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FEDERAL REGISTER

Vol. 77 Thursday,
No. 235 December 6, 2012

Pages 72681–72912

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Doc. No. AMS–FV–12–0027; FV12–922–1 IR]

Apricots Grown in Designated Counties in Washington; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Washington Apricot Marketing Committee (Committee) for the 2012–13 and subsequent fiscal periods from $1.50 to $0.50 per ton of Washington apricots handled. The Committee locally administers the marketing order which regulates the handling of apricots grown in designated counties in Washington. Assessments upon apricot handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended or terminated.

DATES: Effective December 7, 2012. Comments received by February 4, 2013, will be considered prior to issuance of a final rule.

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

FOR FURTHER INFORMATION CONTACT: Manuel Michel, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 805 SW. Broadway, Suite 930, Portland, OR 97205; Telephone: (503) 326–2724; Fax: (503) 326–7440; or Email: *Manuel.Michel@ams.usda.gov* or *GaryD.Olson@ams.usda.gov*.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 922 (7 CFR 922), as amended, regulating the handling of apricots grown in designated counties in Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, apricot handlers in designated counties in Washington are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable Washington apricots beginning April 1, 2012, and continue until amended, suspended, or terminated.

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

This rule decreases the assessment rate established for the Committee for the 2012–13 and subsequent fiscal periods from $1.50 to $0.50 per ton of Washington apricots handled under the order.

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

For the 2010–11 and subsequent fiscal periods, the Committee recommended, and the USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 24, 2012, and unanimously recommended expenditures of $4,695 for the 2012–13 fiscal period. In comparison, the

previous fiscal period's budgeted expenditures were $8,145. The Committee also unanimously recommended an assessment rate of $0.50 per ton of apricots. The recommended assessment rate of $0.50 is $1.00 lower than the rate currently in effect.

The Committee's decision to lower expenditures and its recommendation to decrease the assessment rate were a direct result of discussions regarding the future of the marketing order. Committee members discussed reasons for and against regulatory suspension, order suspension, and termination of the order. After much consideration, the Committee unanimously recommended a temporary suspension of the order's handling regulations, lower expenditures, and a decrease in the assessment rate. The Committee believes that decreasing the assessment rate will allow the Committee to fund its financial obligations and reduce its current monetary reserve of $3,968.

The major expenditures recommended by the Committee for the 2012–13 fiscal period include $2,400 for the management fee, $1,300 for Committee travel, $750 for the annual audit review, and $245 for insurance, bonds, and miscellaneous expenses. In comparison, major expenditures for the 2011–12 fiscal period included $4,800 for the management service fee, $1,300 for travel, $100 for compliance, and $1,945 for audits, insurance and bonds, equipment maintenance and miscellaneous expenses.

Committee members estimated the 2012 fresh apricot production to be approximately 6,600 tons, which exceeds the 2011 production of 2,758 tons by 3,840 tons. The Committee's recommended assessment rate was then derived by dividing the 2012–13 anticipated expenses by the expected shipments of Washington apricots, while also taking into account the Committee's monetary reserve. The recommended assessment rate of $0.50 per ton of apricots multiplied by the 6,600 tons of estimated 2012 Washington apricot shipments would generate $3,300 in handler assessments. The projected revenue from handler assessments, along with funds from the Committee's monetary reserve of $3,968, will be adequate to cover the 2012–13 budgeted expenses of $4,695. The Committee's monetary reserve is expected to be approximately $2,573 at the end of the 2012–13 fiscal period.

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

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of the Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2012–13 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–602), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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

There are approximately 94 producers of apricots in the production area and approximately 20 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $7,000,000.

The National Agricultural Statistics Service reported that in 2011 the Washington apricot total utilization (including both fresh and processed markets) of 3,900 tons sold for an average of $1,830 per ton. Consequently, the total farm-gate value in 2011 was approximately $7,132,000. Based on the number of producers in the production area (94), the 2011 average revenue from the sale of apricots is estimated at approximately $75,925 per producer. In addition, based on information from the USDA's Market News Service, 2011 f.o.b. prices for WA No. 1 apricots ranged from $20.00 to $26.00 per 24-pound loose-pack container, and from $22.00 to $30.00 for 2-layer tray-pack containers. Using average price and shipment information provided by the Committee, it is determined that each of the Washington apricot handlers currently ship less than $7,000,000 worth of apricots on an annual basis. In view of the foregoing, it can be concluded that the majority of producers and handlers of Washington apricots may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2012–13 and subsequent fiscal periods from $1.50 to $0.50 per ton of apricots handled under the order's authority. The Committee also unanimously recommended 2012–13 expenditures of $4,695. With a 2012–13 Washington apricot crop estimate of 6,600 fresh market tons, the Committee anticipates assessment income of approximately $3,300. Income derived from handler assessments, along with funds from the Committee's monetary reserve, will be adequate to cover budgeted expenses for the 2012–13 fiscal period. At this assessment rate and expense level, the Committee's monetary reserve will approximate $2,573 by March 30, 2013, which is within the maximum permitted by the order of approximately one fiscal period's operational expenses (§ 922.42).

The major expenditures recommended by the Committee for the 2012–13 fiscal period include $2,400 for the management fee; $1,300 for Committee travel; $750 for the annual audit review; and $245 for insurance, bonds, and miscellaneous expenses. In comparison, major expenditures for the 2011–12 fiscal period included $4,800 for the management service fee; $1,300 for travel; $100 for compliance; and $1,945 for audits, insurance and bonds, equipment maintenance, and miscellaneous expenses. Funds in the Committee's monetary reserve were $3,968 on March 31, 2012, and were within the order's limit of approximately one fiscal period's operational expenses.

The Committee discussed alternatives to this rule, including alternative expenditure levels. Although lower assessment rates were considered, none were selected because they would not generate sufficient income to administer the order. Committee members also discussed reasons for and against regulatory suspension, order suspension, and termination of the

order. The result of these discussions was the Committee's recommendation to decrease the assessment rate. The Committee also recommended suspension of the handling regulations, and that recommendation is being reviewed separately by USDA.

A review of historical crop and price information, as well as preliminary information pertaining to the 2012–13 fiscal period, indicates that the producer price could average approximately $1,000 per ton for fresh Washington apricots. Therefore, the estimated assessment revenue for the 2012–13 fiscal period as a percentage of total producer revenue is 0.05 percent for Washington apricots.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Washington apricot industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 24, 2012, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Washington apricot handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2012–13 fiscal period began on April 1, 2012, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable apricots handled during such fiscal period; (2) the action decreases the assessment rate for assessable apricots beginning with the 2012–13 fiscal period; (3) handlers are aware of this action, which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 922 is amended as follows:

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ 1. The authority citation for 7 CFR part 922 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 922.235 is revised to read as follows:

§ 922.235 Assessment rate.

On or after April 1, 2012, an assessment rate of $0.50 per ton is established for the Washington Apricot Marketing Committee.

Dated: November 30, 2012.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2012–29435 Filed 12–5–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 923

[Doc. No. AMS–FV–12–0026; FV12–923–1 IR]

Sweet Cherries Grown in Designated Counties in Washington; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Washington Cherry Marketing Committee (Committee) for the 2012–2013 and subsequent fiscal periods from $0.40 to $0.18 per ton of sweet cherries handled. The Committee locally administers the marketing order which regulates the handling of sweet cherries grown in designated counties in Washington. Assessments upon Washington sweet cherry handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective December 7, 2012. Comments received by February 4, 2013, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular

business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

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

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 923, as amended (7 CFR part 923), regulating the handling of sweet cherries grown in designated counties in Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Washington sweet cherry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable sweet cherries beginning April 1, 2012, and continue until amended, suspended, or terminated.

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

This rule decreases the assessment rate established for the Committee for the 2012–2013 and subsequent fiscal periods from $0.40 to $0.18 per ton of sweet cherries handled.

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

For the 2007–2008 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 15, 2012, and unanimously recommended 2012–2013 expenditures of $64,400 and an assessment rate of $0.18 per ton of sweet cherries. In comparison, last year's budgeted expenditures were $72,200. The assessment rate of $0.18 is $0.22 lower than the rate currently in effect. The Committee recommended the lower assessment rate for the purpose of decreasing the monetary reserve, which is approximately $107,074. Funds in the reserve must be kept within the maximum permitted by the order of approximately one fiscal period's operational expenses (§ 923.42).

The major expenditures recommended by the Committee for the 2012–2013 fiscal period include $20,000 for administration and data management fees; $35,000 for Committee expenses such as travel, accounting, and compliance; $5,000 for contingency; and $4,400 for office expenses—including bonds, insurance, telephone, office equipment and supplies. Budgeted expenses for these items in 2011–2012 were $22,500, $38,000, $2,500, and $9,200, respectively.

The assessment rate recommended by the Committee was derived by multiplying anticipated shipments of Washington sweet cherries by various assessment rates. Applying the $0.18 per ton assessment rate to the Committee's 120,000 ton crop estimate should provide $21,600 in assessment income. Thus, income derived from handler assessments and interest ($5) plus $42,795 from the Committee's monetary reserve would be adequate to cover the recommended $64,400 budget for 2012–2013. Funds in the reserve were $107,074 as of March 31, 2012. The Committee estimates a reserve of $64,279 on March 31, 2013, which would be within the maximum permitted by the order of approximately one fiscal period's operational expenses.

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

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2012–2013 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are

unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 53 handlers of Washington sweet cherries subject to regulation under the order and approximately 1,500 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

National Agricultural Statistics Service has prepared a preliminary report for the 2011 shipping season showing that the sweet cherry fresh market utilization of 165,000 tons sold for an average of $2,300 per ton. Based on the number of producers in the production area (1,500), the average producer revenue from the sale of sweet cherries in 2011 can therefore be estimated at approximately $253,000 per year. In addition, the Committee reports that most of the industry's 53 handlers would have each averaged gross receipts of less than $7,500,000 from the sale of fresh sweet cherries last season. Thus, the majority of producers and handlers of Washington sweet cherries may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2012–2013 and subsequent fiscal periods from $0.40 to $0.18 per ton of sweet cherries. The Committee also unanimously recommended 2012–2013 expenditures of $64,400. The assessment rate of $0.18 is $0.22 lower than the previous rate. The quantity of assessable sweet cherries for the 2012–2013 fiscal period is estimated at 120,000 tons. Thus, the $0.18 rate should provide $21,600 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

The Committee recommended the assessment rate decrease for the purpose of decreasing the monetary reserve, which is approximately $107,074. With this recommended assessment rate and budget, the Committee may need to draw $42,795 from its monetary reserve, thus helping to decrease the reserve to a level that is less than approximately one fiscal period's operating expenses, the maximum permitted by the order.

The major expenditures recommended by the Committee for the 2012–2013 fiscal period include $20,000 for administration and data management fees; $35,000 for Committee expenses such as travel, accounting, and compliance; $5,000 for contingency; and $4,400 for office expenses—including bonds, insurance, telephone, office equipment and supplies. Budgeted expenses for these items in 2011–2012 were $22,500, $38,000, $2,500, and $9,200, respectively.

The Committee discussed alternatives to this rule. Leaving the assessment rate at the current $0.40 per ton was initially considered, but not recommended because of the Committee's desire to decrease the level of the monetary reserve so that it is not more than approximately one fiscal period's operational expenses.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2012–2013 fiscal period could average $2,300 per ton of sweet cherries. Therefore, the estimated assessment revenue for the 2012–2013 fiscal period as a percentage of total producer revenue is 0.008 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Washington sweet cherry industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 15, 2012, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189, Generic Fruit Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Washington sweet cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2012–2013 fiscal period began on April 1, 2012, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable sweet cherries handled during such fiscal period; (2) this action decreases the assessment rate for assessable sweet cherries beginning with the 2012–2013 fiscal period; (3) handlers are aware of this action, which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 923 is amended as follows:

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ 1. The authority citation for 7 CFR part 923 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 923.236 is revised to read as follows:

§ 923.236 Assessment rate.

On and after April 1, 2012, an assessment rate of $0.18 per ton is established for the Washington Cherry Marketing Committee.

Dated: November 30, 2012.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2012–29436 Filed 12–5–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 417

[Docket No. FSIS–2012–0007]

HACCP Plan Reassessment for Not-Ready-To-Eat Comminuted Poultry Products and Related Agency Verification Procedures

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Compliance with the HACCP system regulations and request for comments

SUMMARY: The Food Safety and Inspection Service (FSIS) is publishing this notice to inform establishments producing not-ready-to-eat (NRTE) ground or otherwise comminuted chicken and turkey products that they must reassess their Hazard Analysis and Critical Control Points (HACCP) plans for these products to take into account several recent *Salmonella* outbreaks associated with consumption of comminuted NRTE turkey products. No sooner than 90 days following publication of this notice, Agency inspection program personnel (IPP) will begin verifying that establishments that manufacture comminuted NRTE turkey or chicken product, as a final or intermediary product for further processing as NRTE product, have reassessed their HACCP plans for these products.

This notice also describes how FSIS will determine whether the association of NRTE meat or poultry product with an outbreak would make subsequently-produced like product adulterated.

In addition, FSIS is expanding its *Salmonella* Verification Sampling Program for Raw Meat and Poultry product to include all forms of non-breaded, non-battered comminuted NRTE poultry product that are not destined under company control programs for further processing into RTE products in official establishments.

Finally, this notice announces that FSIS will apply its Category 1 performance measure based on current performance standards for ground chicken and turkey product to comminuted poultry to mark the level of process control that all establishments producing such products should maintain. No sooner than 90 days after publication of this notice, the Agency will begin sampling to determine the prevalence of *Salmonella* in comminuted poultry and will use the results from this sampling to develop performance standards for these products. For reasons discussed later, FSIS has not tested NRTE comminuted poultry products, other than ground chicken and ground turkey, for *Salmonella.* In addition, FSIS is likely to develop *Campylobacter* standards for these products following validation of an analytic method.

FSIS invites comments on this notice.

DATES: The Agency must receive comments by March 6, 2013.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by either of the following methods:

Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov/*. Follow the on-line instructions at that site for submitting comments.

Mail, including CD–ROMs: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782 Room 8–163A, Washington, DC 20250–3700.

Hand- or courier-delivered submittals: Deliver to Patriots Plaza 3, 355 E Street SW., Room 8–163A, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2012–0007. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or to comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E Street SW., Room 8–164, Washington, DC 20250–3700 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For information: Contact Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development, at (202) 205–0495, or by fax at (202) 720–2025.

SUPPLEMENTARY INFORMATION:

I. Background

FSIS administers a regulatory program under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 453 *et seq.*) to protect the health and welfare of consumers by preventing the distribution in commerce of meat or poultry products that are adulterated or misbranded. In pursuit of its goal of reducing the risk of foodborne illness from meat and poultry products to the maximum extent possible, FSIS issued final regulations on July 25, 1996, that mandated the development and implementation of Pathogen Reduction and Hazard Analysis and Critical Control Point (HACCP) Systems by federally inspected establishments (61 FR 38806). These regulations require that federally inspected establishments take preventive and corrective measures at each stage of the food production process where food safety hazards are likely to occur. The HACCP regulations (9 CFR 417.2(a)) require establishments to conduct a hazard analysis to determine what food safety hazards are reasonably likely to occur in the production process of particular products and to identify the preventive measures that the establishment can apply to control those hazards.

Section 417.2(a)(1) of the HACCP regulations states that a food safety hazard that is reasonably likely to occur is one for which a prudent establishment would establish control measures because the hazard historically has occurred, or because there is a reasonable possibility that it will occur in the particular type of product being processed, in the absence of those controls. Whenever a hazard analysis reveals that one or more hazards are reasonably likely to occur in the production process, the regulations require that the establishment develop and implement a written HACCP plan that includes specific control measures for each hazard identified (9 CFR 417.2(b)(1) and (c)).

Section 417.4(a)(3) of the regulations requires that every establishment reassess the adequacy of its HACCP plan at least annually and whenever any

changes occur that could affect the hazard analysis or alter the HACCP plan. Because the recent outbreaks discussed in this notice were associated with many individual consumers in multiple States, the occurrence of these outbreaks could represent a change in the sanitary conditions involved in the manufacture of these products and is a change that could affect the hazard analysis or alter the HACCP plans for comminuted poultry products. Although the recalls described in this notice have involved NRTE comminuted turkey products, NRTE comminuted chicken products are produced in a similar manner. Therefore, FSIS is requiring that establishments reassess HACCP plans for comminuted NRTE chicken or turkey products, including final products or intermediary product for further processing as NRTE product. Such product includes any NRTE chicken or turkey product that has been ground, mechanically separated, or hand- or mechanically deboned and further chopped, flaked, minced or otherwise processed to reduce particle size.

II. Findings Associated With Recent Outbreaks

In February 2011, the Wisconsin Department of Health and Family Services (WDHFS) notified FSIS of a case-patient hospitalized with a confirmed *Salmonella* Hadar infection who had consumed turkey burgers within the incubation period of illness onset. Leftover product tested positive for the pathogen associated with the outbreak. The clinical and product isolates also exhibited similar antimicrobial resistance. In March 2011, Colorado notified FSIS of a case-patient with multiple drug resistant *Salmonella* Hadar who had consumed the same brand of turkey burgers before becoming ill. Turkey burger from the case-patient's home was positive for the pathogen associated with the outbreak. Shopper card information was used to determine that the case-patient's family had purchased the same brand of turkey burgers in January 2011. Later that month, the Ohio Department of Health notified FSIS of a case-patient hospitalized with *Salmonella* Hadar with a history of consuming the same brand of turkey burgers. The three case-patients with detailed food histories reporting these turkey burger exposures were all hospitalized overnight. In mid-January 2011, the Minnesota Department of Agriculture's retail food sampling program had detected the pathogen associated with the outbreak in the same brand of NRTE turkey meatloaf with gravy product with nationwide distribution. In March 2011, the New Mexico Department of Health had detected the outbreak strain of *Salmonella* Hadar in a ground turkey product from the same company during routine National Antimicrobial Resistance Monitoring System (NARMS) retail meat study testing (no illnesses resulted from consumption of these turkey products). The producing establishment voluntarily recalled approximately 54,960 pounds of ground turkey product. Information on this recall can be found on the FSIS Web page (*http://www.fsis.usda.gov*), through the ''FSIS Recalls'' link, under recall case number 028–2011.

In response to the events, the Agency conducted a Food Safety Assessment (FSA) at the establishment in April-May 2011. An FSA is performed to assess the design and validity of food safety systems in an establishment. FSAs are conducted routinely and periodically and also ''for cause'' when prompted by a positive sample result, production and shipment of adulterated product, or any other high priority food safety related incident. FSIS issued a Notice of Intended Enforcement Action (NOIE) to this establishment in early May due to lack of validated cooking instructions, among other findings. Specifically, the cooking instructions prescribed a certain number of minutes for cooking per patty side, but the establishment's validation cooking study did not demonstrate that the cook time and cooking methods prescribed in these instructions ensured that a safe internal temperature is reached. In response to the NOIE, the establishment decreased its patty thickness, revalidated cooking instructions, and changed its consumer package instructions to recommend cooking to 165 degrees Fahrenheit. The establishment also implemented antimicrobial treatments in product manufacture and made other changes in response to the NOIE. FSIS verified that the establishment was implementing effective *Salmonella* controls.

The establishment associated with this outbreak is not a slaughter establishment and receives raw product for grinding and ground product for blending from other establishments in its corporate structure. The recalled product was produced at this establishment by blending turkey ground at slaughter establishments within its corporate structure.

Through review of records, FSIS found that at the time of the outbreak, this further processing establishment had not, as cited above, provided validated cooking instructions for the recalled product, did not use interventions other than temperature control on raw parts for grinding, and did not prevent lots from contaminating each other by cleaning and sanitizing blending and grinding equipment between lots. FSIS also found that in the months leading up to the outbreak, the establishment that manufactured the product associated with the outbreak may not have had adequate controls to prevent or reduce *Salmonella.*

In May 2011, FSIS became aware of a cluster of 29 *Salmonella* Heidelberg illnesses from 18 states. Additionally, three ground turkey samples collected as part of the NARMS retail testing program (two in New Mexico and one in Minnesota) were included in the cluster; the MN sample was resistant to ampicillin, streptomycin, tetracycline, and gentamycin. Interviewed case-patients who had consumed turkey mentioned several brands, including a number of store brands. FSIS issued a public health alert based upon the investigative findings on July 29, 2011, by which time there were 77 case patients from 26 states. As part of the outbreak investigation, the California Department of Public Health collected ground turkey samples from retail stores and tested them for *Salmonella.* On August 3, 2011, the producing establishment voluntarily recalled approximately 36 million pounds of ground turkey. Information on this recall can be found on the FSIS Web page (*http://www.fsis.usda.gov*), through the ''FSIS Recalls'' link, under recall case number 060–2011. FSIS requested that the establishment recall product based on outbreak investigation data implicating the establishment as a supplier of product linked to human illness. FSIS suspended inspection for the NRTE grinding operations producing the implicated products at the establishment.

The establishment responded with modifications to its food safety system to improve its interventions designed to control *Salmonella.* The establishment's stated goal had been to meet the FSIS *Salmonella* performance standard for ground turkey (49.9 percent positive or less) (9 CFR 381.94(b)(1)). The establishment was depending solely on non-specific *Salmonella* controls to prevent further illness from its product. FSIS allowed the establishment to resume operations to validate those modifications.

FSIS initiated an FSA and scheduled an Incident Investigation Team (IIT) review at the establishment. An IIT review is convened to investigate and provide information regarding a non-routine incident involving the adulteration of FSIS-regulated product

or a significant event or potential public health issue. This IIT was convened in response to the outbreak linked to poultry product and repetitive food safety concerns identified in the review of establishment microbiological sampling and testing results by the FSIS District Office directing the investigation. The IIT investigation at the establishment showed that the establishment's umbrella corporation was unable to substantiate that it had controlled the pathogen associated with the outbreak in its source products. Testing of the establishment environment and poultry product by FSIS found additional evidence of the pathogen associated with the outbreak. Further, while the establishment was on track to meet the performance standard of 49.9 percent positive for generic *Salmonella* and validate its interventions, it had not correlated the standard to the effective control of the pathogen associated with the outbreak. The establishment was unable to substantiate that the non-specific *Salmonella* controls it had initiated were sufficient to prevent further illness from comminuted product.

Establishment data indicated, furthermore, that the use of mechanically deboned and separated product increased the likelihood of *Salmonella* contamination. As noted below, both mechanically deboned product and mechanically separated product were used in the product associated with one of the outbreaks discussed in this notice. This appears to have been due to the establishment using antimicrobial treatments on some but not all source materials and specifically not on mechanically separated source materials.

Based on information from the FSA and IIT, FSIS issued an NOIE on the same NRTE ground processes previously suspended to provide the establishment the opportunity to demonstrate compliance as directed by 9 CFR 500.4(a). This resulted in a new suspension of inspection for the specified NRTE ground processes until the establishment was able to demonstrate effective controls. On September 11, the producing establishment voluntarily recalled 185,000 pounds of ground turkey. Information on this recall can be found on the FSIS Web page (*http://www.fsis.usda.gov*), through the ''FSIS Recalls'' link, under recall case number 071–2011.

III. Reassessment in Response to Outbreaks

Because the recent outbreaks discussed above have been directly associated with illness in many unrelated individuals in multiple states, these outbreaks, in the Agency's view, represent evidence of a material change in the effectiveness of what heretofore had been regarded as necessary and appropriate sanitary conditions required to manufacture safe and wholesome product. As such, the occurrence of these outbreaks is a change that could affect the hazard analysis or alter the HACCP plans for such products and like products. Therefore, establishments that produce NRTE comminuted turkey or chicken poultry products (including ground, mechanically separated, or hand- or mechanically-deboned poultry that is further chopped, flaked, minced, or otherwise processed to reduce particle size but not battered or breaded) in final form or as an intermediary product must evaluate the information discussed above to determine whether their HACCP plans for these products adequately address biological hazards, particularly *Salmonella.* An establishment that produces comminuted poultry and has already taken these outbreaks into account in a HACCP plan reassessment for these products is not required to do so again, provided the establishment has documented its reassessment in its hazard analysis or HACCP plans, or a record or reassessment, and makes this evidence available to FSIS inspection program personnel.

The investigations conducted at establishments associated with the outbreaks showed that sanitation procedures are particularly important in the production of ground and comminuted poultry products. When conducting a reassessment that takes these outbreaks into account to determine whether HACCP plans for NRTE comminuted poultry products adequately address biological hazards, *Salmonella* in particular, establishments should evaluate the adequacy of their sanitation procedures for processing equipment, including grinders, blenders, pipes, and other components and surfaces in contact with the product. Thus, Sanitation SOPs, other prerequisite programs, or HACCP plans should address procedures that ensure that all slaughter and further processing equipment, employee hands, tools, and clothing, and food contact surfaces are maintained in a sanitary manner to minimize the potential for cross contamination within and among lots of production. In addition, FSIS expects establishments to ensure that slaughter and dressing procedures are designed to prevent contamination to the maximum extent possible. Such procedures should, at a minimum, be designed to limit the exterior contamination of birds before exsanguination, as well as minimize digestive tract content spillage during dressing process.

Establishments producing NRTE comminuted poultry products should ensure that cooking instructions are validated, especially if the instructions explain how to cook the product to attain an end-point temperature of 165 degrees Fahrenheit (e.g., when grilling patties, cook from the unfrozen state on each side for ''X'' minutes for a patty of ''Y'' thickness; bake uncovered in an oven at ''Z'' degrees for ''A'' minutes).

Establishments producing NRTE comminuted poultry products should also consider lotting practices (distinguishing one portion of production from another such that they are microbiologically independent) and ability to prevent lots from contaminating each other, including not carrying over production; cleaning and sanitizing between lots; and being able to trace back product to originating slaughter establishments (if applicable), grow-out houses, hatcheries, and breeding flocks. Such process control procedures may be instrumental in reducing the impact of potential future product recalls.

Establishments producing NRTE comminuted poultry products should evaluate the adequacy of any *Salmonella* interventions applied to product source materials or to product during or after grinding or blending. These establishments should also evaluate these interventions for their ability to reduce *Salmonella* (expressed as ''log reduction''). When they are evaluating the effectiveness of these interventions, establishments should consider incoming variability of *Salmonella* levels in live birds (at establishments that slaughter) and on parts (at establishments that use parts in comminuted product manufacturing).

If they have not already done so, establishments producing NRTE ground and comminuted poultry products should consider implementing purchase specifications that require raw materials used to produce such products to have been treated with an intervention shown to reduce *Salmonella.* If establishments producing NRTE comminuted poultry products require their suppliers (both within and outside their corporate structure) to meet such specifications, they should also ensure that their suppliers actually meet these purchase specifications. Establishments could incorporate such specifications in their HACCP plans, in their Sanitation SOPs, or in other prerequisite programs.

Establishments producing comminuted poultry should also consider serotype information, focusing on presence and trends in the serotypes of human health concern identified by the Centers for Disease Control and Prevention (CDC) in the CDC top 30 serotypes list (available at *http://www.cdc.gov/ncezid/dfwed/PDFs/SalmonellaAnnualSummaryTables2009.pdf*). FSIS provides guidance, including data on serotype information to establishments that have had *Salmonella* HACCP verification testing performed by FSIS. This guidance explains that serotype information can be used to better focus food safety efforts to protect public health. For example, compiled serotype information can assist an establishment's efforts to identify interventions it may use and in that way help address the problem.

Finally, establishments producing NRTE comminuted poultry products should consider pre-harvest factors and interventions that may influence *Salmonella* contamination in NRTE comminuted poultry products (including breeder flock *Salmonella* status, hatchery management, biosecurity and pest control, feed manufacturing and feed withdrawal practices, and sanitation of pre-harvest environments including transport crates).

Although comminuted livestock products (e.g., beef and pork) are similarly produced, this notice is specific to poultry. Historically, ground chicken products have the highest *Salmonella* spp. percent positive rates of all FSIS-regulated product classes. Further, three of the five most common *Salmonella* serotypes known to cause human illness are consistently found more in ground chicken. As such, available data suggests a continued focus on poultry products will reduce salmonellosis. Prudent manufacturers of comminuted meat products, however, should be aware of the factors contributing to the recent ground turkey product outbreaks and consider the information in this notice with regard to assessing whether their food safety systems present similar vulnerabilities.

IV. FSIS Actions To Enforce and Facilitate Compliance With the Reassessment Requirement

FSIS will instruct inspection program personnel to ensure that all establishments producing non-breaded, non-battered NRTE comminuted chicken or turkey, including small and very small establishments that may not belong to a trade association, are aware that the Agency has issued this notice.

No sooner than 90 days following publication of this notice in the **Federal Register**, FSIS will instruct inspection program personnel to begin conducting a checklist survey in chicken and turkey slaughter and further processing establishments, including establishments that produce comminuted poultry. Through this checklist survey, FSIS will document whether establishments made changes to their HACCP plans in response to the required reassessment or whether changes were made before the mandatory reassessment, and will capture a general description of the type of changes made. IPP will be instructed to share establishment responses to the checklist with establishment management in order to best ensure that the information is complete. Establishments that disagree with the IPP checklist entries will be encouraged to provide supporting rationale for why the responses should be changed. The completed survey will enable the Agency to identify which establishments have reassessed HACCP plans for NRTE comminuted poultry products, based on the outbreak information discussed above.

FSIS will subsequently evaluate establishments that produce NRTE comminuted poultry products to collect in-depth information on changes made. FSIS will evaluate information gathered in the survey and may conduct FSAs of establishments producing NRTE comminuted poultry products. The Agency will decide on the conditions under which it will conduct any other evaluations for establishments producing NRTE comminuted poultry products. Consistent with current Agency practices, FSIS may conduct a ''for cause'' FSA in response to production and shipment of adulterated product. In response to the survey results discussed above, FSIS may consider conducting a ''for cause'' FSA, if FSIS has any concerns regarding that establishment's food safety system.

Once FSIS has evaluated such establishments, it intends to publish guidance for industry on best practices to reduce *Salmonella* in comminuted poultry. In addition, the Agency expects to use the results in designing targeted verification activities.

FSIS recommends that manufacturers of comminuted products derived from cattle, hogs, and sheep or comminuted poultry products derived from poultry other than chicken or turkeys also take note of the factors contributing to the recent comminuted turkey product outbreaks. These manufacturers should consider the instructions in this notice with regard to assessing whether their food safety systems present similar vulnerabilities.

Adulteration of Product Associated With Outbreaks

When NRTE poultry or meat products are associated with an illness outbreak and contain pathogens that are not considered adulterants, FSIS likely will consider the product linked to the illness outbreak to be adulterated under 21 U.S.C. 453(g)(3) or 21 U.S.C. 601(m)(3) because the product is ''* * * unsound, unhealthful, unwholesome, or otherwise unfit for human food.'' In such cases, the Agency would request that the establishment recall the product if it is still in commerce.

FSIS will also evaluate whether the particular product associated with the illness outbreak may also be adulterated because it was ''* * *prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health'' (21 U.S.C. 453(g)(4) or 21 U.S.C. 601(m)(4)). FSIS would likely find that such product is adulterated because it was produced under insanitary conditions where the establishment produced the product of concern under conditions that did not adequately address control of the pathogen in the product associated with the illness.

The Agency would also likely determine the insanitary conditions to be continuing in the establishment until the establishment demonstrates that it has regained control of its production processes and re-established sanitary conditions under which the product is produced so that the establishment is able to produce unadulterated product.

FSIS would also have to evaluate whether the type of product produced at other establishments, when demonstrably linked to product associated with the outbreak, is adulterated because it was produced under substantially similar processes and insanitary conditions. For example, associated product at another establishment produced from birds that came from the same grow-out house as the birds that were the source of the product associated with the illness outbreak, and that were subject to substantially similar processing conditions, may also be determined to be adulterated by the Agency.

FSIS would not be likely, however, to consider product of the same type adulterated though it is found to have the pathogen associated with the illness outbreak, provided it was produced in other establishments that have no relationship to product involved in the illness outbreak. A determination of

adulteration would be specific to the product linked to the illness outbreak and to the conditions in the establishment where that product was produced.

Agency Verification Sampling and Testing

The Agency is expanding its *Salmonella* Verification Sampling Program to include all non-breaded, non-battered ''NRTE comminuted'' chicken or turkey products in addition to the currently sampled NRTE ground chicken and turkey. In a way similar to the process of grinding product, the process of producing comminuted product, whether mechanically deboned or mechanically separated, leads to the distribution of pathogens throughout the product. These techniques differ mainly in the equipment used and the source materials (i.e., boneless meat versus meat with bone attached). Both mechanically deboned product and mechanically separated product were used in the product associated with one of the outbreaks discussed in this notice. The product involved in the outbreak was likely not subject to FSIS sampling. In the past, mechanically separated product was not typically used in poultry product sold to consumers in an NRTE product. At this time, however, mechanically separated product may be included in such product, especially for export. For all these reasons, FSIS will begin sampling non-breaded, non-battered comminuted product for *Salmonella.* In addition, FSIS expects to use the verification testing program as the mechanism to obtain samples to determine the prevalence of *Salmonella* in comminuted poultry and will use the results from this sampling to develop performance standards for these products. FSIS also expects to analyze the samples for *Campylobacter,* as well as for other microorganisms that could serve as indicators of inadequate process control.

As explained above, ''NRTE comminuted poultry'' products to be sampled include any non-breaded, non-battered raw or otherwise NRTE product that has been ground, mechanically separated, or hand- or mechanically-deboned and further chopped, flaked, minced, or otherwise processed to reduce particle size. The Agency will also include in its sampling non-breaded, non-battered NRTE comminuted poultry product after other ingredients such as spices have been added, since the Agency expects establishments to control pathogens in final product regardless of the source of the pathogens. Consistent with FSIS's current *Salmonella* sampling procedures for NRTE product, when the establishment either processes all comminuted product into RTE product or moves all such product to another official federally-inspected domestic establishment for further processing into RTE product, such product will not be subject to Agency sampling. The Agency will collect comminuted NRTE samples in establishments with an average daily production of greater than 1,000 pounds over the past month, but this may change as the program progresses.

A sampling change will be initiated to allow for a more accurate measurement of the incidence of *Salmonella.* Beginning 90 days after publication of this notice, the sampling for these comminuted poultry products will begin with a new larger standard size for its verification samples as the Agency completes validation studies on moving its microbiological testing from a 25 gram sample size to 325 grams. This larger sample size will provide consistency as the Agency moves toward analyzing each sample for two pathogens.

Meanwhile, based on analysis of data from three consecutive years, Fiscal Year (FY) 2009 to FY2011, FSIS is considering reducing the number of samples in a set from 53 to 26 samples. FY2009–2011 data analysis showed that reducing samples from 53 to 26 will not compromise the ability to detect non-compliant establishments. With this change, based on current standards, FSIS is considering accepting a maximum of 15 positive samples in a 26-sample ground turkey set to meet the performance standard and a maximum of seven positive samples for such a set to count toward Category 1 status. For ground chicken, based on current standards, FSIS is considering accepting a maximum of 13 positive samples in a 26-sample set to meet the performance standard and a maximum of six positive samples for such a set to count toward Category 1 status. Because a reduction in sample set size could increase the number of sets that can be performed in a given period of time, the possibility exists that this modification may result in a greater number of non-compliant establishments detected in that time period, providing a better reflection of current production practices and increasing the efficiency of FSIS resource utilization.

The original *Salmonella* performance standards were established based on industry averages (percent positive samples) estimated from baseline surveys conducted more than a decade ago. The current standards were designed such that establishments with sampling results above an average (or expected) result would be considered non-compliant with the standard. Recently, FSIS has explored designing performance standards to achieve a public health objective. For example, the Healthy People 2020 goal for human salmonellosis is a 25 percent reduction. FSIS intends to apply its Category 1 ranking for ground chicken and turkey product to comminuted product to mark the level of performance at which all establishments producing such products should maintain process control. The Agency's Category 1 approach for the current performance standard includes establishments with sample results at 50 percent or less of the relevant performance standard, as detailed in a February 2006 **Federal Register** notice (*http://www.fsis.usda.gov/Frame/FrameRedirect.asp?main=http://www.fsis.usda.gov/OPPDE/rdad/FRPubs/04-026N.htm;http://www.fsis.usda.gov/Frame/FrameRedirect.asp?main=http://www.fsis.usda.gov/OPPDE/rdad/FRPubs/2010-0029.htm*). For ground chicken the performance standard is 44.6 percent and the acceptable number of positive samples per set is 26 of 53. For ground turkey the performance standard is 49.9 percent and the acceptable number of positive samples per set is 29 of 53.

FSIS intends to conduct a risk assessment based on at least three months of these new sampling and testing results and issue a new performance standard for these products for *Salmonella* and likely *Campylobacter* as well. With publication of this notice, FSIS will discontinue sampling sets for ground poultry product, except for establishments in category 3. When FSIS stops testing sets at establishments, FSIS recommends that they assess whether they meet the category 1 standard. Establishments in category 3 are those that have not been able to maintain consistent process control over the previous two *Salmonella* verification testing sets and have shown highly variable process control over the most recent set (i.e., the most recent set does not meet the performance standard and any result in prior set). For these establishments, FSIS will continue to schedule sets for ground chicken or turkey and would also sample other comminuted chicken or turkey products. The Agency requests comment on whether, given the relatively high prevalence of *Salmonella* in comminuted chicken and turkey product, it should apply to these product classes a more stringent measure of 25 percent of the national

prevalence for defining Category 1 rather than the traditional measure of 50 percent of the national prevalence for defining Category 1. That is, the traditional 50 percent reduction applied to the current standard of 44.6 for ground chicken and 49.9 percent for ground turkey would give a Category 1 standard of approximately 22 and 24 percent, respectively. Applying a more stringent measure of 25 percent of the national prevalence to these product classes would give a Category 1 standard of approximately 11 and 12 percent, respectively. FSIS believes that establishments would seek to improve process control so as to remain compliant with a revised performance standard and that, as a result, a substantial number of illnesses would be averted. In addition, a reduction of Category 1 to 25 percent of the performance standard would be consistent with the goals of the Healthy People 2020 initiative.

Except for category 3 establishments, FSIS will discontinue the concept of set testing for ground and comminuted chicken or turkey at least until it establishes new performance standards for these products. For samples that are not collected as part of sets, FSIS field service laboratories will perform qualitative testing for the presence or absence of *Salmonella* using the same methodology, discard criteria, and reporting as those currently in place. Samples that screen positive will be analyzed, i.e., the *Salmonella* organisms present will be enumerated, using the MPN (Most Probable Number) procedure.

Paperwork Reduction Act

FSIS has reviewed the paperwork and recordkeeping requirements in this notice in accordance with the Paperwork Reduction Act and has determined that the paperwork requirements for this notice, which informs establishments that produce not ready-to-eat comminuted poultry products that they need to reassess their HACCP Plans, have already been accounted for in the Pathogen Reduction/HACCP Systems information collection approved by the Office of Management and Budget (OMB). The OMB approval number for the Pathogen Reduction/HACCP Systems information collection is 0583–0103.

USDA Nondiscrimination Statement

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Additional Public Notification

FSIS will announce this document online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp*.

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/*. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on November 30, 2012.

Alfred V. Almanza,

Administrator, FSIS.

[FR Doc. 2012–29510 Filed 12–5–12; 8:45 am]

BILLING CODE 3410–DM–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG27

Small Business Size Standards: Administrative and Support, Waste Management and Remediation Services

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The United States Small Business Administration (SBA) is increasing the small business size standards for 37 industries and retaining the current size standards for the remaining seven industries in North American Industry Classification System (NAICS) Sector 56, Administrative and Support, Waste Management and Remediation Services. As part of its ongoing comprehensive review of all size standards, SBA has evaluated all receipts-based size standards for industries in NAICS Sector 56 to determine whether they should be retained or revised. SBA did not review the employee-based size standard for Environmental Remediation Services, an ''exception'' under NAICS 562910, Remediation Services, in NAICS Sector 56, but will do so at a later date with other employee-based size standards.

DATES: This rule is effective January 7, 2013

FOR FURTHER INFORMATION CONTACT: Jon Haitsuka, Program Analyst, Size Standards Division, (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION:

To determine eligibility for Federal small business assistance programs, SBA establishes small business size definitions (referred to as size standards) for private sector industries in the United States. SBA's existing size standards use two primary measures of business size—average annual receipts and number of employees. Financial assets, electric output and refining capacity are used as size measures for a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC), 7(a), and Certified Development Company (CDC or 504) Loan Programs determine small business eligibility using either the industry based size standards or alternative net worth and net income size based standards. SBA is currently in the process of comprehensively reviewing all of its small business size standards. At the start of this comprehensive review, there were 41

different size standards levels, covering 1,141 NAICS industries and 18 sub-industry activities (*i.e.,* ''exceptions'' in SBA's Table of Size Standards). Of these size standards levels, 31 were based on average annual receipts, seven based on number of employees, and three based on other measures.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy, in particular the changes in the Federal contracting marketplace and industry structure. SBA last conducted a comprehensive review of size standards during the late 1970s and early 1980s. Since then, most reviews of size standards have been limited to a few specific industries in response to requests from the public and Federal agencies. SBA also makes periodic inflation adjustments to its receipts-based size standards. The latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

SBA recognizes that changes in industry structure and Federal marketplace since the last overall review have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of its size standards to determine whether existing size standards have supportable bases relative to the current data, and to revise them, where necessary.

In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act), Public Law 111–240. The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to review at least one-third of all size standards during every 18-month period from the date of its enactment and review all size standards not less frequently than once every 5 years thereafter. Reviewing existing small business size standards and making appropriate adjustments based on current data is also consistent with Executive Order 13563 on improving regulation and regulatory review.

SBA has chosen not to review all size standards at one time. Rather, it is reviewing groups of related industries on a Sector by Sector basis.

As part of SBA's comprehensive review of size standards, the Agency reviewed all receipts-based size standards in NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services, to determine whether the existing size standards should be retained or revised. On October 12, 2011, SBA published a proposed rule in the **Federal Register** (76 FR 63510) seeking public comment on its proposal to increase the size standards for 37 industries and retain current size standards for 15 industries in NAICS Sector 56. The rule was one of a series of proposed rules that examines industries grouped by NAICS Sector.

SBA has recently developed a ''Size Standards Methodology'' for developing, reviewing, and modifying size standards, when necessary. SBA has published the document on its Web site at *www.sba.gov/size* for public review and comment and also included it as a supporting document in the electronic docket of the October 12, 2011 proposed rule at *www.regulations.gov.*

In evaluating an industry's size standard, SBA examines its characteristics (such as average firm size, startup costs and entry barriers, industry competition and distribution of firms by size) and the level and small business share of Federal contract dollars in that industry. SBA also examines the potential impact a size standard revision might have on its financial assistance programs and whether a business concern under a revised size standard would be dominant in its industry. SBA analyzed the characteristics of each industry in NAICS Sector 56 that has a receipts-based size standard, mostly using a special tabulation obtained from the U.S. Bureau of the Census based on its 2007 Economic Census (the latest available). SBA also evaluated the level and small business share of Federal contracts in each of those industries using the data from the Federal Procurement Data System—Next Generation (FPDS–NG) for fiscal years 2008 to 2010. To evaluate the impact of changes to size standards on its loan programs, SBA analyzed internal data on its 7(a) and 504 Loan Programs for fiscal years 2008 to 2010.

SBA's ''Size Standards Methodology'' provides a detailed description of its analyses of various industry and program factors and data sources, and how the Agency used the results to derive size standards. In the proposed rule, SBA detailed how it applied its ''Size Standards Methodology'' to review and modify, where necessary, the existing receipts-based size standards for industries in NAICS Sector 56. SBA sought comments from the public on a number of issues concerning its ''Size Standards Methodology,'' such as whether there are alternative methodologies that SBA should consider; whether there are alternative or additional factors or data sources that SBA should evaluate; whether SBA's approach to establishing small business size standards makes sense in the current economic environment; whether SBA's applications of anchor size standards are appropriate in the current economy; whether there are gaps in SBA's methodology because of the lack of comprehensive data; and whether there are other facts or issues that SBA should consider.

SBA also sought comments on its proposal to increase receipts-based size standards for 37 industries and retain the existing receipts-based size standards for seven industries in NAICS Sector 56. Specifically, SBA requested comments on whether the size standards should be revised as proposed and whether the proposed revisions are appropriate. SBA also invited comments on whether its proposed eight fixed size standard levels are appropriate and whether it should adopt common size standards for several Subsectors and Industry Groups in NAICS Sector 56.

SBA's analyses of industry and program data could support lowering existing receipts based standards for five industries and keeping current receipts based size standards for two industries. However, as SBA pointed out in the proposed rule, lowering size standards would not serve the interest of small businesses under the current economic environment because it would reduce the number of firms eligible to participate in Federal small business assistance programs. In addition, this would also run counter to what the Federal government and the Agency are doing to help small businesses and create jobs. Therefore, SBA proposed to retain the current size standards for those five industries and requested comments on whether the Agency should lower size standards for those industries for which its analyses might support lowering them.

Summary of Comments

SBA received 21 comments from individuals, small businesses, and trade groups on its proposal to increase receipts-based size standards for 37 industries and retain current receipts-based size standards for seven industries in NAICS Sector 56 and its size standards methodology.

Of the 21 comments, 18 commented on proposed size standards changes for specific NAICS codes and three provided general comments, mostly relating to the SBA's size standards methodology. The NAICS codes that received the most comments (six)

included NAICS 562910, Remediation Services (including ''exception,'' Environmental Remediation Services), followed by NAICS 561210, Facilities Support Services (four comments), and NAICS 561612, Security Guards and Patrol Services (two comments). Other NAICS codes 561320, Temporary Help Services; 561422, Telemarketing Bureaus and Other Contact Centers; 561440, Collection Agencies; 561510, Travel Agencies; 561520, Tour Operators; 561730, Landscaping Services; and 561920, Conventions and Trade Shows Organizers received one comment each.

Commenters generally supported SBA's effort to review small business size standards for NAICS Sector 56 and its size standards methodology. Comments also generally supported SBA's proposal to increase size standards, but for a number of industries they recommended larger increases. Below is a discussion of the issues and concerns raised in each of those comments and SBA's responses.

NAICS Code 561210—Facilities Support Services

SBA received four comments (including two from the same individual) on NAICS Code 561210, Facilities Support Services. One commenter agreed with SBA's proposal to keep the size standard for this industry at the current $35.5 million level, but recommended that SBA apply the same $35.5 million size standard for all NAICS industries that could be part of a solicitation for Facilities Support Services. SBA does not adopt this suggestion because doing so would allow otherwise large businesses to become small in some industries, thereby hurting truly small businesses to compete for Federal procurements in those industries. For example, the current size standard for all industries under specialty trade contractors, which could be part of procurements under Facilities Support Services (*see* Footnote 12, 13 CFR 121.201), is $14 million. If it were raised to $35.5 million, many large businesses that exceed the current size standard for specialty trade contractors would become small. In addition, SBA continues to believe that these industries are distinct and deserve separate analyses.

Two other commenters expressed concern that SBA did not propose to increase the size standard for this NAICS Code, which is currently $35.5 million. One of them offered a detailed response, including the data on his firm's total revenue and revenue from contract work with the Centers for Disease Control (CDC) for years from 1999 to 2010 and projected revenues for 2011 and 2012. He argued that U.S. Department of Labor's (DOL) mandated 8.5 percent labor cost increase to CDC's contracts in 2006 largely contributed to inflationary growth in his company's total revenue since then, pushing its three-year average annual revenue above $35.5 million in 2010. As a result, as the commenter stated, his company is currently a large business and has been ineligible to re-compete as a small business for its four follow-on contracts with CDC. The commenter anticipates another DOL's labor cost adjustment soon. The commenter argued that if SBA adjusted its size standard for inflation and DOL's labor cost increases in 2012, the size standard for NAICS Code 561210 would increase to $37 million to $38 million, thereby making his company eligible to again compete for its follow-on contract with CDC that is expected to be re-competed in 2012 or 2013.

SBA is required to review all size standards for inflation not less frequently than every five years. Accordingly, the latest inflation adjustment for all receipts-based size standards, including that for NAICS Code 561210, was completed in July 2008. In this comprehensive size standards review, SBA's revisions to size standards are primarily based on the Agency's evaluation of industry and Federal procurement factors. SBA plans to adjust all monetary size standards together for inflation soon after it completes its review of all receipts-based size standards. SBA is reviewing size standards on a Sector by Sector basis, and this can take several years to complete all of them. If SBA were to make additional adjustments for inflation on a Sector by Sector basis, the result would be inconsistent size standards across industries.

The next commenter objected to SBA's proposal to keep the size standard for NAICS Code 561210 at the current $35.5 million level. The commenter criticized the SBA's analysis as being flawed because the 2007 Economic Census tabulation that the Agency used to examine characteristics of industries is limited to businesses operating primarily in that industry. The commenter argued that the size standard would be much higher than $35.5 million had SBA included in its analyses some of the largest companies receiving the Federal contracts under that NAICS code, whose primary industry is not NAICS Code 561210. SBA is aware that there are some problems with the Economic Census tabulation for some industries; therefore it also evaluates Central Contractor Registration and FPDS–NG data for those industries when evaluating a size standard. For example, to assess small business participation in Federal contracting in NAICS Code 561210, SBA evaluated FPDS–NG data for fiscal years 2008 to 2010. The FPDS–NG data for a particular NAICS code include all businesses receiving contracts regardless of whether that industry is their primary industry. Thus, although the Economic Census tabulation may not include all establishments receiving contracts under NAICS Code 561210, FPDS–NG includes them all. Based on the fiscal years 2008–2010 FPDS–NG data, SBA found the small business share of total industry receipts to be very similar to small business share of total Federal contracts in NAICS Code 561210.

The commenter contended further that since procurements for NAICS Code 561210 are very large and include a substantial mix of various services from various industries, most small businesses under the current size standard cannot handle Federal contracts for Facilities Support Services. The commenter included an epipeline summary report of the Federal procurement activities under NAICS Code 561210 for the period from 2004–2008. The report, although somewhat outdated, showed that the majority of Federal contracts awarded by the Federal agencies under NAICS Code 561210 went to larger businesses. This commenter recommended a larger than $35.5 million size standard for this industry because it, as the commenter stated, would increase the number of capable small businesses and offer more competition in the Federal market that is currently dominated by very large companies.

SBA has not adopted this recommendation for several reasons. First, although SBA recognizes the challenges small businesses face in the Federal market, the Agency is also very concerned that ''smaller'' small businesses may not be able to compete effectively with ''larger'' small businesses for Federal small business contracts if a size standard is set too large. Second, SBA's analysis of industry and program data suggested a lower $30 million size standard for this industry. However, for the reasons explained in the proposed rule and also stated above in this rule, SBA has decided not to lower any of its current size standards although the analytical results might support lowering some of them. Thus, SBA proposed to retain the current $35.5 million size standard for NAICS Code 561210 even if its analysis

supported a lower $30 million. Third, to be consistent with SBA's size standards methodology and with proposed and final rules for other NAICS Sectors that SBA has issued to date, $35.5 million is the highest receipts based size standards that SBA will propose or adopt. Thus, SBA is adopting $35.5 million as the size standard for NAICS Code 561210, Facilities Support Services, as proposed.

NAICS Code 561320—Temporary Help Services

There was one comment on SBA's proposed change to the size standard for this NAICS code. The commenter disagreed with SBA's proposal to increase the size standard for that industry from the current $13.5 million to $25.5 million. Rather, he recommended that it should be increased to $35.5 million. The basis for his suggestion was the breakdown of cost for each employee and the benefits not calculated by the Federal government for a business under this NAICS code. He argued that expenses and profits contemplated from Federal contracts did not cover other expenses, such as general and administrative expenses. He neither challenged the industry and program data or methodology SBA used to arrive at the proposed $25.5 million size standard nor did he provide alternative industry data and analysis supporting his recommendation to increase it to $35.5 million. Thus, SBA has not adopted this recommendation and is adopting $25.5 million, as proposed.

NAICS Code 561422—Telemarketing Bureaus and Other Contact Centers and NAICS Code 561920—Convention and Trade Show Organizers

SBA received one comment on both NAICS Code 561422 and NAICS Code 561920. SBA had proposed to increase the size standard for NAICS Code 561422 from $7 million to $14 million. The commenter suggested SBA to reevaluate its proposal and recommended that the size standard for NAICS Code 561422 be increased to at least $25 million. He argued that the proposed $14 million is low compared to size standards for other industries, such as NAICS Code 541511 (Custom Computer and Programming Services) that has a size standard of $25 million and NAICS Code 511199 (All Other Publishers) that has a size standard of 500 employees. The commenter did not explain the rationale for choosing these industries for comparison, nor did he provide any explanation why NAICS Code 561422 should have the same size standard as those other industries. As such, SBA is not convinced that a higher increase is warranted. Thus, SBA has not adopted the commenter's recommendation and is adopting the $14 million size standard for NAICS Code 561422, as proposed.

This commenter also urged SBA to re-assess its proposal to increase the size standard for NAICS Code 561920, Convention and Trade Show Organizers, from $7 million to $10 million and recommended that it should be increased further to at least $14 million, or preferably to $19 million. The commenter argued that it requires specialized labor categories and hence higher labor costs to perform work in this industry, warranting a larger increase to its size standard. However, the comment did not explain why the proposed $10 million size standard was not appropriate in view of higher labor costs. Therefore, SBA has not adopted the recommendation and is adopting $10 million, as proposed.

NAICS Code 561440—Collection Agencies

SBA received one comment that fully supported its proposal to increase the size standard for NAICS Code 561440, Collection Agencies, from $7 million to $14 million. The commenter stated that the proposed size standard accurately reflects current economic conditions and that the higher $14 million size standard would help small businesses to remain competitive in Federal procurements. Thus, SBA is adopting $14 million, as proposed.

NAICS Code 561510—Travel Agencies, and NAICS Code 561520—Tour Operators

SBA received one comment on behalf of two trade associations, one representing Travel Agencies and the other representing Tour Operators. The comment fully supported the SBA's proposal to increase the size standard for NAICS Code 561510 (Travel Agencies) from $3.5 million to $19 million and to increase the size standard for NAICS Code 561520 (Tour Operators) from $7 million to $19 million. The comment also supported SBA's current method of measuring revenues in these industries in terms of commissions and other earnings, excluding funds collected for a third party (such as bookings and sales subject to commissions). The trade associations also confirmed that the proposed size standards are consistent with the data collected from their members and that 73 percent of their members surveyed supported SBA's efforts to increase size standard for those two industries. Thus, SBA is adopting the proposed size standards.

NAICS Code 561612—Security Guards and Patrol Services

SBA received two comments on its proposal to increase the size standard for NAICS Code 561612 (Security Guards and Patrol Services) from $18.5 million to $19 million. The first commenter argued for a higher size standard than SBA's proposed $19 million size standard for this NAIC code. Citing industry data and the methodology that SBA used to derive the proposed size standard, the commenter contended that SBA's proposal to increase it by only $500,000.00 (from its existing $18.5 million) could not be justified. The commenter alleged that the proposed increase from $18.5 million to $19 million failed to account for inflation. The commenter argued that simply by updating the $18.5 million for inflation since the last inflation adjustment in 2008, the size standard should be increased to $19.5 million.

As stated elsewhere with respect to a comment on another NAICS code, SBA is required to review all size standards for inflation not less frequently than every five years. In this review, SBA's revisions to size standards are primarily based on the Agency's evaluation of industry and Federal procurement factors. The Agency plans to adjust all monetary size standards for inflation after it completes its current review of all receipts based size standards. As SBA is reviewing size standards on a Sector by Sector basis, making additional adjustments for inflation for a particular size standard would result in inconsistent size standards across sectors and industries.

The same commenter also expressed concern that the proposed $500,000 increase does not ameliorate the growing problem in recent years that small but growing small businesses have to compete with a small number of industry ''giants'' in the Federal market. He also noted that due to increased security risks agencies often look for brand recognition and because most contracts for security services are ''best value'' procurements where the cost is not a determining factor, Federal agencies often select large, expensive firms. The commenter added that the security industry is dominated by very large firms and aggressive acquisition by large firms has contributed to further market consolidation and dominance by fewer and fewer firms. As a result, as the commenter explained, very small businesses benefit from the current $18.5 million size standard, while mid-tiered companies that have exceeded the size standard are forced to compete with

the largest and most dominant firms in the Federal market place. To address this problem, the commenter suggested of a size standard of $50 million to $75 million. To be consistent with SBA's size standards methodology and with proposed and final rules for other NAICS Sectors that SBA has issued to date, $35.5 million is the highest receipts based size standards that SBA will propose or adopt. Thus, SBA is adopting $35.5 million as the size standard for NAICS Code 561612, Security Guards and Patrol Services.

The next commenter stated that raising the size standard by a mere $500,000 was insufficient compared to what SBA is doing in other industries. The commenter recommended that the size standard for NAICS Code 561612 should be at least $23 million and an even higher $30 million for Service Disable Veteran Owned Small Businesses (SDVOSBs). The commenter noted that a size standard higher than the proposed $19 million size standard is needed to meet the statutorily required 3 percent small business contracting goal for SDVOSB's program. All increases to size standards SBA proposed or adopted in other industries were supported by the analyses of industry and Federal procurement Factors using the same methodology and data sources. The analysis only supported a $500,000 increase to the size standard for NAICS Code 561612. SBA evaluates the level and small business share of Federal contracts for each industry as one of the primary factors in establishing or reviewing a size standard, but whether the Federal agencies are meeting their small business contracting goals or not is not important to deciding a size standard. SBA does not establish separate size standards for individual small business procurement programs. SBA establishes only one set of small business size standards for all small business procurement programs, such as SDVOSB, 8(a), businesses located in Historically Underutilized Business Zones (HUBZone), and Woman-Owned Small Business Programs (WOSB). Thus, SBA has not adopted the commenter's recommendation and is adopting the $19 million size standard for NAICS Code 561622, as proposed.

NAICS Code 561730—Landscaping Services

SBA received one comment on NAICS Code 561730, Landscaping Services, for which SBA had proposed to retain the current size standard of $7 million. The commenter expressed concern that his business' average annual revenue has exceeded the $7 million size standard for NAICS Code 561730. The commenter felt that the $7 million size standard is too low for this industry and it should be much higher. The commenter stated that his company also does irrigation work under NAICS Code 238910 (Site Preparation Contractors) which has a size standard of $13 million and recommended that NAICS Codes 561730 and 238910 have the same size standard of at least $13 million. The comment argued further that 80–85 percent of actual costs of contracts performed under NAICS Code 561730 is for landscaping and the remainder for other services, warranting a higher size standard. SBA is not adopting the commenter's recommendation for several reasons. First, SBA's analyses of industry and program data actually supported lowering the size standard for that industry to $5 million. However, for the reasons provided in the proposed rule, SBA proposed not to reduce any size standard, even if the data appeared to support reducing it. Second, irrigation falls under NAICS Code 221310 (not NAICS Code 238910 as the commenter argued) and it currently has the same size standard of $7 million as for NAICS Code 561730. Third, the commenter did not provide any explanation or analysis of similarities between NAICS Codes 238910 and 561730 for them to have the same size standard. Therefore, SBA has not adopted the commenter's recommendation and is adopting $7 million as the size standard for NAICS Code 561730, as proposed.

NAICS Code 562910—Remediation Services

Six commenters offered data, analysis and suggestions regarding the proposed change to the size standard for this NAICS code. SBA had proposed to increase the size standard for NAICS Code 562910, Remediation Services, from $14 million to $19 million. In the October 12, 2011 proposed rule, SBA had stated that it did not review the 500-employee size standard for the ''exception'' to NAICS Code 562910, Environmental Remediation Services, and that the 500-employee size standard will remain effective until the Agency reviewed it with all employee-based size standards at a later date.

Of the six comments, two pertained to the receipts based size standard for NAICS Code 562910, Remediation Services, and four pertained to the ''exception,'' Environmental Remediation Services, that has a 500-employee size standard.

One commenter supported SBA's proposal to increase the receipts-based size standard for NAICS Code 562910 from $14 million to $19 million, but suggested further increase to $30 million. The commenter noted that a higher size standard will allow procuring agencies to have more discretion in using the receipts-based size standard for specific procurements. He added that historically the receipts-based size standard has not been used much in comparison to the 500-employee size standard. It should be noted that the 500-employee size standard applies only to very specific types of procurements, as described in Footnote 14 in 13 CFR 121.201, and contracting officers cannot apply the employee-based size standard to all contracts under NAICS Code 562910 if they do not meet the requirements under the footnote. The Small Business Size Regulations require Federal agencies to designate the proper NAICS code and size standard in a solicitation, selecting the NAICS code which best describes the principal purpose of the product or service being acquired. *See* 13 CFR 121.402(b). The regulations also provide that any interested party adversely affected by a NAICS code designation may appeal the designation to the Office of Hearings and Appeals. *See* 13 CFR 121.1102–1103. Because the commenter did not provide any data or analysis supporting why a higher $30 million higher size standard he suggested was more appropriate than the SBA's proposed $19 million, SBA is adopting the proposed $19 million.

Another commenter supported the application of the receipts-based size standard to NAICS Code 562910, Remediation Services, but expressed concern with the 500-employee size standard and its impact on businesses with less than 100 employees or $50 million in revenue. The commenter argued that there exist significant similarities in terms of labor and equipment utilized between remediation activities and some of the construction activities under NAICS Subsector 237, Heavy and Civil Engineering Construction, and yet the size standard for construction activities is $33.5 million without an employee-based size standard. The commenter noted that under the 500-employee size standard companies with hundreds of millions of dollars in revenue qualify for small business set-asides and that it is easy for companies to remain permanently below 500 employees by subcontracting out their non-core activities to others. He alleged that procurement personnel have applied the NAICS Code 561290, Remediation Services, for procurements where NAICS Code 541620, Environmental

Consulting Services would been more appropriate, thereby causing an adverse impact on much smaller businesses. He expressed disappointment that SBA deferred the review of the 500-employee size standard for NAICS Code 562910, thereby allowing this situation to continue. Given these concerns, he urged SBA to remove the 500-employee size standard and instead increase the revenue based size standard to $33.5 million in par with the construction industries.

In 1994, based on its analyses of businesses involved in environmental remediation work and the nature of Federal marketplace, SBA created an ''Environmental Remediation Services'' sub-industry category (*see* 59 FR 47237, (September 15, 1994)). The SBA's analyses showed that environmental remediation work involved services from multiple industries and that businesses involved in environmental remediation work tended to be much larger than those doing general remediation work. SBA also found that Federal contracts for environmental remediation work to be of much more sophisticated, multidisciplinary, and large-scale nature than general remediation work. SBA determined that relatively large companies will be necessary to perform environmental remediation procurements. Based on these factors, SBA established a 500-employee based size standard for Environmental Remediation Services and also specified requirements to classify a procurement as Environmental Remediation Services and to apply the 500-employee size standard. A large percentage of commenters on the 1993 proposed rule (58 FR52452, (October 8, 1993)) also had supported the creation of Environmental Remediation Services sub-industry and recommended an employee-based size standard for it instead of a revenue-based size standard. Several commenters on this proposed rule, as discussed below, also recommended the continuation of the employee-based size standard for Environmental Remediation Services exception to NAICS Code 562910, Remediation Services. SBA is concerned that replacing the 500-employee size standard with a receipts-based size standard of $33.5 million, as recommended by the commenter above, would cause several currently eligible small businesses to lose their eligibility for Federal assistance, which is not in the interest of small businesses under the current economic environment, as stated elsewhere in this final rule. At $33.5 million, small businesses may not have adequate capabilities to meet the scope and size requirements of Federal procurements for Environmental Remediation Services and it may hamper the government critical environmental remediation programs. In addition, at $33.5 million, given the large size of most environmental remediation contracts, even with one or two contracts small businesses will quickly exceed the size standard and they will be forced to compete with much larger companies in the Federal market, which is, according to several commenters to this proposed rule, already dominated by very large businesses. Therefore, SBA is not adopting the recommendation. Instead it is adopting the proposed $19 million size standard for NAICS Code 562910, Remediation Services and retaining its Environmental Remediation Services exception and the 500-employee based size standard.

In response to the previous two comments, SBA believes it should clarify why there are two size standards under NAICS Code 562910, one for Remediation Services and the other for Environmental Remediation Services. When SBA converted its table of size standards from Standard Industrial Classification (SIC) codes to NAICS in 2000, it underlined the difference between the two. SBA stated in its September 5, 2000 final rule (65 FR 53533) that the distinction '' * * * lies in the extent and complexity of work to be performed on a specific Federal government contract. 'Environmental Consulting Services' is one activity, and * * * often conducted in conjunction with an environmental remediation contract. However, 'Environmental Remediation Services' requires that (1) the purpose of the procurement be the restoration of a contaminated environment, *i.e.,* environmental remediation; and (2) the procurement be composed of activities in three or more separate industries, none of which constitutes 50 percent or more of the contract value, and each of which would, if it were a separate contract, be a different NAICS (formerly SIC) code. Footnote 14 more fully details when 500 employees is the appropriate size standard for an Environmental Remediation Services contract.''

Although SBA did not review the 500-employee based size standard for Environmental Remediation Services exception under NAICS Code 562910 in the October 12, 2011 proposed rule, the Agency received four comments on this size standard. All four commenters recommended that SBA retain the employee-based size standard for Environmental Remediation Services and felt that the current 500-employee size standard is too low and needs to be increased. Three suggested that it should be increased to 1,000 employees and one recommended 1,500 employees. They provided several reasons for their recommendations: (1) There have been significant mergers and acquisitions and industry consolidation since 1994, resulting in dominance of the Federal market place by several larger firms; (2) the 500-employee size standard has been a barrier for small businesses to acquire financial and technical ability to be able to perform tasks under environmental remediation procurements that are getting increasingly complex and large; (3) it limits ability to grow as a small business, thereby forcing small businesses to compete with mega firms with thousands of employees and billions in revenues once they exceed the size standard; and (4) more mid-sized businesses will retain or regain small business status under a higher size standard, thereby providing agencies with a large selection of capable small business to choose from for their critical small business procurements. SBA recognizes the challenges mid-sized businesses face in Federal marketplace for environmental remediation services, but as stated in the proposed rule, the Agency has decided to retain the current 500-employee size standard for Environmental Remediation Service until it reviews that size standard with other employee based size standards at a later date. SBA will consider the comments identified here when it reviews the 500-employee Environmental Remediation Service size standard at a later date.

Comments on SBA's Size Standards Methodology and Other Issues

SBA received three comments that did not directly refer to any particular NAICS codes, but offered general comments on the SBA's size standards methodology for evaluating size standards.

The first commenter alleged that proposed size standards are still too low and suggested that they should start at $50 million in total sales. He added that when contracts are valued at $250 million or more, even a company with $50 million in sales cannot compete. He suggested that SBA take into account the costs of materials and labor and establish size standards in terms of gross profit instead of total receipts. SBA doesn't accept this recommendation for three reasons. First, under SBA's current size standards methodology, the maximum receipts based size standard

the Agency can adopt or propose for any industry is $35.5 million. Second, if a size standard were set at $50 million in average annual receipts, SBA is concerned that it would adversely affect the ability of truly small businesses to compete for Federal small business opportunities. Third, for most industries, SBA uses either average annual receipts or number of employees to establish size standards. If a size standard were established in terms of gross profit, as suggested by the commenter, a company with hundreds of millions of revenues and thousands of employees can qualify as small under a profit-based size standard. It is not unusual for very lager companies to have little or negative profit over the course of business cycles, for instance General Motors during the recent recession. Such a firm would clearly be ''dominant'' in the industry and, thus, not a small business under the statutory requirement that a small business is one that is independently owned and operated and not dominant in its field of operation. Moreover, a firm's profit can be manipulated and, thus, would be an inconsistent and misleading guide to firm's size.

The next commenter generally supported SBA's effort to increase several size standards and also agreed with the Agency's position that lowering size standards under current economic conditions is not in the best interests of small business. However, he felt that increasing size standards by 180 percent to over 300 percent at one time is also not in the best interests of small business, although he did not explain why. He urged that size standards should be raised between 50–75 percent immediately across all NAICS codes within NAICS Sector 56. He argued that this will enable truly small businesses to seek SBA's assistance and foster positive competition in Federal contracting and more accurately reflect today's economic environment where some businesses are still suffering the effects of recent recession. The commenter also recommended a full review of SBA's loan data, small business participation in Federal contracting, and other relevant factors within 2–3 years to determine if another increase is appropriate. Finally, he suggested that some of the sole-sourced 8(a) contracts should be competed among small businesses, but this issue is beyond the scope of this rule.

SBA's agrees that the proposed increases to size standards in NAICS Sector 56 are quite significant for some industries and the Agency had sought comments in this proposed rule as well as in proposed rules for other Sectors, if the increases to size standards should be limited to certain amounts. Comments have generally supported SBA's size standards methodology, industry and program data it evaluated and its proposed increases to size standards. SBA believes that the changes in industry structure since the last comprehensive review of size standards nearly 30 years ago may have resulted in large increases to size standards for some industries. The Jobs Act requires SBA to review all size standards at least once every five years and make adjustments to reflect market conditions. Prior to the next review, SBA will assess the impact of size standards revisions adopted in the current review.

This last commenter disagreed with SBA's proposed changes to size standards because, as he stated, it will create more competition for real small businesses. He stated that more than two-thirds of businesses that are registered in CCR have less than 20 employees, and argued that those are the companies that need support. He maintained that businesses with 10–20 employees hire new people when they receive new contracts, while those with 40 employees can do additional work with existing workers and have no need to hire new people. For industries selling commodities, he suggested that businesses with less than 20 employees should be classified as ''small business'' and contracts valued at $150,000 or less should be set-aside for those businesses. Similarly, according to the commenter, businesses with 40 employees should be classified as ''medium sized small business'' and contracts between $150,000 and $500,000 should be reserved for those businesses. For services industries, he suggested less than $100,000 in sales as ''small business,'' $300,000 as ''medium small business'' and $500,000 as ''large small business.''

SBA does not adopt these suggestions for several reasons. First, SBA is concerned that very small size standards, such as those suggested by the commenter, may not adequately capture the small business segment in an industry that small business programs are intended to assist. The size standards should be such that small businesses are able to grow and develop to an economically viable size while remaining eligible for Federal assistance. If size standards were set too low, small businesses will quickly outgrow the size standards and be forced to compete with significantly larger businesses for Federal contracts on a full and open basis. However, as stated elsewhere in this rule, SBA is also equally concerned about setting size standards too high, as doing so could put smaller businesses at a disadvantage in competing for Federal opportunities. Second, SBA believes that such tiered size standards would add significant complexity to size standards, which many believe are already too complex, which would run counter to SBA's ongoing effort to simplify them. More importantly, the Small Business Act requires SBA to establish one definition of what is a small business concern, not what is small, medium, and so forth.

Further Increases for Inflation

A number of commenters suggested that SBA adopt size standards higher than what it proposed based on industry and Federal contracting factors, to account for inflation since its last inflation adjustment in 2008. As stated elsewhere in this rule, for the current comprehensive size standards review, SBA is not considering the inflation factor for the following reasons.

SBA will, as required by the regulations, increase all monetary based size standards for inflation soon after it completes the review of all receipts based size standards. If SBA were to increase size standards for inflation in this Sector, it would need to re-adjust all of previously revised receipts based size standards for other Sectors to make them consistent across sectors and equitable among small businesses from different industries. For inflation adjustment, as described in the SBA's ''Size Standards Methodology'' Whitepaper, SBA establishes a starting (base) period and an ending period and calculates the inflation rate during the period covered. For example, SBA's latest adjustment covered inflation that occurred from the third quarter of 2001 through the fourth quarter of 2006 (73 FR 41237). Since we are reviewing size standards on a Sector by Sector basis and different Sectors are at different stages of rulemaking process, it is not practicable to adjust size standards for inflation as part of the current review. Moreover, because of the long time lag from the start of the proposed rule to the publication of the final rule, unless SBA were to re-adjust the proposed standards at the final rule stage, any inflationary increases would already be outdated.

Therefore, SBA is not adopting the recommendation to make additional adjustment for inflation to proposed revisions to size standards based on industry and federal procurement factors. As stated above, after SBA completes the review of all receipts based size standards it will adjust them

across the board for inflation that has occurred since its last increase.

All comments to the proposed rule are available for public review at *http://www.regulations.gov*.

Conclusion

Based on SBA's analyses of relevant industry and program data and the public comments it received on the proposed rule, SBA has decided to increase the small business size standards for the 37 industries in NAICS Sector 56 to the levels it proposed. Those industries and their revised size standards are shown in the following table, Table-1, Summary of Proposed Size Standard Revisions.

TABLE 1—SUMMARY OF PROPOSED SIZE STANDARD REVISIONS

NAICS Codes	NAICS Industry title	Current size standard ($ million)	Proposed size standard ($ million)
561311	Employment Placement Agencies	$7.0	$25.5
561312	Executive Search Services	7.0	25.5
561320	Temporary Help Services	13.5	25.5
561330	Professional Employer Organizations	13.5	25.5
561410	Document Preparation Services	7.0	14.0
561421	Telephone Answering Services	7.0	14.0
561422	Telemarketing Bureaus and Other contact Centers	7.0	14.0
561431	Private Mail Centers	7.0	14.0
561439	Other Business Service Centers (including Copy Shops)	7.0	14.0
561440	Collection Agencies	7.0	14.0
561450	Credit Bureaus	7.0	14.0
561491	Repossession Services	7.0	14.0
561492	Court Reporting and Stenotype Services	7.0	14.0
561499	All Other Business Support Services	7.0	14.0
561510	Travel Agencies	3.5	19.0
561520	Tour Operators	7.0	19.0
561591	Convention and Visitors Bureaus	7.0	19.0
561599	All Other Travel Arrangement and Reservation Services	7.0	19.0
561611	Investigation Services	12.5	19.0
561612	Security Guards and Patrol Services	18.5	19.0
561613	Armored Car Services	12.5	19.0
561621	Security Systems Services (except Locksmiths)	19.0	12.5
561622	Locksmiths	7.0	19.0
561710	Exterminating and Pest Control Services	7.0	10.0
561740	Carpet and Upholstery Cleaning Services	4.5	5.0
561910	Packaging and Labeling Services	7.0	10.0
561920	Convention and Trade Show Organizers	7.0	10.0
561990	All Other Support Services	7.0	10.0
562111	Solid Waste Collection	12.5	35.5
562112	Hazardous Waste Collection	12.5	35.5
562119	Other Waste Collection	12.5	35.5
562211	Hazardous Waste Treatment and Disposal	12.5	35.5
562212	Solid Waste Landfill	12.5	35.5
562213	Solid Waste Combustors and Incinerators	12.5	35.5
562219	Other Nonhazardous Waste Treatment and Disposal	12.5	35.5
562910	Remediation Services	14.0	19.0
562920	Materials Recovery Facilities	12.5	19.0

For the reasons stated above in this rule and in the proposed rule, SBA will retain the current receipts-based size standards for seven industries in this Sector. SBA's analysis of industry and program data had suggested that it could reduce standards for five of those seven industries. However, lowering size standards in NAICS Sector 56 is not consistent with SBA's recent final rules on NAICS Sector 44–45, Retail Trade (75 FR 61597, (October 6, 2010)); NAICS Sector 72, Accommodation and Food Services (75 FR 61604,) (October 6, 2010)); and NAICS Sector 81, Other Services (75 FR 61591,) (October 6, 2010)). In each of those final rules, SBA adopted its proposal not to reduce small business size standards for the same reasons. SBA is also retaining the existing receipts-based size standards for two industries for which the results supported their current levels. Accordingly, SBA has retained the existing receipts-based size standards for seven industries in NAICS Subsector 561 (Administrative and Support Services) and Subsector 562 (Waste Management and Remediation Services).

SBA did not review the 500-employee size standard for Environmental Remediation Services, which is an exception under NAICS Code 562910, Remediation Services. SBA will retain that size standard until later when the Agency reviews it with other employee based size standards.

Compliance With Executive Orders 12866, 13563, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C., Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is a ''significant'' regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis:

1. Is there a need for the regulatory action? SBA believes that the revised changes to small business size standards for 37 industries in NAICS Sector 56,

Administrative and Support, Waste Management and Remediation Services, reflect changes in economic characteristics of small businesses in those industries and the Federal procurement market. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To assist the intended beneficiaries of these programs effectively, SBA establishes distinct definitions to determine which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing definitions for small business. The Act also requires that small business definitions vary to reflect industry differences. The recently enacted Jobs Act requires SBA to review at least one-third of all size standards within each 18-month period from the date of its enactment and to review all size standards at least every five years thereafter. The Supplementary Information Sections of the October 12, 2011 proposed rule and this final rule explain the SBA's methodology for analyzing a size standard for a particular industry.

2. What are the potential benefits and costs of this regulatory action? The most significant benefit to businesses obtaining small business status as a result of this rule is gaining eligibility for Federal small business assistance programs, including SBA's financial assistance programs, economic injury disaster loans, and Federal procurement opportunities intended for small businesses. Federal small business programs provide targeted opportunities for small businesses under SBA's various business development and contracting programs. These include the 8(a) Business Development program and programs benefiting small businesses located in Historically Underutilized Business Zones (HUBZone), women owned small businesses (WOSB), and service-disabled veteran-owned small businesses (SDVOSB). Other Federal agencies also may use SBA's size standards for a variety of regulatory and program purposes. These programs help small businesses become more knowledgeable, stable, and competitive. In the 37 industries in NAICS Sector 56 for which SBA is increasing size standards, SBA estimates that about 2,700 additional firms will gain small business status and become eligible for these programs. That number is nearly 1.0 percent of the total number of firms in industries in NAICS Sector 56 that have receipts-based size standards. SBA estimates that this would increase the small business share of total industry receipts in those industries from 32 percent under the current size standards to 37 percent.

The benefits of increasing size standards to a more appropriate level will accrue to three groups in the following ways: (1) Some businesses that are above the current size standards will gain small business status under the higher size standards, thereby enabling them to participate in Federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the higher size standards, thereby enabling them to continue their participation in the programs; and (3) Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs.

Based on the data for fiscal years 2008 to 2010, more than two-thirds of total Federal contracting dollars spent in industries reviewed in this proposed rule were accounted for by the 37 industries for which SBA is increasing size standards. SBA estimates that additional firms gaining small business status in those industries under the revised size standards could potentially obtain Federal contracts totaling up to $60–75 million per year through SBA's small business, 8(a), HUBZone, WOSB, and SDVOSB programs and through other, unrestricted procurements. The added competition for many of these procurements may also result in lower prices to the Government for procurements reserved for small businesses, although SBA cannot quantify this benefit.

Under SBA's 7(a) and 504 Loan Programs, based on the 2008 to 2010 data, SBA estimates that approximately 20–30 additional loans totaling $3 million to $5 million in new Federal loan guarantees could be made to the newly defined small businesses under the revised size standards. Under the Jobs Act, SBA can now guarantee substantially larger loans than in the past. In addition, the Jobs Act established an alternative size standard for SBA's 7(a) and 504 Loan Programs for those applicants that do not meet the size standards for their industries. That is, under the Jobs Act, if a firm applies for a 7(a) or 504 loan but does not meet the size standard for its industry, it might still qualify if, including its affiliates, it has tangible net worth that does not exceed $15 million and also has average net income after Federal income taxes (excluding any carry-over losses) for its preceding two completed fiscal years that does not exceed $5.0 million. Thus, increasing the size standards may result in an increase in small business guaranteed loans to small businesses in these industries, but it would be impractical to try to estimate the extent of their number and the total amount loaned.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since the EIDL program is contingent on the occurrence and severity of one or more disasters, SBA cannot make a meaningful estimate of benefits for businesses impacted by those disasters.

If all of the estimated 2,700 newly defined small firms under the revised size standards could become active in Federal procurement programs, there may be added administrative costs to the Federal Government associated with additional bidders for Federal small business procurement opportunities. There may be new firms seeking SBA guaranteed loans, more eligible for enrollment in the Central Contractor Registration's Dynamic Small Business Search database, and others seeking certification in SBA's 8(a) or HUBZone Programs. More firms may also qualify for WOSB, SDVOSB, and SDB status. Among businesses in this group seeking SBA assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. These added costs are likely to be minimal because mechanisms are already in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts under the higher revised size standards. With a greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside contracting will likely result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers. In addition, higher costs may result when additional full and open contracts are awarded to HUBZone businesses because of price evaluation preferences. The additional costs associated with fewer bidders, however, will likely be minor since, as a matter of law, procurements may be set aside for small businesses or reserved for the 8(a), HUBZone, WOSB, or SDVOSB Programs only if awards are expected to be made at fair and reasonable prices.

The revised size standards may have some distributional effects among large

and small businesses. Although SBA cannot estimate with certainty the actual outcome of gains and losses among small and large businesses, there are several likely impacts. There may be a transfer of some Federal contracts from large businesses to small businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal contracts for small businesses. In addition, some agencies may award more Federal contracts to HUBZone concerns instead of large businesses since HUBZone concerns may be eligible for price evaluation adjustments when they compete on full and open bidding opportunities. Similarly, currently defined small businesses may obtain fewer Federal contracts due to the increased competition from more businesses defined as small under the revised size standards. This transfer may be offset by more Federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts away from large and small businesses under the existing size standards. The SBA cannot estimate with precision the potential distributional impacts of these transfers.

The revisions to the existing size standards for Administrative and Support, Waste Management and Remediation Services industries are consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action including possible distributions impacts that relate to Executive Order 13563 is included above in the Regulatory Impact Analysis under Executive Order 12866.

In an effort to engage interested parties in this action, SBA has presented its methodology (discussed above under Supplementary Information) to various industry associations and trade groups. SBA also met with various industry groups to obtain their feedback on its methodology and other size standards issues. In addition, SBA presented its size standards methodology to businesses in 13 cities in the U.S. and sought their input as part of the Jobs Act tours. The presentation included information on the status of the comprehensive size standards review at that time, SBA's anticipated schedule for reviewing other Sectors, and how interested parties can provide SBA with input and feedback on size standards review.

Additionally, SBA sent letters to the Directors of the Offices of Small and Disadvantaged Business Utilization (OSDBU) at several Federal agencies with considerable procurement responsibilities requesting their feedback on how the agencies use SBA size standards and whether current standards meet their programmatic needs (both procurement and non-procurement). SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in preparing this final rule.

The review of size standards in NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services, is consistent with E.O. 13563 Sec, 6 calling for retrospective analyses of existing rules. The last overall review of size standards occurred during the late 1970s and early 1980s. Since then, except for periodic adjustments for monetary based size standards, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of all size standards to ensure that existing size standards have supportable bases and to revise them when necessary. In addition, the Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and do a complete review of all size standards not less frequently than once every 5 years thereafter.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this final rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this final rule would not impose any new reporting or record keeping requirements.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this final rule may have a significant impact on a substantial number of small entities in NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services. As described above, this rule may affect small entities seeking Federal contracts, SBA's 7(a) and 504 Guaranteed Loans, SBA's Economic Injury Disaster Loans, and various small business benefits under other Federal programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis of this final rule addressing the following questions: (1) What are the need for and objective of the rule?; (2) What are SBA's description and estimate of the number of small entities to which the rule will apply?; (3) What are the projected reporting, record keeping, and other compliance requirements of the rule?; (4) What are the relevant Federal rules which may duplicate, overlap, or conflict with the rule?; and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

(1) What are the need for and objective of the rule?

Most of SBA's size standards for the industries in Sector 56, Administrative and Support, Waste Management and Remediation Services, had not been reviewed since the 1980s. Technological changes, productivity growth,

international competition, mergers and acquisitions and updated industry definitions may have changed the structure of many industries in that Sector. Such changes can be sufficient to support a revision to size standards for some industries. Based on the analysis of the latest industry and program data available, SBA believes that the revised standards in this rule more appropriately reflect the size of businesses in those industries that need Federal small business assistance. Additionally, the Jobs Act requires SBA to review all size standards and make appropriate adjustments to reflect current data and market conditions.

(2) What are SBA's description and estimate of the number of small entities to which the rule will apply?

SBA estimates that approximately 2,700 additional firms will become small because of increases in size standards in 37 industries in NAICS Sector 56. That represents about 1.0 percent of total firms in industries in that Sector that have receipts-based size standards. The small business share of total industry receipts in those industries will increase from about 32 percent under the current size standards to nearly 37 percent under the proposed standards. SBA does not anticipate a significant competitive impact on smaller businesses in these industries. The revised size standards will enable more small businesses to retain their small business status for a longer period. Under current size standards, many small businesses may have lost their eligibility or found it difficult to compete with companies that are significantly larger than they are and this final rule attempts to correct that impact. SBA believes these changes will have a positive impact for existing small businesses and for those that have either exceeded or are about to exceed current size standards.

(3) What are the projected reporting, record keeping, and other compliance requirements of the rule?

Revising size standards does not impose any additional reporting or record keeping requirements on small entities. However, qualifying for Federal procurement and a number of other Federal programs requires that entities register in the Central Contractor Registration (CCR) database and certify at least annually that they are small in the Online Representations and Certifications Application (ORCA). Therefore, businesses opting to participate in those programs must comply with CCR and ORCA requirements. There are no costs associated with either CCR registration or ORCA certification. Revising size standards alters the access to SBA programs that are designed to assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

(4) What are the relevant Federal rules which may duplicate, overlap, or conflict with the rule?

Under § 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988, (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing or revising size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an agency to establish an alternative small business definition after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

(5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the existing system of numerical size standards. The possible alternative size standards considered for the individual NAICS Code industries within NAICS Sector 56 are discussed in the supplementary information to the proposed rule and this final rule.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For reasons set forth in the preamble, SBA amends 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 662, 694a(9).

■ 2. In § 121.201, in the table, revise the entries for ''561311,'' ''561312,'' ''561320,'' ''561330,'' ''561410,'' ''561421,'' ''561422,'' ''561431,'' ''561439,'' ''561440,'' ''561450,'' ''561491,'' ''561492,'' ''561499,'' ''561510,'' ''561520,'' ''561591,'' ''561599,'' ''561611,'' ''561612,'' ''561613,'' ''561621,'' ''561622,'' ''561710,'' ''561740,'' ''561910,'' ''561920,'' ''561990,'' ''562111,'' ''562112,'' ''562119,'' ''562211,'' ''562212,'' ''562213,'' ''562219,'' ''562910,'' ''562920'' to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS Codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * *	*	*
561311	Employment Placement Agencies	$25.5	
561312	Executive Search Services	25.5	
561320	Temporary Help Services	25.5	
561330	Professional Employer Organizations	25.5	
561410	Document Preparation Services	14.0	
561421	Telephone Answering Services	14.0	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS Codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
561422	Telemarketing Bureaus and Other contact Centers	14.0	
561431	Private Mail Centers	14.0	
561439	Other Business Service Centers (including Copy Shops)	14.0	
561440	Collection Agencies	14.0	
561450	Credit Bureaus	14.0	
561491	Repossession Services	14.0	
561492	Court Reporting and Stenotype Services	14.0	
561499	All Other Business Support Services	14.0	
561510	Travel Agencies [10]	[10] 19.0	
561520	Tour Operators [10]	[10] 19.0	
561591	Convention and Visitors Bureaus	19.0	
561599	All Other Travel Arrangement and Reservation Services	19.0	
561611	Investigation Services	19.0	
561612	Security Guards and Patrol Services	19.0	
561613	Armored Car Services	19.0	
561621	Security Systems Services (except Locksmiths)	19.0	
561622	Locksmiths	19.0	
561710	Exterminating and Pest Control Services	10.0	
*	* * * * *	*	*
561740	Carpet and Upholstery Cleaning Services	5.0	
*	* * * * *	*	*
561910	Packaging and Labeling Services	10.0	
561920	Convention and Trade Show Organizers [10]	[10] 10.0	
561990	All Other Support Services	10.0	
*	* * * * *	*	*
562111	Solid Waste Collection	35.5	
562112	Hazardous Waste Collection	35.5	
562119	Other Waste Collection	35.5	
562211	Hazardous Waste Treatment and Disposal	35.5	
562212	Solid Waste Landfill	35.5	
562213	Solid Waste Combustors and Incinerators	35.5	
562219	Other Nonhazardous Waste Treatment and Disposal	35.5	
562910	Remediation Services	19.0	
*	* * * * *	*	*
562920	Materials Recovery Facilities	19.0	
*	* * * * *	*	*

* * * * * * *

[10] *NAICS codes 488510 (part) 531210, 541810, 561510, 561520,* and *561920*—As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenues.

* * * * *

Dated: April 25, 2012.

Karen G. Mills,

Administrator.

Editorial Note: This document was received at the Office of the Federal Register on November 30, 2012.

[FR Doc. 2012–29349 Filed 12–5–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG26

Small Business Size Standards: Information

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The United States Small Business Administration (SBA) is increasing the receipts based small business size standards for 15 industries and retaining the current receipts based size standards for five industries in North American Industry Classification System (NAICS) Sector 51, Information. As part of its ongoing comprehensive review of all size standards, SBA evaluated all receipts based size standards for industries in NAICS Sector 51 to determine whether they should be retained or revised. SBA did not review the employee based standards for industries in NAICS Sector 51 in this rule, but will do so at a later date with other employee based size standards.

DATES: This rule is effective January 7, 2013.

FOR FURTHER INFORMATION CONTACT: Jon Haitsuka, Program Analyst, Size Standards Division, phone: (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION: To determine eligibility for Federal small business assistance programs, SBA establishes small business size definitions (referred to as size standards) for private sector industries in the United States. SBA's existing size standards use two primary measures of business size—average annual receipts and number of employees. Financial assets, electric output, and refining capacity are used as size measures for a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC), 7(a), and Certified

Development Company (CDC or 504) Loan Programs determine small business eligibility using either the industry based size standards or net worth and net income size based standards. At the start of the current comprehensive review of SBA's small business size standards, there were 41 different size standards levels, covering 1,141 NAICS industries and 18 sub-industry activities (*i.e.,* ''exceptions'' in SBA's table of size standards). Of these, 31 were based on average annual receipts, seven based on number of employees, and three based on other measures.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy, in particular the changes in the Federal contracting marketplace and industry structure. SBA last conducted a comprehensive review of size standards during the late 1970s and early 1980s. Since then, most reviews of size standards have been limited to a few specific industries in response to requests from the public and Federal agencies. SBA also makes periodic inflation adjustments to its monetary based size standards. The latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

SBA recognizes that changes in industry structure and the Federal marketplace since the last overall review have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of its size standards to determine whether existing size standards have supportable bases relative to the current data, and to revise them, where necessary.

In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and review of all size standards not less frequently than once every 5 years thereafter. Reviewing existing small business size standards and making appropriate adjustments based on current data is also consistent with Executive Order 13563 on improving regulation and regulatory review.

SBA has chosen not to review all size standards at one time. Rather, it is reviewing groups of related industries on a Sector by Sector basis.

As part of SBA's comprehensive review of size standards, the Agency reviewed all receipts based size standards in NAICS Sector 51, Information, to determine whether the existing size standards should be retained or revised. On October 12, 2011, SBA published a proposed rule in the **Federal Register** (76 FR 63216) seeking public comment on its proposal to increase the receipts based size standards for 15 industries in NAICS Sector 51. The rule was one of a series of proposed rules that examines industries grouped by NAICS Sector.

SBA has recently developed a ''Size Standards Methodology'' for developing, reviewing, and modifying size standards, when necessary. SBA has published the document on its Web site at *www.sba.gov/size* for public review and comment and also included it as a supporting document in the electronic docket of the October 12, 2011 proposed rule at *www.regulations.gov.*

In evaluating an industry's size standard, SBA examines its characteristics (such as average firm size, startup costs, industry competition, and distribution of firms by size) and the level and small business share of Federal contract dollars in that industry. SBA also examines the potential impact a size standard revision might have on its financial assistance programs and whether a business concern under a revised size standard would be dominant in its industry. SBA analyzed the characteristics of each industry in NAICS Sector 51 that has a receipts-based size standard, mostly using a special tabulation obtained from the U.S. Bureau of the Census based on its 2007 Economic Census (the latest available). SBA also evaluated the level and small business share of Federal contracts in each of those industries using the data from the Federal Procurement Data System—Next Generation (FPDS–NG) for fiscal years 2008 to 2010. To evaluate the impact of changes to size standards on its loan programs, SBA analyzed internal data on its guaranteed loan programs for fiscal years 2008 to 2010.

SBA's ''Size Standards Methodology'' provides a detailed description of its analyses of various industry and program factors and data sources, and how the Agency uses the results to derive size standards. In the proposed rule, SBA detailed how it applied its ''Size Standards Methodology'' to review and modify, where necessary, the existing standards for industries in NAICS Sector 51. SBA sought comments from the public on a number of issues concerning its ''Size Standards Methodology,'' such as whether there are alternative methodologies that SBA should consider; whether there are alternative or additional factors or data sources that SBA should evaluate; whether SBA's approach to establishing small business size standards makes sense in the current economic environment; whether SBA's applications of anchor size standards are appropriate in the current economy; whether there are gaps in SBA's methodology because of the lack of comprehensive data; and whether there are other facts or issues that SBA should consider.

SBA also sought comments on its proposal to increase the size standards for 15 industries and retain the existing size standards for remaining industries in NAICS Sector 51 (Information) that have receipts based size standards. Specifically, SBA requested comments on whether the size standards should be revised as proposed and whether the proposed revisions are appropriate. SBA also invited comments on whether its proposed eight fixed size standard levels are appropriate and whether it should adopt common size standards for some industries in NAICS Sector 51.

SBA's analyses supported lowering existing receipts based standards for four industries and keeping the current size standard for one industry. However, as SBA explained in the proposed rule, lowering size standards would reduce the number of firms eligible to participate in Federal small business assistance programs and would run counter to what the Federal government and SBA are doing to help small businesses and create jobs. Therefore, SBA proposed to retain the current size standards for those industries and requested comments on whether the Agency should lower size standards for those five industries for which its analyses might support lowering them.

Summary of Comments

SBA sought comments on its proposed rule to increase the size standard for 15 industries and retain the existing size standards for the remaining five industries in NAICS Sector 51 that have receipts based size standards. SBA requested comments on whether the size standards should be revised as proposed or different size standards were appropriate. SBA received two comments to the proposed rule, which are summarized below.

One commenter fully supported SBA's proposed size standards, particularly with regard to increasing the size standard for NAICS 519190, All

Other Information Services, from $7 million to $25.5 million.

The second commenter raised a number of issues on SBA's size standards. The commenter stated that SBA has not kept up with current business practices, making the size standards ''nearly irrelevant.'' The comment contended that today's businesses are involved in several NAICS industries, including manufacturing, wholesale trade, retail trade, and services. The commenter stated further that when a manufacturer is also a wholesaler of products manufactured overseas, it easily would meet an employee based size standard. The second concern the commenter expressed that some manufacturers that meet the 1,000-employee to 1,500-employee size standards may have several hundred million dollars in average annual revenue and are considered small. The commenter recommended that SBA's size standards include both number of employees and annual receipts.

SBA agrees that many businesses are involved in industries covering more than one NAICS code, but it does not adopt the commenter's recommendation for two reasons. First, although a concern might participate in multiple industries, a Federal procurement generally does not use multiple NAICS codes. SBA regulations provide that NAICS codes and their size standards for Wholesale Trade (NAICS Sector 42) and Retail Trade (NAICS Sector 44–45) do not apply to Federal procurement. To qualify as small for a Federal procurement opportunity, a business must meet the size standard for the NAICS code under that procurement. A procuring agency's contracting officer must use the NAICS code, along with the appropriate size standard, that best describes the principal purpose of the procurement. (13 CFR 121.402(b)). If the procurement is for services, the contracting officer will assign a service NAICS code and the associated size standard will likely be based on average annual receipts. To qualify as small under a receipts based size standard the firm's total annual receipts—together with those of its affiliates (*see* 13 CFR 121.103)—must meet that size standard, regardless of whether it might qualify as small under an employee based size standard for another NAICS code. If the procurement is for manufactured products, then, to qualify as small, the company must meet the size standard for the NAICS industry that manufactures that product. In the event that a company did not manufacture the product the government wishes to buy, then it may qualify as small by supplying the product as a ''nonmanufacturer.'' However, the nonmanufacturer must have 500 or fewer employees (regardless of what the size standard is for the manufacturer making the product) and provide the product of a small, domestic manufacturer. This is provided for in the nonmanufacturer rule. (13 CFR 121.406(b)). Second, for the reasons provided in its ''Size Standards Methodology'' available at *www.sba.gov/size,* SBA uses number of employees to measure the size of manufacturing industries and average annual receipts to measure the size of services industries. SBA believes that using both number of employees and average annual receipts for a size standard would add tremendous complexity to size standards, and it would run counter to SBA's ongoing effort to simplify size standards. For these reasons SBA declines to adopt the comment.

The third issue raised by the commenter was related to publicly traded companies bidding on small business Federal contracts. The commenter contended that typically the publicly traded companies are managed by people formerly associated with large businesses. SBA's small business size regulations do not preclude a publicly traded company from qualifying as small if it meets the small business size requirements. Whether a company is publicly or privately owned or how widely a company's stock is held is not a relevant factor in determining whether it can qualify small. If a company represents itself as a small business concern on a particular procurement, and one or more interested parties believe that the entity does not qualify as small, SBA has established rules and procedures for protests of the small business size status of the company. (*See* 13 CFR 121.1001 through 121.1010). If a company is managed by individuals formerly associated with large businesses, that may be a relevant fact in determining whether the company is affiliated with other firms and qualifies as small. (13 CFR 121.103).

The fourth issue the commenter raised related to mergers and acquisitions (M&A) activities. The commenter contended that, without regular review of size standards, businesses involved in M&As will be considered small. SBA disagrees with this comment. Mergers create affiliation (*see* 13 CFR 121.103) between or among the companies involved and their receipts and employees should be aggregated to determine if the company qualifies as small after the merger. To address this issue, on November 15, 2006, SBA issued a final rule requiring small business government contractors to recertify their size status on long-term contracts when a contract option is exercised, when a small business is involved in an executed merger or purchase with another business, or at the end of the first five years of a contract. (71 FR 66434). For contract opportunities after a merger has occurred, any interested party may protest the size of a small business offeror under 13 CFR 121.1001 through 121.1010. SBA would apply its affiliation rules during any protest.

Conclusion

Based on SBA's analyses of relevant industry and program data and the public comments it received on the proposed rule, SBA has decided to increase the small business size standards for the 15 industries in NAICS Sector 51 to the levels it proposed. Those industries and their revised size standards are shown in the following Table 1, Summary of Revised Size Standards in NAICS Sector 51.

TABLE 1—SUMMARY OF REVISED SIZE STANDARDS IN NAICS SECTOR 51

NAICS Code	NAICS Industry title	Current size standard ($ million)	Revised size standard ($ million)
511210 ..	Software Publishers	$25.0	$35.5
512110 ..	Motion Picture and Video Production	29.5	30.0
512131 ..	Motion Picture Theaters (except Drive-Ins)	7.0	35.5
512199 ..	Other Motion Picture and Video Industries	7.0	19.0
512290 ..	Other Sound Recording Industries	7.0	10.0
515111 ..	Radio Networks	7.0	30.0
515112 ..	Radio Stations	7.0	35.5

TABLE 1—SUMMARY OF REVISED SIZE STANDARDS IN NAICS SECTOR 51—Continued

NAICS Code	NAICS Industry title	Current size standard ($ million)	Revised size standard ($ million)
515120 ..	Television Broadcasting	14.0	35.5
515210 ..	Cable and Other Subscription Programming	15.0	35.5
517410 ..	Satellite Telecommunications	15.0	30.0
517919 ..	All Other Telecommunications	25.0	30.0
518210 ..	Data Processing, Hosting, and Related Services	25.0	30.0
519110 ..	News Syndicates	7.0	25.5
519120 ..	Libraries and Archives	7.0	14.0
519190 ..	All Other Information Services	7.0	25.5

For the reasons stated above in this rule and in the proposed rule, SBA has decided to retain the current receipts based size standards for four industries for which analytical results suggested lowering them. Not lowering size standards in NAICS Sector 51 is consistent with SBA's recent final rules on NAICS Sector 44–45, Retail Trade (75 FR 61597, October 6, 2010); NAICS Sector 72, Accommodation and Food Services (75 FR 61604, October 6, 2010); and NAICS Sector 81, Other Services (75 FR 61591,October 6, 2010). In each of those final rules, SBA adopted its proposal not to reduce small business size standards for the same reasons. SBA is also retaining the existing receipts based size standard for one industry for which the results supported it at its current level. Accordingly, SBA has retained the existing receipts-based size standards for five industries in NAICS Sector 51. SBA did not review the 12 industries in NAICS Sector 51 that have employee based size standards. Therefore, SBA has retained the size standards for those industries at their current levels until the Agency reviews employee based size standards at a later date.

Compliance With Executive Orders 12866, 13563, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C., Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is a significant regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

SBA believes that the revised changes to small business size standards for 15 industries in NAICS Sector 51, Information, reflect changes in economic characteristics of small businesses in those industries and the Federal procurement market. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To assist the intended beneficiaries of these programs effectively, SBA establishes distinct definitions to determine which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The recently enacted Jobs Act requires the Administrator to review one-third of all size standards within each 18-month period from the date of its enactment and to review all size standards at least every five years thereafter. The supplementary information sections of the October 12, 2011 proposed rule and this final rule explained in detail SBA's methodology for analyzing a size standard for a particular industry.

2. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses obtaining small business status as a result of this rule is gaining eligibility for Federal small business assistance programs, including SBA's financial assistance programs, economic injury disaster loans, and Federal procurement opportunities intended for small businesses. Federal small business programs provide targeted opportunities for small businesses under SBA's various business development and contracting programs. These include the 8(a) Business Development program and programs benefiting small businesses located in Historically Underutilized Business Zones (HUBZone), women owned small businesses (WOSB), and service-disabled veteran-owned small businesses (SDVOSB). Other Federal agencies also may use SBA's size standards for a variety of regulatory and program purposes. These programs help small businesses become more knowledgeable, stable, and competitive. In the 15 industries in NAICS Sector 51 for which SBA has decided to increase size standards, SBA estimates that more than 500 firms exceeding the current size standards will gain small business status and become eligible for these programs. That number is 1.2 percent of the total number of firms that are classified as small under the current size standards in all 20 industries in NAICS Sector 51 that are covered by this final rule. SBA estimates that this will increase the small business share of total industry receipts in those industries from 13 percent under the current size standards to 15 percent.

The benefits of increasing size standards to a more appropriate level will accrue to three groups in the following ways: (1) Some businesses that are above the current size standards will gain small business status under the higher size standards; thereby enabling them to participate in Federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the higher size standards, thereby enabling them to continue their participation in the programs; and (3) Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs.

For the October 12, 2011 proposed rule, SBA analyzed FY 2007–2009 FPDS–NG data and found that, among the industries that SBA examined, nearly 98 percent of Federal contracting dollars in Sector 51 were accounted for by those 15 industries for which SBA has increased size standards. This also held true in SBA's updated analysis using the FY 2008–2010 FPDS–NG data. SBA estimates that additional firms gaining small business status in those industries under the revised size standards could potentially obtain

Federal contracts totaling between $15 million and $20 million annually through the 8(a), HUBZone, WOSB, and SDVOSB programs and other, unrestricted procurements. The added competition for many of these procurements may also result in lower prices to the Government for procurements reserved for small businesses, although SBA cannot quantify this benefit.

Based on the 2008 to 2010 data alone, SBA estimates that approximately 5 to 10 more loans totaling $1 million to $2 million could be made to newly defined small businesses under its 7(a) and 504 Loan Programs. However, under the Jobs Act, SBA can now guarantee substantially larger loans than in the past. The Jobs Act also established an alternative size standard for SBA's 7(a) and 504 Loan Programs for those applicants that do not meet the size standards for their industries. Under the alternative size standard, if a firm applies for a 7(a) or 504 loan but does not meet the size standard for its industry, it might still qualify if, including its affiliates, it has tangible net worth that does not exceed $15 million and has average net income after Federal income taxes (excluding any carry-over losses) for its preceding two completed fiscal years that does not exceed $5.0 million. Thus, increasing the size standards may result in an increase in small business guaranteed loans to small businesses in these industries, but it is impractical to try to estimate the extent of their number and the total amount loaned.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since the EIDL program is contingent on the occurrence and severity of a disaster, SBA cannot make a meaningful estimate of future EIDL benefits.

To the extent that those 500 newly defined small firms under the revised size standards could become active in Federal procurement programs, there may be some additional administrative costs to the Federal Government. There will be additional bidders for Federal small business procurement opportunities, additional firms applying for SBA guaranteed loans, additional firms eligible to enroll in the Central Contractor Registration's (CCR) Dynamic Small Business Search database, and additional firms seeking certification as 8(a) or HUBZone firms or qualifying for small business, WOSB, SDVOSB, and SDB status. Among these businesses, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. These added costs are likely to be minimal because mechanisms are already in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts under the higher revised size standards. With a greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside contracting will likely result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers. In addition, higher costs may result when additional full and open contracts are awarded to HUBZone businesses because of a price evaluation preference. The additional costs associated with fewer bidders, however, will likely be minor since, as a matter of law, procurements may be set aside for small businesses or reserved for the 8(a), HUBZone, WOSB, or SDVOSB Programs only if awards are expected to be made at fair and reasonable prices.

The revised size standards may have some distributional effects among large and small businesses. Although SBA cannot estimate with certainty the actual outcome of gains and losses among small and large businesses, there are several likely impacts. There may be a transfer of some Federal contracts from large businesses to small businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal contracts for small businesses. In addition, some agencies may award more Federal contracts to HUBZone concerns instead of large businesses since HUBZone concerns may be eligible for price evaluation preferences when they compete on full and open bidding opportunities. Similarly, currently defined small businesses may obtain fewer Federal contracts due to the increased competition from more businesses defined as small under the revised size standards. This transfer may be offset by more Federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts away from large and small businesses under the existing size standards. The SBA cannot estimate with precision the potential distributional impacts of these transfers.

The revisions to the existing size standards for Information industries are consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action including possible distributions impacts that relate to Executive Order 13563, Improving Regulation and Regulatory Review, are included above in the Regulatory Impact Analysis under Executive Order 12866.

In an effort to engage interested parties in this action, SBA has presented its methodology (discussed above under Supplementary Information) to various industry associations and trade groups. SBA also met with various industry groups to obtain their feedback on its methodology and other size standards issues. SBA also presented its size standards methodology to businesses in 13 cities in the United States and sought their input as part of the Jobs Act tours. The presentation also included information on the latest status of the comprehensive size standards review and on how interested parties can provide SBA with input and feedback on size standards review.

Additionally, SBA sent letters to the Directors of the Offices of Small and Disadvantaged Business Utilization (OSDBU) at several Federal agencies with considerable procurement responsibilities requesting their feedback on how the agencies use SBA size standards and whether current standards meet their programmatic needs (both procurement and non-procurement). SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in preparing this proposed rule.

The review of size standards in NAICS Sector 51, Information, is consistent with Executive Order 13563, § 6 calling for retrospective analyses of existing rules. The last overall review of size standards occurred during the late 1970s and early 1980s. Since then, except for periodic adjustments for monetary based size standards, most

reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of all size standards to ensure that existing size standards have supportable bases and to revise them when necessary. In addition, the Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and do a complete review of all size standards not less frequently than once every 5 years thereafter.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, Federalism, SBA has determined that this final rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, SBA has determined that this final rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this final rule would not impose any new reporting or record keeping requirements.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this final rule may have a significant impact on a substantial number of small entities in NAICS Sector 51, Information. As described above, this final rule may affect small entities seeking Federal contracts, SBA's 7(a) and 504 Guaranteed Loans, SBA's Economic Injury Disaster Loans, and various small business benefits under other Federal programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis of this final rule addressing the following questions: (1) What are the need for and objective of the rule?; (2) What are SBA's description and estimate of the number of small entities to which the rule will apply?; (3) What are the projected reporting, record keeping, and other compliance requirements of the rule?; (4) What are the relevant Federal rules which may duplicate, overlap, or conflict with the rule?; and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

(1) What are the need for and objective of the rule?

Most of SBA's size standards for the Information industries had not been reviewed since the 1980s. Technological changes, productivity growth, international competition, mergers and acquisitions and updated industry definitions may have changed the structure of many industries in that Sector. Such changes can be sufficient to support a revision to size standards for some industries. Based on the analysis of the latest industry and program data available, SBA believes that the revised standards in this rule more appropriately reflect the size of businesses in those industries that need Federal assistance. Additionally, the Jobs Act requires SBA to review all size standards and make appropriate adjustments to reflect current data and market conditions.

(2) What are SBA's description and estimate of the number of small entities to which the rule will apply?

SBA estimates that approximately 500 additional firms will become small because of increases in size standards in 20 industries in NAICS Sector 51. That represents 1.2 percent of the total firms in industries in that Sector that have receipts-based size standards. This will result in an increase in the small business share of total industry receipts in those industries from about 13 percent under the current size standards to nearly 15 percent under the revised size standards. SBA does not anticipate a significant competitive impact on smaller businesses in these industries. The revised size standards will enable more small businesses to retain their small business status for a longer period. Under current size standards, many small businesses may have lost their eligibility or found it difficult to compete with companies that are significantly larger than they are, and this final rule attempts to correct that impact. SBA believes these changes will have a positive impact for existing small businesses and for those that have either exceeded or are about to exceed current size standards.

(3) What are the projected reporting, record keeping, and other compliance requirements of the rule?

Revising size standards does not impose any additional reporting or record keeping requirements on small entities. However, qualifying for Federal procurement and a number of other Federal programs requires that entities register in the Central Contractor Registration (CCR) database and certify at least annually that they are small in the Online Representations and Certifications Application (ORCA). Therefore, businesses opting to participate in those programs must comply with CCR and ORCA requirements. There are no costs associated with either CCR registration or ORCA certification. Revising size standards alters the access to SBA programs that are designed to assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

(4) What are the relevant Federal rules which may duplicate, overlap, or conflict with the rule?

Under § 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988, November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing or revising size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an agency to establish an alternative small business definition after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

(5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no

practical alternative exists to the existing system of numerical size standards. The possible alternative size standards considered for the individual NAICS Code industries within NAICS Sector 51 are discussed in the supplementary information to the proposed rule and this final rule.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For reasons set forth in the preamble, SBA amends 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 662, 694a(9).

■ 2. In § 121.201, in the table, revise the entries for ''511210'', ''512110'', ''512131'', ''512199'', ''512290'', ''515111'', ''515112'', ''515120'', ''515210'', ''517410'', ''517919'', ''518210'', ''519110'', ''519120'', and ''519190'' to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * * *	*	*
511210	Software Publishers	$35.5	
*	* * * * *	*	*
512110	Motion Picture and Video Production	30.0	
*	* * * * *	*	*
512131	Motion Picture Theaters (except Drive-Ins)	35.5	
*	* * * * *	*	*
512199	Other Motion Picture and Video Industries	19.0	
*	* * * * *	*	*
512290	Other Sound Recording Industries	10.0	
*	* * * * *	*	*
515111	Radio Networks	30.0	
515112	Radio Stations	35.5	
515120	Television Broadcasting	35.5	
515210	Cable and Other Subscription Programming	35.5	
*	* * * * *	*	*
517410	Satellite Telecommunications	30.0	
*	* * * * *	*	*
517919	All Other Telecommunications	30.0	
*	* * * * *	*	*
518210	Data Processing, Hosting, and Related Services	30.0	
*	* * * * *	*	*
519110	News Syndicates	25.5	
519120	Libraries and Archives	14.0	

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * *	*	*
519190	All Other Information Services	25.5	
*	* * * *	*	*

Dated: April 25, 2012.

