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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 2

[Docket No. APHIS–2006–0023]

RIN 0579–AD03

Submission of Itineraries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Animal Welfare Act regulations to include more specific requirements in the regulations concerning the submission of itineraries by any person who is subject to the Animal Welfare Act regulations and who intends to exhibit any animal at any location other than the person's approved site when travel will extend overnight. APHIS inspectors need access to animals, facilities, and records for unannounced inspections when animals are exhibited at a location other than at a regulated person's approved site to improve compliance with the regulations and the Animal Welfare Act.

DATES: *Effective Date:* January 30, 2013.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road, Unit 84, Riverdale, MD 20737–1234; (301) 851–3751.

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Executive Summary

I. Purpose of the Regulatory Action

The rule will facilitate enforcement of the Animal Welfare Act regulations for traveling exhibitors and thereby help to ensure the humane handling, housing, treatment, and transportation of the animals in their care.

II. Summary of the Major Provisions of the Regulatory Action in Question

This rule will require the advance submission of itineraries by any person who is subject to the Animal Welfare Act regulations and who intends to exhibit any animal at any location other than the person's approved site when travel will extend overnight.

III. Costs and Benefits

Costs of the rule for exhibitors are expected to be small. The estimated time needed to prepare and submit an itinerary once arrangements have been made is about 15 minutes. Many traveling animal exhibitors are already submitting itineraries in a timely manner in accordance with existing Agency policy when a regulated animal is exhibited away from its approved site for 4 days or more. This rule is expected to cost the estimated affected 425 exhibitors a total of about $15,375 per year to prepare and submit itineraries.

The rule is expected to eliminate costs APHIS incurs in attempting to inspect animals that are not at locations where APHIS expected them to be, and to reduce some costs associated with responding to inquiries and complaints about traveling exhibitors alleged to have violated Animal Welfare Act regulations and standards. Money saved on these activities can be put toward inspections and other activities that will benefit animal welfare.

The Final Rule

The Animal Welfare Act (Act) (7 U.S.C. 2131–2159) authorizes the Secretary of Agriculture to promulgate rules and standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, exhibitors, and other regulated entities. The Secretary of Agriculture has delegated the responsibility for enforcing the Act to the Administrator of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS). Regulations and standards established under the Act are contained in title 9 of the Code of Federal Regulations (CFR), parts 1, 2, and 3. The APHIS Animal Care (AC) program ensures compliance with the Act regulations and standards by conducting unannounced inspections of premises with regulated animals.

The regulations contained in 9 CFR part 2 establish certain responsibilities of regulated persons under the Act. These responsibilities include requirements for the licensing and registration of dealers, exhibitors, and research facilities, and standards for veterinary care, identification of animals, and recordkeeping.

On October 1, 2009, we published in the **Federal Register** (74 FR 50738–50740, Docket No. APHIS–2006–0023) a proposal [1] to amend the regulations to include more specific requirements in the regulations concerning the submission of itineraries by any person who is subject to the Act regulations and who intends to exhibit any animal at any location other than the person's approved site. We proposed to require that such itineraries be submitted to the AC Regional Director no fewer than 2 days in advance of any travel.

We proposed that the itinerary include:

- The name and license or registration number under the Act of the person who will exhibit the animals, and if any animals are leased, borrowed, loaned, or under some similar arrangement, the name of the person who owns the animals;
- The name, identification number or identifying characteristics, species (common or scientific name), sex and age of each animal; and
- The names, dates, and locations where the animals will travel, be housed, and be exhibited, including all anticipated dates and locations for any stops and layovers.

We proposed to require that the itinerary be revised as necessary and the AC Regional Director notified of any changes.

We explained that our reason for proposing to require such itineraries to be submitted no fewer than 2 days before the start of travel was to ensure that AC inspectors have advance notice of the locations where animals will be exhibited so that they can make unannounced inspections to ensure compliance with regulations and standards for animal welfare.

We solicited comments concerning our proposal for 60 days ending November 30, 2009. We received 790 comments by that date. They were from

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2006-0023.*

animal welfare organizations, exhibitor and trade associations, exhibitors, and private citizens. We have considered all issues raised by the commenters and discuss below those issues that were within the scope of the proposed rule.

A large number of commenters supported the proposed rule as written. Among the reasons provided for their support, commenters stated that the proposed provisions would make it easier for APHIS to monitor adherence to the regulations and that the rule would have little impact on the majority of exhibitors who already submit itineraries in a timely manner. One commenter expressed the hope that the proposed provisions would allow APHIS to ensure that animals are afforded the minimum space requirements for primary enclosures when not in actual transport and to better monitor the time animals spend in an exercise pen or its equivalent.