Karen G. Mills,

Administrator.

Editorial Note: This document was received at the Office of the Federal Register on November 30, 2012.

[FR Doc. 2012–29360 Filed 12–5–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2003–14766; Amendment No. 91–327; SFAR No. 77]

RIN 2120–AK07

Prohibition Against Certain Flights Within the Territory and Airspace of Iraq

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action is taken to allow U.S. civil flight operations to and from Erbil and Sulaymaniyah International Airports in Northern Iraq by any United States (U.S.) air carrier or commercial operator, any person exercising the privileges of an airman certificate issued by the FAA except such persons operating U.S.-registered aircraft for a foreign air carrier (who are not covered by the prohibition), or a person operating an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier (which also is not covered by the prohibition). The FAA has recently determined that a full flight prohibition is no longer necessary for these airports in Northern Iraq, and this action will allow flights to be conducted provided that certain measures are taken. Additional adjustments to the current flight prohibition may be appropriate as the risk to aviation safety and security lessens in other parts of the country, and ultimately the prohibition may be lifted completely.

DATES: This action is effective January 7, 2013.

FOR FURTHER INFORMATION CONTACT: For technical questions about this final rule, contact: Will Gonzalez, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–4080. For legal questions, contact: Lorna John, Office of the Chief Counsel, AGC–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3921.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA is responsible for the safety of flight in the United States and for the safety of U.S. civil operators, U.S.-registered aircraft, and U.S.-certificated airmen throughout the world. Also, the FAA is responsible for issuing rules affecting the safety of air commerce and national security. The FAA's authority to issue rules for aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106(g), describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. Section 40101(d)(1) provides that the Administrator shall consider in the public interest, among other matters, assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise his authority consistently with the obligations of the U.S. Government under international agreements. Furthermore, the FAA has broad authority under section 44701(a)(5) to prescribe regulations governing the practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security.

I. Background

On October 16, 1996, SFAR No. 77 was issued to prohibit flight operations within the territory and airspace of Iraq by any U.S. air carrier or commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA except persons operating U.S.-registered aircraft for a foreign air carrier (who are not covered by the prohibition), or by a person operating an aircraft registered in the United States, unless the operator of such aircraft is a foreign air carrier (which also is not covered by the prohibition). The prohibition was issued in response to concerns for the safety and security of U.S. civil flights within the territory and airspace of Iraq. In the final rule, the FAA cited a threat made by then President Saddam Hussein who urged his air defense forces to ignore both the southern and northern no-fly zones and to attack ''any air target of the aggressors.'' The FAA was concerned that this threat could apply to civilian as well as military aircraft, and therefore issued SFAR 77.

In early 2003, a U.S.-led coalition removed Saddam Hussein's regime in Iraq from power. The FAA anticipated that when hostilities ended in Iraq, humanitarian efforts would be needed to assist the people of Iraq. To facilitate those efforts, in April 2003, the FAA amended paragraph 3 of SFAR No. 77 to clarify what the approval process was for such flights, making clear that operations could not be authorized by another agency without the approval of the FAA.

On November 19, 2003, the FAA determined that certain limited overflights of Iraq could be conducted safely, subject to the permission of the appropriate authorities in Iraq and in accordance with the conditions established by those authorities. Accordingly, the FAA amended SFAR No. 77 to permit overflights of Iraq above Flight Level (FL) 200. That amendment also allowed aircraft departing from countries adjacent to Iraq to operate at altitudes below FL 200 within Iraq to the extent necessary to permit a climb above FL 200 if the climb performance of the aircraft would not permit operation above FL 200 prior to entering Iraqi airspace.

Results of recent evaluations of airports in Iraq prompted the FAA to consider removing the flight prohibition for Erbil and Sulaymaniyah. The Erbil and Sulaymaniyah International Airports have supported non-U.S. air carrier operations for a number of years without incident. Based largely on the initiation of those operations and on improvements in the operational environment, the FAA has determined that flights by U.S. operators may now be conducted safely to these two airports under certain conditions.

Therefore, the FAA is amending paragraph (b) (former paragraph 2) of SFAR No. 77 to allow certain flights from outside Iraq to and from the international airports of Erbil and Sulaymaniyah in the northern provinces of Iraq by any U.S. air carrier or commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA, except persons operating U.S.-registered aircraft for a foreign air carrier (who are not currently affected by the prohibition), or a person operating an aircraft registered in the United States, unless the operator of such aircraft is a foreign air carrier (which also is not currently affected by the prohibition). The FAA is committed to actively and continually evaluating airports in other regions of Iraq so that they can be used by U.S. civil operators. It is anticipated that additional adjustments to the SFAR may be appropriate as the risk to aviation safety and security lessens in other parts of the country, and ultimately the SFAR may be lifted completely.

Before U.S. air carriers begin commercial operations to either Erbil or Sulaymaniyah, the Transportation Security Administration (TSA) must review the current security situation.[1] Consequently, all U.S. air carriers who are required to have a TSA-approved security program under 49 CFR 1544.101 that are planning operations to and from Erbil or Sulaymaniyah must contact TSA before initiating service to obtain appropriate security approvals to operate the proposed service.[2]

Under new paragraphs (b)(3) and (4) (former paragraphs 2(c) and (d)) of SFAR No. 77, flights may be operated by persons covered by paragraph (a) (former paragraph 1) of the SFAR within the territory and airspace of Iraq north of the 34°30′ North latitude below FL200 to and from Erbil International Airport (ORER) or Sulaymaniyah International Airport (ORSU) to and from points outside Iraq. All other flight operations by persons covered by paragraph (a) (former paragraph 1) of SFAR No. 77 within the territory and airspace of Iraq north of the 34°30′ North latitude and in other areas within the territory and airspace of Iraq must be in accordance with paragraphs (b)(1), (b)(2), (c) and (d) (former paragraphs 2(a), 2(b), 3 and 4) of SFAR No. 77.

Under new paragraph (b)(5) (former paragraph 2(e)), prior to conducting operations under paragraphs (b)(3) and (b)(4) (former paragraphs 2(c) and 2(d)), the operator must apply for and obtain a letter of authorization (LOA) or operations specification (OpSpec), as appropriate, from the Director, Flight Standards Service, AFS–1, which will specify the limitations and conditions under which the operation must be conducted. An OpSpec or LOA addresses operational safety both for the particular flight and for continuing operations. The FAA often uses OpSpecs and LOAs to manage specific operations conducted pursuant to underlying regulations. In this instance, the OpSpecs and LOAs will address the residual risk associated with operating into and out of ORER or ORSU. Generally, the operator must:

- Have a method for obtaining current reports and information on airport conditions, navigation aids, weather, and any other factors that may affect the safety of flight including commercially available current threat information. This includes both preflight planning and enroute operations.
- Use specific airways to enter Iraqi airspace.
- Operate in accordance with the Iraq Aeronautical Information Publication (AIP).
- Minimize time below FL200 within the amended airspace.
- Not land at airports other than ORER and ORSU, except in an emergency.
- Report any security incidents/events to the FAA Washington Operations Center (WOC) via phone at 202–267–3333 or email *aeo-citewatch@faa.gov.*
- Comply with 14 CFR parts 91, 119, 125, 135 or 121.

While the conditions imposed in the OpSpec or LOA may be similar to the conditions imposed in OpSpecs and LOAs issued under exemptions or approvals for operations to the rest of Iraq, the threshold for issuance of an OpSpec or an LOA for flight operations into and out of ORER or ORSU is significantly different and does not rise to the level required for an exemption or approval for operations to the rest of Iraq. In order for an operator to receive an OpSpec or LOA under the approval process that applies to the rest of Iraq, a U.S. government agency must request approval of the specific operation or series of operations. Approval is granted only if the request for approval includes a written contract between the U.S. government agency and the operator, a plan approved by the U.S. government agency describing how the threats to the operation will be mitigated, and any other information requested by the FAA. That information will not be required for flights into and out of ORER or ORSU. The FAA will not require any contractual relationship between the operator and another U.S. government agency, and it will not require another agency to request operations be permitted. Nor will there be a requirement for a threat mitigation plan, although there may be some requirements that the operator provide the FAA with information regarding the situation in or around the airports.

Good Cause Justification for Waiving Notice and Comment

Because the circumstances described herein require immediate action and results in a lessening of the current flight prohibition, I find that notice and public comment under 5 U.S.C. 553(b)(3)(B) are impracticable and contrary to the public interest. I also find that this action is fully consistent with the obligations under 49 U.S.C. 40105 to ensure that I exercise my duties consistently with the obligations of the United States under international agreements.

II. Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses.

[1] In matters relating to aviation security, the FAA works closely with the Transportation Security Administration (TSA), which, pursuant to Subtitle I, Sections 114(d) and (f) of Title 49 of the United States Code, is responsible for civil aviation security, including the implementation and adequacy of security measures at airports and other transportation facilities. With respect to foreign airports, the TSA, on behalf of the Secretary of the Department of Homeland Security (DHS), implements the requirement set forth in Section 44907 of Title 49 to assess the effectiveness of the security measures maintained at foreign airports (1) Served by an air carrier; (2) from which a foreign air carrier serves the United States as a last point of departure; (3) that pose a high risk of introducing danger to international air travel; or (4) that the DHS Secretary considers appropriate. Among its other authorities, the TSA has the general authority under Section 40113 of Title 49 to prescribe regulations, standards, and procedures and issue orders in carrying out its security responsibilities.

[2] U.S. air carriers also must hold any necessary U.S. and Iraqi economic operating authority.

First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with the base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected impact on costs and benefits is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows: This rule will permit additional flights to be flown within the territory of Iraq north of the 34°30′ North latitude to or from Erbil International Airport (ORER) and Sulaymaniyah International Airport (ORSU). The relaxation of restrictions on operations to and from these two airports provides more commercial opportunities for operators, as well as improved consumer choice, and therefore, has more benefits than costs. Further, this expansion of opportunities is likely to lower transportation costs associated with these trips today. For example, with this rule U.S. operators may operate directly into these two airports without incurring the cost of contracting with a foreign operator or using foreign-registered aircraft. Therefore, the rule expands commercial opportunities with an expected minimal additional cost.

FAA has, therefore, determined that this final rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This rule permits more flights to Iraq; permits more direct flights which reduce costs; and expands revenue opportunity. Therefore, as the acting FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will reduce obstacles to the foreign commerce of the United States and is consistent with this Act.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million. This rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or
3. Accessing the Government Printing Office's Federal Digital System at: *http://www.fdsys.gov.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the

beginning of the preamble. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Iraq.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531; articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180).

■ 2. Amend part 91 by removing SFAR No. 77.

■ 3. Amend Subpart M by adding § 91.1605 to read as follows:

§ 91.1605 Special Federal Aviation Regulation No. 77—Prohibition Against Certain Flights Within the Territory and Airspace of Iraq.

(a) *Applicability.* This rule applies to the following persons:

(1) All U.S. air carriers or commercial operators;

(2) All persons exercising the privileges of an airman certificate issued by the FAA except such persons operating U.S.-registered aircraft for a foreign air carrier; or

(3) All operators of aircraft registered in the United States except where the operator of such aircraft is a foreign air carrier.

(b) *Flight prohibition.* No person may conduct flight operations over or within the territory of Iraq, except as provided in paragraphs (c) and (d) of this section or except as follows:

(1) Overflights of Iraq may be conducted above flight level (FL) 200 subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Iraq.

(2) Flights departing from the countries adjacent to Iraq whose climb performance will not permit operations above FL200 prior to entering Iraqi airspace may operate at altitudes below FL200 within Iraq to the extent necessary to permit a climb above FL200, subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Iraq.

(3) Flights originating from or destined to areas outside of Iraq may be operated to or from Erbil International Airport (ORER) or Sulaymaniyah International Airport (ORSU) within the territory of Iraq north of 34°30′ North latitude. Such flights may operate below FL200 only when initiating an arrival to or departure from Erbil International Airport (ORER) or Sulaymaniyah International Airport (ORSU).

(4) Flights departing Erbil and Sulaymaniyah whose climb performance will not permit operation above FL200 prior to entering Iraqi airspace south of the 34°30′ North latitude may operate at altitudes below FL 200 to the extent necessary to permit a climb above FL200.

(5) Prior to conducting the flight operations described in paragraphs (b)(3) and (4) of this section, the operator must obtain a letter of authorization or operations specification, as appropriate, from the Director, Flight Standards Service, AFS–1, which will specify the limitations and conditions under which the operation must be conducted. All flights conducted under paragraphs (b)(3) and (4) of this section are subject to the approval of, and must be conducted in accordance with the conditions established by the appropriate authorities of Iraq.

(c) *Permitted Operations.* This SFAR does not prohibit persons described in paragraph (a) of this section from conducting flight operations within the territory and airspace of Iraq when such operations are authorized either by another agency of the United States Government with the approval of the FAA, or by an exemption granted by the Administrator.

(d) *Emergency situations.* In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this SFAR to the extent required by that emergency. Except for U.S. air carriers or commercial operators that are subject to the requirements of parts 119, 121, or 135, each person who deviates from this rule shall, within ten (10) days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the Flight Standards Service Air Transportation Division (AFS–200) a complete report of the operations of the aircraft involved in the deviation including a description of the deviation and the reasons therefore.

Issued in Washington, DC on November 28, 2012.

Michael P. Huerta,

Acting Administrator.

[FR Doc. 2012–29412 Filed 12–5–12; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 681

RIN 3084–AA94

Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003, as Amended by the Red Flag Program Clarification Act of 2010

AGENCY: Federal Trade Commission.

ACTION: Interim final rule; request for comment.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is amending its Red Flags Rule promulgated under Section 615 of the Fair Credit Reporting Act (FCRA), to implement the Red Flag Program Clarification Act of 2010 (Clarification Act or Act). The interim final rule amends the definition of ''creditor'' in the original Red Flags Rule to make it consistent with the revised definition of that term in the Clarification Act.

DATES: The interim final rule is effective on February 11, 2013. Written comments must be received on or before February 11, 2013.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Red Flags Interim Final Rule'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/redflagsinterimrule* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex M), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Steven Toporoff, Attorney, or Tiffany George, Attorney, Federal Trade Commission, Division of Privacy and Identity Protection, Bureau of Consumer Protection, (202) 326–2252, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

On November 9, 2007, the Commission and banking agencies published final rules and guidelines [1] to implement the red flags provisions of section 615 of the FCRA.[2] Section 615 directed the Commission and banking agencies to issue joint regulations and guidelines requiring ''financial institutions'' and ''creditors'' to develop and implement a written identity theft program to identify, detect, and respond to possible risks of identity theft relevant to them.

The final Commission rule (the Red Flags Rule) [3] included the definition of ''creditor,'' as set forth in section 603(r)(5) of the FCRA.[4] That definition references the definition of ''creditor'' in section 702 of the Equal Credit Opportunity Act (ECOA). The ECOA defines the term ''creditor'' broadly as ''any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew or continue credit.'' [5] The ECOA further defines ''credit'' as ''the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor.'' [6]

The final rule, therefore, defined the term ''creditor'' in this manner. The definition included businesses or organizations that regularly provide goods or services first and allow consumers to pay later.[7] It also covered businesses or organizations that regularly grant loans, arrange for loans or the extension of credit, or make credit decisions, as well as those who regularly participate in the decision to extend, renew, or continue credit, including setting the terms of credit.[8]

II. The Red Flag Program Clarification Act

In December 2010, Congress enacted the Red Flag Program Clarification Act (Clarification Act), 15 U.S.C. 1681m(e)(4), which narrows the scope of entities covered as ''creditors'' under the Red Flags Rule.[9] The Clarification Act retains the ECOA definition of ''creditor,'' but generally limits the application of the Red Flags Rule to those ECOA creditors that regularly and in the ordinary course of business engage in at least one of the following three types of conduct: [10]

1. Obtain or use consumer reports, directly or indirectly, in connection with a credit transaction; [11] or

2. Furnish information to consumer reporting agencies in connection with a credit transaction; [12] or

3. Advance funds to or on behalf of a person, based on an obligation of the person to repay the funds or repayable from specific property pledged by or on behalf of the person.[13]

In addition to limiting the scope of coverage for ''creditors'' by creating these specified categories, the Clarification Act empowers the Commission, banking agencies, CFTC, and SEC [14] to determine through a future rulemaking whether to include any other type of creditor that offers or maintains accounts that are subject to a reasonably foreseeable risk of identity theft.[15] At this time, the Commission does not intend to use its discretionary rulemaking to extend coverage of the Red Flags Rule to additional creditors.

III. The Amended Definition of ''Creditor''

Pursuant to the Clarification Act, the definition of ''creditor'' is amended to ensure that it is consistent with the amended text of the FCRA. Accordingly, the FTC is amending its regulations applicable to the entities subject to its jurisdiction to clarify that the definition of ''creditor'' set forth in the interim final rule has the same meaning as in 15 U.S.C. 1681m(e)(4).[16]

A. Regularly and in the Ordinary Course of Business

By referencing the statutory definition of creditor, the interim final rule limits the definition of ''creditor'' to those ECOA creditors that ''regularly and in the ordinary course of business'' engage in the specific conduct set forth in the Clarification Act.[17] ''Regularly and in the ordinary course of business'' excludes isolated conduct.

B. Obtains or Uses Consumer Reports

A ''creditor'' will be covered by the interim final rule if it regularly and in the ordinary course of its business obtains or uses consumer reports, directly or indirectly, in connection with a credit transaction. This includes any use of a consumer report in connection with a credit transaction, even if the report is not directly obtained by the creditor and even if the creditor uses a service provider to make the credit determination. For this

[1] 72 FR 63718 (Nov. 9, 2007). Office of Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), Office of Theft Supervision (OTS) (collectively ''banking agencies''), and the Federal Trade Commission issued Red Flags Rules in a joint rulemaking. In addition to these agencies, the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) obtained rulemaking authority under section 615 of the FCRA, as amended by the Dodd Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203; 124 Stat. 1376–2223 (2010).

[2] 15 U.S.C. 1681m(e).

[3] *See also* OCC, 12 CFR 41.90 and 171.90; Board, 12 CFR 222.90; FDIC, 12 CFR 334.90; NCUA, 12 CFR 717.90; FTC, 16 CFR 681.1.

[4] 15 U.S.C. 1681a(r)(5).

[5] 15 U.S.C. 1691a(e).

[6] 15 U.S.C. 1691a(d). Regulation B, promulgated under the ECOA, defines ''credit'' in similar terms: ''the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.'' 12 CFR 202.2(j).

[7] For example, motor vehicle dealers and providers of telecommunications services may provide goods or services in advance and allow consumers to pay later. *See* 72 FR at 63741.

[8] ''[E]ntities under FTC's jurisdiction covered by [section 615 of the FCRA] include State-chartered credit unions, non-bank lenders, mortgage brokers, automobile dealers, utility companies, telecommunications companies, and any other person that regularly participates in a credit decision, including setting the terms of credit.'' 72 FR at 63750.

[9] Public Law 111–319, 124 Stat. 3457 (Dec. 18, 2010). The Clarification Act does not modify the definition of the term ''financial institution,'' nor does it amend any of the substantive requirements of the Red Flags Rule.

[10] The Clarification Act does not create any industry-wide exemptions: whether any particular entity is covered by the Rule must be determined by that entity's specific conduct.

[11] 15 U.S.C. 1681m(e)(4)(A)(i).

[12] 15 U.S.C. 1681m(e)(4)(A)(ii).

[13] 15 U.S.C. 1681m(e)(4)(A)(iii). As explained further below, the Clarification Act further provides that ''advancing funds'' does not include a creditor that advances funds on behalf of a person for expenses incidental to a service provided by the creditor to that person. 15 U.S.C. 1681m(e)(4)(B).

[14] The Dodd Frank Wall Street Reform and Consumer Protection Act added the CFTC and SEC to the list of agencies with rulemaking and enforcement authority for Red Flags. Pub. L. 111–203, 124 Stat. 1376 (2010).

[15] 15 U.S.C. 1681m(e)(4)(C).

[16] The FTC has conferred with the banking agencies, CFTC, and SEC, which do not object to the Commission's issuance of this interim final rule to amend the Red Flags Rule to conform it to the Clarification Act. The banking agencies each plan to make conforming changes to their respective regulations separately in the future. The CFTC and SEC have issued a proposal setting out their regulations and guidance under section 615 of FCRA and have included in that proposal the definition of ''creditor'' as set forth in the Clarification Act. *See* 77 FR 13450 (March 6, 2012).

[17] The question of whether an entity is a ''creditor'' within the meaning of the Red Flags Rule is only the first step of the inquiry in determining whether that entity must comply with the Rule. The second step is to determine whether the creditor has covered accounts, which means either: (1) Accounts offered primarily for personal, family, or household purposes that involve or are designed to permit multiple payments or transactions (*e.g.,* credit card accounts, mortgage loans, automobile loans, margin accounts, cell phone accounts, utility accounts, checking or savings accounts); or (2) any other account a creditor offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the creditor from identity theft, including financial, operational, compliance, reputation, or litigation risks. 72 FR at 63719, 63721.

reason, a creditor that engages a third-party servicer to obtain consumer report information on its behalf, or to evaluate a consumer's creditworthiness based upon the consumer's report, is a ''creditor'' under this prong for purposes of the interim final rule.

The Commission notes that for this prong to apply, the creditor must use or obtain a consumer report ''in connection with a credit transaction.'' Accordingly, the use of consumer reports for purposes other than credit B such as employment B will not trigger coverage under the interim final rule's definition of ''creditor.''

C. Furnishing Information to Credit Reporting Agencies

A creditor will be covered by the interim final rule if it regularly and in the ordinary course of business furnishes information to a consumer reporting agency, as described in section 623 of the FCRA, in connection with a credit transaction.

D. Advancing Funds

Further, a creditor will be covered by the interim final rule if it regularly and in the ordinary course of business advances funds to a person, or on behalf of a person, where that person is obligated to repay the funds or the funds are repayable from pledged specific property by or on behalf of the person.[18] This prong covers those lenders, such as payday lenders and automobile title lenders, that may not typically obtain, use, or furnish consumer reports in the ordinary course of business, but lend money to or on behalf of consumers and thus may be attractive targets for identity thieves. Consistent with the statutory language, the term ''creditor'' includes not only those creditors that lend money directly to a consumer, but also those creditors that advance funds to a third party ''on behalf of a person.'' Thus, for example, a finance company that provides funds to a furniture store related to a person's purchase of furniture would be covered under this prong because it is advancing funds ''on behalf of a person.''

At the same time, the interim final rule provides that the term ''advancing funds'' does not include a creditor that advances funds ''on behalf of a person for expenses incidental to a service provided by the creditor to that person.'' This limitation makes clear that advancing funds does not include payment in advance for fees, materials, or services that are incidental to the creditor's ability to provide another service that a person initiated or requested. Accordingly, a lawyer, for example, who advances funds on behalf of a client to pay expert witness fees or other expenses that are incidental to a request by a client for the provision of legal services in the course of litigation will not be deemed to be ''advancing funds.'' Thus, unlike a commercial lender making a loan, a business will not be deemed a creditor merely by advancing funds and deferring payment for fees incurred in the course of providing services to a client or customer.

E. Discretionary Rulemaking Authority

Finally, the Clarification Act provides that the definition of ''creditor'' includes any other type of creditor that an agency with jurisdiction determines, through a rulemaking, offers or maintains accounts that are subject to a reasonably foreseeable risk of identity theft. At this time, the Commission is not initiating discretionary rulemaking to extend coverage of the Red Flags Rule to additional creditors.

IV. Good Cause for Interim Final Rule

The Commission finds good cause for adopting the interim final rule without advance public notice and opportunity for public comment. Advance public notice and comment are not required ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [19]

As discussed above, the Clarification Act amends the definition of ''creditor'' for purposes of the Red Flags Rule. This amendment necessitates a technical revision of the Red Flags Rule to ensure that the regulation is consistent with the text of the amended FCRA.

The Commission finds that prior public comment on the Rule is unnecessary because the Commission has merely codified the amended statutory definition of ''creditor.'' Delay in adoption of the rule revision to allow for prior public comment would prolong uncertainty about the applicability of the Red Flags Rule requirements to the class of ''creditors,'' as defined in the amended FCRA. As a result, adoption of this amendment serves the public interest by providing clarity to the public regarding the entities that are subject to the Rule and furthering the effectiveness of the Commission's ongoing efforts to prevent identity theft and fraud through the enforcement of the Rule.

Accordingly, the Commission finds that there is good cause for adopting this interim final rule as effective on February 11, 2013, without prior public comment. Nonetheless, in order to promote good and open government, the Commission exercises its discretion to invite public comment on the interim final rule. Based on comments received, the Commission may adjust the interim final rule as necessary.

V. Request for Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before February 11, 2013. Write ''Red Flags Interim Final Rule,'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www/ftc/gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment doesn't include any sensitive personal information, such as anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment doesn't include any sensitive health information, such as medical records or other individually identifiable health information. In addition, don't include any '[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, don't include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR

[18] By incorporating the statutory language ''advances funds,'' the interim final rule does not cover merely deferring payment of debt or deferring payment for the purchase of property or services.

[19] 5 U.S.C. 553(b)(3)(B).

4.9(c).[20] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/redflagsinterimrule,* by following the instruction on the web-based form. If this Notice appears at *http://www.regulations.gov/serach/Regs/home.html#home,* you may also file a comment through that Web site.

If you file your comment on paper, write ''Red Flags Interim Final Rule'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex M), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Interim Final Rule and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before February 11, 2013. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

VI. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries of transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner will be placed on the public record.[21]

VII. Regulatory Analysis

A. Paperwork Reduction Act

The interim final rule does not include any new information collection requirements under the provisions of the Paperwork Reduction Act of 1995 (PRA).[22] Nonetheless, the Commission anticipates that the narrowed definition of the term ''creditor'' will result in a decrease in the number of creditors covered by the Red Flags Rule. Commission staff has proposed revised estimates of hours and costs ''burden'' under the PRA in connection with the FTC's pursuit of renewed OMB clearance for the Red Flags Rule (under OMB Control No 3084–0137), which currently runs through November 30, 2012. These estimates, which factor in the anticipated effects of the amended Rule, appear separately in the **Federal Register** for public comment.[23]

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a proposed rule and a Final Regulatory Flexibility Analysis (FRFA), if any, with a final rule. As noted above, the Commission finds that good cause exists for adopting this interim final rule without advance public notice or an opportunity for public comment. Because notice and comment is not statutorily required, the requirement to publish an analysis under the Regulatory Flexibility Act does not apply in this proceeding.[24]

List of Subjects in 16 CFR Part 681

Consumer reports, Consumer report users, Consumer reporting agencies, Credit, Creditors, Fair credit, Information furnishers, Identity theft, Trade practices.

For the reasons discussed in the preamble, the Commission amends part 681 of title 16 of the Code of Federal Regulations as follows:

PART 681—IDENTITY THEFT RULES

■ 1. Revise the authority citation for part 681 to read as follows:

Authority: 15 U.S.C. 1681m(e); 15 U.S.C. 1681m(e)(4); 15 U.S.C. 1681c(h).

■ 2. Revise 681.1(b)(5) to read as follows:

681.1 Duties regarding the detection, prevention, and mitigation of identity theft.

* * * * *

(b) * * *

(5) *Creditor* has the same meaning as in 15 U.S.C. 1681m(e)(4).

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2012–29430 Filed 12–5–12; 8:45 am]

BILLING CODE 6750–01–P

[20] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

[21] *See* 16 CFR 1.26(b)(5).

[22] 44 U.S.C. 3501–3521. Under the PRA, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3).

[23] *See* 77 FR 58994 (Sept. 25, 2012) (comment period ending Oct. 25, 2012).

[24] 5 U.S.C. 603, 604.

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 10, 24, 102, 123, 128, 141, 143, 145, and 148

[USCBP–2011–0042, CBP Dec. 12–19]

RIN 1515–AD69

Informal Entry Limit and Removal of a Formal Entry Requirement

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

ACTION: Final rule.

SUMMARY: Currently, for any merchandise valued over $2,000, CBP requires importers to provide a surety bond, complete CBP form 7501, and pay a minimum of $25 in Merchandise Processing Fees (MPF). The final rule increases the limit, from $2,000 to $2,500, for which merchandise may qualify for an ''informal entry'', thereby eliminating the need for a surety bond, expediting the customs clearance process, and reducing the required MPF amount to $2 (assuming the entries are filed electronically). CBP is increasing the informal entry limit to mitigate the effects of inflation and in addition, to meet a commitment of the Beyond the Border Initiative between the United States and Canada, to increase and harmonize the value thresholds to $2,500 for expedited customs clearance from the current levels of $2,000 for the United States and $1,600 for Canada.

This document also removes the language requiring formal entry for certain articles that were formerly subject to absolute quotas under the Agreement on Textiles and Clothing because CBP no longer needs to require formal entries for these articles. This document also makes a technical conforming amendment to reflect a recent statutory amendment that increased the *ad valorem* Merchandise Processing Fee (MPF) from 0.21 percent to 0.3464 percent. Finally, this document makes non-substantive editorial and nomenclature changes.

DATES: Effective January 7, 2013.

FOR FURTHER INFORMATION CONTACT: Elena Ryan, Acting Director, Trade Facilitation and Administration Division, Office of International Trade, Customs and Border Protection, 202–863–6578.

SUPPLEMENTARY INFORMATION:

Background

On October 28, 2011, U.S. Customs and Border Protection (''CBP'') published a proposed rule in the **Federal Register** (76 FR 66875) proposing to amend title 19 of the Code of Federal Regulations (''19 CFR'') to increase the informal entry limit from $2,000 to $2,500, the maximum statutory limit, in response to inflation and thereby to reduce the burden on importers and other entry filers. We note that an increase of the informal entry limit is also consistent with one of the goals of the Beyond the Border Initiative, which began on February 4, 2011, and encourages bilateral cooperation between the United States and Canada. Through the Beyond the Border Initiative, the United States and Canada have agreed to increase and harmonize the value thresholds to $2,500 for expedited customs clearance from the current levels of $2,000 for the United States and $1,600 for Canada. (For further information on the Beyond the Border Action Plan, see *http://www.dhs.gov/files/publications/beyond-the-border.shtm.*) CBP also proposed to remove the language requiring formal entry for certain articles, because with the elimination of absolute quotas under the Agreement on Textiles and Clothing, CBP no longer needs to require formal entries for these articles. For further details on the proposal, please reference the published proposed rule.

CBP solicited public comments on the proposed rule.

Technical Correction

This document also makes a technical correction to conform the regulations to reflect the statutory amendment to section 13031(a)(9) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)(9)) by section 2 of the Trade Adjustment Assistance Extension Act of 2011 that increased the *ad valorem* Merchandise Processing Fee (MPF) of 0.21 percent to 0.3464 percent. *See* Pub. L. 112–40, 125 Stat. 401 (October 23, 2011). The increased MPF applies to imported merchandise entered on or after October 1, 2011 until June 30, 2014.

Discussion of Comments

Eighteen commenters responded to the solicitation of public comments in the proposed rule. These comments can be found at *http://www.regulations.gov/#!docketDetail;dct=PS;rpp=25;po=0;D=USCBP-2011-0042.* The vast majority of the commenters expressed support for increasing the informal entry limit and/or removing the formal entry list. CBP's responses to the comments are set forth below.

Comment: Fifteen commenters expressed general agreement with the proposal to increase the informal entry limit to $2,500. Fourteen of these fifteen commenters agreed with the proposal to remove the formal entry requirement for certain articles and one commenter did not comment on the proposal concerning the formal entry requirement.

CBP Response: CBP concurs with proceeding to increase the informal entry amount to its statutory limit and to remove the formal entry requirement for certain articles that were previously subject to absolute quotas under the Agreement on Textiles and Clothing.

Comment: One commenter questioned whether filing an informal entry is less time consuming and burdensome than filing a formal entry. The commenter stated that an importer must use due diligence for both formal and informal entries.

CBP Response: CBP notes that importers filing by paper are required to complete more data elements in the formal entry paper form than in the informal entry form. For example, importers filing a formal entry paper form are required to provide the location of the goods, whereas importers filing an informal entry paper form are not required to provide this data element. Therefore, for paper filers, the informal entry is less time consuming. The bulk of affected filings are electronic, however, and in the electronic format filers provide the same data for both formal and informal entries. CBP agrees that the importer must use due diligence for filing both informal and formal entries.

Comment: Two commenters indicated that adjusting the informal entry limit to reflect inflation from 1998 to 2011 would raise the amount to approximately $2,800 rather than the proposed $2,500. One commenter suggested increasing the informal entry limit to $3,000.

CBP Response: Although CBP agrees that inflation would increase the informal entry limit from $2,000 to approximately $2,800, CBP is bound by the statutory limit of $2,500.

Comment: One commenter asked whether a study has been conducted to determine how many entries between the value of $2,000 and $2,500 would have been filed in the past years if the informal entry limit were $2,500.

CBP Response: As set forth in this document (see the ''Executive Orders 12866 and 13563'' section), CBP estimates that in fiscal year 2011 (the latest year of available data), there were approximately 852,000 formal entries between the value of $2,000 and $2,500. Approximately 558,000 of those entries would have been affected by this rule because they were required to pay MPFs.

Comment: One commenter suggested that CBP postpone the effective date of the rule until 2015 because promulgation of the rule would result in a net loss of $11 million to the U.S. Treasury. Two other commenters stated that the timing of the policy seemed inconsistent with the recent Congressional decision to increase the *ad valorem* MPFs by 60 percent. These two commenters noted that CBP would lose revenue from MPFs by increasing the informal entry limit and one of these commenters additionally noted that removing the formal entry requirement for textile and apparel entries would reduce revenue further because of the reduced collection of MPFs.

CBP Response: CBP notes that the MPF is set by Congress and the level of the MPF is beyond the scope of this rule. The reduction in MPF for the shipments which are affected by this rule should facilitate trade.

Comment: Three commenters stated that the analysis of the impact on small entities was too conservative and did not address the savings that would be achieved by small and medium businesses. Four commenters cited a June 2011 study conducted by the Peterson Institute for International Economics (''Peterson study'') in support of this statement and in support of its statement that raising the informal entry level would result in a substantial savings to CBP, the United States Postal Service, the express industry, and U.S. consumers.

CBP Response: CBP has reviewed the Peterson study, and while we agree that this final rule could result in meaningful benefits for the public, the estimates in the study relied on assumptions that CBP could not verify or support. Given the limitations in the data available for this analysis, CBP cannot ascertain with any degree of certainty the specific monetary impacts to businesses based on size.

Comment: Two commenters questioned CBP's ability to conduct post-entry audit on informal entries. One commenter noted that the security of the cargo and the accuracy of the cargo's description is at risk because

there is no review of incoming air cargo prior to lading on board an aircraft. The other commenter stated that a similar issue would arise in the case of antidumping and countervailing duties entries that were not properly prepared.

CBP Response: CBP has the ability to conduct post-entry audits on informal entries because CBP has regulatory auditors who conduct either scheduled or random audits on importers' liquidated entries to determine compliance with applicable U.S. laws and regulations. Moreover, CBP notes that formal entries are required for all antidumping and countervailing duties entries. The commenter's concern regarding the security of the cargo prior to lading is not impacted by raising the informal entry limit because CBP screens all manifested merchandise on board the carrier without regard to its value.

Comment: One commenter asserted that CBP inspectors universally seem to agree that a large percentage of import violations occur when importers inaccurately claim that their goods are valued less than $2,000.

CBP Response: Even when entries are informal, CBP reviews for correctness of the entry and the admissibility of the merchandise to ensure compliance with applicable U.S. laws and regulations.

Comment: One commenter asked whether Congress will allow resource deviation from CBP's enforcement efforts to the further development of the Automated Commercial Environment (ACE) system.

CBP Response: The anticipated actions of Congress are beyond the scope of this rulemaking.

Conclusion

After review of the comments and further consideration, CBP has decided to adopt the proposed rule that was published in the **Federal Register** (76 FR 66875) on October 28, 2011, with the addition of the conforming technical amendment to the MPF as discussed above. Additional minor grammatical and editorial changes were made in this final rule.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB). CBP has prepared the following analysis to help inform stakeholders of the potential impacts of this final rule.

CBP requires importers to submit a completed CBP Form 7501 (OMB Control Number 1651–0022) or its electronic equivalent with each entry of merchandise for consumption. Merchandise valued over $2,000 requires a formal entry, which generally includes detailed information regarding the import transaction as well as commercial documents pertaining to the transaction. In addition, a surety bond is required, and the importer may take possession of the merchandise before duties and taxes are assessed. Currently, merchandise valued below $2,000 may be entered informally without a bond; and duties and taxes are assessed immediately. However, based on his/her discretion, a port director, may require a formal entry to be filed. This final rule increases the ceiling for which merchandise may qualify for an informal entry from $2,000 to $2,500.

Unless exempt under a free trade agreement and in addition to any duty or tax owed, merchandise requiring a formal entry was subject to a 0.21 percent *ad valorem* MPF, which may be no greater than $485 and no less than $25. Since the publication of the NPRM, the *ad valorem* rate has increased from 0.21 percent to 0.3464 percent (starting on October 1, 2011). Any merchandise currently requiring a formal entry with a value of $2,000 to $2,500 is subject to the minimum $25 MPF. Entries that are now considered informal entries as a result of the change in the threshold would now be subject to only a $2 MPF (assuming they are filed electronically, see 19 CFR 24.23(b)(2)(i)). In the NPRM, CBP stated that in fiscal year (FY) 2009, 476,081 formal entries, valued between $2,000 and $2,500, were processed which were not subject to free trade agreements and were subject to the $25 MPF. Since the publication of the NPRM, these formal entries have increased from 476,081 entries in FY 2009 to 558,259 entries for FY 2011. Consequently, raising the informal entry limited to $2,500 would result in a loss of approximately $14 million in revenues if the $25 MPF were not collected for these entries in FY 2011 (558,259 × $25 = $14.0 million). Revenues would now be approximately $1 million (558,259 × $2 = $1.1 million), thus the net loss in fees collected would be approximately $13 million ($14 million − $1 million). We note that the estimated loss in net fees collected has increased from approximately $11 million estimated in the NPRM to $13 million estimated here for the final rule.

Because the informal entry limit has not kept pace with inflation, some importers may have paid a higher MPF than would have been required if the informal entry limit had kept pace with inflation. Due to data limitations CBP is unable to determine the aggregate savings any particular firm will realize if this regulation is finalized. CBP estimates importers as a whole, however, will realize a benefit of approximately $13 million when this regulation is finalized. CBP notes that this benefit to the trade represents a transfer from the government.

Additionally, this increase in the informal entry level meets the agreed upon value of $2,500 for the Beyond the Border Initiative. Harmonizing the informal entry value thresholds of the United States and Canada eliminates one difference in the customs clearance process.

Regulatory Flexibility Act

This section examines the impact of the rule on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

CBP has considered the impact of this rule on small entities. To the extent that this rule affects small entities, these entities would experience a small cost savings on a per-transaction basis. The total cost savings per entity would be based on its annual transaction levels. CBP does not believe such a small cost savings would rise to the level of a ''significant economic impact.'' During the comment period for the NPRM, CBP did not receive any comments that would amend this conclusion. Thus, CBP certifies that this rule will not have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the

private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132 (Federalism)

Executive Order 13132 requires CBP to develop a 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 are defined in the Executive Order to include rules 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.'' CBP has analyzed the rule in accordance with the principles and criteria in the Executive Order and has determined that it does not have federalism implications or a substantial direct effect on the States. The rule increases the informal entry limit from $2,000 to $2,500 and removes the formal entry list. States do not conduct activities with which this rule would interfere. For this reason, this rule would not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988. That Executive Order requires agencies to conduct reviews, before proposing legislation or promulgating regulations, to determine the impact of those proposals on civil justice and potential issues for litigation. The Order requires that agencies make reasonable efforts to ensure that a regulation clearly identifies preemptive effects, effects on existing Federal laws and regulations, any retroactive effects of the proposal, and other matters. CBP has determined that this regulation meets the requirements of Executive Order 12988 because it does not involve retroactive effects, preemptive effects, or other matters addressed in the Order.

National Environmental Policy Act

Increasing the informal entry limit, removing the formal entry list, and amending the regulations to reflect a recent statutory amendment that increased the *ad valorem* Merchandise Processing Fee (MPF) from 0.21 percent to 0.3464 percent, is non-invasive and there is no potential environmental impact of any kind. Therefore, an environmental statement under the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) is not required.

Paperwork Reduction Act

The collection of information on the Entry Summary and Informal Entry has been previously reviewed and approved by OMB in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651–0022. This collection of information is used to identify imported merchandise entering the commerce of the United States, to document the amount of duty and/or tax paid, and to serve as a record of the import transaction for the purposes of required certifications, enforcement information, and statistical data. An agency may not conduct or sponsor and an individual is not required to respond to a collection of information unless it displays a valid OMB control number. This rule does not implicate recordkeeping requirements; however, please note that the recordkeeping requirements for the filing of informal and formal entries are covered in part 163 of title 19 of the CFR (19 CFR part 163), and are approved under OMB control number 1651–0076.

Signing Authority

This document is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of his delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Parts 10, 123, 128, 141, 143, and 145

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Parts 24 and 148

Customs duties and inspection, Reporting and recordkeeping requirements, Taxes.

19 CFR Part 102

Canada, Customs duties and inspection, Imports, Mexico, Reporting and recordkeeping requirements, Trade agreements.

Amendments to the CBP Regulations

For the reasons set forth in the preamble, parts 10, 24, 102, 123, 128, 141, 143, 145, and 148 of title 19 of the CFR (19 CFR parts 10, 24, 102, 123, 128, 141, 143, 145, and 148) are amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

■ 1. The general authority citation for part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

* * * * *

§ 10.1 [Amended]

■ 2. In § 10.1:

■ a. Paragraph (a) introductory text is amended by removing the word ''shall'' and adding in its place the word ''must'', and by removing the sum ''$2,000'' and adding in its place the sum ''$2,500'';

■ b. Paragraph (a)(1) is amended by revising''19___'' to read ''20___'';

■ c. Paragraph (a)(2) introductory text is amended in the last sentence by removing the word ''shall'' and adding in its place the word ''must'';

■ d. Paragraph (b) is amended by removing the sum ''$2,000'' and adding in its place the sum ''$2,500'';

■ e. Paragraph (e) is amended by removing the word ''shall'' and adding in its place the word ''will'';

■ f. Paragraph (f) is amended by removing the word ''shall'' each place that it appears and adding in its place the word ''must'';

■ g. Paragraph (g)(1) is amended by:

■ i. Removing the word ''Customs'' each place that it appears and adding in its place the term ''CBP'';

■ ii. Removing the word ''shall'' the first time that it appears and adding in its place the word ''must''; and

■ iii. Removing the word ''shall'' in the last sentence and adding in its place the word ''will'';

■ h. Paragraph (g)(2) introductory text is amended by removing the word ''shall'' and adding in its place the word ''must'', and by removing the word ''Customs'' and adding in its place the term ''CBP'';

■ i. Paragraph (g)(3) is amended by removing the word ''Customs'' and adding in its place the term ''CBP'', and removing the word ''shall'' and adding in its place the word ''will'';

■ j. Paragraph (h)(1) introductory text is amended by removing the word ''Customs'' each place that it appears and adding in its place the term ''CBP'', and removing the word ''shall'' each place that it appears and adding in its place the word ''must'';

■ k. Paragraph (h)(2) is amended by removing the word ''shall'' and adding in its place the word ''will'', and by removing the word ''Customs'' and adding in its place the term ''CBP'';

■ l. Paragraph (h)(3) introductory text is amended by removing the word ''Customs'' each place that it appears and adding in its place the term ''CBP'', and removing the word ''shall'' and adding in its place the word ''must'';
■ m. Paragraph (h)(4) introductory text is amended by removing the word ''shall'' and adding in its place the word ''must'';
■ n. Paragraph (h)(5) is amended by removing the word ''Customs'' and adding in its place the term ''CBP'', and removing the word ''shall'' and adding in its place the word ''will'';
■ o. Paragraph (i) is amended by removing in the first sentence the word ''Customs'' the first two times it appears and adding in its place the term ''CBP'', and by removing the word ''shall'' each place that it appears and adding in its place the word ''must''; and
■ p. Paragraph (j)(2) is amended by removing the word ''Customs'' each place that it appears and adding in its place the term ''CBP'', and by removing the word ''shall'' each place that it appears and adding in its place the word ''must''.

PART 24—CUSTOMS AND FINANCIAL ACCOUNTING PROCEDURE

■ 3. The general authority citations for part 24 is revised and the specific authority citation for § 24.23 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 3717, 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

* * * * *

Section 24.23 also issued under 19 U.S.C. 3332;

* * * * *

§ 24.23 [Amended]

■ 4. In § 24.23:
■ a. Paragraph (a)(4) introductory text is amended by removing the word ''shall'' and adding in its place the word ''must'';
■ b. Paragraph (b)(1)(i)(A) is amended by removing the sum ''$2,000'' and adding in its place the sum ''$2,500''; and by removing the number ''0.21'' each place it appears and adding in its place the number ''0.3464'';
■ c. Paragraph (b)(1)(i)(B) is amended by removing the word ''shall'' each place that it appears and adding in its place the word ''must'';
■ d. Paragraph (b)(1)(ii) is amended by removing the word ''shall'' each place that it appears and adding in its place the word ''will'';
■ e. Paragraph (b)(3) is amended by removing the sum ''$2,000'' and adding in its place the sum ''$2,500'';
■ f. Paragraph (b)(4) introductory text is amended by removing the sum ''$2,000'' and adding in its place the sum ''$2,500'';
■ g. Paragraph (c)(1) introductory text is amended by removing the word ''shall'' and adding in its place the word ''will'';
■ h. Paragraphs (c)(2)(i) and (ii) are amended by removing the word ''shall'' and adding in its place the word ''will'';
■ i. Paragraph (c)(3) is amended by removing the word ''shall'' each place that it appears and adding in its place the word ''will'';
■ j. Paragraph (c)(4) is amended by removing the word ''shall'' and adding in its place the word ''will'';
■ k. Paragraph (c)(5) is amended by:
■ i. Removing the word ''shall'' and adding in its place the word ''will'';
■ ii. Removing the word ''Custons'' and adding in its place the word ''Customs'';
■ l. Paragraph (d)(1) introductory text is amended by:
■ i. Removing the word ''Customs'' and adding in its place the term ''CBP''; and
■ ii. Removing the word ''shall'' and adding in its place the word ''will'';
■ m. Paragraph (d)(2) is amended by:
■ i. Removing the word ''shall'' in the first sentence and adding in its place the word ''must'';
■ ii. Removing the word ''Customs'' and adding in its place the term ''CBP''; and
■ iii. Removing the word ''shall'' in the last sentence and adding in its place the word ''will'';
■ n. Paragraph (e)(1) is amended by removing the word ''Customs'', in its heading and in its text, each place that it appears and adding in its place the word ''customs'', and by removing the word ''shall'' each place that it appears and adding in its place the word ''will''; and
■ o. Paragraph (e)(2) is amended by removing the word ''shall'' and adding in its place the word ''will'', and by removing the word ''Customs'' and adding in its place the word ''customs''.

PART 102—RULES OF ORIGIN

■ 5. The general authority citation for part 102 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3314, 3592.

* * * * *

§ 102.24 [Amended]

■ 6. Section 102.24 is amended by removing paragraph (a), the paragraph designation ''(b)'', and the paragraph (b) subject heading and wrapping into one paragraph.

* * * * *

PART 123—CBP RELATIONS WITH CANADA AND MEXICO

■ 7. The general authority citation for part 123 and the specific authority citations for § 123.4 continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624, 2071 note.

* * * * *

Section 123.4 also issued under 19 U.S.C. 1484, 1498;

* * * * *

§ 123.4 [Amended]

■ 8. In § 123.4:
■ a. The introductory text is amended by removing the word ''shall'' and adding in its place the word ''must'', and by removing the word ''Customs'' and adding in its place the term ''CBP'';
■ b. Paragraph (a) is amended by removing the word ''Customs'' and adding in its place the term ''CBP'';
■ c. Paragraph (b) is amended by removing the sum ''$2,000'' and adding in its place the sum ''$2,500'', and removing the word ''Customs'' each place that it appears and adding in its place the term ''CBP'';
■ d. Paragraph (c) is amended by removing the word ''Customs'' and adding in its place the term ''CBP''; and
■ e. Paragraph (d) is amended by removing the word ''Customs'' and adding in its place the term ''CBP'', and removing the word ''shall'' and adding in its place the word ''must''.

§ 123.92 [Amended]

■ 9. In § 123.92:
■ a. Paragraph (b)(2)(i) is amended by removing the words ''Customs Form (CF)'' and adding in its place the term ''CBP Form'';
■ b. Paragraph (b)(2)(ii) is amended by removing the sum ''$2,000'' and adding in its place the sum ''$2,500'', and by removing the term ''CF'' and adding in its place the words ''CBP Form'';
■ c. Paragraph (b)(2)(iii) is amended by removing the term ''CF'' and adding in its place the words ''CBP Form''; and
■ d. Paragraph (c)(2) is amended by removing the term ''Customs'' and adding in its place the word ''customs''.

PART 128—EXPRESS CONSIGNMENTS

■ 10. The general authority citation for part 128 continues to read as follows:

Authority: 19 U.S.C. 58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1484, 1498, 1551, 1555, 1556, 1565, 1624.

§ 128.24 [Amended]

■ 11. In § 128.24:
■ a. Paragraph (a) is amended by removing the sum ''$2,000'' each place that it appears and adding in its place the sum ''$2,500'';
■ b. Paragraph (b) is amended by removing the word ''Customs'' and adding in its place the term ''CBP'', and by removing the word ''shall'' and adding in its place the word ''must'';
■ c. Paragraph (c) is amended by removing the word ''Customs'' each place that it appears and adding in its place the term ''CBP'', and by removing the word ''shall'' each place that it appears and adding in its place the word ''must'';
■ d. Paragraph (d) is amended by removing the word ''Customs'' and adding in its place the term ''CBP''; and
■ e. Paragraph (e) introductory text is amended by removing the word ''shall'' and adding in its place the word ''will''.

PART 141—ENTRY OF MERCHANDISE

■ 12. The general authority citation for part 141 is revised to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1498, 1624.

* * * * *

§ 141.82 [Amended]

■ 13. In § 141.82:
■ a. Paragraphs (b) and (c) are amended by removing the word ''shall'' each place that it appears and adding in its place the word ''must''; and
■ b. Paragraph (d) is amended by:
■ i. Removing the sum ''$2,000'' and adding in its place the sum ''$2,500'';
■ ii. Removing the words ''Sections VII, VIII, XI, and XII; Chapter 94; and''; and
■ iii. Adding the symbol ''\)'' after the word ''States''.

PART 143—SPECIAL ENTRY PROCEDURES

■ 14. The general authority citation for part 143 is revised to read as follows:

Authority: 19 U.S.C. 66, 1321, 1414, 1481, 1484, 1498, 1624, 1641.

* * * * *

§ 143.21 [Amended]

■ 15. In § 143.21:
■ a. Paragraphs (a) and (b) are amended by removing the sum ''$2,000'' and adding in its place the sum ''$2,500'';
■ b. Paragraph (a) is further amended by removing the words ''Sections VII, VIII, XI, and XII; Chapter 94 and'';
■ c. Paragraph (c) is amended by:
■ i. Removing the sum ''$2,000'' and adding in its place the sum ''$2,500'';
■ ii. Removing the citation ''§ 141.51'' and adding in its place the citation ''§ 141.52''; and
■ iii. Removing the words ''subheadings from Sections VII, VIII, XI, and XII; or in Chapter 94 and'';
■ d. Paragraphs (f) and (g) are amended by removing the sum ''$2,000'' and adding in its place the sum ''$2,500'';
■ e. Paragraph (j) is amended by removing the word ''Customs'' and adding in its place the term ''CBP'';
■ 16. Section 143.22 is revised to read as follows:

§ 143.22 Formal entry may be required.

The port director may require a formal consumption or appraisement entry for any merchandise if deemed necessary for import admissibility enforcement purposes; revenue protection; or the efficient conduct of customs business. Individual shipments for the same consignee, when such shipments are valued at $2,500 or less, may be consolidated on one such entry.

§ 143.23 [Amended]

■ 17. In § 143.23:
■ a. The introductory text is amended by removing the word ''shall'' and adding in its place the word ''must'', and by removing the word ''Customs'' each time it appears and adding in its place the term ''CBP'';
■ b. Paragraphs (b) and (c) are amended by removing the word ''Customs'' and adding in its place the term ''CBP'';
■ c. Paragraph (d) is amended by:
■ i. Removing the sum ''$2,000'' and adding in its place the sum ''$2,500'';
■ ii. Removing the word ''Customs'' and adding in its place the term ''CBP''; and
■ iii. Removing the words ''Sections VII, VIII, XI, and XII; Chapter 94; and'';
■ d. Paragraph (e) is amended by removing the word ''can'' and adding in its place the word ''may'';
■ e. Paragraphs (f), (g), (h)(1), and (h)(2) introductory text are amended by removing the word ''Customs'' each time it appears and adding in its place the term ''CBP''; and
■ f. Paragraph (i) is amended by removing the sum ''$2,000'' and adding in its place the sum ''$2,500''.

§ 143.26 [Amended]

■ 18. In § 143.26:
■ a. Paragraph (a) is amended by removing, in its heading and in its text, the sum ''$2,000'' each place that it appears and adding in its place the sum ''$2,500'', and by removing the word ''Customs'' and adding in its place the word ''customs''; and
■ b. Paragraph (b) is amended by removing the space between ''appropriatel'' and ''y'' to read ''appropriately'', and by removing the word ''Customs'' and adding in its place the word ''customs''.

PART 145—MAIL IMPORTATIONS

■ 19. The general authority citation for part 145 and the specific authority citations for §§ 145.4, 145.12, 145.31, 145.35, 145.41 continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Notice 3(i), Harmonized Tariff Schedule of the United States), 1624.

* * * * *

Section 145.4 also issued under 18 U.S.C. 545, 19 U.S.C. 1618;

* * * * *

Section 145.12 also issued under 19 U.S.C. 1315, 1484, 1498;

* * * * *

Section 145.31 also issued under 19 U.S.C. 1321;

Section 145.35 through 145.38, 145.41, also issued under 19 U.S.C. 1498;

* * * * *

§ 145.4 [Amended]

■ 20. In § 145.4:
■ a. Paragraph (a) is amended by removing the word ''Customs'' the first time it appears and adding in its place the term ''CBP'', and by removing the word ''Customs'' the second time it appears and adding in its place the word ''customs''; and
■ b. Paragraph (c) is amended by:
■ i. Removing the sum ''$2,000'' and adding in its place the sum ''$2,500'';
■ ii. Removing the word ''Customs'' and adding in its place the term ''CBP''; and
■ iii. Removing the word ''shall'' and adding in its place the word ''must''.

§ 145.12 [Amended]

■ 21. In § 145.12:
■ a. Paragraph (a)(2) is amended by removing the word ''shall'' and adding in its place the word ''will'', and by removing the sum ''$2,000'' and adding in its place the sum ''$2,500'';
■ b. Paragraph (a)(3) is amended by:
■ i. Removing the sum ''$2,000'' each place that it appears and adding in its place the sum ''$2,500'';
■ ii. Removing the word ''Customs'' the first time that it appears and adding in its place the term ''CBP'';
■ iii. Removing the word ''Customs'' the second time that it appears and adding in its place the word ''customs''; and
■ iv. Removing the words ''shall not'' and adding in its place the word ''cannot'';
■ c. Paragraph (a)(4) is amended by:
■ i. Removing the word ''shall'' in the first and second sentence and adding in its place the word ''will'';
■ ii. Removing the word ''shall'' in the last sentence and adding in its place the word ''must''; and
■ iii. Removing the word ''Customs'' and adding in its place the term ''CBP'',

and adding the word, ''customs'' before the word, ''station'';
■ d. Paragraph (b)(1) is amended by:
■ i. Removing the word ''Customs'' each place that it appears and adding in its place the term ''CBP'';
■ ii. Removing the word ''shall'' each place that it appears and adding in its place the word ''will'';
■ iii. Removing the sum ''$2,000'' and adding in its place the sum ''$2,500''; and
■ iv. Removing the word ''shall'' and adding in its place the word ''will'';
■ e. Paragraph (b)(2) is amended by removing the word ''shall'' and adding in its place the word ''will'', and by removing the word ''Customs'' and adding in its place the term ''CBP'';
■ f. Paragraph (c) is amended by:
■ i. Removing, in its heading and in its text, the sum ''$2,000'' and adding in its place the sum $2,500'';
■ ii. Removing the word ''Customs'' each place that it appears in the first sentence and adding in its place the term ''CBP'';
■ iii. Removing the words ''Customs treatment'' in the third sentence and adding in its place the words ''customs treatment'';
■ iv. Removing the words ''Customs office'' and adding in its place the words ''CBP office''; and
■ v. Removing the word ''shall'' each place that it appears and adding in its place the term ''will'';
■ g. Paragraph (e)(1) is amended by removing the word ''Customs'' in each place that it appears and adding in its place the term ''CBP'', and by removing the word ''shall'' and adding in its place the word ''will''; and
■ h. Paragraph (e)(2) is amended by:
■ i. Removing the words ''Customs Form'' each place that it appears, in its heading and its text, and adding in its place the words ''CBP Form'';
■ ii. Removing the words ''Customs officer'' and adding in its place the words ''CBP officer'';
■ iii. Removing the words ''Customs purposes'' and adding in its place the words ''customs purposes'';
■ iv. Removing the word ''shall'' in the first sentence and adding in its place the word ''must''; and
■ v. Removing the word ''shall'' in the second sentence and adding in its place the word ''will''.

§ 145.31 [Amended]

■ 22. Section 145.31 is amended by removing the word ''shall'' and adding in its place the word ''will''.

§ 145.35 [Amended]

■ 23. Section 145.35 is amended by removing the sum ''$2,000'' and adding in its place the sum ''$2,500''.

§ 145.41 [Amended]

■ 24. Section 145.41 is amended by removing the sum ''$2,000'' and adding in its place the sum ''$2,500''.

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

■ 25. The general authority citation for part 148 is revised and the specific authority citations for § 148.51 and 148.64 continue to read as follows:

Authority: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States).

* * * * *

Sections 148.43, 148.51, 148.63, 148.64, 148.74 also issued under 19 U.S.C. 1321;

* * * * *

§ 148.23 [Amended]

■ 26. In § 148.23:

■ a. Paragraph (c)(1) is amended by removing, in its heading and in its text, the sum ''$2,000'' and adding in its place the sum ''$2,500'';

■ b. Paragraph (c)(1) is further amended by removing, in the text, the words ''Sections VII, VIII, XI, and XII; Chapter 94; and'';

■ c. Paragraph (c)(2) is amended by removing, in its heading and in its text, the sum ''$2,000'' and adding in its place the sum ''$2,500''; and

■ d. Paragraph (c)(2) is further amended by removing the words ''Sections VII, VIII, XI, and XII; Chapter 94; and''.

§ 148.54 [Amended]

■ 27. In § 148.54

■ a. Paragraph (b) is amended by removing the word ''shall'' and adding in its place the word ''must'', and by removing the sum ''$250'' and adding in its place the sum''$2,500''; and

■ b. Paragraph (c) is amended by removing the word ''shall'' each place that it appears and adding in its place the word ''will''.

David V. Aguilar,

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

Approved: November 28, 2012.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2012–29193 Filed 12–5–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 40, 46, and 602

[TD 9602]

RIN 1545–BK59

Fees on Health Insurance Policies and Self-Insured Plans for the Patient-Centered Outcomes Research Trust Fund

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that implement and provide guidance on the fees imposed by the Patient Protection and Affordable Care Act on issuers of certain health insurance policies and plan sponsors of certain self-insured health plans to fund the Patient-Centered Outcomes Research Trust Fund. These final regulations affect the issuers and plan sponsors that are directed to pay those fees.

DATES: *Effective Date:* These regulations are effective December 6, 2012.

Applicability Dates: These regulations apply to policy and plan years ending on or after October 1, 2012, and before October 1, 2019.

FOR FURTHER INFORMATION CONTACT: R. Lisa Mojiri-Azad at (202) 622–6080 (regarding self-insured health arrangements) or Rebecca L. Baxter at (202) 622–3970 (regarding health insurance policies).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2238. The collections of information in these final regulations are in § 46.4375–1(c)(2)(iv) (use of the snapshot method to calculate the fee under section 4375); § 46.4375–1(c)(2)(v) (use of the National Association of Insurance Commissioners (NAIC) Supplemental Health Care Exhibit to calculate the fee under section 4375); § 46.4375–1(c)(2)(vi) (use of certain state forms to calculate the fee under section 4375); § 46.4376–1(b)(2)(G) (identification or designation of a plan sponsor under the governing plan document for certain applicable self-insured health plans); § 46.4376–1(c)(2)(iv) (use of snapshot method to calculate the fee under section 4376); and § 46.4376–1(c)(2)(v) (use of the

Form 5500, ''Annual Return/Report of Employee Benefit Plan,'' or Form 5500–SF, ''Short Form Annual Return/Report of Employee Benefit Plan'' to calculate the fee under section 4376).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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.

Background

This document contains final amendments to 26 CFR part 40 (Excise Tax Procedural Regulations) and 26 CFR part 46 (relating to excise taxes imposed on policies issued by foreign insurers and obligations not in registered form) to implement the requirements under sections 4375 through 4377 of the Internal Revenue Code (Code). The Treasury Department and the IRS issued proposed regulations under sections 4375 through 4377 on April 17, 2012 (77 FR 22,691). Sections 4375 and 4376 of the Code impose fees on issuers of specified health insurance policies and plan sponsors of applicable self-insured health plans, and section 4377 contains special rules that apply to these issuers and plan sponsors with respect to these fees. Sections 4375, 4376, and 4377 were added to the Code by section 6301 of the Patient Protection and Affordable Care Act (Affordable Care Act), Public Law 111–148 (124 Stat. 119 (2010)).

The Affordable Care Act provides for the establishment of the private, nonprofit corporation, the Patient-Centered Outcomes Research Institute (the ''Institute''). Through research, the Institute will assist patients, clinicians, purchasers, and policy-makers in making informed health decisions by advancing the quality and relevance of evidence-based medicine through the synthesis and dissemination of comparative clinical effectiveness research findings. The statute specifically prohibits the Secretary of Health and Human Services (HHS) from using the evidence or findings of the research conducted in determining coverage, reimbursement, or incentive programs unless it is through an iterative and transparent process which includes public comment and considers the effect on subpopulations. Nothing under this provision allows the Secretary of HHS to deny coverage of items or services solely on the basis of comparative clinical effectiveness research. The statute provides that the Institute will not develop a dollars-per-quality-life-year estimate as a threshold to establish effective or recommended care.

Section 6301 of the Affordable Care Act amended the Code by adding new section 9511 to establish the Patient-Centered Outcomes Research Trust Fund (the ''Trust Fund''), which is the funding source for the Institute. Section 6301 of the Affordable Care Act also added new Code sections 4375, 4376, and 4377 to provide a funding source for the Trust Fund that is to be financed, in part, by fees to be paid by issuers of specified health insurance policies and sponsors of applicable self-insured health plans.

Statutory Provisions

Section 4375 imposes a fee on an issuer of a specified health insurance policy for each policy year ending on or after October 1, 2012, and before October 1, 2019. Under section 4375(a), the fee is two dollars (one dollar in the case of policy years ending before October 1, 2013) multiplied by the average number of lives covered under the policy. Under section 4375(d), for policy years ending on or after October 1, 2014, the fee is increased based on increases in the projected per capita amount of National Health Expenditures. Section 4375(b) provides that the fee imposed by section 4375(a) shall be paid by the issuer of the policy.

Section 4375(c) defines a *specified health insurance policy* as any accident or health insurance policy (including a policy under a group health plan) issued with respect to individuals residing in the United States. Section 4375(c)(2) excludes from a specified health insurance policy any insurance if substantially all of its coverage is of excepted benefits described in section 9832(c). Section 4375(c)(3) provides that a specified health insurance policy includes any prepaid health coverage arrangement described in section 4375(c)(3)(B). An arrangement is described in section 4375(c)(3)(B) if, under the arrangement, fixed payments or premiums are received as consideration for a person's agreement to provide or arrange for the provision of accident or health coverage to residents of the United States, regardless of how the coverage is provided or arranged to be provided.

Section 4376 imposes a fee on a plan sponsor of an applicable self-insured health plan for each plan year ending on or after October 1, 2012, and before October 1, 2019.[1] Under section 4376(a), the fee is two dollars (one dollar for plan years ending before October 1, 2013) multiplied by the average number of lives covered under the plan. Under section 4376(d), for plan years ending on or after October 1, 2014, the fee is increased based on increases in the projected per capita amount of National Health Expenditures. Section 4376(b)(1) provides that the fee imposed by section 4376(a) shall be paid by the plan sponsor.

Section 4376(b)(2) defines a *plan sponsor* as the employer in the case of a plan established or maintained by a single employer, or the employee organization in the case of a plan established or maintained by an employee organization. Section 4376(b)(2) also provides that, in the case of (1) a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, (2) a multiple employer welfare arrangement, or (3) a voluntary employees' beneficiary association described in section 501(c)(9), the plan sponsor is the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan. Section 4376(b)(2) further provides that in the case of a plan established or maintained by a rural electric cooperative (as defined in section 3(40)(B)(iv) of the Employee Retirement Income Security Act of 1974 (ERISA)) or rural telephone cooperative association (as defined in section 3(40)(B)(v) of ERISA), the plan sponsor is the cooperative or association that established or maintained the plan.

Section 4376(c) defines an *applicable self-insured health plan* as any plan for providing accident or health coverage if any portion of the coverage is provided other than through an insurance policy, and the plan is established or maintained (1) By one or more employers for the benefit of their employees or former employees, (2) by one or more employee organizations for the benefit of their members or former members, (3) jointly by one or more employers and one or more employee organizations for the benefit of employees or former employees, (4) by a voluntary employees' beneficiary

[1] The Department of Labor has advised that, because the fee is imposed on the plan sponsor under section 4376 (instead of the plan), paying the PCORI fee generally does not constitute a permissible expense of the plan for purposes of Title I of the Employee Retirement Income Security Act (ERISA), although special circumstances may exist in limited situations. The Department of Labor will provide guidance in the near future on PCORI fee payments under Title I of ERISA on its Web site, *www.dol.gov/ebsa*.

association described in section 501(c)(9), (5) by any organization described in section 501(c)(6), or (6) if not previously described, by a multiple employer welfare arrangement (as defined in section 3(40) of ERISA), a rural electric cooperative (as defined in section 3(40)(B)(iv) of ERISA), or a rural telephone cooperative association (as defined in section 3(40)(B)(v) of ERISA).

Section 4377 includes definitions and special rules that apply for purposes of sections 4375 and 4376. Section 4377(a)(1) defines *accident and health coverage* as any coverage that, if provided by an insurance policy, would cause the policy to be a specified health insurance policy (as defined in section 4375(c)).

Section 4377(b)(1)(B) provides that ''[n]otwithstanding any other law or rule of law, governmental entities shall not be exempt from'' the fees imposed by sections 4375 and 4376 unless the policy or plan is an exempt governmental program. Section 4377(b)(3) defines an *exempt governmental program* as (1) any insurance program established under title XVIII of the Social Security Act (42 U.S.C. 1395 *et. seq.*) (Medicare), (2) the medical assistance program established by title XIX (42 U.S.C. 1396 *et. seq.*) (Medicaid) or title XXI of the Social Security Act (42 U.S.C. 1397aa *et. seq.*) (Children's Health Insurance Program), (3) any program established by Federal law for providing medical care (other than through insurance policies) to individuals (or the spouses and dependents thereof) by reason of such individuals being members of the Armed Forces of the United States or veterans, and (4) any program established by Federal law for providing medical care (other than through insurance policies) to members of Indian tribes (as defined in section 4(d) of the Indian Health Care Improvement Act, 25 U.S.C. 1603). Under these special rules, a governmental entity (including a federally recognized Indian tribal government) that is the plan sponsor of an applicable self-insured health plan that does not meet the definition of an exempt governmental program must pay the fee imposed by section 4376.

Section 4377(c) provides that the fees imposed by sections 4375 and 4376 are treated as taxes for purposes of subtitle F of the Code (sections 6001 through 7874 that set forth the rules of federal tax procedure and administration).

Notice 2011–35 and Proposed Regulations

On June 8, 2011, the IRS released Notice 2011–35 (2011–25 IRB 879), which requested comments on how the fees imposed under sections 4375 and 4376 (referred to collectively as the PCORI fee) should be calculated and paid, including possible rules and safe harbors. The Treasury Department and the IRS received numerous comments in response to Notice 2011–35 and considered all comments in issuing proposed regulations under sections 4375, 4376, and 4377 (77 FR 22,691). The Treasury Department and the IRS received 26 written comments on the proposed regulations. After consideration of the comments, these final regulations adopt the provisions of the proposed regulations with certain modifications, the most significant of which are highlighted in the Summary of Comments and Explanation of Revisions. See § 601.601(d)(2).

Summary of Comments and Explanation of Revisions

I. Health Insurance Policies Subject to the PCORI Fee

Section 4375(a) imposes a fee on an issuer of a specified health insurance policy for each policy year ending on or after October 1, 2012, and before October 1, 2019. Section 46.4375–1(b)(1) of these regulations defines a *specified health insurance policy* as any accident and health insurance policy (including a policy under a group health plan) issued with respect to individuals residing in the United States. Section 46.4375–1(b)(1)(ii) provides exceptions to the term *specified health insurance policy.* Section 4375(c)(2) and § 46.4375–1(b)(1)(ii)(A) provide an exclusion for any insurance if substantially all of its coverage is of excepted benefits described in section 9832(c). While § 46.4376–1(b)(ii)(B) excludes from the definition of applicable self-insured health plan an employee assistance program (EAP), disease management program, or wellness program, if the program does not provide significant benefits in the nature of medical care or treatment, no similar exclusion was included in the proposed regulations for a specified health insurance policy.

One commentator explained that California and Nevada regulate EAPs that provide for four or more counseling, treatment, or therapy visits as insurance thereby requiring the issuance of an insurance policy. The commentator argued that in any other state, identical EAPs would be excluded from the definition of applicable self-insured plan and not subject to the PCORI fee. In recognition of the unique California and Nevada requirements that certain employee assistance plans be treated as insurance, the commentator asked that an exception be added to the definition of specified health insurance policy to exclude those EAPs. In response to this comment, these final regulations provide that the definition of a *specified health insurance policy* does not include any insurance policy to the extent that the policy provides for an EAP, disease management program, or wellness program, if the program does not provide significant benefits in the nature of medical care or treatment. No inference is intended whether the specific health benefits cited by the commentator constitute insignificant benefits.

II. Retiree Coverage and Retiree-Only Plans

As noted in the preamble to the proposed regulations, sections 4375 and 4376 may apply to a retiree-only plan because, although group health plans that have fewer than two participants who are current employees (such as retiree-only plans) are excluded from the requirements of chapter 100 (setting forth requirements applicable to group health plans such as portability, nondiscrimination, and market reform requirements), this exclusion does not apply to sections 4375 and 4376 because these sections are in chapter 34. In addition, section 4376(c)(2)(A) states explicitly that an applicable self-insured health plan includes a plan established or maintained by one or more employers for the benefit of their employees or former employees. Some commentators requested that the final regulations exempt from the PCORI fee retiree coverage on public policy grounds, but generally agreed that a retiree-only insured plan or retiree coverage under an applicable self-insured health plan may be subject to the PCORI fee. Consistent with the statutory language, the final regulations apply the PCORI fee to specified health insurance policies or applicable self-insured health plans that provide accident and health coverage to retirees, including retiree-only policies and plans.

III. COBRA Coverage

Commentators requested clarification of whether sections 4375 and 4376 apply to continuation coverage required under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) or similar continuation coverage under other federal law or under state law (referred to collectively as ''continuation coverage'') and asked that the final regulations explicitly exclude continuation coverage from application of those sections. If the coverage provided under the

continuation coverage arrangement is accident and health coverage, there is no basis to exclude the arrangement from the PCORI fee. The requirements of sections 4375 and 4376 apply to specified health insurance policies that provide accident and health coverage and plans that are applicable self-insured health plans, regardless of whether provided through the individual market, to an active employee as part of a group health plan, or as continuation coverage to an active employee, former employee, or otherwise qualifying beneficiary. In response to comments, these final regulations state explicitly that continuation coverage must be taken into account in determining the PCORI fee, unless the arrangement is otherwise excluded.

IV. Lives Taken Into Account in Calculating the Fee

The fee imposed on an issuer of a specified health insurance policy under section 4375 is based on the average number of lives covered under the policy during the policy year. The fee imposed on a plan sponsor of an applicable self-insured health plan under section 4376 is based on the average number of lives covered under the plan during the plan year.

Commentators acknowledged that separate fees are imposed by sections 4375 and 4376, but argued that this only reflects congressional intent for the PCORI fee to extend to both insured and self-insured arrangements. Several commentators requested that the final regulations provide that the PCORI fee does not apply multiple times if accident and health coverage is provided to one individual through more than one policy or self-insured arrangement (for example, where an individual is covered by a fully-insured major medical insurance policy and a self-insured prescription arrangement). Commentators also requested that the final regulations clarify that the issuer or plan sponsor is required to pay only once with respect to each covered life under the specified health insurance policy or applicable self-insured health plan.

The final regulations do not adopt the requested change that the fee apply only once with respect to each covered life because it would be contrary to the explicit statutory language applying the fee to each specified health insurance policy or applicable self-insured health plan. For example, for an employee covered by both a group insurance policy and a health reimbursement arrangement (HRA), the group insurance policy falls within the definition of a specified health insurance policy to which section 4375 applies a fee, and the HRA falls within the definition of an applicable self-insured health plan, to which section 4376 applies a fee to the plan sponsor. Because there are no allocation rules or other method of applying the fee on an aggregated basis in the statute or legislative history, there is no evidence that the statutory provisions were intended to be applied in a manner that aggregated these separate arrangements for a single covered individual and allocated the fee between them. However, in response to comments, the final regulations permit an applicable self-insured health plan that provides accident and health coverage through fully-insured options and self-insured options to determine the fee imposed by section 4376 by disregarding the lives that are covered solely under the fully-insured options. (See also discussion under section V of this preamble relating to the special rule for plan sponsors that establish or maintain multiple self-insured arrangements with the same plan year and section VI of this preamble relating to special rules for health reimbursement arrangements and flexible spending arrangements). Except as otherwise provided, the final regulations do not permit an issuer or plan sponsor to disregard a covered life merely because that individual is also covered under another specified health insurance policy or applicable self-insurance plan.

V. Lives Covered Under Multiple Policies or Plans

Section 46.4376–1(b)(1)(iii) of the proposed regulations provided that for purposes of section 4376, two or more arrangements established or maintained by the same plan sponsor that provide for accident and health coverage other than through an insurance policy and that have the same plan year may be treated as a single applicable self-insured health plan for purposes of calculating the fee imposed by section 4376.

A few commentators described self-insured arrangements that are coordinated with an underlying health plan, including a plan of an unrelated entity. Commentators pointed to collectively bargained arrangements under which the union sponsors a prescription-only or premium-only plan that is tied to an insured health plan of the employers that have entered into a collective bargaining agreement between the employee representatives and one or more employers. These commentators requested that the final regulations include special rules that exempt from the PCORI fee certain applicable self-insured health plans that are established or maintained by a union because the lives covered under the union plan are taken into account for the fee imposed on the employer, if the employer's plan is also an applicable self-insured health plan, or the issuer, if the employer's plan is an insured plan. One commentator requested that the final regulations permit collectively bargained plans to be aggregated with the employer's plan, without regard to whether they have the same sponsor or plan year, for purposes of determining the fee with respect to the same lives covered.

One commentator pointed out that the Medical Loss Ratio (MLR) Interim Final Rule issued by HHS allows affiliated issuers to report their premiums and expenditures on an aggregate basis if one issuer provides in-network coverage and the second provides out-of network coverage for one group health plan. The commentator requested the same approach provided in § 46.4376–1(b)(1)(iii) (permitting two or more applicable self-insured health plans with the same plan sponsor and same plan year to be treated as a single applicable self-insured health plan) be provided for group health plans that provide separate benefits to a participant or beneficiary during the same plan year under two or more insurance policies or through a self-insured plan and an insured plan. Specifically, the commentator suggested that if insurance policies covering the same individual qualify for aggregation under the MLR rebate reporting rules, the IRS should allow issuers to aggregate their policies for purposes of the PCORI fee.

Sections 4375 and 4376 specifically apply the PCORI fee to, respectively, an issuer of a specified health insurance policy and to the sponsor of an applicable self-insured health plan (subject to certain exceptions). The commentators have shown no statutory basis for combining arrangements involving different issuers or different plan sponsors. The statute specifically contemplated that different arrangements having different plan sponsors would be subject to separate fees imposed by section 4376. See section 4376(b)(2) (naming the different types of plan sponsors for different types of applicable self-insured health plans). Commentators, however, point to the proposed rule, adopted in these final regulations, permitting a plan sponsor to treat two different applicable self-insured health plans with the same plan year and plan sponsor as one plan as the basis for adopting the suggested

change. There is no significant difference between that arrangement and a single plan, or ''umbrella'' plan containing both self-insured arrangements. In contrast, if the two arrangements are sponsored by two different plan sponsors, there is no single plan equivalent. Accordingly, this suggestion is not adopted in the final regulations.

VI. Health Reimbursement Arrangements (HRAs) and Flexible Spending Arrangements (FSAs)

Section 46.4376–1(b)(1)(ii) of the proposed regulations defined an applicable self-insured health plan to include HRAs (as described in Notice 2002–45 (2002–2 CB 93)) and health flexible spending arrangements (as described in section 106(c)(2)) (FSAs) that do not satisfy the requirements to be treated as an excepted benefit (within the meaning of section 9832(c) and § 54.9831–1(c)(3)(v)). The proposed regulations also provided additional rules that permitted the plan sponsor to assume one covered life for each employee with an HRA and for each employee with an FSA that is not an excepted benefit. The final regulations retain these rules. See § 601.601(d)(2).

Commentators requested that the definition of applicable self-insured health plan be revised to exclude all HRAs, or alternatively that the final regulations exclude from the definition HRAs that are ''integrated'' with coverage under a self-insured or fully-insured arrangement. One commentator requested that the final regulations exempt from the definition of applicable self-insured health plan premium-only HRAs for Medicare-eligible retirees. As discussed in the preamble to the proposed regulations, an HRA is not subject to a separate fee under section 4376 if the plan sponsor also maintains a separate applicable self-insured health plan with a calendar year (referred to as the other plan). In such circumstances, the plan sponsor is permitted to treat the HRA and other plan as a single applicable self-insured health plan for purposes of section 4376 and therefore determine and pay the PCORI fee once with respect to each life covered under the HRA and other plan. Because the statutory structure provides that the fee imposed by section 4375 is separate from the fee imposed by section 4376, these regulations do not permit a plan sponsor to treat the HRA and a fully-insured plan as a single plan or arrangement for purposes of the PCORI fee, and these final regulations include additional examples to clarify the application of the PCORI fee to an HRA, including an HRA and other plan.

For the same reasons, the final regulations do not adopt the request to provide that the PCORI fee does not apply to an employee's FSA that does not meet the requirements for being an excepted benefit if the employee is covered by a major medical plan.

VII. Determination of Whether an Individual Is Residing in the United States

The term *specified health insurance policy* includes only an accident and health insurance policy that is issued with respect to an individual residing in the United States. The final regulations adopt the rule in the proposed regulations that provides that if the address on file with the issuer or plan sponsor for the primary insured is outside of the United States, the issuer or plan sponsor may treat the primary insured and the primary insured's spouse, dependents, or other beneficiaries covered under the policy as having the same place of abode and not residing in the United States. For this purpose, the term *primary insured* refers to the individual covered by the policy whose eligibility for coverage was not due to his or her status as a spouse, dependent, or other beneficiary of another insured individual. Also as provided in the proposed regulations, these final regulations clarify that for purposes of the PCORI fee, ''an individual residing in the United States'' means an individual who has a place of abode in the United States.

Two commentators suggested that an issuer or plan sponsor should be permitted to find that a primary insured who is on a temporary U.S. visa does not have a place of abode in the United States. The commentators argued that because many (if not most) health insurance issuers offering expatriate plans request, for compliance purposes, an overview of citizenship and visa status from an employee covered under an employer-sponsored international plan, visa information and citizenship information should be available to them and can be relied upon in determining whether the employee's place of abode is the United States or elsewhere.

The final regulations do not adopt this requested change. To exclude covered individuals who are residing in the United States would be contrary to Congressional intent that the PCORI fee applies to policies and plans that cover individuals residing in the United States. An individual on a temporary U.S. visa who has a place of abode in the United States is residing in the United States. For purposes of sections 4375, 4376, and 4377, the determination of place of abode is based on the most recent address on file with the issuer or plan sponsor.

VIII. Self-Insured Expatriate Plans

As in the proposed regulations, these final regulations provide that the term *specified health insurance policy* does not include any group policy issued to an employer if the facts and circumstances show that the group policy was designed and issued specifically to cover primarily employees who are working and residing outside of the United States. One commentator requested clarification that similar self-insured plans are also excepted for purposes of the fee under section 4376. The final regulations clarify that the term *applicable self-insured health plan* does not include a self-insured plan if the facts and circumstances show that the self-insured plan was designed specifically to cover primarily employees who are working and residing outside of the United States.

IX. Additional Rules for Determining the Applicable Fee

Under the proposed regulations, issuers and plan sponsors were permitted to use alternative methods for determining the average number of lives for the year. Issuers could choose any of four alternative methods to determine the average number of lives covered under policies that it issues for purposes of the fee imposed by section 4375: (1) The actual count method, (2) the snapshot method, (3) the member months method, or (4) the state form method. While the actual count and snapshot methods count lives covered on the policy-by-policy basis for each policy having a policy year that ends in the reporting period (which is based on the calendar year), the member months or state form methods count all lives covered during the calendar year for all policies in effect during the calendar year irrespective of when actual policy years end. Plan sponsors could use one of three alternative methods to determine the average number of lives covered under a plan for purposes of the fee imposed by section 4376: (1) The actual count method, (2) the snapshot method, or (3) the Form 5500 method.

One of the permitted methods—the ''snapshot method''—would have required issuers and plan sponsors to determine the average lives by adding the number of lives covered on one date (or an equal number of dates) in each quarter during the plan year or policy year and dividing that sum by the number of dates on which the count was made. Commentators suggested that issuers and plan sponsors using the

snapshot method should not be required to use the same date for each quarter, but should be permitted to use different dates to determine the number of lives covered during a quarter to address holidays, weekend days, or other similar issues. The Treasury Department and the IRS recognize the need for flexibility but also the need to avoid permitting issuers and plan sponsors to pick the most advantageous dates (that is, the dates on which the number of lives covered is the lowest so that under the facts and circumstances the snapshot method does not fairly approximate the average number of lives covered for the applicable year). In response to these comments, the final regulations require an issuer or a plan sponsor that uses the snapshot method to determine the counts used based on a date during the first, second, or third month of each quarter (or more dates in each quarter if an equal number of dates is used for each quarter). Each date used for the second, third, and fourth quarters must be within three days of the date in that quarter that corresponds to the date used for the first quarter, and all dates used must fall within the same policy year or plan year. If an issuer or plan sponsor uses multiple dates for the first quarter, the issuer or plan sponsor must use dates in the second, third, and fourth quarters that correspond to each of the dates used for the first quarter or are within three days of such corresponding dates, and all dates used must fall within the same policy year or plan year. The 30th and 31st day of a month are treated as the last day of the month for purposes of determining the corresponding date for any month that has fewer than 31 days (for example, if either March 30 or 31 are used as snapshot dates for a calendar year plan, June 30 is the corresponding date for the second quarter). Thus, for example, under the final regulations, if a plan sponsor uses the snapshot method to determine the average number of lives covered under an applicable self-insured health plan with a calendar year plan year and uses Monday, January 7, 2013, as the counting date for the first quarter, the plan sponsor may use any date beginning with Thursday, April 4, 2013, and ending with Wednesday, April 10, 2013, as the counting date for the second quarter (because all of those days are within three days of April 7, 2013, the date that corresponds to the January 7, 2013 counting date for the first quarter).

One commentator stated that the actual count and snapshot methods may pose significant operational challenges for many issuers. Because these methods require a determination of the number of lives covered by reference to the policy year for each health insurance policy that is subject to the fee, the commentator anticipates that issuers with a significant number of insurance policies that have policy years that begin at different dates during a calendar year will have difficulty implementing this approach. The commentator suggested that, regardless of the actual policy year, issuers who choose to use the actual count method should be permitted to measure lives covered on all days of a calendar year and then divide the result by 365. The commentator also suggested that, regardless of the actual policy year, issuers who choose to use the snapshot method should be permitted to measure lives covered using calendar year quarters and then average the results.

The final regulations do not adopt this requested change. The fee imposed by section 4375 applies to policies based on their policy year. For administrative ease and to facilitate the use of available information that is compiled by issuers, these regulations provide the member months method and the state form method as alternatives for all policies in effect during a calendar year. Under each of these alternatives, the data permitted to be used is already reported by the issuer based on the calendar year. Issuers may use calendar year information in lieu of policy year information only if they use the member months method or the state form method.

The member months data and the data reported on state forms are based on the calendar year. To adjust for the fee being applicable to policy years ending after September 30, 2012, but before January 1, 2013, and after December 31, 2018, but before October 1, 2019, these final regulations adopt the pro rata approach set out in the proposed regulations for calculating the average number of lives covered using the member months method or the state form method for 2012 and 2019. For example, the member months number for 2012 is divided by 12 and the resulting number is multiplied by one-quarter to arrive at the average number of lives covered for October through December 2012. The proposed regulations further treated the amount calculated under this pro rata approach as the average number of lives covered for policies with policy years that end on or after October 1, 2012, and before January 1, 2013. Similar rules are provided for 2019.

Commentators suggested that the special pro rata approach for calculating the average number of lives covered using the member months method or the state form method for 2012 and 2019 should be applied to all years the fee is in effect, to appropriately reflect the change in the fee during each of such intervening years. One commentator argued that this revision is needed to prevent issuers that use these methods from being unfairly penalized by paying the rate determined as of December 31 of each year, resulting in an unanticipated higher liability for an issuer using those methods.

The final regulations do not adopt this requested change. The special pro rata approach for calculating the average number of lives covered was the least administratively burdensome way for the first and last policy years to which the fee applies to incorporate data from the NAIC annual report and similar state reporting requirements with the applicability dates for the PCORI fee related to policy years ending in 2012 and 2019. Other years are not affected by the applicability date issues. In addition, issuers are not required to use the member months or state form method and can use another permissible method.

X. Plan Years Subject to the PCORI Fee

The fee imposed by section 4376 applies to plan years ending on or after October 1, 2012, and before October 1, 2019. Under the proposed regulations, an applicable self-insured health plan was required to determine the fee using the applicable dollar amount that applies for the plan year and the average number of lives covered during the plan year. Unlike the section 4375 fee, which is based on policy years, the application and amount of the section 4376 fee is based on the applicable dollar amount under section 4376 that is in effect on the last day of the plan year. One commentator requested additional examples illustrating the plan years covered by the fee, including the first plan year to which the PCORI fee applies. In response, § 46.4376–1(a) of the final regulations includes examples illustrating the plan years (calendar and fiscal years) subject to the PCORI fee and the applicable dollar amount that must be used to determine the section 4376 fee for that plan year.

XI. Reporting and Payment Deadline

Consistent with the proposed regulations, these final regulations require an issuer of a specified health insurance policy and plan sponsor of an applicable self-insured health plan to report and pay the PCORI fee for a policy year or plan year no later than July 31 of the year following the last day of the policy or plan year.

One commentator asked that the final regulations provide that the reporting and payment due date for a plan sponsor that uses the Form 5500 method to determine the PCORI fee be the due date (including extensions) for the plan's Form 5500. The extended due date for a Form 5500 for a plan with a calendar year plan year is generally October 15 of the following year. As discussed earlier in this preamble, the Institute is funded in part from the PCORI fee. Under current rules, the PCORI fee ceases to apply after the end of the last policy and plan year ending before October 1, 2019, (with a due date of July 31, 2020) and funding for the Institute terminates on September 30, 2019. This lag between the last year of the PCORI fee (policy and plan years ending before October 1, 2019) and the proposed due date for the fee for the last year (July 31, 2020) means that the PCORI fee collected for the last year will not be available to the Institute. A delay for policy or plan years ending in years before 2019, as requested, would permit the PCORI fee for the policy or plan year ending during 2018 to be paid after September 30, 2019, and result in the Institute losing an additional year of funding. Accordingly, the Treasury Department and IRS have determined that delaying the proposed due date would result in additional complications and burdens for the Institute. Thus, these final regulations retain the proposed rule set forth in § 40.6071(a)–1(c) that all plan sponsors and issuers report and pay the PCORI fee no later than July 31 of the calendar year following the last day of the policy or plan year.

XII. Correction and Amendments of Form 720

One commentator requested that the final regulations provide that plan sponsors may correct, without penalty, inadvertent errors if correction is within a specified period or if the error is de minimis. These final regulations do not adopt this change and, therefore, do not explicitly address corrections. As discussed in the preamble to the proposed regulations, the PCORI fee must be reported and paid on the Form 720, ''Quarterly Federal Excise Tax Return.''

The applicable penalties related to late filing of the applicable form or late payment of the applicable fee, however, may be waived or abated if the issuer or plan sponsor has reasonable cause and the failure was not due to willful neglect. See § 301.6651–1(c) relating to rules for showing of reasonable cause. Issuers and plan sponsors may use Form 720X, ''Amended Quarterly Federal Excise Tax Return,'' to make adjustments to liabilities reported on a previously filed Form 720, including adjustments that result in an overpayment.

XIII. Special Rules for First Year Fee Is in Effect

The Treasury Department and the IRS recognized when issuing the proposed regulations that in certain instances the policy or plan year to which the PCORI fee would apply had already commenced, and therefore that transition relief was appropriate for purposes of counting lives covered under the policy or plan during the period before the issuance of the proposed regulations. Two commentators requested additional transition relief, including extending the good faith compliance period provided under the proposed regulations. These final regulations do not adopt this request because the Treasury Department and IRS have determined that the relief provided in the proposed regulations is sufficient.

Accordingly, consistent with the proposed regulations, these final regulations provide that an issuer using the actual count method for determining the average number of lives covered under a policy with a policy year that ends on or after October 1, 2012, could begin counting lives covered under a policy as of May 14, 2012 (30 days after the date that the proposed regulations were published in the **Federal Register**), rather than the first day of the policy year, and divide by the appropriate number of days remaining in the policy year. Similarly, for policy years that end on or after October 1, 2012, but that began before May 14, 2012, these regulations provide that issuers using the snapshot method could use counts from quarters beginning on or after May 14, 2012, to determine the average number of lives covered under the policy. These final regulations also permit a plan sponsor to use any reasonable method to determine the average number of lives covered under an applicable self-insured health plan for a plan year beginning before July 11, 2012 (90 days after the date that the proposed regulations were published in the **Federal Register**), and ending on or after October 1, 2012.

XIV. Third-Party or Affiliated Insurer Reporting and Payment

The proposed regulations did not permit third-party reporting or payment of the PCORI fee. One commentator requested that the final regulations permit third-party reporting and payment. Another commentator requested that the final regulations permit affiliated insurers to designate an insurer that will be responsible for payment of the section 4375 fee as long as the responsible insurer consents to such designation. Because the PCORI fee ceases to apply to policy years and plan years that end on or after October 1, 2019, the Treasury Department and IRS have determined that the burden and complexity that would have to be addressed by issuers, plan sponsors and the IRS to develop and operate a third-party reporting and payment regime significantly outweigh the benefits of such a regime. Therefore, the final regulations do not permit or include rules for third-party reporting or payment of the PCORI fee.

Applicability Date

These regulations apply to policy and plan years ending on or after October 1, 2012, and before October 1, 2019.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that small businesses generally do not have self-insured health plans and that these regulations will therefore primarily affect large corporations. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. The Treasury Department and the IRS specifically solicit comments from any party, particularly affected small entities, on the accuracy of this certification. Pursuant to section 7805(f) of the Code, the proposed regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small business and no comments were received.

Drafting Information

The principal authors of these regulations are R. Lisa Mojiri-Azad, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), and Rebecca L. Baxter, Office of Associate Chief Counsel (Financial Institutions & Products). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 46

Excise taxes, Insurance, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 40, 46, and 602 are amended as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

■ **Paragraph 1.** The authority citation for part 40 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 40.0–1 is amended by:
■ 1. Removing from the third sentence in paragraph (a) the language ''chapter 34 to taxes imposed on policies issued by foreign insurers'' and adding ''chapter 34 to taxes imposed on certain insurance policies'' in its place.
■ 2. Adding a new sentence after the third sentence in paragraph (a).

The addition reads as follows:

§ 40.0–1 Introduction.

(a) * * * References in this part to ''taxes'' also include references to the fees imposed by sections 4375 and 4376. * * *

* * * * *

■ **Par. 3.** Section 40.6011(a)–1 is amended by:
■ 1. In paragraph (a)(2)(i), first sentence, the language ''paragraph (b) of this section'' is removed and the language ''paragraphs (b) and (c) of this section'' is added in its place.
■ 2. Paragraph (c) is added.

The addition reads as follows:

§ 40.6011(a)–1 Returns.

* * * * *

(c) *Fees on health insurance policies and self-insured health plans*—(1) *In general.* A return that reports liability imposed by section 4375 or 4376 is a return for policies or plans with policy or plan years ending in the previous calendar year, and, for issuers that determine the average number of lives covered under a policy for purposes of section 4375 using the member months method under § 46.4375–1(c)(2)(v) or the state form method under § 46.4375–1(c)(2)(vi) of this chapter, the return is for all policies in effect during the previous calendar year. The second sentence of paragraph (a)(2)(i) of this section (relating to filing quarterly returns regardless of whether liability is incurred) does not apply to a person that files a Form 720, ''Quarterly Federal Excise Tax Return,'' only to report liability imposed by section 4375 or 4376.

(2) *Applicability date.* This paragraph (c) applies to returns that report liability imposed by section 4375 or 4376.

■ **Par. 4.** Section 40.6071(a)–1 is amended as follows:
■ 1. Paragraph (c) is revised.
■ 2. Paragraph (d) is added.

The revision and addition read as follows:

§ 40.6071(a)–1 Time for filing returns.

* * * * *

(c) *Fees on health insurance policies and self-insured health plans*—(1) *Specified health insurance policies.* A return that reports liability for the fee imposed by section 4375 must be filed by July 31 of the calendar year immediately following the last day of the policy year. For issuers that determine the average number of lives covered under the policy for section 4375 using the member months method under § 46.4375–1(c)(2)(v) or the state form method under § 46.4375–1(c)(2)(vi), the return must be filed by July 31 of the immediately following calendar year. Thus, for example, a return that reports liability for the fee imposed by section 4375 for the year ending on December 31, 2012, must be filed by July 31, 2013.

(2) *Applicable self-insured health plans.* A return that reports liability for the fee imposed by section 4376 for a plan year must be filed by July 31 of the calendar year immediately following the last day of the plan year. Thus, for example, a return that reports liability for the fee imposed by section 4376 for the plan year ending on January 31, 2013, must be filed by July 31, 2014.

(d) *Effective/Applicability date.* Paragraphs (a) and (b) of this section apply to returns for calendar quarters beginning on or after October 1, 2001, and paragraph (c) of this section applies to returns that report liability imposed by section 4375 or 4376.

§ 40.6091–1 Amended

■ **Par. 5.** Section 40.6091–1, paragraph (a), is amended by removing the language ''paragraph (b) of this section, quarterly returns'' and by adding the language ''paragraphs (b) and (c) of this section, returns'' in its place.
■ **Par. 6.** Section 40.6302(c)–1 is amended by revising paragraph (e)(1)(iv) to read as follows:

§ 40.6302(c)–1 Deposits.

* * * * *

(e) * * *
(1) * * *
(iv) Sections 4375 and 4376 (relating to fees on health insurance policies and self-insured health plans).

* * * * *

PART 46—EXCISE TAX ON CERTAIN INSURANCE POLICIES, SELF–INSURED HEALTH PLANS, AND OBLIGATIONS NOT IN REGISTERED FORM

■ **Par. 7.** The authority citation for part 46 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

■ **Par. 8.** In part 46, the heading is revised to read as set forth above.

§ 46.0–1 Amended

■ **Par. 9.** In § 46.0–1, first sentence, the language ''policies issued by foreign insurers'' is removed and the language ''certain insurance policies and self-insured health plans'' is added in its place.

§ 46.0–2 [Removed]

■ **Par. 10.** Section 46.0–2 is removed.
■ **Par. 11.** In Part 46, subpart C is redesignated as subpart D and a new subpart C is added to read as follows:

Subpart C—Fees on Insured and Self-insured Health Plans

Sec.
46.4375–1 Fee on issuers of specified health insurance policies.
46.4376–1 Fee on sponsors of self-insured health plans.
46.4377–1 Definitions and special rules.

Subpart C—Fees on Insured and Self-insured Health Plans

§ 46.4375–1 Fee on issuers of specified health insurance policies.

(a) *In general.* An issuer of a specified health insurance policy is liable for a fee imposed by section 4375 for policy years ending on or after October 1, 2012, and before October 1, 2019. Paragraph (b) of this section provides definitions that apply for purposes of section 4375 and this section. Paragraph (c) of this section provides rules for calculating the fee under section 4375. Paragraph (d) of this section provides the applicability date. For rules relating to filing the required return and paying the fee, see §§ 40.6011(a)–1 and 40.6071(a)–1 of this chapter.

(b) *Definitions.* The following definitions apply for purposes of section 4375 and this section. See also § 46.4377–1 for additional definitions.

(1) *Specified health insurance policy*—(i) *In general.* Except as

provided in paragraph (b)(1)(ii) of this section and § 46.4377–1, *specified health insurance policy* means any accident and health insurance policy (including a policy under a group health plan) issued with respect to individuals residing in the United States (as defined in § 46.4377–1(a)(2)), including prepaid health coverage arrangements described in paragraph (b)(2) of this section. *Specified health insurance policy* also includes any policy that provides accident and health coverage to an active employee, former employee, or qualifying beneficiary, as continuation coverage required under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) or similar continuation coverage under other Federal law or state law.

(ii) *Exceptions.* The term *specified health insurance policy* does not include—

(A) Any insurance policy if substantially all of its coverage is of excepted benefits described in section 9832(c);

(B) Any group policy issued to an employer where the facts and circumstances show that the group policy was designed and issued specifically to cover primarily employees who are working and residing outside of the United States (as defined in § 46.4377–1(a)(3));

(C) Any stop loss or indemnity reinsurance policy; or

(D) Any insurance policy to the extent it provides an employee assistance program, disease management program, or wellness program if the program does not provide significant benefits in the nature of medical care or treatment.

(iii) *Stop loss policy.* For purposes of paragraph (b)(1)(ii) of this section, *stop loss policy* means an insurance policy in which—

(A) The insurer that issues the policy to a person establishing or maintaining a self-insured health plan becomes liable for all, or an agreed upon portion of, losses that person incurs in covering the applicable lives in excess of a specified amount; and

(B) The person establishing or maintaining the self-insured health plan retains its liability to, and its contractual relationship with, the applicable lives covered.

(iv) *Indemnity reinsurance policy.* For purposes of paragraph (b)(1)(ii) of this section, *indemnity reinsurance policy* means an agreement between two or more insurance companies under which—

(A) The reinsuring company agrees to accept and to indemnify the issuing company for all or part of the risk of loss under policies specified in the agreement; and

(B) The issuing company retains its liability to, and its contractual relationship with, the applicable lives covered.

(2) *Prepaid health coverage arrangement.* The term *prepaid health coverage arrangement* means an arrangement under which fixed payments or premiums are received as consideration for a person's agreement to provide or arrange for the provision of accident and health coverage to individuals residing in the United States, regardless of how such coverage is provided or arranged to be provided. For example, any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract is a specified health insurance policy.

(c) *Calculation of fee*—(1) *In general.* The amount of the fee for a policy for a policy year is equal to the product of the average number of lives covered under the policy for the policy year (determined in accordance with paragraphs (c)(2) and (c)(3) of this section) and the applicable dollar amount (determined in accordance with paragraph (c)(4) of this section). For purposes of computing the fee under this paragraph (c), in the case of an issuer that determines the average number of lives covered for all policies in effect during a calendar year using the member months method under paragraph (c)(2)(v) of this section or the state form method under paragraph (c)(2)(vi) of this section, the applicable dollar amount with respect to such issuer's policies for such calendar year is the applicable dollar amount for policy years ending on December 31 of such calendar year (determined in accordance with paragraph (c)(4) of this section), except that the applicable dollar amount with respect to such an issuer's policies for calendar year 2019 is the applicable dollar amount for policy years ending on September 30, 2019. For more information, see the examples in paragraphs (c)(2)(iii)(B), (c)(2)(iv)(B), (c)(2)(v)(B), and (c)(2)(vi)(B) of this section.

(2) *Determination of the average number of lives covered under a policy*—(i) *In general.* To determine the average number of lives covered under a specified health insurance policy during a policy year, an issuer must use one of the following methods—

(A) The actual count method (described in paragraph (c)(2)(iii) of this section);

(B) The snapshot method (described in paragraph (c)(2)(iv) of this section);

(C) The member months method (described in paragraph (c)(2)(v) of this section); or

(D) The state form method (described in paragraph (c)(2)(vi) of this section).

(ii) *Consistency requirements.* An issuer must use the same method of calculating the average number of lives covered under a policy consistently for the duration of the year. In addition, for all policies for which a liability is reported on a Form 720, ''Quarterly Federal Excise Tax Return,'' for a particular year, the issuer must use the same method of computing lives covered. An issuer that determines the average number of lives covered by using the actual count method described in paragraph (c)(2)(iii) of this section or the snapshot method described in paragraph (c)(2)(iv) of this section may change its method of computing the average lives covered to the snapshot method or actual count method, respectively, provided that the issuer uses the same method for computing the average lives covered for all policies for which a liability is reported on the Form 720 for that year. For example, an issuer with a policy having a policy year that ends on June 30, Policy A, may determine the average number of lives covered under Policy A for July 1, 2013, to June 30, 2014, using the actual count method if the issuer uses the actual count method for all policies for which a liability will be reported on the Form 720 due by July 31, 2015 (the due date for return that will include the liability for the July 2013 to June 2014 policy year for Policy A). The issuer may change its method for determining the average number of lives covered under Policy A to the snapshot method for the July 1, 2014, to June 30, 2015, policy year, provided that the snapshot method is used for all policies for which a liability will be reported on the Form 720 due by July 31, 2016 (the due date for return that will include the liability for the July 2014 to June 2015 policy year for Policy A). An issuer that determines the average number of lives covered by using the member months method under paragraph (c)(2)(v) of this section or the state form method under paragraph (c)(2)(vi) of this section must use the same method for calculating lives covered for all policy years for which the fee applies.

(iii) *Actual count method*—(A) *Calculation method.* An issuer may determine the average number of lives covered under a policy for a policy year by adding the total number of lives covered for each day of the policy year and dividing that total by the number of days in the policy year.

(B) *Example.* The following example illustrates the principles of paragraphs (c)(1) and (c)(2)(iii)(A) of this section:

Example. Insurance Company A issues three policies that are in effect during 2014, Group Health Insurance Policy A, which has a policy year from December 1 to November 30, Group Health Insurance Policy B, which has a policy year from March 1 to February 28, and Group Health Insurance Policy C, which has a policy year from January 1 to December 31. To calculate the average number of lives covered for 2014, Insurance Company A must calculate the average number of lives covered for each of its three policies for the policy year that ends in 2014. Insurance Company A chooses to use the actual count method under paragraph (c)(2)(iii)(A) of this section to determine average lives covered for policies having a policy year that ends in 2014. Insurance Company A calculates the sum of lives covered under Policy A for each day of the policy year ending November 30, 2014, as 3,285,000. The average number of lives covered under Policy A for the policy year ending November 30, 2014, is 3,285,000 divided by 365, or 9,000. Insurance Company A calculates the sum of lives covered under Policy B for each day of the policy year ending February 28, 2014, as 547,500. The average number of lives covered under Policy B for the policy year ending on February 28, 2014, is 547,500 divided by 365, or 1,500. Insurance Company A calculates the sum of lives covered under Policy C for each day of the policy year ending December 31, 2014, as 4,380,000. The average number of lives covered under Policy C for the policy year ending December 31, 2014, is 4,380,000 divided by 365, or 12,000. To calculate the section 4375 fee under paragraph (c)(1) of this section for calendar year 2014, Insurance Company A must first determine the applicable dollar amount for each policy under paragraph (c)(4) of this section and multiply that amount by the average number of lives covered for that policy. Insurance Company A then adds the total fees for all three policies to determine the total fee under section 4375 that it must pay for calendar year 2014.

(iv) *Snapshot method*—(A) *Calculation method.* An issuer may determine the average number of lives covered under a policy for a policy year by adding the totals of lives covered on a date during the first, second, or third month of each quarter (or more dates in each quarter if an equal number of dates is used for each quarter), and dividing that total by the number of dates on which a count is made. For purposes of this paragraph (c)(2)(iv)(A), each date used for the second, third and fourth quarters must be within three days of the date in that quarter that corresponds to the date used for the first quarter, and all dates used must be within the same policy year. If an issuer uses multiple dates for the first quarter, the issuer must use dates in the second, third, and fourth quarters that correspond to each of the dates used for the first quarter or are within three days of such corresponding dates, and all dates used must be within the same policy year. The 30th and 31st day of a month are treated as the last day of the month for purposes of determining the corresponding date for any month that has fewer than 31 days (for example, if either March 30 or March 31 is used as a counting date for a calendar year policy, June 30 is the corresponding date for the second quarter).

(B) *Example.* The following example illustrates the principles of paragraphs (c)(1) and (c)(2)(iv)(A) of this section:

Example. (i) Insurance Company B issues three policies with 12-month policy years that end in 2014, Group Health Insurance Policy A, which has a policy year from December 1 to November 30, Group Health Insurance Policy B, which has a policy year from March 1 to February 28, and Group Health Insurance Policy C, which has a policy year from January 1 to December 31. To calculate the average number of lives covered for 2014, Insurance Company B must calculate the average number of lives covered for each of its three policies for the policy year that ends in 2014. Insurance Company B chooses to determine the average lives covered using the snapshot method for all policies that have a policy year that ends in 2014 and chooses to count lives covered on a single date of the first month of each quarter of the policy years. Thus, for Policy A, Insurance Company B must count lives covered on a single date falling in each of December 2013, March 2014, June 2014 and September 2014; for Policy B, Insurance Company B must count lives covered on a single date falling in each of March 2014, June 2014, September 2014 and December 2014; and for Policy C, Insurance Company B must count lives covered on a single date falling in each of January 2014, April 2014, July 2014 and October 2014. In addition, the date for each of the second, third, and fourth quarters must fall within three days of the date in such quarter that corresponds to the date used for the first quarter, and must fall within the same policy year.

(ii) On December 6, 2013, Policy A covers 8,900 lives, on March 7, 2014, 9,100 lives, on June 6, 2014, 9,050 lives, and on September 5, 2014, 9,050 lives. Insurance Company B treats the average number of lives covered under Policy A for the policy year ending November 30, 2014, as 36,100 (8,900 + 9,100 + 9,050 + 9,050) divided by 4, or 9,025.

(iii) On March 4, 2013, Policy B covers 1,500 lives, on June 7, 2013, 1,350 lives, on September 6, 2013, 1,400 lives, and on December 6, 2013, 1,550 lives. Insurance Company B treats the average number of lives covered under Policy B for the policy year ending February 28, 2014, as 5,800 (1,500 + 1,350 + 1,400 + 1,550) divided by 4, or 1,450.

(iv) On January 6, 2014, Policy C covers 12,500 lives, on April 4, 2014, 12,250 lives, on July 7, 2014, 12,000 lives, and on October 3, 2014, 11,250 lives. Insurance Company B treats the average number of lives covered under Policy C for the policy year ending December 31, 2014, as 47,750 (12,500 + 12,250 + 12,000 + 11,250) divided by 4, or 12,000.

(v) To calculate the section 4375 fee under paragraph (c)(1) of this section for calendar year 2014, Insurance Company B must first determine the applicable dollar amount for each policy under paragraph (c)(4) of this section and multiply that amount by the number of average lives covered for that policy. Insurance Company B then adds the total fees for all three policies to determine the total fee under section 4375 that it must pay for calendar year 2014.

(v) *Member months method*—(A) *Calculation method.* An issuer may determine the average number of lives covered under all policies in effect for a calendar year based on the member months (an amount that equals the sum of the totals of lives covered on pre-specified days in each month of the reporting period) reported on the National Association of Insurance Commissioners (NAIC) Supplemental Health Care Exhibit filed for that calendar year. Under this method, the average number of lives covered under the policies in effect for the calendar year equals the member months divided by 12.

(B) *Example.* The following example illustrates the principles of paragraphs (c)(1) and (c)(2)(v)(A) of this section:

Example. Insurance Company C chooses to determine the average number of lives covered for all years to which the section 4375 fee applies using the member months method of paragraph (c)(2)(v)(A) of this section. Insurance Company C reports 12,000,000 as its member months on the NAIC Supplemental Health Care Exhibit filed for calendar year 2013. Under the member months method, Insurance Company C calculates the average number of lives covered for all its specified health insurance policies in force during calendar year 2013 by dividing 12,000,000 (member months) by 12 (number of months in the reporting period), which equals 1,000,000. To determine the section 4375 fee it must pay for calendar year 2013, Insurance Company C multiplies 1,000,000 by the applicable dollar amount that is in effect at the end of the calendar year under paragraph (c)(4) of this section.

(vi) *State form method*—(A) *Calculation method.* An issuer that is not required to file NAIC annual financial statements may determine the number of lives covered under all policies in effect for the calendar year using a form that is filed with the issuer's state of domicile and a method similar to that described in paragraph (c)(2)(v) of this section, if the form reports the number of lives covered in the same manner as member months are reported on the NAIC Supplemental Health Care Exhibit.

(B) *Example.* The following example illustrates the principles of paragraphs (c)(1) and (c)(2)(vi)(A) of this section:

Example. Insurance Company D is not required to file the NAIC Supplemental Health Care Exhibit, but files a form with its state of domicile. Insurance Company D chooses to determine the average number of lives covered for all years to which the section 4375 fee applies using the state form method of paragraph (c)(2)(vi)(A) of this section. The state form reports the number of lives covered in the same manner as member months is reported on the NAIC Supplemental Health Care Exhibit. For calendar year 2013, Insurance Company D reports 12,000,000 as its equivalent member months on the state form. Under the state form method, Insurance Company D calculates the average number of lives covered for all of its specified health insurance policies in force during calendar year 2013 by dividing 12,000,000 (equivalent member months) by 12 (number of months in the reporting period), which equals 1,000,000. To determine the section 4375 fee it must pay for calendar year 2013, Insurance Company D multiplies 1,000,000 by the applicable dollar amount that is in effect at the end of the calendar year under paragraph (c)(4) of this section.