Issue: Some commenters stated that the proposed rule is unnecessary because exhibitors already submit itineraries in accordance with a policy that APHIS implemented in 1997, titled ''Policy 2,'' which states:

Exhibitors who are in continuous travel status shall update their itinerary as often as necessary to ensure AC [Animal Care] knows their whereabouts at all times.

Circuses, petting zoos, and acts with an established route shall notify AC in advance of departing their home facility and update travel information as needed.

Exhibitors who take animals from their facilities from time to time shall notify AC when any animal is gone more than four (4) consecutive days. Upon request, a licensee shall provide an itinerary of absences of less than four (4) days.

Providing notification ensures the opportunity for access for an unannounced inspection, eliminates unnecessary AC visits when a licensee has been inspected recently, and minimizes resources needed to locate the exhibitor.

The itinerary should provide the following:

1. Dates away from the home facility.
2. City and State for all stops.
3. Site name or location of all stops.

Similar information must be provided for all periods of ''lay-over'' while traveling.

Response: Federal regulations are codified in the CFR and carry the force of law. The regulations that APHIS has promulgated in accordance with the Act are set forth in 9 CFR parts 1 through 4. Additionally, we sometimes issue policy statements to provide the guidance to the public regarding our interpretation of what is necessary for regulated entities to meet the requirements of the regulations. Policy 2 was issued for guidance regarding the requirements of the regulations in § 2.126, which specify that APHIS must have access to regulated facilities in order to conduct inspections that effectively enforce the Act. Although regulated entities are subject to the Act no matter where their animals might be located, the regulations in § 2.126 have not included specific provisions on what APHIS considers necessary for effective enforcement of the regulations when animals have temporarily been moved from an approved site. Although Policy 2 has been useful in conveying APHIS' intent and expectations in such situations, we consider it necessary to codify in § 2.126 more specific responsibilities of a regulated entity.

Issue: A number of commenters stated that if APHIS does replace Policy 2 with regulations in the CFR, the regulations should be consistent with Policy 2 in requiring itineraries to be submitted only if the animals are away from the approved site for 4 days or more. Commenters stated that exhibitors sometimes take animals offsite for several short engagements during the same week or even the same day. Commenters expressed concern that being required to submit an itinerary for every movement from the approved site would impose a large and unnecessary paperwork burden on both exhibitors and APHIS. One commenter recommended that if APHIS concludes there is a need for additional reporting of offsite engagements, the regulations require that all exhibitors who move animals offsite for more than 48 hours notify APHIS of their route, exhibit locations, and anticipated time of return. One commenter recommended that, instead of requiring reporting of all travel from an approved site, APHIS require that exhibitors have on file with APHIS current contact information for the person in charge of the traveling unit. Another commenter recommended that, instead of requiring that all travel from a home facility be reported, APHIS should require that regulated facilities keep in their own records information identifying the animals taken offsite, the location to which the animals have been taken, the date and time of travel, and the date and time when the animals were returned to the facility. The commenter stated that such information would enable APHIS inspectors to know the location of animals that are taken from the approved site for short periods of time.

Response: Based on our experience enforcing the regulations, we consider 4 days too long a time for APHIS to be unaware of the location of animals covered by the Act. As we stated in our October 2009 proposed rule, we need to ensure that AC inspectors have advance notice of the locations where animals will be exhibited so that they can make unannounced inspections to ensure compliance with regulations and standards for animal welfare. Knowing which exhibitor showed animals at a particular location on a particular date will also help AC inspectors follow up on complaints that APHIS receives about alleged violations of the regulations and standards by traveling exhibitors. Such complaints are often received after an exhibitor has left a location, and the person submitting the complaint often does not know the name of the exhibitor. However, based on the information supplied by commenters, we agree that the benefit of APHIS' knowing the location of animals that are taken offsite for exhibition for less than a day may not be commensurate with the reporting that would be required under the proposed provisions. Therefore, in this final rule, we are providing that the reporting requirement under new § 2.126(c) applies only if animals are absent from the approved site overnight.

Issue: One commenter stated that if a complaint were filed while an animal were offsite for less than 4 days, the animal would likely be returned to its approved site before an inspector could reach the offsite location.

Response: We are making no changes based on the comment. Complaints regarding potential violations of the Act are made at various times in relation to the incident or observation. Some are made several weeks or months later. In order for APHIS to effectively follow up on any information received, it is imperative that the Agency know the location of the licensee or registrant and animals at the time of the incident or observation that prompted the complaint.

Issue: As noted above, the proposed rule would have required that itineraries submitted by exhibitors be received by the AC Regional Director no fewer than 2 days in advance of any travel to another location for exhibition, regardless of the length of time. A number of commenters expressed concern that having to give such advance notice would prohibit some exhibitors from accepting certain engagements and requested that the regulations provide for situations where 2 days' notice is not practical. Commenters stated that many requests for animal exhibits, including those for educational purposes, occur within 2 days of the requested exhibit date and that some requests are received on the day of the requested exhibition. Conversely, one commenter recommended that the regulations require that a detailed itinerary be

submitted to APHIS no less than 2 months before travel. Another commenter stated that engagements accepted with little advance notice may be subject to less careful planning than those scheduled ahead of time, making it more important for APHIS to ensure that the regulations and the standards of the Act are met.

Response: We expect that some of the concerns expressed by the commenters will be addressed by the change we are making to the proposed provisions that will exempt exhibitors from the submission requirement if the animals are taken offsite for exhibition and returned the same day. Movements of animals offsite for exhibition for longer periods of time requires preparation with regard to logistics such as housing, security, food, water, employees, and public barriers and perimeter fences. Such arrangements are typically made well in advance of travel. AC needs the itineraries before the travel begins to ensure that inspectors know where the animals will be on specific dates so that they can make unannounced inspections at the travel sites. Requiring itineraries to be submitted at least 48 hours in advance will give AC sufficient notice and will be close enough to the time of travel for travel plans and logistics to be firm in most instances. Nevertheless, we recognize the need for some flexibility regarding this requirement. If an exhibitor does accept an engagement for which travel will begin with less than 48 hours' notice, the exhibitor must contact the APHIS AC Regional Director immediately in writing with the information listed in § 2.126(c). Facsimiles or emails are acceptable. We expect such notifications on shortened notice to be infrequent, however, and exhibitors who repeatedly provide less than 48 hours' notice will be subject to increased scrutiny under the Act. We do not consider it practical to set a specific threshold for what constitutes ''repeatedly,'' due to the wide range of number of submissions by exhibitors. Whereas some exhibitors make only several submissions a year that cover multiple pre-scheduled exhibitions, others submit more numerous submissions on a job-by-job basis. If APHIS considers an exhibitor to be submitting itineraries with less than 48 hours' notice with a high frequency, we may monitor the exhibitor more closely.

Issue: Several commenters stated that the information on itineraries submitted in a timely fashion frequently becomes outdated by the time the animals actually begin their travel. Commenters stated that, due to factors such as illness, behavior, client requests, or shedding, animals listed on the itinerary sometimes cannot travel. Additionally, said some commenters, illness or scheduling conflicts may require that staff members other than those listed on the itinerary travel with the animals. The commenters expressed concern that having to report all such last-minute changes to APHIS would become unduly burdensome for exhibitors.

Response: Although exhibitors are free to submit itineraries well in advance of intended travel, this rule only requires submission of an itinerary no less than 2 days before the travel. Although we recognize that even during that amount of time, it may sometimes become necessary to change the plans indicated on the itinerary, based on our experience dealing with the regulated industry, we do not expect such changes to happen frequently enough that reporting them to APHIS will create an undue burden on exhibitors. Requirements for notifying APHIS of itinerary changes are discussed below.

Issue: Some commenters expressed concern that the proposed rule included a requirement that an itinerary include all anticipated dates and locations (with addresses) for any stops and layovers, and that the itinerary be promptly revised, as necessary, to account for any changes. Commenters stated that it would be unreasonably burdensome on the exhibitor and APHIS to require notification of every minor deviation from a previously filed itinerary. One commenter asked whether APHIS is contemplating requiring specific information regarding rest stops and meal breaks. Commenters stated that a variety of factors determine where and when exhibitors stop on the road for animal care checks and that events that delay or interrupt travel sometimes occur with little or no advance warning. The commenters gave as examples problems with weather, mechanical breakdowns, road conditions, uncooperative animals, and delays from a home facility or stop/layover. Other factors cited included access to water spigots and adequate parking. One commenter stated that train travel is sometimes interrupted due to track or equipment issues or for crew changes, the filling of water tanks, or to allow other traffic to proceed. During longer delays, stated the commenter, animals might be offloaded for exercise and cleaning of railcars.

Response: It is not the intent of this final rule, nor is it the intent of Policy 2 and § 2.126 of the regulations, to require that APHIS be advised regarding every minute of a journey. The required itinerary must indicate where the licensee or registrant and animals will be on which dates. If there is an anticipated layover of a length of time sufficient to allow/require removal of the animals from the transport enclosures, that layover should be indicated on the itinerary. Unanticipated delays of such length must be reported to the appropriate APHIS AC Regional Director the next APHIS business day.[2]

Issue: As noted above, the proposed rule included the requirement that the information on a submitted itinerary be promptly revised to account for any changes. Several commenters asked what APHIS' intent is regarding the term ''promptly,'' whether APHIS personnel would be available to receive notification of changes that occur overnight, and what process APHIS had in mind for editing an itinerary.