(3) *Special rules for the first year and the last year the fee is in effect*—(i) *Calculation of the average number of lives covered under the policy for the first year the fee is in effect.* For issuers that determine the average number of lives covered using data reported on the 2012 NAIC Supplemental Health Care Exhibit or a permitted state form that covers the 2012 calendar year, the average number of lives covered under all policies in effect for the 2012 calendar year equals the average number of lives covered for that year (as determined under paragraph (c)(2)(v) or (vi) of this section) multiplied by ¼. The resulting number is deemed to be the average number of lives covered for policies with policy years ending on or after October 1, 2012, and before January 1, 2013. For policy years beginning before May 14, 2012, and ending on or after October 1, 2012, issuers that determine the average number of lives covered using the actual count method under paragraph (c)(2)(iii) of this section may calculate the average number of lives covered using data from the period beginning May 14, 2012, through the end of the policy year. For policy years beginning before May 14, 2012, and ending on or after October 1, 2012, issuers that determine the average number of lives covered using the snapshot method under paragraph (c)(2)(iv) of this section may calculate the average number of lives covered using dates from the quarters remaining in the policy year starting on or after May 14, 2012. If an abbreviated year is used, the issuer will divide the number of lives covered by the number of days from May 14, 2012, through the end of the policy year (for the actual count method) or the number of days on which a count was made (for the snapshot method).

(ii) *Calculation of the average number of lives covered under the policy for the last year the fee is in effect.* For issuers that determine the average number of lives covered using data reported on the 2019 NAIC Supplemental Health Care Exhibit or a permitted state form that covers the 2019 calendar year, the average number of lives covered for all policies in effect during the 2019 calendar year equals the average number of lives covered for that year (as determined under paragraph (c)(2)(v) or (vi) of this section) multiplied by ¾. The resulting number is deemed to be the average number of lives covered for policies with policy years ending on or after January 1, 2019, and before October 1, 2019.

(iii) *Examples.* The following examples illustrate the principles of paragraph (c)(3) of this section:

Example 1. Insurance Company E issues Group Health Insurance Policy C, which has a policy year that ends on November 30, 2012. Insurance Company E determines the average number of lives covered under a policy by using the actual count method. Under that method, for that policy year, Insurance Company E calculates the sum of lives covered under Policy C for each day between May 14, 2012, and November 30, 2012, as 10,000. The average number of lives covered under Policy C for that policy year is 10,000 divided by the number of days from May 14, 2012, through November 30, 2012. Alternatively, Insurance Company E could have counted the number of lives covered for the entire policy year and divided the sum by 365.

Example 2. Insurance Company F reports 12,000,000 as its member months on its NAIC Supplemental Health Care Exhibit filed for calendar year 2012. Under the member months method, Insurance Company F calculates the average number of lives covered for 2012 by dividing 12,000,000 (member months) by 12 (number of months in the reporting period), and then multiplying the result (1,000,000) by ¼, which equals 250,000. Accordingly, the average number of lives covered for policies with policy years ending on or after October 1, 2012, and before January 1, 2013, is 250,000.

(4) *Applicable dollar amount.* For policy years ending on or after October 1, 2012, and before October 1, 2013, the applicable dollar amount is $1. For policy years ending on or after October 1, 2013, and before October 1, 2014, the applicable dollar amount is $2. For any policy year ending in any Federal fiscal year beginning on or after October 1, 2014, the applicable dollar amount is the sum of—

(i) The applicable dollar amount for the policy year ending in the previous Federal fiscal year; plus

(ii) The amount equal to the product of—

(A) The applicable dollar amount for the policy year ending in the previous Federal fiscal year; and

(B) The percentage increase in the projected per capita amount of the National Health Expenditures most recently released by the Department of Health and Human Services before the beginning of the Federal fiscal year.

(d) *Effective/Applicability date.* This section applies for policies with policy years ending on or after October 1, 2012, and before October 1, 2019.

§ 46.4376–1 Fee on sponsors of self-insured health plans.

(a) *In general*—(1) *General rule.* A plan sponsor of an applicable self-insured health plan is liable for a fee imposed by section 4376 for plans with plan years ending on or after October 1, 2012, and before October 1, 2019. Paragraph (b) of this section provides the definitions that apply for purposes of section 4376 and this section. Paragraph (c) of this section provides the requirements for calculating the fee imposed by section 4376. Paragraph (d) of this section provides the applicability date. For rules relating to filing the required return and paying the fee, see §§ 40.6011(a)–1 and 40.6071(a)–1.

(2) [Reserved]

(b) *Definitions.* The following definitions apply for purposes of section 4376 and this section. See § 46.4377–1 for additional definitions.

(1) *Applicable self-insured health plan*—(i) *In general.* Except as provided in paragraph (b)(1)(ii) of this section and § 46.4377–1, *applicable self-insured health plan* means a plan that provides for accident and health coverage (within the meaning of § 46.4377–1(a)) if any portion of the coverage is provided other than through an insurance policy and the plan is established or maintained—

(A) By one or more employers for the benefit of their employees or former employees;

(B) By one or more employee organizations for the benefit of their members or former members;

(C) Jointly by one or more employers and one or more employee organizations for the benefit of employees or former employees;

(D) By a voluntary employees' beneficiary association, as described in section 501(c)(9);

(E) By an organization described in section 501(c)(6); or

(F) By a multiple employer welfare arrangement (as defined in section 3(40) of the Employee Retirement Income Security Act of 1974 (ERISA)), a rural electric cooperative (as defined in section 3(40)(B)(iv) of ERISA), or a rural cooperative association (as defined in section 3(40)(B)(v) of ERISA).

(ii) *Exceptions.* The term *applicable self-insured health plan* does not include any of the following:

(A) A plan that provides benefits substantially all of which are excepted benefits, as defined in section 9832(c). For example, a health flexible spending arrangement (health FSA) (as described in section 106(c)(2)) that satisfies the requirements to be treated as an excepted benefit under section 9832(c) and § 54.9831–1(c)(3)(v) of this chapter is not an applicable self-insured health plan. A health FSA that is not treated as an excepted benefit under section 9832(c) and § 54.9831–1(c)(3)(v) is an applicable self-insured health plan.

(B) An employee assistance program, disease management program, or wellness program if the program does not provide significant benefits in the nature of medical care or treatment.

(C) A plan that, as demonstrated by the facts and circumstances surrounding the adoption and operation of the plan, was designed specifically to cover primarily employees who are working and residing outside the United States (as defined in § 46.4377–1(a)(3)).

(iii) *Multiple self-insured arrangements established or maintained by the same plan sponsor.* For purposes of section 4376, two or more arrangements established or maintained by the same plan sponsor that provide for accident and health coverage (within the meaning of § 46.4377–1(a)) other than through an insurance policy and that have the same plan year may be treated as a single applicable self-insured health plan for purposes of calculating the fee imposed by section 4376. For example, if a plan sponsor establishes or maintains a self-insured arrangement providing major medical benefits, and a separate self-insured arrangement with the same plan year providing prescription drug benefits, the two arrangements may be treated as one applicable self-insured health plan so that the same life covered under each arrangement would count as only one covered life under the plan for purposes of calculating the fee. Similarly, if a plan sponsor provides a Health Reimbursement Arrangement (HRA) and another applicable self-insured health plan that provides major medical coverage, the HRA and the major medical plan may be treated as one applicable self-insured health plan if the HRA and the self-insured plan have the same plan year.

(iv) *Examples.* The following examples illustrate the principle of this paragraph (b)(1):

Example 1. (i) Plan Sponsor D sponsors and maintains three separate plans to provide certain benefits to its employees—Plan 501, Plan 502, and Plan 503.

(ii) Plan 501 is a calendar year plan that provides accident and health benefits, other than through insurance (that is, on a self-insured basis), to employees of Plan Sponsor D. Plan 502 is a calendar year HRA that can be used to pay for qualified accident and medical expenses for employees of Plan Sponsor D and their eligible dependents. Plan 503 provides dental and vision benefits for employees of Plan Sponsor D and eligible dependents, other than through insurance (that is, on a self-insured basis).

(iii) Because Plan 501 and Plan 502 provide accident and health coverage (within the meaning of § 46.4377–1(a)) and are maintained by Plan Sponsor D for the benefit of its employees, Plans 501 and 502 are applicable self-insured health plans that are subject to the fee imposed by section 4376. Because dental and vision benefits are excepted benefits, as defined in section 9832(c), Plan 503 is not an applicable self-insured health plan subject to the section 4376 fee. Under the special rule set forth in § 46.4376–2(b)(1)(iii), Plan Sponsor D may treat Plans 501 and 502 (both self-insured plans with a calendar year plan year) as a single plan for purposes of calculating the fee imposed by section 4376.

Example 2. Same facts as *Example 1,* except Plan 503 is not a Plan that provides dental and vision benefits, but rather a plan that provides accident and health coverage solely to employees who are working and residing outside the United States and does not provide any benefits to employees who are not working and residing outside the United States. Plan 503 is designed specifically to provide coverage to employees working and residing outside the United States because it limits coverage to these employees. Therefore, in accordance with the exception described in § 46.4376–1(b)(1)(ii)(C), Plan 503 is not an applicable self-insured health plan.

(2) *Plan sponsor*—(i) *In general.* The term *plan sponsor* means—

(A) The employer, in the case of an applicable self-insured health plan established or maintained by a single employer;

(B) The employee organization, in the case of an applicable self-insured health plan established or maintained by an employee organization;

(C) The joint board of trustees, in the case of a multiemployer plan (as defined in section 414(f));

(D) The committee, in the case of a multiple employer welfare arrangement (as defined in section 3(40) of ERISA);

(E) The cooperative or association that establishes or maintains an applicable self-insured health plan established or maintained by a rural electric cooperative (as defined in section 3(40)(B)(iv) of ERISA) or rural cooperative association (as defined in section 3(40)(B)(v) of ERISA);

(F) The trustee, in the case of an applicable self-insured health plan established or maintained by a voluntary employees' beneficiary association (meaning that the voluntary employees' beneficiary association is not merely serving as a funding vehicle for a plan that is established or maintained by an employer or other person); or

(G) In the case of an applicable self-insured health plan the plan sponsor of which is not described in paragraphs (b)(2)(i)(A) through (F) of this section, the person identified by the terms of the document under which the plan is operated as the plan sponsor, or the person designated by the terms of the document under which the plan is operated as the plan sponsor for section 4376 purposes, provided that designation is made in writing, and that person has consented to the designation in writing, by no later than the date by which the return paying the fee under section 4376 for that plan year is required to be filed, after which date that designation for that plan year may not be changed or revoked, and provided further that a person may be designated as the plan sponsor only if the person is one of the persons establishing or maintaining the plan (for example, one of the employers that establishes or maintains the plan with one or more other employers or employee organizations).

(H) In the case of an applicable self-insured health plan the sponsor of which is not described in paragraphs (b)(2)(i)(A) through (F) of this section, and for which no identification or designation of a plan sponsor has been made pursuant to paragraph (b)(2)(i)(G) of this section, each employer that establishes or maintains the plan (with respect to employees of that employer), each employee organization that establishes or maintains the plan (with respect to members of that employee organization), and each board of trustees, cooperative, or association that establishes or maintains the plan, meaning that each plan sponsor must file a separate Form 720, ''Quarterly Federal Excise Tax Return,'' reflecting its separate liability under section 4376.

(ii) *Examples.* The following examples illustrate the principles of paragraph (b)(2) of this section:

Example 1. (i) Corporation XYZ is a holding company with no employees that owns all the issued and outstanding shares of Employer X, Employer Y, and Employer Z.

Employer X, Employer Y, and Employer Z have established the XYZ Group Health Plan to provide accident and health coverage, provided other than through an insurance policy, for the benefit of their employees. The XYZ Group Health Plan has a calendar year plan year. In addition, there is no plan sponsor identified or designated in the plan document.

(ii) Because the XYZ Group Health Plan provides accident and health coverage other than through an insurance policy, and is established by one or more employers for the benefit of their employees, the XYZ Group Health Plan is an applicable self-insured health plan under section 4376(c)(2)(A) and paragraph (b)(1)(i)(A) of this section. Because a plan sponsor is not identified or designated in the governing plan document, the plan sponsor, for purposes of section 4376, is determined under paragraph (b)(2)(i)(H) of this section as each employer that establishes or maintains the plan (Employer X, Employer Y, and Employer Z), each with respect to its employees covered under the plan. Accordingly, Employer X, Employer Y, and Employer Z each must file a Form 720 reflecting their separate liabilities under section 4376, calculated based on lives covered that are employees of that employer (or spouses, dependents, or other beneficiaries of employees of that employer) and the applicable dollar amount in effect for the plan year.

Example 2. The same facts as *Example 1,* except that the governing plan document designates Employer X as the plan sponsor of the XYZ Group Health Plan for purposes of the fee under section 4376 and Employer X consents to this designation no later than the due date for paying the fee under section 4376. Accordingly, the plan sponsor for purposes of section 4376 is determined under paragraph (b)(2)(i)(G) of this section as Employer X. Employer X must file a Form 720 reflecting liabilities under section 4376, calculated based upon lives covered that are employees of Employer X, Employer Y, or Employer Z, or spouses, dependents, or other beneficiaries of employees of those employers and the applicable dollar amount in effect for the plan year.

(c) *Calculation of fee*—(1) *In general.* The amount of the fee for a plan year is equal to the product of the average number of lives covered under the plan for the plan year (determined in accordance with paragraph (c)(2) of this section) and the applicable dollar amount (determined in accordance with paragraph (c)(3) of this section).

(2) *Determination of the average number of lives covered under the plan*—(i) *In general.* To determine the average number of lives covered under an applicable self-insured health plan during a plan year, a plan sponsor must use one of the following methods—

(A) The actual count method (described in paragraph (c)(2)(iii) of this section);

(B) The snapshot method (described in paragraph (c)(2)(iv) of this section); or

(C) The Form 5500 method (described in paragraph (c)(2)(v) of this section).

(ii) *Consistency within plan year.* A plan sponsor must use the same method of calculating the average number of lives covered under the plan consistently for the duration of the plan year. However, a plan sponsor may use a different method from one plan year to the next.

(iii) *Actual count method*—(A) *In general.* A plan sponsor may determine the average number of lives covered under a plan for a plan year by adding the totals of lives covered for each day of the plan year and dividing that total by the number of days in the plan year.

(B) *Example.* The following example illustrates the principles of paragraphs (c)(1) and (c)(2)(iii)(A) of this section:

Example. Employer A is the plan sponsor of the Employer A Self-Insured Health Plan, which has a calendar year plan year. Employer A calculates the sum of lives covered under the plan for each day of the plan year ending December 31, 2013 as 3,285,000. The average number of lives covered under the plan for the plan year ending December 31, 2013, is 3,285,000 divided by 365, or 9,000. To calculate the section 4376 fee for the plan under paragraph (c)(1) of this section for the plan year ending December 31, 2013, Employer A must determine the applicable dollar amount under paragraph (c)(3) of this section and multiply that amount by 9,000.

(iv) *Snapshot method*—(A) *In general.* A plan sponsor may determine the average number of lives covered under an applicable self-insured health plan for a plan year by adding the totals of lives covered on a date during the first, second, or third month of each quarter of the plan year (or more dates in each quarter if an equal number of dates is used in each quarter), and dividing that total by the number of dates on which a count was made. For purposes of this paragraph (c)(2)(iv), each date used for the second, third and fourth quarter must be within three days of the date in that quarter that corresponds to the date used for the first quarter, and all dates used must fall within the same plan year. If a plan sponsor uses multiple dates for the first quarter, the plan sponsor must use dates in the second, third, and fourth quarters that correspond to each of the dates used for the first quarter or are within three days of such corresponding dates, and all dates used must fall within the same plan year. The 30th and 31st day of a month are treated as the last day of the month for purposes of determining the corresponding date for any month that has fewer than 31 days (for example, if either March 30 or March 31 is used for a calendar year plan, June 30 is the corresponding date for the second quarter). For purposes of this paragraph (c)(2)(iv), the number of lives covered on a designated date may be determined using either the snapshot factor method described in paragraph (c)(2)(iv)(B) of this section or the snapshot count method described in paragraph (c)(2)(iv)(C) of this section.

(B) *Snapshot factor method.* Under the snapshot factor method, the number of lives covered on a date is equal to the sum of—

(*i*) The number of participants with self-only coverage on that date; plus

(*ii*) The number of participants with coverage other than self-only coverage on the date multiplied by 2.35.

(C) *Snapshot count method.* Under the snapshot count method, the number of lives covered on a date equals the actual number of lives covered on the designated date.

(D) *Examples.* The following examples illustrate the principles of paragraphs (c)(1) and (c)(2)(iv) of this section:

Example 1. (i) Employer B is the plan sponsor of the Employer B Self-Insured Health Plan, which has a calendar year plan year. Employer B uses the snapshot method to determine the average number of lives covered under the plan and uses the snapshot count method to determine the number of lives covered on a day in the first month of each calendar quarter of the plan year.

(ii) On January 4, 2013, the Employer B Self-Insured Health Plan covers 2,000 lives, on April 5, 2013, 2,100 lives, on July 5, 2013, 2,050 lives, and on October 4, 2013, 2,050 lives. Under the snapshot method, Employer B must determine the average number of lives covered under the Employer B Self-Insured Health Plan for the plan year ending December 31, 2013, as 8,200 (2,000 + 2,100 + 2,050 + 2,050) divided by 4, or 2,050. To calculate the section 4376 fee under paragraph (c)(1) of this section for the plan year ending December 31, 2013, Employer B must determine the applicable dollar amount under paragraph (c)(3) of this section and multiply that amount by 2,050.

Example 2. (i) Same facts as *Example 1,* except that for the 2014 plan year Employer B determines the number of lives covered that are not covered by self-only coverage using the snapshot factor method (that is, based on the number of participants with coverage other than self-only coverage multiplied by 2.35 (the factor set forth in (c)(2)(iv) of this section)).

(ii) On January 10, 2014, Employer B Self-Insured Health Plan provides self-only coverage to 600 employees and other than self-only coverage to 800 employees. On April 11, 2014, Employer B Self-Insured Health Plan provides self-only coverage to 608 employees and other than self-only coverage to 800 employees. On July 11, 2014 and October 10, 2014, Employer B Self-Insured Health Plan provides self-only coverage to 610 employees and other than self-only coverage to 809 employees.

(iii) Under the snapshot factor method, Employer B must determine the average number of lives covered under the Employer B Self-Insured Health Plan for the plan year ending December 31, 2014 as 9,988 [(600 + (800 × 2.35)) + (608 + (800 × 2.35)) + (610 + (809 × 2.35)) + (610 + (809 × 2.35))] divided by 4, or 2,497. To calculate the section 4376 fee under paragraph (c)(1) of this section for the plan year ending December 31, 2014, Employer B must determine the applicable dollar amount under paragraph (c)(3) of this section and multiply that amount by 2,497.

(v) *Form 5500 method*—(A) *Calculation method.* A plan sponsor may determine the average number of lives covered under a plan for a plan year based on the number of participants reported on the Form 5500, ''Annual Return/Report of Employee Benefit Plan,'' or the Form 5500–SF, ''Short Form Annual Return/Report of Small Employee Benefit Plan,'' that is filed for the applicable self-insured health plan for that plan year, provided that the Form 5500 or Form 5500–SF is filed no later than the due date for the fee imposed by section 4376 for that plan year. For purposes of this paragraph (c)(2)(v), the average number of lives covered under the plan for the plan year for a plan offering only self-only coverage equals the sum of the total participants covered at the beginning and the end of the plan year, as reported on the Form 5500 or Form 5500–SF for the applicable self-insured health plan, divided by 2. For purposes of this paragraph (c)(2)(v), the average number of lives covered under the plan for the plan year for a plan offering self-only coverage and coverage other than self-only coverage equals the sum of total participants covered at the beginning and the end of the plan year, as reported on the Form 5500 or Form 5500–SF filed for the applicable self-insured health plan.

(B) *Examples.* The following examples illustrate the principles of paragraphs (c)(1) and (c)(2)(v)(A) of this section:

Example 1. Employer C is the plan sponsor of the Employer C Self-Insured Health Plan, which has a calendar year plan year ending on December 31, 2013. Employer C is required to file a Form 5500 for the plan for the 2013 plan year by July 31, 2014. However, on July 30, 2014, Employer C obtains an automatic 2½ month extension for filing the 2013 Form 5500. Employer C files the 2013 Form 5500 on September 30, 2014 (that is, before the October 15 extended due date). Employer C is not eligible to use the Form 5500 method to determine the average number of lives covered under Plan C for the plan year ending on December 31, 2013, because the 2013 Form 5500 was not filed by the original due date (that is, by July 31, 2014) for the return that reports liability for the fee imposed by section 4376 for the 2013 plan year.

Example 2. Same facts as *Example 1,* except that the Employer C Self-Insured Health Plan has a fiscal year plan year ending on July 31, 2013, and offers only self-only coverage. Employer C files a Form 5500 for the Employer C Self-Insured Health Plan for the plan year ending July 31, 2013 (the 2012 Form 5500), on the extended due date for filing the 2012 Form 5500 (May 15, 2014). Employer C is eligible to use the Form 5500 method to determine the average number of lives covered under Plan C for the plan year ending on July 31, 2013, because the 2012 Form 5500 had been filed by the due date for the return that reports liability for the fee imposed by section 4376 for that plan year (July 31, 2014).

Example 3. Same facts as *Example 2,* provided further that the Employer C Self-Insured Health Plan 2012 Form 5500 reports 4,000 plan participants on the first day of the plan year and 4,200 plan participants on the last day of the 2012 plan year. For purposes of calculating the fee under section 4376 using the Form 5500 method, Employer C must treat the number of lives covered for the plan year ending July 31, 2013, as equal to the sum of 4,000 and 4,200 or 8,200, divided by 2, or 4,100. To calculate the section 4376 fee under paragraph (c)(1) of this section for the plan year ending July 31, 2013, Employer C must determine the applicable dollar amount under paragraph (c)(3) of this section and multiply that amount by 4,100.

Example 4. Same facts as *Example 3,* except that the Employer C Self-Insured Health plan offers self-only coverage and family coverage. For purposes of calculating the fee under section 4376 using the Form 5500 method, Employer C must treat the number of lives covered for the plan year ending July 31, 2013, as equal to the sum of 4,000 and 4,200, or 8,200. To calculate the section 4376 fee under paragraph (c)(1) of this section for the plan year ending July 31, 2013, Employer C must determine the applicable dollar amount under paragraph (c)(3) of this section and multiply that amount by 8,200.

(vi) *Special rule for health FSAs and HRAs.* For purposes of this section, if a plan sponsor does not establish or maintain an applicable self-insured health plan other than a health flexible spending arrangement (health FSA) (as described in section 106(c)(2)) or a health reimbursement arrangement (as described in Notice 2002–45 (2002–2 CB 93)) (HRA), the plan sponsor may treat each participant's health FSA or HRA as covering a single life (and therefore the plan sponsor is not required to include as lives covered any spouse, dependent, or other beneficiary of the individual participant in the health FSA or HRA, as applicable). If a health FSA or HRA that is an applicable self-insured health plan has the same plan sponsor and plan year as another applicable self-insured health plan other than a health FSA or HRA, the two arrangements may be treated as a single plan under paragraph (b)(1)(iii) of this section. However, the special counting rule in this paragraph applies only for purposes of the health FSA or HRA and, therefore, applies only for purposes of the participants in the health FSA or HRA that do not participate in the other applicable self-insured health plan. The participants in the health FSA or HRA that participate in the other applicable self-insured health plan will be counted in accordance with the method applied for counting lives covered under that other plan as described in paragraph (b)(2)(i) of this section. See § 601.601(d)(2) of this chapter.

(vii) *Special rule for lives covered solely by the fully-insured options under an applicable self-insured health plan*—(A) *In general.* If an applicable self-insured health plan provides accident and health coverage through fully-insured options and self-insured options, the plan sponsor is permitted to disregard the lives that are covered solely under the fully-insured options in determining the lives covered taken into account for the actual count method (described in paragraph (c)(2)(iii) of this section), the snapshot method (described in paragraph (c)(2)(iv) of this section), and the Form 5500 method (described in paragraph (c)(2)(v) of this section).

(B) *Example.* The following example illustrates the principles of paragraph (c)(2)(vii) of this section:

Example. (i) Employer C is the plan sponsor of the Employer C Health Plan (Plan P). The Plan offers self-only or family health and accident coverage under fully-insured or self-insured options. On June 28, 2015, Employer C files a Form 5500 for Plan P for the plan year ending December 31, 2014 indicating: (1) a total of 4,000 plan participants on the first day of the 2014 plan year; and (2) a total of 4,200 plan participants on the last day of the plan year. Employer C determines that there were 3,000 plan participants (and their families, as applicable) covered under the fully-insured option offered under the plan on the first day of the 2014 plan year, and 2,900 plan participants (and their families, as applicable) covered under the fully-insured option on the last day of the 2014 plan year. Employer C uses the Form 5500 method to calculate the number of lives covered for the 2014 plan year.

(ii) Pursuant to paragraph (c)(2)(vii) of this section, Employer C determines the number of lives covered for the 2014 plan year as: the sum of 1,000 (4,000 total participants on the first day of the plan year—3,000 participants covered by the specified health insurance policy on the first day of the plan year) and 1,300 (4,200 total participants—2,900 participants covered by the specified health insurance policy on the first day of the plan year), or 2,300. To calculate the section 4376 fee under paragraph (c)(1) of this section for

the 2014 plan year, Employer C must determine the applicable dollar amount under paragraph (c)(3) of this section and multiply that amount by 2,300.

(viii) *Special rule for the first year the fee is in effect.* Notwithstanding paragraph (c)(2)(i) of this section, for a plan year beginning before July 11, 2012, and ending on or after October 1, 2012, a plan sponsor may determine the average number of lives covered under the plan for the plan year using any reasonable method.

(3) *Applicable dollar amount.* For a plan year ending on or after October 1, 2012, and before October 1, 2013, the applicable dollar amount is $1. For a plan year ending on or after October 1, 2013, and before October 1, 2014, the applicable dollar amount is $2. For any plan year ending in any Federal fiscal year beginning on or after October 1, 2014, the applicable dollar amount is equal to the sum of—

(i) The applicable dollar amount for the plan year ending in the previous Federal fiscal year; plus

(ii) The amount equal to the product of—

(A) The applicable dollar amount for the plan year ending in the previous Federal fiscal year; and

(B) The percentage increase in the projected per capita amount of the National Health Expenditures most recently released by the Department of Health and Human Services before the beginning of the Federal fiscal year.

(4) *Examples.* The following examples illustrate the principle of paragraph (c)(3) of this section.

Example 1. (Calendar year plan). (i) Plan Sponsor C maintains Plan X which has a calendar year plan year; the plan continues in operation for the entire calendar years 2012 through 2019. Plan X is an applicable self-insured health plan, within the meaning of § 46.4376–1(b)(1), and Plan Sponsor C is liable for the fee imposed by section 4376, determined in accordance with these regulations, beginning with the 2012 plan year—the plan year beginning January 1, 2012, and ending December 31, 2012—and ending with the 2018 plan year—the plan year beginning January 1, 2018, and ending December 31, 2018. In accordance with § 40.6071(a)–1(c) of this chapter:

(ii) The first Form 720 that must be filed to report and pay the fee imposed by section 4376 for Plan X covers the 2012 plan year (January 1, 2012, through December 31, 2012) and must be filed no later than July 31, 2013, and the fee reported on this form must be calculated by multiplying the average number lives by $1 (the applicable dollar amount in effect for plans with plan years beginning on or after October 1, 2012, and before October 1, 2013); and

(ii) The last Form 720 that must be filed to report and pay the fee imposed by section 4376 for Plan X covers the 2018 plan year (January 1, 2018, through December 31, 2018) and must be filed no later than July 31, 2019, and the fee reported on this form must be calculated using the applicable dollar amount in effect for plan years ending on or after October 1, 2018, and before October 1, 2019.

Example 2. (Fiscal year plan). (i) Plan Sponsor B maintains Plan W, which has a fiscal year plan year ending on July 31; the plan continues in operation for the entire fiscal year plan years from August 1, 2012, through July 31, 2019. Plan W is an applicable self-insured health plan, within the meaning of § 46.4376–1(b)(1), and Plan Sponsor B is liable for the fee imposed by section 4376, determined in accordance with these regulations, beginning with the 2012 plan year—the plan year beginning on August 1, 2012, and ending on July 31, 2013—and ending with the 2018 plan year—plan year beginning on August 1, 2018, and ending July 31, 2019. In accordance with § 40.6071(a)–1(c) of this chapter:

(ii) The first Form 720 that must be filed to report and pay the fee imposed by section 4376 for Plan X covers the 2012 plan year (August 1, 2012, through July 31, 2013) and must be filed no later than July 31, 2014, and the fee reported on this form must be calculated by multiplying the average number lives by $1 (the applicable dollar amount in effect for plans with plans years beginning on or after October 1, 2012, and before October 1, 2013); and

(iii) The last Form 720 that must be filed to report and pay the fee imposed by section 4376 for Plan X covers the 2018 plan year (August 1, 2018, through July 31, 2019) and must be filed no later than July 31, 2020, and the fee must be calculated using the applicable dollar amount in effect for plan years ending on or after October 1, 2018, and before October 1, 2019.

(d) *Effective/Applicability date.* This section applies for plan years that end on or after October 1, 2012, and before October 1, 2019.

§ 46.4377–1 Definitions and special rules.

(a) *Definitions.* The following definitions apply for purposes of sections 4375 and 4376 and §§ 46.4375–1 and 46.4376–1.

(1) *Accident and health coverage.* The term *accident and health coverage* means any coverage that, if provided by an insurance policy, would cause such policy to be a specified health insurance policy (as defined in section 4375(c) and § 46.4375–1(b)(1)). Accident and health coverage also includes coverage for an active employee, a former employee, or a qualifying beneficiary that is continuation coverage required under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) or similar continuation coverage under other federal law or under state law.

(2) *Individual residing in the United States*—(i) The term *individual residing in the United States* means an individual with a place of abode in the United States.

(ii) *Determination of place of abode.* For purposes of paragraph (a)(2) of this section, an issuer or a plan sponsor may rely on the most recent address on file with the issuer or plan sponsor and may treat the primary insured and the primary insured's spouse, dependents, or other beneficiaries covered by the policy as having the same place of abode. For this purpose, the primary insured is the individual covered by the policy whose eligibility for coverage was not due to that individual's status as the spouse, dependent, or other beneficiary of another covered individual.

(3) *United States.* The term *United States* includes American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands, and any other possession of the United States.

(4) *Federal fiscal year.* The term *Federal fiscal year* means the year beginning on October 1 and ending on the following September 30.

(b) *Treatment of exempt governmental programs*—(1) *In general.* The fees imposed by sections 4375 and 4376 do not apply to any covered life under an exempt governmental program as defined in paragraph (b)(2) of this section.

(2) *Exempt governmental program.* For purposes of this section, *exempt governmental program* means any—

(i) Insurance program established under title XVIII of the Social Security Act;

(ii) Medical assistance program established by title XIX or XXI of the Social Security Act;

(iii) Program established by Federal law for providing medical care (other than through insurance policies) to individuals (or their spouses and dependents) by reason of such individuals being (or having been) members of the Armed Forces of the United States; and

(iv) Program established by Federal law for providing medical care (other than through insurance policies) to members of Indian tribes (as defined in section 4(d) of the Indian Health Care Improvement Act).

(c) *Effective/Applicability date.* This section applies to all policy and plan years that end on or after October 1, 2012, and before October 1, 2019.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 12.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 13.** In § 602.101, paragraph (b) is amended by adding the following entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR Part or section where indentified and described	Current OMB control No.
* * * * *	
46.4375–1	1545–2238
46.4376–1	1545–2238
* * * * * * *	

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: November 28, 2012.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2012–29325 Filed 12–5–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that USS CHANCELLORSVILLE (CG 62) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective December 6, 2012 and is applicable beginning November 14, 2012.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jocelyn Loftus-Williams, JAGC, U.S. Navy, Admiralty Attorney, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR Part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS CHANCELLORSVILLE (CG 62) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the horizontal distance between the forward and after masthead lights. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

For the reasons set forth in the preamble, amend part 706 of title 32 of the CFR as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended in Table Five by revising the entry for USS CHANCELLORSVILLE (CG 62) to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
* *	*	*	*	*	*
USS CHANCELLORSVILLE	CG 62		X	X	36.8
* *	*	*	*	*	*

Approved: November 14, 2012.

A.B. Fischer,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

Dated: November 20, 2012.

C.K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012–29477 Filed 12–5–12; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–1021]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway (Alternate Route), Dismal Swamp Canal, South Mills, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the Great Dismal Swamp Canal Bridge, at mile 28.0, over the Atlantic Intracoastal Waterway (Alternate Route), Dismal Swamp Canal, South Mills, NC. The deviation restricts the operation of the draw span and is necessary in order to facilitate the structural repair of the bridge.

DATES: This deviation is effective from 8 a.m. December 10, 2012, until 5 p.m. December 14, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket USCG–2012–1021 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–1021 in the ''Search'' box, and then clicking ''Search''. This material is also available for inspection or copying the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Bill H. Brazier, Bridge Management Specialist, Fifth Coast Guard District, telephone (757) 398–6422, email *Bill.H.Brazier@uscg.mil.* If you have questions on reviewing the docket, call Renee V. Wright, Program Manager, Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION: The North Carolina Department of the Environment and Natural Resources, Division of Parks and Recreation, who owns and operates this swing-type bridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.820, to facilitate the structural repair of the bridge.

The Great Dismal Swamp Canal Bridge is normally maintained in the open position to navigation, closing only for pedestrian crossings and periodic maintenance.

Under this temporary deviation, the drawbridge will be closed to navigation from 8 a.m., on December 10, 2012, through 5 p.m., on December 14, 2012.

Vessel traffic along this part of the Atlantic Intracoastal Waterway (Alternate Route) consists of pleasure craft including sail boats, and fishing boats, with some commercial traffic. The alternate route for vessels transiting is the Atlantic Intracoastal Waterway, Albemarle Sound to Sunset Beach. The bridge will be unable to open in an emergency.

The Coast Guard has carefully coordinated the restrictions with recreational waterway users. The Coast Guard will inform all users of the waterway through our Local and Broadcast Notice to Mariners of the closure periods for the bridge so that vessels can arrange their transits to minimize any impacts caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the draw must return to its original operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 21, 2012.

Waverly W. Gregory, Jr.,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2012–29443 Filed 12–5–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–1014]

Drawbridge Operation Regulation; Mile 359.4, Missouri River, Kansas City, MO

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Harry S. Truman Railroad Drawbridge across the Missouri River, mile 359.4, at Kansas City, Missouri. The deviation is necessary to allow the replacement of 64 counterweight cables that facilitate movement of the lift span. This deviation allows the bridge to remain in the closed position while the counterweight cables are replaced.

DATES: This deviation is effective from 7 a.m. on February 11, 2013, through 11:59 p.m. on March 2, 2013. If due to weather or other conditions, replacement cable work has not begun by 7 a.m. on February 11, 2013, the normal operating schedule in 33 CFR 117.687 will be maintained until this replacement work has started.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–1014 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–1014 in the ''Search'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard 314–269–2378, email *Eric.Washburn@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Canadian Pacific Railway requested a temporary deviation for the Harry S. Truman Railroad Drawbridge, across the Missouri River, mile 359.4, at Kansas City, Missouri to remain in the closed-to-navigation position while 64 counterweight cables that facilitate movement of the lift span are replaced. The closure period will start at 7 a.m. on February 11, 2013, and continue through 11 p.m. on March 2, 2013.

Once the counterweight cables are removed, the lift span will not be able to open, even for emergencies, until the replacement of the counterweight cables are installed.

The Harry S. Truman Railroad Drawbridge currently operates in

accordance with 33 CFR 117.687, which states the draws of the bridges across the Missouri River shall open on signal; except during the winter season between the date of closure and date of opening of the commercial navigation season as published by the Army Corps of Engineers, the draws need not open unless at least 24 hours advance notice is given.

There are no alternate routes for vessels transiting this section of the Missouri River. The Harry S. Truman Railroad Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 51.3 feet above zero on W. B. gage at Kansas City, Missouri. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This temporary deviation has been coordinated with the waterway users.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 16, 2012.

Eric A. Washburn,

Bridge Administrator, Western Rivers.

[FR Doc. 2012–29444 Filed 12–5–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 51

RIN 2900–AO57

Contracts and Provider Agreements for State Home Nursing Home Care

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: This interim final rule amends Department of Veterans Affairs (VA) regulations to allow VA to enter into contracts or provider agreements with State homes for the nursing home care of certain disabled veterans. This rulemaking is required to implement a change in law that revises how VA will pay for care provided to these veterans and authorizes VA to use provider agreements to pay for such care. The change made by this law applies to all care provided to these veterans in State homes on and after February 2, 2013.

DATES: *Effective Date:* This interim final rule is effective on February 2, 2013. Comments must be received by VA on or before February 4, 2013.

ADDRESSES: Written comments may be submitted by email through *http://www.regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. (This is not a toll-free number.) Comments should indicate that they are submitted in response to ''RIN 2900–AO57—Contracts and Provider Agreements for State Home Nursing Home Care.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kelly Schneider, State Home Per Diem Program Manager, Purchased Care (10NB3), Chief Business Office, Veterans Health Administration, 810 Vermont Avenue NW., Washington, DC 20420. Please call (308) 389–5106. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This rulemaking implements VA's authority to pay for State home nursing home care under section 105 of the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012 (the Act), Public Law 112–154, 126 Stat. 1165, which was enacted on August 6, 2012.

VA pays State veterans homes to provide nursing home care to eligible veterans under 38 U.S.C. 1741 and 1745. Under 38 U.S.C. 1745, as it existed before it was amended by section 105 of the Act, and current 38 CFR 51.41, VA currently pays State homes a special daily per diem rate for care provided to the following veterans: Those who need nursing home care for a service-connected disability, and those who need nursing home care and have either a service-connected disability rating of 70 percent or more or a rating of total disability based on individual unemployability. These payments under current 38 CFR 51.41 are considered grant payments. Section 105 of the Act requires VA to change the mechanism for paying State homes for care provided to these veterans. Specifically, as of February 2, 2013, VA will only be authorized to use contracts or provider agreements to pay State homes for the nursing home care of these veterans. This rulemaking therefore will revise VA's regulation at 38 CFR 51.41, effective February 2, 2013, to implement VA's authority under the Act to enter into provider agreements and contracts to pay for this care.

In § 51.41(a), as revised by this rulemaking (hereinafter referred to as ''revised § 51.41''), we identify the veterans whose care is affected by this rulemaking, i.e., veterans residing in State homes who need nursing home care for a VA adjudicated service-connected disability, or who need nursing home care and have either: (1) A singular or combined rating of 70 percent or more based on one or more service-connected disability, or (2) a rating of total disability based on individual unemployability. These veterans are identified by statute and are the same veterans for whose care State homes are currently paid the special daily per diem rate. 38 U.S.C. 1745(a)(1)(A) and (B). This rulemaking will affect payments for State nursing home care only for these veterans. VA will continue to pay basic per diem as specified in 38 CFR part 51 for all other veterans receiving State home nursing home care.

Consistent with current practice, if a veteran receives a retroactive VA service-connected disability rating and becomes a veteran identified in revised § 51.41(a), the State home may request additional payment for care rendered prior to the rating. Revised § 51.41(c)(4) provides that in these instances the State home may request payment under the VA provider agreement for care back to the retroactive effective date or February 2, 2013, whichever is later. For care provided to a veteran before February 2, 2013, the State home may request payment at the special per diem rate in effect at the time that the care was rendered, which will be reimbursed based on VA's special per diem authority in current § 51.41. VA cannot enter into a contract to make retroactive payments for care rendered in the past. This is because contracts can only be created for a bona fide need that exists at the time of contract execution, not one that may have existed in the past.

Revised § 51.41(a) states that VA and State homes may enter into both contracts and provider agreements, but each veteran's care will be paid through only one of these two instruments. This allows VA and State homes to use the payment instrument that best meets their needs.

As noted above, section 105 of the Act specifies that VA must pay State homes for the nursing home care of these veterans using either contracts or provider agreements. Because the Act makes no further explanation of the term ''contracts,'' VA has determined that existing contracting authorities

should apply in this regulation. Contracts between VA and State homes are currently negotiated under Federal contract statutes and regulations, including the Federal Acquisition Regulation, which is set forth at 48 CFR chapter 1, and VA Acquisition Regulations, which are set forth at 48 CFR chapter 8.

Paragraph (b) of revised § 51.41 discusses contracts. The Act requires that rates of payments be ''based on a methodology, developed by the Secretary in consultation with the State home, to adequately reimburse the State home for the care provided.'' Pub. L. 112–154, Sec. 105(a)(2). Contracts are negotiated with each State home, as stated in revised § 51.41(b)(1). Additionally, the Act requires that VA offer, at the request of the State home, to provide either a contract or provider agreement that ''reflects the overall methodology of reimbursement for such care that was in effect for such state home on the day before the date of enactment of this Act.'' Pub. L. 112–154, Sec. 105(c)(2). This mandate is stated in revised § 51.41(b)(2).

Revised § 51.41(c) sets forth VA's authority to enter into provider agreements for State nursing home care. Under 38 U.S.C. 1745(a)(1), as amended by section 105 of the Act, VA is authorized to enter into an agreement under 38 U.S.C. 1720(c)(1) with each State home for nursing home care. Section 1720(c)(1) authorizes VA to enter into agreements with non-VA providers using ''the procedures available for entering into provider agreements under section 1866(a) of the Social Security Act.'' Section 1866(a) (codified at 42 U.S.C. 1395cc(a)) authorizes the Department of Health and Human Services to enter into agreements with participating Medicare providers, and specifies the rates and terms of those agreements. Similar agreements are offered under State Medicaid programs. Agreements under both Medicare and State Medicaid programs are administered by the Centers for Medicare and Medicaid Services (CMS).

Pursuant to the Act, this rulemaking implements VA's authority in section 1720(c)(1) to enter into provider agreements with State homes to provide care to the veterans covered by the Act. VA provider agreements with State homes will be entered into using procedures similar to those used in entering into Medicare agreements. VA provider agreements will accommodate the differences between VA's State home programs and Medicare programs and enable participation in VA provider agreements by all State homes.

The rates of payment for VA provider agreements are reflected in revised § 51.41(c)(1), and the procedures and standards of care are covered in revised § 51.41(c)(3).

Revised § 51.41(c)(1) establishes payment rates for VA provider agreements by adopting part of VA's existing payment methodology for State homes providing care to veterans affected by the Act. For VA provider agreements, we have adopted VA's rate calculation from current § 51.41(b)(1), which is commonly called the ''prevailing Medicare rate'' (''prevailing rate''). The prevailing rate is specific to each State home, and is based on an average of CMS case-level data in the geographic area, labor costs, and physician's fees. Under provider agreements, VA will pay each State home the prevailing rate for the veterans under their care each day. By contrast, under a Medicare or State Medicaid agreement, the State home would be paid an amount determined by a CMS rate schedule specific to each resident, based on an assessment of their medical conditions and the amount of care the resident would require. We have amended the prevailing rate regulation in § 51.41(c) to make it clearer and easier to understand how the rates are calculated, but the method used for calculating the rates remains the same.

There are strong administrative reasons to support using the prevailing rate to pay for care provided to veterans by State nursing homes. Foremost, using a single, fixed rate will provide regular and predictable payment amounts, which will make administration of the program easier both for VA and for State homes. Second, the prevailing rate is familiar to State veterans homes, as it has been one of two payment methodologies that have been effective in VA regulations since May 29, 2009. It is also familiar to VA for the same reasons, which will make it easy to implement as a payment rate in the short period of time required by statute (i.e., on and after February 2, 2013). In addition, some State homes—particularly the approximately 40 percent of State homes that are not CMS certified—are unfamiliar with the process of determining an appropriate individualized rate using the CMS fee schedule. Moreover, these rates must be adjusted whenever the veteran's level of care adjusts, which means that the same veteran might be subject to several different rates during any one calendar month. These frequent calculations and recalculations would be particularly burdensome on State homes that lack current administrative mechanisms to perform them, but would also present a significant strain on VA's ability to effectively administer payments and ensure that payments are correct. Moreover, the prevailing rate methodology should not, over time, deviate from the amount that payment would be using the Medicare fee schedule. The prevailing rate is based on CMS data, therefore it is a close reflection of the payments State homes would receive if CMS rates were used. Finally, VA has received comments from State homes and groups representing the State homes that they would prefer to receive the prevailing rate.

Under this rule, the VA provider agreement payment mechanism presents an option to pay for State home care that is distinct from contracting. Apart from the distinct terminology difference, using the prevailing rate, which is based on the non-negotiable Medicare fee schedule (or State Medicaid payment system), does not permit rate negotiation. In this manner, provider agreements are not contractual in nature. Allowing VA and State homes to negotiate rates would make the agreements subject to the authorities applicable to negotiated contracts, which is contrary to Congressional intent.

Revised § 51.41(c)(2) requires that the provider agreement reflect that State homes may not charge any individual, insurer, or entity other than VA for nursing home care paid for by VA under a VA provider agreement. A similar requirement is in current § 51.41(c), and the basis for the requirement that payment under an agreement must represent payment in full is not affected by the amendments made by the Act. The purpose of this paragraph, consistent with the purpose of the current paragraph, is to ensure that VA does not pay for services—such as drugs or medical care—that should be provided by the State home as part of the home's care for the veteran. It is also to ensure that VA does not pay for care that is covered by another responsible party.

Revised § 51.41(c)(3) states that provider agreements are subject to the rest of 38 CFR part 51, unless part 51 conflicts with paragraph (c). It also states that the term ''per diem'' in part 51 includes payments under provider agreements for the purposes of this section. This provision will ensure that State homes are subject to VA's requirements such as recognition and certification, standards of care, enforcement of such standards, etc, in the same manner as they are currently. Nothing in the Act suggests that these procedures and standards should not

apply to State homes to which we will pay for care via a provider agreement. Moreover, State homes are familiar with our existing procedures and standards and will also need to continue to comply with them in order to receive VA basic per diem payments for providing nursing home care to veterans who are not subject to this rulemaking. Revised 51.41(c)(4) describes procedures for payments if a veteran receives a retroactive VA service-connected disability rating, as discussed previously.

Revised paragraph (d) requires that the Director of the VA medical center of jurisdiction or a designee sign VA provider agreements.

Revised § 51.41(e) requires a State home to submit a VA Form 10–10EZ, Application for Medical Benefits (or VA Form 10–10EZR, Health Benefits Renewal Form), and VA Form 10–10SH, State Home Program Application for Care—Medical Certification, to the VA medical center of jurisdiction prior to entering into a VA provider agreement for the veterans for whom the State home will seek payment under the provider agreement. These VA forms are currently submitted by a new State home or when a State home seeks payment for providing care to a new veteran in the State home. VA must collect these forms from States seeking to enter into provider agreements to assist with administering the change from the current per diem payment program to provider agreements. Revised § 51.41(e) also requires that State homes with a VA provider agreement follow § 51.43(a) regarding submission of required forms for payments.

Revised paragraph (f) sets forth procedures to terminate provider agreements. A State home can terminate the agreement by sending VA written notice of its intent to terminate the agreement 30 days in advance of the termination date under paragraph (f)(1). This provision is consistent with the transfer and discharge rights of veterans stated in § 51.80. It is important to ensure that VA has advance notice of any termination that might cause a disruption in care for veterans, and also because State homes may choose to contract with VA to provide care, rather than continue to provide care under a provider agreement. Under paragraph (f)(2), a VA provider agreement will terminate immediately upon a final determination that the State home has lost VA recognition under 38 CFR 51.30. This provision is substantively consistent with current State home per diem payment procedures at §§ 51.10 and 51.30(f).

Revised § 51.41(g) says that under these provider agreements, State homes need not comply with the Service Contract Act of 1965 (codified at 41 U.S.C. 351, et seq.). While the Service Contract Act of 1965 applies to contracts entered into by the United States for services by service employees, it does not apply to Medicare provider agreements because these are not contracts with the United States. This is consistent with VA's recent interpretation of its provider agreement authority under 38 U.S.C. 1720(c)(1) in RIN 2900–AO15, in which we explain that VA provider agreements are not contracts. VA provider agreements are based on the non-negotiable Medicare fee schedule (or State Medicaid payment system), which does not permit rate negotiation. In this manner, provider agreements are not contractual in nature. VA believes it is reasonable to apply this interpretation to all VA provider agreements because their purpose and execution is the same. However, paragraph (g) would require that providers comply with all other applicable Federal laws concerning employment and hiring practices, including the Fair Labor Standards Act, National Labor Relations Act, the Civil Rights Acts, the Age Discrimination in Employment Act of 1967, the Vocational Rehabilitation Act of 1973, Worker Adjustment and Retraining Notification Act, Sarbanes-Oxley Act of 2002, Occupational Health and Safety Act of 1970, Immigration Reform and Control Act of 1986, Consolidated Omnibus Reconciliation Act, the Family and Medical Leave Act, the Americans with Disabilities Act, the Uniformed Services Employment and Reemployment Rights Act, the Immigration and Nationality Act, the Consumer Credit Protection Act, the Employee Polygraph Protection Act, and the Employee Retirement Income Security Act.

The Act requires VA to consult with State homes to develop the payment methodology under these authorities. During development of this rulemaking, groups representing State veterans homes, such as the National Association of State Veterans Homes and the National Association of State Directors of Veterans Affairs, and State officials on their own wrote to VA and spoke with VA representatives about implementing the Act and provided comments about payment methodologies under contracts and provider agreements. In addition to these discussions and submissions, contracts are negotiated with each State home, and that negotiation will provide the opportunity for individualized consultation. The comment period for this notice also serves as part of the consultation process for payments under provider agreements. VA welcomes further comment from the public, particularly those who will be affected by this regulation, to ensure we implement the new payment methodology required by the Act effectively.

Administrative Procedure Act

The Secretary of Veterans Affairs finds that there is good cause under 5 U.S.C. 553(b)(B) to publish this rule without prior opportunity for public comment. This interim final rule is necessary to implement the contracting and provider agreement authority of section 105 of the Act, which requires VA to change its payment methodology for State home nursing home care of severely disabled Veterans. This rule must be in place by February 2, 2013, in order to ensure continuity of care for affected veterans in State veterans nursing homes. As of February 2, 2013, VA will no longer have authority to use its current procedures to pay State homes for care provided to the affected veterans, and must enter into either contracts or provider agreements with State homes by that date. VA presently has the authority to enter into contracts with State homes on that date, but many State homes have notified VA that some States will be unable to enter into contracts with VA for this care due to the application of many Federal acquisition laws, such as the Service Contract Act of 1965, the applicability of which State governing bodies may not support because the provisions would require greater expenditures by the States. However, VA lacks the authority to enter into provider agreements without this rulemaking. Failure to effect this regulatory change by February 2, 2013, may cause serious disruptions in VA's ability to pay for the care provided to certain veterans in State home nursing homes. For the foregoing reasons, VA is issuing this rule as an interim final rule, effective on February 2, 2013. The Secretary of Veterans Affairs will consider and address comments that are received within 60 days after this interim final rule is published in the **Federal Register**.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance

or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

Although this action contains a provision constituting collections of information at 38 CFR 51.41(e), under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), no new or proposed revised collections of information are associated with this interim final rule. The information collection requirements for § 51.41(e) are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control numbers 2900–0091 and 2900–0160.

Regulatory Flexibility Act

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

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

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

Unfunded Mandates

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

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; and 64.022, Veterans Home Based Primary Care.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on December 3, 2012 for publication.

List of Subjects in 38 CFR Part 51

Administrative practice and procedure; Claims; Day care; Dental health; Government contracts; Grant programs—health; Grant programs—veterans; Health care; Health facilities; Health professions; Health records; Mental health programs; Nursing homes; Reporting and recordkeeping requirements; Travel and transportation expenses; Veterans.

Dated: December 3, 2012.

Robert C. McFetridge,

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

For the reasons set out in the preamble, VA amends 38 CFR part 51 as follows:

PART 51—PER DIEM FOR NURSING HOME CARE OF VETERANS IN STATE HOMES

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 38 U.S.C. 101, 501, 1710, 1720, 1741–1743; and as stated in specific sections.

■ 2. Revise § 51.41 to read as follows:

§ 51.41 Contracts and provider agreements for certain veterans with service-connected disabilities.

(a) *Contract or VA provider agreement required.* VA and State homes may enter into both contracts and provider agreements. VA will pay for each eligible veteran's care through either a contract or a provider agreement (called a ''VA provider agreement''). Eligible veterans are those who:

(1) Are in need of nursing home care for a VA adjudicated service-connected disability, or

(2) Have a singular or combined rating of 70 percent or more based on one or more service-connected disabilities or a rating of total disability based on individual unemployability and are in need of nursing home care.

(b) *Payments under contracts.* Contracts under this section will be subject to this part to the extent provided for in the contract and will be governed by federal acquisition law and regulation. Contracts for payment under this section will provide for payment either:

(1) At a rate or rates negotiated between VA and the State home; or

(2) On request from a State home that provided nursing home care on August 5, 2012, for which the State home was eligible for payment under 38 U.S.C. 1745(a)(1), at a rate that reflects the overall methodology of reimbursement for such care that was in effect for the State home on August 5, 2012.

(c) *Payments under VA provider agreements.* (1) State homes must sign an agreement to receive payment from VA for providing care to certain eligible veterans under a VA provider

agreement. VA provider agreements under this section will provide for payments at the rate determined by the following formula. For State Homes in a metropolitan statistical area, use the most recently published CMS Resource Utilization Groups (RUG) case-mix levels for the applicable metropolitan statistical area. For State Homes in a rural area, use the most recently published CMS Skilled Nursing Prospective Payment System case-mix levels for the applicable rural area. To compute the daily rate for each State home, multiply the labor component by the State home wage index for each of the applicable case-mix levels; then add to that amount the non-labor component. Divide the sum of the results of these calculations by the number of applicable case-mix levels. Finally, add to this quotient the amount based on the CMS payment schedule for physician services. The amount for physician services, based on information published by CMS, is the average hourly rate for all physicians, with the rate modified by the applicable urban or rural geographic index for physician work, then multiplied by 12, then divided by the number of days in the year.

Note to paragraph (c)(1): The amount calculated under this formula reflects the prevailing rate payable in the geographic area in which the State home is located for nursing home care furnished in a non-Department nursing home (a public or private institution not under the direct jurisdiction of VA which furnishes nursing home care). Further, the formula for establishing these rates includes CMS information that is published in the **Federal Register** every year and is effective beginning October 1 for the entire fiscal year. Accordingly, VA will adjust the rates annually.

(2) The State home shall not charge any individual, insurer, or entity (other than VA) for the nursing home care paid for by VA under a VA provider agreement. Also, as a condition of receiving payments under paragraph (c) of this section, the State home must agree not to accept drugs and medicines from VA provided under 38 U.S.C. 1712(d) on behalf of veterans covered by this section and corresponding VA regulations (payment under paragraph (c) of this section includes payment for drugs and medicines).

(3) Agreements under paragraph (c) of this section will be subject to this part, except to the extent that this part conflicts with this section. For purposes of this section, the term ''per diem'' in part 51 includes payments under provider agreements.

(4) If a veteran receives a retroactive VA service-connected disability rating and becomes a veteran identified in paragraph (a) of this section, the State home may request payment under the VA provider agreement for nursing home care back to the retroactive effective date of the rating or February 2, 2013, whichever is later. For care provided after the effective date but before February 2, 2013, the State home may request payment at the special per diem rate that was in effect at the time that the care was rendered.

(d) *VA signing official.* VA provider agreements must be signed by the Director of the VA medical center of jurisdiction or designee.

(e) *Forms.* Prior to entering into a VA provider agreement, State homes must submit to the VA medical center of jurisdiction a completed VA Form 10–10EZ, Application for Medical Benefits (or VA Form 10–10EZR, Health Benefits Renewal Form, if a completed VA Form 10–10EZ is already on file at VA), and a completed VA Form 10–10SH, State Home Program Application for Care—Medical Certification, for the veterans for whom the State home will seek payment under the provider agreement. After VA and the State home have entered into a VA provider agreement, forms for payment must be submitted in accordance with paragraph (a) of this section. VA Forms 10–10EZ and 10–10EZR are set forth in full at § 58.12 of this chapter and VA Form 10–10SH is set forth in full at § 58.13 of this chapter.

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900–0091 and 2900–0160.)

(f) *Termination of VA provider agreements.* (1) A State home that wishes to terminate a VA provider agreement with VA must send written notice of its intent to the Director of the VA medical center of jurisdiction at least 30 days before the effective date of termination of the agreement. The notice shall include the intended date of termination.

(2) VA provider agreements will terminate on the date of a final decision that the home is no longer recognized by VA under § 51.30.

(g) *Compliance with Federal laws.* Under provider agreements entered into under this section, State homes are not required to comply with reporting and auditing requirements imposed under the Service Contract Act of 1965, as amended (41 U.S.C. 351, *et seq.*); however, State homes must comply with all other applicable Federal laws concerning employment and hiring practices including the Fair Labor Standards Act, National Labor Relations Act, the Civil Rights Acts, the Age Discrimination in Employment Act of 1967, the Vocational Rehabilitation Act of 1973, Worker Adjustment and Retraining Notification Act, Sarbanes-Oxley Act of 2002, Occupational Health and Safety Act of 1970, Immigration Reform and Control Act of 1986, Consolidated Omnibus Reconciliation Act, the Family and Medical Leave Act, the Americans with Disabilities Act, the Uniformed Services Employment and Reemployment Rights Act, the Immigration and Nationality Act, the Consumer Credit Protection Act, the Employee Polygraph Protection Act, and the Employee Retirement Income Security Act.

(Authority: 38 U.S.C. 101, 501, 1710, 1720, 1741–1745; 42 U.S.C. 1395cc)

[FR Doc. 2012–29521 Filed 12–5–12; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2012–0078; FRL–9722–9]

Approval and Promulgation of State Implementation Plans: State of Washington; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve the Best Available Retrofit Technology (BART) determination for NO_X for the TransAlta Centralia Generation LLC coal-fired power plant in Centralia, Washington (TransAlta). The Washington State Department of Ecology (Ecology) submitted its Regional Haze State Implementation Plan (SIP) on December 22, 2010 to meet the requirements of the Clean Air Act Regional Haze Rule at 40 CFR 50.308. On December 29, 2011 Ecology submitted an update to the SIP submittal containing a revised and updated BART determination for TransAlta. On May 23, 2012, EPA proposed to approve the portion of the revised SIP submission containing the BART determination for TransAlta.77 FR 30467. EPA plans to act on the remaining Regional Haze SIP elements for Washington in the near future.

DATES: This action is effective on January 7, 2013.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R10–OAR–

2012–0078. Generally documents in the docket are available at *http://www.regulations.gov* or in hard copy at EPA Region 10, Office of Air, Waste, and Toxics, AWT–107, 1200 Sixth Avenue, Seattle, Washington 98101. Please note that while many of the documents in the docket are available electronically at *http://www.regulations.gov,* some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, large maps or voluminous materials, is not placed on the Internet and will be publicly available only at the hard copy location. To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

FOR FURTHER INFORMATION CONTACT: Steve Body, (206) 553–0782, or by email at *body.steve@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA. Information is organized as follows:

I. What is the background for this final action?

Ecology submitted its Regional Haze SIP on December 22, 2010 to meet the requirements of 40 CFR 50.308. On December 29, 2011 Ecology submitted an update to the SIP submittal containing a revised and updated BART determination for TransAlta. On May 23, 2012, EPA proposed to approve the portion of the SIP submission containing the BART determination for NO_X at TransAlta.

The TransAlta power plant, located in Centralia, Washington, is a two unit coal-fired power plant rated at 702.5 MW each, when burning coal from the Centralia coalfield as originally designed. The units now burn coal from the Wyoming Powder River Basin and are rated at 670 MW each. As explained in the proposal, these Units are subject to BART. The Regional Haze SIP revision imposes as BART a NO_X emission limitation of 0.21 lb/MMBtu for each unit based on the installation of selective noncatalytic reduction on both coal-fired units plus Flex Fuel. It also requires a one year performance optimization study and lowering the emission limits based on the study results. Additionally, the BART determination requires one unit to cease burning coal by December 31, 2020 and the second unit by December 31, 2025 unless Ecology determines that state or federal law requires selective catalytic reduction to be installed on either unit.

A detailed explanation of the Regional Haze Rule, the BART requirements, Ecology's BART determination for TransAlta and EPA's reasons for approving this SIP revision were provided in the notice of proposed rulemaking on May 23, 2012 and will not be restated here.

II. What is our response to comments received on the notice of proposed rulemaking?

The public comment period for EPA's proposal to approve the TransAlta BART determination closed on June 22, 2012. EPA received only one comment on its proposal. The comment, from TransAlta, encouraged EPA to approve the BART determination for NO_X as proposed.

III. What action is EPA taking?

EPA is approving the NO_X emissions BART determination for TransAlta.

IV. Statutory and Executive Order Reviews

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Consistent with EPA policy, EPA nonetheless provided a consultation opportunity to Tribes in Idaho, Oregon and Washington in letters dated January 14, 2011. EPA received one request for consultation, and we have followed-up with that Tribe.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 2013. 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

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

Dated: August 20, 2012.

Dennis J. McLerran,

Regional Administrator, Region 10.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart WW—Washington

■ 2. Section 52.2470 is amended by adding paragraph (c)(89) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(89) On December 29, 2011, the Washington State Department of Ecology submitted a Best Available Retrofit Technology (BART) determination and revised BART Order 6426 for the TransAlta Centralia Generating LLC facility in Centralia, Washington.

(i) Incorporation by reference.

(A) State of Washington, Department of Ecology, Order 6426, first revision, ''BART Emission Limitations,'' issued to TransAlta Centralia Generation, LLC, dated December 13, 2011, except the undesignated introductory text, the section titled ''Findings,'' and the undesignated text following condition 13.

■ 3. Section 52.2475 is amended by adding paragraph (g)(2) to read as follows:

§ 52.2475 Approval of plans.

* * * * *

(g) * * *

(2) EPA approves the Best Available Retrofit Technology (BART) determination for the TransAlta Centralia Generating LLC facility in Centralia Washington submitted by the Washington State Department of Ecology on December 29, 2011.

[FR Doc. 2012–29397 Filed 12–5–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA–R09–OAR–2004–0091; FRL–9750–6]

Outer Continental Shelf Air Regulations Consistency Update for California

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (''EPA'') is finalizing the update of the Outer Continental Shelf (''OCS'') Air Regulations proposed in the **Federal Register** on August 30, 2012. 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 the Clean Air Act, as amended in 1990 (''the Act''). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the Santa Barbara County Air Pollution Control District (''Santa Barbara County APCD'' or ''District'') is the designated COA. The intended effect of approving the OCS requirements for the Santa Barbara County APCD is to regulate emissions from OCS sources in accordance with the requirements onshore.

DATES: This rule is effective on January 7, 2013. The incorporation by reference of certain publications listed in this rule is approved by the Director of the **Federal Register** as of January 7, 2013.

ADDRESSES: EPA has established docket number OAR–2004–0091 for this action. The index to the docket 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 G. 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: Throughout this document, the terms ''we,'' ''us,'' or ''our'' refer to U.S. EPA.

Organization of this document: The following outline is provided to aid in locating information in this preamble.

I. Background
II. Public Comment
III. EPA Action
IV. Statutory and Executive Order Reviews

I. Background

On August 30, 2012 (77 FR 52630), EPA proposed to incorporate various Santa Barbara County APCD air pollution control requirements into the OCS Air Regulations at 40 CFR part 55. We are incorporating these requirements in response to the submittal of these rules by the District. EPA has evaluated the proposed requirements 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 that they are not arbitrary or capricious. 40 CFR 55.12(e).

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. Public Comment

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments on the proposed action.

III. EPA Action

In this document, EPA takes final action to incorporate the proposed changes into 40 CFR part 55. No changes were made to the proposed

action except for minor technical corrections to the list of rules in the part 55 regulatory text to accurately reflect the action we proposed. EPA is approving the proposed action under section 328(a)(1) of the Act, 42 U.S.C. 7627. 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.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore air control requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, EPA's role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the Clean Air Act. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy discretion by EPA. 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);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, nor does it impose substantial direct compliance costs on tribal governments, nor preempt tribal law.

Under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in 40 CFR part 55 and, by extension, this update to the rules, and has assigned OMB control number 2060–0249. Notice of OMB's approval of EPA Information Collection Request (''ICR'') No. 1601.07 was published in the **Federal Register** on February 17, 2009 (74 FR 7432). The approval expires January 31, 2012. 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, using the definition of burden provided in 44 U.S.C. 3502(2).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 2013. 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 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: October 17, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

Title 40 of the Code of Federal Regulations, part 55, is 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 paragraph (e)(3)(ii)(F) 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) * * *

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources,* October 2012.

* * * * *

■ 3. Appendix A to CFR Part 55 is amended by revising paragraph (b)(6) 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) * * *

(6) The following requirements are contained in *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 102 Definitions (Adopted 06/21/12)
Rule 103 Severability (Adopted 10/23/78)
Rule 106 Notice To Comply for Minor Violations (Repealed 01/01/2001)
Rule 107 Emergencies (Adopted 04/19/01)
Rule 201 Permits Required (Adopted 06/19/08)
Rule 202 Exemptions to Rule 201 (Adopted 06/21/12)
Rule 203 Transfer (Adopted 04/17/97)
Rule 204 Applications (Adopted 04/17/97)
Rule 205 Standards for Granting Permits (Adopted 04/17/97)
Rule 206 Conditional Approval of Authority To Construct or Permit To Operate (Adopted 10/15/91)
Rule 207 Denial of Application (Adopted 10/23/78)
Rule 210 Fees (Adopted 03/17/05)
Rule 212 Emission Statements (Adopted 10/20/92)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter-Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration-Southern Zone (Adopted 10/23/78)
Rule 306 Dust and Fumes-Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate-Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/02/90)
Rule 316 Storage and Transfer of Gasoline (Adopted 01/15/09)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems-Southern Zone (Adopted 10/23/78)
Rule 321 Solvent Cleaning Operations (Adopted 06/21/12)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 11/15/01)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Crude Oil Production and Separation (Adopted 07/19/01)
Rule 326 Storage of Reactive Organic Compound Liquids (Adopted 01/18/01)
Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 330 Surface Coating of Metal Parts and Products (Adopted 06/21/12)
Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 06/11/79)
Rule 333 Control of Emissions From Reciprocating Internal Combustion Engines (Adopted 06/19/08)
Rule 342 Control of Oxides of Nitrogen (NO_X) From Boilers, Steam Generators and Process Heaters) (Adopted 04/17/97)
Rule 343 Petroleum Storage Tank Degassing (Adopted 12/14/93)
Rule 344 Petroleum Sumps, Pits, and Well Cellars (Adopted 11/10/94)
Rule 346 Loading of Organic Liquid Cargo Vessels (Adopted 01/18/01)
Rule 349 Polyester Resin Operations (Adopted 06/21/12)
Rule 352 Natural Gas-Fired Fan-Type Central Furnaces and Residential Water Heaters (Adopted 10/20/11)
Rule 353 Adhesives and Sealants (Adopted 06/21/12)
Rule 359 Flares and Thermal Oxidizers (Adopted 06/28/94)
Rule 360 Emissions of Oxides of Nitrogen From Large Water Heaters and Small Boilers (Adopted 10/17/02)
Rule 361 Small Boilers, Steam Generators, and Process Heaters (Adopted 01/17/08)
Rule 370 Potential To Emit—Limitations for Part 70 Sources (Adopted 06/15/95)
Rule 505 Breakdown Conditions Sections A.,B.1,. and D. only (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 06/15/81)
Rule 702 General Conformity (Adopted 10/20/94)
Rule 801 New Source Review (Adopted 04/17/97)
Rule 802 Nonattainment Review (Adopted 04/17/97)
Rule 803 Prevention of Significant Deterioration (Adopted 04/17/97)
Rule 804 Emission Offsets (Adopted 04/17/97)
Rule 805 Air Quality Impact Analysis and Modeling (Adopted 04/17/97)
Rule 808 New Source Review for Major Sources of Hazardous Air Pollutants (Adopted 05/20/99)
Rule 1301 Part 70 Operating Permits—General Information (Adopted 06/19/03)
Rule 1302 Part 70 Operating Permits—Permit Application (Adopted 11/09/93)
Rule 1303 Part 70 Operating Permits—Permits (Adopted 11/09/93)
Rule 1304 Part 70 Operating Permits—Issuance, Renewal, Modification and Reopening (Adopted 11/09/93)
Rule 1305 Part 70 Operating Permits—Enforcement (Adopted 11/09/93)

* * * * *

[FR Doc. 2012–29413 Filed 12–5–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2012–0223; FRL– 9758–8]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: EPA published a direct final rule on October 9, 2012 to amend the definition of heating oil in 40 CFR 80.1401 in the Renewable Fuel Standard (''RFS'') program under section 211(o) of the Clean Air Act. The direct final rule also amended requirements under EPA's diesel sulfur program related to the sulfur content of locomotive and marine diesel fuel produced by transmix processors, and the fuel marker requirements for 500 ppm sulfur locomotive and marine (LM) diesel fuel to allow for solvent yellow 124 marker to transition out of the distribution system. Because EPA received adverse comments on the heating oil definition and transmix amendments, we are withdrawing those portions of the direct final rule. Because EPA did not receive adverse comments with respect to the yellow marker amendments, those amendments will become effective as indicated in the direct final rule.

DATES: Effective December 6, 2012, EPA withdraws the amendments to 40 CFR 80.511, 80.513, 80.572, 80.597, 80.1401, 80.1450, 80.1451, 80.1453, 80.1454, and 80.1460 published at 77 FR 61281 (October 9, 2012). Because EPA did not receive adverse comments with respect to the amendments to 40 CFR 80.510, 80.598, 80.610, and 80.1426, those amendments will become effective on December 10, 2012, as indicated in the direct final rule.

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: EPA published a direct final rule on October 9, 2012 (77 FR 61281) to amend provisions in the renewable fuel standard (RFS) and diesel sulfur fuel programs. The RFS amendment would have changed the definition of home heating oil. The diesel sulfur amendments would have provided

additional flexibility for transmix processors who produce locomotive and marine diesel fuel, and allowed solvent yellow 124 marker to transition out of the distribution system. We stated in the direct final rule that if EPA received timely adverse comment or a hearing request on the rule or any specific portion of the rule, we would 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. We subsequently received adverse comment on the RFS heating oil amendments and the diesel transmix amendments. We did not receive adverse comment on the yellow marker amendments to 40 CFR 80.510, 80.598, 80.610, or the RFS requirement for RIN generation, as amended in 40 CFR 80.1426. Therefore, EPA is withdrawing the direct final rule with respect to the RFS heating oil amendments and the diesel sulfur transmix amendments, but leaving in place the direct final rule with respect to 40 CFR 80.510, 80.598, 80.610, and 80.1426. Those regulatory amendments will take effect on December 10, 2012.

EPA intends to address all comments received on the RFS heating oil and diesel transmix amendments in subsequent final actions, which will be based on the parallel proposed rule also published on October 9, 2012 (77 FR 61313). As stated in the direct final rule and the parallel proposed rule, we will not institute a second comment period on this action.

Dated: November 30, 2012.

Lisa P. Jackson,

Administrator.

Accordingly, the regulatory amendments to 40 CFR 80.511, 80.513, 80.572, 80.597, 80.1401, 80.1450, 80.1451, 80.1453, 80.1454, and 80.1460 published on October 9, 2012 (77 FR 61281) are withdrawn. The regulatory amendments to 40 CFR 80.510, 80.598, 80.610, and 80.1426 will take effect on December 10, 2012.

[FR Doc. 2012–29512 Filed 12–5–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0106; FRL–9369–2]

Alkyl(C_8-C_{18}) dimethylamidopropylamines; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines where the alkyl group is linear and may be saturated and/or unsaturated when used as an inert ingredient at levels not to exceed 20% in herbicide formulations applied to growing crops. Dow AgroSciences, LLC, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines.

DATES: This regulation is effective December 6, 2012. Objections and requests for hearings must be received on or before February 4, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0106, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: William Cutchin, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7990; email address: *cutchin.william@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0106 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before February 4, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any CBI) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number

EPA–HQ–OPP–2012–0106, by one of the following methods:

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

II. Petition for Exemption

In the **Federal Register** of May 2, 2012 (77 FR 25957) (FRL–9346–1), EPA issued a notice pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 1E7949) by Dow AgroSciences, LLC, 9330 Zionsville Rd., Indianapolis, IN 46268. The petition requested that 40 CFR 180.920 be amended by establishing an exemption from the requirement of a tolerance for residues of the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines where the alkyl group is linear and may be saturated and/or unsaturated (9-octadecenamide, *N*-[3-(dimethylamino)propyl]-,(9Z)-, CAS Reg. No. 109–28–4; dodecanamide, *N*-[3-(dimethylamino)propyl], CAS Reg. No. 3179–80–4; octadecanamide, *N*-[3-(dimethylamino)propyl], CAS Reg. No. 7651–02–7; octanamide, *N*-[3-(dimethylamino)propyl], CAS Reg. No. 22890–10–4; decanamide, *N*-[3-(dimethylamino)propyl], CAS Reg. No. 22890–11–5; hexadecanamide, *N*-[3-(dimethylamino)propyl], CAS Reg. No. 39669–97–1; tetradecanamide, *N*-[3-(dimethylamino)propyl], CAS Reg. No. 45267–19–4; amides, coco, *N*-[3-(dimethylamino)propyl], CAS Reg. No. 68140–01–2; *N*-[3-(dimethylamino)propyl]-C_{12}-C_{18}(even numbered)-alkylamide, CAS Reg. No. 1147459–12–8; amides, C_8-C_{18} and C_{18}-unsatd., *N*-[3-(dimethylamino)propyl], CAS Reg. No. 146987–98–6) when used as an inert ingredient at levels not to exceed 20% in herbicide formulations applied to growing crops. That notice referenced a summary of the petition prepared by Dow AgroSciences, LLC, the petitioner, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

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

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with of the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction

with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

The toxicity database for the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines includes acute toxicity studies, *in vitro* genotoxicity assays and a repeat dose developmental/reproductive screening test (OECD 422) toxicity study on a representative *N*-alkyl(C_8-C_{18}) dimethylamidopropylamine member, Amides, coco, *N*-[3-(dimethylamino) propyl]; CAS Reg. No. 68140–01–2 (also referred to as CADPMA). The database is augmented by analogue information in the public domain and EPA's High Production Volume (HPV) program. CAPDMA is included in subcategory 3 of Category I amides within the 2004 HPV submission for Fatty Nitrogen Derived Amides class. CAPDMA has moderate acute oral toxicity with an LD_{50} of 300 milligrams/kilogram/body weight (mg/kg/bw) or greater and is corrosive to the skin and eye, respectively. CAPDMA and its broader class of HPV analogues are negative for genotoxicity across a series of *in vitro* assays. A combined repeated dose toxicity and reproduction and developmental toxicity screening test was conducted in rats with CAPDMA via oral gavage under OECD 422 guidelines. No treatment-related effects were observed in the reproductive or developmental parameters examined. No systemic toxicity was observed in this study. The NOAEL for repeat dose toxicity was 15 mg/kg/bw based on localized gastric irritation due to the irritation and corrosive nature of the material, typical of surfactants seen at the LOAEL of 45 mg/kg/day. The NOAEL for reproductive and mg/kg/day developmental toxicity was the highest dose tested (HDT), 45 mg/kg/day. CAPDMA was negative for mutagenicity in the Ames assay and *in vitro* mammalian chromosome aberration assay. No chronic studies are available for the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines but negative findings for genotoxicity and no preneoplastic lesions were observed in the OECD 422 study on CAPDMA that would suggest no potential for carcinogenicity for the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines. The Agency used a qualitative structure activity relationship (SAR) database, DEREK Version 11, to determine if there were structural alerts suggestive of carcinogenicity. No structural alerts were identified for the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines Neither IARC nor other authoritative bodies have classified the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines as carcinogens based on the SAR analysis, negative findings in both the mutagenicity and clastogenicity studies along with the lack of evidence of specific target organ toxicity. The Agency concluded that these inert ingredients are unlikely to pose a cancer risk to humans. No evidence of immunotoxicity or neurotoxicity was observed in the available database.

A summary of the toxicological endpoints for the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines used for human risk assessment is shown in the Table of this unit.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR THE *N*-ALKYL(C_8-C_{18}) DIMETHYLAMIDOPROPYLAMINES FOR USE IN HUMAN RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effect
Acute dietary (General population including infants and children and Females 13–50 years of age).	No POD identified ...	None	No endpoint of concern following a single exposure was identified in the data base.
Chronic dietary (All populations)	NOAEL = 15 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.15 mg/kg/day. cPAD = 0.15 mg/kg/day.	MRID 48621602 Oral (Gavage) Combined Repeat Dose Toxicity Study with Reproduction/Developmental Toxicity Screening Test in the Rat, NOAEL 15 mg/kg/day based on localized gastric irritation seen at the LOAEL of 45 mg/kg/day.
All Inhalation Exposure Scenarios.	NOAEL = 15 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x 100% inhalation absorption is assumed.	MOE = 100	MRID 48621602 Oral (Gavage) Combined Repeat Dose Toxicity Study with Reproduction/Developmental Toxicity Screening Test in the Rat, NOAEL. 15 mg/kg/day based on localized gastric irritation seen at the LOAEL as of 45 mk/kg/day.
Cancer (Oral, dermal, inhalation).	There is no evidence for carcinogenic concern for the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines.		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. MOE = margin of exposure. LOC = level of concern.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines in food as using the I–Dietary Exposure Evaluation Model (I–DEEM). I–DEEM is a highly conservative model that is based on the assumption that the residue level of the

inert ingredient would be no higher than the highest tolerance for a given commodity. Implicit in this assumption is that there would be similar rates of degradation between the active and inert ingredient (if any) and that the concentration of inert ingredient in the scenarios leading to these highest of tolerances would be no higher than the concentration of the active ingredient. Model estimates were calculated for oral exposure from the use of the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines at a maximum concentration of 20% in herbicidal formulations for all crops (every food eaten by a person each day has tolerance-level residues; D361707, S. Piper, 2/25/09).

2. *Dietary exposure from drinking water.* For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines a conservative drinking water concentration value of 100 ppb based on screening level modeling was used to assess the contribution to drinking water for the chronic dietary risk assessments for parent compound. These values were directly entered into the dietary exposure model.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

The *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines are not currently used, and are not proposed for use as inert ingredients in residential pesticide products. For the general population some exposure to the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines could occur via cosmetic use (at very low concentrations) including hair care dye kits. There is also potential for exposure to these chemicals through the use of personal soaps and shampoos. Incidential oral exposure to *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines resulting from cosmetic uses is not expected. Therefore, a quantitative oral risk assessment was not conducted. Since reliable data are not available, a quantitative dermal/inhalation exposure assessment was not conducted. The current dietary risk assessment is highly conservative and protective of any uses potential exposure via consumer products because the exposed population, children 1–2 years old utilize only 53% of the cPAD leaving about 47% of the cPAD for exposure via consumer products.

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

EPA has not found the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines to share a common mechanism of toxicity with any other substances, and the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines do not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* No evidence of developmental or reproductive toxicity was observed at doses up to 45 mg/kg/day in the Reproduction/Developmental Toxicity Screening Test in Rats (OECD 422 study). The corrosive nature of these chemicals precluded testing at higher doses.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines is adequate for FQPA assessment. The available data included acute toxicity studies, mutagenicity and the Reproduction/Developmental Toxicity Screening Test in rats (OECD 422). The available OECD 422 study evaluated reproductive parameters and developmental toxicity parameters in rats. In addition, it also evaluated hematology, clinical chemistry, organ weights and histopathological parameters. No effects on these parameters were observed at the HDT.

ii. No effects on Functional Observation Battery and motor activity parameters were observed in the Reproduction/Developmental Toxicity Screening Test in rats (OECD 422). Since there is no indication that the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines are neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional uncertainty factor to account for neurotoxicity.

iii. There is no evidence that the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines result in increased susceptibility of infants and children based on the results of the Reproduction/Developmental Toxicity Screening Test in rats, in *in utero* rats or rabbits in the prenatal developmental studies.

iv. There is no evidence of immunotoxicity in the available database. Therefore, there is no need for the immunotoxicity study or additional uncertainty factor.

v. Although the duration of exposure was short in the OECD 422 study, there is no need for an additional uncertainty factor because the effects observed were related to local irritation due to corrosive nature of these chemicals. Based on the lack of progression of severity of effects with time along with the considerable similarities of effects across the species tested and the observation that the vast majority of the effects observed were related to local irritation and corrosive effects, EPA has previously concluded that an additional uncertainty factor for extrapolation from subchronic toxicity study to a chronic exposure scenario would not be needed for highly irritating substances. As a result, the typical 100-fold uncertainty factor is sufficiently protective since it is not expected that humans' response to local irritation/corrosiveness effects would be markedly different based on duration of exposure.

vi. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments

were performed using the highly conservative I–DEEM model. EPA also made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines in drinking water and with regard to potential residential exposures. These assessments will not underestimate the exposure and risks posed by the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines.

E. Aggregate Risks and Determination of Safety

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines are not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines from food and water will utilize 16.5% of the cPAD for the general population, and 53% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit IV.C.3., regarding residential use patterns, chronic residential exposure to *N*-alkyl(C_8-C_{18}) could occur via cosmetic use. While the lack of reliable exposure data precluded the ability to perform a quantitative risk assessment for these uses, the highly conservative nature of the chronic dietary risk assessment would be protective of any uses potential chronic exposure via consumer uses.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). A short-term adverse effect was identified; however, the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines are not currently used as an inert ingredient in pesticide products that are registered for any use patterns that would result in short-term residential exposure. Based on the explanation in Unit IV.C.3., regarding residential use patterns, short-term residential exposure to *N*-alkyl(C_8-C_{18}) could occur via cosmetic use. While the lack of reliable exposure data precluded the ability to perform a quantitative risk assessment for these uses, the highly conservative nature of the chronic dietary risk assessment would be protective of any uses potential short-term residential exposure via consumer uses, and EPA has determined that there are no concerns for short-term aggregate risk for the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines are not currently used as an inert ingredient in pesticide products that are registered for any use patterns that would result in intermediate-term residential exposure. Based on the explanation in Unit IV.C.3., regarding residential use patterns, intermediate-term residential exposure to *N*-alkyl(C_8-C_{18}) could occur via cosmetic use. While the lack of reliable exposure data precluded the ability to perform a quantitative risk assessment for these uses, the highly conservative nature of the chronic dietary risk assessment would be protective of any intermediate-term residential exposure via consumer uses and EPA has determined that there are no concerns for intermediate-term aggregate risk for the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines.

5. *Aggregate cancer risk for U.S. population.* Based on the SAR analysis, negative findings in both the mutagenicity and clastogenicity studies along with the lack of evidence of specific target organ toxicity, the Agency concluded that the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines are unlikely to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines residues.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines in or on any food commodities. EPA is establishing a limitation on the amount of the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines that may be used in pesticide formulations. That limitation will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq*. EPA will not register any pesticide for sale or distribution that contains greater than 20% of the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines by weight in the pesticide formulation.

B. International Residue Limits

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

The Codex has not established a MRL for the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.920 for the *N*-alkyl(C_8-C_{18}) dimethylamidopropylamines when used as an inert ingredient in herbicide formulations applied to growing crops at levels not to exceed 20% of the formulation.

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health

Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: November 21, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.920, alphabetically add the following inert ingredients to the table to read as follows:

§ 180.920 Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * *	* *	*
N-alkyl(C_8-C_{18}) dimethylamidopropylamines where the alkyl group is linear and may be saturated and/or unsaturated (CAS Reg. Nos. 109–28–4, 3179–80–4, 7651–02–7, 22890–10–4, 22890–11–5, 39669–97–1, 45267–19–4, 68140–01–2, 1147459–12–8, 146987–98–6).	Not to exceed 20% by weight in herbicide formulations.	Surfactants, related adjuvants of surfactants.
* * * *	* *	*

[FR Doc. 2012–29106 Filed 12–5–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 8

RIN 0930–AA14

Opioid Drugs in Maintenance and Detoxification Treatment of Opiate Addiction; Proposed Modification of Dispensing Restrictions for Buprenorphine and Buprenorphine Combination as Used in Approved Opioid Treatment Medications

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule amends the federal opioid treatment program regulations by modifying the dispensing requirements for buprenorphine and buprenorphine combination products approved by the Food and Drug Administration (FDA) for opioid dependence and used in federally certified and registered opioid treatment programs. In particular, this rule would allow opioid treatment programs more flexibility in dispensing take-home supplies of buprenorphine—removing restrictions on the time a patient needs to be in treatment in order to receive take-home supplies—after the assessment and documentation of a patient's responsibility and stability to receive opioid addiction treatment medication. Opioid treatment programs that use these products in the treatment of opioid dependence will continue to adhere to all other federal treatment standards established for methadone.

DATES: This rule is effective January 7, 2013.

FOR FURTHER INFORMATION CONTACT: Nicholas Reuter, Center for Substance Abuse Treatment (CSAT), Division of Pharmacologic Therapies, SAMHSA, 1 Choke Cherry Road, Room 2–1063, Rockville, MD 20857, (240) 276–2716, email: *Nicholas.Reuter@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

This final rule will modify the way that the narcotic treatment medication buprenorphine will be dispensed by treatment programs to individuals who are dependent on heroin or on certain prescription pain relievers by reducing

the requirements for dispensing treatment medications for ''take home'' use. Currently, patients in treatment must wait one year before treatment programs may dispense a two week supply of medication. These types of requirements impart a burden on patients and may affect their adherence to treatment. This final rule will provide flexibility to programs in matching patient needs.

There are approximately 1,270 facilities in the U.S. that are specially authorized to use narcotic medications like methadone and buprenorphine to treat addiction. The special authorization is required under federal law because these medications can be abused, and can also produce dependence. To obtain the special authorization, the programs must adhere to requirements that relate to the way patients are selected for treatment, how they receive treatment, and how the treatment medications are dispensed. The Secretary has the authority under 21 U.S.C, 823(g) to establish standards for the quantity of narcotic treatment medications, like buprenorphine, that may be provided by authorized programs for unsupervised use. This rulemaking changes these regulatory standards for buprenorphine.

B. Summary of the Major Provisions of the Regulatory Action in Question

This final rule changes the way one narcotic treatment medication, buprenorphine, is dispensed to patients in admitted to Opioid Treatment Programs (OTPs). The rule permits OTPs to dispense buprenorphine addiction treatment products to patients without requiring the patients to meet eligibility requirements relating to their length of treatment. This change will increase flexibility in treatment and is justified by the experience to date with buprenorphine addiction treatment products, together with buprenorphine's safety profile.

C. Costs and Benefits

The Secretary anticipates that there will be an overall reduction in societal costs if treatment is expanded under this final rule. The costs for OTPs to implement this regulatory change are negligible. The added flexibility will permit OTPs to dispense buprenorphine products more frequently. Insofar as there are costs associated with each dispensing activity, this change could lead to lower overall treatment costs for OTPs. The added flexibility will also benefit patients, who should be able to report to the OTP less frequently, while still benefitting from the counseling, medical, recovery and other services OTPs provide. There may be additional diversion and abuse risks associated with the possible of expansion of treatment, but the Secretary believes that the benefits of increased flexibility and increased access to care in OTP settings outweighs these possible risks.

II. Background

Opioid Treatment Regulations—The opioid treatment program regulations (42 CFR part 8) establish the procedures by which the Secretary will determine whether a practitioner is qualified under Section 303(g) of the Controlled Substance Act (CSA) (21 U.S.C. 823(g)(1)) to dispense certain therapeutic narcotic drugs in the treatment of individuals suffering from narcotic addiction. These regulations also establish the Secretary's standards regarding the appropriate quantities of narcotic drugs that may be provided for unsupervised use by individuals undergoing such treatment (21 U.S.C. 823(g)(1)(c)) (See also 42 U.S.C. 290bb–2a.).

In a notice published in the **Federal Register** on January 17, 2001 (66 FR 4076, January 17, 2001), SAMHSA issued final regulations for the use of narcotic drugs in maintenance and detoxification treatment of opioid addiction. That final rule established an accreditation-based regulatory system under 42 CFR part 8 (''Certification of Opioid Treatment Programs (OTPs)''). The regulations also established (under § 8.12) the Secretary's standards for the use of opioid medications in the treatment of addiction, including standards regarding the quantities of opioid drugs which may be provided for unsupervised use. The SAMHSA regulations establish the standards for determining that practitioners (programs) are qualified for Drug Enforcement Administration (DEA) registration under 21 U.S.C. 823(g)(1). The authority citation for this rule is 21 U.S.C. 823; 42 U.S.C. 290bb–2a, 290aa(d), 290 dd–2, 300×–23, 300×–27(a), 300y–11.

Section 8.12(h) sets forth the standards for medication administration, dispensing and use. Under this Section, OTPs shall use only those opioid agonist treatment medications that are approved by the FDA under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) for use in the treatment of opioid addiction. The regulation listed methadone and levomethadyl acetate (''ORLAAM'') as the opioid agonist treatment medications considered to be approved by the FDA for use in the treatment of opioid addiction.

A. Interim Final Rule—SAMHSA expanded the list of approved medications for use in certified opioid treatment programs by issuing an Interim Final Rule on May 22, 2003 (68 FR 27937, May 22, 2003, ''Interim Final Rule''). This notice was preceded by the FDA's approval of two buprenorphine products (Subutex® and Suboxone®) on October 8, 2002, and the DEA's rescheduling of bulk buprenorphine, as well as all approved medical products containing buprenorphine from Schedule V to Schedule III (see **Federal Register** of October 7, 2002 (67 FR 62354)).

The May 22, 2003, Interim Final Rule added the two FDA-approved buprenorphine addiction treatment products to the previous list of approved opioid treatment medications under 42 CFR 8.12 (h)(2). Effective upon publication, the Interim Final Rule allowed OTPs to use buprenorphine and buprenorphine combination products for the treatment of opioid addiction. In addition, the Interim Final Rule required OTPs to apply the same treatment standards that were finalized on January 17, 2001, for methadone and ORLAAM. These requirements included the restrictions for treatment medications dispensed for unsupervised use, *e.g.,* ''take-home'' medication. Finally, the Interim Final Rule solicited comments on the new provisions.

The ''take-home'' provisions are intended to reduce the risk of abuse and diversion of opioid treatment medications that have abuse potential. The rules tie the amount of ''take home'' medication that a program may dispense to patient characteristics, such as their stability, responsibility and time in treatment. For example, under 42 CFR 8.12(i)(3), a patient would have to be stable in treatment for 9 months to be eligible for a 6-day supply of medication (either methadone or buprenorphine). In addition to the time in treatment eligibility, program physicians must also evaluate and document every patient's stability for take-home medication by applying the factors set forth under 42 CFR 8.12(i)(2).

B. Buprenorphine in Office-Based Opioid Treatment—The Drug Addiction Treatment Act of 2000, (Section 3502 of the Children's Health Act of 2000, Pub. L. 106–310, 21 U.S.C. § 823(g)(2)), ''DATA 2000'') permits qualified physicians to dispense certain opioid treatment medications for the treatment of opioid dependence. Under DATA 2000, qualifying physicians are ''certified'' to obtain waivers from the requirement under 21 U.S.C. 823(g) to obtain approval from SAMHSA as OTPs. Qualifying physicians are

permitted to dispense, including prescribe, Schedule III, IV, and V narcotic controlled drugs approved by the FDA specifically for maintenance or detoxification treatment without being separately registered as a narcotic treatment program by DEA (21 U.S.C. 823(g)(2)(A)). ''DATA Waived'' physicians are not permitted to prescribe the Schedule II medication methadone for addiction or dependence treatment.

Certified physicians are subject to certain limits. For example, certified physicians are authorized to prescribe only opioid medications that are specifically approved by FDA for dependence or addiction treatment. These medications must be controlled in Schedules III through V. This authorization excludes the Schedule II medication methadone. Physicians must be ''qualified'' by credentialing or experience. In addition, physicians are subject to limits on how many patients they can treat at any one time. DATA 2000 did not include restrictions on the amount of an approved drug that may be prescribed to a patient at any one time.

DATA 2000 assigned new responsibilities to both the HHS and the Department of Justice (DOJ). The DEA issued regulations to carry out the DOJ responsibilities, while HHS delegated implementation responsibilities to SAMHSA. SAMHSA has implemented the Department's new responsibilities without new rules. SAMHSA developed a system to accept, review, and verify that physicians fulfill the criteria under DATA to qualify for the waiver. The system assures that physicians complete qualifying training, that they have the necessary DEA registration, and that they are licensed. In addition, SAMHSA developed and issued an office-based treatment guideline, which was a requirement under DATA 2000. The DEA's final regulation removed the regulatory prohibition on prescribing certain narcotic treatment drugs, outlined the process for the interagency review of ''notifications'' under the new law and how the ''unique identification number'' will be assigned, and established recordkeeping requirements for certified physicians. The DEA rule did not establish new requirements or limits for dispensing or prescribing buprenorphine products (70 FR 36338, June 23, 2005).

DEA, FDA and SAMHSA actions to implement DATA 2000 and SAMHSA's May 22, 2003, Interim Final Rule distinguished how the same medications (buprenorphine and buprenorphine combination products) are dispensed in different settings (OTP versus certified physicians). This distinction is because, as explained elsewhere in this notice, OTPs are registered under 21 U.S.C. Section 823(g)(1) of the CSA as practitioner programs. Under this section, SAMHSA certifies and DEA registers ''narcotic treatment programs'' (not individual physicians) to dispense and administer (but not prescribe) approved opioid treatment medications for dependence or addiction treatment. As certified and registered programs with required staffing (physicians, counselors, other health professionals), OTPs are subject to extensive federal, state, and local regulation, including accreditation. OTP medical staffs are required to be licensed and qualified; however, there is no requirement that the OTP physicians, who are part of the treatment team, complete special training on methadone or buprenorphine treatment, or obtain waivers under DATA 2000. As noted elsewhere in this notice, even though it is not required that OTP program physicians obtain waivers to prescribe buprenorphine products, most OTP physicians have completed the training and obtained the waivers. The minority of physicians in OTPs who have not obtained waivers may be located in programs that currently do not use buprenorphine products. Unlike DATA-waivered physicians, federal law does not place a limit on how many patients OTPs treat with buprenorphine or methadone.

C. Comments Submitted in Response to Interim Final Rule—In response to the Interim Final Rule, SAMHSA received two comments from individuals representing hundreds of OTPs providing treatment in several states. While the comments support the Secretary's immediate action to make the new treatment medication available to OTPs expeditiously, the comments questioned the rationale for applying the treatment standards in place for methadone to the new buprenorphine products. One commenter noted that buprenorphine has the same pharmacological properties whether administered by OTPs or ''waived physicians.''

The commenter did not believe that the regulations should preclude OTPs from dispensing buprenorphine in the same manner as private physicians. They stated that it was an error to impose uniquely stringent treatment standards on those clinics best placed to administer buprenorphine products to treat addiction. Because of these dispensing restrictions, the commenter believed that the interim final rule ''in short, will significantly limit if not completely suppress the availability of buprenorphine therapy in OTPs.''

The comments also suggested that the restriction would impact patient care and noted that whether used in an OTP or in a private office, buprenorphine therapy should not be subject to the dispensing restrictions developed to deal with the special risks posed by Schedule II methadone. Commenters noted that from the patient's perspective, the critical advantage of buprenorphine is the possibility of avoiding the long-term daily attendance for dosing that is required with methadone therapy. The commenters stated that ''OTPs have substantial experience in treating a particularly challenging population of patients. Requiring Schedule II type procedures for OTP-based buprenorphine treatment-and by precluding OTPs from administering buprenorphine in the same manner that the drug is available to private physicians risks suppression of addicts entering treatment.''

The commenters requested that SAMHSA provide OTPs with the same take-home prescribing authority which is currently in force for qualified physicians under DATA 2000 suggesting that in this way, there will be no artificial difference in how OTPs prescribe buprenorphine as compared to qualified physicians under DATA 2000. The comments did not suggest changing the OTP dispensing restriction for methadone.

D. Notice of Proposed Rulemaking—After considering the comments submitted in response to the Interim Final Rule, along with administrative considerations, the Secretary decided to not finalize the Interim Final Rule. Instead, the Secretary published a **Federal Register** Notice of Proposed Rulemaking. In the June 19 2009, Notice (74 FR 29153, June 19, 2009) the Secretary proposed to modify the dispensing regime for buprenorphine in OTPs. The proposed rule was based upon the information available that the experience with buprenorphine use in addiction treatment over the last several years, together with the pharmacological properties of the approved buprenorphine treatment products, distinguishes Schedule III buprenorphine products from Schedule II methadone products. Schedule II is the most restrictive Schedule under the Controlled Substances Act, reserved for substances with high potential for abuse and accepted medical use. Substances controlled in Schedule III have a lower potential for abuse compared to Schedule II substances. These distinctions supported the establishment of a less restrictive distribution scheme for Schedule III

buprenorphine products approved to treat opioid dependence.

In the June 19 2009, Notice (74 FR 29153, June 19, 2009), SAMHSA did not propose to change any of the provisions in Subpart A (Accreditation) or Subpart C (Procedures for Review of Suspension or Proposed Revocation of OTP Certification and of Adverse Action Regarding Withdrawal of Approval of an Accreditation Body). Instead, SAMHSA proposed an amendment to Subpart B, Certification and Treatment Standards. SAMHSA proposed to amend only one Section of Subpart B, Section 8.12(i) regarding unsupervised or ''take-home'' use.

Under 42 CFR 8.12(i), OTPs must adhere to requirements for dispensing treatment medications for unsupervised or ''take-home'' use. These restrictions are intended to limit or reduce the potential for diversion of these medications to the illicit market. The proposed rule would remove the restrictions for dispensing buprenorphine and buprenorphine combination products for unsupervised or ''take-home'' use while retaining those requirements for methadone products. The proposed change would be incorporated by adding the following language to 42 CFR 8.12(i)(3): ''The dispensing restrictions set forth in paragraphs (i) through (vi) do not apply to buprenorphine and buprenorphine products listed under 42 CFR section 8.12(h)(2)(iii).'' As discussed throughout this notice, the Secretary believes that buprenorphine's lower potential for abuse, and other factors, when compared to methadone, supports this change.

It should be noted that OTPs would still be required to assess and document each patient's responsibility and stability to handle opioid drug products, including buprenorphine products for unsupervised use set forth under 42 CFR 8.12(i)(2) and 8.12(i)(3). In addition, the provisions of DATA 2000 that limit the total number of patients an office-based physician could treat would not be applied to patients treated with buprenorphine products in OTPs.

In response to the June 19, 2009, proposed rule, the Secretary received 12 comments from patient advocacy groups, addiction treatment provider associations, addiction medicine treatment societies, state regulatory officials, and individuals not affiliated with any organizations. These comments have been considered and analyzed, as discussed below.

E. Discussion, Analyses of Comments. Most comments generally supported the proposed changes to the dispensing restrictions for buprenorphine addiction treatment products in OTPs. A few comments opposed the change, while others either suggested changes to the OTP regulations, or changes to DATA 2000.

1. Those comments that support the modification to the rules stated that the change would significantly increase the use of a valuable treatment medication (buprenorphine) for opioid dependence and addiction through OTPs. They also noted that the change would make the regulations more consistent with DATA 2000. Commenters noted, for example, that ''the analysis supplied by SAMHSA is very complete and accurately reflects the realities of the treatment experience of patients in both OTP's and addiction physicians' offices.'' They note that there is extensive patient experience, including the hundreds of thousands of patients who have received buprenorphine prescriptions from physicians authorized under DATA 2000, that supports the safety and efficacy of buprenorphine addiction treatment products dispensed for unsupervised use. Another comment stated that the proposed rule will help ease the financial and staffing burden incurred with the daily supervised administration of buprenorphine in OTPs. This change may allow OTPs to increase their patient capacity to match the community's needs. Other comments supported the change for its impact on patient access to treatment, particularly in rural settings.

2. Another comment supporting the proposed change urged SAMHSA to go further to implement harm reduction measures, including expanded access to substitution treatment and distribution of sterile injection equipment. The comment is based upon studies that indicate a higher prevalence of intravenous heroin and prescription opioid abuse in patients enrolling in OTPs compared to patients seeking treatment in office-based settings. According to the comment, the increased risk of intravenous drug abuse would also be present in OTP patients who receive buprenorphine products (combination or single entity) for addiction treatment. The commenter was concerned that the hypothetical increase in intravenous buprenorphine abuse would lead to increases in infectious disease transmission and other health issues.

As stated in the June 2009 NPRM, the Secretary anticipates that reducing the distribution restrictions for OTPs using buprenorphine products would increase the number of patients treated in OTPs, expanding access to medication assisted treatment. Although studies may show a higher prevalence of intravenous drug abuse among individuals entering OTPs compared to office-based physicians, it is not clear that these patients would continue intravenous abuse once in treatment, or if they would increase the level of intravenous buprenorphine abuse. Indeed, the number of patients treated with buprenorphine products in OTPs has increased steadily since 2003. According to the 2010 National Survey on Substance Abuse Treatment Services (N–SSATS, a point prevalence, one day client count estimate), OTPs reported treating almost 6,500 patients with buprenorphine products (REF 1). Although a modest number when compared to the hundreds of thousands of patients who receive buprenorphine products from office-based DATA 2000 prescribers, it represents a 5-fold increase since 2005. The Secretary is not aware of a significant increase in intravenous buprenorphine abuse during this period. The Secretary will continue to monitor the treatment field to detect changes in rates of intravenous buprenorphine abuse.

3. One commenter supported the proposal to eliminate the take home restrictions for buprenorphine in OTPs but urged SAMHSA to ''harmonize'' the OTP use of buprenorphine with the requirements of DATA 2000, in particular, the patient limits. A different commenter, while supporting the proposed rule, suggested that the patient limit requirements of DATA 2000 be eliminated altogether. Finally, one comment supported the proposal, but stated that it did not go far enough. This commenter believed that the OTPs rules should be harmonized to eliminate all other requirements under 42 CFR part 8, so that there would be no differences in requirements for patients treated in OTP versus office-based DATA waived physicians.

These comments refer to the requirements under DATA 2000 that physicians adhere to patient limits. Under DATA 2000, a physician initially is limited to treating no more than 30 patients at any one time. DATA 2000 was modified by public law in 2005 to permit physicians to submit applications to treat up to 100 patients at any one time. Of the almost 22,000 physicians certified to prescribe buprenorphine products under DATA 2000, almost 5,200 submitted notifications necessary to treat up to 100 patients.

The Secretary does not intend to issue new rules to ''harmonize'' the use of buprenorphine in OTPs with the use of buprenorphine under DATA 2000 as the commenter suggests. The commenter is correct in noting that DATA 2000 physicians are subject to limits on how

many patients that they may treat with buprenorphine for addiction treatment at any one time, while OTPs are not subject to patient limits. It should be noted, however that under 42 CFR part 8, OTPs are required to provide counseling, medical, drug testing, and other services to each patient admitted to treatment. In addition, OTPs are subject to state laws and regulations, including, in some cases, patient limits. At this time, DATA waived physicians are not required under federal treatment regulations to provide counseling and other services to the patients they treat. The Secretary is not proposing to harmonize either the patient limits or the counseling and services requirements and will not be modifying patient limits in OTPs or for DATA Waived physicians at this time. In addition, the comment to remove most of the requirements set forth under 42 CFR part 8, for OTPs, goes well beyond the scope of changes proposed in the June 2009, NPRM. Additional changes to these regulations would need to be preceded by another notice and comment rulemaking process.

4. One comment urged SAMHSA to address concerns about buprenorphine abuse and diversion from OTPs by ''working with the Drug Enforcement Administration and the Food and Drug Administration to develop a risk evaluation and mitigation strategy.'' The strategy would include dose and quantity limits for buprenorphine, and require that patient demonstrate stability for an unspecified period of time before they are provided buprenorphine products for unsupervised use.

The Secretary notes that the FDA has established a Risk Evaluation and Mitigation Strategy (REMS) program for buprenorphine addiction treatment products.[1] In addition, FDA has established a REMS program for certain buprenorphine pain treatment products. These programs include components on prescriber education to address prescribing practices (including guidance on dosing) and other measures to help ensure that only appropriate patients receive the drug. Making sure that only an appropriate group of patients use the product has the effect of reducing the abuse and diversion of buprenorphine addiction and pain treatment products. SAMHSA has worked with FDA to make the buprenorphine addiction treatment REMS program consistent with these rules. At this time, the Secretary does not believe that modifications to the REMS for buprenorphine addiction treatment products are necessary to ensure the benefits of the product outweigh the risks. In addition, the Secretary does not accept the recommendation that the regulations require OTP patients demonstrate stability for a period of time before receiving buprenorphine take homes. As discussed in the NPRM and throughout this final rule, the Secretary believes that there are adequate safeguards and controls in place to minimize buprenorphine abuse and diversion without applying the time in treatment requirements under 42 CFR 8.12. These include the requirements for patient stability assessments and criteria for stability set forth under 42 CFR 8.12 (i)(2). Under this rule, OTPs will continue to be required to assess patients before unsupervised use and they will continue to be required to provide counseling, which is not required of office-based settings. Finally, as stated elsewhere in this notice, SAMHSA will send a formal guidance letter to all OTP Medical Directors, encouraging them to complete buprenorphine training and obtain a waiver. In the letter, SAMHSA will provide links to Web sites where OTP physicians can complete on-line qualifying training and will offer to send the OTP physicians a CD–ROM to complete training.

5. One comment, representing addiction treatment professionals expressed great concern about ''the potential negative effect the proposed change in regulation would have on the management of opioid dependence'' provided by OTPs. Specifically, the comment stated that removing the restriction for dispensing buprenorphine and buprenorphine combination products in OTPs will lead to poorer treatment outcomes and increased diversion. This problem would arise because OTP patients are often in programs (as opposed to office-based physician settings) because ''they require the structure offered in methadone maintenance (frequent dosing within the clinic environment, frequent contact with clinical staff).'' The comment contends that ''OTPs are a primary referral for patients receiving buprenorphine/naloxone in office-based treatment settings who have been unable to comply with treatment requirements or to discontinue illicit drug use.'' In addition, the comment states that ''patients in methadone maintenance/narcotic treatment programs often have more severe illness (poly-substance abuse/dependence, co-occurring mental illness, antisocial behaviors associated with early drug abuse treatment).''

The Secretary is not aware of evidence to support the assertion that OTPs serve as primary referral centers for non-compliant office-based patients and those office-based patients unable to discontinue drug use, or that OTP patients are more likely to have more severe illness compared to patients treated in office-based settings. The commenter did not provide evidence that removing the take home restrictions for buprenorphine products for patients treated in OTPs would interfere with the medical, drug testing, counseling, and other services that OTPs are required to provide to patients admitted to treatment. In addition, the proposal removes the time in treatment schedule for dispensing buprenorphine products but does not remove the requirement that every patient is assessed for stability before any buprenorphine products are dispensed by an OTP for unsupervised use. As discussed above, providers treating patients in OTPs with approved buprenorphine products are required under the Drug Addiction Treatment Act to provide counseling and other services to patients treated with buprenorphine products, and to assess and document patient suitability and stability before buprenorphine is prescribed for unsupervised use. Office-based buprenorphine providers are not required to provide counseling and to assess suitability and stability.

The same commenter suggested that patients in OTPs are dosed daily until stability is demonstrated. Permitting OTPs to dispense ''buprenorphine products in up to 1-month prescriptions rapidly upon starting this therapy will result in patients losing that important component of their treatment * * * [and] will result in poorer treatment outcomes for this population as well as substantial increases in diversion of the drug.'' The commenter believes that increases in buprenorphine diversion could jeopardize the availability of buprenorphine treatment modality. However, OTPs are not required to dispense a one month supply to every patient; programs are required to assess patients and dispense amounts that meet criteria for stability.

Taken together, the Secretary believes that the risk for buprenorphine diversion from buprenorphine dispensed by OTPs in accordance with this final rule will be less than the risk of diversion associated with office-based settings. Nonetheless, at least annually, SAMHSA will, in consultation with the

[1] The Food and Drug Administration Amendments Act of 2007 gave FDA the authority to require a Risk Evaluation and Mitigation Strategy (REMS) from manufacturers to ensure that the benefits of a drug or biological product outweigh its risks.

Office of National Drug Control Policy (ONDCP) and relevant HHS agencies, review new data on buprenorphine diversion from OTPs and, if necessary, SAMHSA will take formal steps to address this diversion.

The same comment acknowledges that buprenorphine diversion is increasing now, but contends that the risk of diversion ''will increase further should generic buprenorphine (without naloxone) become the preferred formulation used by narcotic treatment programs.'' The comment states that generic single entity (''mono'') formulations will be less expensive than the fixed combination buprenorphine/naloxone products. OTPs seeking higher profit margins will dispense the less expensive and presumptively more abuseable mono formulation, contributing to an increase in abuse and diversion.

The Secretary acknowledges that generic versions of Subutex (a mono formulation of buprenorphine) were first approved in October 2009 and are priced nominally less than the combination (Suboxone product). Generic mono buprenorphine formulations have been available for almost two years. The amount of mono buprenorphine prescribed by office-based physicians has increased steadily in this period of time to almost 12 percent of the total number of patients receiving prescriptions in 2010 (REF 2). As discussed below, the Secretary is aware of reports on increasing buprenorphine abuse and diversion, including diversion in criminal justice settings (REF 3). The Secretary is not aware of compelling evidence to support the assertions that OTPs will predominantly dispense mono buprenorphine more than office-based physicians. Regardless, as noted above, the controls in place under the 42 CFR 8.12, will mitigate diversion issues in OTPs with either buprenorphine formulation.

6. One comment expressed concern that the availability of buprenorphine treatment through narcotic treatment programs ''could discourage office-based practitioners from offering this treatment; particularly if third party payers encourage such treatment from narcotic treatment programs and introduce barriers to office-based treatment.''

The Secretary is not aware of any evidence to support the suggestion the regulatory changes on buprenorphine distribution in OTP settings would discourage office-based buprenorphine treatment, or that third party payers would react to by creating additional barriers to reimbursement for office-based treatment under DATA 2000. Buprenorphine products have been available for office-based treatment and for use in OTPs since 2003. Buprenorphine treatment has been covered by public and private insurance providers in both OTP and office-based settings. It is unclear how changing the way buprenorphine products are dispensed by OTPs will have any direct or indirect impact on private or public reimbursement decisions, or on office-based physicians willingness to continue to treat patients in that setting.

7. One comment recommended that physicians in OTPs be required to obtain the waiver to prescribe buprenorphine under DATA 2000, and to complete the training that is one of the requirements under DATA 2000. The commenter ''believes it would be irresponsible to simply permit uneducated physicians working in narcotic treatment programs to begin to prescribe this medication with no foundation as to its proper use.'' The same comment recommended that non-physician OTP staff also be required to obtain education on buprenorphine.

Another comment, referring to DATA 2000 stated that ''qualified physicians are authorized [to use buprenorphine in addiction treatment]—not programs.'' The same commenter suggested allowing Nurse Practitioners to become qualified to treat these patients.