Response: This final rule requires notification of itinerary changes in written form. Emails and facsimile notifications can be sent at any hour. We are providing in this final rule that, if initial notification in an emergency is made other than by email or facsimile, it must be followed up with written documentation at the earliest possible time. For changes that occur after normal business hours, the change must be conveyed to the appropriate APHIS AC Regional Director no later than the following APHIS business day.[3]

Issue: A number of commenters expressed concern that if detailed information about their stops became public knowledge, it could compromise the safety of animals and caretakers. The commenters stated that such information could be used by special interest groups to plan disruptions or conduct acts of violence against exhibitors. Other commenters stated that having advance notice of an exhibitor's itinerary would give competitors an advantage in competing for business. The commenters stated that itineraries should be made available only to APHIS and its inspectors.

Response: We are cognizant of the concerns of persons subject to the Act regarding the release of itinerary information. We note, however, that the type of information required in this rule is already required in accordance with Policy 2 and § 2.126 of the regulations and we are not aware of any problems that have been caused by it to date. Further, a number of licensees and registrants already inform the public of their exhibit dates and locations through Web sites and other means. A person

[2] APHIS Regional offices are available each weekday, except on Federal holidays, from 8 a.m. to 5 p.m.

[3] See footnote 2.

seeking information submitted to APHIS would need to request such information under the Freedom of Information Act, which exempts from release commercial or financial information that is privileged or confidential.

Issue: One commenter recommended that loans for a stated period of time between Association of Zoos and Aquariums (AZA) member zoos and aquariums for exhibit or breeding be exempt from the provisions of the proposal.

Response: We agree that movements of animals from one zoological facility to another for the purposes described by the commenter are of a different nature than the types of movement contemplated by § 2.126(c). Such transfers, which are generally made on a long-term basis, do not fall under the intent or requirements of this final rule. When one zoological facility loans an animal to another zoological facility for purposes such as exhibit or breeding, the facilities generally enter into a legal agreement that transfers responsibility for the animal to the recipient facility for the loan period. The recipient facility is responsibility for meeting the requirements of the Act with regard to that animal during the duration of the loan period.

Issue: One commenter stated that there is no need to apply the regulation as proposed to zoos. The commenter stated that the clear intent of Policy 2 and § 2.126 of the regulations is to ensure that true traveling exhibitors such as carnivals, circuses, animal acts, traveling educational exhibits, and petting zoos are available for inspection. The commenter stated that because zoos are not traveling exhibitors, there is no need to apply the proposed requirements to them.

Response: We agree that zoos are generally not considered traveling exhibitors. As indicated above, those licensees and registrants who take animals offsite and return them the same day will not need to submit an itinerary to APHIS for those movements. However, APHIS needs to know the location of animals moved from zoos overnight for exhibition, just as the Agency needs to know the whereabouts of animals taken offsite overnight for exhibition by other exhibitors. With the exception discussed above for loans between zoological facilities, the provisions of § 2.126(c) will apply to zoological facilities, just as Policy 2 has applied to permanent facilities such as zoos.

Issue: The proposed rule included the requirement that an itinerary contain the following information:

- The name(s) of the person(s) who intends to exhibit the animal(s) and transport the animal(s) for exhibition purposes, including any business name(s) and current Act license or registration number(s) and, in the event that any animal is leased, borrowed, loaned, or under some similar arrangement, the name of the person who owns such animal;
- The name, identification number or identifying characteristics, species (common or scientific name), sex and age of each animal; and
- The names, dates, and locations (with addresses) where the animals will travel, be housed, and be exhibited, including all anticipated dates and locations (with addresses) for any stops and layovers.

Several commenters stated the required information is duplicative of information the exhibitor is already required to file. Several commenters stated that all animals already must be accompanied by a valid, current health certification, which indicates the animal's age, sex, species, and identification number where applicable. One commenter stated that the proposed requirements would be duplicative of information the exhibitor already files each year as part of its license renewal. The commenter stated that the information already submitted includes a complete list of cities and precise engagement dates and venues.

Response: We are making no changes based on these comments. This rule requires information beyond that collected by other programs and agencies regarding the movement of animals. The information provided in a health certificate does not encompass all the information required under Policy 2 and the more specific requirements of § 2.126 of this rule. Additionally, it is important that this information be submitted and distributed to our field inspectors in a timely manner. Having to rely on incomplete information collected by other parties would not allow efficient and effective use of APHIS resources. We do not expect that there will be a significant increase in reporting requirements for exhibitors who already comply with the regulations and Policy 2. Exhibitors who submit a yearly itinerary that does not change would not need to submit further itineraries under this rule. However, any changes to that yearly submission would need to be reported to APHIS.