The Secretary has carefully considered this recommendation, but does not at this time believe that it is necessary to modify the Opioid Treatment Regulations to require all OTP physicians to complete training and obtain waivers under DATA 2000. The Drug Addiction Treatment Act (21 U.S.C. 823(g)(2)(F), did not establish any additional training or educational requirements for practitioners, including OTPs that dispense Schedule III–V narcotic drugs and are registered as treatment programs under 21 U.S.C. 823(g)(1). Indeed, DATA 2000 specifically authorized treatment programs registered under 21 U.S.C. 823(g)(1) to use Schedule III—V narcotic drugs for addiction and dependence treatment. In addition, 42 CFR 8.12 (d), requires ''that each person engaged in the treatment of opioid addiction must have sufficient education, training, and experience, or any combination thereof, to enable that person to perform the assigned functions.'' This requirement applies to OTP program physicians, who order both methadone and buprenorphine for patients admitted to OTPs. OTP program physicians have been authorized to order buprenorphine products for patients admitted to treatment since the interim final rule was issued in 2003. Moreover, SAMHSA has analyzed its OTP Medical Director database and cross referenced it to the database of physicians with DATA waivers. This analysis indicates that as of October 2012 at least 80 percent of the Medical Directors in OTPs have sought and obtained DATA 2000 waivers to prescribe buprenorphine products in office-based or other settings.

As stated elsewhere in this notice, SAMHSA will send a formal guidance letter to all OTP Medical Directors, encouraging them to complete buprenorphine training and obtain a waiver. In the letter, SAMHSA will provide links to Web sites where OTP physicians can complete on-line qualifying training and will offer to send the OTP physicians a CD–ROM to complete training.

There are many other resources available to OTP staff on the use of buprenorphine in the treatment of opioid dependence. SAMHSA has issued two treatment improvement protocols (TIPs): ''TIP 40: Clinical Guidelines for the Use of Buprenorphine in the Treatment of Opioid Addiction'' and ''TIP 43: Medication Assisted Treatment for Opioid Addiction in Opioid Treatment Programs.'' These treatment guidelines provide extensive evidence-based clinical guidelines on the use of buprenorphine, as well as methadone and other medications in treating opioid dependence. These guidelines are supplemented by the SAMHSA-funded Physician Clinical Support System which provides continuous assistance and training to OTP physicians who need more information on using buprenorphine in dependence treatment.

The Treatment Improvement Protocols, discussed above, are also available to non-physician OTP Staff. In addition, SAMHSA has developed specific guidance for nurses in OTPs or other practice settings such as ''Technical Assistance Publication 30—Buprenorphine: A Guide for Nurses.'' SAMHSA also sponsors continuing medical education seminars for nurses on using buprenorphine in OTPs (see *www.dpt.samhsa.gov.*)

There is also information available on buprenorphine treatment to counselors and other addiction treatment professionals. For example, the SAMHSA-supported network of Addiction Technology Transfer Centers (ATTCs) offers classroom training and other information on using buprenorphine in opioid dependence treatment, including treatment in adolescent populations. (See Short-

Term Opioid Withdrawal Using Buprenorphine: Findings and Strategies from a NIDA Clinical Trials Network (CTN) Study, *http://www.nattc.org/explore/priorityareas/science/blendinginitiative/bupdetox/*).

The Secretary believes that there are considerable education resources available to physicians and non-physician staff in OTPs and that these resources are being used. Finally, the Drug Addiction Treatment Act authority to prescribe buprenorphine addiction treatment products does not extend to practitioners such as nurse practitioners or physicians assistants.

8. One comment recommended that the regulations be modified to establish dose limits for patients treated with buprenorphine products in OTPs. Specifically, the OTP must document the need for any daily dose above 16 mg per day. The commenter provided references to support that 16 mg per day occupies 95 percent of the mu-opioid receptor, and any dose above that amount invites diversion.

The existing OTP regulations (42 CFR 8.12(h)(4)) require that ''each opioid agonist treatment medication used by the program is administered and dispensed in accordance with its approved product labeling.'' Further, the current regulations require that any significant deviations from this labeling, including dosing deviations, are documented in the patient record. The Secretary notes that there are no daily dose limits applied to physicians who prescribe buprenorphine products under their DATA 2000 waiver authority. Accordingly, it is not clear whether establishing a specific 16 mg per day dose limit for buprenorphine dispensed by OTPs would have a measureable impact above the current regulatory requirements. As such, the Secretary declines the recommendation to establish buprenorphine dose limits for OTPs.

9. One comment recommended an increase in the required number of random urine toxicology screening tests within OTPs to at least twice monthly. According to the comment, this level of drug testing is necessary to demonstrate that drug use has ceased or has been at least reduced.

The current regulations require, at a minimum, that OTPs conduct at least 8 random drug tests each year. These tests must be adequate, and are used to monitor a patient's progress in treatment as well as to guide the OTP physician on appropriate take-home doses. The comment provided no evidence to support how increasing the frequency of drug testing in OTPs beyond the minimum of eight per year would produce benefits that would outweigh the additional costs. The Secretary notes OTPs can conduct more frequent drug testing that can be tailored to individual patient needs and treatment status. Further, there is no federal regulatory requirement that a physician that prescribes buprenorphine products under DATA 2000 waivers conduct any drug testing with their patients. This final rule does not increase the number of required drug tests in OTPs.

After carefully analyzing the comments submitted in response to the June 2009 NPRM, together with additional information on buprenorphine abuse and diversion, the Secretary concludes that the OTP regulations should be modified as proposed in the 2009 NPRM. Specifically, the time in treatment restrictions are eliminated for buprenorphine products use in SAMHSA-certified OTPs.

There is now even more experience with buprenorphine in the treatment of opioid dependence. Since 2002, almost 22,000 physicians have sought and obtained the federal certification to prescribe buprenorphine products. According to the DEA Automated Reports Consolidated Orders System (ARCOS), over 190 million dosage units were distributed to pharmacies in 2010, a more than fourfold increase from the almost 40 million dosage units distributed in 2006. It should be noted that only 1.1 million dosage units were distributed to OTPs during 2010. In addition, almost 800,000 individuals received buprenorphine addiction treatment prescriptions from office-based physicians in 2010, increasing almost fivefold from the 150,000 estimated in 2006. (REF 4).

Although buprenorphine abuse and diversion has increased concomitantly with the increase in availability according to information from published literature reports and from long-standing monitoring systems maintained by FDA, SAMHSA, and DEA, the scope, extent, and nature of abuse and diversion, while a major concern, are considerably less—and qualitatively different than the scope, nature, and extent associated with methadone and other Schedule II and Schedule III opioid drug products. Nonetheless, there are initiatives underway to address escalating buprenorphine abuse and diversion, and its consequences. These include the FDA REMS initiative for buprenorphine, the Physician Clinical Support System, and the updated buprenorphine office-based physician training curriculum.

One monitoring system is SAMHSA's Drug Abuse Warning Network (DAWN). DAWN is a public health surveillance system that monitors drug-related visits to hospital emergency departments (EDs). Hospital emergency department (ED) visits involving the nonmedical use (or misuse/abuse) of buprenorphine are increasing with the increased availability of buprenorphine products; however, ED visits involving the nonmedical use (or misuse/abuse) of buprenorphine are substantially less than other opioids in the class. According to the DAWN 2006 national tables, out of an estimated 741,425 drug-related ED visits involving the nonmedical use of pharmaceuticals in 2006, there were an estimated 4,440 (95 percent confidence interval [CI] 823 to 8,057) visits involving buprenorphine/combinations. The 2010 DAWN indicates that out of 1,173,654 drug-related ED visits involving nonmedical use of pharmaceuticals in 2010, there were an estimated 15,778 (95 percent confidence interval [CI] 10,815 to 20,741) visits involving buprenorphine/combinations. While the number of visits in DAWN for buprenorphine/combinations doubled between 2007 and 2009, the increase between 2009 and 2010 (1,522 more reports) was not significant at the p.05 level. The rates for buprenorphine/combinations in 2006 were 1.5 per 100,000 population and 5.1 per 100,000 population in 2009. Non-medical use of buprenorphine/combinations has increased almost four-fold since 2006. (REF 5). It should be noted that analyses of the increases in DAWN reports over the years should also factor in increases in the number of buprenorphine tablets sold per year. (REF 6).

Increasing buprenorphine abuse and misuse has been identified in other substance abuse surveillance instruments. For example, the Researched Abuse, Diversion and Addiction-Related Surveillance (RADARS®) System is a prescription drug abuse, misuse and diversion surveillance system that collects timely product- and geographically-specific data. The RADARS System measures rates of abuse, misuse and diversion throughout the United States (U.S.). Recent information from the RADARS system indicates that abuse of the mono formulation of buprenorphine may be increasing. The same system suggests that intravenous abuse of the mono formulation has increased recently (REF 8).

Increasing buprenorphine abuse, as measured by DAWN, is a concern, and there are measures underway to identify and mitigate this abuse. Buprenorphine DAWN reports must be considered in the context of DAWN non-medical use

reports for other opioids. In 2009 there were an estimated 14,266 (95 percent confidence interval [CI] 8,001 to 20,531) visits involving buprenorphine/combinations. The DAWN non-medical use ED visits for other opioids for 2010 are as follows:

Oxycodone/combinations—146,355 visits (95 percent C.I. 106,109—186,602);

Hydrocodone/combinations—95,972 visits (95 percent C.I. 74,472—117,472);

Fentanyl/combinations—21,196 visits (95 percent C.I. 15,872—26,520);

Hydromorphone/combinations—17,666 (95 percent C.I. 12,502—22,830); and,

Methadone—65,945 (95 percent C.I. 52,085—79,806).

Buprenorphine diversion—NFLIS—The National Forensic Laboratory Information System (NFLIS) is a DEA, Office of Diversion Control program that collects drug identification results and associated information from drug cases analyzed by federal, state, and local forensic laboratories. These laboratories analyze substances secured in law enforcement operations. NFLIS From 2003 to 2008, the national estimated number of methadone items reported in NFLIS more than doubled from 4,967 items to 10,459 items ($p < 0.05$), while buprenorphine increased more than 250-fold from 21 items to 5,627 items ($p < 0.05$). The greatest increases in NFLIS items were in the Northeast U.S. where per capita distribution of buprenorphine is greatest (REF 7).

DEA STRIDE—The DEA's System to Retrieve Information from Drug Evidence II (STRIDE) collects the results of drug evidence analyzed at DEA laboratories across the country. STRIDE reflects evidence submitted by the DEA, other federal law enforcement agencies, and some local police agencies that was obtained during drug seizures, undercover drug buys, and other activities. STRIDE captures data on both domestic and international drug cases; however, the following results describe only those drugs obtained in the U.S. STRIDE data and their generalization are limited by inconsistent and underreporting at the state and local level. During 2008, a total of 51,022 drug exhibits or items were reported in STRIDE, about 3 percent of the estimated 1.8 million drug items analyzed by state and local laboratories during this period. In STRIDE, methadone and buprenorphine each represented less than 1 percent of total drug items reported in 2008. The number of methadone items reported in STRIDE increased from 97 items in 2003 to 159 in 2006, then fell to 130 in 2007 and rose to 165 in 2008. Buprenorphine items increased from 8 items in 2003 to 53 items in 2008.

In sum, buprenorphine abuse and diversion are measureable and increasing. The levels of actual abuse (not adjusted for rate of use) and diversion are noticeably less than other opioids. The Secretary will continue to monitor abuse while applying the specific buprenorphine abuse reduction interventions discussed elsewhere in this notice. While cognizant of this abuse, the Secretary believes that eliminating the time in treatment restrictions for buprenorphine will result in more patients treated in structured opioid treatment programs, where controls and requirements can be applied to identify and address buprenorphine abuse and diversion.

Importantly, the consequences of buprenorphine abuse further distinguish buprenorphine from methadone and other opioids. Two recent review articles discuss buprenorphine toxicity. These articles include reports from the National Poison Control Centers of the American Association of Poison Control Centers. (REFS 8, 9). According to these reports, which covered years 2000 through 2008, there were fewer than nine buprenorphine associated deaths over the nine year period. During the same period of time, there were 654 methadone associated deaths. These reports, together with the discussion in the Proposed Rule, further distinguish buprenorphine from methadone in overall toxicity. One report highlights the risks and severe consequences associated with pediatric buprenorphine poisoning. (REF 9). That same article recommends special precautions and warnings to mitigate the risk of pediatric buprenorphine exposure. Finally, information is presented that contrasts buprenorphine and methadone safety concerns for treatment for opioid dependence during pregnancy. (REF 9).

These peer-reviewed articles support the concept that the consequences of buprenorphine abuse are fewer and less severe than those associated with methadone. Nonetheless, SAMHSA will continue to work with other federal agencies, including FDA with its REMS program, to develop strategies to minimize the consequences of buprenorphine abuse in OTP and office-based settings. In addition, at least annually, SAMHSA will, in consultation with ONDCP and relevant HHS agencies, review new data on buprenorphine diversion from OTPs and, if necessary, SAMHSA will take formal steps to address this diversion, including additional provider training or additional guidance on appropriate prescribing. As stated elsewhere in this notice, SAMHSA will send a formal guidance letter to all OTP Medical Directors, encouraging them to complete buprenorphine training and obtain a waiver. In the letter, SAMHSA will provide links to Web sites where OTP physicians can complete on-line qualifying training and will offer to send the OTP physicians a CD–ROM to complete training.

The Secretary notes that state entities have also initiated programs to inform prescribers on buprenorphine and pediatric exposures. Under the OTP regulations, all take-home doses dispensed by OTPs must be in dispensed in ''packages designed to reduce the risk of accidental ingestion, including child proof containers.'' (see 42 CFR 8.12(i)(5)). Finally, OTPs have considerable experience in treating pregnant patients. This final rule will increase the flexibility in how OTPs can dispense buprenorphine products, and permit programs to expand treatment to this population.

The Secretary concludes that there is adequate information in the administrative record for this rulemaking to eliminate the take-home dispensing schedule for buprenorphine products as set forth in Section IV.

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IV. Summary of Final Regulation

The opioid treatment program regulations (42 CFR part 8) establish the procedures by which the Secretary will determine whether a practitioner is qualified under Section 303(g) of the CSA (21 U.S.C. 823(g)(1)) to dispense certain therapeutic narcotic drugs in the treatment of individuals suffering from narcotic addiction. These regulations also establish the Secretary's standards regarding the appropriate quantities of narcotic drugs that may be provided for unsupervised use by individuals undergoing such treatment (21 U.S.C. 823(g)(1)(c)). (See also 42 U.S.C. 290bb–2a.)

SAMHSA is not changing any of the provisions in Subpart A (Accreditation) or Subpart C (Procedures for Review of Suspension or Proposed Revocation of OTP Certification and of Adverse Action Regarding Withdrawal of Approval of an Accreditation Body). Instead, SAMHSA is finalizing an amendment to Subpart B, Certification and Treatment Standards. If finalized, the rule would amend only one section of Subpart B, Section 8.12(i), Unsupervised or ''take-home'' use.

Under 42 CFR 8.12(i), OTPs must adhere to requirements for dispensing treatment medications for unsupervised or ''take-home'' use. These restrictions are intended to limit or reduce the potential for diversion of these medications to the illicit market. The effect of this final rule is to remove the restrictions for dispensing buprenorphine and buprenorphine combination products for unsupervised or ''take-home'' use while retaining those requirements for methadone products. This change will be incorporated by adding the following language to 42 CFR 8.12(i)(3): ''The dispensing restrictions set forth in paragraphs (i) through (vi) do not apply to buprenorphine and buprenorphine products listed under 42 CFR section 8.12(h)(2)(iii).''

It should be noted that OTPs are still required to assess and document each patient's responsibility and stability to handle opioid drug products for unsupervised use set forth under 42 CFR 8.12(i)(2) and 8.12(i)(3).

V. Regulatory Impact and Notices

Executive Orders 13563 and 12866

Executive Order 13563 of January 18, 2011 (lmproving Regulation and Regulatory Review), explicitly states that our ''regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.'' Consistent with this mandate, Executive Order 13563 requires agencies to tailor ''regulations to impose the least burden on society, consistent with obtaining regulatory objectives.'' Executive Order 13563 also requires agencies to ''identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice'' while selecting ''those approaches that maximize net benefits.'' This final rule sets forth a regulatory approach that will reduce burdens to providers and to consumers, while continuing to provide adequate protections for public health and welfare.

The Secretary has examined the impact of this final rule under Executive Order 12866, which directs federal agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity). This final rule does not establish additional regulatory requirements; it allows an activity that is otherwise prohibited. According to Executive Order 12866, a regulatory action is ''significant'' if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million; adversely affecting in a material way a sector of the economy, competition, or jobs; or if it raises novel legal or policy issues. A detailed discussion of the Secretary's analysis is contained in the opioid treatment Final Rule published in the **Federal Register** of January 17, 2001 (66 FR 4086–4090). That notice described the impact of the opioid treatment regulations, analyzed alternatives, and considered comments from small entities. In addition, a **Federal Register** notice published April 17, 2006, offered the opportunity for comments on this information collection activity.

While this is a significant regulatory action as defined by Executive Order 12866, the Secretary finds that it does not confer significant costs to regulated entities warranting a regulatory flexibility analysis. See the Regulatory Flexibility discussion below. The rule permits OTPs to dispense buprenorphine and buprenorphine combination products for take home use. If opioid treatment programs choose to use these products, the new medications will be used in accordance with all other standards set forth in the January 17, 2001, Final Rule (66 FR 4090). No new regulatory requirements are imposed by this final rule; however, some regulatory requirements will be reduced.

The Secretary anticipates that there will be an overall reduction in societal costs if treatment is expanded under this final rule. The costs for OTPs to implement this regulatory change are negligible. The added flexibility will permit OTPs to dispense buprenorphine products more frequently. Insofar as there are costs associated with each dispensing activity, this change could lead to lower overall treatment costs for OTPs. The added flexibility will also benefit patients, who should be able to report to the OTP less frequently, while still benefitting from the counseling, medical, recovery and other services OTPs provide. There may be additional diversion and abuse risks associated with the possible of expansion of treatment, but the Secretary believes that the benefits of increased flexibility and increased access to care in OTP settings outweigh these possible risks.

Regulatory Flexibility Analysis

For the reasons outlined above, the Secretary has determined that this final rule will not have a significant impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 605(b)). The flexibility added by this final rule will not require addition expenditures by OTPs. Therefore, an initial regulatory flexibility analysis is not required for this final Rule.

As mentioned in the section on Executive Orders 13563 and 12866, the Secretary anticipates that there will be an overall reduction in societal costs if treatment is expanded under this final rule. The costs for OTPs to implement this change to regulation are negligible. The added flexibility will permit OTPs to dispense buprenorphine products more frequently. Insofar as there are costs associated with each dispensing activity, this could lead to lower overall treatment costs for OTPs. The added flexibility will also benefit patients, who should be able to report to the OTP less frequently, while still benefitting from the counseling, medical, recovery and other services OTPs will provide.

The Secretary has determined that this rule is not a major rule for the purpose of congressional review. For the

purpose of congressional review, a major rule is one which is likely to cause an annual effect on the economy of $100 million; a major increase in costs or prices; significant effects on competition, employment, productivity, or innovation; or significant effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This is not a major rule under the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996.

Unfunded Mandates

The Secretary has examined the impact of this rule under the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4). This rule does not trigger the requirement for a written statement under section 202(a) of the UMRA because it does not impose a mandate that results in an expenditure of $100 million (adjusted annually for inflation) or more by either state, local, and tribal governments in the aggregate or by the private sector in any 1-year.

Environmental Impact

The Secretary has previously considered the environmental effects of this rule as announced in the Final Rule (66 FR 4076 at 4088). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that neither an environmental assessment nor an environmental impact statement is required.

Executive Order 13132: Federalism

The Secretary has analyzed this final rule in accordance with Executive Order 13132: Federalism. Executive Order 13132 requires federal agencies to carefully examine actions to determine if they contain policies that have federalism implications or that preempt state law. As defined in the Order, ''policies that have federalism implications'' refer to regulations, legislative comments or proposed legislation, and other policy statements or actions 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.

The Secretary is publishing this final rule to modify treatment regulations that provide for the use of approved opioid agonist treatment medications in the treatment of opiate addiction. The Narcotic Addict Treatment Act (NATA, Pub. L. 93–281) modified the Controlled Substances Act (CSA) to establish the basis for the Federal control of narcotic addiction treatment by the Attorney General and the Secretary. Because enforcement of these Sections of the CSA is a federal responsibility, there should be little, if any, impact from this rule on the distribution of power and responsibilities among the various levels of government. In addition, this final rule does not preempt State law. Accordingly, the Secretary has determined that this final rule does not contain policies that have federalism implications or that preempt state law.

Paperwork Reduction Act of 1995

This final rule modifies 42 CFR 8.12(i) by reducing regulatory dispensing requirements for buprenorphine and buprenorphine combination products that may be used in SAMHSA-certified opioid treatment programs. The final rule establishes no new reporting or recordkeeping requirements beyond those discussed in the January 17, 2001, Final Rule (66 FR 4076 at 4088). On March 7, 2010, the Office of Management and Budget approved the information collection requirements of the Final Rule under control number 0930–0206.

Privacy Act

SAMHSA has determined that the Opioid Treatment Waiver Notification System (OTWNS) constitutes a system of records under the Privacy Act. The **Federal Register** notice announcing establishment of the buprenorphine waiver notification system as a system of records was published on April 25, 2002 (67 FR 20543, April 25, 2002). That system was assigned the identification number 09–30–0052

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000) requires us to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' as defined in the Executive Order, to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the federal government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.''

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175.

Dated: February 23, 2012.

Pamela S. Hyde,

Administrator, SAMHSA.

Dated: March 8, 2012.

Kathleen Sebelius,

Secretary.

Editorial Note: This document was received at the Office of the Federal Register on November 30, 2012.

List of Subjects in 42 CFR Part 8

Health professions, Levo-Alpha-Acetyl-Methadol (LAAM), Methadone, Reporting and recordkeeping requirements.

For the reasons set forth above, Part 8 of Title 42 of the Code of Federal Regulations is amended as follows:

PART 8—CERTIFICATION OF OPIOID TREATMENT PROGRAMS

■ 1. The authority citation for Part 8 continues to read as follows:

Authority: 21 U.S.C. 823; 42 U.S.C. 290bb–2a, 290aa(d), 290dd–2, 300x–23, 300x–27(a), 300y–11.

■ 2. Section 8.12(i)(3) is revised to read as follows:

§ 8.12 Federal opioid treatment standards.

* * * * *

(i) * * *

(3) Such determinations and the basis for such determinations consistent with the criteria outlined in paragraph (i)(2) of this section shall be documented in the patient's medical record. If it is determined that a patient is responsible in handling opioid drugs, the dispensing restrictions set forth in paragraphs (i)(3)(i) through (vi) of this section apply. The dispensing restrictions set forth in paragraphs (i)(3)(i) through (vi) of this section do not apply to buprenorphine and buprenorphine products listed under paragraph (h)(2)(iii) of this section.

* * * * *

[FR Doc. 2012–29417 Filed 12–5–12; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 101013504–0610–02]

RIN 0648–XC353

Atlantic Surfclam and Ocean Quahog Fisheries; 2013 Fishing Quotas for Atlantic Surfclams and Ocean Quahogs; and Suspension of Minimum Atlantic Surfclam Size Limit

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

ACTION: Temporary rule.

SUMMARY: NMFS suspends the minimum size limit for Atlantic surfclams for the 2013 fishing year. NMFS also announces that the quotas for the Atlantic surfclam and ocean quahog fisheries for 2013 will remain status quo. Regulations governing these fisheries require NMFS to notify the public in the **Federal Register** of the allowable harvest levels for Atlantic surfclams and ocean quahogs from the Exclusive Economic Zone if the previous year's quota specifications remain unchanged.

DATES: Effective January 1, 2013, through December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Jason Berthiaume, Fishery Management Specialist, (978) 281–9177; fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Section 648.72(c) of the regulations implementing the fishery management plan (FMP) for the Atlantic surfclam and ocean quahog fisheries authorizes the Administrator, Northeast Region, NMFS (Regional Administrator), to suspend annually, by publication of a notification in the **Federal Register**, the minimum size limit for Atlantic surfclams. This action may be taken unless discard, catch, and biological sampling data indicate that 30 percent or more of the Atlantic surfclam resource is smaller than 4.75 in (120 mm) and the overall reduced size is not attributable to harvest from beds where growth of the individual clams has been reduced because of density-dependent factors.

At its June 2012 meeting, the Mid-Atlantic Fishery Management Council (Council) voted to recommend that the Regional Administrator suspend the minimum size limit for Atlantic surfclams for the 2013 fishing year. Commercial surfclam data for 2012 were analyzed to determine the percentage of surfclams that were smaller than the minimum size requirement. The analysis indicated that 5.6 percent of the overall commercial landings were composed of surfclams that were less than 4.75 in (120 mm). Based on these data, the Regional Administrator concurs with the Council's recommendation and suspends the minimum size limit for Atlantic surfclams from January 1 through December 31, 2013.

The FMP for the Atlantic surfclam and ocean quahog fisheries requires that NMFS issue notification in the **Federal Register** of the upcoming year's quota, even in cases where the quota remains unchanged from the previous year. At its June 2012 meeting, the Council also voted that no action be taken to change the quota specifications for Atlantic surfclams and ocean quahogs for the 2013 fishing year (January 1 through December 31, 2013), and recommended maintaining the 2012 quota levels of 3.4 million bu (181 million L) for Atlantic surfclams, 5.333 million bu (284 million L) for ocean quahogs, and 100,000 Maine bu (3.524 million L) for Maine ocean quahogs, as announced in the **Federal Register** on December 27, 2010 (75 FR 81142).

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: December 3, 2012.

Lindsay Fullenkamp,

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

[FR Doc. 2012–29518 Filed 12–5–12; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 235
Thursday, December 6, 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 ENERGY

10 CFR Parts 429 and 431

[Docket Number: EERE–2012–BT–CE–0048]

RIN 1904–AC90

Energy Conservation Program: Certification of Commercial and Industrial HVAC, Refrigeration and Water Heating Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Energy (DOE or the ''Department'') proposes to amend the compliance dates for revisions to its certification regulations for certain commercial and industrial equipment covered under the Energy Policy and Conservation Act of 1975, as amended (EPCA or the ''Act''). Specifically, DOE is proposing a 12-month extension to the compliance date for the certification provisions of commercial refrigeration equipment; commercial heating, ventilating, air-conditioning (HVAC) equipment; and commercial water heating equipment. DOE is proposing to retain a December 31, 2012 certification date for automatic commercial ice makers. Lastly, DOE is proposing a correction in the packaged terminal equipment standards table, which would impact standard-size packaged terminal air conditioners and packaged terminal heat pumps with a cooling capacity of 15,000 Btu/h.

DATES: DOE will accept comments, data, and information regarding the notice of proposed rulemaking (NOPR) postmarked no later than December 21, 2012.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov*. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2012–BT–CE–0048, by any of the following methods:

- *Email:* to *CCENOPR2012CE0048@ee.doe.gov.* Include EERE–2012–BT–CE–0048 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Revisions to Energy Efficiency Enforcement Regulations, EERE–2012–BT–CE–0048, 1000 Independence Avenue SW., Washington, DC 20585–0121. Phone: (202) 586–2945. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. Phone: (202) 586–2945. Please submit one signed paper original.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking.

Docket: For access to the docket to read background documents, or comments received, go to the Federal eRulemaking Portal at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: 202–586–6590. Email: *Ashley.Armstrong@ee.doe.gov;* and Ms. Laura Barhydt, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–32, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 287–5772. Email: *Laura.Barhydt@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On March 7, 2011, DOE published a final rule in the **Federal Register** that, among other things, modified the requirements regarding manufacturer submission of compliance statements and certification reports to DOE (hereafter referred to as the March 2011 Final Rule) (76 FR 12421). These certification provisions are central to the Department's regulatory framework for ensuring that covered products and equipment sold in the Unites States comply with existing Federal energy conservation standards and associated regulations.

The March 2011 Final Rule imposed new reporting requirements, including a requirement that manufacturers submit annual reports to the Department certifying compliance of their basic models with applicable standards. It also revised the types of information manufacturers must provide in that submission. The Department emphasized that manufacturers could use their discretion in grouping individual models as a certified ''basic model'' such that the certified rating for the basic model matched the represented rating for all included models. *See* 76 FR 12428–12429 for more information. This reflected a basic requirement of the Department's longstanding self-certification compliance regime—that efficiency certifications and representations must be supported by either testing or an approved alternative method of estimating efficiency.

The March 2011 Final Rule provided for the revised certification provisions to be effective on July 5, 2011. Certain manufacturers of particular types of commercial and industrial equipment [1] stated that, for a variety of reasons, they would be unable to meet that deadline. As a result, the Department extended the compliance date for certification of commercial refrigeration equipment; commercial HVAC equipment; commercial WH equipment; and walk-in coolers and freezers. *See* 76 FR 38287 (hereafter referred to as the June 30 Final Rule). DOE also acknowledged in the June 30 Final Rule that numerous manufacturers for certain types of commercial equipment appear to have been making representations of efficiency and determining compliance with the applicable energy conservation standards without testing products in accordance with all of the provisions of the DOE test procedures, which include sampling plans and certification testing tolerances.

In the June 30 Final Rule, DOE stated that it believed 18 months would be sufficient to provide manufacturers with the time necessary to develop the data and supporting documentation needed

[1] These products included commercial warm air furnaces, commercial packaged boilers, and commercial air conditioners and heat pumps (collectively referred to as commercial HVAC equipment); commercial refrigeration equipment; commercial water heaters, commercial hot water supply boilers, and unfired hot water storage tanks (collectively referred to as commercial WH equipment); walk-in coolers; walk-in freezers; and automatic commercial ice makers.

to populate the certification reports and certify compliance with DOE's regulations, including the existing testing and sampling procedures. DOE also emphasized that all covered equipment must meet the applicable energy conservation standard and that all testing procedures and sampling provisions were unaffected by the final rule.

On May 24, 2012, DOE issued a proposed rule to revise and expand its regulations regarding alternative efficiency determination methods (AEDMs). AEDMs reduce testing burdens by allowing manufacturers to use computer simulations, mathematical models, and other alternative methods to determine the amount of energy used or efficiency by a particular basic model. AEDM provisions for commercial HVAC equipment and commercial WH equipment already exist, but DOE has proposed to revise those regulations and to allow manufacturers of commercial refrigeration equipment to use AEDMs. DOE has not yet finalized the AEDM rulemaking.

In an October 2012, letter to the Secretary of Energy, the Air Conditioning, Heating and Refrigeration Institute (AHRI) requested another certification compliance date extension. AHRI wrote, the ''AEDM is a critical element of the DOE certification process as it will help manufacturers comply with the regulations without having to test every basic model they offer.'' (AHRI, No. 1 at pp. 1–2) As a result, in its letter AHRI requested that the compliance date for certification be extended a minimum of 18 months from the date of publication of the AEDM final rule.

The Department agrees that it may address some of the concerns raised by manufacturers' by completing the AEDM rulemaking. The Department is also reviewing the recommendations of the Convenor regarding the feasibility of a negotiated rulemaking to revise the certification requirements for commercial HVAC equipment and commercial refrigeration equipment.[2]

As such, the Department agrees with AHRI that further extension of the December 31, 2012 compliance date may be warranted for commercial refrigeration equipment; commercial HVAC equipment; and commercial WH equipment. However, as all manufacturers should have at least some valid test data upon which to develop a substantiated AEDM, DOE does not believe that an extension for the length of time after finalization of an AEDM rule requested by AHRI would be necessary. Further, the potential for issues raised by manufacturers to be addressed through a negotiated rulemaking also suggests that the time requested by AHRI may be longer than necessary. Accordingly, the Department is proposing a 12-month delay in the compliance date for submission of a certification report for commercial refrigeration equipment, commercial HVAC equipment, and commercial WH equipment. However, DOE is requesting comment on its assumption regarding the existence of test data. We also seek comment on whether a longer or shorter period of time would be more appropriate.

If the Department adopts in a final rule a delayed compliance date for submission of certification reports, DOE will also implement an enforcement policy to encourage voluntary certifications. Specifically, during the interim period, DOE would not perform random assessment tests (as defined at 10 CFR 429.104) of basic models of commercial HVAC, refrigeration, or WH equipment that are voluntarily certified in accordance with DOE's regulations set forth in 10 CFR Parts 429 and 431. This approach would acknowledge the efforts of manufacturers that have been working toward completing the necessary testing to develop certified ratings in accordance with the December 31, 2012 deadline. Even under this approach, DOE would continue to conduct enforcement testing of any basic model pursuant to 10 CFR 429.110 when it has a reason to believe a given basic model may be non-compliant with the applicable Federal standard.

The preamble to the June 30 Final Rule stated that the compliance date for submitting a certification report for automatic commercial ice makers (ACIM) was also extended; however, the regulatory text did not extend the compliance date for that product (76 FR 38287). DOE has not enforced the certification requirements for ACIM. Information available to DOE does not suggest any issues with the compliance date for ACIMs; therefore, DOE is proposing to modify the regulatory text to require submission of a certification report for each basic model of ACIM by December 31, 2012, as contemplated by the June 30 Final Rule. DOE requests comment, however, regarding whether the compliance date for ACIM certification should also be extended.

The compliance dates for certification requirements for walk-in coolers and freezers, distribution transformers, and metal halide lamp ballasts have passed, and manufacturers of those products are now submitting certification reports. The proposed regulatory text would reflect that these products are now required to be certified by removing the delayed compliance dates.

Lastly, the Department is proposing to correct a technical drafting error for packaged terminal air conditioners and heat pumps that was implemented in the reprinting of Table 5 in 10 CFR 431.97 in a final rule published on May 16, 2012 (77 FR 28994). More specifically, DOE adopted changes to the applicable energy conservation standards for standard size and non-standard size packaged terminal air conditioners and heat pumps with a cooling capacity of 15,000 Btu/h. DOE is proposing to correct this error in today's proposed rule and adopt the original standards for standard size and non-standard size packaged terminal air conditioners and heat pumps with a cooling capacity of 15,000 Btu/h as presented in a final rule evaluating and originally adopting the amended energy conservation for this equipment published on April 7, 2008 (73 FR 18915).

Further Information on Submitting Comments

Under 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) A description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the

[2] The U.S. Department of Energy Convening Report on the Feasibility of a Negotiated Rulemaking to Revise the Certification Program for Commercial Heating, Ventilating, Air Conditioning, and Commercial Refrigeration Equipment can be found at *http://www.eere.energy.gov/buildings/appliance_standards/pdfs/convening_report_hvac_cre.pdf.*

passage of time, and (7) why disclosure of the information would be contrary to the public interest.

I. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

This proposed rule has been determined not to be a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IFRA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' (67 FR 53461, August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://www.energy.gov/gc.*

DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This proposed rule would merely extend the compliance date of a rulemaking already promulgated. To the extent such action has any economic impact it would be positive in that it would allow regulated parties additional time to come into compliance. DOE did undertake a full regulatory flexibility analysis of the original CCE rulemaking. That analysis considered the impacts of that rulemaking on small entities. As a result, DOE certifies that, if adopted, this proposed rule would not have a significant economic impact on a substantial number of small entities.

C. Review Under the National Environmental Policy Act

DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule amends an existing rule without changing its environmental effect and, therefore, is covered by the Categorical Exclusion in 10 CFR part 1021, subpart D, paragraph A5. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

II. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's NOPR.

List of Subjects in 10 CFR Parts 429 and 431

Administrative practice and procedure, Energy conservation, Commercial equipment, Reporting and recordkeeping requirements.

Issued in Washington, DC, on November 28, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE is proposing to amend chapter II, subchapter D, of title 10 of the Code of Federal Regulations, to read as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

2. In § 429.12, revise paragraph (i) to read as follows:

§ 429.12 General requirements applicable to certification reports.

* * * * *

(i) *Compliance dates.* For any product subject to an applicable energy conservation standard for which the compliance date has not yet occurred, a certification report must be submitted not later than the compliance date for the applicable energy conservation standard. The covered products are subject to the stated compliance dates for certification as follows:

(1) Automatic commercial ice makers, December 31, 2012;

(2) Commercial refrigeration equipment, December 31, 2013;

(3) Commercial heating, ventilating, and air-conditioning equipment, December 31, 2013; and

(4) Commercial water heating equipment, December 31, 2013.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

3. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

4. In § 431.97, paragraph (c), revise Table 5 to read as follows:

§ 431.97 Energy efficiency standards and their compliance dates.

* * * * *

(c) * * *

TABLE 5 TO § 431.97—UPDATED MINIMUM EFFICIENCY STANDARDS FOR PTAC AND PTHP

Equipment type	Cooling capacity	Sub-category	Efficiency level	Compliance date: Products manufactured on and after
PTAC	Standard Size	<7,000 Btu/h	EER = 11.7	October 8, 2012.
		≥7,000 Btu/h and ≤ 15,000 Btu/h	EER = 13.8 − (0.3 × Cap[1])	October 8, 2012.
		>15,000 Btu/h	EER = 9.3	October 8, 2012.
	Non-Standard Size	<7,000 Btu/h	EER = 9.4	October 7, 2010.
		≥7,000 Btu/h and ≤ 15,000 Btu/h	EER = 10.9 − (0.213 × Cap[1])	October 7, 2010.
		>15,000 Btu/h	EER = 7.7	October 7, 2010.
PTHP	Standard Size	<7,000 Btu/h	EER = 11.9 COP = 3.3	October 8, 2012.
		≥7,000 Btu/h and ≤ 15,000 Btu/h	EER = 14.0 − (0.3 × Cap[1]) COP = 3.7 − (0.052 × Cap[1])	October 8, 2012.

TABLE 5 TO § 431.97—UPDATED MINIMUM EFFICIENCY STANDARDS FOR PTAC AND PTHP—Continued

Equipment type	Cooling capacity	Sub-category	Efficiency level	Compliance date: Products manufactured on and after
		>15,000 Btu/h	EER = 9.5 COP = 2.9	October 8, 2012.
	Non-Standard Size	<7,000 Btu/h	EER = 9.3 COP = 2.7	October 7, 2010.
		≥7,000 Btu/h and ≤15,000 Btu/h	EER = 10.8 − (0.213 × Cap[1]) COP = 2.9 − (0.026 × Cap[1])	October 7, 2010.
		>15,000 Btu/h	EER = 7.6 COP = 2.5	October 7, 2010.

[1] "Cap" means cooling capacity in thousand Btu/h at 95 °F outdoor dry-bulb temperature.

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[FR Doc. 2012–29486 Filed 12–5–12; 8:45 am]

BILLING CODE 6450–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG44

Small Business Size Standards: Support Activities for Mining

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to increase small business size standards for three industries in North American Industry Classification System (NAICS) Subsector 213, Support Activities for Mining, within NAICS Sector 21, Mining, Quarrying, and Oil and Gas Extraction. NAICS Sector 21 contains four industries with receipts based standards and 19 industries with employee based size standards. As part of its ongoing comprehensive review of all size standards, in this proposed rule, SBA has evaluated the four industries that have the receipts based size standards in NAICS Sector 21 to determine whether they should be retained or revised. SBA will review the 19 industries that have the employee based standards in NAICS Sector 21 at a later date. This proposed rule is one of a series of proposed rules that will review size standards of industries grouped by NAICS Sector. SBA has issued a White Paper entitled ''Size Standards Methodology'' and published a notice in the October 21, 2009 issue of the **Federal Register** to advise the public that ''Size Standards Methodology'' is available on its Web site at *www.sba.gov/size* for public review and comments. The ''Size Standards Methodology'' White Paper explains how SBA establishes, reviews, and modifies its receipts based and employee based small business size standards. In this proposed rule, SBA has applied its methodology in determining changes to receipts based size standards in NAICS Sector 21, Mining, Quarrying, and Oil and Gas Extraction.

DATES: SBA must receive comments to this proposed rule on or before February 4, 2013.

ADDRESSES: Identify your comments by RIN 3245–AG44 and submit them by one of the following methods: (1) *Federal eRulemaking Portal: www.regulations.gov,* following the instructions for submitting comments; or (2) *Mail/Hand Delivery/Courier:* Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street SW., Mail Code 6530, Washington, DC 20416. SBA will not accept comments to this proposed rule submitted by email.

SBA will post all comments to this proposed rule on *www.regulations.gov*. If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* you must submit such information to U.S. Small Business Administration, Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street SW., Mail Code 6530, Washington, DC 20416, or send an email to *sizestandards@sba.gov*. You should highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public or not.

FOR FURTHER INFORMATION CONTACT: Khem R. Sharma, Ph.D., Chief, Size Standards Division, phone: (202) 205–6618 or *sizestandards@sba.gov*.

SUPPLEMENTARY INFORMATION: To determine eligibility for Federal small business assistance, SBA establishes small business size definitions (referred to as size standards) for private sector industries in the United States. SBA uses two primary measures of business size—average annual receipts and average number of employees. SBA uses financial assets, electric output, and refining capacity to measure the size of a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC), Certified Development Company (504), and 7(a) Loan Programs use either the industry based size standards or net worth and net income based alternative size standards to determine eligibility for those programs. At the beginning of the current comprehensive size standards review, there were 41 different size standards covering 1,141 NAICS industries and 18 sub-industry activities (''exceptions'' in SBA's table of size standards). Thirty-one of these size levels were based on average annual receipts, seven were based on average number of employees, and three were based on other measures.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy, in particular the changes in the Federal contracting marketplace and industry structure. The last time SBA conducted a comprehensive review of all size standards was during the late 1970s and early 1980s. Since then, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. At least once every five years, SBA also reviews the effect of inflation on its size standards and makes necessary adjustments to its monetary based size standards. SBA's latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

Because of changes in the Federal marketplace and industry structure since the last comprehensive size standards review, SBA recognizes that current data may no longer support some of its existing size standards. Accordingly, in 2007, SBA began a

comprehensive review of all size standards to determine if they are consistent with current data, and to adjust them when necessary. In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment. In addition, the Jobs Act requires that SBA conduct a review of all size standards not less frequently than once every five years thereafter. Reviewing existing small business size standards and making appropriate adjustments based on current data are also consistent with Executive Order 13563 on improving regulation and regulatory review.

Rather than review all size standards at one time, SBA is reviewing size standards on a Sector by Sector basis. An NAICS Sector generally includes 25 to 75 industries, except for NAICS Sector 31–33, Manufacturing, which has considerably more industries. Once SBA completes its review of size standards for industries in an NAICS Sector, it issues a proposed rule to revise size standards for those industries for which it believes currently available data and other relevant factors support doing so.

Below is a discussion of SBA's size standards methodology for establishing receipts based size standards that SBA applied to this proposed rule, including analyses of industry structure, Federal procurement trends and other relevant factors, the impact of the proposed revisions to size standards on Federal small business assistance, and SBA's evaluation of whether a revised size standard would exclude dominant firms from being considered small.

Size Standards Methodology

SBA has developed a ''Size Standards Methodology'' for developing, reviewing, and modifying size standards when necessary. SBA has published the document on its Web site at *www.sba.gov/size* for public review and comments, and has included it as a supporting document in the electronic docket of this proposed rule at *www.regulations.gov*. SBA does not apply all features of its ''Size Standards Methodology'' to all industries because not all features are appropriate for every industry. For example, since all four industries in NAICS Sector 21 that are covered by this proposed rule have receipts based size standards, the methodology described here applies only to establishing a receipts based size standard. However, the methodology is available for review and comments in its entirety for parties who have an interest in SBA's overall approach to establishing, evaluating, and modifying small business size standards. SBA always explains its analysis in individual proposed and final rules relating to size standards for specific industries.

SBA welcomes comments from the public on a number of issues concerning its ''Size Standards Methodology,'' such as whether there are other approaches to establishing and modifying size standards; whether there are alternative or additional factors that SBA should consider; whether SBA's approach to small business size standards makes sense in the current economic environment; whether SBA's use of anchor size standards is appropriate; whether there are gaps in SBA's methodology because the data it uses are not current or sufficiently comprehensive; and whether there are other data, facts, and/or issues that SBA should consider. Comments on SBA's methodology should be submitted via (1) the Federal eRulemaking Portal: *www.regulations.gov,* following the instructions for submitting comments; the docket number is SBA–2009–0008, or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street SW., Mail Code 6530, Washington, DC 20416. As it will do with comments to this and other proposed rules, SBA will post all comments on its methodology on *www.regulations.gov*. As of January 1, 2012, SBA has received 13 comments to its ''Size Standards Methodology.'' The comments are available to the public at *www.regulations.gov,* Docket ID: SBA–2009–0008. SBA continues to welcome comments on its methodology from interested parties. SBA will not accept comments to its ''Size Standards Methodology'' submitted by email.

Congress granted SBA's Administrator discretion to establish detailed small business size standards. 15 U.S.C. 632(a)(2). Specifically, Section 3(a)(3) of the Small Business Act (15 U.S.C. 632(a)(3)) requires that ''* * * the [SBA] Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator.'' Accordingly, the economic structure of an industry is the basis for developing and modifying small business size standards. SBA identifies the small business segment of an industry by examining data on the economic characteristics defining the industry structure (as described below). In addition, SBA considers current economic conditions, its mission and program objectives, the Administration's current policies, suggestions from industry groups and Federal agencies, and public comments on the proposed rule. SBA also examines whether a size standard based on industry and other relevant data successfully excludes businesses that are dominant in the industry.

This proposed rule includes information regarding the factors SBA evaluated and the criteria it used to propose adjustments to receipts based size standards in NAICS Sector 21. This proposed rule affords the public an opportunity to review and to comment on SBA's proposals to revise size standards in NAICS Sector 21, as well as on the data and methodology it used to evaluate and revise the size standards.

Industry Analysis

For the current comprehensive size standards review, SBA established three ''base'' or ''anchor'' size standards—$7.0 million in average annual receipts for industries that have receipts based size standards, 500 employees for manufacturing and other industries that have employee based size standards (except for Wholesale Trade), and 100 employees for industries in the Wholesale Trade Sector. SBA established 500 employees as the anchor size standard for manufacturing industries at its inception in 1953. Shortly thereafter SBA established $1 million in average annual receipts as the anchor size standard for nonmanufacturing industries. SBA has periodically increased the receipts based anchor size standard for inflation, and today it is $7 million. Since 1986, the size standard for all industries in the Wholesale Trade Sector for SBA financial assistance and for most Federal programs has been 100 employees. However, the Wholesale Trade NAICs Codes and their100 employee size standards do not apply to Federal procurement programs. Rather, for Federal procurement the size standard for all industries in Wholesale Trade (NAICS Sector 42) and for all industries in Retail Trade (NAICS Sector 44–45), is 500 employees under SBA's nonmanufacturer rule (13 CFR 121.406(b)).

These long-standing anchor size standards have stood the test of time and gained legitimacy through practice and general public acceptance. An anchor is neither a minimum nor a

maximum size standard. It is a common size standard for a large number of industries that have similar economic characteristics and serves as a reference point in evaluating size standards for individual industries. SBA uses the anchor in lieu of trying to establish precise small business size standards for each industry. Otherwise, theoretically, the number of size standards might be as high as the number of industries for which SBA establishes size standards (1,141). Furthermore, the data SBA analyzes are static, while the U.S. economy is not. Hence, absolute precision is impossible. SBA presumes an anchor size standard is appropriate for a particular industry unless that industry displays economic characteristics that are considerably different from other industries with the same anchor size standard.

When evaluating a size standard, SBA compares the economic characteristics of the industry under review to the average characteristics of industries with one of the three anchor size standards (referred to as the ''anchor comparison group''). This allows SBA to assess the industry structure and to determine whether the industry is appreciably different from the other industries in the anchor comparison group. If the characteristics of a specific industry under review are similar to the average characteristics of the anchor comparison group, the anchor size standard is generally appropriate for that industry. SBA may consider adopting a size standard below the anchor when: (1) All or most of the industry characteristics are significantly smaller than the average characteristics of the anchor comparison group; or (2) other industry considerations strongly suggest that the anchor size standard would be an unreasonably high size standard for the industry.

If the specific industry's characteristics are significantly higher than those of the anchor comparison group, then a size standard higher than the anchor size standard may be appropriate. The larger the differences are between the characteristics of the industry under review and those in the anchor comparison group, the larger will be the difference between the appropriate industry size standard and the anchor size standard. To determine a size standard above the anchor size standard, SBA analyzes the characteristics of a second comparison group. For industries with receipts based size standards, including those in NAICS Sector 21, SBA developed a second comparison group consisting of industries that have the highest of receipts based size standards. To determine a size standard above the anchor size standard, SBA analyzes the characteristics of this second comparison group. The size standards for this group of industries range from $23 million to $35.5 million in average annual receipts; the weighted average size standard for the group is $29 million. SBA refers to this comparison group as the ''higher level receipts based size standard group.''

The primary industry factors that SBA evaluates include average firm size, startup costs and entry barriers, industry competition, and distribution of firms by size. SBA evaluates, as an additional primary factor, the impact that revised size standards might have on Federal contracting assistance to small businesses. These are, generally, the five most important factors SBA examines when establishing or revising a size standard for an industry. However, SBA will also consider and evaluate other information that it believes is relevant to a particular industry (such as technological changes, growth trends, SBA financial assistance, and other program factors). SBA also considers possible impacts of size standard revisions on eligibility for Federal small business assistance, current economic conditions, the Administration's policies, and suggestions from industry groups and Federal agencies. Public comments on a proposed rule also provide important additional information. SBA thoroughly reviews all public comments before making a final decision on its proposed size standards. Below are brief descriptions of each of the five primary factors that SBA has evaluated for each industry in NAICS Sector 21. A more detailed description of this analysis is provided in SBA's ''Size Standards Methodology,'' available at *http://www.sba.gov/size*.

1. *Average firm size.* SBA computes two measures of average firm size: simple average and weighted average. For industries with receipts based size standards, the simple average is the total receipts of the industry divided by the total number of firms in the industry. The weighted average firm size is the sum of weighted simple averages in different receipts size classes, where weights are the shares of total industry receipts for respective size classes. The simple average weighs all firms within an industry equally regardless of their size. The weighted average overcomes that limitation by giving more weight to larger firms.

If the average firm size of an industry is significantly higher than the average firm size of industries in the anchor comparison industry group, this will generally support a size standard higher than the anchor size standard. Conversely, if the industry's average firm size is similar to or significantly lower than that of the anchor comparison industry group, it will be a basis to adopt the anchor size standard, or, in rare cases, a standard lower than the anchor.

2. *Startup costs and entry barriers.* Startup costs reflect a firm's initial size in an industry. New entrants to an industry must have sufficient capital and other assets to start and maintain a viable business. If new firms entering a particular industry have greater capital requirements than firms in industries in the anchor comparison group, this can be a basis for establishing a size standard higher than the anchor size standard. In lieu of actual startup cost data, SBA uses average assets as a proxy to measure the capital requirements for new entrants to an industry.

To calculate average assets, SBA begins with the sales to total assets ratio for an industry from the Risk Management Association's Annual Statement Studies. SBA then applies these ratios to the average receipts of firms in that industry. An industry with average assets that are significantly higher than those of the anchor comparison group is likely to have higher startup costs; this in turn will support a size standard higher than the anchor. Conversely, an industry with average assets that are similar to or lower than those of the anchor comparison group is likely to have lower startup costs; this will support the anchor standard or one lower than the anchor.

3. *Industry competition.* Industry competition is generally measured by the share of total industry receipts generated by the largest firms in an industry. SBA generally evaluates the share of industry receipts generated by the four largest firms in each industry. This is referred to as the ''four-firm concentration ratio,'' a commonly used economic measure of market competition. SBA compares the four-firm concentration ratio for an industry to the average four-firm concentration ratio for industries in the anchor comparison group. If a significant share of economic activity within the industry is concentrated among a few relatively large companies, all else being equal, SBA will establish a size standard higher than the anchor size standard. SBA does not consider the four-firm concentration ratio as an important factor in assessing a size standard if its share of economic activity within the industry is less than 40 percent. For an industry with a four-firm concentration ratio of 40 percent or more, SBA

examines the average size of the four largest firms to determine a size standard.

4. *Distribution of firms by size.* SBA examines the shares of industry total receipts accounted for by firms of different receipts and employment size classes in an industry. This is an additional factor in assessing industry competition. If most of an industry's economic activity is attributable to smaller firms, this generally indicates that small businesses are competitive in that industry. This can support adopting the anchor size standard. If most of an industry's economic activity is attributable to larger firms, this indicates that small businesses are not competitive in that industry. This can support adopting a size standard above the anchor.

Concentration is a measure of inequality of distribution. To determine the degree of inequality of distribution in an industry, SBA computes the Gini coefficient, using the Lorenz curve. The Lorenz curve presents the cumulative percentages of units (firms) along the horizontal axis and the cumulative percentages of receipts (or other measures of size) along the vertical axis. (For further detail, please refer to SBA's ''Size Standards Methodology'' on its Web site at *www.sba.gov/size*.) Gini coefficient values vary from zero to one. If receipts are distributed equally among all the firms in an industry, the value of the Gini coefficient will equal zero. If an industry's total receipts are attributed to a single firm, the Gini coefficient will equal one.

SBA compares the Gini coefficient value for an industry with that for industries in the anchor comparison group. If the Gini coefficient value for an industry is higher than it is for industries in the anchor comparison industry group this may, all else being equal, warrant a size standard higher than the anchor. Conversely, if an industry's Gini coefficient is similar to or lower than that for the anchor group, the anchor standard, or in some cases a standard lower than the anchor, may be adopted.

5. *Impact on Federal contracting and SBA loan programs.* SBA examines the possible impact a size standard change may have on Federal small business assistance. This most often focuses on the share of Federal contracting dollars awarded to small businesses in the industry in question. In general, if the small business share of Federal contracting in an industry with significant Federal contracting is appreciably less than the small business share of the industry's total receipts, this could justify considering a size standard higher than the existing size standard. The disparity between the small business Federal market share and industry-wide small business share may be due to various factors, such as extensive administrative and compliance requirements associated with Federal contracts, the different skill set required by Federal contracts as compared to typical commercial contracting work, and the size of Federal contracts. These, as well as other factors, are likely to influence the type of firms within an industry that compete for Federal contracts. By comparing the small business Federal contracting share with the industry-wide small business share, SBA includes in its size standards analysis the latest Federal contracting trends. This analysis may support a size standard larger than the current size standard.

SBA considers Federal contracting trends in the size standards analysis only if: (1) The small business share of Federal contracting dollars is at least 10 percent lower than the small business share of total industry receipts; and (2) the amount of total Federal contracting averages $100 million or more during the latest three fiscal years. These thresholds reflect significant levels of contracting where a revision to a size standard may have an impact on contracting opportunities to small businesses.

Besides the impact on small business Federal contracting, SBA also evaluates the impact of a proposed size standard revision on SBA's loan programs. SBA examines the volume and number of SBA's guaranteed loans within an industry and the size of firms obtaining those loans. This allows SBA to assess whether the existing or the proposed size standard for a particular industry may restrict the level of financial assistance to small firms. If current size standards have impeded financial assistance to small businesses, higher size standards may be supportable. However, if small businesses under current size standards have been receiving significant amounts of financial assistance through SBA's loan programs, or if the financial assistance has been provided mainly to businesses that are much smaller than the existing size standards, SBA does not consider this factor when determining the size standard.

Sources of Industry and Program Data

SBA's primary source of industry data used in this proposed rule is a special tabulation of the 2007 Economic Census (*see www.census.gov/econ/census07/*) prepared by the U.S. Bureau of the Census (Census Bureau) for SBA. The 2007 Economic Census data are the latest available. The special tabulation provides SBA with data on the number of firms, number of establishments, number of employees, annual payroll, and annual receipts of companies by, Industry (6-digit level), Industry Group (4-digit level), Subsector (3-digit level), and Sector (2-digit level). These data are arrayed by various classes of firms' size based on the overall number of employees and receipts of the entire enterprise (all establishments and affiliated firms) from all industries. The special tabulation enables SBA to evaluate average firm size, the four-firm concentration ratio, and distribution of firms by various receipts, and employment size classes.

In some cases, where data were not available due to disclosure prohibitions in the Census Bureau's tabulation, SBA either estimated missing values using available relevant data or examined data at a higher level of industry aggregation, such as at the NAICS 2-digit (Sector), 3-digit (Subsector), or 4-digit (Industry Group) level. In some instances, SBA's analysis was based only on those factors for which data were available or estimates of missing values were possible.

To calculate average assets, SBA used sales to total assets ratios from the Risk Management Association's Annual Statement Studies, 2008–2010.

To evaluate Federal contracting trends, SBA examined data on Federal contract awards for fiscal years 2008–2010. The data are available from the U.S. General Service Administration's Federal Procurement Data System—Next Generation (FPDS–NG).

To assess the impact on financial assistance to small businesses, SBA examined data on its own guaranteed loan programs for fiscal years 2009–2011.

Data sources and estimation procedures SBA uses in its size standards analysis are documented in detail in SBA's ''Size Standards Methodology'' White Paper, which is available at *www.sba.gov/size*.

Dominance in Field of Operation

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) defines a small business concern as one that is: (1) Independently owned and operated, (2) not dominant in its field of operation; and (3) within a specific small business definition or size standard established by SBA Administrator. SBA considers as part of its evaluation whether a business concern at a proposed size standard would be dominant in its field of operation. For this, SBA generally

examines the industry's market share of firms at the proposed standard. Market share and other factors may indicate whether a firm can exercise a major controlling influence on a national basis in an industry where a significant number of business concerns are engaged. If a contemplated size standard includes a dominant firm, SBA will consider a lower size standard to exclude the dominant firm from being defined as small.

Selection of Size Standards

To simplify receipts based size standards, SBA has proposed to select from a limited number of levels. For many years, SBA has been concerned about the complexity of determining small business status caused by a large number of varying receipts based size standards (*see* 69 FR 13130 (March 4, 2004) and 57 FR 62515 (December 31, 1992)). At the beginning of the current comprehensive size standards review, there were 31 different levels of receipts based size standards. They ranged from $0.75 million to $35.5 million, and many of them applied to one or only a few industries. SBA believes that such a large number of different small business size standards are unnecessary and difficult to justify analytically. To simplify managing and using size standards, SBA proposes that there be fewer size standard levels. This will produce more common size standards for businesses operating in related industries. This will also result in greater consistency among the size standards for industries that have similar economic characteristics.

Therefore, SBA proposes to apply one of eight receipts based size standards to each industry in NAICS Sector 21 reviewed in this rule. The eight ''fixed'' receipts based size standard levels are $5 million, $7 million, $10 million, $14 million, $19 million, $25.5 million, $30 million, and $35.5 million. SBA established these eight receipts based size standard based on the current minimum, the current maximum, and the most commonly used current receipts based size standards. At the start of the current comprehensive review, the most commonly used receipts based size standards clustered around the following—$2.5 million to $4.5 million, $7 million, $9 million to $10 million, $12.5 million to $14 million, $25 million to $25.5 million, and $33.5 million to $35.5 million. SBA selected $7 million as one of eight fixed levels of receipts based size standards because it is an anchor standard. The lowest or minimum receipts based size level will be $5 million. Other than the standards for agriculture and those based on commissions (such as real estate brokers and travel agents), $5 million includes those industries with the lowest receipts based standards, which ranged from $2 million to $4.5 million. Among the higher level size clusters, SBA has set four fixed levels: $10 million, $14 million, $25.5 million, and $35.5 million. Because of the large intervals between some of the fixed levels, SBA established two intermediate levels, namely $19 million between $14 million and $25.5 million, and $30 million between $25.5 million and $35.5 million. These two intermediate levels reflect roughly the same proportional differences as between the other two successive levels.

To simplify size standards further, SBA may propose a common size standard for closely related industries. Although the size standard analysis may support a separate size standard for each industry, SBA believes that establishing different size standards for closely related industries may not always be appropriate. For example, in cases where many of the same businesses operate in the same multiple industries, a common size standard for those industries might better reflect the Federal marketplace. This might also make size standards among related industries more consistent than separate size standards for each of those industries. In NAICS Sector 21, the characteristics of the four industries with receipts based standards reviewed in this rule are not sufficiently alike to warrant a common size standard for all. Therefore, SBA is proposing to increase three of the size standards and retain the $7 million anchor for NAICS 213115, Support Activities for Nonmetallic Minerals (except Fuels).

Evaluation of Industry Structure

SBA evaluated the four industries in NAICS Sector 21, Mining, Quarrying, and Oil and Gas Extraction, to assess the appropriateness of the current receipts based size standards. As described above, SBA compared data on the economic characteristics of each industry to the average characteristics of industries in two comparison groups. The first comparison group consists of all industries with $7 million size standards and is referred to as the ''receipts based anchor comparison group.'' Because the goal of SBA's review is to assess whether a specific industry's size standard should be the same as or different from the anchor size standard, this is the most logical group of industries to analyze. In addition, this group includes a sufficient number of firms to provide a meaningful assessment and comparison of industry characteristics.

If the characteristics of an industry are similar to the average characteristics of industries in the anchor comparison group, the anchor size standard is generally appropriate for that industry. If an industry's structure is significantly different from industries in the anchor group, a size standard lower or higher than the anchor size standard might be appropriate. The proposed new size standard is based on the difference between the characteristics of the anchor comparison group and a second industry comparison group. As described above, the second comparison group for receipts based standards consists of industries with the highest receipts based size standards, ranging from $23 million to $35.5 million. The average size standard for this group is $29 million. SBA refers to this group of industries as the ''higher level receipts based size standard comparison group.'' SBA determines differences in industry structure between an industry under review and the industries in the two comparison groups by comparing data on each of the industry factors, including average firm size, average assets size, the four-firm concentration ratio, and the Gini coefficient of distribution of firms by size. Table 1, Average Characteristics of Receipts Based Comparison Groups, shows the average firm size (both simple and weighted), average assets size, four-firm concentration ratio, average receipts of the four largest firms, and the Gini coefficient for both anchor level and higher level comparison groups for receipts based size standards.

TABLE 1—AVERAGE CHARACTERISTICS OF RECEIPTS BASED COMPARISON GROUPS

Receipts based comparison group	Average firm size ($ million)		Average assets size ($ million)	Four-firm concentration ratio (%)	Average receipts of four largest firms ($ million) *	Gini coefficient
	Simple average	Weighted average				
Anchor Level	1.32	19.63	0.84	16.6	196.4	0.693
Higher Level	5.07	116.84	3.20	32.1	1,376.0	0.830

* To be used for industries with a four-firm concentration ratio of 40% or greater.

Derivation of Size Standards Based on Industry Factors

For each industry factor in Table 1, Average Characteristics of Receipts Based Comparison Groups, SBA derives a separate size standard based on the differences between the values for an industry under review and the values for the two comparison groups. If the industry value for a particular factor is near the corresponding factor for the anchor comparison group, the $7 million anchor size standard is appropriate for that factor.

An industry factor significantly above or below the anchor comparison group will generally imply a size standard for that industry above or below the $7 million anchor. The new size standard in these cases is based on the proportional difference between the industry value and the values for the two comparison groups.

For example, if an industry's simple average receipts are $3.3 million, that can support a $19 million size standard. The $3.3 million level is 52.8 percent between $1.32 million for the anchor comparison group and $5.07 million for the higher level comparison group (($3.30 million − $1.32 million) ÷ ($5.07 million − $1.32 million) = 0.528 or 52.8%). This proportional difference is applied to the difference between the $7 million anchor size standard and average size standard of $29 million for the higher level size standard group and then added to $7.0 million to estimate a size standard of $18.61 million ([{$29.0 million − $7.0 million} * 0.528] + $7.0 million = $18.61 million). The final step is to round the estimated $18.61 million size standard to the nearest fixed size standard, which in this example is $19 million.

SBA applies the above calculation to derive a size standard for each industry factor. Detailed formulas involved in these calculations are presented in SBA's ''Size Standards Methodology'' which is available on its Web site at *www.sba.gov/size*. (However, it should be noted that figures in the ''Size Standards Methodology'' White Paper are based on 2002 Economic Census data and are different from those presented in this proposed rule. That is because when SBA prepared its ''Size Standards Methodology,'' the 2007 Economic Census data were not yet available). Table 2, Values of Industry Factors and Supported Size Standards, (below) shows ranges of values for each industry factor and the levels of size standards supported by those values.

TABLE 2—VALUES OF INDUSTRY FACTORS AND SUPPORTED SIZE STANDARDS

If simple average receipts size ($ million)	*Or if* weighted average receipts size ($ million)	*Or if* average assets size ($ million)	*Or if* average receipts of largest four firms ($ million)	*Or if* Gini coefficient	Then implied size standard is ($ million)
<1.15	<15.22	<0.73	<142.8	<0.686	5.0
1.15 to 1.57	15.22 to 26.26	0.73 to 1.00	142.8 to 276.9	0.686 to 0.702	7.0
1.58 to 2.17	26.27 to 41.73	1.01 to 1.37	277.0 to 464.5	0.703 to 0.724	10.0
2.18 to 2.94	41.74 to 61.61	1.38 to 1.86	464.6 to 705.8	0.725 to 0.752	14.0
2.95 to 3.92	61.62 to 87.02	1.87 to 2.48	705.9 to 1,014.1	0.753 to 0.788	19.0
3.93 to 4.86	87.03 to 111.32	2.49 to 3.07	1,014.2 to 1,309.0	0.789 to 0.822	25.5
4.87 to 5.71	111.33 to 133.41	3.08 to 3.61	1,309.1 to 1,577.1	0.823 to 0.853	30.0
>5.71	>133.41	>3.61	>1,577.1	>0.853	35.5

Derivation of Size Standard Based on Federal Contracting Factor

Besides industry structure, SBA also evaluates Federal contracting data to assess the success of small businesses in getting Federal contracts under the existing size standards. For industries where the small business share of total Federal contracting dollars is 10 to 30 percent lower than the small business share of total industry receipts, SBA has designated a size standard one level higher than their current size standard. For industries where the small business share of total Federal contracting dollars is more than 30 percent lower than the small business share of total industry receipts, SBA has designated a size standard two levels higher than the current size standard.

Because of the complex relationships among several variables affecting small business participation in the Federal marketplace, SBA has chosen not to designate a size standard for the Federal contracting factor alone that is more than two levels above the current size standard. SBA believes that a larger adjustment to size standards based on Federal contracting activity should be based on a more detailed analysis of the impact of any subsequent revision to the current size standard. In limited situations, however, SBA may conduct a more extensive examination of Federal contracting experience. This may support a different size standard than indicated by this general rule and take into consideration significant and unique aspects of small business competitiveness in the Federal contract market. SBA welcomes comments on its methodology for incorporating the Federal contracting factor in the size standard analysis and suggestions for alternative methods and other relevant information on small business experience in the Federal contract market.

None of the four industries in NAICS Sector 21 with receipts based size

standards averaged more than $100 million annually in Federal contracting during fiscal years 2008–2010. Therefore the Federal contracting factor was not considered in calculating the new size standard for them.

New Size Standards Based on Industry Factors

Table 3, Size Standards Supported by Each Factor for Each Industry (millions of dollars), below, shows the results of analyses of industry factors for each industry covered by this proposed rule. A number of NAICS industries in columns 2, 3, 4, 6, and 7 show two numbers. The upper number is the value for the industry factor shown on the top of the column and the lower number is the size standard supported by that factor. For the four-firm concentration ratio, SBA estimates a size standard only if its value is 40 percent or more. If the four-firm concentration ratio for an industry is less than 40 percent, SBA does not estimate a standard for that factor. If the four-firm concentration ratio is more than 40 percent, SBA indicates in column 6 the average size of the industry's top four firms together with a size standard based on that average. Column 8 shows a calculated new size standard for each industry. This is the average of the size standards supported by each factor, rounded to the nearest fixed size level. Analytical details involved in the averaging procedure are described in SBA's ''Size Standard Methodology.'' For comparison with the new standards, the current size standards are in column 9 of Table 3, Size Standards Supported by Each Factor for Each Industry (millions of dollars).

TABLE 3—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY

[Millions of dollars]

(1) NAICS code and NAICS industry title	(2) Simple average firm size ($ million)	(3) Weighted average firm size ($ million)	(4) Average assets size ($ million)	(5) Four-firm ratio (%)	(6) Four-firm average size ($ million)	(7) Gini coefficient	(8) Calculated size standard ($ million)	(9) Current size standard ($ million)
213112 Support Activities for Oil and Gas Operations	$7.9	$197.8	$5.2	27.9	$3,246.0	0.892	$35.5	$7.0
	35.5	35.5	35.5			$35.5		
213113 Support Activities for Coal Mining	7.7	47.9	.....	44.4	219.2	0.786	19.0	7.0
	35.5	14.0			7.0	19.0		
213114 Support Activities for Metal Mining	11.7	63.0	.....	57.9	205.8	0.790	19.0	7.0
	35.5	19.0			7.0	25.5		
213115 Support Activities for Nonmetallic Minerals (except Fuels)	2.2	12.2	.....	24.4	30.9	0.622	7.0	7.0
	14.0	5.0				5.0		

Evaluation of SBA Loan Data

Before deciding on an industry's size standard, SBA also considers the impact of new or revised size standards on SBA's loan programs. Accordingly, SBA examined its 7(a) and 504 Loan Program data for fiscal years 2009–2011 to assess whether the proposed size standards need further adjustments to ensure credit opportunities for small businesses through those programs. For the industries reviewed in this rule, the data show that it is mostly businesses much smaller than the current size standards that use SBA's 7(a) and 504 loans.

Furthermore, the Jobs Act established an alternative size standard for SBA's 7(a) and 504 applicants. Specifically, an applicant exceeding an NAICS industry size standard may still be eligible if its maximum tangible net worth does not exceed $15 million and its average net income after Federal income taxes (excluding any carry-over losses) for the 2 full fiscal years before the date of the application is not more than $5 million.

Therefore, no size standard in NAICS 21, Mining, Quarrying, and Oil and Gas Extraction, needs an adjustment based on this factor.

Proposed Changes to Size Standards

Based on the analyses of industry and program data as discussed above, of the four industries in NAICS Sector 21 reviewed in this rule, SBA proposes to increase the size standard for three and retain the current size standard for one. SBA's proposed changes are summarized in Table 4, Summary of Proposed Size Standards Revisions, below.

TABLE 4—SUMMARY OF PROPOSED SIZE STANDARDS REVISIONS

NAICS code	NAICS industry title	Current size standard ($ million)	Proposed size standard ($ million)
213112	Support Activities for Oil and Gas Operations	$7.0	$35.5
213113	Support Activities for Coal Mining	7.0	19.0
213114	Support Activities for Metal Mining	7.0	19.0
213115	Support Activities for Nonmetallic Minerals (except Fuels)	7.0	7.0

Evaluation of Dominance in Field of Operation

SBA has determined that for the industries in NAICS Sector 21, Mining, Quarrying, and Oil and Gas Extraction, for which it has proposed to increase size standards, no individual firm at or below the proposed size standard will be large enough to dominate its field of operation. At the proposed individual size standards, if adopted, small business shares of total industry receipts among those industries vary from less than 0.1 percent to 2.8 percent, with an average of 1.1 percent. These market shares effectively preclude a firm at or below the proposed size standards from exerting control on any of the industries.

Request for Comments

SBA invites public comments on this proposed rule, especially on the following issues:

1. To simplify size standards, SBA proposes eight fixed levels for receipts based size standards: $5 million, $7 million, $10 million, $14 million, $19 million, $25.5 million, $30 million, and $35.5 million. SBA invites comments on whether this is necessary and whether the proposed fixed size levels are appropriate. SBA welcomes suggestions on alternative approaches to simplifying small business size standards.

2. SBA seeks comment on whether the proposed size standards for NAICS Sector 21 are appropriate given the economic characteristics of each industry reviewed in this proposed rule. SBA also seeks comment and suggestions on alternative standards, if they would be more appropriate, including whether the number of employees is a more suitable measure of size for certain industries and what that employee level should be.

3. SBA's proposed size standards are based on five primary factors—average firm size, average assets size (as a proxy of startup costs and entry barriers), four-firm concentration ratio, distribution of firms by size and the level, and small business share of Federal contracting dollars. SBA welcomes comments on these factors and/or suggestions of other factors that it should consider when evaluating or revising size standards. SBA also seeks information on relevant data sources, other than what it uses, if available.

4. SBA gives equal weight to each of the five primary factors in all industries. SBA seeks feedback on whether it should continue giving equal weight to each factor or whether it should give more weight to one or more factors for certain industries. Recommendations to weigh some factors more than others should include suggested weights for each factor along with supporting information.

5. For NAICS 213112, Support Activities for Oil and Gas Operations, based on its analysis of industry and program data alone, SBA proposes to increase the existing size standards by a large amount, while for NAICS 213113 and NAICS 213114 the proposed increases are modest. SBA seeks comment on whether, as a policy, it should limit the increase to a size standard or establish minimum or maximum values for its size standards. SBA seeks suggestions on appropriate levels of changes to size standards and on their minimum or maximum levels.

6. For analytical simplicity and efficiency, in this proposed rule, SBA has refined its size standard methodology to obtain a single value as a proposed size standard instead of a range of values, as in its past size regulations. SBA welcomes any comments on this procedure and suggestions on alternative methods.

Public comments on the above issues are very valuable to SBA for validating its size standard methodology and proposed size standards revisions in this proposed rule. This will help SBA to move forward with its review of size standards for other NAICS Sectors. Commenters addressing size standards for a specific industry or a group of industries should include relevant data and/or other information supporting their comments. If comments relate to using size standards for Federal procurement programs, SBA suggests that commenters provide information on the size of contracts, the size of businesses that can undertake the contracts, start-up costs, equipment and other asset requirements, the amount of subcontracting, other direct and indirect costs associated with the contracts, the use of mandatory sources of supply for products and services, and the degree to which contractors can mark up those costs.

Compliance With Executive Orders 12866, 13563, 12988 and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is a ''significant'' regulatory action for purposes of Executive Order 12866, Regulatory Planning and Review. Accordingly, the next section contains SBA's Regulatory Impact Analysis. This is not a ''major'' rule, however, under the Congressional Review Act (5 U.S.C. 800).

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

SBA believes that the proposed revisions to receipts based size standards for three industries in NAICS Sector 21, Mining, Quarrying, and Oil and Gas Extraction, will better reflect the economic characteristics of small businesses in those industries and the Federal government marketplace. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To assist the intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The recently enacted Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions. The supplementary information section of this proposed rule explains SBA's methodology for analyzing a size standard for a particular industry.

2. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses obtaining small business status because of this rule is gaining eligibility for Federal small business assistance programs. These include SBA's financial assistance programs, economic injury disaster loans, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted opportunities for small businesses under SBA's business development programs, such as 8(a), Small Disadvantaged Businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses (WOSB), and service-disabled veteran-owned small business concerns (SDVO SBC). Federal agencies may also use SBA size standards for a variety of other regulatory and program purposes. These programs assist small businesses to become more knowledgeable, stable, and competitive. SBA estimates that about 475 firms in the three industries for which it has proposed to increase size standards will become small and therefore eligible for these programs. That is about 8.5 percent of all firms classified as small under the current size standards in those industries. If adopted as proposed, this will also increase the small business share of total industry receipts in those industries within NAICS Sector 21 from about 13 percent to nearly 25 percent.

Three groups will benefit from the proposed size standards revisions in this rule, if they are adopted as proposed: (1) Some businesses that are above the current size standards may gain small business status under the higher size standards, thereby enabling them to participate in Federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards

will be able to retain their small business status under the higher size standards, thereby enabling them to continue their participation in the programs; and (3) Federal agencies will have larger pools of small businesses from which to draw for their small business procurement programs.

Because of limited Federal contracting activities in those industries, proposed increases will cause very minimal impact on Federal contracting programs under SBA's small business, 8(a), SDB, HUBZone, WOSB, and SDVO SBC Programs, and other unrestricted procurements.

Under SBA's 7(a) and 504 Loan Programs, based on the 2009–2011 data, SBA estimates about five additional loans totaling about $2 million to $3 million in Federal loan guarantees could be made to these newly defined small businesses under the proposed standards. Increasing the size standards will likely result in more small business guaranteed loans to businesses in these industries, but it is be impractical to try to estimate exactly the number and total amount of loans. There are two reasons for this: (1) Under the Jobs Act, SBA can now guarantee substantially larger loans than in the past; and, (2) as described above, the Jobs Act established an alternative size standard ($15 million in tangible net worth and $5 million in net income after income taxes) for business concerns that do not meet the size standards for their industry. Therefore, SBA finds it difficult to quantify the impact of these proposed standards on its 7(a) and 504 Loan Programs.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent on the occurrence and severity of one or more disasters, SBA cannot make a meaningful estimate of this impact.

In addition, newly eligible small businesses will also benefit through reduced fees, less paperwork, and fewer compliance requirements.

The proposed revisions to the existing size standards for three industries in NAICS Sector 21, Mining, Quarrying, and Oil and Gas Extraction, are consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action, including possible distributional impacts that relate to Executive Order 13563, Improving Regulation and Regulatory Review, are included above in the Regulatory Impact Analysis under Executive Order 12866.

In an effort to engage interested parties in this action, SBA has presented its methodology (discussed above under Supplementary Information) to various industry associations and trade groups. SBA also met with a number of industry groups to get their feedback on its methodology and other size standards issues. In addition, SBA presented its size standards methodology to businesses in 13 cities in the U.S. and sought their input as part of Jobs Act tours. The presentation also included information on the latest status of the comprehensive size standards review and on how interested parties can provide SBA with input and feedback on size standards review.

Additionally, SBA sent letters to the Directors of the Offices of Small and Disadvantaged Business Utilization (OSDBU) at several Federal agencies with considerable procurement responsibilities requesting their feedback on how the agencies use SBA size standards and whether current standards meet their programmatic needs (both procurement and non-procurement). SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in preparing this proposed rule.

The review of size standards in NAICS Sector 21, Mining, Quarrying, and Oil and Gas Extraction, is consistent with Executive Order 13563, Sec 6, calling for retrospective analyses of existing rules. The last comprehensive review of size standards occurred during the late 1970s and early 1980s. Since then, except for periodic adjustments for monetary based size standards, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of its size standards to ensure that existing size standards have supportable bases. It will revise them when necessary. In addition, the Jobs Act requires SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18 month period from the date of its enactment and do a complete review of all size standards not less frequently than once every 5 years thereafter.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, Federalism, SBA has determined that this proposed rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this proposed rule will not impose any new reporting or recordkeeping requirements.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this proposed rule, if adopted, may have a significant impact on a substantial number of small businesses in NAICS Sector 21, Mining, Quarrying, and Oil and Gas Extraction. As described above, this proposed rule may affect small businesses seeking Federal contracts, loans under SBA's 7(a), 504 Guaranteed Loan and Economic Injury Disaster Loan Programs, and assistance under other Federal small business programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule addressing the following questions: (1) What are the need for and objective of the rule?; (2) What are SBA's description and estimate of the number of small businesses to which the rule will

apply?; (3) What are the projected reporting, record keeping, and other compliance requirements of the rule?; (4) What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule?; and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small businesses?

1. What are the need for and objective of the rule?

SBA has not reviewed the size standards for industries in NAICS Sector 21, Mining, Quarrying, and Oil and Gas Extraction, since the early 1980s. Changes in industry structure, technological changes, productivity growth, mergers and acquisitions, and updated industry definitions have changed the structure of many industries in NAICS Sector 21. Such changes can be sufficient to support revisions to current size standards for some industries. Based on the analysis of the latest data available, SBA believes that the revised standards in this proposed rule more appropriately reflect the size of businesses that need Federal assistance. The recently enacted Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions.

2. What are SBA's description and estimate of the number of small businesses to which the rule will apply?

If the proposed rule is adopted in its present form, SBA estimates that about 475 additional firms will become small because of increased size standards in three industries NAICS Sector 21. That represents 8.5 percent of total firms that are small under current size standards in those industries. This will result in an increase in the small business share of total industry receipts for the Sector from about 13 percent under the current size standard to nearly 25 percent under the proposed size standards. The proposed size standards, if adopted, will enable more small businesses to retain their small business status for a longer period. Many may have lost their eligibility and find it difficult to compete at current size standards with companies that are significantly larger than they are. SBA believes the competitive impact will be positive for existing small businesses and for those that exceed the size standards but are on the very low end of those that are not small. They might otherwise be called or referred to as mid-sized businesses, although SBA only defines what is small; other entities are other than small.

3. What are the projected reporting, record keeping and other compliance requirements of the rule?

The proposed size standard changes impose no additional reporting or record keeping requirements on small businesses. However, qualifying for Federal procurement and a number of other programs requires that businesses register in the CCR database and certify in the Online Representations and Certifications Application (ORCA) that they are small at least once annually. Therefore, businesses opting to participate in those programs must comply with CCR and ORCA requirements. There are no costs associated with either CCR registration or ORCA certification. Changing size standards alters the access to SBA programs that assist small businesses, but does not impose a regulatory burden because they neither regulate nor control business behavior.

4. What are the relevant Federal rules, which may duplicate, overlap or conflict with the rule?

Under § 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988 (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an Agency to establish an alternative small business definition, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

5. What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the systems of numerical size standards.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA proposes to amend part 13 CFR Part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 662, and 694a(9).

2. In § 121.201, in the table, revise the entries for ''213112'', ''213113'', and ''213114'' to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS Codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * * *	*	*
213112	Support Activities for Oil and Gas Operations	$35.5	
213113	Support Activities for Coal Mining	19.0	
213114	Support Activities for Metal Mining	19.0	
*	* * * * *	*	*

Dated: April 25, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–29353 Filed 12–5–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1223; Directorate Identifier 2012–NM–154–AD]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Embraer S.A. Model ERJ 170 and ERJ 190 airplanes. This proposed AD was prompted by reports of the cockpit door falling off the hinges when it is being open or closed. This proposed AD would require replacing the striker and quick-release pin of the passive lock of the cockpit door, and replacing the upper and lower hinges of the cockpit door. We are proposing this AD to prevent the cockpit door from falling off the hinges, which could cause injury to airplane occupants.

DATES: We must receive comments on this proposed AD by January 22, 2013.

ADDRESSES: You may send comments by any of the following methods:

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

For service information identified in this proposed AD, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos–SP–BRASIL; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Cindy Ashforth, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2768; fax (425) 227–1149.

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–2012–1223; Directorate Identifier 2012–NM–154–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directives 2012–08–02 and 2012–08–03, both effective September 5, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> This [ANAC] AD was prompted by reports of cockpit door falling off the hinges when it is being opened or closed. If not corrected, this condition may cause injury to the occupants.
>
> * * * * *

Required actions include replacement of the passive lock striker, quick-release pin, and upper and lower hinges of the cockpit door. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Embraer has issued the following service bulletins to correct the unsafe condition identified in the MCAI. The actions described in the following service information are intended to correct the unsafe condition identified in the MCAI.

- EMBRAER Service Bulletin 170–52–0055, Revision 01, dated August 1, 2011 (for Model ERJ 170 airplanes).
- EMBRAER Service Bulletin 190–52–0038, Revision 01, dated August 1, 2011 (for Model ERJ 190 airplanes except for Model ERJ 190–100 ECJ airplanes).
- EMBRAER Service Bulletin 190LIN–52–0020, dated August 1, 2011 (for Model ERJ 190–100 ECJ airplanes).

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 253 products of U.S. registry. We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $129,030, or $510 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Embraer S.A.: Docket No. FAA–2012–1223; Directorate Identifier 2012–NM–154–AD.

(a) Comments Due Date

We must receive comments by January 22, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Embraer S.A. Model ERJ 170–100 LR, –100 STD, –100 SE., and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes; certificated in any category; as identified in EMBRAER Service Bulletin 170–52–0055, Revision 01, dated August 1, 2011.

(2) Embraer S.A. Model ERJ 190–100 STD, –100 LR, –100 ECJ, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes; certificated in any category; as identified in EMBRAER Service Bulletin 190–52–0038, Revision 01, dated August 1, 2011; and EMBRAER Service Bulletin 190LIN–52–0020, dated August 1, 2011.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Reason

This AD was prompted by reports of the cockpit door falling off the hinges when it is being open or closed. We are proposing this AD to prevent the cockpit door from falling off the hinges, which could cause injury to airplane occupants.

(f) Compliance

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

(g) Required Actions and Compliance Time

Within 1,500 flight hours after the effective date of this AD, do the actions specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) Replace the striker and quick-release pin of the passive lock of the cockpit door, in accordance with Part I of the Accomplishment Instructions of the applicable service bulletin specified in paragraph (g)(1)(i), (g)(1)(ii), or (g)(1)(iii) of this AD.

(i) EMBRAER Service Bulletin 170–52–0055, Revision 01, dated August 1, 2011 (for Model ERJ 170 airplanes).

(ii) EMBRAER Service Bulletin 190–52–0038, Revision 01, dated August 1, 2011 (for Model ERJ 190 airplanes except for Model ERJ 190–100 ECJ airplanes).

(iii) EMBRAER Service Bulletin 190LIN–52–0020, dated August 1, 2011 (for Model ERJ 190–100 ECJ airplanes).

(2) Replace the cockpit door upper and lower hinges in accordance with Part III of the Accomplishment Instructions of the applicable service bulletin specified in paragraph (g)(2)(i), (g)(2)(ii), or (g)(2)(iii) of this AD.

(i) EMBRAER Service Bulletin 170–52–0055, Revision 01, dated August 1, 2011 (for Model ERJ 170 airplanes).

(ii) EMBRAER Service Bulletin 190–52–0038, Revision 01, dated August 1, 2011 (for Model ERJ 190 airplanes except for Model ERJ 190–100 ECJ airplanes).

(iii) EMBRAER Service Bulletin 190LIN–52–0020, dated August 1, 2011 (for Model ERJ 190–100 ECJ airplanes).

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g)(1) of this AD, if those actions were performed before the effective date of this AD using EMBRAER Service Bulletin 170–52–0055, dated February 10, 2011 (for Model ERJ 170 airplanes); or EMBRAER Service Bulletin 190–52–0038, dated February 10, 2011 (for Model ERJ 190 airplanes except for Model ERJ 190–100 ECJ airplanes); which are not incorporated by reference in this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Cindy Ashforth, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2768; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(j) Related Information

(1) Refer to MCAI Brazilian Airworthiness Directives 2012–08–02 and 2012–08–03, both effective September 5, 2012, and the service bulletins identified in paragraphs (j)(1)(i), (j)(1)(ii), and (j)(1)(iii) of this AD, for related information.

(i) EMBRAER Service Bulletin 170–52–0055, Revision 01, dated August 1, 2011.

(ii) EMBRAER Service Bulletin 190–52–0038, Revision 01, dated August 1, 2011.

(iii) EMBRAER Service Bulletin 190LIN–52–0020, dated August 1, 2011.

(2) For service information identified in this AD, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on November 29, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–29460 Filed 12–5–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0880; Directorate Identifier 2012–CE–004–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for certain Cessna Aircraft Company (Cessna) Model 525 airplanes equipped with certain part number (P/N) air conditioning (A/C) compressor motors. That NPRM proposed to require inspection of the number of hours on the A/C compressor hour meter, inspection of the logbook, and replacement of the brushes on certain P/N A/C compressor motors or deactivation of the A/C system until replacement of the brushes and also require reporting of aircraft information related to the replacement of the brushes. That NPRM was prompted by reports of smoke and/or fire in the tailcone caused by brushes wearing beyond their limits on the A/C motor. This action revises that NPRM by providing correct steps for deactivation of the A/C compressor motor. We are proposing this supplemental NPRM to correct the unsafe condition on these products. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this supplemental NPRM by January 22, 2013.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Christine Abraham, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; phone: (316) 946–4165; fax: (316) 946–4107; email: *WICHITA-COS@FAA.GOV.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0880; Directorate Identifier 2012–CE–004–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We issued an NPRM to amend 14 CFR part 39 to include an AD that would apply to certain Cessna Airplane Company Model 525 airplanes equipped with certain P/N A/C compressor motors. That NPRM published in the **Federal Register** on August 22, 2012 (77 FR 50644). That NPRM proposed to require inspection of the number of hours on the A/C compressor hour meter, inspection of the logbook, and replacement of the brushes on certain P/N A/C compressor motors or deactivation of the A/C system until replacement of the brushes and also require reporting of aircraft information related to the replacement of the brushes.

Actions Since Previous NPRM Was Issued

Since we issued the previous NPRM (77 FR 50644, August 22, 2012), we identified revised steps for deactivation of the A/C compressor motor.

Comments

We gave the public the opportunity to comment on the previous NPRM (77 FR 50644, August 22, 2012). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request Task State Current Maintenance Manual Revision or Following Revision 23 or Greater

Timothy Garroutte requested the FAA state current manual revision or following revision 23 or greater instead of using a specific revision of the maintenance manual. Garroutte reasoned that using an exact manual revision number and date in the AD will cause issues in the future because the manual will be revised again with a new date. If a specific revision is identified in the AD, the airplane mechanic will need to call Cessna Aircraft Company or the FAA to figure out what to do once the manual gets a revision higher than 23.

We disagree with the request to state current manual revision or following revision 23 or greater. The Airworthiness Directives Manual, FAA–

IR–M–8040.1 C, dated May 17, 2010, (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgOrders.nsf/0/66DDD8E1D2E95DB3862577270062AABD?OpenDocument&Highlight=order8040.1c*) states in Chapter 7, paragraph 9 (specifically subparagraph (3)) that the phrase ''or later FAA-approved revision'' when referring to the service information is not allowed. This phrase violates Office of the Federal Register policies for approving materials that are incorporated by reference. Service information that we incorporate by reference in an AD is often revised after we issue the AD. We can approve later revisions of service information as an alternative method of compliance.

We did not change the proposed AD action based on these comments.

Request Correct Deactivation Instructions for the A/C

Cessna requested we include revised procedures for deactivating the A/C in the AD.

Cessna stated that pulling the A/C circuit breaker does not disable the A/C compressor motor. The A/C can be deactivated by removal of a fuse limiter. Cessna provided specific deactivation instructions to include in the AD and requested we incorporate these instructions in the proposed AD.

We agree with Cessna's request because the instructions for deactivating the system were not correct in the NPRM (77 FR 50644, August 22, 2012).

We changed the proposed AD action based on these comments.

FAA's Determination

We are proposing this supplemental NPRM because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. Certain changes described above expand the scope of the original NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this supplemental NPRM.

Proposed Requirements of the Supplemental NPRM

This supplemental NPRM would require inspection of the number of hours on the A/C compressor hour meter, inspection of the logbook, replacement of the brushes on certain P/N A/C compressor motors or deactivation of the A/C system until replacement of the brushes, and reporting of aircraft information related to the replacement of the brushes.

Costs of Compliance

We estimate that this proposed AD affects 408 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect and replace brushes on the A/C motor.	11 work-hours × $85 per hour = $935	$252	$1,187	$484,296
Return shipment of brushes to the manufacturer.	$15 per return with two required returns	Not applicable	$30	$12,240

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Cessna Aircraft Company: Docket No. FAA–2012–0880; Directorate Identifier 2012–CE–004–AD.

(a) Comments Due Date

We must receive comments by January 22, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Cessna Aircraft Company Model 525 airplanes, serial number (S/N) 525–0001 through 525–0558, and 525–0600 through 525–0701, that:

(1) Are equipped with part number (P/N) 1134104–1 or 1134104–5 air conditioning (A/C) compressor motor; and

(2) Are certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 21, Air Conditioning.

(e) Unsafe Condition

This AD was prompted by reports of smoke and/or fire in the tailcone caused by brushes wearing beyond their limits on the A/C motor. We are issuing this AD to require replacement of the brushes on certain P/N A/C compressor motors or deactivation of the A/C system until replacement of the brushes. This AD also requires reporting of aircraft information related to the replacement of the brushes.

(f) Compliance

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

(g) Inspections

Within the next 30 days after the effective date of this AD or within the next 10 hours time-in-service (TIS) after the effective date of this AD, whichever occurs first, do the following:

(1) Inspect the number of hours on the A/C compressor hour meter; and

(2) Check the aircraft logbook for any entry for replacing the A/C compressor motor brushes with new brushes or replacing the compressor motor or compressor condenser module assembly (pallet) with a motor or assembly that has new brushes.

(i) If the logbook contains an entry for replacement of parts as specified in the paragraph above, determine the number of hours on the A/C compressor motor brushes by comparing the number of hours on the compressor motor since replacement and use this number in paragraph (h) of this AD; or

(ii) If through the logbook check you cannot positively determine the number of hours on the A/C compressor motor brushes as specified in the paragraph above, you must use the number of hours on the A/C compressor hour meter to comply with the requirements of this AD and use this number in paragraph (h) of this AD or presume the brushes have over 500 hours TIS.

(h) Replacement

At whichever of the below compliance times occurs later, using the hour reading on the A/C compressor hour meter determined in paragraph (g) of this AD, replace the A/C compressor motor brushes with new brushes. Thereafter, repeat the replacement of the A/C compressor motor brushes no later than every 500 hours TIS on the A/C compressor motor. Do the replacement following Cessna Aircraft Company Model 525 Maintenance Manual, Revision 23, dated July 1, 2012.

(1) Before or when the A/C compressor motor brushes reach a total of 500 hours TIS; or

(2) Before further flight after the inspection required in paragraph (g)(2)(ii) of this AD if the A/C compressor motor brush hours cannot be positively determined.

(i) Deactivation

In lieu of replacing the A/C compressor motor brushes, before or when the A/C compressor motor brushes reach a total of 500 hours TIS, you may deactivate the A/C. Remove the fuse limiter that supplies power to the A/C compressor motor, fabricate and install a placard that states: ''A/C DISABLED.'' Install the placard by the A/C selection switch prohibiting use of the vapor cycle air conditioner and document deactivation of the system in the aircraft logbook referring to this AD as the reason for deactivation. While the system is deactivated, aircraft operators must remain aware of operating temperature limitations as detailed in the specific airplane flight manual.

(1) Do the following steps to remove the compressor fuse limiter.

(i) Open aft baggage compartment.

(ii) Remove aft baggage compartment dividers.

(iii) Disconnect the main battery connector from the battery.

(iv) Tag the battery and external power receptacle with a warning tag that reads: WARNING: Do not connect the battery connector or external power cart during the maintenance in progress.

(v) Remove wing nuts that attach the cover to the aft power J-Box.

(vi) Remove the aft power J-Box cover.

(vii) Remove nuts securing compressor fuse limiter (Reference Designator HZ028, P/N ANL100) to bus bar. Retain nuts.

(viii) Remove the compressor motor fuse limiter from the terminals and retain for future reinstallation once compressor motor brushes have been replaced.

(2) A properly certified mechanic must fabricate and install the placard as specified below:

(i) Use ⅛-inch black lettering on a white background; and

(ii) Install the placard on the instrument panel in close proximity to the A/C selection switch.

(3) Do the following steps to return the aircraft to service with the compressor motor fuse limiter removed.

(i) Install fuse limiter nuts on the terminals and torque to 100 inch-pounds +5 or −5 inch-pounds.

(ii) Install the aft power J-Box cover with the wing nuts.

(iii) Remove the warning tag on the battery and external power receptacle.

(iv) Connect battery connector to battery.

(v) Install aft baggage compartment dividers.

(j) Return of Replaced Parts and Reporting Requirement

For the first two A/C compressor motor brush replacement cycles on each aircraft, within 30 days after the replacement or within 30 days after the effective date of this AD, whichever occurs later, send the brushes that were removed to Cessna Aircraft Company, Cessna Service Parts and Programs, 7121 Southwest Boulevard, Wichita, KS 67215. Provide the following information with the brushes:

(1) The Model and S/N of the airplane;

(2) P/N of Motor;

(3) P/N of the brushes, if known;

(4) The elapsed amount of motor hours since the last brush/motor replacement, if known;

(5) If motor hours are unknown, report the elapsed airplane flight hours since the last brush/motor replacement and indicate that motor hours are unknown; and

(6) Number of motor hours currently displayed on the pallet hour meter.

(k) Special Flight Permit

Special flight permits are permitted with the following limitation: Operation of the A/C system is prohibited.

(l) Paperwork Reduction Act Burden Statement

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

(m) Alternative Methods of Compliance (AMOCs)

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

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

(n) Related Information

For more information about this AD, contact Christine Abraham, Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; phone: (316) 946–4165; fax: (316) 946–4107; email: *WICHITA-COS@FAA.GOV.*

Issued in Kansas City, Missouri, on November 29, 2012.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–29398 Filed 12–5–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

[Docket No. OSHA–2012–0007]

RIN 1218–AC67

Standards Improvement Project—Phase IV

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for information.

SUMMARY: OSHA is initiating a regulatory review of its existing safety and health standards in response to the President's Executive Order 13563, ''Improving Regulations and Regulatory Review'' (76 FR 38210). The Agency conducted similar regulatory reviews of its existing standards previously as ''standards improvement projects.'' OSHA is issuing this request for information to initiate another of these regulatory reviews, and naming this review the Standards Improvement Project—Phase IV (SIP–IV). The purpose of SIP–IV is to improve and streamline OSHA standards by removing or revising requirements that are confusing or outdated, or that duplicate, or are inconsistent with, other standards. The purpose of the regulatory review is to reduce regulatory burden while maintaining or enhancing employees' safety and health. SIP–IV will focus primarily on OSHA's construction standards. The purpose of this notice is to invite the public, including employers, employees, and employee representatives involved in the construction industry, to submit recommendations for revisions to existing construction standards, including the rationale for these recommendations. OSHA will review this information to determine the need for, and the content of, any subsequent SIP–IV rulemaking.

DATES: Submit comments and additional material by February 4, 2013. All submissions must bear a postmark or provide other evidence of the submission date.

ADDRESSES: Submit comments and additional material using any of the following methods:

Electronically: Submit comments and attachments electronically via the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions online for making electronic submissions.

Facsimile (FAX): Commenters may fax submissions, including any attachments, that are no longer than 10 pages in length to the OSHA Docket Office at (202) 693–1648; OSHA does not require hard copies of these documents. Commenters must submit lengthy attachments that supplement these documents (e.g., studies, journal articles) to the OSHA Docket Office, Technical Data Center, Room N–2625, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210. These attachments must clearly identify the commenter's name, date, subject, and docket number (i.e., OSHA–2012–0007) so the Agency can attach them to the appropriate comments.

Regular mail, express mail, hand (courier) delivery, or messenger service. Submit a copy of comments and any additional material (e.g., studies, journal articles) to the OSHA Docket Office, Docket No. OSHA–2012–0007, Technical Data Center, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2350 (TDY number: (877) 889–5627). Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express mail, hand delivery, or messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m.–4:45 p.m., e.t.

Instructions: All submissions received must include the Agency name and the docket number for this rulemaking (i.e., OSHA–2012–0007). OSHA places all submissions, including any personal information provided, in the public docket without change; this information will be available online at *http://www.regulations.gov.* Therefore, the Agency cautions commenters about submitting information they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

Docket: To read or download submissions or other material in the docket, go to *http://www.regulations.gov,* or contact the OSHA Docket Office at the address listed above. While the Agency lists all documents in the docket 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 accessible at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT:

Press inquiries: Contact Frank Meilinger, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Dayton Eckerson, Office of Construction Standards and Guidance, OSHA Directorate of Construction, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3468, Washington, DC 20210; telephone: (202) 693–1731; fax: (202) 693–1689; email: *eckerson.dayton@dol.gov.*

Copies of this ***Federal Register*** *notice.* Electronic copies are available at *http://www.regulations.gov.* This **Federal Register** notice, as well as news releases and other relevant information, also are available at OSHA's Web page at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

The purpose of this Request for Information (RFI) is to identify provisions in OSHA standards that are confusing or outdated, or that duplicate, or are inconsistent with, the provisions of other standards, either OSHA standards or the standards of other agencies. Improving OSHA standards will increase employers' understanding of their obligations, which will lead to increased compliance, improve employee safety and health, and reduce compliance costs.

In 1995, in response to a Presidential memorandum to improve government regulation,[1] OSHA began a series of rulemakings designed to revise or remove standards that were confusing, outdated, duplicative, or inconsistent. In the first rulemaking, known as ''Standards Improvement Project, Phase I'' (SIP–I), OSHA focused on revising standards that were out of date,

[1] Clinton, W.J. Memorandum for Heads of Departments and Agencies. Subject: Regulatory Reinvention Initiative. March 4, 1995.

duplicative, or inconsistent. OSHA published the final SIP–I rule on June 18, 1998 (63 FR 33450).[2] Two additional rounds of SIP rulemaking followed, with final SIP rules published in 2005 (SIP–II) and 2011 (SIP–III).[3]

As stated above, the President's Executive Order 13563, ''Improving Regulations and Regulatory Review,'' sets out the goals and criteria for regulatory review, and requires agencies to review existing standards and regulations to ensure that these standards and regulations continue to protect public health, welfare, and safety effectively, while promoting economic growth and job creation. The EO encourages agencies to use the best, least burdensome means to achieve regulatory objectives, to perform periodic reviews of existing standards to identify outmoded, ineffective, or burdensome standards, and to modify, streamline, or repeal such standards when appropriate.

The Agency believes that the SIP rulemaking process is an effective means to improve its standards. In addition, the Advisory Committee for Construction Safety and Health (ACCSH) recommended that the Agency review its construction standards as part of the SIP rulemaking process at a public meeting held on December 16, 2011. (A transcription of these proceedings is available at Docket No. OSHA–2011–0124–0025 (''ACCSH Transcript'')). At this meeting, OSHA discussed examples of existing regulations currently under review for possible inclusion in the SIP–IV rulemaking (see Section II, ''Request for Information, Data, and Comments,'' of this notice for a discussion of these examples) (ACCSH Transcript, pp. 133–154). The ACCSH recommended that OSHA also consider revising the standards related to fit testing personal protective equipment, notably §§ 1926.103 and 1910.134, with emphasis on fit testing for female workers (ACCSH Transcript, pp. 142–144). In addition, the ACCSH recommended that OSHA consider revisions to the fall-protection requirements applicable to chimney construction under § 1926.552 to obviate the need for variances to address the specialized fall hazards common to chimney construction (ACCSH Transcript, pp. 142–149).

Recognizing the importance of public participation in the SIP process, the Agency in this RFI is asking the public to identify standards that are in need of revision or removal, and to explain how such action will reduce regulatory burden while maintaining or increasing the protection afforded to employees. While commenters may recommend extensive revisions to, or major reorganizations of, OSHA standards, recommendations that require large-scale revisions to standards are not appropriate for this rulemaking. The Agency will determine whether such large-scale revisions are appropriate for a separate, future rulemaking. In addition, while SIP–IV will focus primarily on construction standards, the Agency will consider recommendations for improvements to non-construction standards.

II. Request for Information, Data, and Comments

OSHA requests assistance from the public in identifying standards that are potential candidates for SIP–IV rulemaking. As stated above, the Agency is targeting primarily construction standards that are confusing or outdated, or that duplicate, or are inconsistent with, other OSHA standards or the standards issued by other agencies. The Agency is seeking recommendations on how to revise or remove those standards while maintaining or enhancing employee protection. To assist in the identification process, listed below under different objectives of the SIP–IV rulemaking (e.g., ''Eliminate Unnecessary Paperwork'') are specific examples from prior rulemakings, along with candidate standards currently under consideration for this rulemaking.

A. Eliminate Unnecessary Paperwork

1. *Examples from prior SIP rulemakings.* SIP–III removed the duty of employers to transfer employee exposure and medical records to the National Institute for Occupational Safety and Health (NIOSH) when an employer ceased doing business and left no successor, when the required period for retaining the records expired, or when the employer terminated a worker's employment. While the original purpose of this requirement was to provide NIOSH with useful research information, NIOSH determined that it could not use these records for that purpose. SIP–III also removed the requirement to certify personal protective equipment (PPE) training. OSHA concluded that it could obtain the PPE training information using other means, thereby making this requirement unnecessary; removing the requirement reduced substantially the paperwork burden on employers.

2. *Example of an existing standard currently under review for possible inclusion in the SIP–IV rulemaking.* To eliminate unnecessary paperwork among construction employers, OSHA is considering eliminating the requirement for a written certification of employee training in § 1926.503(b) of the construction Fall Protection standard (29 CFR part 1926, subpart M). The underlying training requirement would still apply, but employers would no longer have to prepare written certifications of the training.

B. Clarify Employer Duties and Eliminate Unnecessary Employer Duties

1. *Examples from prior SIP rulemakings.* In SIP–III, OSHA clarified employer duties by redefining the meaning of the term ''potable water,'' and revised the title of 29 CFR part 1910, subpart E, from ''Means of Egress'' to ''Exit Routes and Emergency Planning'' for greater clarity and ease of comprehension by affected employers and employees. To eliminate unnecessary employer duties, SIP–I reduced the frequency of medical examinations and tests required in OSHA's Inorganic Arsenic and Coke Oven Emissions standards at 29 CFR 1910.1018 and .1029, respectively.

2. *Example of an existing standard currently under review for possible inclusion in the SIP–IV rulemaking.* To clarify employer duties, OSHA is considering a revision to the Motor Vehicle, Mechanized Equipment, and Marine Operations standard for construction (29 CFR part 1926, subpart O) that would explain that § 1926.601 (and not § 1926.602) covers vehicles that operate within an off-highway jobsite, while § 1926.602 (and not § 1926.601) covers ''off-highway trucks.''[4] A number of construction employers have complained to OSHA that the existing

[2] Revisions made by the SIP–I rulemaking included adjustments to the medical-surveillance and emergency-response provisions of the Coke Oven Emissions, Inorganic Arsenic, and Vinyl Chloride standards, and removal of unnecessary provisions from the Temporary Labor Camps standard and the textile industry standards.

[3] In the final SIP–II rulemaking published in 2005 (70 FR 1111), OSHA revised a number of provisions in its health and safety standards identified as needing improvement either by the Agency or by commenters during the SIP–I rulemaking. The final SIP–III rule, published in 2011 (76 FR 33590), updated consensus standards incorporated by reference in several OSHA rules, deleted provisions in a number of OSHA standards that required employers to prepare and maintain written training-certification records for personal protective equipment, revised several sanitation standards to permit hand drying by high-velocity dryers, and modified OSHA's sling standards to require that employers use only appropriately marked or tagged slings for lifting capacities.

[4] The term ''off-highway trucks'' refers to trucks designed for moving materials in areas other than public roads, e.g., very large dump trucks that are too large to operate on most roads.

language of these standards is confusing.

C. Update Standards and Eliminate Inconsistencies or Duplication Between Standards

1. *Examples from prior SIP rulemakings.* The SIP–II rulemaking updated and harmonized a number of OSHA's early substance-specific standards (e.g., Vinyl Chloride, Acrylonitrile, Coke Oven Emissions, Inorganic Arsenic, and DBCP) by revising the exposure-monitoring, medical-surveillance, and compliance-plan-update provisions of these early standards consistent with recently promulgated OSHA substance-specific standards. In the SIP–III rulemaking, OSHA revised inconsistent provisions of the Respiratory Protection standard to clarify which appendices contain mandatory provisions.

2. *Example of existing standards currently under review for possible inclusion in the SIP–IV rulemaking.* OSHA is considering revising the construction Signals, Signs, and Barricades standards (29 CFR part 1926, subpart G), notably §§ 1926.201 and 1926.202, to reference the most current version of the Manual on Uniform Traffic Control Devices (MUTCD–2009) from the Department of Transportation's Federal Highway Administration. The current standard references the 1988 and 2000 versions of the MUTCD, which are no longer used in many jurisdictions.

D. Miscellaneous Revisions [5]

1. *Examples from prior SIP rulemakings.* SIP–III removed the word ''hot'' modifying ''air hand dryers'' in its Bloodborne Pathogens standard to allow the use of new high-velocity-air hand-drying machines. OSHA acknowledged in the SIP–III rulemaking that the new hand-drying technology was as effective as the requirements in the existing standard, but the existing standard limited hand drying to a decades-old technology that delivered only hot air.

2. *Examples of existing standards currently under review for possible inclusion in the SIP–IV rulemaking.* With regard to the Underground Construction, Caissons, Cofferdams and Compressed Air standards (29 CFR part 1926, subpart S), OSHA is considering updating the decompression tables in Appendix A.[6] This action would permit employers to use decompression procedures that take advantage of new hyperbaric technologies used widely by private-sector and public-sector employers in the U.S. engaged in extreme hyperbaric exposures. Currently, to use updated decompression procedures, employers engaged in tunneling projects, for example, must apply for a variance from the decompression tables currently specified by Appendix A. However, the variance process is not an efficient means of addressing health and safety issues that may affect multiple employers.

Another possible miscellaneous revision would involve revising the definitions of ''stable rock'' in § 1926.650(b) and ''layered system'' in paragraph (b) of Appendix A of OSHA's Excavation standard by clarifying the meaning of those terms so that employers will classify soil correctly at excavation sites. Incorrect classifications of soil types can endanger employees because, based on faulty soil classification, employers may use inappropriate safeguards to prevent cave-ins.

E. Submitting Recommendations

When submitting a recommended revision to an existing OSHA standard in response to this RFI, OSHA requests that members of the public explain their rationale and provide, if possible, data and information to support their comments. Specifically, OSHA is requesting commenters to provide: (1) The reasons why they believe a candidate standard is confusing or outdated, or duplicates, or is inconsistent with, other OSHA standards or the standards issued by other agencies, and mention specifically what the other standard is, and (2) the action, including revised language when appropriate, that they believe will improve the standard.

III. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, authorized the preparation of this notice pursuant to Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), 29 CFR part 1911, and Secretary's Order 1–2012 (77 FR 3912).

Signed at Washington, DC, on November 29, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2012–29514 Filed 12–5–12; 8:45 am]

BILLING CODE 4510–26–P

[5] These revisions include eliminating obsolete, unclear, or inconsistent standards; permitting the use of new technologies or new and effective employee-protection measures that provide equivalent or superior performance to existing OSHA standards; and correcting grammatical or typographical errors.

[6] Updated decompression procedures typically use oxygen-enriched breathing mixtures during decompression, as well as decompression schedules that differ substantially from the schedules specified by the existing Appendix A tables.

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506–AB20

Notice of Proposed Rulemaking: Definitions of Transmittal of Funds and Funds Transfer

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury; Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Financial Crimes Enforcement Network (FinCEN), a bureau of the Department of the Treasury, and the Board of Governors of the Federal Reserve System (Board) are proposing amendments to the regulatory definitions of ''funds transfer'' and ''transmittal of funds'' under the regulations implementing the Bank Secrecy Act. The proposed changes are intended to maintain the current scope of the definitions and are necessary in light of changes to the Electronic Fund Transfer Act that will result in certain currently covered transactions being excluded from Bank Secrecy Act requirements.

DATES: Written comments on this NPRM must be submitted on or before January 25, 2013.

ADDRESSES: Comments should be directed to:

FinCEN: You may submit comments, identified by Regulatory Identification Number (RIN) 1506–AB20, by any of the following methods:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Include RIN 1506–AB20 in the submission.
- *Mail:* FinCEN, P.O. Box 39, Vienna, VA 22183. Include RIN 1506–AB20 in the body of the text. Please submit comments by one method only. Comments submitted in response to this NPRM will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

Inspection of comments: Public comments received electronically or

through the U. S. Postal Service sent in response to a notice and request for comment will be made available for public review as soon as possible on *www.regulations.gov.* Comments received may be physically inspected in the FinCEN reading room located in Vienna, Virginia. Reading room appointments are available weekdays (excluding holidays) between 10 a.m. and 3 p.m., by calling the Disclosure Officer at (703) 905–5034 (not a toll-free call).

Board: Please submit your comments, identified by Docket No. OP–1445 by one method only, using any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Address to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT:

FinCEN: The FinCEN regulatory helpline at (800) 949–2732 and select Option 6.