Issue: As part of the proposed rule, in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), APHIS provided an estimate of the public reporting burden for the collection of information that would occur under the provisions of the proposal. We estimated that the number of respondents who would provide information to APHIS if the proposed rule were made final would be 300, and that each respondent would provide an average of 8.66 responses per year, for a total of approximately 2,600 responses per year. We estimated that each response would take an average of 0.25 hours to complete.

One commenter, a representative of the AZA, estimated that because many AZA-accredited zoos and aquariums conduct offsite outreach programs at locations such as schools and nursing homes, the AZA's 221 accredited zoos and aquariums alone would make a total of at least 50,000 to 70,000 submissions annually. Another commenter stated that adjustments to itineraries would require more than 15 minutes each.

Response: Based on comments we received from the public and upon review of our estimate of potential reporting burden for this rule, we agree that submissions by permanently based zoological facilities were underrepresented in our estimate. However, we disagree with the commenter who estimated that AZA-accredited zoos and aquariums would submit at least 50,000 to 70,000 itineraries annually. To arrive at that total, each zoo would need to submit from 225 to 320 itineraries per year, which we consider unlikely, particularly in light of the change we are making in this rule that will not require submission of itineraries for trips that do not extend overnight.

We have revised our estimates of the number of exhibitors who will be affected by this rule. Our original estimate that 300 exhibitors would be affected by the rule was based on the number of active licensees that had inspections at traveling sites. We have increased that number by 125, based on our estimate that approximately 6 percent of nontraveling exhibitors may occasionally take animals away from their facility overnight for exhibition. We further estimate that those 425 exhibitors would provide a total of about 4,100 responses each year. We derived this number through discussion with AC regional offices and after looking at the size and histories of traveling exhibitors. For example, large circuses usually have itineraries planned a year or more in advance. Some smaller exhibitors may not know their schedules until a week before a performance. Thus, we estimated that about 100 of the affected exhibitors would submit itineraries about twice a year (200 submissions), and that the

remainder would submit itineraries monthly (3,900 submissions). We continue to consider our estimate of 0.25 hours per response to be reasonable. In each case where animals are to be moved, the facility or promoter would already have arranged the necessary booking and trip logistics. The 0.25 hours represents the time needed to type or write out the itinerary and send it by email or facsimile to APHIS.

Issue: Several commenters stated that APHIS did not make clear in its proposal why the Agency considers the proposed regulations to be necessary. One commenter requested that APHIS indicate the types of problems its inspectors are experiencing. One commenter stated that, in place of the expanded requirements, APHIS should work with regulated entities to develop methods of ensuring that APHIS maintains reasonable access to facilities and animals. One commenter questioned why APHIS has decided to take on the extra burden of requiring itinerary submissions for all traveling exhibits.

Response: As we stated in our October 2009 proposed rule, AC inspectors need to know the location and dates of traveling exhibits in advance of the travel so that they can conduct unannounced inspections of the animals at those sites. Currently, if an exhibitor has not provided AC with an accurate itinerary in advance of travel, an inspector may arrive at a facility only to find that some or all of the animals are elsewhere. Additionally, if AC receives a complaint about an alleged violation of the regulations and standards by an exhibitor at a certain location on a certain date, having a record of the itineraries will enable us to determine which exhibitor and which animals were at the location on that date so that we can look into the complaint. Currently, if there is no itinerary on file for an exhibition at a location and date cited in a complaint, and the exhibitor is not identified, APHIS must conduct an investigation to try to determine which exhibitor was there, which can be difficult and time consuming, and sometimes unsuccessful. We anticipate that this rule will enable APHIS to make more efficient use of its personnel. While we welcome recommendations from regulated entities on how to ensure that APHIS has reasonable access, we consider this rule a reasonable way to achieve that end.

Issue: Several commenters stated that the administrative burden on APHIS could be reduced by applying the proposed provisions to those exhibitors who have shown a reason to be of concern to APHIS and waiving the requirements for exhibitors who have demonstrated to APHIS that they provide their animals with quality care. One commenter stated that perhaps APHIS should limit the itinerary requirements to offsite exhibit of big cats.

Response: We are making no changes based on the comments. We do not expect an undue administrative burden on APHIS due to this rule. The intent of this rule is to ensure that APHIS has access to all regulated animals for inspections and enforcement activities at all times. Application of the rule to selected licensees and registrants could be construed as arbitrary and capricious enforcement of the regulations.

Issue: Several commenters recommended that the proposal be changed to require automated delivery of itineraries to APHIS. One commenter stated that submission of an itinerary by email would take about 15 minutes and would address the problem of paper copies of itineraries becoming outdated before APHIS receives them.