Board: Koko Ives, Senior Supervisory Financial Analyst, (202) 973–6163, Division of Banking Supervision and Regulation, or Dena L. Milligan, Senior Attorney, (202) 452–3900, Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Statutory Provisions

The Currency and Foreign Transactions Reporting Act of 1970, as amended by the USA PATRIOT Act of 2001 and other legislation, which legislative framework is commonly referred to as the Bank Secrecy Act (''BSA''),[1] authorizes the Secretary of the Treasury (''Secretary'') to require financial institutions to keep records and file reports that ''have a high degree of usefulness in criminal, tax, or regulatory proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.'' [2] The Secretary has delegated to the Director of FinCEN, the authority to implement, administer and enforce compliance with the BSA and associated regulations.[3]

The BSA was amended by the Annunzio-Wylie Anti-Money Laundering Act of 1992 (Pub. L. 102–550) (''Annunzio-Wylie''). Annunzio-Wylie authorizes the Secretary and Board of Governors of the Federal Reserve System (the ''Board'') to issue joint regulations requiring insured banks to maintain records of domestic funds transfers.[4] In addition, Annunzio-Wylie authorizes the Secretary and the Board to issue joint regulations requiring insured banks and certain nonbank financial institutions to maintain records of international funds transfers and transmittals of funds.[5] Annunzio-Wylie requires the Secretary and the Board, in issuing regulations for international funds transfers and transmittals of funds, to consider the usefulness of the records in criminal, tax, or regulatory investigations or proceedings, and the effect of the regulations on the cost and efficiency of the payments system.[6]

The Electronic Fund Transfer Act (''EFTA'') [7] was enacted in 1978 to establish the rights and liabilities of consumers as well as the responsibilities of all participants in electronic fund transfer activities. The EFTA is implemented by Regulation E, which sets up the framework that establishes the rights, liabilities, and responsibilities of participants in electronic fund transfer systems.[8] Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[9] added a new section 919 to the EFTA, creating a comprehensive new system of consumer protections for remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries. Because the new section 919 of the EFTA defines ''remittance transfers'' broadly, most electronic transfers of funds sent by consumers in the United States to recipients in other countries will be subject to the new protections.

II. Background Information

A. Current Regulations Regarding Funds Transfers and Transmittals of Funds

On January 3, 1995, FinCEN and the Board jointly issued a rule that requires banks and nonbank financial institutions to collect and retain information on certain funds transfers and transmittals of funds (''recordkeeping rule'').[10] At the same time, FinCEN issued the ''travel rule,'' which requires banks and nonbank financial institutions to include certain information on funds transfers and transmittals of funds sent to other banks or nonbank financial institutions.[11]

The recordkeeping and travel rules provide uniform recordkeeping and transmittal requirements for financial institutions and are intended to help law enforcement and regulatory authorities detect, investigate, and prosecute money laundering and other financial crimes by preserving an information trail about persons sending and receiving funds through the funds transfer system.

In general, the recordkeeping rule requires financial institutions to retain information on transmittals of funds of $3,000 or more and requires banks to retain information on funds transfers of $3,000. Under the recordkeeping rule, a financial institution must retain the following information for transmittals of funds of $3,000 or more:

- If acting as a transmittor's financial institution, either the original, microfilmed, copied, or electronic record of the information received, or the following information: (a) The name and address of the transmittor; (b) the amount of the transmittal order; (c) the

[1] The BSA is codified at 12 U.S.C. 1829b and 1951–1959, 18 U.S.C. 1956, 1957, and 1960, and 31 U.S.C. 5311–5314 and 5316–5332 and notes thereto, with implementing regulations at 31 CFR Chapter X. *See* 31 CFR 1010.100(e).

[2] 31 U.S.C. 5311.

[3] Treasury Order 180–01 (Sept. 26, 2002).

[4] 12 U.S.C. 1829b(b)(2) (2006). Treasury has independent authority to issue regulations requiring nonbank financial institutions to maintain records of domestic transmittals of funds.

[5] 12 U.S.C. 1829b(b)(3) (2006).

[6] *Id.*

[7] 15 U.S.C. 1693 *et seq.*

[8] 12 CFR part 1005.

[9] Public Law 111–203, 124 Stat. 1376, section 1073 (2010).

[10] 31 CFR 1020.410(a)) (recordkeeping requirements for banks); 31 CFR 1010.410(e) (recordkeeping requirements for nonbank financial institutions). The Board revised its Regulation S (12 CFR part 219) to incorporate by reference the recordkeeping rule codified in Title 31 of the CFR, as well as to impose a 5-year record-retention requirement with respect to the recordkeeping and reporting requirements.

[11] 31 CFR 1010.410(f).

execution date of the transmittal order; (d) any payment instructions received from the transmittor with the transmittal order; (e) the identity of the recipient's financial institution; (f) as many of the following items as are received with the transmittal order: the name and address of the recipient, the account number of the recipient, and any other specific identifier of the recipient; and (g) if the transmittor's financial institution is a nonbank financial institution, any form relating to the transmittal of funds that is completed or signed by the person placing the transmittal order.[12]

- If acting as an intermediary financial institution, or a recipient financial institution, either the original, microfilmed, copied, or electronic record of the received transmittal order.[13]

Banks are required to maintain analogous information for funds transfers of $3,000 or more, but the rule uses different terminology to describe the parties.[14] The recordkeeping rule requires that the data be retrievable and available upon request to FinCEN, to law enforcement, and to regulators to whom FinCEN has delegated BSA compliance examination authority. Records required to be retained by the recordkeeping rule must be made available to Treasury or the Board upon request.[15]

Under the travel rule, a financial institution acting as the transmittor's financial institution must obtain and include in the transmittal order the following information on transmittals of funds of $3,000 or more: (a) Name and, if the payment is ordered from an account, the account number of the transmittor; (b) the address of the transmittor; (c) the amount of the transmittal order; (d) the execution date of the transmittal order; (e) the identity of the recipient's financial institution; (f) as many of the following items as are received with the transmittal order: the name and address of the recipient, the account number of the recipient, and any other specific identifier of the recipient; and (g) either the name and address or the numerical identifier of the transmittor's financial institution. A financial institution acting as an intermediary financial institution must include in its respective transmittal order the same data points listed above, if received from the sender.[16]

The recordkeeping rule and the travel rule apply to transmittals of funds and funds transfers. A ''transmittal of funds'' is defined as a series of transactions beginning with the transmittor's transmittal order, made for the purpose of making payment to the recipient of the order (31 CFR 1010.100(ddd)). The term includes any transmittal order issued by the transmittor's financial institution or an intermediary financial institution intended to carry out the transmittor's transmittal order. The term transmittal of funds includes a funds transfer. A ''funds transfer'' is a series of transactions beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order (31 CFR 1010.100(w)). Under the current definitions, transmittals of funds and funds transfers governed by the EFTA as well as any other funds transfers that are effected through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from the definitions of ''transmittal of funds'' and ''funds transfer'' under the BSA.

When the recordkeeping and travel rules were adopted, the EFTA governed only electronic funds transfers as defined in section 903(a)(7) of that Act. The term ''electronic fund transfer'' includes any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer's account (including a payroll card account). The term includes, but is not limited to, (a) Point-of-sale transfers; (b) automated teller machine transfers; (c) direct deposits or withdrawals of funds; (d) transfers initiated by phone as part of a bill-payment plan, and (e) transfers resulting from debit card transactions, whether or not initiated through an electronic terminal. The term does not include certain transfers of funds, such as those originated by check, draft, or similar paper instrument; those issued as a means of guaranteeing the payment or authorizing the acceptance of a check, draft, or similar paper instrument; or those made in the context of a purchase or sale of certain securities or commodities.[17] Wire or other similar transfers conducted through Fedwire® or similar wire transfer systems primarily used for transfers between financial institutions or between businesses are also specifically excluded from the definition of ''electronic fund transfer.''

B. Section 1073 of the Dodd-Frank Act and EFTA

Section 1073 of the Dodd-Frank Act, signed into law on July 21, 2010, adds a new Section 919 to the EFTA, creating new protections for consumers who send remittance transfers. Authority to implement the EFTA (except for the interchange fee provisions in EFTA section 920) transferred from the Board to the Consumer Financial Protection Bureau (''CFPB'') effective July 21, 2011. On February 7, 2012, CFPB adopted a final rule to implement Section 919, with an effective date of February 7, 2013.[18] The provisions of the final rule will apply to any ''remittance transfer,'' which is defined as the electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider. The term applies regardless of whether the sender holds an account with the remittance transfer provider, and regardless of whether the transaction is also an electronic fund transfer. However, certain small dollar and securities- or commodities-related transfers are excluded from the definition of remittance transfer.[19] A ''sender'' is a consumer in a State who primarily for personal, family, or household purposes requests a remittance transfer provider to send a remittance transfer to a designated recipient.[20] A ''designated recipient'' is any person specified by the sender as the authorized recipient of a remittance transfer to be received at a location in a foreign country.[21] A ''remittance transfer provider'' or ''provider'' is any person that provides remittance transfers for a consumer in the normal course of its business, regardless of whether the consumer holds an account with such person.[22] Once effective, the provisions will extend the coverage of section 919 of the EFTA, as implemented by Regulation E, to transactions that were excluded from other portions of the EFTA and Regulation E, such as international wire transfers sent by consumers through banks, and cash-based transmittals of funds sent by a consumer through money transmitters.

[12] 31 CFR 1010.410(e)(1)(i).
[13] 31 CFR 1010.410(e)(1)(ii) and (iii).
[14] 31 CFR 1020.410(a).
[15] 12 U.S.C. 1829b(b)(3)(C); 12 CFR 219.24.
[16] 31 CFR 1010.410(f)(1)–(2).
[17] 15 U.S.C. 1693a(7); 12 CFR 1005.3(b).
[18] 77 FR 6193 (Feb. 7, 2012).
[19] 12 CFR 1005.30(e).
[20] 12 CFR 1005.30(g).
[21] 12 CFR 1005.30(c).
[22] 12 CFR 1005.30(f).

C. Effect of Changes to EFTA and Regulation E on the Scope of the Definitions of ''Transmittal of Funds'' and ''Funds Transfer'' Under the Regulations Implementing the BSA

Existing BSA regulations exclude certain types of transactions and payment systems that are used mostly for domestic retail transactions and payments from the definitions of funds transfer and transmittal of funds. This exclusion was implemented, not by listing the individual transaction types, but by referencing the law that protected the consumers engaged in such transactions (EFTA), and the specific payment systems through which such transactions are conducted (ATM, point-of-sale, and automated clearinghouse). This method of identifying excluded transactions created a link between two statutes (and their implementing regulations) with very different goals. The BSA requires financial institutions to keep records and file reports on transmittals of funds and funds transfers (which could be either domestic or international, consumer- or business-related, retail or wholesale, cash-based or account-based) that the Secretary and the Board determine have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in intelligence or counterintelligence matters to protect against international terrorism.[23] The EFTA protects individual consumers engaging in certain movements of funds initiated through electronic means (electronic terminal, telephone, computer, online banking, magnetic tape, etc.) for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer's account. In spite of the different statutory purposes, for many years this relationship provided a satisfactory match, as the types of transactions covered by the EFTA conformed to the profile of the types of transactions that were appropriate to exclude from the recordkeeping and travel requirements under the BSA.

However, the recent amendments to the EFTA and the recently finalized revisions to Regulation E, which are effective February 7, 2013, will result in an expanded scope of the transactions subject to the EFTA's remittance provisions. Some of these transactions have, to date, been covered by the regulations implementing the BSA. When the changes to Regulation E become effective, these transactions—which include international funds transfers sent by consumers through banks, and cash-based or account-based transmittals of funds sent by consumers through money transmitters—will fall outside the BSA rules' definitions of ''funds transfer'' and ''transmittal of funds'' (31 CFR 1010.100(w) and 1010.100(ddd)). To avoid this result, the Board and FinCEN are proposing to amend the definitions of funds transfer and transmittal of funds under the regulations implementing the BSA to limit the exclusion of EFTA-covered transactions from the recordkeeping and travel rules.

III. Section-by-Section Analysis

This NPRM proposes to revise the regulations implementing the BSA by narrowing the exclusion from definitions of ''funds transfer'' and ''transmittal of funds.'' The term ''funds transfer'' is defined in 31 CFR 1010.100(w). The term ''transmittal of funds'' is defined in 31 CFR 1010.100(ddd). Both definitions state that ''funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. 95–630, 92 Stat. 3728, 15 U.S.C. 1693, *et seq.*), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, also are excluded from this definition.''

To preserve the current scope of transactions subject to the recordkeeping and travel rules, FinCEN and the Board propose to amend these definitions by revising the phrase ''funds transfers governed by the Electronic Fund Transfer Act of 1978'' to read ''electronic fund transfers as defined in section 903(7) of the Electronic Fund Transfer Act.'' These revisions would limit the exclusion in these definitions to electronic fund transfers as defined in the EFTA. Any remittance transfers that are covered by section 919 of the EFTA, but do not meet the definition of electronic fund transfer, would continue to be covered by the travel and recordkeeping rules.

The Board and FinCEN believe that the proposed amendments preserve the current scope of transactions subject to the funds recordkeeping and travel rules. Nonetheless, the Board and FinCEN request comment on whether the proposed amendments change the scope of the current EFTA exclusion from the funds recordkeeping and travel rules, and thus the scope of transactions subject to those rules.

IV. Notice and Comment Under the Administrative Procedure Act

FinCEN and the Board invite comment on any and all aspects of the proposal to amend the definitions of ''funds transfer'' and ''transmittal of funds,'' in order to maintain their current scope, in view of the modifications to the EFTA's coverage.

V. Executive Orders 12866 and 13563

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. It has been determined that this proposed rule is neither an economically significant regulatory action nor a significant regulatory action for purposes of Executive Orders 13563 and 12866.

VI. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), Public Law 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by the 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 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. Since there is no change to the requirements imposed under existing regulations, FinCEN has determined that it is not required to prepare a written statement under section 202.

VII. Regulatory Flexibility Act

FinCEN

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an

[23] Insured depository institutions must keep records relating to funds transfers that the Secretary and the Board jointly determine have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. 12 U.S.C. 1829(b). Financial institutions other than insured depository institutions, must keep records that the Secretary determines has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or conducting intelligence or counterintelligence activities to protect against international terrorism. 12 U.S.C. 1953(a).

analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). The proposed changes are not intended to alter any institution's existing obligations. The sole purpose of these amendments is to maintain the current scope of transactions subject to the BSA funds recordkeeping and travel rules, in light of changes to the EFTA. Accordingly, FinCEN hereby certifies that the proposed regulation is not likely to have a significant economic impact on a substantial number of small business entities for purposes of the Regulatory Flexibility Act. Notwithstanding this certification, FinCEN invites comments on the impact of this rule on small entities.

Board

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule or certify that the proposed rule will not have a significant impact on a substantial number of small entities. The proposed regulation covers insured banks and certain nonbank financial institutions that are engaged in funds transfers and transmittals of funds. The Board believes it is unlikely that the proposed regulation will have a significant economic impact on a substantial number of small entities. Nonetheless, the Board has prepared an initial regulatory flexibility analysis pursuant to the RFA. The Board welcomes comment on all aspects of the initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. *Statement of the need for, and objectives of, the proposed regulation.* The Dodd-Frank Act's amendments to the EFTA expanded the types of transactions that are covered by the EFTA and therefore excluded from the definition of funds transfer and transmittal of funds in 31 CFR 1010.100(w) and 31 CFR 1010.100(ddd), respectively. This proposed regulation is necessary to retain the current scope of transactions subject to recordkeeping rule.

2. *Small entities affected by the proposed regulation.* The requirements of this proposed regulation, like the existing requirements, apply to all financial institutions subject to the Bank Secrecy Act, regardless of size. Based on Call Report data as of June 30, 2012, approximately 3,820 insured depository institutions had total domestic assets of $175 million or less.[24] In addition, the requirements of this proposed regulation to affect financial institutions that are not ''insured depository institutions'' under the Federal Depository Insurance Act. For example, as of June 30, 2012, approximately 6,120 credit unions had total domestic assets of $175 million or less.

3. *Compliance requirements.* The proposed regulation, like the current regulation, requires insured depository institutions and nonbank financial institutions to collect and retain information on funds transfers and transmittals of funds. The proposed regulation does not change the scope of the information currently required to be collected or retained and does not change the funds transfers and transmittals of funds for which the information currently must be collected and maintained.

4. *Other Federal rules.* The Board believes that no Federal rules duplicate, overlap, or conflict with the proposed regulation.

5. *Significant alternatives to the proposed regulation.* The Board welcomes comment on any significant alternatives that would minimize the impact of the proposal on small entities.

VIII. Paperwork Reduction Act

The collection of information requirements have been reviewed and approved by the Office of Management and Budget (''OMB'') under section 3507 of the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3507(d). (OMB Control No. 1506–0058 (recordkeeping requirements for financial institutions under § 1010.410(e) and (f)) and 1506–0059 (recordkeeping requirements for banks under § 1020.410(a)). Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. This proposal intends to keep the same scope of transactions subject to the requirements of the recordkeeping and travel rules as currently are subject to these requirements. With no change to the types or scope of transactions covered under the regulations, there is no impact on the burden estimates already approved under the requirements of the PRA.

List of Subjects in 31 CFR Part 1010

Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR part 1010 is proposed to be amended as follows:

PART 1010—GENERAL PROVISIONS

1. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, secs. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307.

2. Section 1010.100 is amended by:

a. Revising the last sentence of paragraph (w), and

b. Revising the last sentence of paragraph (ddd) to read as follows:

§ 1010.100 General definitions.

* * * * *

(w) *Funds Transfer.* * * * Electronic fund transfers as defined in section 903(7) of the Electronic Fund Transfer Act (15 U.S.C. 1693a(7)), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

* * * * *

(ddd) *Transmittal of funds.* * * * Electronic fund transfers as defined in section 903(7) of the Electronic Fund Transfer Act (15 U.S.C. 1693a(7)), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

* * * * *

In concurrence:

By order of the Board of Governors of the Federal Reserve System, November 27, 2012.

Robert deV. Frierson,

Secretary of the Board.

Dated: November 26, 2012.

Jennifer Shasky Calvery,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2012–29233 Filed 12–5–12; 8:45 am]

BILLING CODE 6210–01–P; 4810–2P–P

[24] U.S. Small Business Administration. Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 157

[DoD–2008–OS–0075; RIN 0790–AI33]

Reduction of Use of Social Security Numbers in the Department of Defense

AGENCY: Department of Defense.

ACTION: Notice addressing comments received on the proposed rule.

SUMMARY: The Department of Defense (DoD) published a proposed rule concerning the reduction of the use of social security numbers (SSN) in the Department on March 3, 2010 (75 FR 9548). The Department published the proposed rule because it intended to apply the SSN reduction policies and procedures to entities that contract with the Department. However, it has been determined that the Defense Federal Acquisition Regulation Supplement (DFARS) or another contract vehicle is a more appropriate way to apply these policies and procedures to these entities; therefore, a final rule in title 32 of the Code of Federal Regulations will not be published. DoD will publish internal guidance in an Instruction that will not contain language regarding contract companies since that guidance will be provided as noted above in a DFARS rule or other contract vehicle. This notice is being published to address the public comments received concerning the proposed rule.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Yousef, 571–372–1939.

SUPPLEMENTARY INFORMATION: Seven sets of comments were received on the proposed rule and are addressed below. All comments are available upon request.

One commenter said that leave forms of military members or the Office of Personnel Management (OPM) Form 71 (Request for Leave or Approved Absence) for civilian employees should not include SSNs in whole or in part. As part of the ongoing review to reduce or eliminate the use of SSNs, the Department will review the forms to document leave usage by military members and will reduce or eliminate the use of SSNs on these forms as appropriate. The civilian employee leave form, OPM Form 71, was revised in September 2009, and requires the individual's Employee Number or only the last four digits of the SSN.

One commenter expressed concern that the SSN is required in order to receive treatment at medical facilities on military installations and that the SSN is printed on identification cards. Other commenters noted that due to the widespread use of SSNs on military installations, individuals are at risk for identity theft. The Department of Defense takes the security and protection of its personnel's Personally Identifiable Information (PII) very seriously. In order to reduce the use of the SSN and to better protect the identity of its members, the Department developed and released ''Business Practice Changes to Allow the Removal of Social Security Numbers from DoD Identification (ID) Cards'' in January 2009 and in November 2012 released an ''Updated Plan for the Removal of Social Security Numbers (SSNs) from Department of Defense (DoD) Identification (lD) Cards,'' that consisted of a comprehensive three-phased plan to reduce or eliminate SSN use on DoD ID cards:

—Phase 1 of the updated plan requires removal of SSNs from DoD ID Cards and began with removal of the dependent's SSN from Dependent ID cards in December 2008. Phase 1 will be complete in December 2012.

—Phase 2 of the plan began replacement of the SSN with the DoD ID Number and started in June 2011. Phase 2 will be complete in June 2015.

—Phase 3 of the plan will remove SSNs from ID card barcodes and is scheduled to begin in the 4th Quarter of Calendar Year 2012 and will take four years to complete.

A commenter, while also expressing concern with the use of SSNs for identification and record keeping purposes, recommended that secure methods be used when transmitting information that includes SSNs. The Department requires that the Privacy Act be complied with when storing or transmitting information that contains PII. Secured communication methods are required to be used when transmitting PII.

Another commenter also expressed concern with the extensive use of SSNs by DoD and recommended that an alternative identification number be used in lieu of the SSN. Another commenter recommended replacing the SSN with the DoD Electronic Data Interchange Personal Identifier (EDI–PI). Directive Type Memorandum (DTM) 07–015, ''DoD Social Security Number (SSN) Reduction Plan'' and DoD Instruction 1000.30, ''Reduction of Social Security Number (SSN) Use Within DoD,'' which supersedes DTM 07–015, require the DoD Forms Management Officer and the DoD Component Forms Management Officers to review SSN use and justifications on new and existing forms in their respective activities to reduce or eliminate the use of SSNs wherever possible. Additionally, these policies require the review and justification of SSN use in new and existing systems and to eliminate the use of SSNs wherever possible. The DoD ID Number, the common name for the EDI–PI, is identified by both policies as the primary alternative for the SSN. It is intended to support replacement of the SSN in most DoD processes and business needs. The DoD ID Number shall only be used for DoD business purposes. This may include transactions that include entities outside DoD, so long as individuals are acting on behalf of or in support of the Department of Defense. The DoD ID Number shall not be used to replace the SSN in any case where the SSN is required by law. All individuals eligible to receive DoD benefits, such as commissary, exchange, Morale, Welfare and Recreation or TRICARE purchased care, will, in addition to the DoD ID Number, receive a DoD Benefits Number that will be used to facilitate medical care in lieu of the SSN to the greatest extent permissible.

Dated: December 3, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–29504 Filed 12–5–12; 8:45 am]

BILLING CODE 5001–06–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201 and 203

[Docket No. 2012–1]

Copyright Office Fees

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office has further revised its proposed fee schedule for filing cable and satellite statements of account following feedback from interested parties in response to a Notice of Proposed Rulemaking published on March 28, 2012. The modified fee schedule set forth below reflects an updated calculation of the cost of providing services.

DATES: Comments must be received in the Copyright Office no later than 5 p.m. Eastern Standard Time (EST) on January 7, 2013. Reply comments must be received in the Copyright Office no later

than 5 p.m. Eastern Standard Time (EST) on January 22, 2013.

ADDRESSES: Comments should be submitted electronically. A comment page containing a comment form is posted on the Copyright Office Web site at *http://www.copyright.gov/docs/newfees/comments/*. The Web site interface requires submitters to complete a form specifying name and organization, as applicable, and to upload comments as an attachment via a browse button. To meet accessibility standards, all comments must be uploaded in a single file not to exceed six megabytes (MB) in one of the following formats: the Adobe Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The form and face of the comments must include both the name of the submitter and the organization. All comments will be posted publicly on the Copyright Office Web site exactly as they are received, along with names and organizations. If electronic submission of comments is not feasible, please contact the Copyright Office at (202) 707–8380 for special instructions.

FOR FURTHER INFORMATION CONTACT: Megan Rivet, Budget Analyst, or Melissa Dadant, Senior Advisor for Operations and Special Projects, at (202) 707–8350.

SUPPLEMENTARY INFORMATION: In 2010, Congress enacted the Satellite Television Extension and Localism Act (''STELA''), Public Law 111–175, 124 Stat. 1218, which, for the first time, granted authority to the Copyright Office to establish fees for the filing of statements of account (''SOAs'') pursuant to the section 111, 119, and 122 statutory licenses for cable and satellite users. Prior to 2010, the cost of processing such statements and associated royalty payments was funded solely by the royalty fees collected for the benefit of the copyright owners under the statutory licenses. STELA added a new provision to Title 17 that permits the Office to apportion up to 50 percent of the cost of processing the SOAs and royalty payments to licensees. More specifically, 17 U.S.C. 708(a) provides that the fees charged to licensees for the filing of SOAs ''shall be reasonable and may not exceed one-half of the cost necessary to cover reasonable expenses incurred by the Copyright Office for the collection and administration of the statements of account and any royalty fees deposited with such statements.''

On March 28, 2012, the Copyright Office published a Notice of Proposed Rulemaking (''NPR'') as the initial step in adopting new fees for various services, including the registration of claims, recordation of documents, special services, processing of requests for records pursuant to the Freedom of Information Act, and Licensing Division services, including the new fees for filing of cable and satellite SOAs. *See* 77 FR 18742 (March 28, 2012). Fees were proposed in accordance with the procedure set forth in the Copyright Act, which provides that the Register of Copyrights may, by regulation, adjust fees for certain enumerated services based upon a study of costs incurred by the Copyright Office. *See* 17 U.S.C. 708(b).

Generally speaking, the Office has conducted a study of costs every three years. In each case, and in the case here, the Office is acutely aware of its obligations as an agency of the federal government, including the mandate to establish sound fiscal policies and develop a responsible budget. At the same time, the Office is cognizant of its responsibilities to both copyright owners and users of copyrighted works. Ultimately, the Office must price its services in a manner that is fair to the parties and conducive to well-functioning programs and recordkeeping. Indeed, elsewhere the Copyright Act indicates that fees ''shall be fair and equitable and give due consideration to the objectives of the copyright system.'' 17 U.S.C. 708(b)(4).

In response to the NPR, the Office received 138 comments on the proposed fees, three of which specifically addressed the new fees for filing cable and satellite SOAs. The Office received individual comments from the American Cable Association (''ACA'') and the National Cable & Telecommunications Association (''NCTA''), and a joint comment from Program Suppliers, Joint Sports Claimants, Commercial Television Claimants, Music Claimants, Canadian Claimants Group, National Public Radio, Broadcaster Claimants Group, and Devotional Claimants (collectively, ''Copyright Owners'').

NCTA expressed the concern that the proposed fees sought to recover costs for services ''that go beyond what is reasonably necessary to administer the license and reflect[] expenses incurred in the past that are unlikely to recur in the future.'' NCTA Comments at 2. ACA requested the Office to provide a waiver of fees for cable operators experiencing financial hardship. *See generally* ACA Comments.

Copyright Owners, on the other hand, argued that the proposed fees failed to recover half of the actual operating costs of the cable and satellite program, and also questioned the Office's methodology, specifically why actual costs were not the starting point for analysis. *See generally* Copyright Owners' Comments.

In light of the comments received from affected stakeholders, and because the fees for filing cable and satellite SOAs are being set for the first time, the Office conducted further analysis of those fees. As explained below, it performed a second study, using a revised methodology to more precisely capture the cost of providing the services in question.

New Cost Study for Setting Cable and Satellite SOA Filing Fees

The original cost study for the Office's administration of the cable and satellite statutory licenses used the additive model employed in previous cost studies for peripheral fee services. This method focuses on the desk time of dedicated employees, in other words, how much time they spend performing activities involved in processing a typical service request. While effective in analyzing services that can be measured by short intervals of time, it is sometimes not as successful in determining the cost of a more complex task, such as the processing of an entire SOA. At the same time, managing the cable and satellite SOAs is a major program of the Office and comprises the greatest portion of staff time and related resources in comparison to administering the other statutory licenses.

In its reexamination of SOA program costs, the Office applied a traditional methodology that it has used to assess the costs of its services in other areas, such as copyright registration. This methodology calculates the full cost of the activity in question—in this case, the entire SOA program, including the receipt and administration of the SOAs and royalty fees deposited with such statements—based on actual expenditures and all costs directly or indirectly associated with these functions. The revised methodology identifies staffing costs for each particular program service and apportions non-personnel costs either directly to the services they support or, in the case of administrative and other indirect costs, in proportion to the staff costs previously identified. Staffing costs not associated directly or indirectly with any of the program services, along with a commensurate proportion of non-personnel costs, are excluded from the model.

The revised methodology is more complete because it accounts for all

relevant staff time, whether associated directly with a program service or indirectly, and includes all staff, including administrative and managerial staff, and all relevant non-personnel costs. Because it is all-inclusive, it covers costs incurred where the standard workflow path cannot be followed, as well as exceptional cases that involve time-intensive research or problem resolution, for example, cases where electronic funds transfer payments need to be matched with a SOA received much earlier or later than the payment or without a remittance advice. It also covers non-routine staff effort. For instance, during the period under review, the Office revised work procedures and forms, and updated its internal information systems, to facilitate its implementation of STELA. The Office expects these types of administrative and technical upgrades to continue to occur during the life of the SOA program.

In conducting the second cost study, the Office applied a three-year average of non-personnel costs to address concerns that an aberrant year may have an undue impact on the proposed fees. The Office considered reengineering efforts of the Licensing Division in the area of statutory licenses and the rise of associated costs in 2011. The administrative and technical enhancements are integral to the SOA program. However, in order to mitigate the impact of higher than usual costs in 2011, the 2011 costs have been averaged with costs from 2010 and 2009 to achieve a balanced representation of the overall, ongoing cost of the SOA program, including periodic and technical upgrades.

Finally, in both the initial and revised cost studies, the Office excluded approximately 75 percent of salaries for staff who work in the Fiscal Section of the Licensing Division. The Office did so because much of the work of these employees is dedicated to royalty management functions that serve copyright owners (e.g., production of financial statements, reconciliations, investments, and distributions); the 75 percent exclusion is meant to fairly account for this fact.

Revised Fees for Cable and Satellite Statements of Account

In the initial cost study, the Office analyzed the processing of cable SA1, SA2, and SA3 SOAs and satellite SOAs independently. In performing the revised study, it was evident that many of the program costs are common to both cable and satellite filings, in particular the fiscal management and information technology costs, and thus should be shared by both types of filers.

Based on its further evaluation of the program costs for the collection and administration of the cable and satellite SOAs and the royalty fees deposited with such statements, the Office continues to propose a tiered fee schedule corresponding to the filing of the different types of SOAs. The fees for licensees who file a cable SA1 or SA2 form remain unchanged from the initial proposal, $15 for the filing of a SA1 form and $20 for the filing of a SA2 form. Such fees are reasonable in light of the minimal amount of processing required and the typical royalty payments associated with such statements, which are substantially lower than royalties associated with SA3 filings. *See* 17 U.S.C. 708(b) (fees established by the Register for cable and satellite SOAs are to be ''reasonable''). Additionally, following its review of the totality of SOA program costs, as described above, the Office proposes to establish both the cable SA3 filing fee and satellite filing fee at $725. The Office believes that $725 is a reasonable fee in light of the second cost study and substantial royalty payments associated with these SOAs.

Moreover, at the proposed levels, the fees collected from licensees filing SOAs should in the aggregate approach, but not exceed, 50 percent of the Office's reasonable expenses to administer the cable and satellite SOA program, as determined in the more recent study conducted by the Office. Based on projected filings, the expected annual fee recovery will be approximately $1.77 million, or approximately 47 percent of the estimated $3.74 million total annual SOA program cost.

Schedule of Revised Proposed Fees

The chart below sets forth the proposed fees for filing cable and satellite SOAs:

SCHEDULE OF PROPOSED FEES

[Administration of statutory licenses]

	Proposed new fee
(1) Processing of a statement of account based on secondary transmissions of primary transmissions pursuant to § 111:	
(i) Form SA1	$15
(ii) Form SA2	20
(iii) Form SA3	725
(2) Processing of a statement of account based on secondary transmissions pursuant to §§ 119 and 122	725

The Office believes that, as revised, the proposed fees are appropriate based on the reasonable expenses incurred in the processing of cable and satellite SOAs and managing the associated royalty payments. Moreover, the fees are set to approach one-half the costs, without exceeding one-half, in order that owners and users of copyrighted works share the burden of supporting the cable and satellite SOA program. An outcome where program costs are shared relatively equally by owners and users is consistent with the mandate of STELA, as well as the objectives of the copyright system.

Waiver of Filing Fees

ACA suggests that the Office ''establish a streamlined waiver process for smaller cable operators where payment of the filing fee would result in a financial hardship.'' ACA Comments at 2. While the Office understands ACA's rationale for this request, the law appears to preclude this option.

Section 708(a) requires that ''fees shall be paid to the Register of Copyrights'' for filing a cable SOA. The statute also instructs the Register to fix said fees based on relevant costs. To this end, the Office conducted a cost study, taking into account that cable companies that file SA1 and SA2 forms benefit from the statutory licensing scheme, yet generate revenues considerably lower than the cable systems that file the SA3 form. Accordingly, the Office is proposing significantly lower fees to ensure that they are reasonable under the circumstances.

To the extent the suggestion of ACA is that nothing in the law expressly prevents the Register from creating exceptions or waivers to the general fee, the Office notes that Congress has set forth express authority for the Register

to waive fees elsewhere in section 708. Section 708(c) grants the Register discretion to waive fees for United States agencies and their employees, but only ''in occasional or isolated cases involving relatively small amounts.'' Such express and limited authority in the area of waivers suggests that Congress would have created a clear exception or waiver of the kind suggested by ACA had it so desired. Moreover, no such waivers exist with respect to other fee requirements, including for example, for registrations of individual claimants. The Office welcomes further comment on whether the statute provides authority to the Register to establish a waiver process where payment of the filing fee would result in a financial hardship and whether, in general, waivers of this kind should be permissible.

Technical Amendments

The Office will adopt technical amendments as needed to conform existing regulations to the changes proposed in this notice.

Request for Comments

As noted above, the Copyright Office is publishing the revised proposed fee schedule for these particular fees to provide the public with an opportunity to comment.

Dated: November 29, 2012.

Maria A. Pallante,

Register of Copyrights.

[FR Doc. 2012–29229 Filed 12–5–12; 8:45 am]

BILLING CODE 1410–30–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 121018563–2563–01]

RIN 0648–XC311

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; 2013 and 2014 Harvest Specifications for Groundfish

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes 2013 and 2014 harvest specifications, apportionments, and prohibited species catch (PSC) allowances for the groundfish fisheries of the Bering Sea and Aleutian Islands (BSAI) management area. This action is necessary to establish harvest limits for groundfish during the 2013 and 2014 fishing years, and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. The intended effect of this action is to conserve and manage the groundfish resources in the BSAI in accordance with the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: Comments must be received by January 7, 2013.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2012–0210, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2012–0210 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on that line.
- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.
- *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address) submitted voluntarily by the sender will be publicly accessible.

Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of the Alaska Groundfish Harvest Specifications Final Environmental Impact Statement (EIS), the Initial Regulatory Flexibility Analysis (IRFA), and the Supplemental IRFA prepared for this action may be obtained from *http://www.regulations.gov* or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov.* The final 2011 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the BSAI, dated November 2011, is available from the North Pacific Fishery Management Council (Council) at 605 West 4th Avenue, Suite 306, Anchorage, AK 99501–2252, phone 907–271–2809, or from the Council's Web site at *http://alaskafisheries.noaa.gov/npfmc.* The draft 2012 SAFE report for the BSAI will be available from the same sources in November 2012.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: Federal regulations at 50 CFR part 679 implement the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) and govern the groundfish fisheries in the BSAI. The Council prepared the FMP and NMFS approved it under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP and its implementing regulations require NMFS, after consulting with the Council, to specify annually the total allowable catch (TAC) for each target species category, the sum of which must be within the optimum yield (OY) range of 1.4 million to 2.0 million metric tons (mt) (see § 679.20(a)(1)(i)). Section 679.20(c)(1) further requires NMFS to publish proposed harvest specifications in the **Federal Register** and solicit public comments on proposed annual TACs and apportionments thereof, PSC allowances, prohibited species quota (PSQ) reserves established by § 679.21, seasonal allowances of pollock, Pacific cod, and Atka mackerel TAC, American Fisheries Act allocations, Amendment 80 allocations, and Community Development Quota (CDQ) reserve

amounts established by § 679.20(b)(1)(ii). The proposed harvest specifications set forth in Tables 1 through 12 of this action satisfy these requirements.

Under § 679.20(c)(3), NMFS will publish the final harvest specifications for 2013 and 2014 after (1) considering comments received within the comment period (see **DATES**), (2) consulting with the Council at its December 2012 meeting, and (3) considering new information presented in the Final EIS (see **ADDRESSES**) and the final 2012 SAFE reports prepared for the 2013 and 2014 groundfish fisheries.

Other Actions Potentially Affecting the 2013 and 2014 Harvest Specifications

The BSAI Groundfish Plan Team (Plan Team) and SSC reviewed models supporting a separate Aleutian Islands Pacific cod stock assessment. This Aleutian Islands stock assessment model is still in development. In the event that the SSC approves a stock assessment model as appropriate for setting Aleutian Islands management benchmarks, then it will be used to set a separate overfishing level (OFL), acceptable biological catch (ABC), and TAC for Pacific cod in the Aleutian Island Pacific cod stock. This could happen as soon as the next stock assessment cycle for the 2014 and 2015 OFL, ABC, and TAC. If the Council recommends separate OFLs, ABCs, and TACs for the Bering Sea subarea and Aleutian Islands subarea and takes no further management actions for sector allocations, then NMFS will interpret that the current Pacific cod sector allocations required by Amendments 80 and 85 to the FMP will continue to apply at the BSAI-wide level. This result could impact the OFLs, ABCs, and TACs for Pacific cod in Table 1 for 2014.

The Plan Team also is reviewing the stock structure of the BSAI groundfish and may recommend allocating current OFLs or ABCs by subareas or reporting areas.

Proposed ABC and TAC Harvest Specifications

At the October 2012 Council meeting, the Scientific and Statistical Committee (SSC), Advisory Panel (AP), and Council reviewed the most recent biological and harvest information about the condition of the BSAI groundfish stocks. The Council's Plan Team compiled and presented this information, which was initially compiled by the Plan Team and presented in the final 2011 SAFE report for the BSAI groundfish fisheries, dated November 2011 (see **ADDRESSES**). The amounts proposed for the 2013 and 2014 harvest specifications are based on the 2011 SAFE report and are subject to change in the final harvest specifications to be published by NMFS following the Council's December 2012 meeting. In November 2012, the Plan Team updated the 2011 SAFE report to include new information collected during 2012, such as NMFS stock surveys, revised stock assessments, and catch data. At its December 2012 meeting, the Council will consider information contained in the final 2012 SAFE report, recommendations from the November 2012 Plan Team meeting, public testimony from the December 2012 SSC and AP meetings, and relevant written comments in making its recommendations for the final 2013 and 2014 harvest specifications.

In previous years, some of the largest changes from the proposed to the final harvest specifications have been based on the most recent NMFS stock surveys, which provide updated estimates of stock biomass and spatial distribution, and changes to the models used in the stock assessments. These changes are recommended by the Plan Team in November 2012 and are included in the 2012 final SAFE report. The 2012 final SAFE report includes the most recent information, such as 2012 catch. The final harvest specification amounts for these stocks are not expected to vary greatly from the proposed specification amounts published here.

If the final 2012 SAFE report indicates that the stock biomass trend is increasing for a species, then the final 2013 and 2014 harvest specifications may reflect that increase from the proposed harvest specifications. Conversely, if the final 2012 SAFE report indicates that the stock biomass trend is decreasing for a species, then the final 2013 and 2014 harvest specifications may reflect a decrease from the proposed harvest specifications. In addition to changes driven by biomass trends, there may be changes in TACs due to the sum of ABCs exceeding 2 million mt. Since the FMP requires TACs to be set to an OY between 1.4 and 2 million mt, the Council may be required to recommend TACs that are lower than the ABCs recommended by the Plan Team if setting TACs equal to ABC would cause TAC to exceed an OY of 2 million mt. Generally, ABCs greatly exceed 2 million mt in years with a large pollock biomass. NMFS anticipates that, both for 2013 and 2014, the sum of the ABCs for pollock will exceed 2 million mt. NMFS also anticipates that decreases in the biomass of Atka mackerel and Greenland turbot will lead to smaller TACs in 2013 and 2014 than in 2012. NMFS expects that the total TAC for the BSAI for both 2013 and 2014 will equal 2 million mt.

The proposed ABCs and TACs are based on the best available biological and socioeconomic data, including projected biomass trends, information on assumed distribution of stock biomass, and revised methods used to calculate stock biomass. The FMP specifies a series of six tiers to define OFLs and ABCs based on the level of reliable information available to fishery scientists. Tier one represents the highest level of information quality available while tier six represents the lowest.

In October 2012, the SSC adopted the proposed 2013 and 2014 OFLs and ABCs recommended by the Plan Team for all groundfish species. The Council adopted the SSC's OFL and ABC recommendations and the AP's TAC recommendations. These amounts are unchanged from the final 2013 harvest specifications published in the **Federal Register** on February 23, 2012 (77 FR 10669). For 2013 and 2014, the Council recommended and NMFS proposes the OFLs, ABCs, and TACs listed in Table 1. The proposed ABCs reflect harvest amounts that are less than the specified overfishing amounts. The sum of the proposed 2013 and 2014 ABCs for all assessed groundfish is 2,639,792 mt, which is higher than the final 2012 ABC total of 2,511,778 mt (77 FR 10669, February 23, 2012).

Specification and Apportionment of TAC Amounts

The Council recommended proposed TACs for 2013 and 2014 that are equal to proposed ABCs for sablefish, Greenland turbot, Pacific ocean perch, shortraker rockfish, and rougheye rockfish. The Council recommended proposed TACs for 2013 and 2014 that are less than the proposed ABCs for pollock, Pacific cod, Atka mackerel, yellowfin sole, rock sole, Kamchatka flounder, arrowtooth flounder, flathead sole, ''other flatfish,'' Alaska plaice, northern rockfish, ''other rockfish,'' squids, sharks, skates, sculpins, and octopuses.

Section 679.20(a)(5)(iii)(B)(*1*) requires the Aleutian Islands (AI) pollock TAC to be set at 19,000 mt when the AI pollock ABC equals or exceeds 19,000 mt. The Bogoslof pollock TAC is set to accommodate incidental catch amounts. With the exceptions of sablefish, Greenland turbot, Pacific ocean perch, shortraker rockfish, and rougheye rockfish, TACs are set below ABCs. TACs are set so that the sum of the overall TAC does not exceed the BSAI OY.

The proposed groundfish OFLs, ABCs, and TACs are subject to change pending the completion of the final 2012 SAFE report and the Council's recommendations for final 2013 and 2014 harvest specifications during its December 2012 meeting. These proposed amounts are consistent with the biological condition of groundfish stocks as described in the 2011 SAFE report, and adjusted for other biological and socioeconomic considerations. Pursuant to section 3.2.3.4.1 of the FMP, the Council could recommend adjusting the TACs if ''warranted on the basis of bycatch considerations, management uncertainty, or socioeconomic considerations, or if required in order to cause the sum of the TACs to fall within the OY range.'' Table 1 lists the proposed 2013 and 2014 OFL, ABC, TAC, initial TAC (ITAC), and CDQ amounts for groundfish for the BSAI. The proposed apportionment of TAC amounts among fisheries and seasons is discussed below.

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TABLE 1– PROPOSED 2013 AND 2014 OVERFISHING LEVEL (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND CDQ RESERVE ALLOCATION OF GROUNDFISH IN THE BSAI[1]

[Amounts are in metric tons]

Species	Area	Proposed 2013 and 2014				
		OFL	ABC	TAC	ITAC[2]	CDQ[3,4,5]
Pollock	BS	2,840,000	1,360,000	1,201,900	1,081,710	120,190
	AI	42,900	35,200	19,000	17,100	1,900
	Bogoslof	22,000	16,500	500	500	n/a
Pacific cod[4]	BSAI	374,000	319,000	262,900	234,770	28,130
Sablefish[5]	BS	2,610	2,200	2,200	935	303
	AI	2,400	2,020	2,020	429	341
Atka mackerel	BSAI	78,300	67,100	42,083	37,580	4,503
	EAI/BS	n/a	31,700	31,700	28,308	3,392
	CAI	n/a	18,900	8,883	7,933	950
	WAI	n/a	16,500	1,500	1,340	161
Yellowfin sole	BSAI	226,000	207,000	203,900	182,083	21,817
Rock sole[6]	BSAI	217,000	196,000	87,000	77,691	9,309
Greenland turbot	BSAI	9,700	8,030	8,030	6,826	n/a
	BS	n/a	6,010	6,010	5,109	643
	AI	n/a	2,020	2,020	1,717	n/a
Arrowtooth flounder	BSAI	186,000	152,000	25,000	21,250	2,675
Kamchatka flounder	BSAI	24,800	18,600	17,700	15,045	n/a
Flathead sole[7]	BSAI	83,100	69,200	34,134	30,482	3,652
Other flatfish[8]	BSAI	17,100	12,700	3,200	2,720	n/a
Alaska plaice	BSAI	65,000	54,000	24,000	20,400	n/a
Pacific ocean perch	BSAI	33,700	28,300	28,300	24,991	n/a
	BS	n/a	6,540	6,540	5,559	n/a
	EAI	n/a	6,440	6,440	5,751	689
	CAI	n/a	5,710	5,710	5,099	611
	WAI	n/a	9,610	9,610	8,582	1,028
Northern rockfish	BSAI	10,400	8,490	4,700	3,995	n/a
Shortraker rockfish	BSAI	524	393	393	334	n/a
Rougheye rockfish[9]	BSAI	605	499	499	424	n/a
	EBS/EAI	n/a	241	241	205	n/a
	CAI/WAI	n/a	258	258	219	n/a
Other rockfish[10]	BSAI	1,700	1,280	1,070	910	n/a
	BS	n/a	710	500	425	n/a
	AI	n/a	570	570	485	n/a
Squids	BSAI	2,620	1,970	425	361	n/a
Sharks	BSAI	1,360	1,020	200	170	n/a
Skates	BSAI	38,300	32,000	24,746	21,034	n/a
Sculpins	BSAI	58,300	43,700	5,200	4,420	n/a
Octopuses	BSAI	3,450	2,590	900	765	n/a
TOTAL		4,341,869	2,639,792	2,000,000	1,786,923	195,792

[1] These amounts apply to the entire BSAI management area unless otherwise specified. With the exception of pollock, and for the purpose of these harvest specifications, the Bering Sea (BS) subarea includes the Bogoslof District.

[2] Except for pollock, the portion of the sablefish TAC allocated to hook-and-line and pot gear, and Amendment 80 species (Atka mackerel, Aleutian Islands Pacific ocean perch, yellowfin sole, rock sole, flathead sole, and Pacific cod), 15 percent of each TAC is put into a reserve. The ITAC for these species is the remainder of the TAC after the subtraction of these reserves.

[3] Under § 679.20(a)(5)(i)(A)(1), the annual Bering Sea subarea pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance 3 percent), is further allocated by sector for a directed pollock fishery as follows: inshore - 50 percent; catcher/processor - 40 percent; and motherships - 10 percent. Under § 679.20(a)(5)(iii)(B)(2)(i) and (ii), the annual Aleutian Islands subarea pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (1,600 mt), is allocated to the Aleut Corporation for a directed pollock fishery.

[4] The Pacific cod TAC is reduced by 3 percent from the ABC to account for the State of Alaska guideline harvest level in state waters of the Aleutian Islands subarea.

[5] For the Amendment 80 species (Atka mackerel, Aleutian Islands Pacific ocean perch, yellowfin sole, rock sole, flathead sole, and Pacific cod), 10.7 percent of the TAC is reserved for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31). Twenty percent of the sablefish TAC allocated to hook-and-line gear or pot gear, 7.5 percent of the sablefish TAC allocated to trawl gear. The 2014 hook-and-line and pot gear portion of the sablefish ITAC and CDQ reserve will not be specified until the fall of 2013. Ten point seven percent of the TACs for Bering Sea Greenland turbot and arrowtooth flounder are reserved for use by CDQ participants (see § 679.20(b)(1)(ii)(B) and (D)). Aleutian Islands Greenland turbot, "other flatfish," Alaska plaice, Bering Sea Pacific ocean perch, Kamchatka flounder, northern rockfish, shortraker rockfish, rougheye rockfish, "other rockfish," squids, octopuses, skates, sculpins, and sharks are not allocated to the CDQ program.

[6] ''Rock sole'' includes Lepidopsetta polyxystra (Northern rock sole) and Lepidopsetta bilineata (Southern rock sole).

[7] ''Flathead sole'' includes Hippoglossoides elassodon (flathead sole) and Hippoglossoides robustus (Bering flounder).

[8] "Other flatfish" includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder, Kamchatka flounder, and Alaska plaice.

[9] ''Rougheye rockfish'' includes Sebastes aleutianus (rougheye) and Sebastes melanostictus (blackspotted).

[10] "Other rockfish" includes all Sebastes and Sebastolobus species except for Pacific ocean perch, northern, shortraker, and rougheye rockfish.

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Groundfish Reserves and the Incidental Catch Allowance (ICA) for Pollock, Atka Mackerel, Flathead Sole, Rock Sole, Yellowfin Sole, and AI Pacific Ocean Perch

Section 679.20(b)(1)(i) requires the placement of 15 percent of the TAC for each target species category, except for pollock, hook-and-line and pot gear allocation of sablefish, and Amendment 80 species, in a non-specified reserve. Section 679.20(b)(1)(ii)(B) requires that 20 percent of the hook-and-line and pot gear allocation of sablefish be allocated to the fixed gear sablefish CDQ reserve. Section 679.20(b)(1)(ii)(D) requires that 7.5 percent of the trawl gear allocations of sablefish and 10.7 percent of Bering Sea Greenland turbot, and arrowtooth flounder be allocated to the respective CDQ reserves. Section 679.20(b)(1)(ii)(C) requires that 10.7 percent of the TACs for Atka mackerel, AI Pacific ocean perch, yellowfin sole, rock sole, flathead sole, and Pacific cod be allocated to the CDQ reserves. Sections 679.20(a)(5)(i)(A) and 679.31(a) also require the allocation of 10 percent of the BSAI pollock TACs to the pollock CDQ directed fishing allowance (DFA). The entire Bogoslof District pollock TAC is allocated as an ICA (see § 679.20(a)(5)(ii)). With the exception of the hook-and-line and pot gear sablefish CDQ reserve, the regulations do not further apportion the CDQ reserves by gear. Sections 679.30 and 679.31 set forth regulations governing the management of the CDQ reserves.

Pursuant to § 679.20(a)(5)(i)(A)(*1*), NMFS proposes a pollock ICA of 3 percent of the Bering Sea subarea pollock TAC after subtracting the 10 percent CDQ reserve. This allowance is based on NMFS' examination of the pollock incidentally retained and discarded catch, including the incidental catch by CDQ vessels, in target fisheries other than pollock from 1999 through 2012. During this 14-year period, the pollock incidental catch ranged from a low of 2.3 percent in 2012 to a high of 5 percent in 1999, with a 14-year average of 3.2 percent. Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) and (*ii*), NMFS proposes a pollock ICA of 1,600 mt for the AI subarea after subtracting the 10 percent CDQ DFA. This allowance is based on NMFS' examination of the pollock incidental catch, including the incidental catch by CDQ vessels, in target fisheries other than pollock from 2003 through 2012. During this 10-year period, the incidental catch of pollock ranged from a low of 5 percent in 2006 to a high of 10 percent in 2003, with a 10-year average of 7 percent.

Pursuant to § 679.20(a)(8) and (10), NMFS proposes ICAs of 5,000 mt of flathead sole, 10,000 mt of rock sole, 2,000 mt of yellowfin sole, 10 mt of Western Aleutian District Pacific ocean perch, 75 mt of Central Aleutian District Pacific ocean perch, 200 mt of Eastern Aleutian District Pacific ocean perch, 40 mt for Western Aleutian District Atka mackerel, 75 mt for Central Aleutian District Atka mackerel, and 1,000 mt of Eastern Aleutian District and Bering Sea subarea Atka mackerel after subtraction of the 10.7 percent CDQ reserve. These ICAs are based on NMFS' examination of the average incidental retained and

discarded catch in other target fisheries from 2003 through 2012.

The regulations do not designate the remainder of the non-specified reserve by species or species group. Any amount of the reserve may be apportioned to a target species that contributed to the non-specified reserve, provided that such apportionments do not result in overfishing (see § 679.20(b)(1)(i)).

Allocations of Pollock TAC Under the American Fisheries Act (AFA)

Section 679.20(a)(5)(i)(A) requires that the pollock TAC apportioned to the Bering Sea subarea, after subtracting 10 percent for the CDQ program and 3 percent for the ICA, be allocated as a DFA as follows: 50 percent to the inshore sector, 40 percent to the catcher/processor sector, and 10 percent to the mothership sector. In the Bering Sea subarea, 40 percent of the DFA is allocated to the A season (January 20 to June 10) and 60 percent of the DFA is allocated to the B season (June 10 to November 1) (§ 679.20(a)(5)(i)(B)). The AI directed pollock fishery allocation to the Aleut Corporation is the amount of pollock remaining in the AI subarea after subtracting 1,900 mt for the CDQ DFA (10 percent) and 1,600 mt for the ICA (§ 679.20(a)(5)(iii)(B)(*2*)(*ii*)). In the AI subarea, 40 percent of the ABC is allocated to the A season and the remainder of the directed pollock fishery is allocated to the B season. Table 2 lists these proposed 2013 and 2014 amounts.

Section 679.20(a)(5)(i)(A)(*4*) also includes several specific requirements regarding Bering Sea subarea pollock allocations. First, 8.5 percent of the pollock allocated to the catcher/processor sector will be available for harvest by AFA catcher vessels with catcher/processor sector endorsements, unless the Regional Administrator receives a cooperative contract that provides for the distribution of harvest among AFA catcher/processors and AFA catcher vessels in a manner agreed to by all members. Second, AFA catcher/processors not listed in the AFA are limited to harvesting not more than 0.5 percent of the pollock allocated to the catcher/processor sector. Table 2 lists the proposed 2013 and 2014 allocations of pollock TAC. Tables 13 through 16 list the AFA catcher/processor and catcher vessel harvesting sideboard limits. In past years, the proposed harvest specifications included text and tables describing pollock allocations to the Bering Sea subarea inshore pollock cooperatives and open access sector. These allocations are based on the submission of AFA inshore cooperative applications due to NMFS on December 1 of each calendar year. Because AFA inshore cooperative applications for 2013 have not been submitted to NMFS, thereby preventing NMFS from calculating 2013 allocations, NMFS has not included inshore cooperative text and tables in these proposed harvest specifications. NMFS will post 2013 AFA inshore cooperative allocations on the Alaska Region Web site at *http://alaskafisheries.noaa.gov* when they become available in December 2012.

Table 2 also lists proposed seasonal apportionments of pollock and harvest limits within the Steller Sea Lion Conservation Area (SCA). The harvest of pollock within the SCA, as defined at § 679.22(a)(7)(vii), is limited to 28 percent of the DFA until noon, April 1, as provided in § 679.20(a)(5)(i)(C). The remaining 12 percent of the 40 percent annual DFA allocated to the A season may be taken outside the SCA before noon, April 1, or inside the SCA after noon, April 1. The A season pollock SCA harvest limit will be apportioned to each sector in proportion to each sector's allocated percentage of the DFA. Table 2 lists these proposed 2013 and 2014 amounts by sector.

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TABLE 2–PROPOSED 2013 AND 2014 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA)[1]

[Amounts are in metric tons]

Area and sector[1]	2013 and 2014 Allocations	A season[1]		B season[1]
		A season DFA	SCA harvest limit[2]	B season DFA
Bering Sea subarea TAC	1,201,900	N/A	N/A	N/A
CDQ DFA	120,190	48,076	33,653	72,114
ICA[1]	32,451	N/A	N/A	N/A
AFA Inshore	524,629	209,852	146,896	314,778
AFA Catcher/Processors[3]	419,703	167,881	117,517	251,822
Catch by C/Ps	384,029	153,611	N/A	230,417
Catch by C/Vs[3]	35,675	14,270	N/A	21,405
Unlisted C/P Limit[4]	2,099	839	N/A	1,259
AFA Motherships	104,926	41,970	29,379	62,956
Excessive Harvesting Limit[5]	183,620	N/A	N/A	N/A
Excessive Processing Limit[6]	314,778	N/A	N/A	N/A
Total Bering Sea DFA (non-CDQ)	1,049,259	419,703	293,792	629,555
Aleutian Islands subareaTAC	19,000	N/A	N/A	N/A
CDQ DFA	1,900	760	N/A	1,140
ICA	1,600	800	N/A	800
Aleut Corporation	15,500	12,520	N/A	2,980
Bogoslof District ICA[7]	500	N/A	N/A	N/A

[1] Pursuant to § 679.20(a)(5)(i)(A), the annual Bering Sea subarea pollock TAC, after subtracting the CDQ DFA (10 percent) and the ICA (3 percent), is allocated as a DFA as follows: inshore sector 50 percent, catcher/processor sector 40 percent, and mothership sector 10 percent. In the Bering Sea subarea, 40 percent of the DFA is allocated to the A season (January 20–June 10) and 60 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(2)(i) and (ii), the annual AI pollock TAC, after subtracting first for the CDQ DFA (10 percent) and second the ICA (1,600 mt), is allocated to the Aleut Corporation for a directed pollock fishery. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the directed pollock fishery.

[2] In the Bering Sea subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of the SCA before April 1 or inside the SCA after April 1. If 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(4), not less than 8.5 percent of the DFA allocated to listed catcher/processors (C/Ps) shall be available for harvest only by eligible catcher vessels (CVs) delivering to listed catcher/processors.

[4] Pursuant to § 679.20(a)(5)(i)(A)(4)(iii), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processor sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(A)(6), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the pollock DFAs not including CDQ.

[6] Pursuant to § 679.20(a)(5)(i)(A)(7), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the pollock DFAs not including CDQ.

[7] The Regional Administrator proposes closing the Bogoslof pollock fishery for directed fishing under the final 2013 and 2014 harvest specifications for the BSAI. The amounts specified are for incidental catch only and are not apportioned by season or sector.

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Allocation of the Atka Mackerel TACs

Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs to the Amendment 80 and BSAI trawl limited access sectors, after subtracting the CDQ reserves, jig gear allocation, and ICAs for the BSAI trawl limited access sector and non-trawl gear (Table 3). 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 in § 679.91. Pursuant to § 679.20(a)(8)(i), up to 2 percent of the Eastern Aleutian District and Bering Sea subarea Atka mackerel ITAC may be allocated to jig gear. The amount of this allocation is determined annually by the Council based on several criteria, including the anticipated harvest capacity of the jig gear fleet. The Council recommended and NMFS proposes a 0.5 percent allocation of the Atka mackerel ITAC in the Eastern Aleutian District and Bering Sea subarea to jig gear in 2013 and 2014. This percentage is applied after subtracting the CDQ reserve and the ICA. Section 679.20(a)(8)(ii)(C)(*3*) limits the annual TAC for Area 542 to no more than 47 percent of the Area 542 ABC. Section 679.7(a)(19) prohibits retention of Atka mackerel in Area 543, and the proposed amount is set to account for discards in other fisheries.

Section 679.20(a)(8)(ii)(A) apportions the Atka mackerel TAC (including the CDQ reserve) into two equal seasonal allowances. Section 679.23(e)(3) sets the first seasonal allowance for directed fishing with trawl gear from January 20 to June 10 (A season), and the second seasonal allowance from June 10 to November 1 (B season). Section 679.23(e)(4)(iii) applies Atka mackerel seasons to CDQ Atka mackerel fishing. The jig gear allocation is not apportioned by season.

Sections 679.20(a)(8)(ii)(C)(*1*)(*i*) and (*ii)* require the Amendment 80 cooperatives and CDQ groups to limit harvest to 10 percent of their Central Aleutian District Atka mackerel allocation equally divided between the A and B seasons within waters 10 nm to 20 nm of Gramp Rock and Tag Island, as described on Table 12 to part 679. Vessels not fishing under the authority of an Amendment 80 cooperative quota or CDQ allocation are prohibited from conducting directed fishing for Atka mackerel inside Steller sea lion critical habitat in the Central Aleutian District.

Two Amendment 80 cooperatives have formed for the 2013 fishing year. Because all Amendment 80 vessels are part of a cooperative, no allocation to the Amendment 80 limited access sector is required. NMFS will post 2013 Amendment 80 cooperative allocations on the Alaska Region Web site at *http://alaskafisheries.noaa.gov* prior to the start of the fishing year on January 1, 2013, based on the harvest specifications effective on that date.

Table 3 lists these 2013 and 2014 Atka mackerel season and area allowances, as well as the sector allocations. The 2014 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2013. NMFS will post 2014 Amendment 80 cooperatives and Amendment 80 limited access allocations on the Alaska Region Web site at *http://alaskafisheries.noaa.gov* when they become available in December 2013.

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TABLE 3–PROPOSED 2013 AND 2014 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]	Allocation by area		
		Eastern Aleutian District/Bering Sea	Central Aleutian District	Western Aleutian District
TAC	n/a	31,700	8,883	1,500
CDQ reserve	Total	3,392	950	161
	A	1,696	475	80
	Critical habitat[5]	n/a	48	n/a
	B	1,696	475	80
	Critical habitat[5]	n/a	48	n/a
ICA	Total	1,000	75	40
Jig[6]	Total	137	0	0
BSAI trawl limited access	Total	2,717	786	0
	A	1,359	393	0
	B	1,359	393	0
Amendment 80	Total	24,454	7,072	1,300
Alaska Seafood Cooperative for 2013	Total	10,202	2,925	532
	A	5,101	1,463	266
	Critical habitat[5]	n/a	146	n/a
	B	5,101	1,463	266
	Critical habitat[5]	n/a	146	n/a
Alaska Groundfish Cooperative for 2013	Total	14,252	4,147	767
	A	7,126	2,074	384
	Critical habitat[5]	n/a	207	n/a
	B	7,126	2,074	384
	Critical habitat[5]	n/a	207	n/a

[1] Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtracting the CDQ reserves, ICAs, and the jig gear allocation, 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] Sections 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 percent 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 Bering Sea subarea TAC be allocated to jig gear after subtraction of the CDQ reserve and ICA. The amount of this allocation is 0.5 percent. The jig gear allocation is not apportioned by season.

[7]The 2014 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2013.

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Allocation of the Pacific Cod TAC

Sections 679.20(a)(7)(i) and (ii) allocate the Pacific cod TAC in the BSAI, after subtracting 10.7 percent for the CDQ program, as follows: 1.4 percent to vessels using jig gear, 2.0 percent to hook-and-line and pot catcher vessels less than 60 ft (18.3 m) length overall (LOA), 0.2 percent to hook-and-line catcher vessels greater than or equal to 60 ft (18.3 m) LOA, 48.7 percent to hook-and-line catcher/processors, 8.4 percent to pot catcher vessels greater than or equal to 60 ft (18.3 m) LOA, 1.5 percent to pot catcher/processors, 2.3 percent to AFA trawl catcher/processors, 13.4 percent to non-AFA trawl catcher/processors, and 22.1 percent to trawl catcher vessels. The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. For 2013 and 2014, the Regional Administrator proposes an ICA of 500 mt, based on anticipated incidental catch in these fisheries.

The allocation of the ITAC for Pacific cod to the Amendment 80 sector is established in Table 33 to part 679 and § 679.91. Two Amendment 80 cooperatives have formed for the 2013 fishing year. Because all Amendment 80 vessels are part of a cooperative, no allocation to the Amendment 80 limited access sector is required. NMFS will post 2013 Amendment 80 cooperative allocations on the Alaska Region Web site at *http://alaskafisheries.noaa.gov* prior to the start of the fishing year on January 1, 2013, based on the harvest specifications effective on that date.

The 2014 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2013. NMFS will post 2014 Amendment 80 cooperatives and Amendment 80 limited access allocations on the Alaska Region Web site at *http://alaskafisheries.noaa.gov* when they become available in December 2013.

The Pacific cod ITAC is apportioned into seasonal allowances to disperse the Pacific cod fisheries over the fishing year (see §§ 679.20(a)(7) and 679.23(e)(5)). In accordance with § 679.20(a)(7)(iv)(B) and (C), any unused portion of a seasonal Pacific cod allowance will become available at the beginning of the next seasonal allowance.

The CDQ and non-CDQ season allowances by gear based on the proposed 2013 and 2014 Pacific cod TACs are listed in Table 4 based on the sector allocation percentages of Pacific cod set forth at §§ 679.20(a)(7)(i)(B) and 679.20(a)(7)(iv)(A); and the seasonal allowances of Pacific cod set forth at § 679.23(e)(5).

Section 679.7(a)(19) prohibits retaining Pacific cod in Area 543 and § 679.7(a)(23) prohibits directed fishing for Pacific cod with hook-and-line, pot, or jig gear in the AI subarea November 1 through December 31.

TABLE 4–PROPOSED 2013 AND 2014 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC

[Amounts are in metric tons]

Gear sector	Percent	2013 and 2014 share of gear sector total	2013 and 2014 share of sector total	2013 and 2014 seasonal apportionment	
				Season	Amount
Total TAC	100	262,900	n/a	n/a	n/a
CDQ	10.7	28,130	n/a	See §679.20(a)(7)(i)(B)	n/a
Total hook-and-line/pot gear	60.8	142,740	n/a	n/a	n/a
Hook-and-line/pot ICA[1]	n/a	n/a	500	n/a	n/a
Hook-and-line/pot sub-total	n/a	142,240	n/a	n/a	n/a
Hook-and-line catcher/processors	48.7	n/a	113,932	Jan-1-Jun 10	58,105
				Jun 10-Dec 31	55,827
Hook-and-line catcher vessels≥ 60 ft LOA	0.2	n/a	468	Jan 1-Jun 10	239
				Jun 10-Dec 31	229
Pot catcher/processors	1.5	n/a	3,509	Jan 1-Jun 10	1,790
				Sept 1-Dec 31	1,720
Pot catcher vessels≥ 60 ft LOA	8.4	n/a	19,652	Jan 1-Jun 10	10,022
				Sept-1-Dec 31	9,629
Catcher vessels < 60 ft LOA using hook-and-line or pot gear	2	n/a	4,679	n/a	n/a
Trawl catcher vessels	22.1	51,884	n/a	Jan 20-Apr 1	38,394
				Apr 1-Jun 10	5,707
				Jun 10-Nov 1	7,783
AFA trawl catcher/processors	2.3	5,400	n/a	Jan 20-Apr 1	4,050
				Apr 1-Jun 10	1,350
				Jun 10-Nov 1	0
Amendment 80	13.4	31,459	n/a	Jan 20-Apr 1	23,594
				Apr 1-Jun 10	7,865
				Jun 10-Nov 1	0
Alaska Groundfish Cooperative for 2013[2]	n/a	5,858	n/a	Jan 20-Apr 1	4,394
				Apr 1-Jun 10	1,465
				Jun 10-Nov 1	0
Alaska Seafood Cooperative for 2013[2]	n/a	25,601	n/a	Jan 20- Apr 1	19,201
				Apr 1-Jun 10	6,400
				Jun 10-Nov 1	0
Jig	1.4	3,287	n/a	Jan 1-Apr 30	1,972
				Apr 30-Aug 31	657
				Aug 31-Dec 31	657

[1] The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator proposes an ICA of 500 mt for 2013 and 2014 based on anticipated incidental catch in these fisheries.

[2]The 2014 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2013.

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Sablefish Gear Allocation

Sections 679.20(a)(4)(iii) and (iv) require that for the Bering Sea and AI subareas, a portion of the TACs be allocated to trawl gear and another portion to hook-and-line or pot gear. Gear allocations of the TACs for the Bering Sea subarea are 50 percent for trawl gear and 50 percent for hook-and-line or pot gear. Gear allocations for the AI subarea are 25 percent for trawl gear and 75 percent for hook-and-line or pot gear. Section 679.20(b)(1)(ii)(B) requires apportioning 20 percent of the hook-and-line and pot gear allocation of sablefish from the nonspecified reserves to the CDQ reserve. Additionally, § 679.20(b)(1)(ii)(D) requires that 7.5 percent of the trawl gear allocation of sablefish from the nonspecified reserves, established under § 679.20(b)(1)(i), be assigned to the CDQ reserve. The Council recommended that only trawl sablefish TAC be established biennially. The harvest specifications for the hook-and-line gear and pot gear sablefish Individual Fishing Quota (IFQ) fisheries will be limited to the 2013 fishing year to ensure those fisheries are conducted concurrently with the halibut IFQ fishery. Concurrent sablefish and halibut IFQ fisheries would reduce the potential for discards of halibut and sablefish in those fisheries. The sablefish IFQ fisheries would remain closed at the beginning of each fishing year until the final harvest specifications for the sablefish IFQ fisheries are in effect. Table 5 lists the proposed 2013 and 2014 gear allocations of the sablefish TAC and CDQ reserve amounts.

TABLE 5–PROPOSED 2013 AND 2014 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS

[Amounts are in metric tons]

Subarea gear	Percent of TAC	2013 Share of TAC	2013 ITAC[1]	2013 CDQ reserve	2014 Share of TAC	2014 ITAC	2014 CDQ reserve
Bering Sea							
Trawl	50	1,100	935	83	1,100	935	83
Hook-and-line gear[2]	50	1,100	n/a	220	n/a	n/a	n/a
TOTAL	100	2,200	935	303	1,100	935	83
Aleutian Islands							
Trawl	25	505	429	38	505	429	38
Hook-and-line gear[2]	75	1,515	n/a	303	n/a	n/a	n/a
TOTAL	100	2,020	429	341	505	429	38

[1] Except for the sablefish hook-and-line or pot gear allocation, 15 percent of TAC is apportioned to the reserve. The ITAC is the remainder of the TAC after the subtraction of these reserves.

[2] For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 20 percent of the allocated TAC is reserved for use by CDQ participants. Section 679.20(b)(1) does not provide for the establishment of an ITAC for sablefish allocated to hook-and-line or pot gear.

Allocation of the Aleutian Islands Pacific Ocean Perch, and BSAI Flathead Sole, Rock Sole, and Yellowfin Sole TACs

Sections 679.20(a)(10)(i) and (ii) require that NMFS allocate AI Pacific ocean perch, and BSAI flathead sole, rock sole, and yellowfin sole TACs between the Amendment 80 and BSAI trawl limited access sectors, after subtraction of 10.7 percent for the CDQ reserve and an ICA for the BSAI trawl limited access sector and vessels using non-trawl gear. The allocation of the ITAC for AI Pacific ocean perch, and BSAI flathead sole, rock sole, and yellowfin sole to the Amendment 80 sector is established in Tables 33 and 34 to part 679 and in § 679.91.

Two Amendment 80 cooperatives have formed for the 2013 fishing year. Because all Amendment 80 vessels are part of a cooperative, no allocation to the Amendment 80 limited access sector is required. NMFS will post 2013 Amendment 80 cooperative allocations on the Alaska Region Web site at *http://alaskafisheries.noaa.gov* prior to the start of the fishing year on January 1, 2013, based on the harvest specifications effective on that date.

The 2014 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2013. NMFS will post 2014 Amendment 80 cooperatives and Amendment 80 limited access allocations on the Alaska Region Web site at *http://alaskafisheries.noaa.gov* when they become available in December 2013.

Table 6 lists the proposed 2013 and 2014 allocations and seasonal apportionments of the AI Pacific ocean perch, and BSAI flathead sole, rock sole, and yellowfin sole TACs.

TABLE 6–PROPOSED 2013 AND 2014 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAS), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, AND BSAI FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACS

[Amounts are in metric tons]

Sector	2013 and 2014 allocations					
	Pacific ocean perch			Flathead sole	Rock sole	Yellowfin sole
	Eastern Aleutian District	Central Aleutian District	Western Aleutian District	BSAI	BSAI	BSAI
TAC	6,440	5,710	9,610	34,134	87,000	203,900
CDQ	689	611	1,028	3,652	9,309	21,817
ICA	200	75	10	5,000	10,000	2,000
BSAI trawl limited access	555	502	171	0	0	36,975
Amendment 80	4,996	4,522	8,400	25,482	67,691	143,107
Alaska Groundfish Cooperative for 2013[1]	2,649	2,398	4,454	4,976	19,000	60,745
Alaska Seafood Cooperative for 2013[1]	2,347	2,124	3,946	20,506	48,691	82,362

[1] The 2014 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2013.

Allocation of PSC Limits for Halibut, Salmon, Crab, and Herring

Section 679.21(e) sets forth the BSAI PSC limits. Pursuant to § 679.21(e)(1)(iv) and (e)(2), the 2013 and 2014 BSAI halibut mortality limits are 3,675 mt for trawl fisheries and 900 mt for the non-trawl fisheries. Sections 679.21(e)(3)(i)(A)(*2*) and (e)(4)(i)(A) allocate 326 mt of the trawl halibut mortality limit and 7.5 percent, or 67 mt, of the non-trawl halibut mortality limit as the PSQ reserve for use by the groundfish CDQ program.

Section 679.21(e)(4)(i) authorizes the apportionment of the non-trawl halibut PSC limit into PSC bycatch allowances among six fishery categories. Table 9 lists the fishery bycatch allowances for the trawl fisheries, and Table 10 lists the fishery bycatch allowances for the non-trawl fisheries.

Pursuant to section 3.6 of the BSAI FMP, the Council recommends, and NMFS agrees, that certain specified non-trawl fisheries be exempt from the halibut PSC limit. As in past years after consultation with the Council, NMFS exempts pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories from halibut bycatch restrictions for the following reasons: (1) The pot gear fisheries have low halibut bycatch mortality; (2) NMFS estimates halibut mortality for the jig gear fleet to be negligible because of the small size of the fishery and the selectivity of the gear; and (3) the sablefish and halibut IFQ fisheries have low halibut bycatch mortality because the IFQ program requires legal-size halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder or a hired master is aboard and is holding unused halibut IFQ (subpart D of 50 CFR part 679). In 2012, total groundfish catch for the pot gear fishery in the BSAI was 30,430 mt, with an associated halibut bycatch mortality of 5 mt.

The 2012 jig gear fishery harvested about 108 mt of groundfish. Most vessels in the jig gear fleet are less than 60 ft (18.3 m) LOA and thus are exempt from observer coverage requirements. As a result, observer data are not available on halibut bycatch in the jig gear fishery. However, as mentioned above, NMFS estimates a negligible amount of halibut bycatch mortality because of the selective nature of jig gear and the low mortality rate of halibut caught with jig gear and released.

Section 679.21(f)(2), annually allocates portions of either 47,591 or 60,000 Chinook salmon PSC among the AFA sectors depending upon past catch performance and upon whether or not Chinook salmon bycatch incentive plan agreements are formed. If an AFA sector participates in an approved Chinook salmon bycatch incentive plan agreement, then NMFS will allocate a portion of the 60,000 PSC limit to that sector as specified in § 679.21(f)(3)(iii)(A). If no Chinook salmon bycatch incentive plan agreement is approved, or if the sector has exceeded its performance standard under § 679.21(f)(6), NMFS will allocate a portion of the 47,591 Chinook salmon PSC limit to that sector as specified in § 679.21(f)(3)(iii)(B). In 2013, the Chinook salmon PSC limit is 60,000, and the AFA sector Chinook salmon allocations are seasonally allocated with 70 percent of the allocation for the A season pollock fishery, and 30 percent of the allocation for the B season pollock fishery as stated in § 679.21(f)(3)(iii)(A). The basis for these PSC limits is described in detail in the final rule implementing management measures for Amendment 91 (75 FR 53026, August 30, 2010). NMFS publishes the approved Chinook salmon bycatch incentive plan agreements, allocations and reports at: *http://alaskafisheries.noaa.gov/sustainablefisheries/bycatch/default.htm.*

Section 679.21(e)(1)(viii) specifies 700 fish as the 2013 and 2014 Chinook salmon PSC limit for the AI subarea pollock fishery. Section 679.21(e)(3)(i)(A)(*3*)(*i*) allocates 7.5 percent, or 53 Chinook salmon, as the AI subarea PSQ for the CDQ program and allocates the remaining 647 Chinook salmon to the non-CDQ fisheries.

Section 679.21(e)(1)(vii) specifies 42,000 fish as the 2013 and 2014 non-

Chinook salmon PSC limit in the Catcher Vessel Operational Area (CVOA). Section 679.21(e)(3)(i)(A)(*3*)(*ii*) allocates 10.7 percent, or 4,494, non-Chinook salmon in the CVOA as the PSQ for the CDQ program, and allocates the remaining 37,506 non-Chinook salmon to the non-CDQ fisheries.

PSC limits for crab and herring are specified annually based on abundance and spawning biomass. Due to the lack of new information as of October 2012 regarding Zone 1 red king crab and BSAI herring PSC limits and apportionments, the Council recommended and NMFS proposes using the crab and herring 2013 and 2014 PSC limits and apportionments based on the 2011 survey data for the proposed 2013 and 2014 limits and apportionments. The Council will reconsider these amounts in December 2012. Pursuant to § 679.21(e)(3)(i)(A)(*1*), 10.7 percent of each PSC limit specified for crab is allocated as a PSQ reserve for use by the groundfish CDQ program.

Based on 2011 survey data, the red king crab mature female abundance is estimated at 27.6 million red king crabs, and the effective spawning biomass is estimated at 43.1 million lb (19,550 mt). Based on the criteria set out at § 679.21(e)(1)(i), the proposed 2013 and 2014 PSC limit of red king crab in Zone 1 for trawl gear is 97,000 animals. This limit derives from the mature female abundance estimate of more than 8.4 million red king crab and the effective spawning biomass estimate of more than 55 million lbs (24,948 mt).

Section 679.21(e)(3)(ii)(B)(*2*) establishes criteria under which NMFS must specify an annual red king crab bycatch limit for the Red King Crab Savings Subarea (RKCSS). The regulations limit the RKCSS to up to 25 percent of the red king crab PSC allowance. NMFS proposes the Council's recommendation that the red king crab bycatch limit be equal to 25 percent of the red king crab PSC allowance within the RKCSS (Table 8).

Based on 2011 survey data, Tanner crab (*Chionoecetes bairdi*) abundance is estimated at 670 million animals. Pursuant to criteria set out at § 679.21(e)(1)(ii), the calculated 2013 and 2014 *C. bairdi* crab PSC limit for trawl gear is 980,000 animals in Zone 1 and 2,970,000 animals in Zone 2. These limits derive from the *C. bairdi* crab abundance estimate being in excess of 400 million animals for both the Zone 1 and Zone 2 allocations. Pursuant to § 679.21(e)(1)(iii), the PSC limit for snow crab (*C. opilio*) is based on total abundance as indicated by the NMFS annual bottom trawl survey. The *C. opilio* crab PSC limit is set at 0.1133 percent of the Bering Sea abundance index minus 150,000 crabs. Based on the 2011 survey estimate of 6.337 billion animals, the calculated limit is 7,029,520 animals.

Pursuant to § 679.21(e)(1)(v), the PSC limit of Pacific herring caught while conducting any trawl operation for BSAI groundfish is 1 percent of the annual eastern Bering Sea herring biomass. The best estimate of 2013 and 2014 herring biomass is 209,419 mt. This amount was derived using 2011 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game. Therefore, the herring PSC limit proposed for 2013 and 2014 is 2,094 mt for all trawl gear as presented in Tables 7 and 8.

Section 679.21(e)(3)(i)(A) requires PSQ reserves to be subtracted from the total trawl PSC limits. The amount of the 2013 PSC limits assigned to the Amendment 80 and BSAI trawl limited access sectors are specified in Table 35 to part 679. The resulting allocation of PSC to CDQ PSQ, the Amendment 80 sector, and the BSAI trawl limited access sector are listed in Table 7. Pursuant to § 679.21(e)(1)(iv) and § 679.91(d) through (f), crab and halibut trawl PSC assigned to the Amendment 80 sector is then further allocated to Amendment 80 cooperatives as PSC cooperative quota as presented in Table 11. Two Amendment 80 cooperatives have formed for the 2013 fishing year. Because all Amendment 80 vessels are part of a cooperative, no allocation to the Amendment 80 limited access sector is required. NMFS will post 2013 Amendment 80 cooperative allocations on the Alaska Region Web site at *http://alaskafisheries.noaa.gov* prior to the start of the fishing year on January 1, 2013, based on the harvest specifications effective on that date.

The 2014 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2013. NMFS will post 2014 Amendment 80 cooperatives and Amendment 80 limited access allocations on the Alaska Region Web site at *http://alaskafisheries.noaa.gov* when they become available in December 2013.

Section 679.21(e)(5) authorizes NMFS, after consulting with the Council, to establish seasonal apportionments of PSC amounts for the BSAI trawl limited access and Amendment 80 limited access sectors in order to maximize the ability of the fleet to harvest the available groundfish TAC and to minimize bycatch. The factors considered are (1) Seasonal distribution of prohibited species, (2) seasonal distribution of target groundfish species, (3) PSC bycatch needs on a seasonal basis relevant to prohibited species biomass, (4) expected variations in bycatch rates throughout the year, (5) expected start of fishing effort, and (6) economic effects of seasonal PSC apportionments on industry sectors.

NMFS proposes the Council's recommendation of the seasonal PSC apportionments in Table 9 to maximize harvest among gear types, fisheries, and seasons while minimizing bycatch of PSC based on the above criteria.

TABLE 7–PROPOSED 2013 AND 2014 APPORTIONMENT OF PROHIBITED SPECIES CATCH ALLOWANCES TO NON-TRAWL GEAR, THE CDQ PROGRAM, AMENDMENT 80, AND THE BSAI TRAWL LIMITED ACCESS SECTORS

PSC species and area[1]	Total non-trawl PSC	Non-trawl PSC remaining after CDQ PSQ[2]	Total trawl PSC	Trawl PSC remaining after CDQ PSQ[2]	CDQ PSQ reserve[2]	Amendment 80 sector[3]	BSAI trawl limited access fishery
Halibut mortality (mt) BSAI	900	832	3,675	3,349	393	2,325	875
Herring (mt) BSAI	n/a	n/a	2,094	n/a	n/a	n/a	n/a
Red king crab (animals) Zone 1	n/a	n/a	97,000	86,621	10,379	43,293	26,489
C. opilio (animals) COBLZ	n/a	n/a	7,029,520	6,277,361	752,159	3,085,323	2,017,544
C. bairdi crab (animals) Zone 1	n/a	n/a	980,000	875,140	104,860	368,521	411,228
C. bairdi crab (animals) Zone 2	n/a	n/a	2,970,000	2,652,210	317,790	627,778	1,241,500

[1] Refer to § 679.2 for definitions of zones.

[2] Section 679.21(e)(3)(i)(A)(2) allocates 326 mt of the trawl halibut mortality limit and § 679.21(e)(4)(i)(A) allocates 7.5 percent, or 67 mt, of the non-trawl halibut mortality limit as the PSQ reserve for use by the groundfish CDQ program. The PSQ reserve for crab species is 10.7 percent of each crab PSC limit.

[3] The Amendment 80 program reduced apportionment of the trawl PSC limits by 150 mt for halibut mortality and 20 percent for crab PSC. These reductions are not apportioned to other gear types or sectors.

TABLE 8-PROPOSED 2013 AND 2014 HERRING AND RED KING CRAB SAVINGS SUBAREA PROHIBITED SPECIES CATCH ALLOWANCES FOR ALL TRAWL SECTORS

Fishery categories	Herring (mt) BSAI	Red king crab (animals) Zone 1
Yellowfin sole	179	n/a
Rock sole/flathead sole/other flatfish [1]	31	n/a
Greenland turbot/arrowtooth/sablefish[2]	15	n/a
Rockfish	11	n/a
Pacific cod	31	n/a
Midwater trawl pollock	1,600	n/a
Pollock/Atka mackerel/other species[3,4]	227	n/a
Red king crab savings subarea non-pelagic trawl gear[5]	n/a	24,250
Total trawl PSC	2,094	97,000

[1]"Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.

[2]"Arrowtooth flounder" for PSC monitoring includes Kamchatka flounder.

[3]Pollock other than pelagic trawl pollock, Atka mackerel, and "other species" fishery category.

[4]"Other species" for PSC monitoring includes sculpins, sharks, skates, and octopuses.

[5]In October 2012 the Council recommended that the red king crab bycatch limit for non-pelagic trawl fisheries within the RKCSS be limited to 25 percent of the red king crab PSC allowance (see § 679.21(e)(3)(ii)(B)(2)).

TABLE 9–PROPOSED 2013 AND 2014 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL LIMITED ACCESS SECTOR

BSAI trawl limited access fisheries	Prohibited species and area[1]				
	Halibut mortality (mt) BSAI	Red king crab (animals) Zone 1	C. opilio (animals) COBLZ	C. bairdi (animals)	
				Zone 1	Zone 2
Yellowfin sole	167	23,338	1,901,193	346,228	1,185,500
Rock sole/flathead sole/other flatfish[2]	0	0	0	0	0
Turbot/arrowtooth/sablefish[3]	0	0	0	0	0
Rockfish April 15-December 31	5	0	3,232	0	1,000
Pacific cod	453	2,954	80,799	60,000	50,000
Pollock/Atka mackerel/other species[4]	250	197	32,320	5,000	5,000
Total BSAI trawl limited access PSC	875	26,489	2,017,544	411,228	1,241,500

[1] Refer to § 679.2 for definitions of areas.

[2] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.

[3] "Arrowtooth flounder" for PSC monitoring includes Kamchatka flounder.

[4] "Other species" for PSC monitoring includes sculpins, sharks, skates, and octopuses.

TABLE 10–PROPOSED 2013 AND 2014 HALIBUT PROHIBITED SPECIES BYCATCH ALLOWANCES FOR NON-TRAWL FISHERIES

Halibut mortality (mt) BSAI		
Non-trawl fisheries	Catcher/processor	Catcher vessel
Pacific cod-Total	760	15
January 1-June 10	455	10
June 10-August 15	190	3
August 15-December 31	115	2
Other non-trawl-Total		58
May 1-December 31		58
Groundfish pot and jig		Exempt
Sablefish hook-and-line		Exempt
Total non-trawl PSC		833

TABLE 11–PROPOSED 2013 PROHIBITED SPECIES BYCATCH ALLOWANCE FOR THE BSAI AMENDMENT 80 COOPERATIVES

Cooperative	Prohibited species and zones[1]				
	Halibut mortality (mt) BSAI	Red king crab (animals) Zone 1	C. opilio (animals) COBLZ	C. bairdi (animals)	
				Zone 1	Zone 2
Alaska Seafood Cooperative	1,609	29,484	1,991,961	259,427	433,149
Alaska Groundfish Cooperative	716	13,809	1,093,362	109,094	194,629

[1] Refer to § 679.2 for definitions of zones.

Halibut Discard Mortality Rates (DMRs)

To monitor halibut bycatch mortality allowances and apportionments, the Regional Administrator uses observed halibut bycatch rates, DMRs, and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. The DMRs are based on the best information available, including information contained in the annual SAFE report.

NMFS proposes the halibut DMRs developed and recommended by the International Pacific Halibut Commission (IPHC) and the Council for the 2013 and 2014 BSAI groundfish fisheries for use in monitoring the 2013

and 2014 halibut bycatch allowances (see Tables 7, 9, 10, and 11). The IPHC developed these DMRs for the 2013 to 2015 BSAI fisheries using the 10-year mean DMRs for those fisheries. The IPHC will analyze observer data annually and recommend changes to the DMRs when a fishery DMR shows large variation from the mean. A discussion of the DMRs and their justification is available from the Council (see **ADDRESSES**). Table 12 lists the 2013 and 2014 DMRs.

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TABLE 12–PROPOSED 2013 AND 2014 ASSUMED PACIFIC HALIBUT DISCARD MORTALITY RATES FOR THE BSAI

Gear	Fishery	Halibut discard mortality rate (percent)
Non-CDQ hook-and-line	Greenland turbot	13
	Other species	9
	Pacific cod	9
	Rockfish	4
Non-CDQ trawl	Alaska Plaice	71
	Arrowtooth flounder	76
	Atka mackerel	77
	Flathead sole	73
	Greenland turbot	64
	Kamchatka flounder	71
	Non-pelagic pollock	77
	Pelagic pollock	88
	Other flatfish	71
	Other species	71
	Pacific cod	71
	Rockfish	79
	Rock sole	85
	Sablefish	75
	Yellowfin sole	83
Non-CDQ pot	Other species	8
	Pacific cod	8
CDQ trawl	Atka mackerel	86
	Arrowtooth flounder	76
	Flathead sole	79
	Kamchatka flounder	90
	Non-pelagic pollock	83
	Pelagic pollock	90
	Pacific cod	90
	Greenland turbot	89
	Rockfish	80
	Rock sole	88
	Yellowfin sole	86
CDQ hook-and-line	Greenland turbot	4
	Pacific cod	10
CDQ pot	Pacific cod	8
	Sablefish	34

Listed AFA Catcher/Processor Sideboard Limits

Pursuant to § 679.64(a), the Regional Administrator is responsible for restricting the ability of listed AFA catcher/processors to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery. The basis for these proposed sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007). Table 13 lists the proposed 2013 and 2014 catcher/processor sideboard limits.

All harvests of groundfish sideboard species by listed AFA catcher/processors, whether as targeted catch or incidental catch, will be deducted from the sideboard limits in Table 13. However, groundfish sideboard species that are delivered to listed AFA catcher/processors by catcher vessels will not be deducted from the 2013 and 2014 sideboard limits for the listed AFA catcher/processors.

TABLE 13–PROPOSED 2013 AND 2014 BSAI GROUNDFISH SIDEBOARD LIMITS FOR LISTED AMERICAN FISHERIES ACT CATCHER/PROCESSORS (C/Ps)

[Amounts are in metric tons]

Target species	Area	1995-1997			2013 and 2014 ITAC available to all trawl C/Ps[1]	2013 and 2014 AFA C/P sideboard limit
		Retained catch	Total catch	Ratio of retained catch of total catch		
Sablefish trawl	BS	8	497	0.016	935	15
	AI	0	145	0	429	0
Atka mackerel	Central AI					
	A season[2]	n/a	n/a	0.115	3,967	456
	B season[2]	n/a	n/a	0.115	3,967	456
	Western AI					
	A season[2]	n/a	n/a	0.2	670	134
	B season[2]	n/a	n/a	0.2	670	134
Rock sole	BSAI	6,317	169,362	0.037	77,691	2,875
Greenland turbot	BS	121	17,305	0.007	5,109	36
	AI	23	4,987	0.005	1,717	9
Arrowtooth flounder	BSAI	76	33,987	0.002	21,250	43
Kamchatka flounder	BSAI	76	33,987	0.002	15,045	30
Flathead sole	BSAI	1,925	52,755	0.036	30,482	1,097
Alaska plaice	BSAI	14	9,438	0.001	20,400	20
Other flatfish	BSAI	3,058	52,298	0.058	2,720	158
Pacific ocean perch	BS	12	4,879	0.002	5,559	11
	Eastern AI	125	6,179	0.02	5,751	115
	Central AI	3	5,698	0.001	5,099	5
	Western AI	54	13,598	0.004	8,582	34
Northern rockfish	BSAI	91	13,040	0.007	3,995	28
Shortraker rockfish	BSAI	50	2,811	0.018	334	6
Rougheye rockfish	EBS/EAI	50	2,811	0.018	205	4
	CAI/WAI	50	2,811	0.018	219	4
Other rockfish	BS	18	621	0.029	425	12
	AI	22	806	0.027	485	13
Squids	BSAI	73	3,328	0.022	361	8
Sharks	BSAI	553	68,672	0.008	170	1
Skates	BSAI	553	68,672	0.008	21,034	168
Sculpins	BSAI	553	68,672	0.008	4,420	35
Octopuses	BSAI	553	68,672	0.008	765	6

[1] Aleutians Islands Pacific ocean perch, and BSAI Atka mackerel, flathead sole, rock sole, and yellowfin sole are multiplied by the remainder of the TAC of that species after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C).

[2] The seasonal apportionment of Atka mackerel in the open access fishery is 50 percent in the A season and 50 percent in the B season. Listed AFA catcher/processors are limited to harvesting no more than zero in the Eastern Aleutian District and Bering Sea subarea, 20 percent of the annual ITAC specified for the Western Aleutian District, and 11.5 percent of the annual ITAC specified for the Central Aleutian District.

Note: Section 679.64(a)(1)(v) exempts AFA catcher/processors from a yellowfin sole sideboard limit because the 2013 and 2014 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector is greater than 125,000 mt.

Section 679.64(a)(2) and Tables 40 and 41 to part 679 establish a formula for calculating PSC sideboard limits for listed AFA catcher/processors. The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007).

PSC species listed in Table 14 that are caught by listed AFA catcher/processors participating in any groundfish fishery other than pollock will accrue against the proposed 2013 and 2014 PSC sideboard limits for the listed AFA catcher/processors. Section 679.21(e)(3)(v) authorizes NMFS to close directed fishing for groundfish other than pollock for listed AFA catcher/processors once a proposed 2013 or 2014 PSC sideboard limit listed in Table 14 is reached.

Crab or halibut PSC caught by listed AFA catcher/processors while fishing for pollock will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/''other species'' fishery categories, according to regulations at § 679.21(e)(3)(iv).

TABLE 14–PROPOSED 2013 AND 2014 BSAI PROHIBITED SPECIES SIDEBOARD LIMITS FOR AMERICAN FISHERIES ACT LISTED CATCHER/PROCESSORS

PSC species and area[1]	Ratio of PSC to total PSC	Proposed 2013 and 2014 PSC available to trawl vessels after subtraction of PSQ[2]	Proposed 2013 and 2014 C/P sideboard limit[2]
BSAI Halibut mortality	n/a	n/a	286
Red king crab Zone 1	0.007	86,621	606
C. opilio (COBLZ)	0.153	6,277,361	960,436
C. bairdi	n/a	n/a	n/a
Zone 1	0.14	875,140	122,520
Zone 2	0.05	2,652,210	132,611

[1] Refer to § 679.2 for definitions of areas.

[2] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals

AFA Catcher Vessel Sideboard Limits

Pursuant to § 679.64(b), the Regional Administrator is responsible for restricting the ability of AFA catcher vessels to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery. Section 679.64(b) establishes formulas for setting AFA catcher vessel groundfish and PSC sideboard limits for the BSAI. The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007). Tables 15 and 16 list the proposed 2013 and 2014 AFA catcher vessel sideboard limits.

All catch of groundfish sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or as incidental catch, will be deducted from the 2013 and 2014 sideboard limits listed in Table 15.

TABLE 15–PROPOSED 2013 AND 2014 BSAI GROUNDFISH SIDEBOARD LIMITS FOR AMERICAN FISHERIES ACT CATCHER VESSELS (CVs)

[Amounts are in metric tons]

Species	Fishery by area/gear/season	Ratio of 1995-1997 AFA CV catch to 1995-1997 TAC	2013-2014 initial TAC[1]	2013 and 2014 AFA catcher vessel sideboard limits
Pacific cod	BSAI	n/a	n/a	n/a
	Jig gear	0	3,287	0
	Hook-and-line CV	n/a	n/a	n/a
	Jan 1-Jun 10	0.0006	239	0
	Jun 10-Dec 31	0.0006	229	0
	Pot gear CV	n/a	n/a	n/a
	Jan 1-Jun 10	0.0006	10,022	6
	Sept 1-Dec 31	0.0006	9,629	6
	CV< 60 ft LOA using hook-and-line or pot gear	0.0006	4,679	3
	Trawl gear CV	n/a	n/a	n/a
	Jan 20-Apr 1	0.8609	38,394	33,053
	Apr 1-Jun 10	0.8609	5,707	4,913
	Jun 10-Nov 1	0.8609	7,783	6,700
Sablefish	BS trawl gear	0.0906	935	85
	AI trawl gear	0.0645	429	28
Atka mackerel	Eastern AI/BS	n/a	n/a	n/a
	Jan 1-Jun 10	0.0032	14,154	45
	Jun 10-Nov 1	0.0032	14,154	45
	Central AI	n/a	n/a	n/a
	Jan 1-Jun 10	0.0001	3,967	0
	Jun 10-Nov 1	0.0001	3,967	0
	Western AI	n/a	n/a	n/a
	Jan 1-Jun 10	0	670	0
	Jun 10-Nov 1	0	670	0
Rock sole	BSAI	0.0341	77,691	2,649
Greenland turbot	BS	0.0645	5,109	330
	AI	0.0205	1,717	35
Arrowtooth flounder	BSAI	0.069	21,250	1,466
Kamchatka flounder	BSAI	0.069	15,045	1,038
Flathead sole	BS trawl gear	0.0505	30,482	1,539
Alaska plaice	BSAI	0.0441	20,400	900
Other flatfish	BSAI	0.0441	2,720	120
Pacific ocean perch	BS	0.1	5,559	556
	Eastern AI	0.0077	5,751	44
	Central AI	0.0025	5,099	13
	Western AI	0	8,582	0
Northern rockfish	BSAI	0.0084	3,995	34
Shortraker rockfish	BSAI	0.0037	334	1
Rougheye rockfish	EBS/EAI	0.0037	204	1
	CAI/WAI	0.0037	219	1
Other rockfish	BS	0.0048	425	2
	AI	0.0095	485	5
Squids	BSAI	0.3827	361	138
Sharks	BSAI	0.0541	170	9
Skates	BSAI	0.0541	21,034	1,138
Sculpins	BSAI	0.0541	4,420	239
Octopuses	BSAI	0.0541	765	41

[1] Aleutians Islands Pacific ocean perch, and BSAI Atka mackerel, flathead sole, rock sole, and yellowfin sole are multiplied by the remainder of the TAC of that species after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C).

Note: Section 679.64(b)(6) exempts AFA catcher vessels from a yellowfin sole sideboard limit because the 2013 and 2014 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector is greater than 125,000 mt.

Halibut and crab PSC limits listed in Table 16 that are caught by AFA catcher vessels participating in any groundfish fishery other than pollock will accrue against the 2013 and 2014 PSC sideboard limits for the AFA catcher vessels. Sections 679.21(d)(8) and 679.21(e)(3)(v) authorize NMFS to close directed fishing for groundfish other than pollock for AFA catcher vessels once a proposed 2013 and 2014 PSC sideboard limit listed in Table 16 is reached. The PSC that is caught by AFA catcher vessels while fishing for pollock in the Bering Sea subarea will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/''other species'' fishery categories under regulations at § 679.21(e)(3)(iv).

TABLE 16–PROPOSED 2013 AND 2014 AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS FOR THE BSAI[1]

PSC species and area[2]	Target fishery category[3]	AFA catcher vessel PSC sideboard limit ratio	Proposed 2013 and 2014 PSC limit after subtraction of PSQ reserves	Proposed 2013 and 2014 AFA catcher vessel PSC sideboard limit
Halibut	Pacific cod trawl	n/a	n/a	887
	Pacific cod hook-and-line or pot	n/a	n/a	2
	Yellowfin sole total	n/a	n/a	101
	Rock sole/flathead sole/other flatfish[4]	n/a	n/a	228
	Greenland turbot/arrowtooth/sablefish[5]	n/a	n/a	0
	Rockfish	n/a	n/a	2
	Pollock/Atka mackerel/other species[6]	n/a	n/a	5
Red king crab Zone 1	n/a	0.299	86,621	25,900
C. opilio COBLZ	n/a	0.168	6,277,361	1,054,597
C. bairdi Zone 1	n/a	0.33	875,140	288,796
C. bairdi Zone 2	n/a	0.186	2,652,210	493,311

[1] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

[2] Refer to § 679.2 for definitions of areas.

[3] Target fishery categories are defined in regulation at § 679.21(e)(3)(iv).

[4] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), arrowtooth flounder, flathead sole, Greenland turbot, rock sole, and yellowfin sole.

[5] Arrowtooth for PSC monitoring includes Kamchatka flounder.

[6] "Other species" for PSC monitoring includes sculpins, sharks, skates, and octopuses.

BILLING CODE 3510–22–C

Classification

NMFS has determined that the proposed harvest specifications are consistent with the FMP and preliminarily determined that the proposed harvest specifications are consistent with the Magnuson-Stevens Act and other applicable laws.

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

NMFS prepared an EIS for this action (see **ADDRESSES**) and made it available to the public on January 12, 2007 (72 FR 1512). On February 13, 2007, NMFS issued the Record of Decision (ROD) for the EIS. Copies of the EIS and ROD for this action are available from NMFS. The EIS analyzes the environmental consequences of the proposed groundfish harvest specifications and its alternatives on resources in the action area. The EIS found no significant environmental consequences from the proposed action or its alternatives.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) as required by section 603 of the Regulatory Flexibility Act analyzing the methodology for establishing the relevant TACs. The IRFA evaluates the impacts on small entities of alternative harvest strategies for the groundfish fisheries in the exclusive economic zone off Alaska. As set forth in the methodology, TACs are set to a level that fall within the range of ABCs recommended by the SSC; the sum of the TACs must achieve OY specified in the FMP. While the specific numbers that the methodology may produce vary from year to year, the methodology itself remains constant.

A description of the proposed action, why it is being considered, and the legal basis for this proposed action are contained in the preamble above. A copy of the analysis is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows. The action under consideration is a harvest strategy to govern the catch of groundfish in the BSAI. The preferred alternative is the existing harvest strategy in which TACs fall within the range of ABCs recommended by the SSC. This action is taken in accordance with the FMP prepared by the Council pursuant to the Magnuson-Stevens Act.

The directly regulated small entities include approximately 216 small catcher vessels, six small catcher/processors, and six CDQ groups. The entities directly regulated by this action are those that harvest groundfish in the exclusive economic zone of the BSAI and in parallel fisheries within State of Alaska waters. These include entities operating catcher vessels and catcher/processors within the action area, and entities receiving direct allocations of groundfish. Catcher vessels and catcher/processors were considered to be small entities if they had annual gross receipts of $4 million per year or less from all economic activities, including the revenue of their affiliated operations (see Table 2 of the IRFA).

The preferred alternative (Alternative 2) was compared to four other alternatives. These included Alternative 1, which would have set TACs to generate fishing rates equal to the maximum permissible ABC (if the full TAC were harvested), unless the sum of TACs exceeded the BSAI OY, in which case TACs would have been limited to

the OY. Alternative 3 would have set TACs to produce fishing rates equal to the most recent five-year average fishing rates. Alternative 4 would have set TACs equal to the lower limit of the BSAI OY range. Alternative 5, the ''no action'' alternative, would have set TACs equal to zero.

The TACs associated with the preferred harvest strategy are those adopted by the Council in October 2012, as per Alternative 2. OFLs and ABCs for the species were based on recommendations prepared by the Council's BSAI Plan Team in September 2012, and reviewed and modified by the Council's SSC in October 2012. The Council based its TAC recommendations on those of its AP, which were consistent with the SSC's OFL and ABC recommendations.

Alternative 1 selects harvest rates that will allow fishermen to harvest stocks at the level of ABCs, unless total harvests were constrained by the upper bound of the BSAI OY of two million mt. As shown in Table 1 of the preamble, the sum of ABCs in 2013 and 2014 would be about 2,639,792 mt, which falls above the upper bound of the OY range. The sum of TACs is equal to the sum of ABCs. In this instance, Alternative 1 is consistent with the preferred alternative 2, meets the objectives of that action, and has small entity impacts that are equivalent to the preferred alternative.

Alternative 3 selects harvest rates based on the most recent 5 years of harvest rates (for species in Tiers 1 through 3) or for the most recent 5 years of harvests (for species in Tiers 4 through 6). This alternative is inconsistent with the objectives of this action, (the Council's preferred harvest strategy) because it does not take account of the most recent biological information for this fishery.

Alternative 4 would lead to significantly lower harvests of all species to reduce TACs from the upper end of the OY range in the BSAI, to its lower end of 1.4 million mt. Overall, this would reduce 2013 TACs by about 30 percent, which would lead to significant reductions in harvests of species harvested by small entities. While reductions of this size would be associated with offsetting price increases, the size of these increases is very uncertain. There are close substitutes for BSAI groundfish species available from the GOA. While production declines in the BSAI would undoubtedly be associated with significant price increases in the BSAI, these increases would still be constrained by production of substitutes, and are very unlikely to offset revenue declines from smaller production. Thus, this alternative action would have a detrimental impact on small entities.

Alternative 5, which sets all harvests equal to zero, would have a significant adverse impact on small entities and would be contrary to obligations to achieve OY on a continuing basis, as mandated by the Magnuson-Stevens Act.

In 2011, there were 216 individual catcher vessels with gross revenues less than or equal to $4 million. Many of these vessels are members of AFA inshore pollock cooperatives, GOA rockfish cooperatives, or crab rationalization cooperatives, and, since under the RFA it is the aggregate gross receipts of all participating members of the cooperative that must meet the ''under $4 million'' threshold, they are considered to be large entities within the meaning of the RFA. After accounting for membership in these cooperatives, NMFS estimates that there are an estimated 112 small catcher vessel entities remaining in the BSAI groundfish sector. These 112 vessels had average gross revenues of about $1.3 million, and median gross revenues of about $1.2 million. The 25th percentile of gross revenues was about $556,000, and the 75th percentile was about $1.97 million.

In 2011, 12 catcher/processors grossed less than $4 million. In 2011, six vessels in this group were affiliated through membership in three cooperatives (the Amendment 80 ''Alaska Seafood Cooperative,'' the Freezer Longline Conservation Cooperative, or the crab rationalization Intercooperative Exchange). After taking account of these affiliations, NMFS estimates that there are six small catcher/processor entities. These six entities had mean gross revenues of about $2.0 million and median gross revenues of about $1.8 million, in 2011.

The proposed harvest specifications extend the current 2013 OFLs, ABCs, and TACs, to 2013 and 2014. As noted in the IRFA, the Council may modify these OFLs, ABCs, and TACs in December 2012, when it reviews the November meeting report from its groundfish Plan Team, and the December Council meeting reports of its SSC and AP. Because most 2013 TACs in the proposed 2013 and 2014 harvest specifications are unchanged from the 2012 and 2013 harvest specification TACs, NMFS does not expect adverse impacts on small entities. Also, NMFS does not expect any changes made by the Council in December to be large enough to have an impact on small entities.

This action does not modify recordkeeping or reporting requirements, or duplicate, overlap, or conflict with any Federal rules.

Adverse impacts on marine mammals resulting from fishing activities conducted under these harvest specifications are discussed in the EIS (see **ADDRESSES**), and in the 2012 SIR (*http://www.alaskafisheries.noaa.gov/analyses/specs/2012-13supplementaryinfoJan2012.pdf*).

Authority: 16 U.S.C. 773 *et seq.;* 16 U.S.C. 1540(f); 16 U.S.C. 1801 *et seq.;* 16 U.S.C. 3631 *et seq.;* Pub. L. 105–277; Pub. L. 106–31; Pub. L. 106–554; Pub. L. 108–199; Pub. L. 108–447; Pub. L. 109–241; Pub. L. 109–479.

Dated: December 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.

[FR Doc. 2012–29508 Filed 12–5–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 77, No. 235
Thursday, December 6, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Land Exchanges

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension with no revision of a currently approved information collection, OMB 0596–0105, Land Exchanges.

DATES: Comments must be received in writing on or before February 4, 2013 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Vicky Wessling, National Land Adjustment Program Manager, Lands, 1601 N. Kent St. 7th floor, Arlington, VA 22209.

Comments also may be submitted via facsimile to 202–205–1604 or by email to: *landexchange@fs.fed.us.*

The public may inspect comments received at Office of the Land Adjustment Program Manager—Lands Staff, 1601 N. Kent St. 7th floor, Arlington, VA, during normal business hours. Visitors are encouraged to call ahead to 202–205–1047 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Vicky Wessling, Lands Staff, 202–205–1047.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: Land Exchanges.

OMB Number: 0596–0105.

Expiration Date of Approval: 04/30/2013.

Type of Request: Extension with revision of a currently approved information collection.

Abstract: Land exchanges are discretionary, voluntary real estate transactions between the U.S. Department of Agriculture, Secretary of Agriculture (acting by and through the Forest Service) and a non-Federal exchange party (or parties). Land exchanges can be initiated by a non-Federal party (or parties), an agent of a landowner, a broker, a third party, or a non-Federal public agency.

Each land exchange requires preparation of an Agreement to Initiate as required by Title 36, Code of Federal Regulations (CFR), Part 254, Subpart A—Agreement to Initiate. The Agreement to Initiate document specifies the preliminary and non-binding intentions of the non-Federal land exchange party and the Forest Service in pursuing a land exchange. The Agreement to Initiate can contain such information as the description of properties being considered in the land exchange, an implementation schedule of action items, identification of the party responsible for each action item, as well as target dates for completion of each action item.

As the exchange proposal develops, the Forest Service and the non-Federal land exchange party may enter into a binding Exchange Agreement, pursuant to Title 36 CFR part 254, subpart A, section 254.14—Exchange Agreement. The Exchange Agreement documents the conditions that must be met to complete the exchange. The Exchange Agreement can contain information such as identification of parties, description of lands and interests to be exchanged, identification of all reserved and outstanding interest, and all other terms and conditions necessary to complete the exchange.

The Forest Service collects the information from the non-Federal party (or parties) necessary to complete the Agreement to Initiate and the Exchange Agreement. The information is collected by Forest Service personnel from parties involved in the exchange via telephone, email, or in person. Data from this information collection is unique to each land exchange and is not available from other sources. No standardized forms are associated with this information collection.

Estimate of Annual Burden:

Agreement to Initiate: 3 hours.

Exchange Agreement: 1 hour.

Type of Respondents: Non-Federal party (or parties) that can include landowners, agents of landowners, brokers, a third party, or a non-Federal public agency.

Description of the collection activity	Estimated number of respondents	Number of responses annually per respondent	Total annual responses	Estimate of burden hours per response	Total annual burden hours
Agreement to Initiate	23	1	23	3	69
Exchange Agreement	19 of the above 23 respondents	1	19	1	19

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and

addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: November 19, 2012.

Calvin N. Joyner,

Associate Deputy Chief, National Forest System.

[FR Doc. 2012–29482 Filed 12–5–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Secure Rural Schools Act

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Forest Service to seek approval to renew and revise a currently approved information collection, ''Secure Rural Schools Act, County Certification of Title III Expenditures.'' The Forest Service is seeking comments from all interested individuals and organizations on renewal and revision of the information collection.

DATES: Comments must be received in writing on or before February 4, 2013 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to USFS Payments to States Coordinator, SWAM/IAS/ASR, 101–B Sun Avenue NE., Albuquerque, NM 87109. Comments also may be submitted via facsimile to 877–684–1422 or by email to: *asc_asr@fs.fed.us.* All comments should identify the OMB Control Number 0596–0220.

The public may inspect comments received on the World Wide Web at *http://www.fs.usda.gov/main/pts/countyfunds/certification.*

FOR FURTHER INFORMATION CONTACT: Reynardo Brown, phone 505–563–7374 or email *asc_asr@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Secure Rural Schools Act, County Certification of Title III Expenditures.

OMB Number: 0596–0220.

Expiration Date of Approval: April 30, 2013.

Type of Request: Extension with revision of a currently approved Information Collection.

Abstract: The Secure Rural Schools and Community Self-Determination Act of 2000 (the Act) (16 U.S.C. 7101 *et seq.*), as reauthorized in Public Law 110–343 and Public Law 112–141, requires the appropriate official of a county that receives funds under title III of the Act to submit to the appropriate Secretary an annual certification that the funds expended have been used as authorized under section 302(a) of the Act.

The appropriate official of each participating county will be requested to report the amount of title III funds expended in the applicable year in these categories as specified in the Act:

1. To carry out authorized activities under the Firewise Communities program.

2. To reimburse the participating county for emergency services performed on Federal land and paid for by the participating county.