Response: While we agree that there are advantages to submitting itineraries electronically, we are not requiring submission by that means. Some persons subject to the Act may not have access to that technology, especially while traveling. Because paper copies will need to arrive at APHIS no later than 2 days before the scheduled travel, in the great majority of cases we do not expect them to be out of date by the time the travel begins. As noted above, in those cases where changes need to be made to itineraries at the last minute, those changes will need to be submitted to APHIS in some expedited fashion (e.g., by phone, facsimile, or email), followed by a written submission if the change is not initially in writing.

Issue: One commenter asked how APHIS intends to inform newly affected parties of any updates to the regulations.

Response: Exhibitors will be notified of the regulatory changes in a variety of ways. All proposed and final rules are made available to the public in the **Federal Register**. Additionally, a press release will be issued when this rule is published and an announcement will be posted to APHIS' Web site. APHIS inspectors will also discuss the rule with licensees and registrants during inspections of regulated facilities.

Issue: One commenter asked what types of animals will be covered by this rule.

Response: This rule applies to all animals covered by the Act that are exhibited anywhere other than the person's approved site.

Issue: One commenter questioned whether the proposed provisions were within APHIS' authority.

Response: Section 2151 of the Act authorizes the Secretary to promulgate such rules, regulations, and orders as the Secretary may deem necessary to govern the humane handling, housing, care, treatment, and transportation of certain animals by dealers, exhibitors, and other regulated entities. Section 2146 of the Act provides that the Secretary shall, at all reasonable times, have access to the places of business and the facilities, animals, and those records required to be kept pursuant to the Act. The Secretary has delegated the responsibility for enforcing the Act to the APHIS Administrator. This final rule merely adds more specific requirements to § 2.126 of the Animal Welfare Act regulations.

Miscellaneous

In this final rule, we are making several nonsubstantive editorial changes to what appeared in the proposed rule. Instead of making joint references to the singular and plural as, e.g., ''animal(s),'' we are using the singular to signify also the plural. This is consistent with the style used in the definitions in § 1.1 of the regulations. In the regulatory text of this rule, when referring to the AC Regional Director, we use the term ''AC Regional Director,'' which is consistent with usage elsewhere in the regulations.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This final rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which 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, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also examines the potential economic effects of this rule on small entities, as required by the

Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

APHIS is amending the Animal Welfare Act (AWA) regulations to require a person who intends to exhibit regulated animals at any location other than the person's approved site to submit an itinerary at least 2 days in advance when travel extends overnight. In those instances when exhibitors are offered engagements with less than 2 days' notice, APHIS will accept itineraries less than 48 hours in advance of travel.

The rule will facilitate enforcement of the AWA regulations for traveling exhibitors, and thereby help to ensure the humane handling, housing, treatment, and transportation of the animals in their care.

Costs of the rule for exhibitors are expected to be small. The AC program has estimated that preparation and submission of an itinerary takes about 15 minutes. Many traveling animal exhibitors are already submitting itineraries in a timely manner in accordance with existing Agency policy when a regulated animal is exhibited away from its approved site for 4 days or more.

The time required to prepare the estimated 4,100 itineraries that will be required because of this rule is expected to cost the approximately 425 affected exhibitors a total of $15,375 per year.

Most of the traveling exhibitors affected by the rule are small entities. Regardless of size, we do not expect the exhibitors to be significantly affected.

The rule is expected eliminate costs APHIS incurs in attempting to inspect animals that are not at locations where APHIS expected them to be, and to reduce some costs associated with responding to inquiries and complaints about traveling exhibitors alleged to have violated Animal Welfare regulations and standards. Money saved on these activities can be put toward inspections and other activities that will benefit animal welfare.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0361.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance 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. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 9 CFR Part 2

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

Accordingly, we are amending 9 CFR part 2 as follows:

PART 2—REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

■ 2. In § 2.126, the section heading is revised and a new paragraph (c) and OMB citation at the end of the section are added to read as follows:

§ 2.126 Access and inspection of records and property; submission of itineraries.

* * * * *

(c) Any person who is subject to the Animal Welfare regulations and who intends to exhibit any animal at any location other than the person's approved site (including, but not limited to, circuses, traveling educational exhibits, animal acts, and petting zoos), except for travel that does not extend overnight, shall submit a written itinerary to the AC Regional Director. The itinerary shall be received by the AC Regional Director no fewer than 2 days in advance of any travel and shall contain complete and accurate information concerning the whereabouts of any animal intended for exhibition at any location other than the person's approved site. If the exhibitor accepts an engagement for which travel will begin with less than 48 hours' notice, the exhibitor shall immediately contact the AC Regional Director in writing with the required information. APHIS expects such situations to occur infrequently, and exhibitors who repeatedly provide less than 48 hours' notice will, after notice by APHIS, be subject to increased scrutiny under the Act.