3. To develop community wildfire protection plans in coordination with the appropriate Secretary.

The information collection will identify the participating county and the year in which the expenditures were made, and include the name, title, and signature of the certifying official, and the date of the certification. The certification will include a statement that all expenditures were for uses authorized under section 302(a) of the Act and that the proposed uses were published and had a 45-day comment period and were submitted to the appropriate Secure Rural Schools Act resource advisory committee(s), if any, as described in Section 302(b) of the Act.

Beginning with the certification due on February 1, 2013, the information collection also will request the county to certify the amount of title III funds received since October of 2008 that has not been obligated as of September 30 of the previous year. This collection is necessary in the certification due on February 1, 2014, to determine the amount of title III funds that must be returned to the U.S. Treasury under section 304(b) of the Act. Collection of this information in 2013 is consistent with a recent audit of county uses of title III funds by the Government Accountability Office (*http://www.gao.gov/products/GAO-12-775*). A county's procedure for and documentation of its obligation of title III funds should be consistent with its procedures to obligate funds from other Federal sources.

In summary, the February 1, 2013 information collection will certify title III funds expended in calendar year 2012 and the amount of title III funds not obligated as of September 30, 2012. The February 1, 2014 information collection will certify title III funds expended in calendar year 2013 and the amount of title III funds not obligated as of September 30, 2013.

The determination of who is the appropriate certifying official is at the discretion of the county and borough and will vary depending on county or borough organization. For unorganized boroughs in Alaska and for participating counties in Vermont, a state official may provide the information

The information will be collected in the form of conventional correspondence such as a letter and, at the respondent's option, attached tables, or similar graphic display. The Forest Service provides an optional form for the convenience of respondents. At the respondent's discretion, the information may be submitted by hard copy and/or electronically scanned and included as an attachment to electronic mail.

Under the Act, the first response was required by February 1, 2010 for funds expended in 2009. Responses are required by February 1 following each year title III funds are expended. The Act requires title III funds to be obligated by September 30, 2013 or be returned to the U.S. Treasury, therefore, the funds are likely to be expended or returned in 2014 and the final certification of expenditures could be made by February 1, 2015.

The U.S. Department of the Interior (DOI) and the Bureau of Land Management (BLM) are also authorized to participate in this information collection because BLM administers Federal lands in western Oregon covered by the Act. The information will be reviewed by the appropriate Secretary, or designee, to verify that participating counties have certified that funds were expended as authorized in the Act and to identify amounts not obligated by September 30 of the previous year. The information also may be used by the DOI because it is relevant to its Payments in Lieu of Taxes (PILT) program.

Estimate of Annual Burden per Respondent: The estimated time required for each respondent to collect, prepare, and submit the information is 24 hours each year, including an estimated 20 hours for collection and four hours for preparation and submission.

Type of Respondents: Respondents are county officials.

Estimated Annual Number of Respondents: 344 county officials are expected to respond each year.

Estimated Annual Number of Responses per Respondent: The Act requires only one response for each participating county for each year expenditures are made, except that sixteen counties in western Oregon will respond separately to the DOI and the U.S. Department of Agriculture (USDA).

Estimated Total Annual Burden on Respondents: The estimated time required for all respondents (344 counties) to collect, prepare and submit the information is 8,256 hours each year.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: November 19, 2012.

Calvin N. Joyner,

Associate Deputy Chief, National Forest System.

[FR Doc. 2012–29484 Filed 12–5–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCIES: Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agencies' intention to request an extension for a currently approved information collection in support of the program for 7 CFR part 1951, subpart F, ''Analyzing Credit Needs and Graduation of Borrowers.''

DATES: Comments on this notice must be received by February 4, 2013 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Susan Woolard, Community Programs Specialist, Rural Housing Service, U.S. Department of Agriculture, STOP 0787, 1400 Independence Ave. SW., Washington, DC 20250–0787, telephone: (202) 720–1506, email: *susan.woolard@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: 7 CFR, part 1951, subpart F, ''Analyzing Credit Needs and Graduation of Borrowers''.

OMB Number: 0575–0093.

Expiration Date of Approval: January 31, 2013.

Type of Request: Extension of a currently approved information collection.

Abstract: Section 333 of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1983) requires the Agencies to ''graduate'' their direct loan borrowers to other credit when they are able to do so. Graduation is required because the Government loans are not to be extended beyond a borrower's need for subsidized rates or Government credit. Borrowers must refinance their direct Government loan when other credit becomes available at reasonable rates and terms.

If other credit is not available, the Agencies will continue to review the account for possible graduation at periodic intervals. The information collected to carry out these statutory mandates is financial data such as amount of income, operating expenses, asset values and liabilities. This information collection is then submitted by the Agencies to private creditors.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Public bodies, not for profits, or Indian Tribes.

Estimated Number of Respondents: 319.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 319.

Estimated Total Annual Burden on Respondents: 638.

Copies of this information collection can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch, at (202) 692–0040.

Comments:

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agencies, including whether the information will have practical utility; (b) the accuracy of the Agencies' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 29, 2012.

Tammye Treviño,

Administrator, Rural Housing Service.

[FR Doc. 2012–29526 Filed 12–5–12; 8:45 am]

BILLING CODE 3410–XV–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: U.S. Census Bureau.

Title: Boundary and Annexation Survey.

OMB Control Number: 0607–0151.

Form Number(s): BAS 1, BAS 2, BAS 3, BAS 4, BAS 5, BAS 6, BAS ARF, BASSC–1, BASSC–2.

Type of Request: Revision of a currently approved collection.

Burden Hours: 169,368.

Number of Respondents: 84,464.

Average Hours per Response: 2 hours.

Needs and Uses: The Boundary and Annexation Survey (BAS) is conducted to provide information documenting the creation of newly incorporated municipalities, minor civil divisions (MCDs), counties, federally recognized

American Indian areas (AIAs, which include reservations and/or off-reservation trust lands), and Alaska Native Regional Corporations (ANRCs), the dissolution of incorporated municipalities and MCDs, and changes in the boundaries of municipalities, MCDs, counties, AIAs, and ANRCs. The BAS information is used to provide an appropriate record for reporting the results of the decennial and economic censuses; annual surveys to support the annual population estimates program, and the American Community Survey, to update the municipal, MCD, county, AIA, and ANRC inventory for compliance with responsibilities specified in the OMB Circular A–16 Governmental Units and Administrative and Statistical Boundaries Data Theme that supports the spatial data steward responsibilities of the OMB E-Gov, Data.gov, The National Map, and to update the Geographic Names Information Systems (GNIS).

The BAS universe and mailing materials vary depending both upon the needs of the Census Bureau in fulfilling its censuses and household surveys, and upon budget constraints.

Counties or equivalent entities federally recognized American Indian reservations, off-reservation trust lands, and tribal subdivisions are included in every BAS.

In the years ending in 8, 9 and 0, the BAS includes all governmentally active counties and equivalent entities, incorporated places, and legally defined minor civil divisions, and legally defined federally recognized American Indian and Alaska Native areas (including the Alaska Native Regional Corporations). Each governmental entity surveyed will receive materials covering its jurisdiction and one or more forms. These three years coincide with the Census Bureau's preparation for the decennial census. There are less than 40,000 governments in the universe each year.

In all other years, the BAS reporting universe includes all legally defined federally recognized American Indian and Alaska Native areas, all governmental counties and equivalent entities, minor civil divisions in the six New England States and those incorporated places that have a population of 2,500 or greater. The reporting universe is approximately 14,000 governments. The Census Bureau follows up on a subset of governments designated as the reporting universe.

In the years ending in 1 through 7, the Census Bureau may enter into agreements with individual States to modify the universe of minor civil divisions and/or incorporated places to include additional entities that are known by that State to have had boundary changes, without regard to population size. Each year, the BAS will also include each year a single respondent request for municipio, barrio, barrio-pueblo, and subbarrio boundary and status information in Puerto Rico and Hawaiian Homeland boundary and status information in Hawaii.

No other Federal agency collects these data nor is there a standard collection of this information at the State level. The Census Bureau's BAS is a unique survey providing a standard result for use by federal, state, local, and tribal governments and by commercial, private, and public organizations.

As part of our partnerships developed with state and county governments, the universe is modified with local knowledge to target those governments known to have changes and delete governments with no changes to minimize unnecessary burden.

The final stage is our newly added quality assurance State Certification program, allowing the state level agencies to verify that the status and boundary updates received through the annual BAS were accomplished according to state law. During each cycle of this program, Governor-designated State Certifying Officials (SCO) review listings of legal boundary changes reported to the BAS during the previous year. The SCO is able to certify, edit, add, or reverse reported annexations, and they may mark a legal boundary change as a duplicate of a previously reported change.

In addition, we are removing the Boundary Validation Program (BVP) from the clearance. The BVP is conducted only for the year of the decennial census.

The BAS information is used to: (1) Classify data collected in the periodic decennial and economic censuses and annual surveys; (2) serve as the primary source of information regarding new incorporations, disincorporations, and other changes in the local and tribal government inventory for the FIPS and GNIS programs, state and local officials, and private data users, (3) update its estimates of the population as a result of the creation of new governments, the dissolution of governments, or changes in boundaries for existing local or tribal governments, (4) serve as the source for governmental unit boundary information as a framework layer of the National Spatial Data Infrastructure for The National Map and the data.gov Web site.

Affected Public: State, local, or Tribal governments.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 6.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

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 Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or email (*bharrisk@omb.eop.gov*).

Dated: November 30, 2012.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–29418 Filed 12–5–12; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–53–2012]

Foreign-Trade Zone 20—Suffolk, VA; Authorization of Production Activity; Usui International Corporation (Diesel Engine Fuel Lines); Chesapeake, VA

On June 28, 2012, the Virginia Port Authority, grantee of FTZ 20, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Usui International Corporation within FTZ 20—Site 9, in Chesapeake, Virginia.

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 48127–48128, 8–13–2012). 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: November 30, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–29534 Filed 12–5–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–836]

Glycine From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Partial Rescission of Antidumping Duty Administrative Review; 2011–2012

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 glycine from the People's Republic of China (the PRC). The period of review (POR) is March 1, 2011, through February 29, 2012. The review covers one exporter of subject merchandise, Baoding Mantong Fine Chemistry Co. Ltd. (Baoding Mantong). We have preliminarily found that Baoding Mantong has not cooperated to the best of its ability and has withheld information, significantly impeding the proceeding. Therefore, we preliminarily determine that we must rely on facts otherwise available, with an adverse inference, in order to determine a weighted-average dumping margin for Baoding Mantong.

DATES: *Effective Date:* December 6, 2012.

FOR FURTHER INFORMATION CONTACT: Brian Davis or Ericka Ukrow, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone: (202) 482–7924 or (202) 482–0405, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The product covered by the antidumping duty order is glycine, which is a free-flowing crystalline material, like salt or sugar.[1] The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading: 2922.49.4020. The HTSUS subheading is provided for convenience and customs purposes only; the written product description of the scope of the order is dispositive.[2]

Preliminary Partial Rescission of Review

With the exception of Baoding Mantong, the sole mandatory respondent in this proceeding, we are preliminarily rescinding this review for all other companies named in the *Initiation Notice*[3] because while the review requests have been withdrawn in a timely manner, these companies have not previously received separate rate status and, as such, remain part of the PRC-wide entity.

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 a full description of the methodology underlying our conclusions, *see* Preliminary Decision Memorandum, which is 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	Dumping margin (percent)
PRC-wide entity (including Baoding Mantong Fine Chemistry Co., Ltd.)	453.79

Disclosure and Public Comment

The Department will disclose calculations performed, if applicable, 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.

Assessment Rates

Upon issuing the final results of the review, 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. The Department recently announced a refinement to its assessment practice in non-market economy (NME) cases.[8] Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the NME-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that

[1] *See* Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review and Preliminary Partial Rescission of Antidumping Duty Administrative Review: Glycine from the People's Republic of China'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, dated concurrently with this notice (Preliminary Decision Memorandum), for a complete description of the scope of the order.

[2] *See Antidumping Duty Order: Glycine from the People's Republic of China,* 60 FR 16116 (March 29, 1995).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 77 FR 25401 (April 30, 2012) (*Initiation Notice*).

[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 Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) (''*Assessment Practice Refinement*'').

exporter's rate) will be liquidated at the NME-wide rate.[9]

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).[10] 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 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 the PRC-wide entity (including Baoding Mantong), the cash deposit rate will be that established in the final results of this review; (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.

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: November 29, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

1. Partial Rescission of Review
2. Separate Rates
3. Use of Facts Available and Adverse Facts Available

[FR Doc. 2012–29543 Filed 12–5–12; 8:45 am]

BILLING CODE 3510–DS–P

[9] *See Assessment Practice Refinement,* 76 FR at 65694.

[10] 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).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Circular Welded Carbon Steel Pipes and Tubes From Turkey; Final Results of Antidumping Duty Administrative Review; 2010 to 2011

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On June 1, 2012, the Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes from Turkey.[1] This review covers four producers and exporters of subject merchandise: Borusan, Erbosan, Toscelik, and Yucel.[2] The period of review (''POR'') is May 1, 2010, through April 30, 2011. Based on our analysis of the comments received, we have made certain changes in the margin calculations. The final results, consequently, differ from the *Preliminary Results.* The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of Review.''

DATES: *Effective Date:* December 6, 2012.

FOR FURTHER INFORMATION CONTACT: Victoria Cho or Christopher Hargett, at (202) 482–5075 or (202) 482–4161, respectively; AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2012, the Department published the *Preliminary Results.* In the *Preliminary Results,* the Department did not address the targeted dumping allegation submitted by the petitioner on May 9, 2012 and May 14, 2012.[3] We invited interested parties to comment on the *Preliminary Results.*[4]

On October 23, 2012, the Department issued a post-preliminary analysis.[5] At that time, we invited parties to comment on the Department's analysis in addressing the petitioners' targeted dumping allegation in this review.[6]

On October 27, 2012, we invited Borusan to submit certain cost data.[7] Borusan submitted that data on October 29, 2012.[8]

[1] *See Circular Welded Carbon Steel Pipes and Tubes From Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review,* 77 FR 32508 (June 1, 2012) (''*Preliminary Results*'').

[2] The Department initiated a review on the Borusan Group, which includes Borusan Mannesmann Boru Sanayi ve Ticaret A.S., Borusan Birlesik Boru Fabrikalari San ve Tic., Borusan Istikbal Ticaret T.A.S., Boruson Gemlik Boru Tesisleri A.S., Borusan Ihracat Ithalat ve Dagitim A.S., Borusan Ithicat ve Dagitim A.S., and Tubeco Pipe and Steel Corporation (collectively, ''Borusan''); ERBOSAN Erciyas Boru Sanayi ve Ticaret A.S. (''Erbosan''); Toscelik Profil ve Sac Endustrisi A.S., Toscelik Metal Ticaret A.S., Tosyali Dis Ticaret A.S. (collectively, ''Toscelik''); the Yucel Group and all affiliates, Yucel Boru ve Profil Endustrisi A.S., Yucelboru Ihracat Ithalat ve Pazarlama A.S., and Cayirova Boru Sanayi ve Ticaret A.S. (collectively, ''Yucel.'').

[3] *See id.,* 77 FR at 32510.

[4] *See id.,* 77 FR at 32512.

[5] *See* the Department's ''Circular Welded Carbon Steel Pipes and Tubes from Turkey 2010–2011 Administrative Review: Post-Preliminary Analysis and Calculation Memorandum,'' dated October 23, 2012 (''Post-Preliminary Analysis'').

[6] *See* Post-Preliminary Analysis at 5; *see also* the Department's October 31, 2012, memorandum to the File setting the case and rebuttal brief due dates.

[7] *See* the Department's October 27, 2012, section D supplemental questionnaire to Borusan.

[8] *See* Letter from Borusan to the Department, dated October 28, 2012, entitled ''Response of Borusan Mannesmann Boru Sanayi ve Ticaret A.S. to the Supplemental Questionnaire Regarding Targeted Dumping in the 2010–2011 Antidumping Administrative Review Involving Certain Welded Carbon Steel Standard Pipe from Turkey.''

On November 5, 2012, U.S. Steel and Borusan submitted comments on the Department's analysis of the petitioners' targeted dumping allegation in the Post-Preliminary Analysis.[9] On November 8, 2012, U.S. Steel and Toscelik submitted rebuttal comments to the Department's Post-Preliminary Analysis.[10]

Period of Review

The POR covered by this review is May 1, 2010, through April 30, 2011.

Scope of the Order

The products covered by the order include circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded and coupled). Those pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. All carbon steel pipes and tubes within the physical description outlined above are included in the scope of this order, except for line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.[11]

Determination of No Reviewable Entries

On September 30, 2011, the Department determined that Erbosan had no reviewable entries during the POR.[12] On October 17, 2011, the Department determined that Yucel had no entries subject to review during the POR.[13] As a result, in the *Preliminary Results,* the Department preliminarily determined that Erbosan and Yucel had no reviewable entries during the POR.[14] No interested party has since submitted additional record evidence or commented on this issue. Therefore, based on the record evidence, we continue to find that these respondents had no reviewable entries during the POR.

Moreover, consistent with our practice, we intend to issue liquidation instructions to U.S. Customs and Border Protection (''CBP'') concerning entries for Erbosan and Yucel following the final results of the review.[15] We will instruct CBP to liquidate any existing unliquidated entries of merchandise produced and/or exported by Erbosan and Yucel at the all-others rate.[16]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding and to which we have responded are listed in Appendix I to this notice and addressed in the Issues and Decision Memorandum, dated concurrently with, and hereby adopted by, this notice.[17] The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit (''CRU''), Room 7046 of the main Department of Commerce Building, as well as electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaacess.trade.gov* and is available to all parties in the CRU. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/frn/index.html*. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Changes From the Preliminary Results and Post-Preliminary Results

Based on our analysis of the comments received from interested parties, we have made the following changes in calculating Borusan's and Toscelik's dumping margins for the final results: (1) We have corrected the home market window period to account for all of Borusan's POR sales; (2) we are not including Borusan's revenue from the sale of land and profit from the previous year and, instead, will exclude such revenue from the calculation of the general and administrative (''G&A'') expense ratio; (3) we are including unpaid exempted import duties in the calculation of Borusan's cost of production; and (4) we re-calculated Toscelik's U.S. credit expense by using Toscelik's own rates from short-term loans in the United States. *See* Issues and Decision Memorandum at Comments 1 through 4 for Borusan and Comment 5 for Toscelik. For further details on how the changes were applied in the margin calculation, *see* Memorandum to the File, from Victoria Cho and Christopher Hargett, International Trade Analysts, through Robert James, Program Manager, entitled ''Final Results in the 2010/2011 Administrative Review on Circular Welded Carbon Steel Pipes and Tubes from Turkey,'' dated November 30, 2012; *see also* Memorandum from James J. Balog, through Michael P. Martin, to Neal M. Halper, entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Final Results—Borusan Mannesmann Boru Sanayive Ticaret A.S.,'' dated November 28, 2012.

Final Results of Review

As a result of this review, we determine that the following weighted-average dumping margins exist for the

[9] *See* U.S. Steel's November 5, 2012, comments to the Department's Post-Preliminary Analysis; Borusan's November 5, 2012, comments to the Department's Post-Preliminary Analysis.

[10] *See* Toscelik's November 8, 2012, rebuttal comments to the Department's Post-Preliminary Analysis; U.S. Steel November 8, 2012, rebuttal comments to the Department's Post-Preliminary Analysis.

[11] For the complete scope of this review, *see Certain Welded Carbon Steel Pipe and Tube From Turkey: Notice of Final Results of Antidumping Duty Administrative Review,* 76 FR 76939 (December 9, 2011).

[12] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, entitled ''Welded Carbon Steel Pipe and Tube from Turkey (Period of Review: May 1, 2010, through April 30, 2011): Whether Entries Are Reviewable for ERBOSAN Erciyas Boru Sanayi ve Ticaret A.S.,'' dated September 30, 2011.

[13] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, entitled ''Welded Carbon Steel Pipe and Tube from Turkey (Period of Review: May 1,2010, through April 30, 2011): Whether the Yucel Group's Entry Is Properly Classified and Subject to Review,'' dated October 17, 2011.

[14] *See Preliminary Results,* 77 FR at 32509.

[15] *See Stainless Steel Butt-Weld Pipe Fittings From Italy: Preliminary Results of Antidumping Duty Administrative Review and Preliminary No Shipment Determination,* 76 FR 79651, 79651–52 (December 22, 2011), unchanged in *Stainless Steel Butt-Weld Pipe Fittings From Italy: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination,* 77 FR 24459, 24460 (April 24, 2012); *see also Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[16] *See, e.g., Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922 (May 13, 2010), unchanged in *Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

[17] *See* Issues and Decision Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, entitled ''Final Results of the Antidumping Duty Administrative Review: Circular Welded Carbon Steel Pipes and Tubes from Turkey—May 1, 2010, through April 30, 2011,'' dated concurrently with this notice.

period May 1, 2010, through April 30, 2011:

Manufacturer/exporter	Weighted-average dumping margin (percent)
Borusan	6.05
Toscelik	0.00

Disclosure

We will disclose calculation memorandums used in our analysis to parties to these proceedings within five days of the date of publication of this notice.[18]

Assessment

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

For assessment purposes, 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).

We calculated such rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. If an importer-specific assessment rate is zero or *de minimis* (*i.e.,* less than 0.50 percent) or exporter has a weighted-average dumping margin that is zero or *de minimis,* the Department will instruct CBP to assess that importer's entries of subject merchandise without regard to antidumping duties, in accordance with 19 CFR 351.106(c)(2).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003.[19] This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the country-specific all-others rate established in the less-than-fair-value (''LTFV'') investigation if there is no rate for the intermediate company(ies) involved in the transaction.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this notice of final results of the administrative review for all shipments of subject merchandise entered or withdrawn from warehouse, for consumption, on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For the companies subject to this review, the cash deposit rate will be the respective rates established in the final results of this review, as listed above; (2) for previously reviewed or investigated companies not listed above that have their own rates, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous completed segment conducted under this proceeding by the Department, the cash deposit rate will be 14.74 percent, the all-others rate, established in the LTFV investigation.[20] These cash 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 and/or countervailing 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 and/or countervailing duties occurred and the subsequent increase in antidumping duties by the amount of antidumping and/or countervailing duties reimbursed.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 30, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I—Issues in Issues and Decision Memorandum

General Issues

Comment 1: Whether To Apply Targeted Dumping to Borusan and Toscelik

Company Specific Issues

Borusan

Comment 2: Home Market Window Period
Comment 3: G&A Expenses Calculation
Comment 4: Unpaid Exempted Duties as a Part of the Cost of Production

Toscelik

Comment 5: U.S. Credit Expense

[FR Doc. 2012–29529 Filed 12–5–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–809]

Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation; 2010–2011; Final Results of Administrative Review and Revision of Agreement Suspending Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 1, 2012, the Department of Commerce (''the Department'') published its preliminary results of administrative review of the Agreement Suspending the Antidumping Duty Investigation on Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation (''the Agreement'') for the period July 1, 2010 through June 30, 2011. *See Hot-Rolled Flat-Rolled*

[18] *See* 19 CFR 351.224(b).

[19] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[20] *See Antidumping Duty Order; Welded Carbon Steel Standard Pipe and Tube Products From Turkey,* 51 FR 17784, 17784 (May 15, 1986).

Carbon-Quality Steel Products From the Russian Federation; Preliminary Results of the Administrative Review of the Suspension Agreement, 77 FR 32513 (June 1, 2012) (''*Preliminary Results*''). In its *Preliminary Results,* the Department determined that, although the Government of the Russian Federation was in compliance with the Agreement, the Department's evaluation with respect to the status of the Agreement indicated that the Agreement was not meeting its statutory requirement to prevent price undercutting of domestic hot-rolled steel prices. On November 14 and 15, 2012, respectively, the Department and the Ministry of Economic Development of the Russian Federation (''The Economy Ministry of Russia'') initialed a draft revision to the Agreement which realigns the reference prices issued pursuant to the Agreement with current U.S. market prices. The Department requested, and received on November 23, 2012, comments from interested parties on the initialed draft revision. On November 30, 2012, the Department and The Economy Ministry of Russia signed the final revision to the Agreement. The revision to the Agreement reestablishes the effectiveness of the reference price mechanism and, thus, brings the revised Agreement into compliance with the statutory requirement to prevent the undercutting of domestic price levels by imports of Russian hot-rolled steel.

DATES: *Effective Date:* November 30, 2012.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or Anne D'Alauro, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–0162 or (202) 482–4830.

SUPPLEMENTARY INFORMATION:

Background

In response to a request from Nucor Corporation (''Nucor''), a domestic interested party, the Department conducted an administrative review of the Agreement, and, on June 1, 2012, the *Preliminary Results* were published in the **Federal Register**. Section 751(a)(1)(C) of the Act specifies that, in an administrative review of a suspension agreement, the Department shall ''review the current status of, and compliance with, any agreement by reason of which an investigation was suspended.'' In this case, the Department reviewed the current status of, and compliance with, the Agreement, which was signed by the Department and the Ministry of Trade of the Russian Federation on July 12, 1999, and suspended the antidumping duty investigation. Because the Department determined that the Russian Federation was a non-market economy country at that time, the Agreement was entered into under section 734(*l*) of the Act, which applies to non-market economy countries.[1] This section provides that the Department may suspend an investigation upon acceptance of an agreement with a non-market economy country to restrict the volume of imports into the United States, if the Department determines that the agreement is in the public interest; that effective monitoring is possible; and that the agreement ''will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation.'' Section 734(*l*)(1). For this purpose, the Agreement's terms established annual quota limits and a reference price mechanism to provide minimum prices for sales of Russian hot-rolled steel imports into the U.S. market. The reference price mechanism in the Agreement relied on quarterly adjustments, based on the average unit prices of fairly-traded imports as reported by the U.S. Bureau of the Census, as specified under Section III.E of the Agreement.

In evaluating the information on the record of the administrative review with respect to the current status of, and compliance with, the Agreement, the Department preliminarily determined that the Agreement's reference price mechanism, in its current form, was no longer preventing price undercutting by Russian imports of hot-rolled steel into the U.S. market, and, as a result, preliminarily determined that the Agreement was no longer fulfilling its statutory requirement. *See Preliminary Results,* 77 FR at 32516. The Department preliminarily determined that the record evidence indicated that the adjustments made quarterly within the Agreement's existing reference price mechanism failed to keep pace with changes in U.S. market prices. Further, once the reference prices became too low relative to U.S. market prices, the subsequent quarterly adjustments were no longer effective in providing new reference prices that were reflective of U.S. market prices for hot-rolled steel. In addition, the Department preliminarily determined that the record evidence indicated that the failing reference price mechanism, as described, had led to the undercutting of domestic hot-rolled steel price levels by Russian hot-rolled steel imports during the period of review (''POR''). As a separate matter, in its preliminary results, the Department found no evidence, in the information submitted by interested parties in the administrative review, that the Agreement had been violated during the POR.

After the publication of the *Preliminary Results,* the Department offered interested parties an opportunity to place additional factual information on the record of this administrative review. The Russian producers Joint Stock Company Severstal (''Severstal''), Novolipetsk Steel, Magnitogorsk Iron and Steel Works, and OJSC ''OMK-Steel'' (collectively, ''the Russian producers''), and Nucor placed factual information on the record on July 5, 2012. Severstal and the domestic producers Nucor, ArcelorMittal USA LLC, United States Steel Corporation, Gallatin Steel Company, Steel Dynamics, Inc., and SSAB N.A.D., Inc. (collectively, ''the domestic producers''), placed rebuttal factual information on the record on July 16, 2012. The Economy Ministry of Russia, the Russian producers and the domestic producers submitted case and rebuttal briefs in response to the *Preliminary Results* on July 23, 2012, and August 1, 2012, respectively.

On September 21, 2012, the Department extended the deadline for the final results of review from October 1, 2012, until November 28, 2012. *See* Memorandum to Lynn Fischer Fox, Deputy Assistant Secretary for Policy and Negotiations in Import Administration, regarding ''Extension of Deadline for Final Results of Administrative Review of the Suspension Agreement'' (September 21, 2012). The Department subsequently exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, 2012, through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. The revised deadline for the final results of this review is now November 30, 2012. *See* Memorandum to the Record from Paul Piquado, Assistant Secretary for Import Administration, regarding ''Tolling of Administrative Deadlines As a Result of the Government Closure during the Recent Hurricane'' (October 31, 2012).

On January 31, 2012, the Department requested consultations with The Economy Ministry of Russia, under Section VIII.C of the Agreement, to

[1] In a memorandum dated June 6, 2002, based on the evidence of Russian economic reforms to that date, the Department revoked Russia's status as a non-market-economy country under section 771(18)(B) of the Act, with such revocation effective as of April 1, 2002.

discuss the issues of the alleged sales of Russian hot-rolled steel imports at prices that called into question the effectiveness of the Agreement's reference price mechanism and whether or not the Agreement was fulfilling its statutory mandate to prevent the undercutting and suppression of domestic hot-rolled steel prices. On February 23, 2012, and September 26–27, 2012, the Department and The Economy Ministry of Russia held consultations in Washington, DC, and on June 1, 2012, in Paris, France, to discuss these issues. The Department and The Economy Ministry of Russia exchanged several written proposals in an attempt to resolve these concerns and to bring the Agreement into alignment with its statutory requirement to prevent the undercutting of domestic price levels for hot-rolled steel.

On November 14 and 15, 2012, respectively, the Department and The Economy Ministry of Russia initialed a draft revision to the Agreement in which the parties agreed to updated reference prices for the fourth quarter of the 2012 Export Limit Period, based on current domestic prices published by the industry publication *SteelBenchmarker,* as well as a modification to the quarterly adjustment mechanism for making future quarterly reference price adjustments. On November 15, 2012, the Department released to interested parties the initialed draft revision to the Agreement and requested that comments be submitted to the Department by November 23, 2012. *See* Memorandum to All Interested Parties from Sally C. Gannon Re ''Draft Revision to the Agreement Suspending the Antidumping Investigation on Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation; Request for Comments'' (November 15, 2012). The initialed draft revision and request for comments were also published in the **Federal Register** on November 23, 2012. *See Initialed Draft Revision to the Agreement Suspending the Antidumping Investigation on Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from the Russian Federation; Request for Comment,* 77 FR 70142 (November 23, 2012). The Department received timely comments on the draft revision from The Economy Ministry of Russia, the Russian producers, and the domestic producers. The Department has considered, and responded to, all relevant comments concerning the revised Agreement in the Issues and Decision Memorandum (''Decision Memorandum'') accompanying this notice. The revised Agreement is effective on November 30, 2012, the date of the signing of the revised Agreement.

Scope of Agreement

The merchandise subject to the Agreement is certain hot-rolled flat-rolled carbon-quality steel products. The covered merchandise is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered include: Vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.01.80. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the covered merchandise is dispositive.

See the accompanying Decision Memorandum for the full description of merchandise covered by the Agreement.

Period of Review

The POR is July 1, 2010 through June 30, 2011.

Final Results of Administrative Review

As noted above, in its *Preliminary Results,* the Department evaluated the information on the record of the administrative review with respect to the current status of, and compliance with, the Agreement and preliminarily determined that the Agreement's reference price mechanism was no longer preventing price undercutting by Russian imports of hot-rolled steel into the U.S. market, and, as a result, that the Agreement was no longer fulfilling its statutory requirement. The Department indicated in its *Preliminary Results* that, on February 23, 2012, it had entered into consultations with The Economy Ministry of Russia to discuss the issues of the alleged sales of Russian hot-rolled steel imports at prices that called into question the effectiveness of the Agreement's reference price mechanism and whether the Agreement was fulfilling its statutory mandate to prevent the undercutting and suppression of domestic hot-rolled steel prices. The Department further indicated that it intended to move forward with additional consultations with The Economy Ministry of Russia during the course of the administrative review period, as mutually agreed, in an attempt to resolve these concerns and to bring the Agreement back into alignment with its statutory requirement to prevent price undercutting. *See Preliminary Results,* 77 FR at 32516.

Pursuant to the government-to-government negotiations that took place during the course of the administrative review, including direct consultations in February, June and September of 2012, the Department and The Economy Ministry of Russia reached an agreement on a revised Agreement that would meet the statutory requirement of preventing the undercutting of domestic prices of hot-rolled steel. The Department and The Economy Ministry of Russia signed the revision to the Agreement on November 30, 2012, the same day these final results were issued. As described above, the revised Agreement provides updated reference prices for the fourth quarter of the 2012 Export Limit Period, based on current domestic prices published by the industry publication *SteelBenchmarker,* and modifies the quarterly adjustment mechanism for updating the reference prices going forward. The use of a published source for current U.S. market pricing of hot-rolled steel to update the reference prices, and the modifications to the quarterly adjustment mechanism going forward, ensure that the revised Agreement complies with the statutory requirements, pursuant to section 734(*l*) of the Act.

For a detailed discussion of the relevant comments received from interested parties, and the Department's response to those comments, *see* the Decision Memorandum. Because the Department has determined that the revised Agreement, which has been signed by the Department and The Economy Ministry of Russia, is in compliance with the requirements of section 734 of the Act, the Department

finds that the interested parties' comments concerning the original, unrevised Agreement are moot. In addition, because we have not reached a final determination with respect to the original, unrevised Agreement, the provisions of 19 CFR 351.209(c) with respect to suspension of liquidation do not apply.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

The text of the signed revision to the Agreement follows in Annex 1 to this notice.

Dated: November 30, 2012.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Annex 1

REVISION TO THE AGREEMENT SUSPENDING THE ANTIDUMPING INVESTIGATION ON CERTAIN HOT-ROLLED FLAT-ROLLED CARBON-QUALITY STEEL PRODUCTS FROM THE RUSSIAN FEDERATION

The Agreement Suspending the Antidumping Investigation on Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation (''Agreement''), signed by the United States Department of Commerce and the Ministry of Trade of the Russian Federation on July 12, 1999, is revised as set forth below. Consistent with Section XI.C of the Agreement governing ''Other Provisions,'' the English and Russian language versions of this revision shall be authentic, with the English version being controlling.

If a provision of the Agreement conflicts with a provision of this revision, the provision of the revision shall supersede the provision of the Agreement to the extent of the conflict. All other provisions of the Agreement and their applicability continue with full force. The Agreement and the present revision to the Agreement are applied without prejudice to either party's rights under the WTO.

The United States Department of Commerce (''DOC'') and Ministry of Economic Development of the Russian Federation (''The Economy Ministry of Russia'') hereby agree as follows:

Section III.C is revised, as follows:

III.C. The Reference Prices for the fourth quarter of the 2012 Export Limit Period, corresponding to October 1, 2012 through December 31, 2012, shall be updated by using the following procedure:

1. To update the Reference Price for Group One products, DOC shall average FOB U.S. mill (East of the Mississippi) prices for hot-rolled band (''HRB'') from the public source *SteelBenchmarker* for the two months, September and October 2012, resulting in $684 per metric ton.[2]

2. DOC shall decrease the two-month average price resulting from Section III.C.1 by two percent to account for the percentage difference between the average *SteelBenchmarker* price and the average unit value of fairly-traded imports for the July 2010 through July 2012 period, resulting in $670.32 per metric ton.

3. DOC shall adjust the price resulting from Section III.C.2 for freight and transportation expenses, using the following methodology. DOC shall calculate the freight and transportation expenses using publicly-available import statistics from the U.S. Bureau of the Census (from the International Trade Commission's Dataweb) for January–June 2012. Based on the difference between the CIF values of Russian hot-rolled steel imports relative to the Customs values for the same entries during this period, DOC shall calculate the percentage ratio to be used as a deduction for freight and transportation expenses. DOC shall then subtract the resulting percentage amount of 10.23 percent from the price calculated in Step 2 above to determine the updated Reference Price of $601.75 per metric ton for Group One products for the October 1, 2012, through December 31, 2012, quarterly period.

4. DOC shall calculate the Reference Prices for products in Groups Two and Three for the October 1, 2012, through December 31, 2012, quarterly period based on a 10 and 28 percent increase, respectively, to the Reference Price calculated for Group One, as set forth above.[3]

5. The resulting updated Reference Prices for the fourth quarter of the 2012 Export Limit Period, corresponding to October 1, 2012 through December 31, 2012, and effective as of the date of the signing of this revision to the Agreement, are as follows:

Group	Q4 2012 reference price
One—Commercial and Structural Quality	
A36, A1011–CS	$601.75
A1011–SS—Grades 30, 33, 36, 40.	
A1018–SS—Grades 30, 33, 36, 40.	
API 5L Grades A & B.	
Two—HSLA & HSLA–F Quality	
Grades: A572, A1011–HSLAS	661.92
A1018–HSLAS, A1011–HSLAS–F.	
A1018–HSLAS–F.	
API 5L Gr. X42, X46, X52, X56, X60.	
API 5CT Grades J55 and K55.	
Three—High Grade Coils and Sheets for Pipes and Casings	
API 5L Gr. X65, X70, and X80	770.24

[2] Group One corresponds to the original grades in the reference price calculation under Section III.C of the Agreement, including modifications to that grade grouping made pursuant to administrative proceedings conducted over the course of the administration of the Agreement. *See http://ia.ita.doc.gov/reference-price/refprice-a821809.html* for the October 1, 2004–December 31, 2004 quarter.

[3] Groups Two (including modifications) and Three were added to the reference price calculation, in accordance with Section III.D of the Agreement, and as a result of administrative proceedings conducted over the course of the administration of the Agreement. *See http://ia.ita.doc.gov/reference-price/refprice-a821809.html* for the October 1, 2005–December 31, 2005 quarter.

Section III.E is replaced with:

III.E. Thirty days before the start of each quarter of each Export Limit Period (beginning with the first quarter, or January 1, 2013, through March 31, 2013), DOC shall calculate the new quarterly Reference Prices, based on the percentage increase or decrease in the weighted-average unit import values for hot-rolled steel from all countries not subject to antidumping duty orders or investigations over the most recent three months for which data is available, compared to the three preceding months. The source of the unit import values will be publicly-available import statistics from the U.S. Bureau of the Census (International Trade Commission's Dataweb). DOC will provide The Economy Ministry of Russia with the worksheets supporting its calculation of the quarterly Reference Prices at the time it provides the Reference Prices to The Economy Ministry of Russia. For the first calculation only, *i.e.,* for the quarterly reference prices effective for January 1, 2013, through March 31, 2013, the Department shall delay issuance of the reference prices to The Economy Ministry of Russia until the U.S. Bureau of the Census releases data for October 2012 which shall be incorporated into this calculation.

Signed in Washington, DC, on November 30, 2012.

For the United States Department of Commerce:

Ronald K. Lorentzen,
Deputy Assistant Secretary for Import Administration.

For the Ministry of Economic Development of the Russian Federation:

Rinat M. Dosmukhamedov,
Trade Representative of the Russian Federation in the USA.

[FR Doc. 2012–29537 Filed 12–5–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–904]

Certain Activated Carbon From the People's Republic of China; 2011–2012; Partial Rescission of the Fifth Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 29, 2012, the Department of Commerce (''the Department'') published a notice of initiation of an administrative review of the antidumping duty order on certain activated carbon from the People's Republic of China (''PRC'') based on multiple timely requests for an administrative review. The review covers 187 companies. Based on a withdrawal of the requests for review of certain companies from Calgon Carbon Corporation and Norit Americas Inc. (''Petitioners''), we are now rescinding this administrative review with respect to two companies.

DATES: *Effective Date:* December 6, 2012.

FOR FURTHER INFORMATION CONTACT: Bob Palmer, 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) 482–9068.

Background

In April 2012, the Department received multiple timely requests to conduct an administrative review of the antidumping duty order on certain activated carbon from the PRC (''the Order''). Based upon these requests, on May 29, 2012, the Department published a notice of initiation of an administrative review of the Order covering the period April 1, 2011, to March 31, 2012.[1] The Department initiated the administrative review with respect to 187 companies.[2] On August 27, 2012, Petitioners withdrew their request for an administrative review on Shanxi Xuanzhong Chemical Industry Co., Ltd. (''Xuanzhong'') and Xi'an Shuntong International Trade & Industrials Co., Ltd. (''Xi'an'').[3] Petitioners were the only party to request a review of these companies.

Partial Rescission

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. Petitioners' requests for review of Xuanzhong and Xi'an were withdrawn within the 90-day period. Because Petitioners' requests for review were timely withdrawn and because no other party requested a review of Xuanzhong and Xi'an, in accordance with 19 CFR 351.213(d)(1), we are partially rescinding this review with respect to Xuanzhong and Xi'an.

Assessment Rates

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries.[4] Because Xuanzhong and Xi'an have a separate rate from a prior segment of this proceeding, antidumping duties shall be assessed 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). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification to Importers

This notice serves as a final reminder to importers for whom this review is being rescinded, as of the publication date of this notice, 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 the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

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 or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 77 FR 31568, 31570 (May 29, 2012) (''*Initiation Notice*'').

[2] *See id.*

[3] Petitioners also withdrew their request for review of Calgon Carbon (Tianjin) Co., Ltd. (''Calgon''). However, Albemarle Corporation also has submitted a request for an administrative review of Calgon in the current proceeding. *See* Letter from Albemarle Corporation, dated April 30, 2012. Additionally, we note that there are additional companies for which all review requests were withdrawn within the 90 day period. *See* Letter to the Department from Petitioners, Re: Certain Activated Carbon from the People's Republic of China: Petitioners' Withdrawal of Certain Requests for Administrative Review, dated August 27, 2012. These additional companies for which all review requests were withdrawn do not have a separate rate from a prior segment of this proceeding. We intend to address the disposition of these companies in the preliminary results of this review.

[4] *See* 19 CFR 351.212(b)(1).

and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: November 30, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–29531 Filed 12–5–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–844]

Narrow Woven Ribbons With Woven Selvedge From Taiwan: Final Results of Antidumping Duty Administrative Review; 2010–2011

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 4, 2012, the Department of Commerce (the Department) published the preliminary results of the first administrative review of the antidumping duty order on narrow woven ribbons with woven selvedge (narrow woven ribbons) from Taiwan. The period of review (POR) is September 1, 2010, through August 31, 2011.

Based on our analysis of the comments received we have made no changes to the dumping margin assigned to Hubschercorp, the sole respondent in this administrative review. Therefore, the final results do not differ from the preliminary results. The final dumping margin for Hubschercorp is listed below in the section entitled ''Final Results of Review.''

DATES: *Effective Date:* December 6, 2012.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; telephone: (202) 482–3874.

SUPPLEMENTARY INFORMATION:

Background

This review covers one exporter, Hubschercorp. On June 4, 2012, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on narrow woven ribbons from Taiwan.[1]

In July 2012, we received a case brief from Hubschercorp (the respondent) and a rebuttal brief from Berwick Offray LLC and its wholly-owned subsidiary Lion Ribbon Company, Inc. (collectively, the petitioner). In September 2012, the Department held a public hearing at the request of Hubschercorp.

Also in September 2012, the Department extended the deadline for these final results until December 1, 2012. As explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. The revised deadline for the final results of this administrative review is now December 3, 2012.[2]

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The scope of the order covers narrow woven ribbons with woven selvedge. The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 5806.32.1020; 5806.32.1030; 5806.32.1050 and 5806.32.1060. Subject merchandise also may enter under subheadings 5806.31.00; 5806.32.20; 5806.39.20; 5806.39.30; 5808.90.00; 5810.91.00; 5810.99.90; 5903.90.10; 5903.90.25; 5907.00.60; and 5907.00.80 and under statistical categories 5806.32.1080; 5810.92.9080; 5903.90.3090; and 6307.90.9889. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description, available in *Narrow Woven Ribbons With Woven Selvedge From Taiwan and the People's Republic of China: Amended Antidumping Duty Orders,* 75 FR 56982 (September 17, 2010), remains dispositive.

[1] *See Narrow Woven Ribbons With Woven Selvedge From Taiwan: Preliminary Results of Antidumping Duty Administrative Review,* 77 FR 32938 (June 4, 2012) (*Preliminary Results*).

[2] *See* Memorandum to the Record from Paul Piquado, Assistant Secretary for Import Administration, regarding ''Tolling of Administrative Deadlines As a Result of the Government Closure During Hurricane Sandy,'' dated October 31, 2012.

Period of Review

The POR is September 1, 2010, through August 31, 2011.

Use of Facts Otherwise Available and Adverse Facts Available (AFA)

In the *Preliminary Results,* we determined that, due to Hubschercorp's lack of cooperation in the review, in accordance with section 776(a)(2)(A) of the Act, the use of facts available with an adverse inference was appropriate as the basis for the dumping margin for Hubschercorp. *See Preliminary Results,* 77 FR at 32940. Having considered the arguments raised by the parties in the case and rebuttal briefs, we continue to find that the application of AFA is warranted, and have assigned to Hubschercorp a dumping margin of 137.20 percent. *See* the Issues and Decision Memorandum accompanying these final results.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this administrative review are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum, which is adopted by this notice.

The Issues and 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 Issues and Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made no changes to the margin assigned to Hubschercorp. For further discussion, *see* the Issues and Decision Memorandum.

Final Results of Review

We determine that the following dumping margin exists for the period September 1, 2010, through August 31, 2011:

Manufacturer/exporter	Percent margin
Hubschercorp	137.20

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. *See generally* 19 CFR 351.212. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

For Hubschercorp's U.S. sales, we will base the assessment rate assigned to the corresponding entries on AFA, determined as noted above.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Hubschercorp will be the rate shown above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published in the LTFV investigation; (3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established in the LTFV investigation for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 4.37 percent, the all-others rate made effective by the LTFV investigation.[3] 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 to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 29, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Company-Specific Comments

1. Use of Highest Petition Rate as Adverse Facts Available (AFA).
2. Application of AFA Rate to Hubschercorp's Exports.

[FR Doc. 2012–29542 Filed 12–5–12; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See Notice of Final Determination of Sales at Less than Fair Value: Narrow Woven Ribbons with Woven Selvedge from Taiwan,* 75 FR 41804 (July 19, 2010).

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before December 26, 2012. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 12–047. *Applicant:* Columbia University, 500 West 20th St., Suite 200, New York, NY 10027. *Instrument:* Electron Microscope. *Manufacturer:* FEI Co., Czech Republic. *Intended Use:* The instrument will be used to obtain bright-field and dark-field images of materials microstructures, to do high resolution lattice imaging, to obtain diffraction patterns to identify crystalline phases, to determine what elements are in a particular phase using the energy dispersive spectrometer, and to obtain atomic number contrast, or Z-contrast, images using the high angle annular dark field detector. The materials to be studied include metal, ceramics, semiconductors, and nanostructured materials and nanoparticles. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* October 15, 2012.

Docket Number: 12–052. *Applicant:* Stanford University, 450 Sierra Mall, Stanford, CA 94305. *Instrument:* Electron Microscope. *Manufacturer:* FEI Co., the Netherlands. *Intended Use:* The instrument will be used for ''spectrum imaging'' of elemental distributions at the sub-nano level, to gather three-dimensional structural information of nano-sized crystals as well as to measure electrostatic and magnetic fields in a variety of samples. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* November 2, 2012.

Docket Number: 12–059. *Applicant:* Stanford University, 450 Sierra Mall, Stanford, CA 94305. *Instrument:* Electron Microscope. *Manufacturer:* FEI Co., the Netherlands. *Intended Use:* The instrument will be used to fabricate plasmonic structures that can trap sub-5-nm nanoparticles, create nanoparticles to advance state of the art cancer diagnosis, fabricate arrays of micro-Barkhausen Kurz vacuum THz oscillators on silicon wafers, develop organic solar cells with higher efficiency and organic transistors with higher mobility, create nanoscale probes to study the electrical behavior of the heart and brain, and attempt to measure persistent currents in topological insulators with SQUID magnetometers to confirm the existence of an edge state, to test models of the edge state, and to elucidate the mechanisms that break the persistent currents. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* November 9, 2012.

Dated: November 30, 2012.

Gregory W. Campbell,

Director of Subsidies Enforcement, Import Administration.

[FR Doc. 2012–29539 Filed 12–5–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–815 and A–580–816]

Corrosion-Resistant Carbon Steel Flat Products From Germany and the Republic of Korea: Final Results of Full Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 27, 2012, the Department of Commerce (''the Department'') issued the preliminary results of the full third sunset reviews of the antidumping duty (''AD'') orders on certain corrosion-resistant carbon steel flat products (''CORE'') from Germany and the Republic of Korea (''Korea'').[1] We received comments from interested parties on our *Preliminary Results.* As a result of our analysis, the Department finds that revocation of these AD orders would likely lead to continuation or recurrence of dumping at margins of dumping specified in the ''Final Results of Reviews'' section of this notice.

DATES: *Effective Date:* December 6, 2012.

FOR FURTHER INFORMATION CONTACT: James Terpstra, AD/CVD Operations, Office 8, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3965.

SUPPLEMENTARY INFORMATION

Background

On January 3, 2012, the Department initiated the third sunset review of the AD orders on CORE from Germany and Korea pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act'').[2] The Department received notices of intent to participate from the following domestic interested parties: United States Steel Corporation (''U.S. Steel''); ArcelorMittal USA LLC (''AMUSA''); and Nucor Corporation (''Nucor''), within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as U.S. producers of the subject merchandise. The Department received complete substantive responses from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).

The Department did not receive a substantive response from any respondent in either of the sunset reviews of the AD orders on CORE from Germany and Korea. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department determined to conduct expedited reviews of these orders. However, on April 20, 2012, the Department revised its original adequacy determination and determined to conduct full sunset reviews.[3] The conversion to full sunset reviews and extension of the deadlines for the preliminary results were done to provide interested parties with an opportunity to comment concerning the implementation of the *Final Modification for Reviews.*[4]

On July 27, 2012, the Department published in the *Preliminary Results* of the full third sunset review of the AD order on CORE from Germany and Korea.[5] We preliminarily found that dumping was likely to continue or recur.

The Department invited interested parties to comment on the *Preliminary Results.* On September 17, 2012, we received case briefs from AMUSA and U.S. Steel. We did not receive a rebuttal brief. We did not conduct a hearing in either review because a hearing was not requested.

As explained in the memorandum from the Assistant Secretary for Import Administration, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. The revised deadline for the final results of these reviews is now November 30, 2012.[6]

Scope of the Orders

The products subject to the orders include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 mm, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness, or if of a thickness of 4.75 mm or more, are of a width which exceeds 150 mm and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090.

Included in the orders are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges.

Excluded from the scope of the orders are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also

[1] *Corrosion-Resistant Carbon Steel Flat Products From Germany and the Republic of Korea: Preliminary Results of Full Sunset Reviews,* 77 FR 44213 (July 27, 2012) and accompanying Issues and Decision Memorandum (''*Preliminary Results*'').

[2] *Initiation of Five-Year (''Sunset'') Review,* 77 FR 85 (January 3, 2012).

[3] Memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary for Antidumping Duty and Countervailing Duty Operations, from Melissa G. Skinner, Director, Office 3, on ''Sunset Reviews of the Antidumping Duty Orders on Corrosion-Resistant Carbon Steel Flat Products from Germany and South Korea: Adequacy Redetermination Memorandum'' and *Corrosion-Resistant Carbon Steel Flat Products From Germany and South Korea: Extension of Time Limits for Preliminary and Final Results of Third Antidumping Duty Sunset Reviews,* 77 FR 25141 (April 27, 2012).

[4] *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification for Reviews,* 77 FR 8101 (February 14, 2012) (''*Final Modification for Reviews*'').

[5] *Preliminary Results.*

[6] *See* Memorandum to the Record from Paul Piquado, Assistant Secretary for Import Administration, regarding ''Tolling of Administrative Deadlines As a Result of the Government Closure During Hurricane Sandy,'' dated October 31, 2012.

excluded from the scope of the orders are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Also excluded from the scope of the orders are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 mm in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

Further, the Department made three changed circumstances determination with respect to the order on Germany. The Department partially revoked the order with respect to deep-drawing carbon steel strip, roll-clad on both sides with aluminum (AlSi) foils in accordance with St3 LG as to EN 10139/10140.[7] The Department also partially revoked the order with respect to certain wear plate products.[8] In addition, the Department partially revoked the order with respect to the following products: Certain corrosion-resistant carbon steel from Germany, meeting the following description: electrolytically zinc coated flat steel products, with a coating mass between 35 and 72 grams per meter squared on each side; with a thickness range of 0.67 mm or more but not more than 2.95 mm and width 817 mm or more but not over 1830 mm; having the following chemical composition (percent by weight): carbon not over 0.08, silicon not over 0.25, manganese not over 0.9, phosphorous not over 0.025, sulfur not over 0.012, chromium not over 0.1, titanium not over 0.005 and niobium not over 0.05; with a minimum yield strength of 310 Mpa and a minimum tensile strength of 390 Mpa; additionally coated on one or both sides with an organic coating containing not less than 30 percent and not more than 60 percent zinc and free of hexavalent chrome.[9]

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum for the Final Results of Full Third Sunset Reviews of the Antidumping Duty Orders on Corrosion-Resistant Carbon Steel Flat Products from Germany and the Republic of Korea (''Decision Memorandum'') from Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, dated concurrently with this final notice, which is hereby adopted by this notice. Parties can find a complete discussion of all issues raised in this full sunset review and the corresponding recommendation in this public memorandum which 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 Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/*. The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

Final Results of Reviews

We determine that revocation of these AD duty orders on CORE from Germany and Korea would be likely to lead to continuation or recurrence of dumping. Further, we determine that the magnitude of the margin likely to prevail are at least 9.35 percent for Thyssen Stahl AG and all other German producers of CORE and at least 12.85 percent for all Korean producers and exporters of CORE, other than POSCO.[10]

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to an administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the final results of these reviews in accordance with sections 751(c), 752, and 777(i) of the Act.

Dated: November 30, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–29533 Filed 12–5–12; 8:45 am]

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[7] *Notice of Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews and Revocation of Orders in Part: Certain Corrosion-Resistant Carbon Steel Flat Products From Germany,* 64 FR 51292 (September 22, 1999).

[8] *Notice of Final Results of Antidumping Duty Changed Circumstances Reviews and Revocation of Orders In Part: Certain Corrosion-Resistant Carbon Steel Flat Products From Canada and Germany,* 71 FR 14498 (March 22, 2006).

[9] *Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation of Order In Part: Certain Corrosion-Resistant Carbon Steel Flat Products from Germany,* 71 FR 66163 (November 13, 2006).

[10] The order was revoked with respect to Pohang Iron & Steel Co., Ltd. and Pohang Coated Steel Co., Ltd. (collectively, POSCO), who was the only respondent examined in the original antidumping investigation. *See Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Final Results of the 2009–2010 Administrative Review and Revocation, in Part,* 77 FR 14501 (March 12, 2012).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC383

Pacific Fishery Management Council; Public Meeting/Online Webinar

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

ACTION: Notice of online webinar.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will hold an online webinar to develop alternatives for determining the status of groundfish stocks based on results of data-moderate assessments. The online Groundfish Status Determination Criteria for Data-Moderate Stocks webinar is open to the public, although space for online access is limited to the first 100 participants.

DATES: The Groundfish Status Determination Criteria for Data-Moderate Stocks webinar will commence at 9 a.m. PST, Friday, December 21, 2012 and continue until noon or as necessary to complete business for the day.

ADDRESSES: To attend the Groundfish Status Determination Criteria for Data-Moderate Stocks webinar, please reserve your seat by visiting *https://www2.gotomeeting.com/register/260816698.* If requested, enter your name, email address, and the webinar id, which is 260–816–698. Once registered, participants will receive a confirmation email message that contains detailed information about viewing the event. To only join the audio teleconference of the Groundfish Status Determination Criteria for Data-Moderate Stocks webinar from the U.S. or Canada, call the toll number 1–415–655–0051 (note: this is not a toll-free number) and use the access code 260–374–057 when prompted.

System requirements for attending the online webinar are as follows:

PC-based attendees: Windows® 7, Vista, XP or 2003 Server;

Mac®-based attendees: Mac OS® X 10.5 or newer; and

Mobile attendees: iPhone®, iPad®, Android™ phone or Android tablet.

Public listening stations for the Groundfish Status Determination Criteria for Data-Moderate Stocks webinar will also be available at the following locations:

1. Large conference room (room 188), NMFS Southwest Fisheries Science Center, 110 Shaffer Rd., Santa Cruz, CA 95060;

2. Large conference room, Pacific Council office, 7700 NE. Ambassador Place, Suite 101, Portland, OR 97220–1384; and

3. Auditorium, NMFS Northwest Fisheries Science Center, 2725 Montlake Blvd. E., Seattle, WA 98112.

Council address: 7700 NE. Ambassador Place, Suite 101, Portland, OR 97220–1384; telephone: (503) 820–2280.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Pacific Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the Groundfish Status Determination Criteria for Data-Moderate Stocks webinar is to develop alternative status determination criteria for stocks that are assessed using new data-moderate methods adopted last year for use in the 2013 assessment cycle. No management actions will be decided in this workshop. Any recommendations developed at the workshop will be submitted for consideration by the Pacific Council at its March 2013 meeting in Tacoma, WA.

Members of the general public who are not NMFS employees need to provide photo identification to attend the webinar at the Northwest Fisheries Science Center. Foreign nationals without green cards intending to attend the webinar at the Northwest Fisheries Science Center must notify Dr. Jim Hastie, (206) 860–3412, at the Northwest Fisheries Science Center at least one week prior to the webinar.

Public comments during the webinar will only be received from attendees at one of the three public listening stations, although participants who have pre-registered can listen in on the proceedings online from remote locations.

Although non-emergency issues not identified in the webinar agenda may come before the webinar participants for discussion, those issues may not be the subject of formal action during this webinar. Formal action at the workshop will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the webinar participants' intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2280 at least 5 days prior to the webinar date.

Dated: December 3, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–29495 Filed 12–5–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA807–X

Marine Mammals; File No. 16305

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to John P. Wise, Sr., Ph.D., Wise Laboratory of Environmental and Genetic Toxicology, Maine Center for Toxicology and Environmental Health, University of Southern Maine, 478 Science Building, 96 Falmouth Street, Portland, ME 04104–9300, to receive, import, and export marine mammal and sea turtle biological samples for scientific research purposes.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices: See **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Jennifer Skidmore, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On November 7, 2011, notice was published in the **Federal Register** (76 FR 68718) that a request for a permit to receive, import, and export biological samples for scientific research had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit No. 16305 authorizes the permit holder to receive, import, or export samples from marine mammals and sea turtles under NMFS jurisdiction to determine tissue levels of metals and other environmental contaminants and conduct DNA analysis and pathology studies in marine mammal and sea turtles species; and, establish a resource of marine mammal and sea turtle cell lines for use as model systems in the investigation of various factors related to marine mammal health. Tissues may also be used as comparative tools to human studies (toxicity of metals, virology, etc.). The permit expires on October 31, 2017.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Documents may be reviewed in the following locations:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018;

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm. 1110, Honolulu, HI 96814–4700; phone (808) 944–2200; fax (808) 973–2941;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Dated: November 30, 2012.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–29414 Filed 12–5–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–P–2012–0043]

Request for Comments on Request for Continued Examination (RCE) Practice

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for Comments.

SUMMARY: The United States Patent and Trademark Office (Office) currently has a backlog of over 90,000 patent applications that have not been examined since the filing of a Request for Continued Examination (RCE). This backlog diverts resources away from the examination of new applications. The Office is continuing its efforts to reduce the RCE backlog. For example, the Office recently implemented a pair of pilot programs—the Quick Path Information Disclosure Statement (QPIDS) pilot program and the After Final Consideration Pilot (AFCP)—designed to reduce the need to file an RCE. The Office is now soliciting public feedback in an effort to better understand the full spectrum of factors that impact the decision to file an RCE. The Office is providing three different avenues for the public to provide their feedback on RCE practice: (1) Through the submission of written comments by electronic mail message over the Internet or by postal mail; (2) through the submission of written comments using a Web-based collaboration tool called IdeaScale®; and (3) through a series of roundtables that the Office is planning to conduct. The Office plans to use the information it obtains to design additional programs and initiatives aimed at reducing RCE filings and the RCE backlog.

DATES: *Comment Deadline Date:* Written comments must be received on or before February 4, 2013.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: *rceoutreach@uspto.gov.* Comments may also be submitted by postal mail addressed to: United States Patent and Trademark Office, Mail Stop Comments—Patents, Office of Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Raul Tamayo. Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message over the Internet in order to facilitate posting on the Office's Internet Web site.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located at Madison Building East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia. Comments also will be available for viewing via the Office's Internet Web site (*http://www.uspto.gov*). Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Raul Tamayo, Legal Advisor, Office of the Deputy Commissioner for Patent Examination Policy (telephone (571) 272–7728; email *raul.tamayo@uspto.gov*). Alternatively, mail may be addressed to Raul Tamayo, Office of Commissioner for Patents, Attn: RCE Outreach, P.O. Box 1450, Alexandria, VA 22313–1450.

SUPPLEMENTARY INFORMATION: The Office has gathered a variety of statistics related to RCEs, including the fraction of applications (by technology classification) containing at least one RCE, and the fraction of applications (out of a random sample) in which no submission under 37 CFR 1.116 was filed prior to the filing of the RCE. These statistics can be viewed at *http://www.uspto.gov/patents/init_events/rce_outreach.jsp,* and may help inform comments responsive to this request for comments (RFC).

The Office has generated the following list of questions concerning RCE practice to further inform comments responsive to this RFC. Responders to this RFC can choose to address as many of these questions as desired. The Office is particularly interested in receiving information that facilitates an understanding of filing strategies related to RCEs.

(1) *If within your practice you file a higher or lower number of RCEs for certain clients or areas of technology as compared to others, what factor(s) can you identify for the difference in filings*?

(2) *What change(s), if any, in Office procedure(s) or regulation(s) would reduce your need to file RCEs*?

(3) *What effect(s), if any, does the Office's interview practice have on your decision to file an RCE*?

(4) *If, on average, interviews with examiners lead you to file fewer RCEs, at what point during prosecution do interviews most regularly produce this effect*?

(5) *What actions could be taken by either the Office or applicants to reduce the need to file evidence (not including an IDS) after a final rejection*?

(6) *When considering how to respond to a final rejection, what factor(s) cause you to favor the filing of an RCE*?

(7) *When considering how to respond to a final rejection, what factor(s) cause you to favor the filing of an amendment after final (37 CFR 1.116)*?

(8) *Was your after final practice impacted by the Office's change to the order of examination of RCEs in November 2009*? *If so, how*?

(9) How *does client preference drive your decision to file an RCE or other response after final*?

(10) *What strategy/strategies do you employ to avoid RCEs*?

(11) *Do you have other reasons for filing an RCE that you would like to share*?

Interested members of the public can provide the Office with their feedback on RCE practice through the submission of written comments by electronic mail message over the Internet or by postal mail sent to the corresponding address noted above. Feedback on RCE practice can alternatively be submitted using a Web-based collaboration tool called IdeaScale®. The tool allows users to post comments on a topic, and view and respond to others' comments. In addition, users may vote to indicate agreement or disagreement with a particular comment. Information on how to use IdeaScale® to comment on RCE practice is available at *http://www.uspto.gov/patents/init_events/rce_outreach.jsp.*

Finally, the Office is planning to conduct roundtables to obtain input from diverse organizations and individuals on RCE practice. Further information on roundtable dates and how to participate in a roundtable on RCE practice will be available at *http://www.uspto.gov/patents/init_events/rce_outreach.jsp.*

Dated: November 30, 2012.

Teresa Stanek Rea,

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

[FR Doc. 2012–29546 Filed 12–5–12; 8:45 am]

BILLING CODE 3510–16–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau), 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 information collections, as required by the Paperwork Reduction Act of 1995. The Bureau is soliciting comments concerning its proposed information collection titled, ''Clearance for Financial Education Program Evaluation.'' The proposed collection has been submitted to the Office of Management and Budget (OMB) for review and approval. A copy of the submission, including copies of the proposed collection and supporting documentation, may be obtained by contacting the agency contact listed below.

DATES: Written comments are encouraged and must be received on or before January 7, 2013 to be assured of consideration.

ADDRESSES: You may submit comments, identified by agency name and proposed collection title, ''Clearance for Financial Education Program Evaluation'' to:

- *Agency contact:* Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552; (202) 435–9011; and *CFPB_Public_PRA@cfpb.gov.*
- *OMB reviewer:* Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9011, or through the internet at *CFPB_Public_PRA@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

Title: Clearance for Financial Education Program Evaluation.

OMB Control Number: 3170–XXXX.

Type of Review: New collection.

Abstract: Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law No. 111–203, the Bureau's Office of Financial Education (OFE) is responsible for (1) developing and implementing a strategy to improve the financial literacy of consumers that includes measurable goals and objectives, in consultation with the Financial Literacy and Education Commission, consistent with the National Strategy for Financial Literacy; and (2) developing and implementing initiatives intended to educate and empower consumers to make better informed financial decisions. Together with the CFPB's Office of Research, OFE is also responsible for conducting ''research related to consumer financial education and counseling.'' The proposed collection will focus on financial education program elements related to increasing household non-retirement savings and/or reducing financial distress.

The CFPB expects to collect quantitative data through in-person and telephone surveys. The information collected through quantitative evaluation methods will increase OFE's understanding of what financial education program elements can improve financial decision making skills and outcomes for consumers.

The core objective of the data collection is to measure the effectiveness of selected financial education programs. This data will provide useful information on evidence-based practices that can be used to improve financial education programs nationwide, leading to better financial decision-making outcomes for adult consumers.

Affected Public: Individuals.

Estimated Total Annual Burden Hours: Below is an estimate of the aggregate burden hours for the evaluation of two (2) financial education programs.

Process	Number of respondents	Number of responses per respondent	Average burden per response (min)	Total burden (hours)
In-person baseline surveys	1000	1	10	166.7
Phone-based follow-up surveys	800	1	40	533.3
Total				700

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

The Bureau issued a 60-day **Federal Register** notice on January 19, 2012, [77 FR 2684]. Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information shall have practical utility; (b) the accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: November 28, 2012.

Chris Willey,

Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2012–29437 Filed 12–5–12; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Ocean Research Advisory Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of open meeting.

SUMMARY: The Ocean Research Advisory Panel will hold a regularly scheduled meeting. The meeting will be open to the public.

DATES: The meeting will be held on Monday, January 14, 2013 from 9:00 a.m. to 5:15 p.m. and Wednesday, January 16, 2013 from 9:00 a.m. to 12:10

p.m. The agenda can be found at *http://www.nopp.org/committees/orap/orap_meetings/*. At the conclusion of the meeting there will be a 15 minute open forum for public commentary.

ADDRESSES: The meeting will be held at the Consortium for Ocean Leadership, 1201 New York Avenue NW., 4th Floor, Washington DC 2005.

FOR FURTHER INFORMATION CONTACT: Dr. Joan S. Cleveland, Office of Naval Research, 875 North Randolph Street Suite 1425, Arlington, VA 22203–1995, telephone 703–696–4532.

SUPPLEMENTARY INFORMATION: This notice of open meeting is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The meeting will include discussions on ocean research, resource management, and other current issues in the ocean science and management communities.

Dated: November 29, 2012.

L.R. Almand,

Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 2012–29468 Filed 12–5–12; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Native American and Alaska Native Children in School Program

AGENCY: Office of English Language Acquisition, Department of Education.

Overview Information

Native American and Alaska Native Children in School Program Notice inviting applications for new awards for fiscal year (FY) 2013.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.365C.

DATES: *Applications Available:* December 6, 2012.

Pre-application Technical Assistance for Potential Applicants: A webinar for potential applicants will be conducted 14 days after the publication of this notice in the **Federal Register**. For further information on this webinar, contact Yvonne Putney-Mathieu at (202) 401–1461, or by email at *yvonne.mathieu@ed.gov*. Please include ''84.365C Webinar Information'' in the subject heading of your email.

Deadline for Transmittal of Applications: February 1, 2013.

Deadline for Intergovernmental Review: May 1, 2013.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to provide grants for eligible entities to develop high levels of academic attainment in English among English learners (ELs),[1] and to promote parental and community participation in language instruction educational programs. Projects funded under the Native American and Alaska Native Children in School Program, authorized under Title III of the Elementary and Secondary Education Act of 1965, as amended (ESEA), may support the teaching and studying of Native American languages, but must have, as a project objective, an increase in English language proficiency for participating students.

Priorities: This notice includes two competitive preference priorities and three invitational priorities. Competitive preference priorities 1 and 2 are from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78485) and corrected on May 12, 2011 (76 FR 27637).

Competitive Preference Priorities: For FY 2013, and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to 10 additional points to an application, depending upon how well it meets competitive preference priority 1, and up to 5 additional points to an application, depending upon how well it meets competitive preference priority 2 (i.e., an application could attain up to 15 additional points depending upon how well it meets both competitive preference priority 1 and competitive preference priority 2).

Note: We will add competitive preference priority points for priorities 1 and 2 only to applications that score 75 or higher on the selection criteria. We will fund only applications that score 75 or higher on the selection criteria.

These priorities are:

Competitive Preference Priority 1—Increasing Postsecondary Success (10 points)

Projects that are designed to address the following priority area:

Increasing the number and proportion of high-need students (as defined in this notice) who are academically prepared for and enroll in college or other postsecondary education and training.

Note: *High-need children and high-need students* means children and students at risk of educational failure, such as children and students who are living in poverty, who are English learners, who are far below grade level or who are not on track to becoming college- or career-ready by graduation, who have left school or college before receiving, respectively, a regular high school diploma or a college degree or certificate, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who are pregnant or parenting teenagers, who have been incarcerated, who are new immigrants, who are migrant, or who have disabilities.

Competitive Preference Priority 2—Enabling More Data-Based Decision-Making (5 Points)

Projects that are designed to collect (or obtain), analyze, and use high-quality and timely data, including data on program participant outcomes, in accordance with privacy requirements (as defined in this notice), in one or more of the following priority areas:

(a) Improving postsecondary student outcomes relating to enrollment, persistence, and completion and leading to career success.

(b) Improving instructional practices, policies, and student outcomes in elementary or secondary schools.

Note: *Privacy requirements* means the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and its implementing regulations in 34 CFR part 99, the Privacy Act, 5 U.S.C. 552a, as well as all applicable Federal, State and local requirements regarding privacy.

Invitational Priorities: For FY 2013, and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1—Supporting Native American Language Instruction

Projects that are designed to support the teaching and studying of Native American languages, while maintaining the objective of increasing English language proficiency for participating students.

Note: The term *Native American languages* means the historical, traditional languages spoken by Native Americans, consistent with section 103 of the Native American Languages Act (25 U.S.C. 2902).

[1] The term English learner, as used in this notice, is synonymous with the term limited English proficient (LEP), as defined in section 9101(25) of the ESEA.

Invitational Priority 2—Parental Involvement To Improve Early Learning Outcomes and Success

Projects that are designed to improve early learning outcomes and success for high-need children and high-need students (as defined in this notice) from birth through third grade (or any age group of high-need children and high-need students within that range) through a focus on language and literacy development.

Invitational Priority 3—Civic Learning and Engagement

Projects that are designed to engage students and families in community improvement activities that support and develop civic knowledge and values.

Program Authority: 20 U.S.C. 6821(c)(1)(A) and 6822.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 86, 97, 98, and 99. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78485) and corrected on May 12, 2011 (76 FR 27637).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $3,825,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2014 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $150,000–$300,000.

Estimated Average Size of Awards: $225,000.

Estimated Number of Awards: 17.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* The following entities, when they operate elementary, secondary, or postsecondary schools primarily for Native American children (including Alaska Native children), are eligible applicants under this program: Indian tribes; tribally sanctioned educational authorities; Native Hawaiian or Native American Pacific Islander native language educational organizations; elementary schools or secondary schools that are operated or funded by the Department of the Interior's Bureau of Indian Education (BIE), or a consortium of these schools; elementary schools or secondary schools operated under a contract with or grant from the BIE in consortium with another such school or a tribal or community organization; and elementary schools or secondary schools operated by the BIE and an IHE, in consortium with an elementary school or secondary school operated under a contract with or a grant from the BIE or a tribal or community organization.

Note: Any eligible entity that receives Federal financial assistance under this program is not eligible to receive a subgrant under section 3114 of title III of the ESEA.

Note: Eligible applicants applying as a consortium should read and follow the regulations in 34 CFR 75.127 through 75.129.

Note: Charter schools meeting the eligibility requirement described in this section are eligible to apply for a grant under the Native American and Alaska Native Children in School Program.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other:*

Participation by Private School Children and Teachers. An entity that receives a grant under the Native American and Alaska Native Children in School Program must provide for the equitable participation of private school children and their teachers or other educational personnel.

In order to ensure that grant program activities address the needs of private school children, the applicant must engage in timely and meaningful consultation with appropriate private school officials during the design and development of the program. This consultation must take place before the applicant makes any decision that affects the opportunities for participation by eligible private school children, teachers, and other educational personnel. Administrative direction and control over grant funds must remain with the grantee. (*See* section 9501 of the ESEA, Participation by Private School Children and Teachers.)

IV. Application and Submission Information

1. *Address to Request Application Package:* Yvonne Mathieu, U.S. Department of Education, 400 Maryland Avenue SW., room 5C138, Washington, DC 20202–6510. Telephone: (202) 401–1461 or by email: *yvonne.mathieu@ed.gov.*

Note: Please include ''84.365C Application Request'' in the subject heading of your email.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. a. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 35 pages using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1'' margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the three-page abstract. However, the page limit does apply to all of the application narrative section in Part III.

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

b. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the Native American and Alaska Native

Children in School Program, an application may include business information that the applicant considers proprietary. The Department's regulations define ''business information'' in 34 CFR 5.11.

Because, consistent with the process followed in the FY 2011 competition, we plan to post on our Web site the project narrative sections of all successful applications, you may wish to request confidentiality of business information.

3. *Submission Dates and Times:*

Applications Available: December 6, 2012.

Deadline for Transmittal of Applications: February 1, 2013.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: May 1, 2013.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, Central Contractor Registry, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR)—and, after July 24, 2012, with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR or SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR or SAM registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days to complete. Information about SAM is available at SAM.gov.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements.*

Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Native American and Alaska Native Children in School Program, CFDA number 84.365C, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Native American and Alaska Native Children in School Program at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.365, not 84.365C).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to

ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at www.G5.gov.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Trini Torres, U.S. Department of Education, 400 Maryland Avenue SW., room 5C145, Washington, DC 20202. FAX: (202) 260–1292.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.365C), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.365C), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between

8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 of EDGAR. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

The *Notes* we have included after each criterion are guidance to assist applicants in understanding the criterion as they prepare their applications and are not required by statute or regulation.

(a) *Quality of the project design.* (30 points)

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (20 points)

Note: For example, applicants might, in addressing this factor, include in their application ambitious, measurable objectives that reflect the performance measures discussed in section VI of this notice regarding improved student English language proficiency and reading proficiency, and that include annual targets of expected student achievement in English language proficiency and in reading proficiency. Applicants also might include measurable objectives that reflect all or some of the competitive preference and invitational priorities, if they choose to address those priorities.

(ii) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance. (5 points)

(iii) The extent to which the proposed project encourages parental involvement. (5 points)

(b) *Quality of project personnel.* (10 points)

The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the following factors:

(i) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (2 points)

(ii) The qualifications, including relevant training and experience, of the project director or principal investigator. (4 points)

(iii) The qualifications, including relevant training and experience, of key project personnel. (4 points)

(c) *Quality of the management plan.* (30 points)

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (30 points)

Note: For example, applicants, in addressing this criterion, might include in their application information on how management activities support the accomplishment of each objective, costs associated with the accomplishment of each objective, persons responsible for each management activity, and timeframes for the completion of each management activity.

(d) *Quality of the project evaluation.* (30 points)

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (5 points)

Note: For example, applicants, in addressing this factor, might include in their application information on how each proposed objective, including those objectives addressing competitive priorities and invitational priorities (if the applicants choose to address those priorities), will be evaluated.

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (15 points)

Note: For example, applicants, in addressing this factor, might include in their application information on how the proposed project will collect, analyze, and report quantitative data on the performance measures discussed in section VI of this notice.

(iii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies. (5 points)

(iv) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (5 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

Note: After awards are made under this competition, all of the successful applications, together with reviewers' scores and comments, will be posted on the Department's Web site at: *www2.ed.gov/about/offices/list/oela/index.html?src=oc.*

2. *Administrative and National Policy Requirements:* We identify administrative and national policy

requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), Federal departments and agencies must clearly describe the goals and objectives of programs, identify resources and actions needed to accomplish goals and objectives, develop a means of measuring progress made, and annually report on achievement. One important source of program information on successes and lessons learned is the project evaluation conducted under individual grants. The Department has developed the following GPRA performance measures for evaluating the overall effectiveness of the Native American and Alaska Native Children in School Program:

(i) The percentage of English learners (ELs) served by the program who score proficient or above on, as applicable, valid and reliable State and/or local district reading assessments.

(ii) The percentage of ELs served by the program who are making progress in learning English as measured by the State-approved English language proficiency assessment.

(iii) The percentage of ELs served by the program who are attaining proficiency in English as measured by the State-approved English language proficiency assessment.

Grantees funded under this competition will be expected to collect and report to the Department data related to these measures in their Annual Performance Report and in their Final Performance Report. Applicants should discuss in the application narrative how they propose to collect these data.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Trini Torres, U.S. Department of Education, 400 Maryland Avenue SW., room 5C145, Washington, DC 20202–6510. Telephone: (202) 401–1445 or by email: *trinidad.torres-carrion@ed.gov;* or Sharon Coleman, U.S. Department of Education, 400 Maryland Avenue SW., room 5C146, Washington, DC 20202–6510. Telephone: (202) 401–1452 or by email: *sharon.coleman@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: November 30, 2012.

Tony Miller,

Deputy Secretary of Education.

[FR Doc. 2012–29424 Filed 12–5–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 12–156–LNG]

Golden Pass Products LLC; Application for Long-Term Authorization To Export Liquefied Natural Gas Produced From Domestic Natural Gas Resources to Non-Free Trade Agreement Countries for a 25-Year Period

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application) filed on October 26, 2012, by Golden Pass Products LLC (GPP), requesting long-term, multi-contract authorization to export domestically produced liquefied natural gas (LNG) in an amount up to the equivalent of 740 billion cubic feet (Bcf) of domestically produced natural gas per year, equal to approximately 15.6 million metric tons per annum (mtpa), for a period of 25 years beginning on the earlier of the date of first export or seven years from the date the authorization is granted by DOE/FE. The LNG would be exported from the existing Golden Pass LNG Terminal (Golden Pass Terminal), a facility located in Sabine Pass, Texas, to any country (1) That has or in the future develops the capacity to import LNG via ocean-going carrier; (2) with which the United States does not prohibit trade; and (3) that does not have a Free Trade Agreement (FTA) requiring the national treatment for trade in natural gas (NFTA country). GPP seeks to export this LNG on its own behalf and also as agent for other entities who themselves hold title to the LNG. The Application was filed under section 3 of the Natural Gas Act (NGA). Protests, motions to intervene,

notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., eastern time, February 4, 2013.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine Moore or Lisa Tracy, U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478; (202) 586–4523;

Edward Myers, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6B–256, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–3397.

SUPPLEMENTARY INFORMATION:

Background

GPP is a Delaware limited liability company with its principal place of business in Houston, Texas. GPP is owned by QTL U.S. Terminal LLC (an affiliate of Qatar Petroleum International Limited), and Golden Pass LNG Terminal Investments LLC. GPP is affiliated with Golden Pass LNG Terminal LLC (GPLNG) and Golden Pass Pipeline LLC (GPPL). GPP was formed by affiliates of Qatar Petroleum and Exxon Mobil Corporation.

GPP states that the Application represents the second part of a two-part authorization request to export LNG from domestic sources. On August 17, 2012, in FE Docket No. 12–88–LNG, GPP filed with DOE/FE a separate application for long-term multi-contract authorization to engage in the export of LNG in an amount up to 740 million Bcf per year, to any country with which the U.S. has or in the future will have an FTA requiring the national treatment for trade in natural gas and LNG; that has developed, or in the future develops, the capacity to import LNG; and with which trade is not prohibited by U.S. law or policy. DOE/FE subsequently issued an order in FE Docket No 12–88–LNG granting long-term export authorization to FTA countries from the Golden Pass Terminal.[1]

GPLNG owns and operates an LNG import terminal located near Sabine Pass, in Jefferson County, Texas. GPPL is an interstate pipeline connected to the import terminal and regulated by the Federal Energy Regulatory Commission (FERC). The GPLNG import terminal is a receiving facility for LNG imported from abroad. The import terminal has a nominal output of 2 Bcf per day (Bcf/d), with a peak capacity of 2.7 Bcf/d. In an order issued on July 6, 2005, the FERC authorized GPLNG under Section 3 of the NGA to site, construct and operate: (1) A berthing structure and unloading facilities for LNG ships; (2) vaporization equipment; (3) five LNG storage tanks with approximate working capacity of 155,000 cubic meters (m^3) each; and (4) associated utilities, infrastructure and facilities required to send out natural gas from the import terminal. The July 6, 2005, FERC order also authorized GPPL to construct and operate a 70-mile interstate pipeline system to receive revaporized gas form the GPLNG import terminal to be transported to domestic markets. The import facilities were placed in service on March 14, 2011.

GPP intends to construct and operate the GPP export facility contiguous to and interconnected with the GPLNG import terminal, for the liquefaction and export of domestically produced natural gas. GPP states that it intends to construct and operate the export facilities to maximize use of the existing GPLNG import terminal facilities, with the intent of preserving full import capability of the GPLNG import facilities while also creating new export capability.

GPP states that domestic gas would be delivered to the GPP export facility through GPPL's existing pipeline. GPP states that the pipeline would be modified to flow gas (1) to the GPP export facility for export to other countries, or (2) from the GPLNG import terminal for delivery to interstate and intrastate markets. GPP also states that the existing facilities at the import terminal would be used as part of the liquefaction project. These facilities include insulated LNG and gas piping, ship berthing facilities, and the five LNG storage tanks and control systems. In addition, GPP states that it would construct new facilities to liquefy the natural gas delivered to the GPP export project through the pipeline owned by GPPL.

Current Application

In the instant Application, GPP seeks long-term, multi-contract authorization to export LNG in an amount up to the equivalent of 740 Bcf of domestically produced natural gas per year, for a period of 25 years beginning on the earlier of the date of first export or seven years from the date the authorization is granted by DOE/FE. In order to engage in these exports, GPP requests authority to: (1) Engage in natural gas purchases and LNG sales for export, and (2) act as agent for third parties. In addition, GPP requests authorization to provide tolling services for third parties. GPP requests authorization to export this LNG to any country with which the United States does not have an FTA requiring national treatment for trade in natural gas, that has, or in the future develops, the capacity to import LNG, and with which trade is not prohibited by U.S. law or policy.

GPP states that it anticipates entering into one or more long-term agreement to export LNG that do no exceed the term requested in the Application. GPP states that the contracts will provide for GPP to liquefy natural gas and load it onto LNG tankers for export. GPP states that the specific terms of GPP's future contracts for liquefaction end exportation of natural gas will include provisions governing dates of commencement and termination, pricing, volumes, and export destinations. GPP notes that market conditions and negotiations will determine the precise terms of these contracts. GPP further notes that such contracts will expressly require that the export destination be consistent with GPP's export authorization from DOE/FE, and that deliveries shall be reported to DOE/FE on a monthly basis.

GPP states that customers contracting with GPP for tolling services will be responsible for procuring their own gas supplies and holding title to the gas delivered to the GPP facility for liquefaction. GPP states that customers will be responsible for arranging the delivery of gas to the terminal. GPP also states that consistent with prior DOE/FE orders authorizing export tolling services, GPP will accept a condition requiring GPP to register with DOE/FE

[1] *Golden Pass Products LLC,* Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Golden Pass LNG Terminal to Free Trade Agreement Nations, DOE/FE Order No. 3147, September 27, 2012 (FE Docket No 12–88–LNG).

each title holder for whom GPP seeks to export LNG.[2]

GPP states that it will file with DOE/FE any relevant long-term commercial agreements within thirty days of execution. GPP states that it will file either (1) a copy of each long-term contract with commercially sensitive information redacted, or (2) a summary of all major provision of the contract. GPP states that each of its contract filings will include a justification for non-disclosure of any redacted contract provisions or information.

GPP states that the GPP export facility will have access to substantial quantities of natural gas from diverse domestic supply sources. GPP notes that the GPP export facility will be located close to the Onshore Gulf Coast, the Offshore Gulf of Mexico and the Mid-Continent producing regions, which GPP states have long been significant U.S. natural gas supply areas. Specifically, GPP states that the export project is located close to well-developed pipeline and transportation infrastructure. GPP states that the export facility will be connected, through the GPPL pipeline, with the interstate pipeline systems of Florida Gas Transmission Company, LLC; Golden Triangle Storage, Inc.; Natural Gas Pipeline Company of America; Tennessee Gas Pipeline Company, LLC; Texas Eastern Transmission, LP; and Transcontinental Gas Pipeline Company, LLC. GPP notes that each of these pipelines in turn has interconnections with a larger network of pipeline traversing the Gulf Coast region.

Lastly, GPP states that it intends to apply separately to the FERC for authorization to site, contract and operate the proposed GPP export facility under Section 3 of the NGA and Part 153 of the FERC's regulations.

Public Interest Considerations

GPP states that the requested LNG export authorization is in the public interest. GPP states that approval of GPP's proposed exports will not impact the adequacy of domestic production to meet projected demand over the term of the requested authorization. GPP further states that it will contemplate contracts that will be based on market-competitive terms. In addition, GPP states that it has considered the public benefits to its proposed exports, including the impact on U.S. job creation, U.S. gross domestic product, domestic energy security, U.S. trade, as well as the cumulative impacts of all LNG projects on the domestic need for gas. GPP concludes that the proposed export project is consistent with the public interest under all of these considerations.

In support of the Application, GPP submitted an independent study by The Perryman Group to help identify the socioeconomic impacts of GPP's proposed export project (TPG Study). In particular, the TPG Study sought to quantify the potential gains in business activity in Jefferson County, Texas, the location of the terminal. GPP states that the TPG Study concludes that the project could create approximately $31 billion in U.S. economic gains at the local, state and national levels over the life of the project. Specifically, the approximately $10 billion investment in infrastructure to build the facility would generate: (1) An estimated $20 billion in national gross product during the five-year construction phase, and (2) an estimated $11 billion in national gross product from operations, about $460 million annually for the life of the facility. The TPG Study goes on to project that the GPP project would generate tens of thousands of jobs for American workers across the country including: (1) 324,000 person-years of direct and indirect work over the life of the project; (2) the equivalent of 45,000 jobs nationally during the five-year construction phase, including 9,000 construction jobs as well as jobs across a wide spectrum of supporting industries, including manufacturing, transportation, and utilities; and (3) around 3,800 permanent jobs nationwide during the operation phase, including more than 200 jobs at the facility. Lastly, GPP states that the TPG Study projects cumulative tax revenues for federal, state, and local governments totaling about $4.6 billion across the construction and operating life of the project.

To further support the Application, GPP engaged Deloitte MarketPoint (DMP) to provide a comprehensive analysis to evaluate the price impact of GPP's proposal to export natural gas. GPP states that the DMP study shows that exports of 2 Bcf/d from the GPP project would have less than a 1 percent effect on long-term annual average prices, despite an outlook of robust U.S. gas demand growth. GPP notes that the DMP study also concluded that the potential cumulative price effects from U.S. LNG export projects would be modest based on the idea that: (1) U.S. producers currently have access to abundant domestic natural gas that can be developed cost-effectively to supply both domestic and incremental LNG export opportunities; (2) only a limited number of projects will likely reach completion; and (3) competition for international markets will serve to balance the collective growth of U.S. export developments, further moderating domestic market implications.

Additionally, in support of the Application, GPP cites numerous studies, statistics, and reports as prepared by the Energy Information Administration, MIT, the Brookings Institution, the American Chemistry Council, and the U.S. Census Bureau to demonstrate that the export of LNG and the approval of this Application are in the public interest.

Further details can be found in the Application, which has been posted at *http://www.fe.doe.gov/programs/gasregulation/index.html*.

Environmental Impact

GPP states that the export project will be designed to minimize or mitigate environmental or other adverse impacts. GPP contends that the proposal does not constitute a major federal action significantly affecting the quality of human environment, within the meaning of the National Environmental Policy Act (NEPA) of 1969. GPP states that it plans to file an application with the FERC for the necessary authorization to construct and operate the GPP export facility, and that the FERC will complete an environmental review prior to granting the requested authorization. GPP recognizes that it cannot engage in the export of LNG until after the FERC has granted its NGA section 3 authorization and the necessary facilities have been constructed and placed in service. GPP states that DOE has previously participated in the FERC's environmental review process as a cooperating agency in other LNG export projects. Accordingly, GPP requests that DOE/FE condition the export authorization requested in this Application on GGP's receipt of all necessary FERC authorizations to construct and operate the GPP export facility.

DOE/FE Evaluation

The Application will be reviewed pursuant to section 3 of the NGA, as amended, and the authority contained in DOE Delegation Order No. 00–002.00L (April 29, 2011) and DOE Redelegation Order No. 00–002.04E (April 29, 2011). In reviewing this LNG export Application, DOE will consider any issues required by law or policy. To the extent determined to be relevant or

[2] *Freeport LNG Development, L.P.,* FE Docket No. 11–51–LNG, DOE/FE Order No. 2986 (July 19, 2011); *Sabine Pass Liquefaction, LLC,* FE Docket No. 10–111–LNG, DOE/FE Order No. 2961 (May 20, 2011).

appropriate, these issues will include the impact of LNG exports associated with this Application, and the cumulative impact of any other application(s) previously approved, on domestic need for the gas proposed for export, adequacy of domestic natural gas supply, U.S. energy security, and any other issues, including the impact on the U.S. economy (GDP), consumers, and industry, job creation, U.S. balance of trade, international considerations, and whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this Application should comment in their responses on these issues, as well as any other issues deemed relevant to the Application.

NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Due to the complexity of the issues raised by the Applicants, interested persons will be provided 60 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, notices of intervention, or motions for additional procedures.

Public Comment Procedures

In response to this notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention, as applicable. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov* with FE Docket No. 12–156–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office Natural Gas Regulatory Activities at the address listed in **ADDRESSES**. The filing must include a reference to FE Docket No. 12–156–LNG; or (3) hand delivering an original and three paper copies of the filing to the Office of Natural Gas Regulatory Activities at the address listed in **ADDRESSES**. The filing must include a reference to FE Docket No. 12–156–LNG.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this Notice, in accordance with 10 CFR 590.316.

The Application filed by GPP is available for inspection and copying in the Office of Natural Gas Regulatory Activities docket room, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html*.

Issued in Washington, DC, on November 30, 2012.

John A. Anderson,

Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

[FR Doc. 2012–29479 Filed 12–5–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 12–123–LNG]

CE FLNG, LLC; Application for Long-Term Authorization To Export Liquefied Natural Gas Produced From Domestic Natural Gas Resources to Non-Free Trade Agreement Countries for a 30-Year Period

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application) filed on September 21, 2012, by CE FLNG, LLC (CE FLNG), requesting long-term, multi-contract authorization to export up to 8 million tons per annum (mtpa) of domestically produced liquefied natural gas (LNG), the equivalent of about 391 billion cubic feet (Bcf) of natural gas per year, or 1.07 Bcf per day (Bcf/d), over a 30-year period, commencing on the earlier of the date of first export or ten years from the date the requested authorization is granted. The LNG would be exported from the proposed CE FLNG LNG terminal in Plaquemines Parish, Louisiana, (Project) to any country (1) With which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas, (2) which has developed or in the future develops the capacity to import LNG via ocean-going carrier, and (3) with which trade is not prohibited by U.S. law or policy. The source of the natural gas will be from direct connects with the interstate pipelines of Tennessee 500 leg, SONAT, Transcontinental, Gulf South and several intrastate pipelines in Louisiana. CE FLNG anticipates that it will need to extend pipeline approximately 100 miles to connect to the proposed Project. CE FLNG anticipates that sources of natural gas will include Texas and Louisiana producing regions and the offshore gulf producing regions, with CE FLNG's primary source of natural gas coming from the Gulf of Mexico rather than from shale gas plays. CE FLNG is requesting this authorization to export LNG both on its own behalf and as agent for other parties who hold title to the LNG at the point of export. The Application was filed under section 3 of the Natural Gas Act (NGA). Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using

procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., eastern time, February 4, 2013.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine Moore or Marc Talbert, U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478; (202) 586–7991.

Edward Myers, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6B–256, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586–3397.

SUPPLEMENTARY INFORMATION:

Background

CE FLNG is a Delaware limited liability company with its principal place of business in Greensboro, Georgia. CE FLNG is a subsidiary of Cambridge Energy Holdings, LLC which is owned by Cambridge Energy Group Limited. CE FLNG's affiliate Cambridge Energy, LLC is a marketer of natural gas and currently has a two-year blanket authorization to import and export natural gas and LNG to and from Canada and Mexico, and import LNG from international sources under DOE/FE Order No. 2991.

CE FLNG states that it is finalizing the design of natural gas processing and liquefaction facilities to receive and liquefy domestic natural gas at the proposed Project. CE FLNG states that the Project facilities will consist of two floating liquefaction, storage and offloading units (FLSO), each capable of producing up to 4 mtpa of LNG for a total capacity of 8 mtpa of LNG. CE FLNG states that the units will have an LNG storage capacity of 250,000 cubic meters. CE FLNG further states that each FLSO unit will be capable of limited natural gas treatment, liquefaction, and capability to export LNG to off-taking LNG carriers utilizing ship-to-ship process. CE FLNG also states that the Project facilities would permit natural gas to be received by pipeline at the Project, liquefied, and loaded from the FLSO unit's storage tanks onto LNG carriers berthed alongside. CE FLNG states that it will construct, own, and operate the Project.

In this same Application, CE FLNG also requested long-term authorization to export domestically produced LNG to countries that have or will enter into FTAs with the United States calling for national treatment of trade in natural gas. Subsequently, on November 12, 2012, DOE/FE issued an order in FE Docket No 12–123–LNG granting long-term export authorization to FTA countries.[1]

Current Application

In the instant application, CE FLNG seeks long-term, multi-contract authorization to export up to 8 mtpa of domestically produced natural gas, as LNG (the equivalent of 391 Bcf per year, or 1.07 Bcf/d of natural gas), for a period of 30 years beginning on the earlier of the date of first export or ten years from the date the authorization is granted by DOE/FE, to any nation with which the United States does not have an FTA requiring national treatment for trade in natural gas or LNG with which trade is not prohibited by United States law or policy. CE FLNG requests that such long-term authorization provide for export from its proposed Project in Plaquemines, Louisiana to any country with which the United States does not have an FTA requiring national treatment for trade in natural gas, which has developed or in the future develops the capacity to import LNG via ocean-going carrier, and with which trade is not prohibited by U.S. law or policy.

CE FLNG requests authorization to export LNG acting on its own behalf or as agent for other parties who themselves hold title to the LNG at the time of export.

CE FLNG seeks long-term multi-contract authorization to export natural gas available in the United States natural gas pipeline system. CE FLNG states that the source of natural gas supply will come from the interstate grid at different liquidity points. CE FLNG states that the pipeline infrastructure will be expanded and extended to connect to the proposed Project allowing CE FLNG and its customers to purchase gas for export from any point in the U.S. interstate pipeline system. CE FLNG states that this supply will be sourced in large volumes in the spot markets, in medium term markets, or pursuant to long-term arrangements, for the account of CE FLNG or third party customers of CE FLNG.

Public Interest Considerations

CE FLNG states that DOE/FE recently affirmed that ''principal focus of this agency's review of export applications in decisions under current delegated authority has continued to be the domestic need for the natural gas proposed to be exported, and any other factors to the extent they are shown to be relevant to a public interest determination.''[2] CE FLNG states as demonstrated herein, its application is not inconsistent with the public interest.

CE FLNG states that the main focus of the DOE/FE's public interest analysis has been the projected domestic need for the gas to be exported. CE FLNG states that domestic need can be measured by looking at domestic natural gas supply versus natural gas demand. CE FLNG states that DOE/FE has historically compared the total volume of natural gas reserves and recoverable resources available to be produced during the proposed export period to total gas demand during the export period to determine whether there is a domestic need for the gas to be exported.[3]

CE FLNG states that it is their view that recoverable natural gas resources in the U.S. are abundant, cheap, and sufficient to meet demand for domestic consumption and CE FLNG's proposed export over the long-term. In addition, CE FLNG states that it is their belief that exports will not cause a significant increase in domestic natural gas prices. CE FLNG states that accordingly, the proposed export authorizations will not have a detrimental impact on the domestic supply of natural gas and, therefore, are not inconsistent with the public interest.

CE FLNG states that for temporary jobs, it estimates that 750–1,000 constructions jobs will be created during the design and construction of the Project. CE FLNG states that for permanent jobs, it estimates a further 200 jobs will be created for CE FLNG Production Staff (100 people assigned per vessel), 120 jobs for staff on the carriers, 50 jobs for support staff

[1] On November 21, 2012, DOE/FE issued Order No. 3193, granting long-term multi-contract authorization to export LNG by vessel from the proposed CE FLNG LNG terminal in Plaquemines Parish, Louisiana to FTA nations.

[2] *Sabine Pass Liquefaction, LLC,* DOE/FE Order Denying Request for Review Under Section 3(c) of the Natural Gas Act, at page 6, October 21, 2010.

[3] *Phillips Alaska Natural Gas Corp. and Marathon Oil Co.,* DOE/FE Order No. 1473 at pp. 29, 40, 46.

personnel, as well as various other jobs for support vessels, tugs, etc.

CE FLNG also states that granting the requested authorizations would also positively impact the U.S. balance of trade. CE FLNG states that in 2010, the U.S. trade deficit was $497.8 billion, an increase of $122.9 billion from the 2009 figure.[4] CE FLNG state that notably, of the $497.8 billion deficit, $265 billion (over half) resulted from a negative balance in the trade of petroleum products.[5] CE FLNG asserts that its exports of 1.07 Bcf/d will make a positive impact on the balance of trade. CE FLNG states that the DOE/FE, in approving export applications has acknowledged the positive impact that LNG exports can have on the balance of trade with destination nations.[6] CE FLNG states moreover, consistent with the aims of the National Export Initiative and the DOE's policy of ''promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements'',[7] the export of LNG will help to improve economic trade and ties between the U.S. and the destination nations, which could include key industrialized nations in Europe and Asia, as well as developing nations in Asia, South America, the Middle Ease, and the Caribbean.

Further details can be found in the Application, which has been posted at *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Environmental Impact

CE FLNG states that following the issuance of this long-term multi-contract authorization requested in this Application, it will initiate the pre-filing review process at the Federal Energy Regulatory Commission (FERC) for the proposed Project facilities. CE FLNG states that this will be the initial step in a comprehensive and detailed environmental review of the Project by FERC. CE FLNG states that it anticipates, consistent with the requirements of the National Environmental Policy Act (NEPA), FERC will act as the lead agency for environmental review, with the DOE acting as a cooperating agency. CE FLNG requests that the DOE issue an order approving this Application, with such approval subject to completion by FERC of a satisfactory environmental review of the Project.

DOE/FE Evaluation

The Application will be reviewed pursuant to section 3 of the NGA, as amended, and the authority contained in DOE Delegation Order No. 00–002.00L (April 29, 2011) and DOE Redelegation Order No. 00–002.04E (April 29, 2011). In reviewing this LNG export Application, DOE will consider any issues required by law or policy. To the extent determined to be relevant or appropriate, these issues will include the impact of LNG exports associated with this Application, and the cumulative impact of any other application(s) previously approved, on domestic need for the gas proposed for export, adequacy of domestic natural gas supply, U.S. energy security, and any other issues, including the impact on the U.S. economy (GDP), consumers, and industry, job creation, U.S. balance of trade, international considerations, and whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this Application should comment in their responses on these issues, as well as any other issues deemed relevant to the Application.

NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Due to the complexity of the issues raised by the Applicants, interested persons will be provided 60 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, notices of intervention, or motions for additional procedures.

Public Comment Procedures

In response to this notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention, as applicable. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov* with FE Docket No. 12–123–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office Natural Gas Regulatory Activities at the address listed in **ADDRESSES**. The filing must include a reference to FE Docket No. 12–123–LNG; or (3) hand delivering an original and three paper copies of the filing to the Office of Natural Gas Regulatory Activities at the address listed in **ADDRESSES**. The filing must include a reference to FE Docket No. 12–123–LNG.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application filed by CE FLNG is available for inspection and copying in the Office of Natural Gas Regulatory Activities docket room, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585. The docket

[4] Bureau of Economic Analysis, U.S. Department of Commerce, U.S. International Trade in Goods and Services, (Feb. 11, 2011), available at *http://www.bea.gov/newsreleases/international/trade/2011/pdf/trad1210.pdf.*

[5] Id. at 11. In 2010, the U.S. exported only $70 billion in petroleum products while importing over $335 billion.

[6] *See, e.g., ConocoPhillips Company,* FE Docket No. 09–92–LNG, Order No. 2731 at 10 (Nov. 30, 2009); *Cheniere Marketing, Inc.,* FE Docket No. 08–77–LNG, Order No. 2651 at 14 (June 8, 2009) (''[M]itigation of balance of payments issues may result from a grant of the [export] application.'')

[7] *Cheniere Marketing, Inc.,* FE Docket No. 08–77–LNG, Order No. 2651 at 11 (June 8, 2009).

room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Issued in Washington, DC, on November 30, 2012.

John A. Anderson,

Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

[FR Doc. 2012–29473 Filed 12–5–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 12–146–LNG]

Excelerate Liquefaction Solutions I, LLC; Application for Long-Term Authorization To Export Liquefied Natural Gas Produced From Domestic Natural Gas Resources to Non-Free Trade Agreement Countries for a 20-Year Period

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application) filed on October 5, 2012, by Excelerate Liquefaction Solutions I, LLC (ELS), requesting long-term, multi-contract authorization to export up to 10 million metric tons per annum (mtpa) of domestically produced liquefied natural gas (LNG), equivalent to approximately 502 million MMBtu of natural gas per year or 1.33 billion cubic feet of natural gas per day, for a period of 20 years beginning on the earlier of the date of first export or seven years from the date the authorization is granted by DOE/FE. ELS seeks authorization to export this LNG by vessel from the terminal it intends to construct, own, and operate in Calhoun County, Texas (ELS Terminal), to any country with which the United States does not now, or during the term of the license requested by ELS will not, have a free trade agreement (FTA) requiring national treatment for trade in natural gas and LNG that has, or in the future develops, the capacity to import LNG, and with which trade is not prohibited by U.S. law or policy (non-FTA Countries). ELS is requesting this authorization to export LNG both on its own behalf and as agent for other parties who hold title to the LNG at the time of export. The Application was filed under section 3 of the Natural Gas Act (NGA). Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., eastern time, February 4, 2013.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine Moore or Lisa Tracy, U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478; (202) 586–4523.

Edward Myers, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6B–256, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–3397.

SUPPLEMENTARY INFORMATION:

Background

ELS is a Delaware limited liability company with its principal place of business in The Woodlands, Texas. ELS is a wholly owned subsidiary of Excelerate Liquefaction Solutions, LLC, which also is a limited liability company organized under the law of Delaware. Excelerate Liquefaction Solutions, LLC, is in turn, a wholly-owned subsidiary of Excelerate Energy Limited Partnership, which is a limited partnership organized under the laws of Delaware. The general partner of Excelerate Energy Limited Partnership is Excelerate Energy, LLC, a limited liability company organized under the laws of Delaware. RWE Supply & Trading Participation Ltd., a UK company, and Mr. George B. Kaiser, an individual, each own 50 percent of Excelerate Energy, LLC. The limited partners of Excelerate Energy Limited Partnership are (a) RWE supply & Trading Participations Ltd.; and (b) Excelerate Holdings LLC, a limited liability company organized under the laws of Oklahoma. RWE Supply & Trading Participations Ltd. is a wholly-owned subsidiary of RWE Supply & Trading GmbH, a German company, that is, in turn, ultimately owned by RWE, A.G., a widely-held and publicly-traded, German electric and gas company. Excelerate Holdings LLC is majority-owned and controlled by Mr. Kaiser. (No other entity owns more than 2.5 percent of Excelerate Holdings LLC.) ELS is authorized to do business in the State of Texas.

ELS states that this Application represents the second part of a two-part export authorization request. On May 25, 2012, in FE Docket No. 12–61–LNG, ELS filed with DOE/FE an application for long-term multi-contract authorization to engage in the export of domestically produced LNG in an amount up to 10 mtpa, to any country with which the U.S. does not now or in the future will have an FTA requiring the national treatment for trade in natural gas and LNG; that has developed, or in the future develops, the capacity to import LNG; and with which trade is not prohibited by U.S. law or policy. DOE/FE subsequently issued an order in FE Docket No 12–61–LNG granting long-term export authorization to FTA countries from the ELS Project.[1]

ELS states that the proposed ELS Project will be located on a parcel of land owned by the Calhoun Port Authority (the ''Port''). ELS states that the Port and ELS have entered into an option to lease approximately 85 acres for the development of the ELS Project located on the South Peninsula of Point Comfort, Texas. In its Application, ELS seeks long-term, multi-contract authorization to export domestically produced LNG from the ELS Terminal that ELS intends to construct, own, and operate in Calhoun County, Texas. ELS states that the proposed project consists of the ELS Terminal, with natural gas compression, gas treatment, gas liquefaction, and ancillary facilities as needed to receive and liquefy domestic natural gas at the ELS Terminal. ELS states that it currently is finalizing the design of the ELS Project, but asserts that the ELS Project facilities will include two floating liquefaction, storage and offloading (FSLO) units,

[1] *Excelerate Liquefaction Solutions I, LLC,* Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Excelerate Liquefaction Solutions I, LLC Terminal to Free Trade Agreement Nations, DOE/FE Order No. 3128, August 9, 2012 (FE Docket No 12–61–LNG).

each capable of producing up to 5 mtpa of LNG per year for a total capacity of 10 mtpa of LNG. ELS states that in addition to liquefying natural gas, each FLSO unit will have an LNG storage capacity of about 250,000 cubic meters (m^3), and the ability to offload LNG to LNG carriers for export utilizing standard hard-arm technology and ship-to-ship transfer process.

ELS further states that the ELS Terminal will receive natural gas from the ELS Pipeline, an approximately 27-mile long, 36-inch O.D. natural gas pipeline that ELS will construct, or cause to be constructed. ELS states that the ELS Pipeline will allow the ELS Terminal to connect to and access up to nine natural gas pipelines, including both interstate and intrastate systems, thereby providing indirect access to natural gas through displacement and transactions at market hubs, as well as direct access to gas in Texas. ELS states that the sources of natural gas for the ELS Project will include the vast supplies available from the Texas producing regions, including recent discoveries of shale gas resources. ELS notes that in additional to traditional production, emerging unconventional supply areas, such as the Barnett, Eagle Ford, Haynesville, and Bossier shale gas formations, will provide additional diversity and reliability of gas supply for the ELS Project.

ELS acknowledges that the siting, construction and operation of the ELS Terminal is subject to approval by the Federal Energy Regulatory Commission (FERC) pursuant to Section 3 of the NGA. ELS states that it intends to commence the FERC's mandatory prefiling process later this year and file its final application with the FERC in the first half of 2013. In addition, ELS states that it will also pursue authorization from the FERC under Section 7(c) of the NGA to construct, own and operate a pipeline to connect the ELS Terminal facilities to interstate and intrastate natural gas supplies and markets in 2012.

Current Application

In the instant Application, ELS seeks long-term, multi-contract authorization to export up to 10 mtpa of domestically produced LNG, equivalent to approximately 502 million MMBtu of natural gas per year or 1.33 Bcf of natural gas per day, from the ELS Project to non-FTA Countries. ELS requests this authorization for a 20-year term commencing the earlier of the date of first export or seven years from the date the authorization is granted by DOE/FE.

ELS states that it is requesting this authorization both on its own behalf and as agent for other parties who themselves hold title to the LNG at the time of export. To ensure that all exports are permitted and lawful under U.S. laws and policies, ELS states that it will comply with all DOE/FE requirements for exporters and agents, including the registration requirements as first established in *Freeport LNG Development, L.P.,* DOE/FE Order No. 2913 and most recently set forth in *Excelerate Liquefaction Solutions I, LLC,* DOE/FE Order No. 3128.[2] ELS states that when acting as agent, ELS will register with the DOE/FE each LNG title holder ELS seeks to export LNG on behalf of or as agent for, and will cause such title holder to comply with all applicable DOE/FE requirements included in ELS's export authorization.

ELS states that it has not yet entered into any long-term gas supply or long-term export contracts with regards to this Application. ELS states that, accordingly, it is not submitting transaction-specific information (e.g., long-term supply agreements and long-term export agreements) at this time and requests that DOE/FE make a similar finding to that made in *Sabine Pass Liquefaction, LLC,* DOE/FE Order No. 2961, issued on May 20, 2011, in Docket No. 10–111–LNG, with regard to the transaction-specific information requested in 10 CFR 590.202(b). ELS states that it is cognizant of the DOE/FE Policy Guidelines (of 1984) and expects to enter into export transactions that are responsive to the relative level of natural gas prices in the United States, similar to those entered into in connection with the Sabine Pass liquefaction and export project (DOE/FE Docket No. 10–111–LNG), thereby creating supply to mitigate price impacts if the U.S. market is in greater need of natural gas than would otherwise be exported.

Lastly, ELS requests that DOE/FE issue a conditional Order authorizing the export of domestically produced LNG, subject to completion of the environmental review of the ELS Project by the FERC.

Public Interest Considerations

ELS states that it proposed the project in part due to the improved outlook for domestic natural gas production, and in particular, to improved drilling techniques and extraction technologies that have contributed to the rapid growth in new supplies from unconventional gas-bearing shale formations across the U.S. ELS maintains that exports of domestic LNG will contribute to the public interest by providing a meaningful market solution to the country's vast energy reserves that will result in:

(1) Increased production capacity able to better adjust to varying domestic demand scenarios,

(2) Less volatile natural gas prices,

(3) More jobs, greater tax revenues, and improvements to economic activity,

(4) New competitive supplies introduced into world gas markets, leading to improved economies among U.S. trading partners, and, in turn, providing better opportunities to market U.S. products and services abroad,

(5) The ability for the U.S. to promote greater national security through its larger role in international energy markets, to assist our allies, and to reduce dependency on foreign oil through co-production of oil and natural gas liquids that might otherwise be uneconomic,

(6) An improvement to U.S. balance of payments between $2.4 billion and $4.4 billion annually per terminal through the exportation of natural gas and the displacement of imports of other petroleum liquids, and

(7) Increased economic trade and ties with foreign trading partners and hemispheric allies, and the displacement of environmentally damaging fuels in those countries.

In support of its Application, ELS commissioned a report from Black & Veatch (B&V), titled *Economic Impacts of the Lavaca Bay LNG Project—Estimates of the Construction and Operational Impacts on the Local, State and U.S. Economies* (B&V Report), to assess the economic benefits of the ELS Project. ELS states that the B&V Report estimates that the ELS Project's construction expenditures to account for well in excess of $3.32 billion in total economic output, which, under current tax regimes, will generate more than $154 million in state and local taxes, as well as more than $242 million in total federal tax revenues. In addition, ELS states that the B&V Report estimates that the combined operations and maintenance expenditures could result in an additional yearly total economic output of over $102 million and well over $3.7 million in state and local taxes, plus more than $6.0 million in total federal taxes each year. ELS further states that, with respect to job creation, the B&V Report projects that construction of the ELS Project will

[2] *Freeport LNG Development, L.P., Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Freeport LNG Terminal to Free Trade Nations,* FE Docket No. 10–160–LNG, DOE/FE Order No. 2913 (February 10, 2011); *Excelerate Liquefaction Solutions I, LLC,* FE Docket No. 12–61–LNG, DOE/FE Order No. 3128 (August 9, 2012).

result in 21,367 new jobs during the three year construction period for Phase I (with additional jobs created by Phase 2 work over and above that amount), with operations and maintenance expenditures project to support or create 696 jobs during the ELS Project's life.