(1) The itinerary shall include the following:

(i) The name of the person who intends to exhibit the animal and transport the animal for exhibition purposes, including any business name and current Act license or registration number and, in the event that any animal is leased, borrowed, loaned, or under some similar arrangement, the name of the person who owns such animal;

(ii) The name, identification number or identifying characteristics, species (common or scientific name), sex and age of each animal; and

(iii) The names, dates, and locations (with addresses) where the animals will travel, be housed, and be exhibited, including all anticipated dates and locations (with addresses) for any stops and layovers that allow or require removal of the animals from the transport enclosures. Unanticipated delays of such length shall be reported to the AC Regional Director the next APHIS business day. APHIS Regional offices are available each weekday, except on Federal holidays, from 8 a.m. to 5 p.m.

(2) The itinerary shall be revised as necessary, and the AC Regional Director shall be notified of any changes. If initial notification of a change due to an emergency is made by a means other than email or facsimile, it shall be followed by written documentation at the earliest possible time. For changes that occur after normal APHIS business hours, the change shall be conveyed to the AC Regional Director no later than the following APHIS business day. APHIS Regional offices are available each weekday, except on Federal holidays, from 8 a.m. to 5 p.m.

(Approved by the Office of Management and Budget under control number 0579–0361)

Done in Washington, DC, this 20th day of December, 2012.

Rebecca Blue,

Deputy Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2012–31417 Filed 12–28–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 2 and 3

[Docket No. APHIS–2006–0159]

RIN 0579–AC69

Handling of Animals; Contingency Plans

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Animal Welfare Act regulations to add requirements for contingency planning and training of personnel by research facilities and by dealers, exhibitors, intermediate handlers, and carriers. We are taking this action because we believe all licensees and registrants should develop a contingency plan for all animals regulated under the Animal Welfare Act in an effort to better prepare for potential disasters. This action will heighten the awareness of licensees and registrants regarding their responsibilities and help ensure a timely and appropriate response should an emergency or disaster occur.

DATES: *Effective Date:* January 30, 2013.

FOR FURTHER INFORMATION CONTACT: Dr. Jeanie Lin, Eastern Region Emergency Programs Manager, Animal Care, APHIS, 920 Main Campus Drive, Raleigh NC 27606; (919) 855–7100.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and intermediate handlers. Regulations established under the AWA are contained in the Code of Federal Regulations (CFR) in 9 CFR parts 1 and 2, and 9 CFR part 3 contains standards for the humane handling, care, treatment, and transportation of animals covered by the AWA. Currently, part 3 consists of subparts A through E, which contain specific standards for dogs and cats, guinea pigs and hamsters, rabbits, nonhuman primates, and marine mammals, respectively, and subpart F, which sets forth general standards for warmblooded animals not otherwise specified.

The only requirement for contingency planning by licensees and registrants in the regulations has been in § 3.101(b), which covers water and power supply requirements at facilities housing marine mammals. Specifically, this section requires such facilities to submit written contingency plans to the Deputy Administrator of Animal Care (AC) regarding emergency sources of water and electric power should primary sources fail. Among other things, the plans must include evacuation plans in the event of a disaster and a description of backup systems and/or arrangements for relocating marine mammals requiring artificially cooled or heated water.

Following the events experienced during the 2005 hurricane season, a Federal document, ''The Federal Response to Katrina: Lessons Learned,'' which can be found on the Internet at *http://georgewbush-whitehouse.archives.gov/reports/katrina-lessons-learned/*, was published that highlighted the need for planning to minimize the impact of disasters. AC's experience indicates that, although contingency planning would benefit the health and welfare of animals covered by the AWA, at least some entities responsible for regulated animals have not undertaken such planning. We believe all licensees and registrants should be required to develop a contingency plan for all animals regulated under the AWA in an effort to better prepare for potential disasters. Therefore, on October 23, 2008, we published in the **Federal Register** (73 FR 63085–63090, Docket No. APHIS–2006–0159) a proposal [1] to amend the AWA regulations to add requirements for contingency planning and training of personnel by research facilities and by dealers, exhibitors, intermediate handlers, and carriers.

We solicited comments concerning our proposal for 60 days ending on December 22, 2008. On December 19, 2008, we published a notice in the **Federal Register** (73 FR 77554) that extended the comment period an additional 60 days until February 20, 2009. We received 997 comments by that date. They were from private citizens, breeders, dealers, animal welfare organizations, research facilities, Government agencies, pharmaceutical companies, universities and colleges, research associations, exhibitors, carriers, kennels, and medical associations. Fifty commenters supported the rule as it was proposed. The issues raised by the remaining commenters are discussed below by topic.

Many commenters had comments or questions that were not germane to the proposed rule, such as asking the Animal and Plant Health Inspection Service (APHIS) to end the trade of exotic animals. We are not addressing those comments in this final rule because they are outside of its scope.