In support of its Application, ELS also commissioned an independent assessment of the impact of LNG exports from the ELS Project by Deloitte MarketPoint LLC (DMP), titled *Analysis of Economic Impact of LNG Exports from the United States* (DMP Report). In its Application, ELS cites the DMP Report with references to issues concerning regional supply, supply-demand balance, and price impacts to further support ELS's position that exports of LNG are in the public interest.

Lastly, ELS states that these as well as other benefits enumerated in this Application and supported by additional studies and reports by the Energy Information Administration, the James A. Baker III Institute for Public Policy, MIT, and the Brookings Institution compellingly demonstrate that the export of LNG and the approval of this Application are in the public interest.

Further details can be found in the Application, which has been posted at *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Environmental Impact

ELS states that it intends to file an application with FERC for authorization to site, construct, own and operate the ELS Project and acknowledges that the potential environment impacts of the Project will be reviewed by the FERC under the National Environmental Policy Act (NEPA). ELS states that it anticipates that DOE/FE will act as a cooperating agency in FERC's environmental review process for the ELS project, including the preparation of an EA or EIS, which will satisfy the NEPA responsibilities associated with the LNG exports as proposed in the Application. Accordingly, ELS requests that DOE/FE issue a conditional order authorizing the export of LNG as requested in the Application, conditioned on completion of the environmental review of the ELS Project by the FERC.

DOE/FE Evaluation

The Application will be reviewed pursuant to section 3 of the NGA, as amended, and the authority contained in DOE Delegation Order No. 00–002.00L (April 29, 2011) and DOE Redelegation Order No. 00–002.04E (April 29, 2011). In reviewing this LNG export Application, DOE will consider any issues required by law or policy. To the extent determined to be relevant or appropriate, these issues will include the impact of LNG exports associated with this Application, and the cumulative impact of any other application(s) previously approved, on domestic need for the gas proposed for export, adequacy of domestic natural gas supply, U.S. energy security, and any other issues, including the impact on the U.S. economy (GDP), consumers, and industry, job creation, U.S. balance of trade, international considerations, and whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this Application should comment in their responses on these issues, as well as any other issues deemed relevant to the Application.

NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Due to the complexity of the issues raised by the Applicants, interested persons will be provided 60 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, notices of intervention, or motions for additional procedures.

Public Comment Procedures

In response to this notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention, as applicable. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov* with FE Docket No. 12–146–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office Natural Gas Regulatory Activities at the address listed in **ADDRESSES**. The filing must include a reference to FE Docket No. 12–146–LNG; or (3) hand delivering an original and three paper copies of the filing to the Office of Natural Gas Regulatory Activities at the address listed in **ADDRESSES**. The filing must include a reference to FE Docket No. 12–146–LNG.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this Notice, in accordance with 10 CFR 590.316.

The Application filed by ELS is available for inspection and copying in the Office of Natural Gas Regulatory Activities docket room, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Issued in Washington, DC, on November 30, 2012.

John A. Anderson,

Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

[FR Doc. 2012–29475 Filed 12–5–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL13–25–000]

H.Q. Energy Services (U.S.) Inc. v. ISO New England Inc.; Notice of Complaint

Take notice that on November 28, 2012, pursuant to section 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, H.Q. Energy Services (U.S.) Inc. (Complainant) filed a formal complaint against ISO New England Inc. (Respondent), requesting the Commission to issue an order requiring the Respondent to revise its Forward Capacity Market tariff rules to reflect that the Respondent has the burden to change its standards for determining deliverability for import capacity resources, as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on the contacts for the Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on December 21, 2012.

Dated: November 30, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–29464 Filed 12–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC12–145–000; ER12–2681–000; EL12–107–000]

ITC Holdings Corp.; Entergy Corporation; Midwest Independent Transmission System Operator, Inc.; Notice of Filing

Take notice that, on November 20, 2012, ITC Holdings Corp. and Entergy Services, Inc. (together, Applicants) submitted a filing styled as an answer in the above-referenced proceedings attaching a series of confidential workpapers and additional background information relating to Applicants' joint application that was filed in the above-referenced proceedings on September 24, 2012 under sections 203 and 205 of the Federal Power Act. (*See Joint Application for Authorization of Acquisition and Disposition of Jurisdictional Transmission Facilities, Approval of Transmission Service Formula Rate and Certain Jurisdictional Agreements, and Petition for Declaratory Order on Application of Section 305(a) of the Federal Power Act,* Docket Nos. EC12–145–000, ER12–2681–000, and EL12–107–000). Applicants' filing is hereby noticed as an amendment to the application.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to these proceedings. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on Applicants and all of the parties in these proceedings.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: January 22, 2013.

Dated: November 30, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–29465 Filed 12–5–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9758–2]

California State Nonroad Engine Pollution Control Standards; In-Use Portable Diesel Engines 50 Horsepower and Greater; Notice of Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of decision.

SUMMARY: EPA is granting the California Air Resources Board's (CARB's) request for an authorization of its airborne toxic control measure for in-use portable diesel-fueled compression-ignition engines 50 horsepower and greater.

DATES: Petitions for review must be filed by February 4, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID EPA–HQ–OAR–2011–0101. All documents relied upon in making this

decision, including those submitted to EPA by CARB, are contained in the public docket. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open to the public on all federal government working days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566–1744. The Air and Radiation Docket and Information Center's Web site is *http://www.epa.gov/oar/docket.html*. The electronic mail (email) address for the Air and Radiation Docket is: *a-and-r-Docket@epa.gov*, the telephone number is (202) 566–1742, and the fax number is (202) 566–9744. An electronic version of the public docket is available through the federal government's electronic public docket and comment system. You may access EPA dockets at *http://www.regulations.gov*. After opening the *www.regulations.gov Web site*, enter EPA–HQ–OAR–2011–0101 in the ''Enter Keyword or ID'' fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (''CBI'') or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality (''OTAQ'') maintains a Web page that contains general information on its review of California waiver requests. Included on that page are links to prior waiver **Federal Register** notices, some of which are cited in today's notice; the page can be accessed at *http://www.epa.gov/otaq/cafr.htm*.

FOR FURTHER INFORMATION CONTACT:

Kristien G. Knapp, Attorney-Advisor, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue (6405J), NW., Washington, DC 20460. Telephone: (202) 343–9949. Fax: (202) 343–2800. Email: *knapp.kristien@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. California's Portable Diesel Equipment Regulation

In a letter dated December 5, 2006, CARB submitted to EPA its request pursuant to section 209 of the Clean Air Act (''CAA'' or ''the Act''), regarding its regulations to enforce its airborne toxic control measure (ATCM) for in-use portable diesel-fueled engines 50 brake-horsepower (hp) and greater (CARB's ''PDE'' regulation).[1] As defined in CARB's regulation, ''portable engines'' are engines that may be moved easily from location to location.[2] The engines are used to power a variety of equipment, including pumps, ground support equipment at airports, cranes, oil-well drilling and workover rigs, power generators, dredging equipment, rock crushing and screening equipment, welding equipment, woodchippers, and compressors. To be portable, the engine must not reside at any one location for more than 12 consecutive months. A location is defined as any place of operation or single site at a building, structure, facility, installation or well site. CARB expects the PDE regulation to reduce diesel particulate matter (PM) emissions by 95 percent, and significant health costs will be saved by reduced mortality, reduced incidences of cancer, chronic bronchitis, asthma and fewer hospital visits caused by pneumonia and asthma-related conditions.

CARB's authorization request covers four primary substantive requirements: (1) Starting on January 1, 2010, all portable engines in California must be certified to meet a federal or California standard for newly manufactured nonroad engines; (2) Starting on January 1, 2020, all portable engines in California must be either (a) certified to meet federal Tier 4 emission standards, (b) equipped with a properly functioning CARB Level-3 verified technology,[3] or (c) equipped with a combination of control strategies that have been verified together with CARB to achieve at least an 85 percent reduction in diesel PM emissions; (3) All portable engines that, prior to January 1, 2006, have not been either registered in CARB's Portable Equipment Registration Program (''PERP'') or permitted under the permit program of an air quality management district or air pollution control district must meet the most stringent of the federal or California emission standards for nonroad engines at the time the engine is either registered in the PERP or registered for a permit; and (4) Each fleet of portable engines must comply with increasingly more stringent weighted PM emission fleet averages that apply on three different deadlines (January 1, 2013, January 1, 2017 and January 1, 2020).[4] Owners of in-use equipment have options available to meet the CARB requirements.[5] These include: purchasing new equipment with cleaner engines, repowering existing equipment with cleaner engines, using verified add-on control devices on existing equipment and engines, switching to alternative diesel fuels or alternative fuels, or electrifying some or all of the in-use fleet and receiving emission credits.

Certain types of diesel-fueled engines are exempt from the PDE regulations. Engines used to propel mobile applications are exempt, including dual-use engines that both propel the equipment and operate the attached equipment.[6] Dual-fuel diesel pilot engines, military tactical support equipment, and ground support equipment (used at airports) are also exempt from the regulation. PDEs that are used solely in emergency applications or are ''low-use'' engines that run less than eighty hours annually are also not subject to the fleet emission standards.[7]

Credits toward satisfying the fleet standard can be earned by opting to use electric power on a given project in lieu of a portable diesel engine, if more than 200 hours of grid power are used.[8] Under certain circumstances, alternative-fueled engines operating more than 100 hours per year can be allowed into the fleet. Also, fleet owners who purchase federal Tier 4 engines prior to January 1, 2013 may count the engine twice in calculating the fleet weighted diesel PM emission rates for the 2013 deadline, and the same allowance is made for Tier 4 engines purchased prior to the 2017 deadline. The PDE regulation also has recordkeeping and reporting requirements.[9] Records must be kept only for engines taking advantage of the incentives and exemptions described above. For example, records must be kept for engines with hourly limitations, like low-use engines, or hourly minimums, like alternative-fuel engines.

[1] Letter from Catherine Witherspoon, Executive Officer, California Air Resources Board to Administrator Stephen L. Johnson, December 5, 2006, EPA–HQ–OAR–2011–0101–002.

[2] *See* California Air Resources Board (''CARB''), ''Authorization Request Support Document,'' December 5, 2006, EPA–HQ–OAR–2011–0101–0003, at 4 (hereinafter ''CARB Support Document'').

[3] Level 3 p.m. control technology refers to a control technology that has been verified to achieve PM reductions of at least 85 percent under the CARB ''Verification Procedure, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines,'' 13 California Code of Regulations (CCR) sections 2700–2710.

[4] The PDE regulation contains a fifth substantive requirement that pertains to the fuels that may be used in in-use portable equipment engines, but this fuels requirement is not preempted by CAA section 209(e). *See* CARB Support Document at 2.

[5] *See* CARB Support Document at 4.

[6] *See* CARB Support Document at 5.

[7] *See* CARB Support Document at 10.

[8] *See* CARB Support Document at 11.

[9] *See* CARB Support Document at 12–13.

Status reports and compliance statements must be submitted to CARB and include information identifying each engine and its emission rate, as well as the fleet emission rate. The local air districts and CARB both are given authority to review or seek enforcement action for violation of the fleet emission standards, and either can take appropriate enforcement action as necessary.

CARB's PDE regulation was considered at the Board's public hearing on February 26, 2004.[10] The proposed regulations were approved, with modifications, in Resolution 04–7, in which the CARB Board directed the CARB Executive Officer to adopt the PDE regulation after making the proposed language available for public comment for a supplemental period of fifteen days.[11] The public comment period ended June 1, 2004, and the CARB Executive Officer considered the two submitted written comments and determined that the comments did not require the regulation to be modified or reconsidered by the CARB Board.[12] The Executive Officer adopted the ATCM by executive order G–04–080 on December 23, 2004.[13] California's Office of Administrative Law approved the PDE regulation on February 9, 2005, and the regulations were adopted at 93116–93116.5, title 17, California Code of Regulations, effective March 11, 2005.[14]

B. Nonroad Authorizations

Section 209(e)(1) of the Act permanently preempts any State, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for new nonroad engines or vehicles. States are also preempted from adopting and enforcing standards and other requirements related to the control of emissions from non-new nonroad engines or vehicles. Section 209(e)(2) requires the Administrator, after notice and opportunity for public hearing, to authorize California to enforce such standards and other requirements, unless EPA makes one of three findings. In addition, other states with attainment plans may adopt and enforce such regulations if the standards, and implementation and enforcement procedures, are identical to California's standards. On July 20, 1994, EPA promulgated a rule that sets forth, among other things, regulations providing the criteria, as found in section 209(e)(2), which EPA must consider before granting any California authorization request for new nonroad engine or vehicle emission standards.[15] EPA later revised these regulations in 1997.[16] As stated in the preamble to the 1994 rule, EPA has historically interpreted the section 209(e)(2)(iii) ''consistency'' inquiry to require, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers).[17]

In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California's nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same ''consistency'' criteria that are applied to motor vehicle waiver requests. Pursuant to section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California ''standards and accompanying enforcement procedures are not consistent with section 202(a)'' of the Act. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures are inconsistent with section 202(a) if: (1) There is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time, or (2) the federal and state testing procedures impose inconsistent certification requirements.

C. Burden of Proof

In *Motor and Equip. Mfrs Assoc.* v. *EPA,* 627 F.2d 1095 (D.C. Cir. 1979) (''*MEMA I*''), the U.S. Court of Appeals stated that the Administrator's role in a section 209 proceeding is to:

> consider all evidence that passes the threshold test of materiality and * * * thereafter assess such material evidence against a standard of proof to determine whether the parties favoring a denial of the waiver have shown that the factual circumstances exist in which Congress intended a denial of the waiver.[18]

The court in *MEMA I* considered the standards of proof under section 209 for the two findings related to granting a waiver for an ''accompanying enforcement procedure'' (as opposed to the standards themselves): (1) Protectiveness in the aggregate and (2) consistency with section 202(a) findings. The court instructed that ''the standard of proof must take account of the nature of the risk of error involved in any given decision, and it therefore varies with the finding involved. We need not decide how this standard operates in every waiver decision.'' [19]

The court upheld the Administrator's position that, to deny a waiver, there must be 'clear and compelling evidence' to show that proposed procedures undermine the protectiveness of California's standards.[20] The court noted that this standard of proof also accords with the congressional intent to provide California with the broadest possible discretion in setting regulations it finds protective of the public health and welfare.[21]

With respect to the consistency finding, the court did not articulate a standard of proof applicable to all proceedings, but found that the opponents of the waiver were unable to meet their burden of proof even if the standard were a mere preponderance of the evidence. Although *MEMA I* did not explicitly consider the standards of proof under section 209 concerning a waiver request for ''standards,'' as compared to accompanying enforcement

[10] *See* CARB Support Document at 2.

[11] CARB, Resolution 04–7, EPA–HQ–OAR–2011–0101–0004.

[12] CARB Support Document at 2. *See also* CARB Executive Order G–04–080, EPA–HQ–OAR–2011–0101–0005.

[13] CARB, Executive Order G–04–080, EPA–HQ–OAR–2011–0101–0005.

[14] CARB, Final Regulation Order, EPA–HQ–OAR–2011–0101–0006.

[15] 59 FR 36969 (July 20, 1994).

[16] *See* 62 FR 67733 (December 30, 1997). The applicable regulations, now in 40 CFR part 1074, subpart B, § 1074.105, provide:

(a) The Administrator will grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as otherwise applicable federal standards.

(b) The authorization will not be granted if the Administrator finds that any of the following are true:

(1) California's determination is arbitrary and capricious.

(2) California does not need such standards to meet compelling and extraordinary conditions.

(3) The California standards and accompanying enforcement procedures are not consistent with section 209 of the Act.

(c) In considering any request from California to authorize the state to adopt or enforce standards or other requirements relating to the control of emissions from new nonroad spark-ignition engines smaller than 50 horsepower, the Administrator will give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

[17] *See* 59 FR 36969 (July 20, 1994).

[18] *MEMA I,* 627 F.2d at 1122.

[19] *Id.*

[20] *Id.*

[21] *Id.*

procedures, there is nothing in the opinion to suggest that the court's analysis would not apply with equal force to such determinations. EPA's past waiver decisions have consistently made clear that: ''[E]ven in the two areas concededly reserved for Federal judgment by this legislation—the existence of 'compelling and extraordinary' conditions and whether the standards are technologically feasible—Congress intended that the standards of EPA review of the State decision to be a narrow one.'' [22]

Opponents of the waiver bear the burden of showing that the criteria for a denial of California's waiver request have been met. As found in *MEMA I,* this obligation rests firmly with opponents of the waiver in a section 209 proceeding:

> [t]he language of the statute and its legislative history indicate that California's regulations, and California's determinations that they must comply with the statute, when presented to the Administrator are presumed to satisfy the waiver requirements and that the burden of proving otherwise is on whoever attacks them. California must present its regulations and findings at the hearing and thereafter the parties opposing the waiver request bear the burden of persuading the Administrator that the waiver request should be denied.[23]

The Administrator's burden, on the other hand, is to make a reasonable evaluation of the information in the record in coming to the waiver decision. As the court in *MEMA I* stated: ''here, too, if the Administrator ignores evidence demonstrating that the waiver should not be granted, or if he seeks to overcome that evidence with unsupported assumptions of his own, he runs the risk of having his waiver decision set aside as 'arbitrary and capricious.' '' [24] Therefore, the Administrator's burden is to act ''reasonably.'' [25]

D. EPA's Administrative Process in Consideration of California's PDE Regulation

Upon receipt of CARB's request, EPA offered an opportunity for a public hearing, and requested written comment on issues relevant to a full section 209(e) authorization analysis, by publication of a **Federal Register** notice on February 9, 2011.[26] Specifically, we requested comment on: (a) Whether CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) whether California needs such standards to meet compelling and extraordinary conditions, and (c) whether California's standards and accompanying enforcement procedures are consistent with section 209 of the Act.

In response to EPA's February 9, 2011 **Federal Register** notice, EPA received one request for a public hearing, which was withdrawn, and no public comments.[27]

II. Discussion

A. California's Protectiveness Determination

Section 209(e)(2)(i) of the Act instructs that EPA cannot grant an authorization if the agency finds that California was arbitrary and capricious in its determination that its standards are, in the aggregate, at least as protective of public health and welfare as applicable federal standards. The California Air Resources Board made a protectiveness determination in Resolution 04–7, finding that California's PDE regulations will not cause the California emission standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards.[28] CARB presents that California's PDE regulations will be, in the aggregate, ''undisputedly at least as stringent as applicable federal regulations'' because ''there are no federal standards for in-use portable engines.'' [29] CARB received no information calling this determination into question.[30] Accordingly, CARB concludes that the protectiveness determination ''clearly is not arbitrary or capricious.'' [31]

EPA did not receive any comments challenging California's protectiveness determination. Therefore, based on the record before us, EPA finds that opponents of the authorization have not shown that California was arbitrary and capricious in its determination that its standards are, in the aggregate, at least as protective of public health and welfare as applicable federal standards.

B. Need for California Standards To Meet Compelling and Extraordinary Conditions

Section 209(e)(2)(ii) of the Act instructs that EPA cannot grant an authorization if the agency finds that California ''does not need such California standards to meet compelling and extraordinary conditions * * *.'' This criterion restricts EPA's inquiry to whether California needs its own mobile source pollution program to meet compelling and extraordinary conditions, and not whether any given standards are necessary to meet such conditions.[32] As discussed above, for over forty years CARB has repeatedly demonstrated the need for its mobile source emissions program to address compelling and extraordinary conditions in California. In its Resolution 04–7, CARB affirmed its longstanding position that California continues to need its own motor vehicle and engine program to meet its serious air pollution problems.[33] Likewise, EPA has consistently recognized that California continues to have the same ''geographical and climatic conditions that, when combined with the large numbers and high concentrations of automobiles, create serious pollution problems.'' [34] Furthermore, no commenter has presented any argument or evidence to suggest that California no longer needs a separate mobile source emissions program to address compelling and extraordinary conditions in California. Therefore, EPA has determined that we cannot deny California an authorization for its PDE regulation under section 209(e)(2)(ii).

C. Consistency With Section 209 of the Clean Air Act

Section 209(e)(2)(iii) of the Act instructs that EPA cannot grant an authorization if California's standards and enforcement procedures are not consistent with section 209. As described above, EPA has historically evaluated this criterion for consistency with sections 209(a), 209(e)(1), and 209(b)(1)(C).

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[22] *See, e.g.,* 40 FR 21102–103 (May 28, 1975).

[23] *MEMA I,* 627 F.2d at 1121.

[24] *Id.* at 1126.

[25] *Id.*

[26] *See* 76 FR 7196 (February 9, 2011).

[27] EPA, ''Memorandum from Cassie Weaver to Docket EPA–HQ–OAR–2011–0101,'' EPA–HQ–OAR–2011–0101–0029.

[28] ''BE IT FURTHER RESOLVED that the Board hereby determines that pursuant to Title II, section 209(e)(2) of the federal Clean Air Act, as amended in 1990, that the emission standards and other requirements related to the control of emissions adopted as part of this ATCM are, in the aggregate, at least as protective of public health and welfare as applicable federal standards, that California needs the adopted standards to meet compelling and extraordinary conditions, and that the adopted standards and accompanying enforcement procedures are consistent with the provisions of section 209.'' CARB, Resolution 04–7, EPA–HQ–OAR–2011–0101–0004.

[29] CARB Support Document at 19. *See also* CARB, Resolution 04–7, EPA–HQ–OAR–2011–0101–0004.

[30] CARB Support Document at 19.

[31] *Id.*

[32] *See* 74 FR 32744, 32761 (July 8, 2009); 49 FR 18887, 18889–18890 (May 3, 1984).

[33] CARB, ''Resolution 04–7,'' EPA–HQ–OAR–2011–0101–0004.

[34] 49 FR 18887, 18890 (May 3, 1984); *see also* 76 FR 34693 (June 14, 2011), 74 FR 32744, 32763 (July 8, 2009), and 73 FR 52042 (September 8, 2008).

1. Consistency With Section 209(a)

To be consistent with section 209(a) of the Clean Air Act, California's ATCM for portable diesel engines must not apply to new motor vehicles or new motor vehicle engines. California's PDE regulation expressly apply only to in-use nonroad engines and do not apply to engines used in motor vehicles as defined by section 216(2) of the Clean Air Act.[35] No commenter presented otherwise. Therefore, EPA cannot deny California's request on the basis that California's PDE regulation are not consistent with section 209(a).

2. Consistency With Section 209(e)(1)

To be consistent with section 209(e)(1) of the Clean Air Act, California's ATCM for portable diesel engines must not affect new farming or construction vehicles or engines that are below 175 horsepower, or new locomotives or their engines. CARB presents that its PDE regulation does not apply to new locomotives or locomotive engines.[36] To the extent that an owner or operator elects to meet the standards established by the PDE regulation by replacing existing equipment with new equipment, or repowering existing equipment with new engines, the PDE regulation requires the use of engines meeting federal and California certification requirements for new engines.[37] Therefore, CARB states, ''the ATCM does not establish emission standards that are otherwise preempted'' under Clean Air Act section 209(e)(1).[38] CARB received no information calling this determination into question.[39] No commenter presented otherwise to EPA. Therefore, EPA cannot deny California's request on the basis that California's PDE regulation is not consistent with section 209(e)(1).

3. Consistency With Section 209(b)(1)(C)

The requirement that California's standards be consistent with section 209(b)(1)(C) of the Clean Air Act effectively requires consistency with section 202(a) of the Act. California standards are inconsistent with section 202(a) of the Act if there is inadequate lead-time to permit the development of technology necessary to meet those requirements, giving appropriate consideration to the cost of compliance within that timeframe. California's accompanying enforcement procedures would also be inconsistent with section 202(a) if federal and California test procedures conflicted. The scope of EPA's review of whether California's action is consistent with section 202(a) is narrow. The determination is limited to whether those opposed to the authorization or waiver have met their burden of establishing that California's standards are technologically infeasible, or that California's test procedures impose requirements inconsistent with the federal test procedures.[40]

a. Technological Feasibility

Congress has stated that the consistency requirement of section 202(a) relates to technological feasibility.[41] Section 202(a)(2) states, in part, that any regulation promulgated under its authority ''shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.'' Section 202(a) thus requires the Administrator to first determine whether adequate technology already exists; or if it does not, whether there is adequate time to develop and apply the technology before the standards go into effect. The latter scenario also requires the Administrator to decide whether the cost of developing and applying the technology within that time is feasible. Previous EPA waivers are in accord with this position.[42] For example, a previous EPA waiver decision considered California's standards and enforcement procedures to be consistent with section 202(a) because adequate technology existed as well as adequate lead-time to implement that technology.[43] Subsequently, Congress has stated that, generally, EPA's construction of the waiver provision has been consistent with congressional intent.[44]

CARB presents that its PDE regulation satisfies the technological feasibility and lead time criteria because CARB either has ''demonstrated that the necessary technology presently exists to meet the established standards or has specifically identified the projected control technology * * * and has explained its reasons for believing that each of the steps can be completed in the time available.''[45] CARB states that the individual portable engine requirements and the initial fleet average requirements which take effect in 2013 will likely be met by purchasing new equipment with cleaner engines or repowering existing equipment with cleaner engines.[46] In addition to engine replacement, owners and operators of portable diesel engines will likely use verified diesel particulate matter retrofit strategies to meet the two subsequent fleet average requirements that take effect in 2017 and 2020.[47]

CARB presents that the individual portable engine requirements are technologically feasible in the time provided because they parallel federal emission standards for off-road compression ignition engines, set forth in 40 CFR parts 89 and 1039, for which the EPA made express findings of technological feasibility.[48] CARB has established a verification program for diesel particulate matter retrofit technologies, and based on the activity of that program, presents that there is a solid base of control technology to meet the fleet average requirements in the PDE regulation.[49] Finally, owners and operators of portable diesel engines will not be required to use retrofit technologies until 2017, which CARB found to be ''ample lead time to allow the development of the necessary control techniques.'' * * *[50] CARB expects that the costs associated with the PDE regulation will be generated by the early replacement or repower of portable engines, prior to the end of the engine's useful life, and will range from $135–$220 per horsepower.[51]

EPA did not receive any comments suggesting that CARB's standards and test procedures are technologically infeasible and no information to contradict CARB's cost estimates. Consequently, based on the record, EPA cannot deny California's authorization based on technological infeasibility.

b. Consistency of Certification Procedures

California's standards and accompanying enforcement procedures would also be inconsistent with section

[35] CARB Support Document at 5 (''Engines used to propel * * * motor vehicles are not regulated by the ATCM.'') Also, ''the ATCM neither applies to motor vehicles that are preempted under 209(a) or to new engines less than 175 hp used in farm and construction equipment and vehicles or to new locomotives or locomotive engines.'' *Id.* at 21.

[36] CARB Support Document at 18.

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *MEMA I,* 627, F.2d at 1126.

[41] H.R. Rep. No. 95–294, 95th Cong., 1st Sess. 301 (1977).

[42] *See, e.g.,* 49 FR 1887, 1895 (May 3, 1984); 43 FR 32182, 32183 (July 25, 1978); 41 FR 44209, 44213 (October 7, 1976).

[43] 41 FR 44209 (October 7, 1976).

[44] H.R. Rep. No. 95–294, 95th Cong., 1st Sess. 301 (1977).

[45] CARB Support Document at 22.

[46] *See* CARB Support Document at 4, 22.

[47] *Id.* at 22.

[48] *Id.*

[49] *Id.* at 22. *See also id.* at 22–26.

[50] *Id.* at 26.

[51] CARB, ''CARB Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Appendix G: Economic Impact Analysis Methodology,'' January 2004, EPA–HQ–OAR–2011–0101–0022, at G–2.

202(a) if the California test procedures were to impose certification requirements inconsistent with the federal certification requirements. Such inconsistency means that manufacturers would be unable to meet both the California and federal testing requirements using the same test vehicle or engine.[52] CARB presents that the PDE regulation raises no issue regarding test procedure consistency because the regulation does not establish any test procedures for which there are comparable federal test procedures.[53]

EPA received no comments suggesting that CARB's PDE regulation poses any test procedure consistency problem. Therefore, based on the record, EPA cannot find that CARB's testing procedures are inconsistent with section 202(a). Consequently, EPA cannot deny CARB's request based on this criterion.

E. Authorization Determination for California's PDE Regulation

After a review of the information submitted by CARB, EPA finds that those opposing California's request have not met the burden of demonstrating that authorization for California's PDE regulation should be denied based on any of the statutory criteria of section 209(e)(2). For this reason, EPA finds that an authorization for California's PDE regulation should be granted.

III. Decision

The Administrator has delegated the authority to grant California section 209(e) authorizations to the Assistant Administrator for Air and Radiation. After evaluating California's PDE regulation and CARB's submissions, EPA is granting an authorization to California for its PDE regulation.

My decision will affect not only persons in California, but also entities outside the State who must comply with California's requirements. For this reason, I determine and find that this is a final action of national applicability for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by February 4, 2013. Judicial review of this final action may not be obtained in subsequent enforcement proceedings, pursuant to section 307(b)(2) of the Act.

[52] *See, e.g.,* 43 FR 32182 (July 25, 1978).

[53] CARB Support Document at 27.

IV. Statutory and Executive Order Reviews

As with past authorization and waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Further, the Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

Dated: November 29, 2012.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2012–29511 Filed 12–5–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9758–1]

California State Nonroad Engine Pollution Control Standards; Portable Equipment Registration Program; Notice of Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Decision.

SUMMARY: EPA is granting authorization for the California Air Resources Board's (CARB's) amendments to its Portable Equipment Registration Program (PERP), and confirming that certain portions of CARB's PERP program is within the scope of previous EPA authorizations. PERP is a voluntary statewide program that enables registration of nonroad engines and equipment that operate at multiple locations across California, so that the engine and equipment owners can operate throughout California without obtaining permits from local air pollution control districts.

DATES: Petitions for review must be filed by February 4, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID EPA–HQ–OAR–2011–0102. All documents relied upon in making this decision, including those submitted to EPA by CARB, are contained in the public docket. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open to the public on all federal government working days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566–1744. The Air and Radiation Docket and Information Center's Web site is *http://www.epa.gov/oar/docket.html.* The electronic mail (email) address for the Air and Radiation Docket is: *a-and-r-Docket@epa.gov*, the telephone number is (202) 566–1742, and the fax number is (202) 566–9744. An electronic version of the public docket is available through the federal government's electronic public docket and comment system. You may access EPA dockets at *http://www.regulations.gov.* After opening the *www.regulations.gov* Web site, enter EPA–HQ–OAR–2011–0102 in the ''Enter Keyword or ID'' fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (''CBI'') or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality (''OTAQ'') maintains a Web page that contains general information on its review of California waiver requests. Included on that page are links to prior waiver **Federal Register** notices, some of which are cited in today's notice; the page can be accessed at *http://www.epa.gov/otaq/cafr.htm.*

FOR FURTHER INFORMATION CONTACT: Kristien G. Knapp, Attorney-Advisor, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue (6405J) NW., Washington, DC 20460. Telephone: (202) 343–9949. Fax: (202) 343–2800. Email: *knapp.kristien@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. California's PERP Authorization Request

In a letter dated December 5, 2008, CARB submitted to EPA its request pursuant to section 209 of the Clean Air Act (''CAA'' or ''the Act''), regarding its Portable Equipment Registration Program (''PERP'').[1] The PERP was

[1] California Air Resources Board (CARB), Request for Authorization, December 5, 2008, EPA–HQ–OAR–2011–0102–0002.

established by CARB as a voluntary program to address the concern that equipment owners who moved equipment within California often faced the need to obtain preconstruction and operating permits from different local air pollution control districts in the state.[2] The PERP allows voluntary registration of either spark-ignition (SI) or compression-ignition (CI) portable piston driven internal combustion engines or portable equipment units. Under the PERP, once registered, equipment is no longer subject to local air pollution control district permitting requirements. Rather, registration with the PERP allows equipment to be moved more freely within the state. ''Portable'' as defined within CARB's PERP program, means equipment that is designed and capable of being transported from one location to another. Not all equipment is eligible for registration in the PERP; generally, engines used for propulsion, as part of a stationary source, or used to produce power into the California electricity grid are not eligible for registration under the PERP. The PERP sets out four general requirements applicable to all registered equipment: (1) Registered equipment may not operate in a manner that causes a nuisance; (2) registered equipment may not interfere with attainment of federal or state air quality standards; (3) registered equipment may not cause an exceedance of an ambient air quality standard; and (4) owners of registered equipment (or combined operation of such equipment) must provide notice and comply with requirements for prevention of significant deterioration (PSD) if it would constitute a major modification of that source. The PERP also has specific requirements for both registered engines and certain types of equipment units. For engines, the specific requirements include fuel-type restrictions, opacity limits, mass emissions and emission concentration limits, and metering requirements, based on engine size. With limited exceptions, after January 1, 2006, only engines that meet the most stringent CARB or EPA emission standards in effect at the time of registration are allowed in the PERP. Registered compression-ignition engines must also meet requirements of the CARB Airborne Toxic Control Measure (ATCM) for in-use portable diesel-fueled engines 50 brake-horsepower (hp) and greater portable engines (CARB's portable diesel equipment (PDE) regulations).[3] For equipment, the PERP sets daily and annual mass emission limits for all registered equipment units (exclusive of engine emissions). Certain types of equipment, such as concrete batch plants and rock crushing and screening plants, have specific, additional requirements, primarily aimed to minimize particulate emissions associated with their operation. The PERP also includes regulatory requirements for recordkeeping, reporting, inspection, testing, fee collection, and enforcement.

In 1995, the California Legislature passed Assembly Bill (AB) 531 to address a perceived problem with the use of portable equipment and associated engines that were operated in more than one air pollution control district.[4] CARB was directed by AB 531 to create and administer a voluntary statewide program for the registration of portable equipment.[5] In 1997, CARB adopted regulations creating the PERP,[6] which was amended by CARB in 1998, 2005, 2006, and March 2007.[7] CARB adopted Resolution 07–9 on March 22, 2007, which amended the PERP, after a public hearing held earlier that month.[8] Executive Order G–07–013 was issued by the Executive Officer, and the regulations were submitted to the Office of Administrative Law (OAL), on July 31, 2007.[9] On September 12, 2007, OAL approved the regulations and they became operative the same day.[10]

CARB has requested that EPA confirm that parts of the voluntary PERP for portable engines and equipment fall within the scope of previously issued authorizations or submitted authorization requests (i.e., the ATCM for Portable Diesel Engines),[11] and that the Administrator grant a new authorization for those emission standards not otherwise covered by a within-the-scope confirmation.

B. Clean Air Act Nonroad Engine and Vehicle Authorizations

Section 209(e)(1) of the Act permanently preempts any State, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain new nonroad engines or vehicles. States are also preempted from adopting and enforcing standards and other requirements related to the control of emissions from non-new nonroad engines or vehicles. Section 209(e)(2) requires the Administrator, after notice and opportunity for public hearing, to authorize California to enforce such standards and other requirements, unless EPA makes one of three findings. In addition, other states with attainment plans may adopt and enforce such regulations if the standards, and implementation and enforcement procedures, are identical to California's standards. On July 20, 1994, EPA promulgated a rule that sets forth, among other things, regulations providing the criteria, as found in section 209(e)(2), which EPA must consider before granting any California authorization request for new nonroad engine or vehicle emission standards.[12] EPA later revised these regulations in 1997.[13] As stated in the preamble to the 1994 rule, EPA has historically

[2] CARB notes in its request that ''For the record, CARB believes that because participation in the Statewide Program is voluntary, the emission standards for registered nonroad engines are not subject to the [Clean Air Act] § 209 preemption. Since the emission standards apply only if an owner voluntarily elects to register, the standards do not constitute 'standards and other requirements' within the meaning of section 209(e), which CARB believes only applies to mandated requirements. However, without prejudice to CARB's position and to avoid further delay in obtaining federal authorization, CARB submits this request.'' EPA takes no position here on CARB's beliefs with respect to its need for authorization of a voluntary program.

[3] CARB has requested an authorization for its air toxic control measure for portable diesel engines. EPA announced the opportunity for public hearing and public comment on that request by a **Federal Register** notice published February 9, 2011. *See* 76 FR 7196 (February 9, 2011).

[4] CARB, Request for Authorization at 2; California Health and Safety Code (CA HSC) § 41750.

[5] CA HSC § 41752.

[6] California Code of Regulations, title 13 §§ 2450 through 2465.

[7] CARB, Request for Authorization at 3.

[8] *Id.;* CARB, Resolution 07–9 at 1.

[9] CARB, Resolution 07–9 at 1.

[10] *Id.*

[11] *See* California State Nonroad Engine Pollution Control Standards; Authorization of State Standards for 1996 and later New Diesel Cycle Engines 175 Horsepower and Greater, 60 FR 48981 (September 21, 1995); California State Nonroad Engine and Vehicle Pollution Control Standards; Authorization of Large Off-Road Spark-Ignition Engine Standards, Notice of Decision, 71 FR 29621 (May 23, 2006).

[12] 59 FR 36969 (July 20, 1994).

[13] 62 FR 67733 (December 30, 1997). The applicable regulations, now in 40 CFR part 1074, subpart B, 1074.105, provide:

(a) The Administrator will grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as otherwise applicable federal standards.

(b) The authorization will not be granted if the Administrator finds that any of the following are true:

(1) California's determination is arbitrary and capricious.

(2) California does not need such standards to meet compelling and extraordinary conditions.

(3) The California standards and accompanying enforcement procedures are not consistent with section 209 of the Act.

(c) In considering any request from California to authorize the state to adopt or enforce standards or other requirements relating to the control of emissions from new nonroad spark-ignition engines smaller than 50 horsepower, the Administrator will give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

interpreted the section 209(e)(2)(iii) ''consistency'' inquiry to require, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers).[14]

In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California's nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same ''consistency'' criteria that are applied to motor vehicle waiver requests. Pursuant to section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California ''standards and accompanying enforcement procedures are not consistent with section 202(a)'' of the Act. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures are inconsistent with section 202(a) if: (1) There is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time, or (2) the federal and state testing procedures impose inconsistent certification requirements.

If California amends regulations that were previously granted an authorization, EPA can confirm that the amended regulations are within the scope of the previously granted authorization. Such within-the-scope amendments are permissible without a full authorization review if three conditions are met. First, the amended regulations must not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as applicable federal standards. Second, the amended regulations must not affect consistency with section 202(a) of the Act. Third, the amended regulations must not raise any ''new issues'' affecting EPA's prior authorizations.

C. Burden of Proof

In *Motor and Equip. Mfrs Assoc.* v. *EPA,* 627 F.2d 1095 (D.C. Cir. 1979) (*''MEMA I''*), the U.S. Court of Appeals stated that the Administrator's role in a section 209 proceeding is to:

> consider all evidence that passes the threshold test of materiality and * * * thereafter assess such material evidence against a standard of proof to determine whether the parties favoring a denial of the waiver have shown that the factual circumstances exist in which Congress intended a denial of the waiver.[15]

The court in *MEMA I* considered the standards of proof under section 209 for the two findings related to granting a waiver for an ''accompanying enforcement procedure'' (as opposed to the standards themselves): (1) Protectiveness in the aggregate and (2) consistency with section 202(a) findings. The court instructed that ''the standard of proof must take account of the nature of the risk of error involved in any given decision, and it therefore varies with the finding involved. We need not decide how this standard operates in every waiver decision.'' [16]

The court upheld the Administrator's position that, to deny a waiver, there must be 'clear and compelling evidence' to show that proposed procedures undermine the protectiveness of California's standards.[17] The court noted that this standard of proof also accords with the congressional intent to provide California with the broadest possible discretion in setting regulations it finds protective of the public health and welfare.[18]

With respect to the consistency finding, the court did not articulate a standard of proof applicable to all proceedings, but found that the opponents of the waiver were unable to meet their burden of proof even if the standard were a mere preponderance of the evidence. Although *MEMA I* did not explicitly consider the standards of proof under section 209 concerning a waiver request for ''standards,'' as compared to accompanying enforcement procedures, there is nothing in the opinion to suggest that the court's analysis would not apply with equal force to such determinations. EPA's past waiver decisions have consistently made clear that: ''[E]ven in the two areas concededly reserved for Federal judgment by this legislation—the existence of 'compelling and extraordinary' conditions and whether the standards are technologically feasible—Congress intended that the standards of EPA review of the State decision to be a narrow one.'' [19]

Opponents of the waiver bear the burden of showing that the criteria for a denial of California's waiver request have been met. As found in *MEMA I,* this obligation rests firmly with opponents of the waiver in a section 209 proceeding:

> [t]he language of the statute and it's legislative history indicate that California's regulations, and California's determinations that they must comply with the statute, when presented to the Administrator are presumed to satisfy the waiver requirements and that the burden of proving otherwise is on whoever attacks them. California must present its regulations and findings at the hearing and thereafter the parties opposing the waiver request bear the burden of persuading the Administrator that the waiver request should be denied.[20]

The Administrator's burden, on the other hand, is to make a reasonable evaluation of the information in the record in coming to the waiver decision. As the court in *MEMA I* stated: ''here, too, if the Administrator ignores evidence demonstrating that the waiver should not be granted, or if he seeks to overcome that evidence with unsupported assumptions of his own, he runs the risk of having his waiver decision set aside as 'arbitrary and capricious.' '' [21] Therefore, the Administrator's burden is to act ''reasonably.'' [22]

D. EPA's Administrative Process in Consideration of CARB's PERP Request

Upon review of CARB's request, EPA offered an opportunity for a public hearing, and requested written comment on issues relevant to a full section 209(e) authorization analysis, by publication of a **Federal Register** notice on February 9, 2011.[23] Specifically, we requested comment on: (a) Whether CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) whether California needs such standards to meet compelling and extraordinary conditions, and (c) whether California's standards and accompanying enforcement procedures are consistent with section 209 of the Act.

In response to EPA's February 9, 2011 **Federal Register** notice,[24] EPA received one request for a hearing, which was

[14] 59 FR 36969 (July 20, 1994).

[15] *MEMA I,* 627 F.2d at 1122.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *See, e.g.,* 40 FR 21102–103 (May 28, 1975).

[20] *MEMA I,* 627 F.2d at 1121.

[21] *Id.* at 1126.

[22] *Id.*

[23] 76 FR 7194 (February 9, 2011).

[24] *Id.*

later withdrawn, and no public comments.[25]

II. Discussion

A. Full Authorization Analysis

1. California's Protectiveness Determination

Section 209(e)(2)(i) of the Act instructs that EPA cannot grant an authorization if the agency finds that California was arbitrary and capricious in its determination that its standards are, in the aggregate, at least as protective of public health and welfare as applicable federal standards. CARB made a protectiveness determination in Resolution 07–9, finding that California's PERP is, ''in the aggregate, at least as protective of public health and welfare as applicable federal standards.'' [26] CARB presents that California's PERP is at least as stringent as the federal standards: ''since no federal standards exist for in-use nonroad engines,[27] the emissions standards [submitted] are unquestionably as protective of comparable federal regulations.'' [28]

EPA did not receive any comments challenging California's protectiveness determination. Therefore, based on the record before us, EPA finds that opponents of the authorization have not shown that California was arbitrary and capricious in its determination that its standards are, in the aggregate, at least as protective of public health and welfare as applicable federal standards.

2. Need for California Standards To Meet Compelling and Extraordinary Conditions

Section 209(e)(2)(ii) of the Act instructs that EPA cannot grant an authorization if the agency finds that California ''does not need such California standards to meet compelling and extraordinary conditions * * *.'' This criterion restricts EPA's inquiry to whether California needs its own mobile source pollution program to meet compelling and extraordinary conditions, and not whether any given standards are necessary to meet such conditions.[29] As discussed above, for over forty years CARB has repeatedly demonstrated the need for its mobile source emissions program to address compelling and extraordinary conditions in California. In its Resolution 07–9, CARB affirmed its longstanding position that, in order to fight its serious air pollution problems, ''California needs its off-road engine emission standards to meet compelling and extraordinary conditions.'' [30] Likewise, EPA has consistently recognized that California continues to have the same ''geographical and climatic conditions that, when combined with the large numbers and high concentrations of automobiles, create serious pollution problems.'' [31] Furthermore, no commenter has presented any argument or evidence to suggest that California no longer needs a separate mobile source emissions program to address compelling and extraordinary conditions in California. Therefore, EPA has determined that we cannot deny California an authorization for its PERP under section 209(e)(2)(ii).

3. Consistency With Section 209 of the Clean Air Act

Section 209(e)(2)(iii) of the Act instructs that EPA cannot grant an authorization if California's standards and enforcement procedures are not consistent with section 209. As described above, EPA has historically evaluated this criterion for consistency with sections 209(a), 209(e)(1), and 209(b)(1)(C).

a. Consistency With Section 209(a)

To be consistent with section 209(a) of the Clean Air Act, California's PERP must not apply to new motor vehicles or new motor vehicle engines. California's PERP expressly applies only to portable vehicles and expressly precludes registration of engines used to propel motor vehicles as defined by section 216(2) of the Clean Air Act.[32] No commenter presented otherwise. Therefore, EPA cannot deny California's request on the basis that California's PERP is not consistent with section 209(a).

b. Consistency With Section 209(e)(1)

To be consistent with section 209(e)(1) of the Clean Air Act, California's PERP must not affect new farming or construction vehicles or engines that are below 175 horsepower, or new locomotives or their engines. CARB presents that ''locomotive and locomotive engines cannot be registered in the Statewide Program.'' [33] CARB also presents that new farm and construction equipment do not fall under the program.[34] No commenter presented otherwise. Therefore, EPA cannot deny California's request on the basis that California's PERP is not consistent with section 209(e)(1).

c. Consistency With Section 209(b)(1)(C)

The requirement that California's standards be consistent with section 209(b)(1)(C) of the Clean Air Act effectively requires consistency with section 202(a) of the Act. California standards are inconsistent with section 202(a) of the Act if there is inadequate lead-time to permit the development of technology necessary to meet those requirements, giving appropriate consideration to the cost of compliance within that timeframe. California's accompanying enforcement procedures would also be inconsistent with section 202(a) if federal and California test procedures conflicted. The scope of EPA's review of whether California's action is consistent with section 202(a) is narrow. The determination is limited to whether those opposed to the authorization or waiver have met their burden of establishing that California's standards are technologically infeasible, or that California's test procedures impose requirements inconsistent with the federal test procedures.[35]

i. Technological Feasibility

Congress has stated that the consistency requirement of section 202(a) relates to technological feasibility.[36] Section 202(a)(2) states, in part, that any regulation promulgated under its authority ''shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.'' Section 202(a) thus requires the Administrator to first determine whether adequate technology already exists; or if it does not, whether there is adequate time to develop and apply the technology before the standards go into effect. The latter scenario also requires the Administrator to decide whether the cost of developing and applying the technology within that time is feasible. Previous EPA waivers are in accord with this position.[37] For example, a previous EPA waiver decision considered California's standards and enforcement procedures to be consistent with section 202(a)

[25] EPA, ''Memorandum from Brianna Iddings to Docket ID EPA–HQ–OAR–2011–0102,'' EPA–HQ–OAR–2011–0102–0014.

[26] CARB, Resolution 07–9 at 5.

[27] CAA § 213.

[28] CARB, Request for Authorization at 14.

[29] *See* 74 FR 32744, 32761 (July 8, 2009); 49 FR 18887, 18889–18890 (May 3, 1984).

[30] CARB, Resolution 07–9 at 5.

[31] 49 FR 18887, 18890 (May 3, 1984); *see also* 76 FR 34693 (June 14, 2011), 74 FR 32744, 32763 (July 8, 2009), and 73 FR 52042 (September 8, 2008).

[32] CARB, Request for Authorization at 12.

[33] *Id.* at 13.

[34] *Id.*

[35] *MEMA I,* 627 F.2d at 1126.

[36] H.R. Rep. No. 95–294, 95th Cong., 1st Sess. 301 (1977).

[37] *See, e.g.,* 49 FR 1887, 1895 (May 3, 1984); 43 FR 32182, 32183 (July 25, 1978); 41 FR 44209, 44213 (October 7, 1976).

because adequate technology existed as well as adequate lead-time to implement that technology.[38] Subsequently, Congress has stated that, generally, EPA's construction of the waiver provision has been consistent with congressional intent.[39]

CARB presents that the technology required to comply with its PERP has already been established and is currently available.[40] CARB has determined that ''participants in the Statewide Program can pass on any compliance costs without incurring significant economic disruption.'' [41] CARB further stresses that admission into PERP is entirely voluntary, so any costs associated with compliance of the program are voluntarily incurred by those that choose to participate in the program.[42]

CARB staff estimate ''that the total economic impact of the proposed amendments to the Statewide PERP Regulation to affect private businesses and public agencies is $6.6 million over its lifetime ($6.1 million for private businesses and $0.5 million for public agencies).'' [43] The economic impact comes from fees for non-compliant engines. However, if affected parties were instead required to purchase new engines that meet current emission standards, the overall cost to those parties would be around $250 million.[44] The PERP thus results in an estimated savings of $243.4 million.[45]

EPA did not receive any comments suggesting that CARB's standards and test procedures are technologically infeasible. Consequently, based on the record, EPA cannot deny California's authorization based on technological infeasibility.

ii. Consistency of Certification Procedures

California's standards and accompanying enforcement procedures would also be inconsistent with section 202(a) if the California test procedures were to impose certification requirements inconsistent with the federal certification requirements. Such inconsistency means that manufacturers would be unable to meet both the California and federal testing requirements using the same test vehicle or engine.[46] CARB presents that the PERP requirements raise no issue regarding test procedure consistency because the tests procedures incorporated into the program are existing EPA and CARB test procedures.[47] Either agency's test procedures may be used to demonstrate compliance with the program.[48]

EPA received no comments suggesting that CARB's PERP poses any test procedure consistency problem. Therefore, based on the record, EPA cannot find that CARB's testing procedures are inconsistent with section 202(a). Consequently, EPA cannot deny CARB's request based on this criterion.

d. Full Authorization Determination for California's PERP Regulations

After a review of the information submitted by CARB, EPA finds that those opposing California's request have not met the burden of demonstrating that authorization for California's PERP should be denied based on any of the statutory criteria of section 209(e)(2). For this reason, EPA finds that an authorization for California's PERP should be granted.

B. Within-the Scope Confirmation

In our February 9, 2011 **Federal Register** notice, EPA sought comment on a range of issues, including those applicable to a within-the-scope analysis as well as those applicable to a full waiver analysis. EPA received no public comment in response to our request, including no public comments on whether EPA should consider CARB's request according to a within-the-scope analysis of full authorization analysis. Therefore, we have evaluated CARB's request by application of our traditional analysis of authorizations. At the same time, CARB believes it meets the requirements for a within-the-scope confirmation to the extent that EPA has already authorized the numeric emission standards referenced in its PERP program. According to our analysis, as discussed below, we can confirm that the PERP program is within the scope of previous authorizations issued on September 21, 1995 (60 FR 48981), May 23, 2006 (71 FR 29621), and April 4, 2012 (75 FR 8056).

If California amends regulations that were previously granted an authorization, EPA can confirm that the amended regulations are within the scope of the previously granted authorization. Such within-the-scope amendments are permissible without a full authorization review if three conditions are met. First, the amended regulations must not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as applicable federal standards. Second, the amended regulations must not affect consistency with section 209 of the Act. Third, the amended regulations must not raise any ''new issues'' affecting EPA's prior authorizations.

EPA issued an authorization of CARB's diesel emission standards for 1996 and later new diesel cycle engines 175 horsepower and greater on September 21, 1995 (60 FR 48981). EPA also issued authorizations applicable to CARB's large off-road spark-ignition engine standards on May 23, 2006 (71 FR 29621) and April 4, 2012 (75 FR 8056). As discussed above, the first two within-the-scope criteria regarding protectiveness and consistency with section 209 of the Act have been established for the PERP program. Additionally, because registration to such standards does not appear to present a new issue, and no commenter presented otherwise, EPA can confirm that CARB's PERP program is within the scope of the above-noted EPA authorizations, to the extent that the PERP requirements are reliant upon the emission standards at the heart of the above-noted authorizations.[49] To the extent that CARB's PERP program allows registration of engines and equipment to emission standards that are not the subject of a previous EPA authorization, EPA cannot confirm they are within the scope as consideration of those provisions present ''new issues'' that have not previously been the subject of an authorization.

III. Decision

The Administrator has delegated the authority to grant California section 209(e) authorizations to the Assistant Administrator for Air and Radiation. After evaluating California's PERP amendments, and CARB's submissions, EPA is granting an authorization to California for its PERP amendments. To the extent that the PERP program allows registration of equipment for which EPA has already issued authorizations to California, EPA is confirming that those

[38] 41 FR 44209 (October 7, 1976).

[39] H.R. Rep. No. 95–294, 95th Cong., 1st Sess. 301 (1977).

[40] CARB, Request for Authorization at 16–17.

[41] *Id.* at 16.

[42] *Id.*

[43] CARB Staff Report: Initial Statement of Reasons for the Proposed Amendments to the Statewide Portable Equipment Registration Program Regulation and Airborne Toxic Control Measure for Diesel Particulate Matter From Portable Engines at vi.–vii.

[44] *Id.* at vii.

[45] *Id.*

[46] *See, e.g.,* 43 FR 32182 (July 25, 1978).

[47] CARB, Request for Authorization at 17.

[48] *Id.*

[49] To the extent that any provision in CARB's PERP program, which is herein confirmed as within the scope, is later construed as not within-the-scope of EPA's prior authorizations, then a full authorization is appropriate and granted based upon the full authorization evaluation as discussed above.

provisions are within the scope of its previous authorizations.

My decision will affect not only persons in California, but also entities outside the State who must comply with California's requirements. For this reason, I determine and find that this is a final action of national applicability for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by February 4, 2013. Judicial review of this final action may not be obtained in subsequent enforcement proceedings, pursuant to section 307(b)(2) of the Act.

IV. Statutory and Executive Order Reviews

As with past authorization and waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Further, the Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

Dated: November 29, 2012.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2012–29513 Filed 12–5–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9758–3]

New York State Prohibition of Discharges of Vessel Sewage; Receipt of Petition and Tentative Affirmative Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice—receipt of petition and tentative affirmative determination.

SUMMARY: Notice is given that, pursuant to Clean Water Act Section 312(f)(3), the State of New York has determined that the protection and enhancement of the quality of the New York State (NYS or the State) portion of Lake Erie requires greater environmental protection, and has petitioned the United States Environmental Protection Agency, Region 2, for a determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for those waters, so that the State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters.

New York State has proposed to establish a ''Vessel Waste No Discharge Zone'' for the State's portion of Lake Erie stretching from the Pennsylvania-New York State boundary to include the upper Niagara River to Niagara Falls. The proposed No Discharge Zone encompasses approximately 593 square miles and 84 linear shoreline miles, including the navigable portions of the Upper Niagara River and numerous other tributaries and harbors, and embayments of the Lake, including Barcelona Harbor, Dunkirk Harbor and Buffalo Outer Harbor, and other formally designated habitats and waterways of local, state, and national significance.

DATES: Comments regarding this tentative determination are due by January 7, 2013.

Petition: You may view Lake Erie No Discharge Zone Petition by clicking the link below: *http://www.epa.gov/region02/water/permits.html.*

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

- *Email: chang.moses@epa.gov.* Include ''Comments on Tentative Affirmative Decision for NYS Lake Erie NDZ'' in the subject line of the message.
- *Fax:* 212–637–3891.
- *Mail and Hand Delivery/Courier:* Moses Chang, U.S. EPA Region 2, 290 Broadway, 24th Floor, New York, NY 10007–1866. Deliveries are only accepted during the Regional Office's normal hours of operation (8 a.m. to 5 p.m., Monday through Friday, excluding federal holidays), and special arrangements should be made for deliveries of boxed information.

FOR FURTHER INFORMATION CONTACT: Moses Chang, (212) 637–3867, email address: *chang.moses@epa.gov.*

SUPPLEMENTARY INFORMATION: Notice is given that the State of New York has petitioned the United States Environmental Protection Agency (EPA), Region 2, pursuant to section 312(f)(3) of Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the NYS portion of Lake Erie. Adequate pumpout facilities are defined as one pumpout station for every 300–600 boats under the Clean Vessel Act: Pumpout Station and Dump Station Technical Guidelines (**Federal Register**, Vol. 59, No. 47, March 10, 1994).

The Great Lakes are the largest group of freshwater lakes on Earth, containing 95% of the fresh surface water in the United States and serving as the largest single reservoir on Earth. The glacial history and the influence of the Lakes themselves create unique conditions that support a wealth of biological diversity, including over 200 globally rare plants and animals and more than 40 species that are found nowhere else in the world.

Lake Erie is the smallest of the Great Lakes. It is also the shallowest, with depths that range from an approximate average of 24 feet in the western basin, to 82 feet in the deeper eastern basin. As the shallowest of the Great Lakes, it warms quickly in the spring and summer, and cools quickly in the fall. This shallowness and the warmer temperatures result in making Lake Erie the most biologically productive of the Great Lakes.

The New York State Department of Environmental Conservation (DEC) developed the New York State petition in collaboration with New York State Department of State (DOS) and the New York State Environmental Facilities Corporation (EFC) to establish a vessel waste No Discharge Zone (NDZ) on the open waters, tributaries, harbors and embayments of New York State's portion of Lake Erie.

A Clean Water Act Section 312(f)(4)(B) NDZ designation for drinking water intake zones might be appropriate for the vast majority of the Lake Erie waters included in this petition. However, to address the few areas that are not Class A (including Barcelona Harbor, Dunkirk Harbor and the Black Rock Canal), the State is seeking a determination by EPA, under Section 312(f)(3), that adequate facilities exist for the safe and sanitary removal and treatment of sewage from all vessels using this area of the Lake, and has provided information on Lake resources, vessel traffic, and vessel pumpout facilities in support of such a determination. In support of its petition, the state also submitted a Certification of the Need for Greater Protection and Enhancement of Lake Erie waters.

The Lake Erie watershed is home to approximately one-third of the total human population of the Great Lakes basin: 11.6 million people (10 million

U.S. and 1.6 million Canadian), including 17 metropolitan areas, each with more than 50,000 residents. The majority, 11 million people, receive their drinking water from the Lake. Of all the Great Lakes, Lake Erie is exposed to the greatest stress from urbanization, industrialization and agriculture. Because the Lake Erie basin supports such a large human population, it surpasses all the other Great Lakes in the amount of effluent received from sewage treatment plants.

There are 18 designated Significant Coastal Fish and Wildlife Habitats in the two counties that comprise New York's Lake Erie shoreline, including Cataraugus Creek, Dunkirk Harbor, Buckhorn Island Wetlands and Grand Island Tributaries. These habitats are essential to the survival of a large portion of lake fish and wildlife populations, and they support populations of species of special concern as well as those having significant commercial, recreational, and educational values.

The New York State shoreline and waters of Lake Erie also host a variety of swimming, boating and other recreational activities. These recreational activities are a source of revenue to the regional economy, bringing people to the shoreline, where they patronize local businesses.

Virtually all of Lake Erie is classified by New York State as Class A waters. This classification means that the best uses of these waters are for drinking, culinary or food processing purposes, recreation and fishing. Class A waters shall be suitable for fish, shellfish, and wildlife propagation and survival, and, when subject to accepted treatment for drinking water supplies, must comply with New York State Department of Health (DOH) drinking water safety standards. Currently, six New York municipal and community water supplies, including Buffalo and Erie County, draw water from Lake Erie, and serve approximately 275,000 people.

In summary, as one of the nation's premier waterbodies, Lake Erie supports several important uses, including drinking water supplies, valuable habitats, commercial and recreational boating and other recreational activities. The Lake serves as an economic engine for the region, heavily used and enjoyed by the citizens of the many lakeshore communities and throughout the watershed. The protection and enhancement of the open waters, tributaries, harbors and embayments of the New York State portion of Lake Erie require greater protection than is afforded by the current federal vessel sewage discharge standards. And, an NDZ designation covering the waters of the Lake represents one component of a comprehensive approach to water quality management. This wider effort includes initiatives to control point and non-point source pollution, including pollution associated with municipal discharges, Combined Sewer Overflows, and storm water runoff.

For EPA to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the New York State portion of Lake Erie, the State must demonstrate that the pumpout-to-vessel ratio does not exceed 1:600. In its petition, the State described the recreational and commercial vessels that use Lake Erie and the pumpout facilities that are available for their use.

To develop a reasonable estimate of recreational vessel use of the NYS portion of Lake Erie, the State utilized two major sources of information. The first was DOS's Clean Vessel Act Plan (Statewide Plan), released in1996. Using data from the Statewide Plan, the estimated number of recreational vessels in each of the New York State counties bordering Lake Erie is 2,029. The second information source for recreational boater usage was boater registrations, obtained through the New York State Office of Parks, Recreation and Historic Preservation's 2010 Boating Report (OPRHP Report) for the counties of Erie and Chautauqua (the two New York State counties on Lake Erie). The data in the OPRHP Report yields an estimate of 2,204 vessels with MSDs in the respective counties, which are assumed to operate in Lake Erie.

The State provided sufficient information about 15 pumpout facilities that are publicly available for use by recreational and small commercial vessels on the New York State shore of Lake Erie. These facilities either discharge to a holding tank, to a municipal wastewater treatment plant, or to an on-site septic system. All fifteen (15) were created through funding provided by the Clean Vessel Assistance Program (CVAP), and are thus required to be open to the public. Nine additional marinas are located along Lake Erie in New York State. Four of these do not receive CVAP funding, so specific information is not available. The other five marinas represent locations where CVAP funding could support future pumpout facilities. However, for purposes of this adequacy determination, EPA only considered the 15 CVAP funded facilities. Therefore, the most conservative estimate of the ratio of pumpout facilities to recreational vessels is 15:2,204 or 1:147. Because this exceeds the minimum ratio of 1:600, EPA proposes to determine that adequate pumpout facilities for the safe and sanitary removal and treatment of sewage for recreational vessels are reasonably available for the New York State portion of Lake Erie shoreline.

Lake Erie is also used by large commercial vessels. The commercial vessel population was estimated using data from the National Ballast Information Clearinghouse (NBIC), which records ballast water discharge reports for arriving ships at the two main commercial ports on Lake Erie: Buffalo and Lackawanna. In 2010, ballast manifests showed that 62 vessels arrived in Buffalo, and one arrived in Lackawanna. The majority (58) of these vessels were bulk ships, with two passenger ships and one more listed as ''other.'' The single arrival in Lackawanna was also a bulk ship. Based on these sources, New York State conservatively estimates that the commercial boat traffic docking in the New York State portion of Lake Erie is approximately one vessel per week. Although there are no fixed commercial vessel pumpout facilities at the Ports of Buffalo or Lackawanna, information gathered from the petition indicated that mobile pumpout services are available for hire, including septic waste haulers or pumpout trucks, which can service the vessels while they are docked in either port.

To supplement the State's submissions regarding commercial vessel traffic in the NYS section of Lake Erie, DEC published a data call on its Web site seeking any additional relevant information, and also sent an informal request for information to commercial boating organizations that had commented on previous New York State NDZ petitions. Through that data call or request for information exercise DEC did not obtain any additional information. Therefore, based on the low level of commercial vessel traffic at Lake Erie ports in New York, and the availability of septic hauler pumpout trucks, EPA proposes to determine that adequate pumpout facilities for the safe and sanitary removal and treatment of sewage for commercial vessels are reasonably available for the New York State portion of Lake Erie shoreline.

A list of pumpout facilities, phone numbers, locations, hours of operation, water depth and fees is provided below:

LIST OF PUMPOUTS IN THE LAKE ERIE NDZ PROPOSED AREA

No.	Name	Location	Contact information	Days and hours of operation	Water depth (feet)	Fee
1	City of Dunkirk—Municipal Dock.	Dunkirk Harbor	716–366–9882	April 1–November 15, 6 a.m.–6 p.m.	6′–7′	$5.00
2	Niagara Frontier Trans. Authority.	Buffalo Harbor and Buffalo River.	716–855–7230	May 5–October 15, 7:00 a.m.–10:30 p.m.	6′–8′	5.00
3	RCR Yachts Skyway Marina	Buffalo Harbor and Buffalo River.	716–856–6314	April 1–November 30, 8:30 a.m.–5:30 p.m.	12′	5.00
4	City of Buffalo—Erie Basin Marina.	Buffalo Harbor and Buffalo River.	716–851–5389	May 1–October 15, 7:00 a.m.–7:00 p.m.	10′	6.50
5	Rich Marine Sales, Inc	Buffalo Harbor and Buffalo River.	716–873–4060	May 1–November 1, 9:00 a.m.–5:00 p.m.	6′	5.00
6	Harbour Place Marine Sales, Inc.	Buffalo Harbor and Buffalo River.	716–876–5944	April 15–October 31, 24 Hours.	12′	5.00
7	NYSOPRHP—Beaver Island State Park Transient M.	Grand Island	716–278–1775	May 15–October 15, 24 Hours.	10′	5.00
8	Blue Water Marine	Grand Island	716–773–7884	May 1–November 1, 9:00 a.m.–7:00 p.m.	5′	0.00
9	Mid River Marina Inc	Tonawanda Creek	716–875–7447	April 1–September 30, 9:00 a.m.–6:00 p.m.	5′	5.00
10	Collins Marine Inc	Tonawanda Creek	716–875–6000	April 1–November 1, 24 Hours.	6′	5.00
11	The Shores/Placid Harbor Marine—Tonawanda Marine Develop Corp.	Tonawanda Creek	716–625–8235	April 15–October 15, 9:00 a.m.–9:00 p.m.	12′	5.00
12	Niagara River Yacht Club	Tonawanda Creek	716–693–2882	May 1–November 1, Dusk–Dawn.	NA	3.00
13	Smith Boys of North Tonawanda—Upgrade.	Tonawanda Creek	716–693–3472	April 1–November, 24 Hours	8′	0.00
14	East Pier Marine, Inc	Tonawanda Creek	716–693–6604	May 1–November 15, 9:00 a.m.–8:00 p.m.	5′	5.00
15	NYSOPRHP—Big Six Mile Creek State Marina.	Grand Island	315–483–9111	May 1–November 1, 24 Hours.	10′	5.00

Based on the above, EPA proposes to make an affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are available for the waters of the New York State portion of Lake Erie. A 30-day period for public comment has been opened on this matter, and EPA invites any comments relevant to its proposed determination. If, after the public comment period ends, EPA makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the New York State areas of Lake Erie, the State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into those waters.

Dated: November 16, 2012.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2012–29509 Filed 12–5–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9758–4; Docket ID No. EPA–HQ–ORD–2012–0830]

Toxicological Review of Inorganic Arsenic (Cancer and Noncancer Effects): In Support of Summary Information on the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a public stakeholder workshop to inform the development of a state of the science toxicological review of inorganic arsenic (cancer and noncancer effects) in support of the IRIS program.

SUMMARY: The inorganic arsenic (iAs) public stakeholder workshop is designed to inform the planning for EPA's toxicological review of chronic exposure to iAs (cancer and noncancer effects), which EPA intends to post in the IRIS database. Workshop participants will be asked to highlight significant new and emerging research, discuss methods for evaluating literature, identify critical research issues (including mode of action) that may impact the toxicological review, and discuss approaches for dose-response. The ultimate goals of the workshop are to ensure that while developing the toxicological review, EPA provides public stakeholders an opportunity to inform the toxicological review and transparently communicates how EPA will produce a toxicological review that meets the needs of Agency stakeholders and partners.

DATES: The public stakeholder workshop will begin at 8:00 a.m. on January 8, 2013, and end at 5:00 p.m. on January 9, 2013.

ADDRESSES: The iAs public stakeholder workshop will be held at the U.S. EPA, 109 T.W. Alexander Drive, Research Triangle Park, North Carolina 27711. To attend the workshop in person, register no later than 12:00 p.m. on January 2, 2013, by contacting Susan Blaine via email: *EPA_Arsenic@icfi.com* or by telephone: 703–225–2471 (reference the iAs Public Stakeholder Workshop and include your name, title, affiliation, full address, and contact information). You can also register via the Internet at *http://tinyurl.com/EPA-Arsenic-2013.* Space is limited, and reservations will be accepted on a first-come, first-served basis.

To attend the workshop via webinar/video conference, register no later than 12:00 p.m. on January 7, 2013, by contacting Susan Blaine via email: *EPA_Arsenic@icfi.com* or by phone: 703–225–2471 (reference the ''iAs Public Stakeholder Workshop'' and include your name, title, affiliation, full address, and contact information). You can also register via the Internet at *http://tinyurl.com/EPA-Arsenic-2013.* During the meeting, webinar attendees and individuals attending the iAs public stakeholder workshop in person are welcome to make comments or ask questions of presenters. All attendees may submit materials via *http://www.regulations.gov* (Docket ID No. EPA–HQ–ORD–2012–0830). All materials submitted before 12:00 p.m. on January 2, 2013, will be included for consideration during the iAs public workshop. However, there will be multiple opportunities for public input to inform the EPA's toxicological review of chronic exposure to iAs (cancer and noncancer effects).

Information on Services for Individuals with Disabilities: EPA welcomes public attendance at the iAs public stakeholder workshop and will make every effort to accommodate persons with disabilities. For information on access or services for individuals with disabilities, contact Susan Blaine by telephone: 703–225–2471, by facsimile: 703–934–3740 (reference the iAs public stakeholder workshop and include your name and contact information), or by email: *EPA_Arsenic@icfi.com* (reference the iAs public stakeholder workshop and include your name and contact information).

Additional Information

Workshop participants will be encouraged to think broadly about the body of iAs scientific evidence and how it can be best used to generate a toxicological review for iAs. They will be invited to participate in an open dialogue regarding ways in which this evidence could most effectively be used in the toxicological review that will serve as the scientific and technical foundations for the Agency's decisions. Specifically, workshop discussions will provide important input as EPA considers the appropriate design, scope, and methods used in the toxicological review of iAs and participants may provide individual advice to EPA. This toxicological review, in turn, will inform risk management decisions by Agency stakeholders and partners. Panelists participating in the workshop will represent a wide range of external experts, as well as EPA staff, with various areas of expertise (*e.g.,* epidemiology, human and animal toxicology, systematic review, risk assessment, dose-response, and mode of action).

In addition to the iAs public stakeholder workshop, the National Academy of Sciences (NAS) is planning to hold a public workshop on aspects of IRIS toxicological review of iAs. EPA will consider the key issues and recommendations from the NAS and stakeholders in developing a draft toxicological review of iAs. Upon completion of the draft, the public will have an opportunity to review and provide comments and NAS will conduct an external peer review. The draft toxicological review for iAs will be revised in response to the NAS recommendations and public comments. The final toxicological review will be posted in the IRIS database.

For updated information on the iAs public stakeholder meeting, please refer to the following Web site: *http://www.epa.gov/iris/.* Alternatively, please contact John Cowden, Ph.D., U.S. Environmental Protection Agency, National Center for Environmental Assessment, Mail Code: B243–01, 109 T.W. Alexander Drive, Durham, NC 27711; telephone: 919–541–3667; facsimile: 919–541–0245; or email: *cowden.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About IRIS

EPA's IRIS is a human health assessment program that evaluates quantitative and qualitative risk information on effects that may result from exposure to chemical substances found in the environment. Through the IRIS program, EPA provides the highest quality science-based human health assessments to support the Agency's regulatory activities. The IRIS database contains information for more than 540 chemical substances that can be used to support the first two steps (hazard identification and dose-response evaluation) of the risk assessment process. When supported by available data, IRIS provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic noncancer health effects and cancer assessments. Combined with specific exposure information, government and private entities use IRIS to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

II. How To Submit Materials to the Docket at *http://www.regulations.gov*

Submit your materials, identified by Docket ID No. EPA–HQ–ORD–2012–0830, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting materials.
- *Email: Docket_ORD@epa.gov.*
- *Facsimile:* 202–566–9744.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460. The telephone number is 202–566–1752. If you provide materials by mail, please submit one unbound original with pages numbered consecutively, and three copies of the materials. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your materials to Docket ID No. EPA–HQ–ORD–2012–0830. Please ensure that your materials are submitted within the specified submission period. Materials received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all materials it receives in the public docket without change and to make the materials available online at *http://www.regulations.gov,* including any personal information provided, unless materials include information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is

an ''anonymous access'' system, which means that EPA will not know your identity or contact information unless you provide it in the body of your materials. If you send email comments directly to EPA without going through *http://www.regulations.gov*, your email address will be automatically captured and included as part of the materials that are placed in the public docket and made available on the Internet. If you submit electronic materials, EPA recommends that you include your name and other contact information in the body of your materials and with any disk or CD–ROM you submit. If EPA cannot read your materials due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your materials. Electronic files should avoid the use of special characters and any form of encryption and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: November 29, 2012.

Debra B Walsh,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2012–29507 Filed 12–5–12; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 2012–0545]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP085680XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

Reference: AP085680XX.

Purpose and Use:

Brief description of the purpose of the transaction:

To support the export of commercial aircraft to Indonesia and/or Malaysia.

Brief non-proprietary description of the anticipated use of the items being exported:

To provide short- and medium-haul airline service in Indonesia and Malaysia, and between Indonesia and Malaysia and other countries in Asia.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported are not expected to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties:

Principal Supplier: The Boeing Company.

Obligor: PT Lion Mentari and/or PT Batik Air Indonesia and/or Malindo Airways Sdn. Bhd and/or Transportation Partners Pte. Ltd.

Guarantor(s): N/A.

Description of Items Being Exported:

Boeing 737 aircraft.

Information On Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://www.exim.gov/articles.cfm/board%20minute*.

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

DATES: Comments must be received on or before *December 31, 2012* to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

ADDRESSES: Comments may be submitted through Regulations.gov at *www.regulations.gov*. To submit a comment, enter EIB–2012–0047 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2012–0047 on any attached document.

Sharon A. Whitt,

Records Clearance Officer.

[FR Doc. 2012–29485 Filed 12–5–12; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before February 4, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications

Commission via email to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1101.

Title: Children's Television Requests for Preemption Flexibility.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents and Responses: 15 respondents; 15 responses.

Estimated Time per Response: 10 hours.

Frequency of Response: Annual reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i) and 303 of the Communications Act of 1934, as amended.

Total Annual Burden: 150 hours.

Total Annual Cost: 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: On September 26, 2006, the Commission adopted a Second Order on Reconsideration and Second Report and Order in MM Docket 00–167, FCC 06–143, In the Matter of Children's Television Obligations of Digital Television Broadcasters. The Second Order addressed several matters relating to the obligation of television licensees to provide educational programming for children and the obligation of television licensees and cable operators to protect children from excessive and inappropriate commercial messages. Among other things, the Second Order adopts a children's programming preemption policy. This policy requires all networks requesting preemption flexibility to file a request with the Media Bureau by August 1 of each year. The request identifies the number of preemptions the network expects, when the program will be rescheduled, whether the rescheduled time is the program's second home, and the network's plan to notify viewers of the schedule change. Preemption flexibility requests are not mandatory filings. They are requests that may be filed by networks seeking preemption flexibility.

OMB Control Number: 3060–0837.

Title: Application for DTV Broadcast Station License, FCC Form 302–DTV.

Form Number: FCC Form 302–DTV.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit entities; Not-for-profit institutions.

Number of Respondents/Responses: 300 respondents; 300 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 600 hours.

Total Annual Costs: $133,800.

Nature of Response: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: Licensees and permittees of DTV broadcast stations are required to file FCC Form 302–DTV to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities of these stations. FCC staff use the data to confirm that the station has been built to terms specified in the outstanding construction permit, and to update FCC station files. Staff extracted the data from FCC 302–DTV for inclusion in the subsequent license to operate the station.

OMB Control Number: 3060–0405.

Title: Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station, FCC Form 349.

Form Number: FCC Form 349.

Type of Review: Extension of a currently approved collection.

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

Number of Respondents and Responses: 1,200 respondents; 2,400 responses.

Estimated Time per Response: 1–1.5 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 4,500 hours.

Total Annual Cost: $4,598,100.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Needs and Uses: FCC Form 349 is used to apply for authority to construct a new FM translator or FM booster broadcast station, or to make changes in the existing facilities of such stations.

Form 349 also contains a third party disclosure requirement, pursuant to Section 73.3580. This rule requires stations applying for a new broadcast station, or to make major changes to an existing station, to give local public notice of this filing in a newspaper of general circulation in the community in which the station is located. This local public notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. In addition, a copy of this notice must be placed in the station's public inspection file along with the application, pursuant to Section 73.3527. This recordkeeping information collection requirement is contained in OMB Control No. 3060–0214, which covers Section 73.3527.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–29492 Filed 12–5–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: 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 take this opportunity to comment on the following information collection(s). Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's

burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before February 4, 2013. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B. Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1048.

Title: Section 1.929(c)(1), Composite Interference Contour (CIC).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions and state, local or tribal government.

Number of Respondents: 50 respondents; 50 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: On occasion reporting requirements and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. section 309(j).

Total Annual Burden: 100 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses

The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) for approval of an extension request (no change in the public reporting and/or recordkeeping requirement). There is no change in the Commission's previous burden estimates.

Under 47 CFR 1.929(c)(1) of the Commission's rules, any increase in the composite interference contour (CIC) of a site-based licensee in the Paging and Radiotelephone Service, Rural Radiotelephone Service, or 800 MHz Specialized Mobile Radio Service is a major modification of a license that requires prior Commission approval.

However, in February 2005, the Commission adopted and released final rules which amended section 1.929(c)(1) to specify that expansion of a composite interference contour (CIC) of a site-based licensee in the Paging and Radiotelephone Service—as well as the Rural Radiotelephone Service and 800 MHz Specialized Mobile Radio Service—over water on a secondary, non-interference basis should be classified as a minor (rather than major) modification of a license. Such reclassification has eliminated the filing requirements associated with these license modifications, but requires site-based licensees to provide the geographic area licensee (on the same frequency) with the technical and engineering information necessary to evaluate the site-based licensee's operations over water.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–29491 Filed 12–5–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS12–24]

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—400 7th Street SW., Room 7W–601, Washington, DC 20024.

Date: December 12, 2012.

Time: Immediately following the ASC open session.

Status: Closed.

Matters to be Considered:

November 14, 2012 minutes—Closed Session.

Preliminary discussion of State Compliance Reviews.

Dated: November 30, 2012.

James R. Park,

Executive Director.

[FR Doc. 2012–29480 Filed 12–5–12; 8:45 am]

BILLING CODE P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS12–23]

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 open session for its regular meeting:

Location: OCC—400 7th Street SW., Room 7W–601, Washington, DC 20024.

Date: December 12, 2012.

Time: 10:30 a.m.

Status: Open.

Matters to be Considered:

Summary Agenda:

November 14, 2012 minutes—Open Session.

(No substantive discussion of the above items is anticipated. These matters will be resolved with a single vote unless a member of the ASC requests that an item be moved to the discussion agenda.)

Discussion Agenda:

ASC Policy for the Appraisal Complaint National Hotline

Appraisal Foundation August 2012 Grant Reimbursement Request

Arizona Compliance Review

Pennsylvania Compliance Review

How to Attend and Observe an ASC meeting:

Email your name, organization and contact information to *meetings@asc.gov.* You may also send a written request via U.S. Mail, fax or commercial carrier to the Executive Director of the ASC, 1401 H Street NW.,

Ste 760, Washington, DC 20005. The fax number is 202–289–4101. Your request must be received no later than 4:30 p.m., ET, on the Monday prior to the meeting. Attendees must have a valid government-issued photo ID and must agree to submit to reasonable security measures. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC meetings.

Dated: November 30, 2012.

James R. Park,

Executive Director.

[FR Doc. 2012–29481 Filed 12–5–12; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov.*

Air 7 Seas Transport Logistics, Inc. (NVO & OFF), 1815 Houret Court, Milpitas, CA 95035. Officers: Poonam Dhamija, Secretary (QI), Surya Dhamija, CEO & CFO. Application Type: QI Change.

All International Solutions Inc. (NVO), 281 E. Redondo Beach Blvd., Gardena, CA 90248. Officer: Alexis F. Robin, President (QI). Application Type: New NVO License.

BestOcean Worldwide Logistics, Inc. (NVO & OFF), 1300 Valley Vista Drive, Suite 203, Diamond Bar, CA 91765. Officers: Yuxin Wang, President (QI), Le Sun, CFO. Application Type: QI Change.

D & D Transport, Inc. (NVO & OFF), 4869 Peavey Drive, Meridian, MS 39301. Officers: Uros Pejanovic, Vice President (QI), Hartley Peavey, CEO. Application Type: New NVO & OFF License.

DCI Transport LLC (OFF), 2635 Northgate Avenue, Suite A, Cumming, GA 30041. Officers: Christie Patterson, Manager (QI), Christopher W. Purdy, Chief Executive Manager. Application Type: New OFF License.

EL Palmar International, Inc. (NVO & OFF), 9383 NW 13th Street, Miami, FL 33172. Officers: Andres E. Penalver, President (QI), Eduardo Nucete, Director. Application Type: New NVO & OFF License.

Embarque Los Hidalgos LLC (NVO & OFF), 326 Grand Street, Paterson, NJ 07501. Officers: Juan C. Santos, Manager (QI), Tito Santos, Member. Application Type: New NVO & OFF License.

Enter To USA LLC (NVO & OFF), 1553 NW 82nd Avenue, Miami, FL 33126. Officers: Julio A. Aninat, Manager (QI), Rodrigo A. Armijo, Manager. Application Type: New NVO & OFF License.

Interchez Global Services, Inc. (NVO & OFF), 600 Alpha Pkwy., Stow, OH 44224. Officers: Cassie S. McClellan, COO (QI), Sharlene Chesnes, CEO. Application Type: QI Change.

J. F. Hillebrand USA, Inc. (NVO & OFF), 1600 St. Georges Avenue, Suite 301, Rahway, NJ 07065. Officers: Linda Leonard, Vice President (QI), Jean-Jacques Francoulon, President. Application Type: Add NVO Service.

Kingz International Logistics Inc (OFF), 415 S. Yale Drive, Garland, TX 75042. Officer: Temitope Olojede, CEO (QI), Application Type: New OFF License.

P. J. Caputo Shipping Co. Inc. (OFF), One Edgewater Street, Suite 218, Staten Island, NY 10305. Officers: Peter J. Caputo, Jr., Secretary (QI), Peter J. Caputo, President. Application Type: QI Change.

Paramount Enterprises International, Inc. (OFF), 119 John Robert Thomas Drive, Exton, PA 19341. Officer: Joseph T. Walsh, President (QI). Application Type: New OFF License.

Premier Van Lines, Inc. (NVO), 2208 Harmony Grove Road, Escondido, CA 92029. Officers: Christopher R. McClenaghen, President (QI), Robert L. Berti, Vice President. Application Type: QI Change.

Starship International, Inc. (OFF), 5857 Eagle Cay Lane, Coconut Creek, FL 33073. Officer: Stella Florez, President (QI). Application Type: New OFF License.

Transnuclear, Inc. (NVO & OFF), 7135 Minstrel Way, Suite 300, Columbia, MD 21045. Officers: Michael P. Valenzano, Director, Transportation (QI), Michael McMahon, President. Application Type: QI Change.

By the Commission.

Dated: November 30, 2012.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2012–29450 Filed 12–5–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been reissued pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101) effective on the date shown.

License No.: 022069F.
Name: Unique Logistics International (ATL) LLC.
Address: 510 Plaza Drive, Suite 2290, Atlanta, GA 30349.
Date Reissued: October 15, 2012.

License No.: 015574N.
Name: WW Messenger & Shipping Co.
Address: 150 Main Street, Unit 9, Orange, NJ 07050.
Date Reissued: October 15, 2012.

Vern W. Hill,

Director, Bureau of Certification and Licensing.

[FR Doc. 2012–29445 Filed 12–5–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101) effective on the date shown.

License No.: 3135N.
Name: N & N Safeway Shipping Company.
Address: 871 E. Artesia Blvd., Carson, CA 90746.
Date Revoked: November 7, 2012.
Reason: Failed to maintain a valid bond.

License No.: 4243F.
Name: Bauhinia International Corp.
Address: 124–12 111th Avenue, South Ozone Park, NY 11420.
Date Revoked: October 31, 2012.
Reason: Failed to maintain a valid bond.

License No.: 018498N.
Name: Utopia Worldwide, Inc.
Address: 99 W. Hawthorne Avenue, Suite L–10, Valley Stream, NY 11580.
Date Revoked: October 31, 2012.
Reason: Failed to maintain a valid bond.

License No.: 021628N.
Name: A & S Shipping Company, Inc.
Address: 2759 NW 82nd Avenue, Miami, FL 33122.
Date Revoked: October 25, 2012.
Reason: Failed to maintain a valid bond.

License No.: 022844F.
Name: World Freight Solutions Inc.
Address: 691 Dekle Street, Mobile, AL 36602.
Date Revoked: October 21, 2012.
Reason: Failed to maintain a valid bond.

License No.: 023505NF.
Name: Savannah Logistical Services, LLC dba Savannah Logistical Services dba SLS.
Address: 145 Distribution Drive, Pooler, GA 31322.
Date Revoked: October 27, 2012.
Reason: Failed to maintain valid bonds.

License No.: 004027F.
Name: U.S. Airfreight, Inc.
Address: 2624 NW 112th Avenue, Doral, FL 33172.
Date Revoked: October 28, 2012.
Reason: Failed to maintain a valid bond.

License No.: 022988F.
Name: World Class Solutions LLC.
Address: 3901 NW 79th Avenue, Suite 230, Doral, FL 33166.
Date Revoked: November 8, 2012.
Reason: Failed to maintain a valid bond.

Vern W. Hill,
Director, Bureau of Certification and Licensing.

[FR Doc. 2012–29446 Filed 12–5–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 21, 2012.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Horizon Bancorp Employee Stock Ownership Plan,* Michigan City, Indiana; to acquire voting shares of Horizon Bancorp, and thereby indirectly acquire voting shares of Horizon Bank, National Association, both in Michigan City, Indiana.

Board of Governors of the Federal Reserve System, December 3, 2012.

Margaret McCloskey Shanks,
Deputy Secretary of the Board.

[FR Doc. 2012–29470 Filed 12–5–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Requirements and Registration for healthfinder.gov Mobile App Challenge

AGENCY: Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: healthfinder.gov is a free, award-winning federal Web site that features reliable, evidence-based, and actionable health information presented in plain language. The site has approximately 1 million visits each month. The prevention and wellness information and resources educate and motivate users to incorporate healthy behaviors into their lives by taking small steps towards improving their health. healthfinder.gov also provides information about U.S. Preventive Services Task Force recommended preventive services, giving the public personalized information and resources about these services. It also offers decision support for all of the clinical preventive services covered by the Affordable Care Act.

The Office of Disease Prevention and Health Promotion (ODPHP) is launching a healthfinder.gov Mobile App Challenge to promote the development of a mobile app that will facilitate the customized use of prevention and wellness information featured on the Web site.

The purpose is to provide a customized tool to reach health consumers where they are making health decisions so that they can improve their health and the health of loved ones.

DATES: Effective on December 6, 2012. Important dates include the following:
December 6, 2012: healthfinder App Challenge is announced on *www.challenge.gov* and opened for submissions on *www.health2challenge.org.* Health Tech Hatch opens crowd sourcing platform for developers to receive feedback, user testing, and/or support and backing.
February 1, 2013: Deadline for Phase I Submissions.
February 8, 2013: HHS announces top three challenge applicants and launches Phase II.
March 8, 2013: Deadline for Phase II Submissions.
March 17, 2013 (tentative): HHS announces grand prize winner.

ADDRESSES: Participants can register for the Challenge by visiting *www.health2challenge.org.*

FOR FURTHER INFORMATION CONTACT: Silje Lier, MPH, Communication Advisor, Office of Disease Prevention and Health Promotion, U.S. Department of Health and Human Services. Email *Silje.Lier@hhs.gov;* phone 240–453–6113.

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition: healthfinder.gov App Challenge.

Eligibility Rules for Participating in the Competition: To be eligible to win a prize under this challenge, an individual or entity—

(1) Shall have registered to participate in the competition under the rules promulgated by the Department of Health and Human Services (HHS) and Health 2.0;

(2) Shall have complied with all the requirements under this section;

(3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States; and

(4) May not be a federal entity or federal employee acting within the scope of their employment.

(5) Shall not be a HHS employee working on their applications or submissions during assigned duty hours.

(6) Shall not be in the reporting chain of the Office of the Assistant Secretary for Health.

(7) Federal grantees may not use federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award.

(8) Federal contractors may not use federal funds from a contract to develop COMPETES Act challenge applications

or to fund efforts in support of a COMPETES Act challenge submission.

(9) Applicants must agree to provide the federal government an irrevocable, royalty-free, non-exclusive worldwide license for one year, given that they are prize winners. HHS has the right to distribute copies, display, create derivative works, and publicly post, link to, and share the work or parts thereof.

An individual or entity shall not be deemed ineligible because the individual or entity used federal facilities or consulted with federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

Challenge participants will be expected to sign a liability release as part of the contest registration process. The liability release will use the following language:

By participating in this competition, I agree to assume any and all risks and waive claims against the federal government and its related entities, except in the case of willing misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from my participation in this prize contest, whether the injury, death, damage, or loss arises through negligence or otherwise.

Amount of the Prize: The final challenge winner will be provided a monetary cash prize totaling $50,000. The winning solution will be promoted by ODPHP, and will live on healthfinder.gov.

Basis Upon Which Winner Will Be Selected: Challenge submissions will be judged by a panel selected by healthfinder.gov with relevant expertise in health IT, health literacy, and prevention. Winners will be selected based on the following criteria:

1. Usability and Design;
2. Health Literacy Principles;
3. Focus on Prevention and Wellness;
4. Evidence of Co-design with Users;
5. Innovation in Design;
6. Functionality/Accuracy; and
7. healthfinder.gov Look and Feel.

Award Approving Official: Don Wright, Deputy Assistant Secretary for Health, Office of Disease Prevention and Health Promotion.

Additional Information: *www.healthfinder.gov* contains prevention and wellness information based on health literacy principles. Challenge participants will draw from existing information provided on healthfinder.gov and collaborate directly with health professionals and/or end users to build their application. They will have access to healthfinder.gov's content syndication tool and application programming interface (API). For more information, visit *http://healthfinder.gov/contentsyndication.*

Dated: November 30, 2012.

Don Wright,

Deputy Assistant Secretary for Health, Office of Disease Prevention and Health Promotion.

[FR Doc. 2012–29520 Filed 12–5–12; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Requirements and Registration for ''Mobilizing Data for Pressure Ulcer Prevention Challenge''

AGENCY: Office of the National Coordinator for Health Information Technology, HHS; *Award Approving Official:* Farzad Mostashari, National Coordinator for Health Information Technology.

ACTION: Notice.

SUMMARY: According to the Agency for Healthcare Research and Quality (AHRQ), each year more than 2.5 million people in the United States are affected by skin breakdowns that cause pain, increased risk for serious infection, and increased health care utilization. The National Pressure Ulcer Advisory Panel (NPUAP) serves as the authoritative voice for improved patient outcomes in pressure ulcer prevention and treatment through public policy, education and research, and publishes resources and documents at *www.npuap.org/index.html.* AHRQ has published an acute care toolkit for prevention of pressure ulcers at *www.ahrq.gov/research/ltc/pressureulcertoolkit/putool7b.htm.* Many of today's electronic documentation systems require nurses to enter oversimplified text narratives or check boxes. Even when documentation systems include standard terminology, the data is locked inside proprietary software.

Development of a mobile health application (app) for iPhone, iPad, or Android devices that implements standards for documenting and exchanging health information about pressure ulcers will facilitate meaningful information exchange and improve the patient experience and coordination of care across the healthcare continuum while reducing health care costs. A mobile health app would support nurses, in partnership with patients, families, caregivers and the multidisciplinary health care team, to reduce the incidence and severity of pressure ulcers.

There are two goals for the Mobilizing Data for Pressure Ulcer Prevention Challenge. First, the development of a standard bedside pressure ulcer assessment tool, and second, the broader goal to promote the integration of nursing content into common information models and Systematized Nomenclature of Medicine Clinical Terms (SNOMED CT). With documentation tools that include common information models and standard terminology for structured representation of appropriate nursing knowledge, nurses achieve the ability to track changes in patient status and to exchange information to improve continuity of care.

The statutory authority for this challenge competition is Section 105 of the America COMPETES Reauthorization Act of 2010 (Pub. L. 11–358).

DATES: Effective on December 5, 2012. Challenge submission period ends April 29, 2013, 11:59 p.m. et.

FOR FURTHER INFORMATION CONTACT: Adam Wong, 202–720–2866.

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition

The ''Mobilizing Data for Pressure Ulcer Prevention Challenge'' is a multidisciplinary call to develop a mobile health app to facilitate observation and documentation for prevention, early detection and appropriate management of pressure ulcers in clinical settings. The app is intended to encourage the use of information exchange standards. The challenge will demonstrate the value of common models and terminologies and promote the continued integration of nursing content into SNOMED CT, as well as the development of common clinical information models of interest to nursing.

Submissions must include the following attributes:

- Provide an easy-to-understand and intuitive user interface
- Enter information about the pressure ulcer, including skin color, temperature, and moisture
- Capture photos of the pressure ulcer
- Generate a clinical assessment document
- Apply the following HL7 health care information systems security standards and knowledge, available at *http://wiki.hl7.org/index.php?title=Pressure_Ulcer_Prevention:*
  - Reconciled PDF (October 2011) with introduction (*http://wiki.hl7.org/images/e/eb/PressureUlcerPrevention_DomainAnalysisModel_Oct2011pdf.zip*)

○ The model, Sparx Enterprise Architect (*http://wiki.hl7.org/images/4/4b/PressureUlcerPrevention_Oct2011_reconciled.zip*)

• Apply the terminology and candidate models in the LOINC® Nursing Subcommittee and the International Health Terminology Standards Development Organization (IHTSDO) Nursing Special Interest Group (SIG), available at *https://csfe.aceworkspace.net/sf/sfmain/do/viewProject/projects.nursing_sig*

• Collect, display and transmit content suitable for reporting for meaningful use, quality measures, research and for health information exchange with an electronic health record (EHR) and/or personal health record (PHR)

○ Where applicable, use Nationwide Health Information Network (NwHIN) standards and services including, but not limited to, transport (Direct, web services), content (Transitions of Care, CCD/CCR), and standardized vocabularies

Eligibility Rules for Participating in the Competition

To be eligible to win a prize under this challenge, an individual or entity—

(1) Shall have registered to participate in the competition under the rules promulgated by the Office of the National Coordinator for Health Information Technology.

(2) Shall have complied with all the requirements under this section.

(3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States.

(4) May not be a Federal entity or Federal employee acting within the scope of their employment.

(5) Shall not be an HHS employee working on their applications or submissions during assigned duty hours.

(6) Shall not be an employee of Office of the National Coordinator for Health IT.

(7) Federal grantees may not use Federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award.

(8) Federal contractors may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.

An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

Entrants must agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from my participation in this prize contest, whether the injury, death, damage, or loss arises through negligence or otherwise.

Entrants must also agree to indemnify the Federal Government against third party claims for damages arising from or related to competition activities.

Registration Process for Participants

To register for this challenge participants should either:

▪ Access the *www.challenge.gov* Web site and search for the ''Mobilizing Data for Pressure Ulcer Prevention Challenge''.

▪ Access the ONC Investing in Innovation (i2) Challenge Web site at:

○ *http://www.health2con.com/devchallenge/challenges/onc-i2-challenges/*

○ A registration link for the challenge can be found on the landing page under the challenge description.

Amount of the Prize

▪ First Prize: $60,000
▪ Second Prize: $15,000
▪ Third Prize: $5,000

Awards may be subject to Federal income taxes and HHS will comply with IRS withholding and reporting requirements, where applicable.

Payment of the Prize

Prize will be paid by contractor.

Basis Upon Which Winner Will Be Selected

The review panel will make selections based upon the following criteria:

• Innovation
• Design and usability, including user friendliness and attractiveness of the interface
• Use of National Pressure Ulcer Advisory Panel (NPUAP) guidance to improve pressure ulcer prevention and care
• Ease of integration with PHR/EHR interface
• Application of the HL7 Pressure Ulcer Prevention Domain Analysis Model (DAM)
• Application of the LOINC® Nursing Subcommittee and the International Health Terminology Standards Development Organization (IHTSDO) Nursing Special Interest Group (SIG) terminology and candidate models

In order for an entry to be eligible to win this Challenge, it must meet the following requirements:

1. *General*—Contestants must provide continuous access to the app, a detailed description of the app, instructions on how to install and operate the app, and system requirements required to run the app (collectively, ''Submission'').

2. *Acceptable platforms*—The tool must be designed for use with the Web, a personal computer, a mobile handheld device, console, or any platform broadly accessible on the open Internet.

3. *No HHS or ONC logo*—The app must not use HHS' or ONC's logo or official seal in the Submission, and must not claim endorsement.

4. *Section 508 Compliance*—Contestants must acknowledge that they understand that, as a pre-requisite to any subsequent acquisition by FAR contract or other method, they may be required to make their proposed solution compliant with Section 508 accessibility and usability requirements at their own expense. Any electronic information technology that is ultimately obtained by HHS for its use, development, or maintenance must meet Section 508 accessibility and usability standards. Past experience has demonstrated that it can be costly for solution-providers to ''retrofit'' solutions if remediation is later needed. The HHS Section 508 Evaluation Product Assessment Template, available at *http://www.hhs.gov/od/vendors/index.html*, provides a useful roadmap for developers to review. It is a simple, web-based checklist utilized by HHS officials to allow vendors to document how their products do or do not meet the various Section 508 requirements.

5. *Functionality/Accuracy*—A Submission may be disqualified if the application fails to function as expressed in the description provided by the user, or if the application provides inaccurate or incomplete information.

6. *Security*—Submissions must be free of malware. Contestant agrees that the ONC may conduct testing on the app to determine whether malware or other security threats may be present. ONC may disqualify the app if, in ONC's judgment, the app may damage government or others' equipment or operating environment.

Additional Information

Since the Health Level 7 (HL7) Pressure Ulcer Prevention Domain Analysis Model (DAM) does not address

the use of photographic images, the ONC invites suggestions for extending the HL7 DAM to accommodate images.

Ownership of intellectual property is determined by the following:

• Each entrant retains title and full ownership in and to their submission. Entrants expressly reserve all intellectual property rights not expressly granted under the challenge agreement.

• By participating in the challenge, each entrant hereby irrevocably grants to Sponsor and Administrator a limited, non-exclusive, royalty free, worldwide, license and right to reproduce, publically perform, publically display, and use the Submission to the extent necessary to administer the challenge, and to publically perform and publically display the Submission, including, without limitation, for advertising and promotional purposes relating to the challenge.

Authority: 15 U.S.C. 3719.

Dated: November 20, 2012.

Farzad Mostashari,

National Coordinator for Health Information Technology.

[FR Doc. 2012–29524 Filed 12–5–12; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–13–0214]

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

National Health Interview Survey (NHIS), (OMB No. 0920–0214 expiration 08/31/2014)—Revision—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.

The annual National Health Interview Survey is a major source of general statistics on the health of the U.S. population and has been in the field continuously since 1957. Clearance is sought for three years, to collect data for 2013, 2014, and 2015. This voluntary household-based survey collects demographic and health-related information on a nationally representative sample of persons and households throughout the country. Information is collected using computer assisted personal interviews (CAPI). A core set of data is collected each year while sponsored supplements vary from year to year. For 2013, there are supplementary questions on cancer screening, asthma, immune suppression, hepatitis, epilepsy, HIV testing, neighborhood characteristics, financial worries, sleep issues, and sexual identity.

Cases in a 5,000 case test were randomly assigned to receive questions on HIV testing, neighborhood characteristics, financial worries, sleep issues, and sexual identity in either CAPI or ACASI. Prevalence estimates for the sexual identity questions were compared by mode of administration. Since a documented advantage of ACASI is the enhanced level of privacy it affords, we anticipated higher prevalence estimates from this mode of administration. Estimates were similar for the two modes of administration. Therefore, the questions will be administered in CAPI, the more cost efficient mode.

In accordance with the 1995 initiative to increase the integration of surveys within the Department of Health and Human Services, respondents to the NHIS serve as the sampling frame for the Medical Expenditure Panel Survey conducted by the Agency for Healthcare Research and Quality. The NHIS has long been used by government, university, and private researchers to evaluate both general health and specific issues, such as cancer, diabetes, and access to health care. It is a leading source of data for the Congressionally-mandated ''Health US'' and related publications, as well as the single most important source of statistics to track progress toward the National Health Promotion and Disease Prevention Objectives.

There is no cost to the respondents other than their time. As shown below, the estimated overall average annual burden for the 2013, 2014, and 2015 surveys is 57,099 hours.

ANNUALIZED BURDEN TABLE

Questionnaire (respondent)	Number of respondents	Number of responses per respondent	Average burden per respondent in hours
Screener Questionnaire	12,000	1	5/60
Family Core (adult family member)	55,000	1	23/60
Adult Core (sample adult)	44,000	1	15/60
Child Core (adult family member)	17,000	1	10/60
Child/Teen Record Check (medical provider)	10,000	1	5/60
Supplements (adult family member)	60,000	1	12/60
Sexual Identity Module (adult family member)	44,000	1	4/60
Multi-mode study (adult family member)	5,000	1	30/60
Reinterview Survey	5,000	1	5/60
Sample Frame Test (adult family member)	5,000	1	30/60

Kimberly S. Lane,

Deputy Director, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–29474 Filed 12–5–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The Centers for Disease Control (CDC)/ Health Resources and Services Administration (HRSA) Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment, Department of Health and Human Services, has been renewed for a 2-year period through November 25, 2014.

Contact Person for More Information: Kevin Fenton, M.D., Ph.D., Designated Federal Officer, CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment, Department of Health and Human Services, CDC, 1600 Clifton Road, NE., Mailstop E07, Atlanta, Georgia 30333, telephone (404) 639–8000 or fax (404) 639–8600.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 29, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–29471 Filed 12–5–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Request for Nominations for Candidates To Serve on the National Public Health Surveillance and Biosurveillance Advisory Committee (NPHSBAC)

Correction: This notice was published in the **Federal Register** on November 1, 2012 Volume 77, Number 215, page 66620. This notice is to announce the extension of submission for potential nominees.

Nominations should be sent, in writing, and postmarked by December 21, 2012: Vernellia Johnson, Management and Program Analyst, Public Health Surveillance and Informatics Program Office, Centers for Disease Control and Prevention, Office of Surveillance, Epidemiology and Laboratory Services Century, 1600 Clifton Road NE., MS E–97, Atlanta, GA 30333 or via email to *hft9@cdc.gov.* Telephone and facsimile submissions cannot be accepted.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: November 30, 2012.

Cathy Ramadei,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 2012–29478 Filed 12–5–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–1086]

Compliance Guidance for Small Business Entities on Labeling and Effectiveness Testing; Sunscreen Drug Products for Over-the-Counter Human Use; Notice of Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a compliance guidance for small business entities entitled ''Labeling and Effectiveness Testing: Sunscreen Drug Products for Over-the-Counter Human Use; Small Entity Compliance Guide.'' This guidance is intended to help small businesses understand and comply with the requirements of the final rule addressing labeling and effectiveness testing requirements for over-the counter (OTC) sunscreen drug products. The guidance describes the requirements of the final rule in plain language and provides answers to common questions on how to comply with the rule. This guidance was prepared in accordance with the Small Business Regulatory Enforcement Fairness Act.

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: Reynold Tan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5493, Silver Spring, MD 20993–0002, 301–796–1009.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a compliance guidance for small business entities entitled ''Labeling and Effectiveness Testing: Sunscreen Drug Products for Over-the-Counter Human Use; Small Entity Compliance Guide.'' This guidance summarizes the June 17, 2011, final rule (76 FR 35620) regarding labeling and testing requirements for OTC sunscreen drug products. Under the 2011 sunscreen final rule, required and permitted labeling is based upon the results of effectiveness testing. The effectiveness testing consists of a sun protection factor (SPF) Test and a Broad Spectrum (ultraviolet A (UVA) and ultraviolet B (UVB) protection) Test. In addition, a test demonstrating water resistance that accompanies the SPF Test to ensure retention of SPF

protection while swimming or sweating is described. The 2011 sunscreen final rule makes the following changes to OTC sunscreen drug product regulations:

- Requires that OTC sunscreen drug products follow Drug Facts labeling content and format requirements in § 201.66 (21 CFR 201.66).
- Establishes new labeling requirements for marketed OTC sunscreen drug products set forth in § 201.327 (21 CFR 201.327).
- Revises SPF, broad spectrum, and water-resistant testing requirements and the indications and claims allowed based upon the results of these tests in § 201.327(i) and (j).

FDA is issuing this compliance guidance for small business entities as a level 2 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on the testing requirements for OTC sunscreen drug products and revision of labeling requirements for OTC sunscreen drug products. 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 found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in § 201.327 have been approved under OMB control number 0910–0717.

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/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: November 30, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–29462 Filed 12–5–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–1135]

Guidance for Industry on Limiting the Use of Certain Phthalates as Excipients in Center for Drug Evaluation and Research-Regulated Products; 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 ''Limiting the Use of Certain Phthalates as Excipients in CDER-Regulated Products.'' This guidance provides the pharmaceutical industry with the Center for Drug Evaluation and Research's (CDER's) current thinking on the potential human health risks associated with exposure to dibutyl phthalate (DBP) and di(2-ethylhexyl) phthalate (DEHP). In particular, the guidance recommends that the pharmaceutical industry avoid the use of these two specific phthalates as excipients in CDER-regulated drug and biologic products, including prescription and nonprescription products.

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

ADDRESSES: Submit written requests for single copies of the guidance to the Division of 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: Laurie Muldowney, Center for Drug Evaluation and Research (HFD–003), Food and Drug Administration, Bldg. 51, Rm. 4154, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–1571.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Limiting the Use of Certain Phthalates as Excipients in CDER-Regulated Products.'' This guidance provides the pharmaceutical industry with CDER's current thinking on the potential human health risks associated with exposure to DBP and DEHP. In particular, the guidance recommends that the pharmaceutical industry avoid the use of these two specific phthalates as excipients in CDER-regulated drug and biologic products, including prescription and nonprescription products. The recommendations in this guidance do not address the use of DBP or DEHP in other types of FDA-regulated products or exposure to DBP or DEHP due to the presence of any of these compounds as an impurity—including as a result of leaching from packaging materials and delivery systems.

Phthalate esters (phthalates) are synthetic chemicals with a broad spectrum of uses. Phthalates are found in certain pharmaceutical formulations, primarily as a plasticizer in enteric-coatings of solid oral drug products to maintain flexibility, but they also may be used for different functions in other dosage forms. Phthalates also are found in other products for uses such as softeners of plastics, solvents in perfumes, and additives to nail polish, as well as in lubricants and insect repellents.

Phthalates have been studied extensively in animals, and DBP and DEHP have been shown to be developmental and reproductive toxicants in laboratory animals. While the data in humans are less clear, epidemiological studies suggest that certain phthalates may affect reproductive and developmental outcomes. Other studies have confirmed the presence of DBP and DEHP in amniotic fluid, breast milk, urine, and serum.

Data from the National Health and Nutrition Examination Survey indicate widespread exposure of the general population to phthalates. Humans are exposed to phthalates by multiple

routes, including inhalation, ingestion, and to a lesser degree absorption through the skin. Several observational human studies have reported an association between exposure to certain phthalates and adverse developmental and reproductive effects. The ubiquitous presence of phthalates in the environment and the potential consequences of human exposure to phthalates have raised concerns, particularly in vulnerable populations such as pregnant women and infants.

Although the currently available human data are limited, the Agency has determined that there is evidence that exposure to DBP and DEHP from pharmaceuticals presents a potential risk of developmental and reproductive toxicity. While it is recognized that drug products may carry inherent risks, DBP and DEHP are used as excipients, and safer alternatives are available. Therefore, the Agency recommends avoiding the use of DBP and DEHP as excipients in CDER-regulated drug and biologic products.

These recommendations apply to CDER-regulated drug and biologic products that are under development (i.e., investigational new drugs), nonapplication products (e.g., over the counter monograph products), and both marketed approved products and those currently under review for marketing consideration (i.e., new drug applications, abbreviated new drug applications, and biologics license applications).

There are alternatives to DBP and DEHP for use as excipients in CDER-regulated products. Manufacturers with products that contain DBP or DEHP should consider alternative excipients and determine if the alternative excipient they plan to use has been used in similar CDER-approved products and at what level.

The Inactive Ingredients Database provides information on excipients present in FDA-approved drug products, and this information can be helpful in developing drug products. As manufacturers reformulate their products, the listings for DBP and DEHP will be removed from the Inactive Ingredients Database.

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 limiting the use of certain phthalates as excipients in CDER-regulated products. 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. 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.*

III. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and have been approved under OMB control numbers 0910–0014 and 0910–0001.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: November 30, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–29461 Filed 12–5–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission 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 (44 U.S.C. Chapter 35), the Health Resources and Services Administration (HRSA) will submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB). Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. To request a copy of the clearance requests submitted to OMB for review, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office at (301) 443–1984.

Information Collection Request Title: Health Center Controlled Networks (OMB No. 0915-xxxx) NEW

Abstract: One goal of the Health Resources and Services Administration (HRSA) is to ensure that all Health Center Program grantees effectively implement health information technology (HIT) systems that enable all providers to become meaningful users of HIT, including Electronic Health Records (EHR), and use those systems to increase access to care, improve quality of care, and reduce the costs of care delivered. The Health Center Controlled Network (HCCN) program serves as a major component of HRSA's HIT initiative to support these goals. The HCCN model focuses on the integration of certain functions and the sharing of skills, resources, and data to improve health center operations and care provision, and to generate efficiencies and economies of scale. Through this grant, HCCNs will provide support for the adoption, implementation, and meaningful use of HIT to improve the quality of care provided by existing Health Center Program grantees (i.e., Section 330 funded health centers) by engaging in the following program components:

- *Adoption and Implementation:* Assist participating health centers with effectively adopting and implementing certified EHR technology.
- *Meaningful Use:* Support participating health centers in meeting Meaningful Use requirements and accessing incentive payments under the Medicare and Medicaid EHR Incentive Programs.
- *Quality Improvement (QI):* Advance participating health centers' QI initiatives to improve clinical and operational quality, including Patient Centered Medical Home (PCMH) recognition.

HRSA plans to collect and evaluate network outcome measures. HRSA also plans to require that HCCNs report such measures to HRSA in annual work plan updates as part of their annual, non-competing continuation progress reports through an electronic reporting system. The work plan updates will include information on grantees' plans and progress on the following:

• Adoption and Implementation of HIT (including EHR);
• Attainment of Meaningful Use Requirements; and
• QI Measures (e.g., Healthy People 2020 clinical quality measures, PCMH recognition status, etc.).

The annual, non-competing continuation progress reports will describe each grantee's progress in achieving key activity goals such as quality improvement, data access and exchange, efficiency and effectiveness of network services, and the ability to track and monitor patient outcomes, as well as emerging needs, challenges and barriers encountered, customer satisfaction, and plans to meet goals for the next year. Grantees will submit their work plan updates and annual, non-competing continuation progress report each fiscal year of the grant; the submission and subsequent HRSA approval of each report triggers the budget period renewal and release of each subsequent year of funding. The estimated total number of burden hours is 1662.

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.

The annual estimate of burden is as follows:

Form name	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Work Plan Update	30	1	30	10.9	327
Annual Progress Report/Interim Evaluation Progress Report	30	1	30	44.5	1,335
Total	30				1,662

ADDRESSES: Submit your comments to the desk officer for HRSA either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Deadline: Comments on this ICR should be received within 30 days of this notice.

Dated: November 29, 2012.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2012–29496 Filed 12–5–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request (60-Day FRN): The Agricultural Health Study: A Prospective Cohort Study of Cancer and Other Disease Among Men and Women in Agriculture (NCI)

Summary: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) The quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To submit comments in writing, request more information on the proposed project, or to obtain a copy of the data collection plans and instruments, contact: Jane Hoppin, Sc.D., Epidemiology Branch, National Institute of Environmental Health Sciences, NIH, 111 T.W. Alexander Drive, PO Box 12233, MD A3–05, Research Triangle Park, NC 27709, or call non-toll-free number 919–541–7622, or email your request, including your address to: *hoppin1@niehs.nih.gov*.

Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: The Agricultural Health Study: A Prospective Cohort Study of Cancer and Other Disease Among Men and Women in Agriculture, 0925–0406, Expiration Date 5/31/2013—REVISION—National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

Need and Use of Information Collection: The purpose of this information collection is to continue and complete updating the occupational and environmental exposure information as well as medical history information for licensed pesticide applicators and their spouses enrolled in the Agricultural Health Study. This represents a request to complete phase IV (2013–2015) of the study and to continue and complete the buccal cell collection and the Study of Biomarkers of Exposures and Effects in Agriculture (BEEA). The primary objectives of the study are to determine the health effects resulting from occupational and environmental exposures in the agricultural environment. The phase IV follow up data will be collected by using one of three methods of the cohort member's choosing: self-administered computer assisted web survey (CAWI); self-administered paper-and-pen (Paper/pen); or an interviewer administered computer assisted telephone interview (CATI). Proxy interviews for those cohort members unable to complete the follow up will be completed by using one of the three methods as well. Secondary objectives include evaluating

biological markers that may be associated with agricultural exposures and risk of certain types of cancer. Questionnaire data will be collected by using computer assisted telephone interview (CATI) and in-person interview (CAPI) systems for telephone screeners and home visit interviews, respectively. Some respondents will also be asked to participate in the collection of biospecimens including blood, urine, and buccal cells (loose cells from the respondent's mouth). The findings will provide valuable information concerning the potential link between agricultural exposures and cancer and other chronic diseases among agricultural Health Study cohort members, and this information may be generalized to the entire agricultural community.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 10,465.

Estimated Annualized Burden Hours

TABLE A.12–1—ESTIMATES ANNUALIZED BURDEN HOURS

Type of respondent	Form	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
Private and Commercial Applicators and Spouses.	Reminder, Missing, and Damaged Scripts for Buccal Cell.	100	1	5/60	8
Private Applicators	BEEA CATI Screener	480	1	20/60	160
Private Applicators	BEEA Home Visit CAPI, Blood, & Urine x 1.	160	1	30/60	80
Private Applicators	BEEA Schedule Home Visit Script	20	3	5/60	5
Private Applicators	BEEA Home Visit CAPI, Blood, & Urine x 3.	20	3	30/60	30
Private Applicators	Paper/pen, CAWI or CATI	13,855	1	25/60	5,773
Spouses	Paper/pen, CAWI or CATI	10,201	1	25/60	4,250
Proxy	Paper/pen, CAWI or CATI	635	1	15/60	159
Total					10,465

Dated: November 30, 2012

Vivian Horovitch-Kelley,

Program Analyst, NCI, NIH.

[FR Doc. 2012–29548 Filed 12–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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: Center for Scientific Review Special Emphasis Panel; Neurodegeneration Mechanisms.

Date: December 10, 2012.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Peter B. Guthrie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.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. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 30, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–29447 Filed 12–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of 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 National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, 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 Advisory Neurological Disorders and Stroke Council.

Date: January 31–February 1, 2013.

Open: January 31, 2013, 8:00 a.m. to 2:45 p.m.

Agenda: Report by the Director, NINDS; Report by the Associate Director for Extramural Research; and Administrative and Program Developments.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 6, Bethesda, MD 20892.

Closed: January 31, 2013, 2:45 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 6, Bethesda, MD 20892.

Closed: February 1, 2013, 8:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 6, Bethesda, MD 20892.

Contact Person: Robert Finkelstein, Ph.D., Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892, (301) 496–9248.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http:// www.ninds.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: November 30, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–29449 Filed 12–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Member Conflict Applications—Basic Sciences.

Date: December 19, 2012.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIAAA 5635 Fishers Lane, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Ranga Srinivas, Ph.D., Chief, Extramural Project Review Branch Office of Extramural Activities, NIAAA, National Institutes of Health, 5365 Fishers Lane, Room 2085, Rockville, MD 20852, (301) 451–2067, *srinivar@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.273, Alcohol Research Programs; National Institutes of Health, HHS)

Dated: November 30, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–29448 Filed 12–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Revocation of Customs Broker Licenses

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Customs broker license revocations for the failure to file the triennial status report and applicable fee.

SUMMARY: Notice is hereby given that pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and title 19 of the Code of Federal Regulations at section 111.30(d), (19 CFR 111.30(d)) the following Customs broker licenses are revoked by operation of law without prejudice.

Last/company name	First name	License	Port of issuance
Poplarchik	Sherry Lou	17058	Anchorage.
Joo	Suk C	21454	Anchorage.
Parker	Marvin H	04273	Anchorage.
Miller	John S	16474	Atlanta.
Topoulos	Christine	24021	Atlanta.
Pangburn	Kimberly J	16474	Atlanta.
Le	Anthony	27512	Atlanta.
Koshy	Kurian	22300	Atlanta.
Love	Charles Michael	20059	Atlanta.
Henry	Perry W	15714	Atlanta.
Kraus	Linda Louise	07532	Baltimore.
Martin	Wade S	16390	Baltimore.
World Trade Logistics, Inc		27975	Baltimore.
Kraus	Duncan Lee	03587	Baltimore.
Beck	Jonathan P	10436	Baltimore.
Malone	Helen	10404	Baltimore.
Curley	Richard Francis	04536	Boston.
Macchione	Richard	04897	Boston.
McCleery	Richard F	10542	Boston.
Hamson	Raymond	03396	Boston.
Thompson	Jane D	09126	Buffalo.
Hachee	Michael W	04191	Buffalo.
Koss	Lori Janeen	16184	Buffalo.
Smith	Esther	17581	Buffalo.
Dixon	Kathleen M	10523	Buffalo.

Last/company name	First name	License	Port of issuance
Hagyard	Carol Sue	10942	Buffalo.
Litwin	Alan L	05025	Buffalo.
Levenson	Elizabeth A	05926	Buffalo.
Knoblock	Kathleen M	11091	Buffalo.
Tower	Peter	02420	Buffalo.
DeGrandpre	Christopher B	20975	Champlain.
Sholan	Charles Nelson	04025	Champlain.
Penfield	Conrad S	03229	Champlain.
Carey	Francis L	06837	Champlain.
Meseck	Ronald R	07270	Champlain.
Erwin	Martha J	10898	Champlain.
Bouyea	Janet C	11082	Champlain.
Wister	Steven A	15506	Champlain.
Hail	David	20370	Charleston.
Childers	Carol J	14011	Charleston.
Smith	William A	09028	Charleston.
Johnson	Christine Marie Elizabeth	14010	Charleston.
Smith	Julie Ann	13117	Charleston.
McCarthy, III	Charles Joseph	10159	Charleston.
Thomas	David Michael	06535	Charleston.
Sabback	Darlene B	10353	Charleston.
Lott	Jesse J	23539	Charleston.
Barr IV	Capers	21749	Charleston.
Davenport	William L	06634	Charleston.
Pelloni	Robin	15894	Charleston.
Garst, III	James L	05563	Charlotte.
McHale	Bernard J	09099	Charlotte.
Abernathy	Barbara B	15707	Charlotte.
McKinnon	Candace E	15923	Charlotte.
Tucker	Evadne Winniefred	15001	Charlotte.
McHale	Michael J	15021	Charlotte.
Simpson	Elaine M	10849	Charlotte.
Bailey	Jequita Keith	22021	Charlotte.
Corbin	Nicole Kathleen	22644	Charlotte.
Devane	Bonnie W	10197	Charlotte.
Novakovsky	Mila	15946	Chicago.
Wheeler	Loren Wenfeng	13087	Chicago.
Herrera	John C	14586	Chicago.
Stanley	Thomas A	17161	Chicago.
Luludakis	Angela	09730	Chicago.
Schaible-Klaiss	Kathleen M	22382	Chicago.
Abel	Danette Marie	15313	Chicago.
Carcione	Lisa	10590	Chicago.
Flick	Barbara L	06943	Chicago.
Downie	Kevin	05733	Chicago.
Santos	Pablo C	17201	Chicago.
Dai	Jessica	24192	Chicago.
McGinnis	Eileen M	06735	Chicago.
Kerr	Angela Reed	10261	Chicago.
Adair	Jeffrey	14558	Cleveland.
Ferling	Ronald F	20225	Cleveland.
Gill	Linda J	15909	Cleveland.
Nuckles	Mickie M	11198	Cleveland.
Lauterbach	Paul D	23413	Cleveland.
Garen	Stacia D	23293	Cleveland.
Marshall	William	16996	Cleveland.
Chaffee	Robin R	09861	Cleveland.
Townsend	Dana S	14556	Cleveland.
Bokisa, Sr.	George	10633	Cleveland.
Miller	Julia M	15184	Cleveland.
Shtayyeh	Sami W	15185	Cleveland.
Brookman	Beverly J	16381	Cleveland.
Munera	Doris	16380	Cleveland.
Madison	Kimberly C	15741	Cleveland.
McKiddy	William T	13887	Cleveland.
Frick	Dawn	27626	Cleveland.
Hill	Theresa K	23945	Cleveland.
Forney	Robert K	12437	Cleveland.
Williams	Kenneth M	04648	Cleveland.
Bouslay	Joyce A	06327	Cleveland.
Martin	Sandra L	21701	Cleveland.
Sweeney	John P	06008	Cleveland.
Brooks	Mary Anne	14534	Dallas/Fort Worth.
Smith	William	20696	Dallas/Fort Worth.

Last/company name	First name	License	Port of issuance
Magalogo	Benjalynn	20141	Dallas/Fort Worth.
Castellanos	James D	15440	Dallas/Fort Worth.
Coon	Carole Gattis	05732	Dallas/Fort Worth.
Williams, Jr	James Boyde	22991	Dallas/Fort Worth.
Rainwater, Jr	Paul A	09186	Dallas/Fort Worth.
Mahoney	Robyn F	13988	Dallas/Fort Worth.
Mansfield	Agnesann B	22727	Dallas/Fort Worth.
Moreland	Lisa Diane	14351	Detroit.
Ramin	Melissa K	04118	Detroit.
Cathey	Candy Lynn	11253	Detroit.
Smith	James William	15066	Detroit.
Conard	Marcia Ann	06540	Detroit.
Loewe	Therese Michelle	07324	Detroit.
Osborn	E. Sunny	22547	Detroit.
Lucci	Gabrielle A	10572	Detroit.
Eason	Julie R	13357	Detroit.
Salisbury	Janet Lee	16289	Detroit.
Mann	Antonia J.S	20457	Detroit.
Erickson	Sandra Lynn	17137	Detroit.
Duhaime	Melissa	17216	Detroit.
Bailey	John Keegan	28425	Detroit.
Warner	Andrew P	17262	Detroit.
Tozer	Jacqueline	15627	Detroit.
Wenclas	Karl S	16940	Detroit.
Collins	Thomas Raymond	10244	Detroit.
Romo	Blanca A	22142	El Paso.
Maldonado	Daniel	15954	El Paso.
Parker	Amy Estelle	16741	El Paso.
Pranses	Anthony R	11609	El Paso.
Kump	Marybeth H	14435	Great Falls.
Drake	Ann K	15988	Great Falls.
Castro	Robert J	22771	Great Falls.
Sluys	Ralph Vaughn	02474	Great Falls.
Stillwagon	Eric Jon	16536	Great Falls.
Dunaway	Alan	21559	Great Falls.
Bair	Joyce H	14196	Great Falls.
Lam	Sun Kien	03750	Honolulu.
Lam	Ernest S.S	05100	Honolulu.
Figueroa	Annette Stowe	12629	Honolulu.
SJ Lam, Inc		14551	Honolulu.
Kohara	Edward	05632	Honolulu.
Skelton-Kohara & Company, Ltd		05813	Honolulu.
Stowe	John Cleophas	04202	Honolulu.
Gregerson	Gerda	10970	Houston.
Hunter	Melba J	09906	Houston.
Olson	James Roger	06385	Houston.
Ewert	James R	07431	Houston.
Euro-Hub International, Inc		13918	Houston.
Hendrix	Teresa Y	13200	Houston.
ATF International, Inc		17495	Laredo.
Bentsen	Janis C	05031	Laredo.
Buitron	Juan E	16235	Laredo.
Garcia	Ana M	22669	Laredo.
Smith	Nathaneal E	22372	Laredo.
Elizondo	Rene	21681	Laredo.
Maquilogistics, Inc		20776	Laredo.
Mata	Robert G	21620	Laredo.
Preuss	Glenn W	15544	Laredo.
Guerrero	Holly D	06797	Laredo.
Rich	William H	17297	Laredo.
Rafael A Morales, Inc		12193	Laredo.
Cook, Jr	Alton Henry	13398	Laredo.
Alaniz, Jr	Jesus	13947	Laredo.
Hinojosa	Anna Maria	16904	Laredo.
Fox	Veronica Lynn	20008	Los Angeles.
O'Neill	Mary Etta	10483	Los Angeles.
Giarraputo	Laura Ann	10597	Los Angeles.
Smart Cargo Service, Inc		16646	Los Angeles.
Ice	Donald Lee	16738	Los Angeles.
Martin-Baker	Deborah Catherine	11423	Los Angeles.
Annulli	Cynthia Ann	20316	Los Angeles.
Avila	Kathryn	28053	Los Angeles.
Curtis	Melinda Sue	15968	Los Angeles.
Agnew	John Andres	14852	Los Angeles.

Last/company name	First name	License	Port of issuance
Yung	Lily Phu	20198	Los Angeles.
Ching	Ann Curie	15445	Los Angeles.
Orton	Steven G	05095	Los Angeles.
Thomas	Robert Walter	04557	Los Angeles.
Stidd	Charles Winfield	11840	Los Angeles.
Antrim-Saizan	Sara Lee	12506	Los Angeles.
Milliner	Gabrielle Marie Louise	13181	Los Angeles.
Bateman	Jeanette Lynne	17514	Los Angeles.
Genesis Forwarding Services of California, Inc		07798	Los Angeles.
Wessell-Cremeans	Julia Marie	20404	Los Angeles.
Leon	Daniel V	11773	Los Angeles.
Henry	Hiram Lee	20059	Los Angeles.
Boucher	Michael Louis	13307	Los Angeles.
Rae	William Alan	13182	Los Angeles.
Renteria	Patricia O	10491	Los Angeles.
Denny	Laura Ann	16952	Los Angeles.
Miller	Megan Nicole	27550	Los Angeles.
Chang	Li-Kung	14602	Los Angeles.
Santo	Renee Kiyomi	17402	Los Angeles.
Cosmo Customs Service, Inc		16645	Los Angeles.
Rittenhouse	John Marshall	14789	Los Angeles.
Puentes	Paul A	16987	Los Angeles.
Waney	Linda Sue	13165	Los Angeles.
Bain	Harry O	09822	Los Angeles.
Horn	Antoine A	11748	Los Angeles.
Perrie	Sharon Lee (Yurrell)	09499	Los Angeles.
Zamarripa	Steven John	07680	Los Angeles.
Edens	Ryan	23317	Los Angeles.
BDR & Associates, Inc		23218	Los Angeles.
Sanchez	Daniel Anthony	08067	Los Angeles.
Lee	Young M	24328	Los Angeles.
Samela	Lenore J	07981	Los Angeles.
Hannon	Timothy O	07909	Los Angeles.
Schick International Forwarding		09762	Los Angeles.
Milicov	Richard	06257	Los Angeles.
Skoczen	Leonard Stanley	04633	Los Angeles.
Roggenburg	Thomas L	04731	Los Angeles.
Hughes	Bernard Dennis	19653	Los Angeles.
Trinity Customs Brokers, Inc		22248	Los Angeles.
Pro-Service Forwarding Co., Inc		07247	Los Angeles.
Crabtree	John Edison	06121	Los Angeles.
Murray	James E	07019	Los Angeles.
France	Heidi A	22036	Los Angeles.
Stein	Renee E	07160	Los Angeles.
Kim	Suji Susan	21216	Los Angeles.
Nik & Associates		06731	Los Angeles.
Krieger	Ian H	07232	Los Angeles.
Sudman	Michael D	21508	Los Angeles.
Inouye	Hiroshi	16447	Los Angeles.
Schepers	John Max	06321	Los Angeles.
Schnetter	Pamela Louise	13140	Los Angeles.
Oxenreider	Derek J	24156	Los Angeles.
Chan	Anthony T	07501	Los Angeles.
Pierce	Brian M	24291	Los Angeles.
Smith	Robert Scott	20357	Los Angeles.
Piser	Louis Todd	05980	Los Angeles.
Bouma	Mary Elizabeth	20305	Los Angeles.
Pouncil, Jr	Phillip	07350	Los Angeles.
Castellanos	Cecilia	04377	Los Angeles.
Curtis	Helen J	04397	Los Angeles.
Mulherin	John L	04598	Los Angeles.
Iannarelli, Jr	William J	15684	Miami.
Lescano	Manuel A	06178	Miami.
Jones	Gary H	10343	Miami.
Leon	Roy	05936	Miami.
Messina	Peter	14267	Miami.
Brenlla, Jr	Santiago M	22004	Miami.
A Active Freezone Cargo, Inc		14868	Miami.
Bleakley	Christopher B	12127	Miami.
Duke, Jr	Gerald W	12451	Miami.
Farrow	Mark A	11361	Miami.
Dominguez	John A	11513	Miami.
Greene	Peter M	14280	Miami.
Hurst	Adrianne Louise	07400	Miami.

Last/company name	First name	License	Port of issuance
Smith	Stephen J	23849	Miami.
Burns	Elizabeth A	22719	Milwaukee.
Hardin	Della M	22649	Milwaukee.
Wadro	Kirsten S	23520	Milwaukee.
Williams	Gerald Paul	14235	Milwaukee.
Diaz	Rudy	15650	Minneapolis.
Otto	Jacqueline J	14521	Minneapolis.
Brault	Elizabeth Ann	10639	Minneapolis.
Gleason	John Michael	03867	Minneapolis.
Davis	Barbara Jean	10640	Minneapolis.
Leach	Charlene K	16876	Minneapolis.
Harley	Chad E	20584	Minneapolis.
Dicks	Kirsten H	21606	Minneapolis.
Superior Global Logistics, Inc		24109	Minneapolis.
Severson	Blythe Rebecca	13689	Minneapolis.
Erickson, Jr	Gordon R	20475	Minneapolis.
Gilbert	Dayton D	17523	Minneapolis.
Lange	Catherine L	20811	Mobile.
Polovich	Lillian Catherine F	20906	Mobile.
Liner Services International, Inc		20794	Mobile.
Draeger	Thomas P	13393	Mobile.
Cisco	Robert W	03517	New Orleans.
Oakley	James J	12288	New Orleans.
Smith	Robert W	22808	New Orleans.
Cowhey	Michael	15663	New Orleans.
Couch	Lesley	17093	New Orleans.
Armshaw	Donald C	05068	New Orleans.
McAuliffe	Margaret M	05130	New Orleans.
Lumpkin	Elizabeth Ann	05459	New Orleans.
Tate, Jr	James W	11667	New Orleans.
McLaughlin	Kathryn J	21480	New Orleans.
Gerville-Reache	Yann	23833	New Orleans.
Laney	Paul D	05998	New Orleans.
Belsom, Jr	Charles William	24316	New Orleans.
Kleiner	Gordon	20774	New Orleans.
Laird	Barbara Laine	20963	New Orleans.
Konstantinovsky	Boris	20792	New York.
Fellouris	George	04757	New York.
Rosato II	Nicholas F	09079	New York.
Rodgers	Roy A	06127	New York.
Keenan	Gloria J	12322	New York.
Wyckoff	Allen	05173	New York.
Lee	Robert Y	09645	New York.
Ma	Guo Zhan	28050	New York.
EWA Customs Service, Inc		23694	New York.
Crapanzano	Dominick J	10029	New York.
Cambell & Gardiner, Inc		02342	New York.
Haft	Shlomo Yisrael	22296	New York.
Piechota	Robert	23529	New York.
Ronan	William G	23177	New York.
Lehat	Irving	02579	New York.
Ahn	Byung M	22354	New York.
Rowan	Susan M	09932	New York.
Novello	Gary C	24161	New York.
HAV International Freight		12843	New York.
Fitzgerald	Matthew K	02941	New York.
Valdes	Dorianne	17091	New York.
Levine	Seth A	09759	New York.
Walsh	John X	03979	New York.
Palmieri	Eugene D	02632	New York.
Elisberg	Norman Gene	02929	New York.
Gambardella	Michael J	02913	New York.
Duncan	Robert Allan	22867	New York.
Mosher	Fredric W	17134	New York.
Irizarry	Dawn M	15160	New York.
Forte	Peter F	14575	New York.
Arbolante	Armand	16369	New York.
Banghart	Warren G	16374	New York.
Pereira	Beatrice R	09059	New York.
Launer	Ralph W	05747	New York.
Oszustowicz Jr	John J	05933	New York.
Stettner	Robert	05894	New York.
Wallace	Frank E	03170	New York.
Wang	Chia S	15452	New York.

Last/company name	First name	License	Port of issuance
Gregoriou	Larry	10461	New York.
Fei	Donald L	10362	New York.
Keough	James	06910	New York.
Brickmeier	Louis F	03176	New York.
Rea	Robert Daniel	03980	New York.
Hassinger	Herbert A	07057	New York.
Kittler	James A	09946	New York.
Kaczynski	Thomas Benjamin	09226	New York.
Ovair Freight Service, Inc		05773	New York.
Weinstock	Richard	05119	New York.
Reid	Derick	15453	New York.
Fietz	William L	05163	New York.
Ferrara International Logistics, Inc		20280	New York.
Allan	Judith	14592	Nogales.
Foster	B. Steven	14665	Nogales.
Evans	Clay W	10057	Nogales.
Albertini-Bond	Sarah Jane	28123	Norfolk.
Perry, Jr	Phillip William	24056	Norfolk.
Blanchard	Karen L	10872	Norfolk.
Pietz	Lisa B	11676	Norfolk.
Suslaev	Alexey A	21236	Norfolk.
Babcock	Janet M	10946	Norfolk.
Vose	Sherry Ann	12458	Norfolk.
Rhodes	Marvin D	04418	Norfolk.
Stonehouse	Stephen	04716	Otay Mesa.
Kramer	John Wade	03516	Pembina.
Kramer	Mary Lee	07741	Pembina.
Anderson	Richard L	03237	Pembina.
Wallen	Michael A	15601	Philadelphia.
Dracha	David	20769	Philadelphia.
Buggey	Joan	20966	Philadelphia.
Aries Global Logistics, Inc		22742	Philadelphia.
Coxson	Charles R	15760	Philadelphia.
Semel	Dana L	15735	Philadelphia.
Murphy	Patrick J	08089	Philadelphia.
Klingbeil	Susan	10847	Philadelphia.
DJR Logistics, Inc		28059	Philadelphia.
Trinidad	Lamberto B	07785	Philadelphia.
Arth	David T	04602	Philadelphia.
Galik	Jane M	10357	Philadelphia.
D'Amico	Lenore Anne	15093	Philadelphia.
Frederick	Ted D	10654	Philadelphia.
Grebe	James J	07962	Philadelphia.
Worldlink Logistics, Inc		22349	Philadelphia.
Bustard	Edwin A	05399	Philadelphia.
Trans Port Agencies, Inc		22111	Philadelphia.
Bustard	Michelle J	21795	Philadelphia.
Liberati Corporation		13176	Philadelphia.
Cargo Express, Inc		20105	Philadelphia.
Bolalek	Philip J	21312	Philadelphia.
Van Valkenburg	Per F	10292	Philadelphia.
Carson M Simon Company		13989	Philadelphia.
Borgerding	Madonna M	13219	Philadelphia.
Caiazza	John L	16868	Philadelphia.
Myers	Ronald W	15479	Philadelphia.
Reynolds	James E	04704	Philadelphia.
Charles	Ralph	15527	Philadelphia.
Godfrey	Charles E	15223	Philadelphia.
Kelly	James A	06512	Philadelphia.
Cherry	Arthur	03504	Philadelphia.
Sinnott	James W	15964	Philadelphia.
Arnone	Charles	04983	Philadelphia.
Bordon	David Scott	16710	Philadelphia.
Liberati	Bernard D	07275	Philadelphia.
Amoriello, Sr	Louis P	03983	Philadelphia.
Tuefel	Sandra Darlene	16396	Philadelphia.
Niedermeyer	Karen L	17177	Philadelphia.
Storey	Jerry I	16896	Philadelphia.
Smith	Christine L	14579	Philadelphia.
Plant	Steven H	16020	Philadelphia.
Hosack	John W	05994	Portland, ME.
Nestor	Susan A	13690	Portland, OR.
CastleIsland LLC		22916	Portland, OR.
Relleve	Anya	15795	Portland, OR.

Last/company name	First name	License	Port of issuance
Harju	Krista Ann	13691	Portland, OR.
Waldrip	David S	16837	Portland, OR.
Babb	Michelle Ann	21082	Portland, OR.
McAlmond	Christina	20169	Portland, OR.
Cannon	Charles J	04618	Providence.
Barragan	Luis	15146	San Diego.
Lugon-Moulin	Shelley	07640	San Diego.
Geely Customs Broker, Inc		28821	San Francisco.
Fortenberry	W.C	11544	San Francisco.
Lowry	Andrew McCartney	14067	San Francisco.
Gaspay	Manuel S	27753	San Francisco.
Budiman	Alex	20163	San Francisco.
Wong	Philip	13776	San Francisco.
Cortes	Luis A	21319	San Juan.
Fahey	Christopher J	20504	Savannah.
James	John William	04071	Savannah.
Duncan	Jean D	04583	Savannah.
Donaldson	J. Gilbert	09278	Savannah.
Quinn	Paulette A	11504	Savannah.
Hart, Jr.	Edward L	12423	Savannah.
Saxton-Freeman	Sandra	12566	Savannah.
Droste	Jeannie	17066	Savannah.
Mobley	Virginia J	04161	Savannah.
Griffith	Laree' Delane	21055	Seattle.
McDonald	Mia Lavon	22438	Seattle.
Morrison	Dwight	15576	Seattle.
Barbour	Anita	21477	Seattle.
Price	Terrence B	04798	Seattle.
World Project Services International, Inc		14872	Seattle.
Gregory	James L	04211	Seattle.
Falip	Ingrid	15717	Seattle.
Wing	Ethan L	14155	Seattle.
Erwin	Kathy A	18014	Seattle.
Griffin	Arthur L	12313	Seattle.
Alexander	Norman	13459	Seattle.
Zimmerman	Berry	16915	Seattle.
Edenholm	Robert M	03716	Seattle.
Anderson	Jennifer M	16747	Seattle.
Harman	Roger	15920	Seattle.
Breidenstein	Dan A	07233	Seattle.
Tuai	Walter M	06770	Seattle.
Bladies	Gerald A	05098	Seattle.
Rouse	John C	06163	Seattle.
Larson	Paul E	06442	Seattle.
Journey	Valerie Toujours	10805	Seattle.
Hoffman	Christina L	11486	Seattle.
Hoopiiaina	Kathleen M	11625	Seattle.
Baldwin	William N	17183	Seattle.
Shiroyama	Gina M	14811	Seattle.
Isabelle	Suzanne Nicole	11513	St. Albans.
Rancourt	Pauline N	24262	St. Albans.
Domey	Brian A	05885	St. Albans.
Drost	Robert B	12848	St. Louis.
Polley	Teresa L	21661	St. Louis.
Bowman	Patricia A	11510	St. Louis.
Hotard	George J	15734	St. Louis.
Sullivan	Betsy Kim	22101	St. Louis.
Neill	George R	21449	St. Louis.
Whitaker	John W	05474	St. Louis.
Trost	Thomas F	14753	St. Louis.
Keperling	Amy Denise	17232	St. Louis.
Ellgen	Eric J	17010	St. Louis.
Warren	David L	16592	St. Louis.
Keller	Donald A	03776	St. Louis.
Wright, Sr	John E	21497	St. Louis.
Lappin	Katharine A	20049	St. Louis.
Kim	Rae H	23730	St. Louis.
Meadows	Matthew C	11512	St. Louis.
Welker	Linda L	14609	St. Louis.
Waltos	Shirley A	07375	St. Louis.
Welch	Michael E	03778	St. Louis.
Howard	Kelly J	20099	St. Louis.
Wolfinger	Enola H	23672	Tampa.
Windau	Jude	28051	Tampa.

Last/company name	First name	License	Port of issuance
Gruenewald	William J	21474	Tampa.
Childers	Scott Eugene	14511	Tampa.
Nichols	Mary Lou	14039	Tampa.
Madden	John L	16629	Tampa.
Elliott	Julian E	15140	Tampa.
Moritsugu	Erika L	23065	Washington, DC.
Goodson	Dale	20190	Washington, DC.
Suter	Joan K	09455	Washington, DC.
Ferguson	Anthony R	10934	Washington, DC.
Brown	Charles L	12112	Washington, DC.
Bucher	Jane Linnea	12388	Washington, DC.
Barr	Richard P	23924	Washington, DC.
St. John	Julia E	12205	Washington, DC.
Welch	Denise L	13043	Washington, DC.
Cassise	Christopher J	20143	Washington, DC.
Nahas	Chanel R	23172	Washington, DC.
Vogt	James	16088	Washington, DC.
Wakeman	Dennis J	16541	Washington, DC.
Golemon	Meredith Lee	22352	Washington, DC.
Soyka	David	22351	Washington, DC.
Jung	Holly D	16706	Washington, DC.
Sullivan	David	16087	Washington, DC.

Dated: December 3, 2012.

Allen Gina,

Assistant Commissioner, Office of International Trade.

[FR Doc. 2012–29476 Filed 12–5–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2012–0012; OMB Control Number 1014–0013]

Information Collection Activities: Notice to Lessees and/or Operators (NTL)—Gulf of Mexico OCS Region—GPS (Global Positioning System) for MODUs (Mobile Offshore Drilling Units); Submitted for Office of Management and Budget (OMB) Review; Comment Request

ACTION: 30-day notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements associated with 30 CFR part 250, subpart A, *General,* and related documents. This notice also provides the public a second opportunity to comment on the revised paperwork burden of these requirements.

DATES: You must submit comments by January 7, 2013.

ADDRESSES: Submit comments by either fax (202) 395–5806 or email (*OIRA_Submission@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1014–0013). Please provide a copy of your comments to BSEE by any of the means below.

- *Electronically:* go to *http://www.regulations.gov*. In the entry titled, Enter Keyword or ID, enter BSEE–2012–0012 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- *Email: cheryl.blundon@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to: Department of the Interior; BSEE; Regulations and Standards Branch (RSB); ATTN: Cheryl Blundon; 381 Elden Street, HE3313; Herndon, Virginia 20170–4817. Please reference 1014–0013 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, RSB, (703) 787–1607, to request additional information about this ICR. To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently Under Review).

SUPPLEMENTARY INFORMATION:

Title: Notice to Lessees and/or Operators (NTL)—Gulf of Mexico OCS Region—GPS (Global Positioning System) for MODUs (Mobile Offshore Drilling Units).

OMB Control Number: 1014–0013.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations necessary for the administration of the leasing provisions of that Act related to mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; to preserve and maintain free enterprise competition; and to ensure that the extent of oil and natural gas resources of the OCS is assessed at the earliest practicable time. Section 43 U.S.C. 1332(6) states that ''operations in the outer Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.''

To carry out these responsibilities, BSEE issues regulations to ensure that operations in the OCS will meet statutory requirements; provide for safety and protect the environment; and result in diligent exploration, development, and production of OCS leases. In addition, we also issue NTLs that provide clarification, explanation, and interpretation of our regulations. These NTLs are used to convey purely informational material and to cover

situations that might not be adequately addressed in our regulations.

The subject of this ICR is an NTL, GPS (Global Positioning System) for MODUs (Mobile Offshore Drilling Units). This NTL requires MODUs to be equipped with multiple tracking/location devices so that during a storm event (hurricane) the respondent, as well as BSEE, will have the capability to monitor their locations. This NTL also provides BSEE GPS data access thereby granting us real-time location information as needed for the Hurricane Response Team (HRT).

The primary regulation for this IC is 30 CFR part 250, Subpart A, approved under the OMB Control Number 1014–0013. However, in connection with this subpart, the burden requirements in the NTL are in addition to the currently approved paperwork burdens under those requirements.

The information to be collected is necessary for BSEE to assess the whereabouts of any MODU becoming unmoored due to extreme weather situations; as well as, to follow the path of that facility to determine if other facilities/pipelines, etc., were damaged in any way. The offshore oil and gas industry will use the information to determine the safest and quickest way to either remove the obstacles or to fix and reuse them.

Regulations at 30 CFR part 250 implement these statutory requirements. The information to be collected is necessary for BSEE to assess the whereabouts of any MODU becoming unmoored due to extreme weather situations; as well as, to follow the path of that facility to determine if other facilities/pipelines, etc., were damaged in any way. The offshore oil and gas industry will use the information to determine the safest and quickest way to either remove the obstacles or to fix and reuse them.

Responses are required to obtain or retain a benefit. No questions of a sensitive nature are asked. We will protect information considered proprietary according to Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2), and 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection.*

Frequency: On occasion.

Description of Respondents: Potential respondents comprise Federal oil and gas lessees and operators that drill using MODUs.

Estimated Reporting and Recordkeeping Hour Burden: The estimated annual hour burden for this IC is a total of 1 hour. The following chart details the individual components and estimated hour burden. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

NTL—Gulf of Mexico OCS Region—GPS for MODUs	Hour burden	Average number of annual responses	Annual burden hours
	Non-Hour Cost Burdens		
1—Notify BSEE with tracking/locator data access; notify BSEE Hurricane Response Team as soon as operator is aware a rig has moved off location.	15 mins	1 rig *	1 hour (rounded).
	15 mins	1 notification *	
2—Purchase and install tracking/locator devices—(these are replacement GPS devices or new rigs).	20 devices per year for replacement and/or new x $325.00 = $6,500.		
3—Pay monthly tracking fee for GPS devices already placed on MODUs/rig.	40 rigs at $50/month = $600/year = $24,000.		
4—Rent GPS devices and pay monthly tracking fee per rig.	40 rigs @ $1,800 per year = $72,000.		
TOTAL BURDEN		102 Responses	1 Hour.
		$ 102,500 non-hour cost burden.	

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified 3 non-hour cost burdens associated with the collection of information. The non-hour cost burdens in this IC total an estimated $102,500 and they are: the actual GPS device—$325; paying a monthly tracking fee for devices physically located on a MODU—$50/mo or $600/year; and renting the GPS devices and paying a monthly tracking fee totaling—$1,800 per year.

We have not identified any other non-hour cost burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.,)* provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.,*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

To comply with the public consultation process, on June 21, 2012, we published a **Federal Register** notice (77 FR 37430) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control number for the information collection requirements imposed by the 30 CFR part 250 regulations. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We received no comments in response to these efforts.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 29, 2012.

Robert W. Middleton,

Deputy Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2012–29422 Filed 12–5–12; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2012–N281; FXIA16710900000P5–123–FF09A30000]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before January 7, 2013.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES.** If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. 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.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

III. Permit Applications

A. Endangered Species

Applicant: American Museum of Natural History, New York, NY; PRT–75897A

The applicant requests a permit to import biological specimens from loggerhead sea turtles (*Caretta caretta*), hawksbill sea turtles (*Eretmochelys imbricata*), and leatherback sea turtles (*Dermochelys coriacea*) that occur in the wild at Tetepare Island, Solomon Islands, for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: LMBI, L.P. doing business as El Coyote Ranch, Ft. Worth, TX; PRT–77706A

The applicant requests a permit to export a male captive bred southern black rhinoceros (*Diceros bicornis minor*) to Zoo Leon, Leon, Guanajuato, Mexico, for the purpose of enhancement of the propagation of the species.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Michael Spencer, Camarillo, CA; PRT–91294A

Applicant: Suzanne Haldan, Scottsdale, AZ; PRT–86466A

Applicant: Mike Vaughan, Norman, OK; PRT–91241A

Lisa J. Lierheimer,

Supervisory Policy Specialist, Branch of Permits, Division of Management Authority.

[FR Doc. 2012–29501 Filed 12–5–12; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Electronic Devices, Including Wireless Communication Devices, Tablet Computers, Media Players, and Televisions, and Components Thereof,* DN 2921; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Ericsson Inc. and Telefonaktiebolaget LM Ericsson on November 30, 2012. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic devices, including wireless communication devices, tablet computers, media players, and televisions, and components thereof. The complaint names as respondents Samsung Electronics America, Inc. of Ridgefield Park, NJ, Samsung Telecommunications America LLC of Richardson, TX and Samsung Electronics Co. Ltd. of South Korea.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2921'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: November 30, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–29442 Filed 12–5–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–932 (Review)]

Folding Metal Tables and Chairs From China; Termination of Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The subject five-year review was initiated in October 2012 to determine whether revocation of the antidumping duty order on folding metal tables and chairs from China would be likely to lead to continuation or recurrence of material injury. On November 29, 2012, the Department of Commerce published notice that it was revoking the order effective October 21, 2012, ''{b}ecause the domestic interested parties did not participate in this sunset review * * *'' (77 FR 71168, November 29, 2012). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), the subject review is terminated.

DATES: *Effective Date:* Date of Commission Action Jacket Approval.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the

Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*).

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

By order of the Commission.

Issued: December 3, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–29493 Filed 12–5–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1197 (Final)]

Steel Wire Garment Hangers From Taiwan

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports of steel wire garment hangers from Taiwan, provided for in subheading 7326.20.00 of the Harmonized Tariff Schedule of the United States, that the U.S. Department of Commerce has determined are sold in the United States at less than fair value (''LTFV'').[2]

Background

The Commission instituted this investigation effective December 29, 2011, following receipt of a petition filed with the Commission and Commerce by M&B Metal Products Company, Inc., Leeds, AL; Innovative Fabrication LLC/Indy Hanger, Indianapolis, IN; and US Hanger Company LLC, Gardena, CA. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of steel wire garment hangers from Taiwan were dumped within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on August 20, 2012 (77 FR 50160) and on August 22, 2012 (77 FR 50713, corrected). The hearing was held in Washington, DC, on October 24, 2012, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on November 29, 2012. The views of the Commission are contained in USITC Publication 4363 (November 2012), entitled *Steel Wire Garment Hangers from Taiwan: Investigation No. 731–TA–1197 (Final).*

By order of the Commission.

Issued: November 30, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–29439 Filed 12–5–12; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] All six Commissioners voted in the affirmative.

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–481 and 731–TA–1190 (Final)]

Crystalline Silicon Photovoltaic Cells and Modules From China

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C.1671d(b)) and (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports of crystalline silicon photovoltaic cells and modules from China, provided for in subheadings 8501.31.80, 8501.61.00, 8507.20.80, and 8541.40.60 of the Harmonized Tariff Schedule of the United States, that the U.S. Department of Commerce (Commerce) has determined are subsidized and sold in the United States at less than fair value.[2]

Background

The Commission instituted these investigations effective October 19, 2011, following receipt of petitions filed with the Commission and Commerce by Solar World Industries America, Hillsboro, OR. The final phase of these investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of crystalline silicon photovoltaic cells and modules from China were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and dumped within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on June 13, 2012 (77 FR 35425). The hearing was held in Washington, DC, on October 3, 2012, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on November 30, 2012. The views of the Commission are contained in USITC Publication 4360 (November 2012), entitled *Crystalline Silicon Photovoltaic Cells and Modules from China: Investigation Nos. 701–TA–481 and 731–TA–1190 (Final).*

By order of the Commission.

Issued: November 30, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–29440 Filed 12–5–12; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] All six Commissioners voted in the affirmative. Commissioners Daniel R. Pearson, Shara L. Aranoff, David S. Johanson, and Meredith M. Broadbent also find that imports subject to Commerce's affirmative critical circumstances determinations are not likely to undermine seriously the remedial effect of the countervailing and antidumping duty orders on crystalline silicon photovoltaic cells and modules from China. Chairman Irving A. Williamson and Commissioner Dean A. Pinkert made affirmative critical circumstances determinations with respect to all imports subject to Commerce's affirmative critical circumstances determinations.

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Bankruptcy Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 2–3, 2013.

Time: 8:30 a.m. to 5:00 p.m.

ADDRESSES: United States Bankruptcy Court, Alexander Hamilton Custom House, Room 608, One Bowling Green, New York, NY 10004–1408.

FOR FURTHER INFORMATION CONTACT: Jonathan C. Rose, Secretary and Chief Rules Officer, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 3, 2012.

Jonathan C. Rose,

Secretary and Chief Rules Officer.

[FR Doc. 2012–29544 Filed 12–5–12; 8:45 am]

BILLING CODE 2210–55–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Criminal Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Criminal Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 25–26, 2013.

Time: 8:30 a.m. to 5:00 p.m.

ADDRESSES: Duke University School of Law, 210 Science Drive, Durham, NC 27708.

FOR FURTHER INFORMATION CONTACT: Jonathan C. Rose, Secretary and Chief Rules Officer, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 3, 2012.

Jonathan C. Rose,

Secretary and Chief Rules Officer.

[FR Doc. 2012–29490 Filed 12–5–12; 8:45 am]

BILLING CODE 2210–55–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Appellate Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Appellate Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 22–23, 2013.

Time: 8:30 a.m. to 5:00 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Mecham Conference Center, One Columbus Circle NE., Washington, DC 20544.

FOR FURTHER INFORMATION CONTACT: Jonathan C. Rose, Secretary and Chief Rules Officer, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 3, 2012.

Jonathan C. Rose,

Secretary and Chief Rules Officer.

[FR Doc. 2012–29540 Filed 12–5–12; 8:45 am]

BILLING CODE 2210–55–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Evidence.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Evidence will hold a one-day meeting. The meeting will be open to public observation but not participation.

DATES: May 3, 2013.

Time: 8:30 a.m. to 5:00 p.m.

ADDRESSES: University of Miami School of Law, 1311 Miller Road, Coral Gables, FL 33146.

FOR FURTHER INFORMATION CONTACT: Jonathan C. Rose, Secretary and Chief Rules Officer, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 3, 2012.

Jonathan C. Rose,

Secretary and Chief Rules Officer.

[FR Doc. 2012–29494 Filed 12–5–12; 8:45 am]

BILLING CODE 2210–55–P

JUDICIAL CONFERENCE

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 11–12, 2013.

Time: 8:30 a.m. to 5:00 p.m.

ADDRESSES: The University of Oklahoma College of Law, 300 West Timberdell Road, Norman, OK 73019.

FOR FURTHER INFORMATION CONTACT: Jonathan C. Rose, Secretary and Chief Rules Officer, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 3, 2012.

Jonathan C. Rose,

Secretary and Chief Rules Officer.

[FR Doc. 2012–29541 Filed 12–5–12; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On November 30, 2012, the Department of Justice lodged a proposed consent decree with the United States District Court for the Northern District of Ohio in the lawsuit entitled *United States and the Oklahoma Department of Environmental Quality* v. *Owens-Brockway Glass Container Inc.,* Civil Action No. 3:12–cv–02961.

The United States and Oklahoma Department of Environmental Quality filed this lawsuit under the Clean Air Act. The complaint seeks injunctive relief and civil penalties for violations of the Clean Air Act's Prevention of Significant Deterioration and Non-Attainment New Source Review requirements at five glass manufacturing plants owned and operated by the defendant, Owens-Brockway Glass Container Inc., in Clarion, Pennsylvania; Crenshaw, Pennsylvania; Muskogee, Oklahoma; Waco, Texas; and Atlanta, Georgia. The consent decree requires the defendant to perform injunctive relief, pay a $1,450,000 civil penalty, and perform a $200,000 ''diesel-retrofit'' mitigation project in the metropolitan Atlanta area.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and the Oklahoma Department of Environmental Quality* v. *Owens-Brockway Glass Container Inc.,* D.J. Ref. No. 90–5–2–1–09678. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044–7611.

During the public comment period, the proposed consent decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the proposed consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $34.00 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $16.75.

Maureen M. Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–29515 Filed 12–5–12; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL LABOR RELATIONS BOARD

Amendment of Statement of Organization and Functions; Restructuring of National Labor Relations Board's Field Organization

November 28, 2012.

AGENCY: National Labor Relations Board.

ACTION: Notice of administrative change in status of the following offices of the National Labor Relations Board:

- Kansas City Regional Office (Region 17) to be designated as Subregional Office (Subregion 17) of the St. Louis Regional Office (Region 14)
- Winston-Salem Regional Office (Region 11) to be designated as Subregional Office (Subregion 11) of the Atlanta Regional Office (Region 10)
- Hartford Regional Office (Region 34) to be designated as Subregional Office (Subregion 34) of the Boston Regional Office (Region 1)
- Memphis Regional Office (Region 26) to be designated as Subregional Office (Subregion 26) of the New Orleans Regional Office (Region 15)
- Transfer of supervision over the Little Rock Resident Office from the Memphis Regional Office to the New Orleans Regional Office (Region 15)
- Transfer of supervision over the Nashville Resident Office from Memphis Regional Office to the Atlanta Regional Office (Region 10)
- Transfer of supervision over the Peoria Subregional Office (Subregion 33) from the St. Louis Regional Office to the Indianapolis Regional Office (Region 25)

SUMMARY: The National Labor Relations Board is restructuring its Regional Offices in Kansas City, Winston-Salem, Hartford and Memphis to designate them as Subregional Offices assigned to the supervision of the St. Louis, Atlanta, Boston and New Orleans Regional Offices, respectively. As part of this restructuring, the supervision of the Little Rock Resident Office will be transferred from the Memphis Regional Office to the New Orleans Regional Office, the supervision of the Nashville Resident Office will be transferred from the Memphis Regional Office to the Atlanta Regional Office and the supervision of the Peoria Subregional Office will be transferred from the St. Louis Regional Office to the Indianapolis Regional Office. Concurrent with this Notice, the National Labor Relations Board is revising its Statement of Organization and Functions accordingly. These revisions are nonsubstantive or merely procedural in nature.

DATES: *Effective Date:* December 10, 2012.

FOR FURTHER INFORMATION CONTACT: Lester A. Heltzer, Executive Secretary, 1099 14th Street NW., Room 11600, Washington, DC 20570. Telephone: (202) 273–1067

SUPPLEMENTARY INFORMATION: The National Labor Relations Board has decided to restructure the Agency's Regional Offices in Kansas City, Winston-Salem, Hartford, and Memphis to designate them as Subregional Offices of the St. Louis, Atlanta, Boston and New Orleans Regional Offices, respectively. The Kansas City office will be redesignated as Subregion 17; the Winston-Salem office will be redesignated as Subregion 11; the Hartford office will be redesignated as Subregion 34; and the Memphis office will be redesignated as Subregion 26. As part of this restructuring, the supervision of the Little Rock Resident Office will be transferred from the Memphis Regional Office to the New Orleans Regional Office, the supervision of the Nashville Resident Office will be transferred from the Memphis Regional Office to the Atlanta Regional Office and the supervision of the Peoria Subregional Office will be transferred from the St. Louis Regional Office to the Indianapolis Regional Office. These changes are prompted by a decline in unfair labor practice and representation case filings in each of the Regional Offices subject to this restructuring and a desire to equalize caseload and case management responsibilities in all affected Offices.

The Kansas City, Winston-Salem, Hartford, and Memphis Regional Offices were headed by a Regional Director, who had full authority for the processing of both unfair labor practice and representation cases. The newly-designated Subregional Offices will now be headed by an Officer-in-Charge, who will report to their respective Regional Directors in St. Louis, Atlanta, Boston, and New Orleans. These changes will vest these Regional Directors with casehandling authority for the geographical area covered by their newly-designated Subregional Office. The geographical areas covered by the Regional and Subregional Offices will continue to be the same as when they were designated as Regional Offices with the following exceptions:

The Atlanta Regional Office would service the following additional counties in Tennessee: Bedford, Benton, Bledsoe, Cannon, Cheatham, Clay, Coffee, Cumberland, Davidson, DeKalb, Dickson, Fentress, Franklin, Giles, Grundy, Henry, Hickman, Houston, Humphreys, Jackson, Lawrence, Lewis, Lincoln, Macon, Marion, Marshall, Maury, Montgomery, Moore, Overton, Perry, Pickett, Putnam, Robertson, Rutherford, Sequatchie, Smith, Stewart, Sumner, Trousdale, Van Buren, Warren, Wayne, White, Williamson, and Wilson; as well as the following counties in Kentucky: Adair, Allen, Ballard, Barren, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Christian, Clinton, Crittenden, Cumberland, Edmondson, Fulton, Graves, Grayson, Green, Hancock, Hart, Hickman, Hopkins, Livingston, Logan, Lyon, Marshall,

McCracken, McLean, Metcalfe, Monroe, Muhlenberg, Ohio, Russell, Simpson, Todd, Trigg, Union, Warren, Wayne, and Webster.

The New Orleans Regional Office would now also service Arkansas with the exception of the following counties: Clay, Craighead, Crittenden, Cross, Greene, Lee, Mississippi, Phillips, Poinsett, and St. Francis.

The Subregional Office in Memphis would service in Tennessee only the following counties: Carroll, Chester, Crockett, Decatur, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Lake, Lauderdale, McNairy, Madison, Obion, Shelby, Tipton, and Weakley; in Arkansas the following counties: Clay, Craighead, Crittenden, Cross, Greene, Lee, Mississippi, Phillips, Poinsett, and St. Francis; and it would no longer service any portion of Kentucky.

The most recent list of Regional and Subregional Offices was published at 65 FR 53228–53229 on August 29, 2000.

Concurrent with this Notice, the NLRB is revising its Statement of Organization and Functions to reflect the addition of Subregions 17, 11, 34 and 26 supervised by their respective Regional Offices; the elimination of Regions 17, 11, 34 and 26 as Regional Offices; the removal of the Little Rock Resident Office from supervision by the Memphis Regional Office and its assignment instead as a Resident Office of the New Orleans Regional Office; the removal of the Nashville Resident Office from supervision by the Memphis Regional Office and its assignment instead as a Resident Office of the Atlanta Regional Office; and the removal of Subregion 33 Peoria from supervision by Region 14 St. Louis, and its assignment instead as a Subregional Office of Region 25 Indianapolis. The revisions to the Board's Statement of Organization and Functions are attached hereto.

Since May 2012, the NLRB has solicited and received feedback on the proposed restructuring of these offices. The decision to restructure the Agency's operations in the manner set forth herein was informed by comments from stakeholders, members of Congress and Agency employees. Because this is a general notice that is related to the organization of the NLRB, it is not a regulation or rule subject to Executive Order 12,866.

Pursuant to the changes set forth herein, the National Labor Relations Board is amending its Statement of Organization and Functions as follows:

Part 201—Description of Organization

Subpart B—Description of Field Organization

(A) Section 203 is amended to read as follows:

Sec. 203 *Regional Offices.* There are 28 Regional Offices through which the Board conducts its business. Certain of the Regions have Subregional Offices or Resident Offices in addition to the central Regional Office. The areas constituting the Regions and the location of the Regional, Subregional, and Resident Offices are set forth in an appendix hereto. Each Regional Office staff is headed by a Regional Director appointed by the Board on the recommendation of the General Counsel and includes a Regional Attorney, Assistant to the Regional Director, field attorneys, field examiners, and clerical staff. Each Subregional Office is headed by an Officer-in-Charge appointed in the same manner as the Regional Directors. Each Resident Office is headed by a Resident Officer.

(B) ''Appendix—Regional and Subregional Offices'' is amended to read as follows:

Appendix—Regional and Subregional Offices

Alphabetical list of States showing location in relation to Regions and Subregions. (Note that respective Region number follows Subregion number to facilitate locating areas serviced.)

REGION AND SUBREGION NOS.

Alabama	10, 15
Alaska	19
Arizona	28
Arkansas	15, 16, S–26 (15)
California	20, 21, 31, 32
Colorado	27
Connecticut	S–34 (1)
Delaware	4, 5
District of Columbia	5
Florida	12, 15
Georgia	10, 12
Hawaii	S–37 (20)
Idaho	19, 27
Illinois	13, 14, S–33 (25)
Indiana	9, 13, 25
Iowa	S–17 (14), 18, S–33 (25)
Kansas	S–17 (14)
Kentucky	9, 10, 25
Louisiana	15
Maine	1
Maryland	5
Massachusetts	1
Michigan	7, 30
Minnesota	18
Mississippi	15, S–26 (15)
Missouri	14, S–17 (14), S–26 (15)
Montana	19, 27
Nebraska	27, S–17 (14)
Nevada	28, 32

REGION AND SUBREGION NOS.—Continued

New Hampshire	1
New Jersey	4, 22
New Mexico	28
New York	2, 3, 29
North Carolina	S–11 (10)
North Dakota	18
Ohio	8, 9
Oklahoma	S–17 (14)
Oregon	S–36 (19)
Pennsylvania	4, 5, 6
Rhode Island	1
South Carolina	S–11 (10)
South Dakota	18
Tennessee	10, S–11 (10), S–26 (15)
Texas	16, 28
Utah	27
Vermont	1
Virginia	5, S–11 (10)

(C) ''Areas Served by Regional and Subregional Offices'' is amended in following manner:

(1) Delete reference to Region 34

(2) Region 1 is amended to read as follows:

Region 1. Boston, Massachusetts. Services Maine, New Hampshire, Vermont, Massachusetts, and Rhode Island.

Subregion 34. Hartford, Connecticut. Services Connecticut.

(3) Delete reference to Region 11

(4) Region 10 is amended to read as follows:

Region 10. Atlanta, Georgia. In Georgia, services Baker, Baldwin, Banks, Barrow, Bartow, Ben Hill, Berrien, Bibb, Bleckley, Bryan, Bulloch, Burke, Butts, Calhoun, Candler, Carroll, Catoosa, Chatham, Chattahoochee, Chattooga, Cherokee, Clarke, Clay, Clayton, Cobb, Colquitt, Columbia, Cook, Coweta, Crawford, Crisp, Dade, Dawson, DeKalb, Dodge, Dooly, Dougherty, Douglas, Early, Effingham, Elbert, Emanuel, Evans, Fannin, Fayette, Floyd, Forsyth, Franklin, Fulton, Gilmer, Glascock, Gordon, Greene, Gwinnett, Habersham, Hall, Hancock, Haralson, Harris, Hart, Heard, Henry, Houston, Irwin, Jackson, Jasper, Jefferson, Jenkins, Johnson, Jones, Lamar, Laurens, Lee, Liberty, Lincoln, Long, Lumpkin, McDuffie, McIntosh, Macon, Madison, Marion, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Muscogee, Newton, Oconee, Oglethorpe, Paulding, Peach, Pickens, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Richmond, Rockdale, Schley, Screven, Spalding, Stevens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Tift, Toombs, Towns, Treutlen, Troup, Turner, Twiggs, Union, Upson, Walker, Walton, Warren, Washington, Webster, Wheeler,

White, Whitfield, Wilcox, Wilkes, Wilkinson, and Worth Counties; in Tennessee, services Anderson, Bedford, Benton, Bledsoe, Blount, Bradley, Campbell, Cannon, Carter, Cheatham, Claiborne, Clay, Cocke, Coffee, Cumberland, Davidson, DeKalb, Dickson, Fentress, Franklin, Giles, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Knox, Lawrence, Lewis, Lincoln, Loudon, McMinn, Macon, Marion, Marshall, Maury, Meigs, Monroe, Montgomery, Moore, Morgan, Overton, Perry, Pickett, Polk, Putnam, Rhea, Roane, Robertson, Rutherford, Scott, Sequatchie, Sevier, Smith, Stewart, Sullivan, Sumner, Trousdale, Unicoi, Union, Van Buren, Warren, Washington Wayne, White, Williamson, and Wilson Counties; in Alabama, services Autauga, Bibb, Blount, Calhoun, Chambers, Cherokee, Chilton, Clay, Cleburne, Colbert, Coosa, Cullman, De Kalb, Elmore, Etowah, Fayette, Franklin, Greene, Hale, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Madison, Marion, Marshall, Morgan, Perry, Pickens, Randolph, St. Clair, Shelby, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, and Winston Counties; and in Kentucky services Adair, Allen, Ballard, Barren, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Christian, Clinton, Crittenden, Cumberland, Edmondson, Fulton, Graves, Grayson, Green, Hancock, Hart, Hickman, Hopkins, Livingston, Logan, Lyon, Marshall, McCracken, McLean, Metcalfe, Monroe, Muhlenberg, Ohio, Russell, Simpson, Todd, Trigg, Union, Warren, Wayne, and Webster Counties.

Subregion 11. Winston-Salem, North Carolina. Services North Carolina and South Carolina; in Tennessee, services the city of Bristol in Sullivan County; in Virginia, services Alleghany, Amherst, Appomattox, Bath, Bedford, Bland, Botetourt, Buchanan, Campbell, Carroll, Charlotte, Craig, Dickenson, Floyd, Franklin, Giles, Grayson, Halifax, Henry, Lee, Mecklenburg, Montgomery, Patrick, Pittsylvania, Pulaski, Roanoke, Rockbridge, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe Counties, and the independently incorporated Virginia cities not part of, but located within or adjacent to, the territory by these Virginia counties; and in West Virginia, services Greenbriar, Mercer, Monroe, and Summers Counties.

Persons may also obtain service at the Resident Offices in Birmingham, Alabama and Nashville, Tennessee.

(5) Delete reference to Region 17

(6) Region 14 is amended to read as follows:

Region 14. St. Louis, Missouri. In Illinois services Adams, Alexander, Bond, Brown, Calhoun, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Edgar, Edwards, Effingham, Fayette, Franklin, Gallatin, Greene, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Macoupin, Madison, Marion, Massac, Monroe, Montgomery, Perry, Pike, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Scott, Shelby, Union, Wabash, Washington, Wayne, White, and Williamson Counties; and in Missouri, services Audrain, Bollinger, Butler, Callaway, Cape Girardeau, Carter, Clark, Crawford, Dent, Franklin, Gasconade, Iron, Jefferson, Knox, Lewis, Lincoln, Madison, Maries, Marion, Monroe, Montgomery, Oregon, Osage, Perry, Phelps, Pike, Ralls, Reynolds, Ripley, St. Charles, St. Francois, St. Louis, St. Genevieve, Scotland, Scott, Shannon, Shelby, Stoddard, Warren, Washington, and Wayne Counties, and the Independent City of St. Louis.

Subregion 17. Kansas City, Kansas. Services Oklahoma and Kansas; in Missouri, services Adair, Andrew, Atchison, Barry, Barton, Bates, Benton, Boone, Buchanan, Caldwell, Camden, Carroll, Cass, Cedar, Chariton, Christian, Clay, Clinton, Cole, Cooper, Dade, Dallas, Daviess, De Kalb, Douglas, Gentry, Greene, Grundy, Harrison, Henry, Hickory, Holt, Howard, Howell, Jackson, Jasper, Johnson, Laclede, Lafayette, Lawrence, Linn, Livingstone, McDonald, Macon, Mercer, Miller, Moniteau, Morgan, Newton, Nodaway, Ozark, Pettis, Platte, Polls, Pulaski, Putnam, Randolph, Ray, St. Clair, Saline, Schuyler, Stone, Sullivan, Taney, Texas, Vernon, Webster, Worth, and Wright Counties; in Iowa, services Fremont, Mills, and Pottawattamie Counties; and in Nebraska, services Adams, Antelope, Arthur, Blaine, Boone, Boyd, Brown, Buffalo, Burt, Butler, Cass, Cedar, Chase, Cherry, Clay, Colfax, Cuming, Custer, Dakota, Dawson, Dixon, Dodge, Douglas, Dundy, Filmore, Franklin, Frontier, Furnas, Gage, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney, Keith, Keya Paha, Knox, Lancaster, Lincoln, Logan, Loup, McPherson, Madison, Merrick, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Plate, Polls, Red Willow, Richardson, Rock, Saline, Sarpy, Saunders, Seward, Sherman, Stanton, Thayer, Thomas, Thurston, Valley, Washington, Wayne, Webster, Wheeler, and York Counties.

Persons may also obtain service at the Resident Office in Tulsa, Oklahoma.

(7) Delete reference to Region 26

(8) Region 15 is amended to read as follows:

Region 15. New Orleans, Louisiana. Services Louisiana; in Mississippi, services Adams, Amite, Claiborne, Clarke, Copiah, Covington, Forrest, Franklin, George, Greene, Hancock, Harrison, Hinds, Issaquena, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lincoln, Madison, Marion, Neshoba, Newton, Pearl River, Perry, Pike, Rankin, Scott, Sharkey, Simpson, Smith, Stone, Walthall, Warren, Wayne, Wilkinson, and Yazoo Counties; in Alabama, services Baldwin, Barbour, Bullock, Butler, Choctaw, Clarke, Coffee, Conecuh, Covington, Crenshaw, Dale, Dallas, Escambia, Geneva, Henry, Houston, Lowndes, Macon, Marengo, Mobile, Monroe, Montgomery, Pike, Russell, Washington, and Wilcox Counties; in Florida, services Bay, Calhoun, Escambia, Franklin, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, and Washington Counties; and services Arkansas with the exception of Clay, Craighead, Crittenden, Cross, Greene, Lee, Miller, Mississippi, Phillips, Poinsett, and St. Francis Counties.

Subregion 26. Memphis, Tennessee. In Tennessee, services Carroll, Chester, Crockett, Decatur, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Lake, Lauderdale, McNairy, Madison, Obion, Shelby, Tipton and Weakley; in Mississippi, services Alcorn, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Clay, Coahoma, De Soto, Grenada, Holmes, Humphreys, Itawamba, Lafayette, Lee, Leflore, Lowndes, Marshall, Monroe, Montgomery, Noxubee, Oktibbeha, Panola, Pontotoc, Prentiss, Quitman, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Washington, Webster, Winston, and Yalobusha Counties; in Arkansas services Clay, Craighead, Crittenden, Cross, Greene, Lee, Mississippi, Phillips, Poinsett, and St. Francis Counties and in Missouri services Dunklin, Mississippi, New Madrid, and Pemiscot Counties.

Persons may also obtain service at the Resident Office in Little Rock, Arkansas.

(9) Delete reference to Subregion 33

(10) Region 25 is amended to read as follows:

Region 25. Indianapolis, Indiana. Services Indiana, with the exception of Clark, Dearborn, Floyd, and Lake Counties; and in Kentucky, services Daviess and Henderson Counties.

Subregion 33. Peoria, Illinois. In Illinois, services Boone, Bureau, Carroll, Cass, Champaign, De Kalb, De Witt, Douglas, Ford, Fulton, Grundy, Hancock, Henderson, Henry, Iroquois, Jo Daviess, Kankakee, Kendall, Knox, La Salle, Lee, Livingston, Logan, Macon, Marshall, Mason, McDonough, McHenry, McLean, Menard, Mercer, Morgan, Moultrie, Ogle, Peoria, Piatt, Putnam, Rock Island, Sangamon, Schuyler, Stark, Stephenson, Tazewell, Vermilion, Warren, Whiteside, Winnebago, and Woodford Counties; and in Iowa, services Clinton, Des Moines, Dubuque, Jackson, Lee, Louisa, Muscatine, and Scott Counties.

Dated: Washington, DC this 28th day of November, 2012.

By direction of the Board.

Lester A. Heltzer,

Executive Secretary.

[FR Doc. 2012–29463 Filed 12–5–12; 8:45 am]

BILLING CODE 7545–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–228; NRC–2012–0286]

Aerotest Operations, Inc., Consideration of Indirect Transfer and Conforming Amendment

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for license transfer; opportunity to comment; opportunity to request a hearing and petition for leave to intervene; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an Order under section 50.80 of Title 10 of the *Code of Federal Regulations* (10 CFR) approving the indirect transfer of Facility Operating License No. R–98 for the Aerotest Radiography and Research Reactor (ARRR) currently held by Aerotest Operations, Inc., (Aerotest or the licensee) as owner and licensed operator of ARRR. Aerotest is a wholly-owned subsidiary of OEA Aerospace, Inc., which, in turn, is a wholly-owned subsidiary of OEA Aerospace, Inc., which is a wholly-owned subsidiary of Autoliv ASP, Inc. (collectively ''seller''). The ultimate owner is Autoliv, Inc. The NRC is also considering amending the license and Technical Specifications for administrative purposes to reflect the proposed indirect transfer.

DATES: Comments must be filed by January 7, 2013. A request for a hearing must be filed by December 26, 2012. Any potential party as defined by 10 CFR 2.4, who believes access to Sensitive Unclassified Non-Safeguards Information (SUNSI) is necessary to respond to this notice must request document access by December 17, 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–2012–0286. You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0286. Address questions about NRC dockets to Carol Gallagher 301–492–3668; email *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* 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: Spyros Traiforos, Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3965; or email at: *Spyros.Traiforos@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0286 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–2012–0286.
- *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 document (if that document is available in ADAMS) is provided the first time that a document is referenced. The application dated May 30, 2012, supplemented by letter dated July 19, 2012, and response to request for additional information dated October 15, 2012, contain confidential information and, accordingly, those portions are being withheld from public disclosure. A redacted version of the application and its supplement is available electronically under ADAMS Accession Nos. ML12180A384 and ML122021201, respectively. A redacted version of the response to the request for additional information is available under ADAMS Accession No. ML12291A508.
- *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–2012–0286 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The Commission is considering the issuance of an Order under 10 CFR 50.80 approving the indirect transfer of

Facility Operating License No. R–98 for the Aerotest Radiography and Research Reactor (ARRR) currently held by Aerotest Operations, Inc., (Aerotest or the licensee) as owner and licensed operator of ARRR. Aerotest is a wholly-owned subsidiary of OEA Aerospace, Inc., which, in turn, is a wholly-owned subsidiary of OEA Aerospace, Inc., which is a wholly-owned subsidiary of Autoliv ASP, Inc. (collectively ''seller''). The ultimate owner is Autoliv, Inc. The Commission is also considering amending the license and Technical Specifications for administrative purposes to reflect the proposed indirect transfer.

According to an application for approval dated May 20, 2012, as supplemented by letters dated July 19, 2012, and October 15, 2012, (hereinafter ''the application''), Aerotest and Nuclear Labyrinth LLC, (''the applicants'') seek approval, under 10 CFR 50.80, of the indirect transfer of control of the licensee. The indirect transfer of control would result from acquisition of Aerotest Operations, Inc., by Nuclear Labyrinth LLC through a stock transfer. Nuclear Labyrinth LLC would indirectly own 100% of ARRR through its ownership of Aerotest. There will be no direct transfer of the license. Aerotest would continue to own and operate the facility and hold the license.

No physical changes to the facilities or operational changes are being proposed in the application. The proposed conforming amendment would replace references to OEA Aerospace, Inc., in the license with ''Aerotest Operations, Inc., which is owned by Nuclear Labyrinth LLC.''

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the indirect transfer will not affect the qualifications of the licensee to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and Orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (The Act), and the Commission's regulations.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below. Access to the application and supplements is discussed in Section II, ''Availability of Documents.'' A portion of the May 30, 2012, application and its supplement dated July 19, 2012, and response to request for additional information dated October 15, 2012, contain SUNSI and are not available to the public.

III. Opportunity To Request a Hearing and Petitions for Leave To Intervene

Requirements for 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 O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 (or call the PDR at 800–397–4209 or 301–415–4737). The NRC's regulations are available online in the NRC Library at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*.

Within 20 days from the date of publication of this notice, any person(s) whose interest may be affected by the Commission's action on the application and who wishes to participate as a party in the proceeding must file a written request for hearing and petition for leave to intervene via electronic submission through the NRC's E-Filing system. As required by the Commission's rules of practice at 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 must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (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 order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. 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. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of the transfer of control of the license in response to the application. 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 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 application for amendment that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application for amendment 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.

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 the NRC 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.

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.

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 26, 2012. The petition must be filed in accordance with the filing instructions in section III 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) a State, local governmental body, or Federally-recognized Indian tribe does 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 under 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 NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings, unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request 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 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.

Attorney for applicant: Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street NW., Washington, DC 20037; telephone: 202–663–8063, email at: *jay.silberg@pillsburylaw.com* (counsel for Aerotest).

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 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 of this notice 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 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 requester'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 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 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 determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

[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.

[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 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.

Dated at Rockville, Maryland, this 30th day of Nov., 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; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requester 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 petitioner/requester 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. 2012–29523 Filed 12–5–12; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17Ad–2(c), (d), and (h), OMB Control No. 3235–0130, SEC File No. 270–149.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) ("PRA"), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rule 17Ad–2(c), (d), and (h), (17 CFR 240.17Ad–2(c), (d), and (h)), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 17Ad–2(c),(d), and (h) enumerates the requirements with which registered transfer agents must comply to inform the Commission or the appropriate regulator of a transfer agent's failure to meet the minimum performance standards set by the Commission rule by filing a notice.

While it is estimated there are 477 registered transfer agents, approximately 116 of this number qualify as small transfer agents under Exchange Act Rule 0.10, 17 CFR 240.010(h) and are therefore exempted from Rule 17Ad–2(c),(d) and (h), leaving 361 transfer agents subject to the rule. Each of these transfer agents annually files approximately five notices pursuant to Rule 17Ad–2(c), (d), and (h) for an industry-wide total of 1,805 notices per year (361 x 5). In view of: (a) The readily available nature of most of the information required to be included in the notice (since that information must be compiled and retained pursuant to other Commission rules); (b) the summary fashion in which such information must be presented in the notice (most notices are one page or less in length); and (c) the past experience of the staff regarding the notices, the Commission staff estimates that, on the average, most notices require approximately one-half hour to prepare. Thus, the Commission staff estimates that each of the transfer agents subject to the rule spends an average of two and a half hours per year complying with the rule for an industry-wide total of 902.5 hours per year (361 x 2.5).

Written comments are invited on: (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 estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: November 30, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–29457 Filed 12–5–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [77 FR 71845, December 4, 2012].

STATUS: Closed meeting.

PLACE: 100 F Street NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: December 6, 2012.

CHANGE IN THE MEETING: Deletion of Item.

The following item will not be considered during the Closed Meeting on Thursday, December 6, 2012:

Adjudicatory matter

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: December 4, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–29617 Filed 12–4–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68330; File No. SR–BATS–2012–045]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand the Availability of Risk Management Tools

November 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 19, 2012, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to expand the availability of the Exchange's Risk Management Tool (the ''Tool'') to all Exchange Members.[3] The Tool is currently available only to Members that provide sponsored access to other market participants, as described below.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange defines a ''Sponsored Participant'' as a person who has entered into a sponsorship arrangement with a Sponsoring Member.[4] A ''Sponsoring Member'' is defined as a broker-dealer that is a Member of the Exchange and has been designated by a Sponsored Participant to execute, clear and settle transactions occurring on the Exchange.[5] Under BATS Rule 11.3(b), a Sponsoring Member may allow its customers to enter orders directly into the trading systems of the Exchange as Sponsored Participants, without the Sponsoring Member acting as an intermediary.

To facilitate the ability of a Sponsoring Member to monitor and oversee the sponsored access activity of its Sponsored Participants, the Exchange offers the Sponsored Access Risk Management Tool.[6] This optional service acts as a risk filter by causing the orders of Sponsored Participants to be evaluated by the Tool prior to entering the Exchange's matching engine for execution. When a Sponsored Participant's order is evaluated by the Tool, it determines whether the order complies with the order criteria established by the Sponsoring Member for that Sponsored Participant. The order criteria pertain to such matters as the size of the order (e.g., maximum notional value per order and maximum shares per order), the order type (e.g., pre-market, post-market, short sales and ISOs), restricted securities, easy to borrow securities, and order cut-off (e.g., block new orders and cancel all open orders).

Given recent market events, the Exchange proposes to expand the availability of the Tool to all Members. As amended, the Tool can be configured by a Member to provide an Exchange offered risk management solution. Just as the use of the Tool by a Sponsoring Member does not automatically constitute compliance with Exchange Rules, the Exchange does not believe that use of the Tool can replace Member-managed risk management solutions. However, the Exchange does believe that the Tool can be a valuable

[4] *See* BATS Rule 1.5(w).

[5] *See* BATS Rule 1.5(x).

[6] *See* Securities Exchange Act Release No. 60236 (July 2, 2009), 74 FR 34068 (July 14, 2009) (SR–BATS–2009–019) (notice of filing and immediate effectiveness of proposed rule change to establish a Sponsored Access Risk Management Tool).

addition to risk management solutions implemented by Members.

As is currently the case, orders subject to the Tool will be validated by the Exchange prior to entering the Exchange's matching engine. Based on parameters provided to the Tool, the order will be immediately passed on to the matching engine or rejected back to the entering Member.

The Exchange does not propose to require Members to use the Tool. Members are free to use any appropriate risk-management tool or service. The Exchange will not provide preferential treatment to Members using the Tool.

The Exchange proposes to make the Tool available to its Members upon request. The Exchange believes the Tool will offer the Exchange's Members another option in the efficient risk management of its Members' access to BATS Exchange.

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[7] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[8] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[9] in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market, and provide an opportunity for investors' orders to be executed without the participation of a dealer. Specifically, the Exchange believes that the proposed rule change is consistent with all of the aforementioned principles because it fosters competition by providing another option in the efficient risk management of trading on the Exchange. In particular, the Exchange notes that the proposal is consistent with Section 11(A)(a)(1) in that it makes available to all Exchange Members a Tool that previously was available only to Members that provided sponsored access to Sponsored Participants. The Exchange notes that a similar functionality has already been found to be consistent with the Act by the Commission.[10]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

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[11] and Rule 19b–4(f)(6)(iii) thereunder.[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–BATS–2012–045 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.

All submissions should refer to File Number SR–BATS–2012–045. 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 such 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–BATS–2012–045 and should be submitted on or before December 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–29456 Filed 12–5–12; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78k–1(a)(1).

[10] Securities Exchange Act Release No. 59354 (February 3, 2009), 74 FR 6683 (February 10, 2009) (SR–NYSE–2008–101) (Approval of NYSE Risk Management Gateway).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68326; File No. SR–BOX–2012–018]

Self-Regulatory Organizations; BOX Options Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase the Maximum Term for LEAPS to Fifteen Years

November 30, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934

[1] 15 U.S.C. 78s(b)(1).

(''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 19, 2012, BOX Options Exchange LLC (the ''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 Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to increase the maximum term for Long-Term Equity Options Series (''LEAPS'') to fifteen years. The text of the proposed rule change is available from the principal office of the Exchange, on the Exchange's Internet Web site at *http://boxexchange.com,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Long-term equity and index option series (LEAPS) are similar to standard options but have maturities that may expire from 3 to 5 years, respectively, post initial listing. The purpose of the proposed rule change is to increase the maximum term for all LEAPS. Currently, the maximum term on BOX for equity LEAPS is 39 months and the maximum term for index LEAPS is 60 months.

Specifically, the Exchange is proposing to increase the maximum term for all LEAPS to 180 months (fifteen years). The Exchange understands that market participants currently enter into over-the-counter (''OTC'') positions that have longer dated expirations than are currently available on BOX. The Exchange would like to accommodate the needs of BOX Options Participants by listing LEAPS with longer dated expirations. BOX is currently unable to do so because of the existing term limitations set forth in the Exchange Rules.

The Exchange believes that expanding the eligible term for all LEAPS to 180 months is important and necessary to BOX's efforts to offer products in an exchange-traded environment that compete with OTC products. The Exchange believes that LEAPS provide market participants and investors with a competitive comparable alternative to the OTC market in long-term options, which can take on contract characteristics similar to LEAPS but are not subject to the same maximum term restriction. By expanding the eligible term for LEAPS, market participants will now have greater flexibility in determining whether to execute their long-term options in an exchange environment or in the OTC market. The Exchange believes that market participants can benefit from being able to trade these long-term options in an exchange environment in several ways, including, but not limited to the following: (1) Enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of The Options Clearing Corporation (''OCC'') as issuer and guarantor of LEAPS.

The Exchange understands that quote traffic is always an issue with the introduction of a new product or a revision to the terms of a contract, such as a longer dated LEAPS option. The Exchange, however, does not expect there to be a significant increase to quote traffic since the Exchange anticipates listing longer dated LEAPS in response to specific market demand and does not expect to significantly populate expirations. In addition, the Exchange notes that certain liquidity providers are not subject to quoting obligations for LEAPs, which will assist with quote traffic mitigation.

Additionally, the OCC has confirmed that it can configure its systems to support LEAPS that have a maximum term of fifteen years (180 months).

Finally, the Exchange is making technical, non-substantive changes to Rule 5070 to delete ''®'' symbols

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[4] in general, and Section 6(b)(5) of the Act,[5] in particular, that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to promote just and equitable principles of trade in that the availability of LEAPS with longer dated expirations will give market participants an alternative to trading similar products in the OTC market. Trading a product in an exchange traded environment (that is currently being used in the OTC market) will also enable the Exchange to compete more effectively with the OTC market.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that it will hopefully lead to the migration of options currently trading in the OTC market to trading on BOX. Also, any migration to BOX from the OTC market will result in increased market transparency.

Additionally, the Exchange believes that the proposed rule change is designed to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest in that it should create greater trading and hedging opportunities and flexibility. The proposed rule change should also result in enhanced efficiency in initiating and closing out positions and heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of LEAPS. Further, the proposal will result in increased competition by permitting the Exchange to offer products that are currently used in the OTC market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [6] and Rule 19b–4(f)(6) thereunder.[7] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6)(iii) thereunder.[9]

The Exchange notes that the proposal is substantially similar to a rule change proposed by the Chicago Board Options Exchange Incorporated (''CBOE''), which was recently approved by the Commission.[10] The Exchange believes that this proposed rule change does not raise any new or unique substantive issues from those raised in the CBOE proposal.

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–BOX–2012–018 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–BOX–2012–018. 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–BOX–2012–018 and should be submitted on or before December 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–29453 Filed 12–5–12; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[10] *See* Securities Exchange Act Release No. 68164 (November 6, 2012), 77 FR 67723 (November 13, 2012) (Order Approving CBOE Proposed Rule Change to Increase the Maximum Term for LEAPS to Fifteen Years) (SR–CBOE–2012–071).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68328; File No. SR–MSRB–2012–10]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Implementation Date of the Requirement To Report the Contractual Dollar Prices at Which Transactions Were Executed for Inter-Dealer Transactions

November 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''the Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 29, 2012, the Municipal Securities Rulemaking Board (the ''MSRB'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the MSRB. The MSRB has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. 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 MSRB is proposing to extend to March 29, 2013, the implementation date of a provision in Rule G–14, on reports of sales or purchases, including the Rule G–14 RTRS Procedures, and amendments to the Real-Time Transaction Reporting System (''RTRS'') information system and subscription service pertaining to a requirement for brokers, dealers and municipal securities dealers (collectively ''dealers'') to report for inter-dealer transactions the contractual dollar price at which the transaction was executed.

The text of the proposed rule change is available on the MSRB's Web site at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2012-Filings.aspx*, at the MSRB's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

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 MSRB 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 MSRB 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 MSRB proposes to extend the implementation date of a requirement for brokers, dealers and municipal securities dealers (collectively ''dealers'') to report for inter-dealer transactions the contractual dollar price at which the transaction was executed to March 29, 2013. The Commission previously approved the change to the transaction reporting procedures on March 20, 2012 (the ''March 20, 2012 Approval Order'').[4]

Inter-dealer transaction reporting is accomplished by both the purchasing and selling dealers submitting information about the transaction to the Depository Trust and Clearing Corporation's (''DTCC'') Real-Time Trade Matching System (''RTTM''). Information submitted to RTTM is forwarded to RTRS for trade reporting. Requiring dealers to report for inter-dealer transactions the contractual dollar price at which the transaction was executed, in addition to the information currently reported, would provide RTRS with an additional data point to use in its evaluation of which dollar price should be disseminated from RTRS for price transparency purposes.

The original proposal had an implementation date of November 5, 2012, but was postponed due to the effects of Hurricane Sandy on DTCC's systems. Due to ongoing effects of Hurricane Sandy on DTCC's systems, DTCC will be unable to make necessary system changes to allow dealers to report the contractual dollar price on inter-dealer trades to RTRS by November 30, 2012, as required by the March 20, 2012 Approval Order. To provide sufficient time for DTCC to make system changes, the proposed rule change would extend the implementation date of the provision to a date no later than March 29, 2013. MSRB is working with DTCC to implement this change as soon as practicable and will provide dealers and affected parties with at least ten business days of advance notice of the implementation date. Given that many dealers already have made system and procedural preparations for this change and the desire to implement this change as soon as practicable, the MSRB believes that ten business days of advance notice of the implementation date for this provision would be sufficient.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the MSRB's rules shall:

> 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act because it extends the implementation date of a provision in a previously approved rule filing as a result of the effects of Hurricane Sandy on certain computer systems.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change extends the implementation date of a provision in a previously approved rule filing as a result of the effects of Hurricane Sandy on certain computer systems.

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 on the proposed rule change.

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[5] and Rule 19b–4(f)(6) thereunder.[6]

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing.[7] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The MSRB requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[8] which would make the rule change effective and operative upon filing.

The MSRB believes that extending the implementation date of the requirement that, for inter-dealer transactions, dealers must report the contractual dollar price at which the transaction was executed to March 29, 2013, will prevent dealers from falling into non-compliance with the requirement. The requirement was originally to be implemented by November 30, 2012, under the terms of the March 20, 2012 Approval Order. The MSRB represents that its inability to implement the reporting requirement by November 30, 2012 is due to the ongoing effects of Hurricane Sandy on DTCC's systems, which are outside the control of the dealers and the MSRB.[9]

The Commission believes that waiver of the 30-day operative delay is consistent with investor protection and the public interest. Extending the implementation date of the requirement without delay could reduce potential confusion among dealers regarding compliance with the requirement and

[4] *See* SEC Release No. 34–66622 (March 20, 2012), 77 FR 17557 (March 26, 2012) (File No. SR–MSRB–2012–01).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

[7] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] Email from Ronald W. Smith, Corporate Secretary and Senior Legal Associate, MSRB, to Derek James, SEC Division of Trading and Markets, Office of Market Supervision, dated November 29, 2012.

should clarify to investors the date by which this requirement will be implemented. Therefore, the Commission designates the proposed rule change as operative upon filing with the Commission.[10]

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 change 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–MSRB–2012–10 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–MSRB–2012–10. 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 such filing also will be available for inspection and copying at the principal office of the MSRB. 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–MSRB–2012–10, and should be submitted on or before December 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–29454 Filed 12–5–12; 8:45 am]

BILLING CODE 8011–01–P

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68325; File No. SR–FINRA–2012–051]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Waiver of Certain TRACE Late Trade Reporting Fees Due to Hurricane Sandy

November 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on November 26, 2012, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as ''establishing or changing a due, fee or other charge'' under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. 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

FINRA is proposing to waive certain Trade Reporting and Compliance Engine (''TRACE'') late trade reporting fees specified in FINRA Rule 7730(b)(3) due to disruptions in normal business operations as a result of Hurricane Sandy.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

Transactions in TRACE-Eligible Securities, as defined in FINRA Rule 6710(a), are required to be reported to FINRA within the time frames specified in FINRA Rule 6730(a). FINRA Rule 7730(b) sets forth the charges to be assessed against each member responsible for reporting such transactions. FINRA Rule 7730(b)(3) provides that members shall be charged a $3.00 per transaction late fee for those transactions that are not timely reported ''as/of'' as required by the FINRA Rule 6700 Series. Due to significant disruptions in normal business operations as a result of Hurricane Sandy or Superstorm Sandy (''Sandy'') that made landfall along the mid-Atlantic Coast on October 29, 2012, FINRA proposes to waive such TRACE late trade reporting fees if a firm in an area affected by Sandy[5] reported certain

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] An affected area means any area, such as a state or a county, that the President declared a major disaster or for which the President signed a federal emergency declaration as a result of Sandy (*e.g.,* the state, or certain counties, of Connecticut, New York, New Jersey, Delaware, District of Columbia,

Continued

transactions in TRACE-Eligible Securities late. The late trade reporting fee would be waived for transactions that were executed on Monday, October 29, 2012 or Tuesday, October 30, 2012, by firms located in the affected areas (or that have their fixed income operations in the affected areas), provided that the affected firms reported the transactions no later than Wednesday, October 31, 2012 by the TRACE system closing.[6]

FINRA has filed the proposed rule change for immediate effectiveness. The effective date and the implementation date will be the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[7] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed rule change to waive the late trade reporting fee for those firms that were adversely affected by Sandy is appropriate considering the lack of communications, transportation, electricity, facilities and available staff as a result of Sandy that hampered the ability of members in the affected areas (or with fixed income operations in the affected area) to meet their TRACE reporting deadlines. FINRA believes that this limited waiver results in reasonable fees and financial benefits from late trade reporting fee waivers that are equitably allocated. The financial benefit of the late trade reporting fee waiver would be available to all firms located in the affected areas (or that have their fixed income operations in the affected areas). In addition, the financial benefit of the late trade reporting fee waiver would be available for a very limited period (i.e., only for transactions that were executed on Monday, October 29, 2012 or Tuesday, October 30, 2012 provided that such transactions were reported no later than Wednesday, October 31, 2012, by the TRACE system closing), such that members not eligible for the late trade reporting fee waiver are not unfairly or inequitably affected. The proposed rule change is reasonable because the waiver of a standard FINRA late trade reporting fee, and the financial benefit from such waiver is of limited amount, duration and application as noted above. Finally, the proposed late trade reporting fee waiver does not unfairly discriminate between or among members in that the waiver would be available to any such member in the affected areas that executed transactions on the relevant dates, provided that the firm reported the transaction(s) no later than Wednesday, October 31, 2012 by the TRACE system closing.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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. FINRA believes that the proposed rule change to waive the late trade reporting fee for those firms that were adversely affected by Sandy is appropriate considering the lack of communications, transportation, electricity, facilities and available staff as a result of Sandy that hampered the ability of members in the affected areas (or with fixed income operations in the affected area) to meet their TRACE reporting deadlines. FINRA believes that the limited late trade reporting fee waiver would not place an unreasonable fee burden on members, nor confer an uncompetitive benefit to members that may have their late trade reporting fees waived, in that such waiver would be available for a very limited period (only for trades executed on Monday, October 29, 2012 or Tuesday, October 30, 2012 provided that such transactions were reported no later than Wednesday, October 31, 2012, by the TRACE system closing), and the financial impact of such a waiver would be *de minimis.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and paragraph (f)(2) of Rule 19b–4 thereunder.[9] 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–FINRA–2012–051 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2012–051. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the

Maryland, Massachusetts, New Hampshire, Pennsylvania, Rhode Island, Virginia and West Virginia) (the ''affected areas'').

[6] FINRA has identified a number of transactions that qualify for the waiver of the late trade reporting fee of $3.00, and proposes to credit those firms with the identified relevant transactions on their TRACE invoices for November 2012 (the ''November Invoice''). However, upon receipt of the November Invoice, if a firm has not received credit for a transaction(s) it believes qualifies for the fee waiver because its fixed income operations are located in one of the affected areas, the firm should contact TRACE Data Services by emailing TRACEDataServices@finra.org or calling (888) 507–3665, and provide a list of such transactions and the reason why the firm believes such transactions qualify for the waiver.

[7] 15 U.S.C. 78*o*–3(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2012–051 and should be submitted on or before December 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–29452 Filed 12–5–12; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68324; File No. SR–ISE–2012–89]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Gateway Fees

November 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 20, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to adopt gateway fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Prior to the launch of the Optimise trading system, ISE Members were able to lease ''gateway'' equipment, i.e., Routers, Switches and Servers, through ISE to connect to the Exchange. Members also were able to use their own equipment, which ISE managed. With the launch of the Optimise trading system, ISE began to maintain shared gateways at its datacenters without charging any fees to Members and removed the gateway fees it previously charged from its Schedule of Fees.[3]

The Exchange now proposes to adopt monthly gateway fees. Specifically, the Exchange proposes to adopt a monthly fee of $250 per shared gateway. Also, some Members have requested their own dedicated gateways as an alternative to using the shared gateways. While the shared gateways provide for full redundancy and the same latency, these Members nevertheless desire their own dedicated gateways as a risk management alternative. To accommodate these Members, the Exchange proposes to adopt an optional dedicated gateway offering for a monthly fee of $2,000 per dedicated gateway pair.[4]

ISE has expended significant amount of resources in developing this infrastructure and the proposed gateway fees will be used to recover the costs the Exchange incurs in providing and maintaining this infrastructure. With this proposed rule change, Members will have the ability to utilize a shared gateway or, if they have [sic] choose, utilize a dedicated gateway. The use of the dedicated gateway is voluntary and therefore, Members who do not opt for a dedicated gateway will be able to connect to the Exchange through a shared gateway.

The Exchange has designated this proposal to be operative on December 3, 2012.

2. Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (''Act''),[5] in general, and with Section 6(b)(4) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. In particular, the proposed rule change will provide greater transparency into the connectivity options available to Members.

The Exchange believes that the proposed rule change constitutes an equitable allocation of fees because all similarly situated Members would be charged the same amount, based on their preference for either a shared gateway or a dedicated gateway. While Members may opt for a dedicated gateway, those that do not will continue to be able to access the Exchange via a shared gateway. And both gateway options provide full redundancy and the same latency. Thus, access to the Exchange would continue to be offered on fair and non-discriminatory terms.

The Exchange also believes the proposed fee for a dedicated gateway is equitably allocated in that all Exchange Members that opt for a dedicated gateway will be charged the same amount. All Exchange Members have the option to select a dedicated gateway connection and those that choose not to will continue to access the Exchange via a shared gateway.

With respect to the increase in fees, the proposed fee change for gateways is expected to offset increasing connectivity costs, including costs for gateway software and hardware enhancements and resources dedicated to gateways development, quality assurance, and support.

The Exchange believes the proposed fees are not unfairly discriminatory in that all Exchange Members have the option of accessing the Exchange via shared gateways or dedicated gateways, and there is no differentiation among Members with regard to the fees charged for either option.

[3] *See* Securities Exchange Act Release No. 65861 (December 1, 2011), 76 FR 76463 (December 7, 2011) (SR–ISE–2011–77).

[4] For redundancy and load balancing purposes, Members that choose the dedicated gateway option would be connected to a pair of dedicated gateways for which the Exchange would charge one fee.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange 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 members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[7] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. 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–ISE–2012–89 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–ISE–2012–89. 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 20549–1090, 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 ISE's principal office and on its Internet Web site. 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–ISE–2012–89, and should be submitted on or before December 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–29451 Filed 12–5–12; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68329; File No. SR–BYX–2012–022]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand the Availability of Risk Management Tools

November 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 19, 2012, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed with the Commission a proposal [sic] codify the availability of a Risk Management Tool (the ''Tool'') currently made available in connection with sponsored access and to expand the availability of the Tool to all Exchange Members.[3] The Tool is currently available only to Members that provide sponsored access to other market participants, as described below.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts 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 defines a ''Sponsored Participant'' as a person who has entered into a sponsorship arrangement with a Sponsoring Member.[4] A ''Sponsoring Member'' is defined as a broker-dealer that is a Member of the Exchange and has been designated by a Sponsored Participant to execute, clear and settle transactions occurring on the Exchange.[5] Under BYX Rule 11.3(b), a Sponsoring Member may allow its customers to enter orders directly into the trading systems of the Exchange as Sponsored Participants, without the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[4] *See* BYX Rule 1.5(w).

[5] *See* BYX Rule 1.5(x).

Sponsoring Member acting as an intermediary.

To facilitate the ability of a Sponsoring Member to monitor and oversee the sponsored access activity of its Sponsored Participants, the Exchange offers the Sponsored Access Risk Management Tool.[6] This optional service acts as a risk filter by causing the orders of Sponsored Participants to be evaluated by the Tool prior to entering the Exchange's matching engine for execution. When a Sponsored Participant's order is evaluated by the Tool, it determines whether the order complies with the order criteria established by the Sponsoring Member for that Sponsored Participant. The order criteria pertain to such matters as the size of the order (e.g., maximum notional value per order and maximum shares per order), the order type (e.g., pre-market, post-market, short sales and ISOs), restricted securities, easy to borrow securities, and order cut-off (e.g., block new orders and cancel all open orders).

Given recent market events, the Exchange proposes to expand the availability of the Tool to all Members. As amended, the Tool can be configured by a Member to provide an Exchange offered risk management solution. Just as the use of the Tool by a Sponsoring Member does not automatically constitute compliance with Exchange Rules, the Exchange does not believe that use of the Tool can replace Member-managed risk management solutions. However, the Exchange does believe that the Tool can be a valuable addition to risk management solutions implemented by Members.

As is currently the case, orders subject to the Tool will be validated by the Exchange prior to entering the Exchange's matching engine. Based on parameters provided to the Tool, the order will be immediately passed on to the matching engine or rejected back to the entering Member.

The Exchange does not propose to require Members to use the Tool. Members are free to use any appropriate risk-management tool or service. The Exchange will not provide preferential treatment to Members using the Tool.

The Exchange proposes to make the Tool available to its Members upon request. The Exchange believes the Tool will offer the Exchange's Members another option in the efficient risk management of its Members' access to BYX.

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[7] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[8] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[9] in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market, and provide an opportunity for investors' orders to be executed without the participation of a dealer. Specifically, the Exchange believes that the proposed rule change is consistent with all of the aforementioned principles because it fosters competition by providing another option in the efficient risk management of trading on the Exchange. The Exchange notes that a similar functionality has already been found to be consistent with the Act by the Commission.[10]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

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[11] and Rule 19b–4(f)(6)(iii) thereunder.[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–BYX–2012–022 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.

All submissions should refer to File Number SR–BYX–2012–022. 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.,

[6] The Exchange's affiliate, BATS Exchange, Inc., filed a proposal to offer an identical service to its members in connection with sponsored access. See Securities Exchange Act Release No. 60236 (July 2, 2009), 74 FR 34068 (July 14, 2009) (SR–BATS–2009–019) (notice of filing and immediate effectiveness of proposed rule change to establish a Sponsored Access Risk Management Tool) (the "BATS Exchange Risk Management Filing").

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78k–1(a)(1).

[10] Securities Exchange Act Release No. 59354 (February 3, 2009), 74 FR 6683 (February 10, 2009) (SR–NYSE–2008–101) (Approval of NYSE Risk Management Gateway).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

Washington, DC 20549, 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 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–BYX–2012–022 and should be submitted on or before December 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–29455 Filed 12–5–12; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of HealthSport, Inc., Home Director, Inc., Home Theater Products International, Inc., House of Taylor Jewelry, Inc. (n/k/a Global Jewelry Concepts, Inc.), and Huifeng Bio-Pharmaceutical Technology, Inc.; Order of Suspension of Trading

December 4, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of HealthSport, Inc. because it has not filed any periodic reports since the period ended September 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Home Director, Inc. because it has not filed any periodic reports since the period ended September 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Home Theater Products International, Inc. because it has not filed any periodic reports since March 31, 1995.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of House of Taylor Jewelry, Inc. (n/k/a Global Jewelry Concepts, Inc.) because it has not filed any periodic since the period ended September 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Huifeng Bio-Pharmaceutical Technology, Inc. because it has not filed any periodic reports since the period ended September 30, 2010.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on December 4, 2012, through 11:59 p.m. EST on December 17, 2012.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–29596 Filed 12–4–12; 11:15 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 8106]

U.S. Department of State Advisory Committee on Private International Law (ACPIL): Notice of Public Meeting of the Study Group on the Hague Convention on Choice of Court Agreements

The Office of the Assistant Legal Adviser for Private International Law, Department of State, hereby gives notice of a public meeting, to be conducted exclusively by teleconference, of the Study Group on the Hague Convention on Choice of Court Agreements. The Study Group will convene by conference call to discuss a new version of draft federal implementing legislation that will be circulated to participants prior to the meeting. The new version differs from earlier draft texts in two key respects: (1) The new version adopts a shorter form; and (2) the new version does not contemplate parallel federal and state implementing legislation. The new version has been prepared for consideration as a potential alternative to the earlier texts. Those earlier texts remain under consideration but to date have not achieved sufficient support. The purpose of the public meeting is to obtain comments on the new version. This is not a meeting of the full Advisory Committee.

Time: The teleconference will take place on Friday, January 4, 2013 at 1:00 p.m. EST and is tentatively scheduled to last until 4:00 p.m. EST.

Public Participation: This meeting is open to the public. Dial-in information and the draft legislation will be sent to those individuals who advise the Office of Private International Law that they wish to participate in the teleconference. Those who plan to participate are requested to email or phone Tricia Smeltzer (*smeltzertk@state.gov*, 202–776–8423) or Niesha Toms (*tomsnn@state.gov*, 202–776–8420) before December 28 and provide your name, affiliation, and email address.

Dated: November 29, 2012.

Keith Loken,

Assistant Legal Adviser, Office of Private International Law, Office of the Legal Adviser.

[FR Doc. 2012–29506 Filed 12–5–12; 8:45 am]

BILLING CODE 4710–08–P

TENNESSEE VALLEY AUTHORITY

Notice of Sunshine Act Meeting

December 10, 2012.

Meeting No. 12–05

The TVA Board of Directors will hold a specially called public meeting on December 10, 2012, in the TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee, to consider the agenda items listed below. A number of the TVA Board of Directors will join the meeting by teleconference. The meeting will begin at 9:30 a.m. (ET). No public listening session is scheduled.

STATUS: Open.

Agenda

Chairman's Welcome.

New Business

1. Arrangements for Non-Quorum Board of Directors.
2. Application of Real Time Energy Rate for a Specific Economic Development Customer.

FOR MORE INFORMATION: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: December 3, 2012.

Ralph E. Rodgers,

General Counsel and Secretary.

[FR Doc. 2012–29586 Filed 12–4–12; 11:15 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–2012–0073]

Notice of Request for Information Collection Approval

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.),* this notice announces that the U.S. Department of Transportation (DOT) has forwarded the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for renewal. The ICR describes the nature of the information collection and its expected cost and burden hours. The OMB approved the form in 2009 with its renewal required by September 30, 2012. The **Federal Register** Notice with a 60-day comment period soliciting comments on the form renewal was published on May 18, 2012, [FR Vol. 77, No. 97, page 29747]. No comments were received.

DATES: Comments on this notice must be received by January 7, 2013: Attention DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tami Wright, Associate Director, Compliance Operations Division (S–34), Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, 202–366–9370 or (TTY) 202–366–0663.

SUPPLEMENTARY INFORMATION:

Form Title(s): EEO Counselor Checklist (DTO F 1050–1); ONE DOT Sharing Neutrals Program Mediation Intake (DOT F 1050–2); Agreement to Mediate (DOT F 1050–3); Exit Survey for Mediation Participants (DOT F 1050–4); Agreement to Postpone the Final Interview and to Extend the Counseling Period (DOT F–1050–5); Notice of Right to File a Discrimination Complaint (DOT F 1050–6); Notice of Rights and Responsibilities (DOT F 1050–7); Individual Complaint of Employment Discrimination (DOT F 1050–8); Designation of Representative (DOT F 1050–9); Final Agency Decision Request (DOT F 1050–10); and Waiver of Right to Anonymity (DOT F 1050–11).

OMB Control Number: OMB #2105–0556.

Abstract: DOT will utilize the forms to collect information necessary to process Equal Employment Opportunity (EEO) discrimination complaints filed by individuals who are not Federal employees and are applicants for employment with the Department. These complaints are processed in accordance with the Equal Employment Opportunity Commission's regulations, 29 CFR part 1614, as amended. DOT will use the forms to: (a) request requisite information from the applicant for processing his or her EEO employment discrimination complaint; and (b) obtain information to identify an individual or his or her attorney or other representative, if appropriate. An applicant's filing of an EEO employment complaint is solely voluntary. DOT estimates that it takes an applicant approximately two and one-half hours to complete the forms.

Affected Public: Job applicants filing EEO employment discrimination complaints.

Annual Estimated Burden: 25 hours.

Frequency of Collection: An applicant's filing of an EEO complaint is solely voluntary.

Comments are Invited on: (a) Whether the proposed collection of information is reasonable for the proper performance of the EEO functions of the Department; (b) the accuracy of the Department's estimate of the burden of the proposed information Collection, including the validity of methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate, automated, electronic, mechanical, or other technology. Comments should be addressed to the address in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Issued in Washington, DC, on November 30, 2012.

Claire Barrett,

Chief Privacy & Information Asset Officer, U.S. Department of Transportation.

[FR Doc. 2012–29483 Filed 12–5–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket ID PHMSA–2012–0291]

Pipeline Safety: Random Drug Testing Rate; Contractor MIS Reporting; and Obtaining DAMIS Sign-In Information

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of calendar year 2013 minimum annual percentage rate for random drug testing, reminder for operators to report contractor MIS data, and new method for operators to obtain user name and password for electronic reporting.

SUMMARY: PHMSA has determined that the minimum random drug testing rate for covered employees will remain at 25 percent during calendar year 2013. Operators are reminded that drug and alcohol testing information must be submitted for contractors performing or ready to perform covered functions. For calendar year 2012 reporting, PHMSA will not attempt to mail the user name and password for the Drug and Alcohol Management Information System (DAMIS) to operators, but will make the user name and password available in the PHMSA Portal (*https://portal.phmsa.dot.gov/pipeline*).

DATES: Effective January 1, 2013, through December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Blaine Keener, National Field Coordinator, by telephone at 202–366–0970 or by email at *blaine.keener@dot.gov*.

SUPPLEMENTARY INFORMATION:

Notice of Calendar Year 2013 Minimum Annual Percentage Rate for Random Drug Testing

Operators of gas, hazardous liquid, and carbon dioxide pipelines and operators of liquefied natural gas facilities must randomly select and test a percentage of covered employees for prohibited drug use. Pursuant to 49 CFR 199.105(c)(2), (3), and (4), the PHMSA Administrator's decision on whether to change the minimum annual random drug testing rate is based on the reported random drug test positive rate for the pipeline industry. The data considered by the Administrator comes from operators' annual submissions of Management Information System (MIS) reports required by § 199.119(a). If the reported random drug test positive rate is less than one percent, the Administrator may continue the

minimum random drug testing rate at 25 percent. In 2011, the random drug test positive rate was less than one percent. Therefore, the PHMSA minimum annual random drug testing selection rate will remain at 25 percent for calendar year 2013.

Reminder for Operators To Report Contractor MIS Data

On January 19, 2010, PHMSA published an Advisory Bulletin (75 FR 2926) implementing the annual collection of contractor MIS drug and alcohol testing data. All applicable § 199.119 (drug testing) and § 199.229 (alcohol testing) MIS reporting operators are responsible for the submission of all contractor MIS reports to PHMSA, as well as their own, by March 15, 2013.

Contractors with employees in safety-sensitive positions who performed covered functions as defined in § 199.3, must submit these reports only through the auspices of each operator for whom these covered employees performed those covered functions (i.e., maintenance, operations or emergency response).

New Method for Operators To Obtain User Name and Password for Electronic Reporting

In previous years, PHMSA attempted to mail the DAMIS user name and password to operator staff with responsibility for submitting DAMIS reports. Based on the number of phone calls to PHMSA each year requesting this information, the mailing process has not been effective. Pipeline operators have been submitting reports required by Parts 191 and 195 through the PHMSA Portal (*https://portal.phmsa.dot.gov/pipeline*) for the past few years. Each Office of Pipeline Safety issued Operator Identification Number (OpID) should employ staff with access to the PHMSA Portal.

The user name and password required for an OpID to access DAMIS and enter calendar year 2012 data will be available to all staff with access to the PHMSA Portal in late December 2012. When the DAMIS user name and password is available in the Portal, all registered users will receive an email to that effect. Operator staff with responsibility for submitting DAMIS reports should coordinate with registered Portal users to obtain the DAMIS user name and password. Registered portal users for an OpID typically include your Compliance Officer and staff, or consultants with responsibility for submitting annual and incident reports on PHMSA F 7000- and 7100-series forms.

For OpIDs that have failed to register in the PHMSA Portal for Part 191 and 195 reporting purposes, operator staff responsible for submitting DAMIS reports can register in the Portal by following the instructions at *http://opsweb.phmsa.dot.gov/portal_message/PHMSA_Portal_Registration.pdf*.

Pursuant to 49 CFR Parts 199.119(a) and 199.229(a), operators with 50 or more covered employees, including both operator and contractor staff, are required to submit DAMIS reports annually. Operators with less than 50 total covered employees are required to report only upon written request from PHMSA. If an OpID submitted a calendar year 2011 DAMIS report with less than 50 total covered employees, the PHMSA Portal message may state that no calendar year 2012 DAMIS report is required. Some of these OpIDs may have grown to more than 50 covered employees during CY 2012. The Portal message will include instructions for how these OpIDs can obtain a calendar year 2012 DAMIS user name and password.

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

Issued in Washington, DC, on November 30, 2012.

Linda Daugherty,

Deputy Associate Administrator for Policy and Programs.

[FR Doc. 2012–29441 Filed 12–5–12; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35700]

Chessie Logistics Co., LLC—Acquisition and Operation Exemption—J. Emil Anderson & Son, Inc.

Chessie Logistics Co., LLC (Chessie), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from J. Emil Anderson & Son, Inc. (Anderson) and to operate 1.006 miles of private terminal trackage, including 431 feet of siding, in the city of Melrose Park, Cook County, Ill. (the Track). According to Chessie, the Track does not have assigned mileposts. Chessie states that the Track, which is owned by Anderson and currently used by Indiana Harbor Belt Railroad (IHB), is located west of the Mannheim Road crossing at the end of the Harvester Spur, an IHB spur track located between milepost 37.0 and milepost 38.0 off of the IHB main line, just south of the IHB Norpaul Yard. Chessie states that Chessie and Anderson have entered into an agreement under which Chessie is acquiring all of Anderson's rights to the Track as well as assuming its obligation to ship to owners of the adjacent commercial properties.[1]

Unless stayed, the effective date of the exemption will be December 21, 2012 (30 days after the verified exemption was filed).[2] Chessie states that it expects to consummate the proposed transaction shortly after the effective date of the exemption.

Chessie certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than December 14, 2012 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35700, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Ariel A. Erbacher, Legal Counsel, Chessie Logistics Co., LLC, 1001 Green Bay Rd., Unit 204, Winnetka, IL 60093.

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov.*''

Decided: December 3, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2012–29505 Filed 12–5–12; 8:45 am]

BILLING CODE 4915–01–P

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[1] In a prior proceeding, Mannheim Armitage Railway, LLC (Mannheim), a wholly owned subsidiary of Anderson, obtained an exemption to acquire the Track from Anderson and operate it. *See Mannheim Armitage Ry.—Acquis. & Operation Exemption—Certain Trackage Rights of J. Emil Anderson & Son, Inc. in Melrose Park, Cook Cnty., Ill.,* FD 35540 (STB served Sept. 9, 2011). According to Chessie, however, that transaction was never consummated, and Anderson now is seeking to transfer all rights to the Track to Chessie instead.

[2] Chessie filed its verified notice of exemption on November 20, 2012, and supplemented it the next day. Therefore, November 21, 2012, the date of Chessie's supplement, will be considered the filing date for purposes of calculating the effective date of the exemption.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35694]

Western Washington Railroad, LLC—Lease and Operation Exemption—City of Tacoma, Department of Public Works

On November 20, 2012, Western Washington Railroad, LLC (WWRR), a Washington limited liability company and noncarrier, filed a verified notice of exemption under 49 CFR 1150.31 to lease from the City of Tacoma, Department of Public Works (Tacoma Rail) and operate 7.6 miles of rail line between milepost 60 and milepost 67.6 in Lewis County, WA.

As a result of this transaction, and pursuant to a lease and operation agreement between WWRR and Tacoma Rail dated October 18, 2012, WWRR will provide freight rail service over the line. WWRR states that Tacoma Rail has retained trackage rights over a portion of the line to allow for interchange with WWRR, BNSF Railway Company, the Puget Sound and Pacific Railroad, and Union Pacific Railroad Company, and also over the entire line for emergency routing. WWRR states that the transaction does not impose any interchange commitments.

The effective date of this exemption is December 20, 2012. WWRR states that it expects to commence operations immediately after the effective date of this exemption.

WWRR certifies that its projected annual revenues as a result of this transaction will not exceed $5 million or result in the creation of a Class I or Class II rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed by December 13, 2012 (at least seven days prior to the date the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 35694 must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on W. Karl Hansen, Leonard, Street and Deinard, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: December 3, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2012–29467 Filed 12–5–12; 8:45 am]

BILLING CODE 4915–01–P

FEDERAL REGISTER

Vol. 77 Thursday,

No. 235 December 6, 2012

Part II

The President

Proclamation 8913—International Day of Persons With Disabilities, 2012

Federal Register
Vol. 77, No. 235
Thursday, December 6, 2012

Presidential Documents

Title 3—

The President

Proclamation 8913 of December 3, 2012

International Day of Persons With Disabilities, 2012

By the President of the United States of America

A Proclamation

Americans have always understood that each of us is entitled to a set of fundamental freedoms and protections under the law, and that when everyone gets a fair shot at opportunity, all of us do better. For more than two decades, our country has upheld those basic promises for persons with disabilities through the Americans with Disabilities Act—a sweeping civil rights bill that moved our Nation forward in the journey to equality for all. And from making health care more affordable to ensuring new technologies are accessible, we have continued to build on that progress, guided by the belief that equal access and equal opportunity are common principles that unite us as one Nation.

On the 20th International Day of Persons with Disabilities, we reaffirm that the struggle to ensure the rights of every person does not end at our borders, but extends to every country and every community. It continues for the woman who is at greater risk of abuse because of a disability and for the child who is denied the chance to get an education because of the way he was born. It goes on for the 1 billion people with disabilities worldwide who all too often cannot attend school, find work, access medical care, or receive fair treatment. These injustices are an affront to our shared humanity—which is why the United States has joined 153 other countries around the world in signing the Convention on the Rights of Persons with Disabilities, which calls on all nations to establish protections and liberties like those afforded under the Americans with Disabilities Act. While Americans with disabilities already enjoy these rights at home, they frequently face barriers when they travel, conduct business, study, or reside overseas. Ratifying the Convention in the Senate would reaffirm America's position as the global leader on disability rights and better position us to encourage progress toward inclusion, equal opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities worldwide.

We have come far in the long march to achieve equal opportunity for all. But even as we partner with countries across the globe in affirming universal human rights, we know our work will not be finished until the inherent dignity and worth of all persons with disabilities is guaranteed. Today, let us renew our commitment to meeting that challenge here in the United States, and let us redouble our efforts to build new paths to participation, empowerment, and progress around the world.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim December 3, 2012, as International Day of Persons with Disabilities. I call on all Americans to observe this day with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of December, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2012–29704
Filed 12–5–12; 11:15 am]
Billing code 3295–F3

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