Objections to Mandating Contingency Plans

Many commenters objected to APHIS mandating contingency plans. One commenter stated that, since no plan can be 100 percent successful, it does not make sense to mandate plans. One commenter stated that the AWA has language prohibiting prescribing methods of research and that the proposed rule violates this by prescribing emergency planning methods.

As stated in the proposed rule, the events experienced during the 2005 hurricane season highlighted the need for planning to minimize the impact of disasters on the health and welfare of all animals covered by the AWA. The intent of the proposed rule was to safeguard the health and welfare of animals in emergency situations. We understand that contingency plans may not be 100 percent successful. However, we do not agree that plans should not be mandated because, to promote animal welfare, entities should be able to demonstrate a reasonable effort to address emergency situations. The rule does not prescribe emergency planning methods. In addition, we do not consider a contingency plan to be a research method.

One commenter suggested that instead of mandated plans, APHIS should provide guidance materials, training videos, or classes, as it would be cheaper for both APHIS and the regulated entities.

APHIS plans to provide guidance materials, which may include videos and classes. However, this does not replace a need for contingency plans as contingency plans are more adaptable to the unique circumstances of each licensee and registrant and will determine what training is needed. In addition, as facilities have widely varying needs, allowing licensees and registrants to determine and implement their own unique training allows

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2006-0159.*

flexibility and will potentially keep training costs down. We have prepared guidance materials that are being made available concurrently with this final rule on our Web site [2] and will provide additional guidance to licensees and registrants for drafting appropriate contingency plans upon request.

Several commenters stated that they already had contingency plans in place or followed other accreditation standards (e.g., Association of Zoos and Aquariums standards), which they stated were sufficient to address the contingency plan components we proposed to require. Some of these commenters asked that they be exempt from the requirements of the rule because they already had plans in place or that APHIS work with other organizations that have accreditation standards to draft a standard document so that the regulations are not redundant. One commenter stated that APHIS should have done a better job of talking to facilities that already have contingency plans in place.

We recognize that many AWA licensees and registrants may already have contingency plans in place. Although many of these plans may be sufficient to satisfy the new contingency plan requirements in this final rule, exemption is not practical as those nongovernmental accreditation standards are not mandatory, nor are they linked by regulatory processes to the AWA. However, before developing the proposed rule, we gathered information on regulated entities that currently have contingency plans in place. This information was used as a basis for the proposed criteria for developing contingency plans.

Submission of Contingency Plans

Many commenters asked how APHIS will review the contingency plans, and in particular whether we will require submission of contingency plans to APHIS. Many commenters objected to submitting contingency plans because they were concerned that the plans would be subject to the Freedom of Information Act (FOIA) and that disclosure of contingency plans would put at risk the safety and security of facilities, employees, and animals by giving animal rights extremists important information. Many other commenters supported submitting contingency plans to APHIS or other agencies or making them available to the public or making relevant portions of plans available to local services identified by facilities as potentially important to the execution of their contingency plan. One commenter suggested posting contingency plans online while another suggested electronic submission. Several commenters stated that licenses should be revoked or not renewed if contingency plans are not submitted to APHIS or that plans that have been modified due to personnel changes or updates should be submitted to APHIS.

We do not intend to require submission of contingency plans. As stated in the analysis of significant alternatives to the rule in the proposed rule, there are over 10,000 licensees and registrants and requiring each of them to submit plans to APHIS for review would take an enormous amount of resources for the Agency to process, review, and store. Therefore, we proposed that each research facility, dealer, exhibitor, intermediate handler, or carrier will be required to review their contingency plan on at least an annual basis. We would expect that each licensee and registrant would maintain documentation of their annual reviews, including documenting any amendments or changes made to their plan since the previous year's review, such as changes made as a result of recently predicted, but historically unforeseen, circumstances (e.g., weather extremes). We are making this clarification in § 2.38(l)(2) and § 2.134(b). We are also clarifying that APHIS will have the opportunity to review annual review documentation and training records, as well as contingency plans, as a part of our routine inspection process. It is the regulated facility's decision whether or not to share its plan with outside entities. The AWA does not require licensees and registrants to disclose documentation to outside entities. However, if a contingency plan details coordination with other government entities, an inspector may check for evidence supporting this coordination.

Expertise

Several commenters stated that there is no evidence that APHIS has more expertise in contingency planning than other organizations, such as universities. One commenter stated that APHIS should consult with other agencies such as the Federal Emergency Management Agency (FEMA) in the development of requirements for contingency plans or in the implementation of contingency plans.

APHIS already has the technical expertise to ensure that regulated entities protect the health and well-being of animals in accordance with the AWA. Further, in 2008, APHIS launched an Animal Care Emergency Programs unit, which is a full-time unit dedicated to collaborating with other organizations to support the safety and well-being of animals during emergencies and disasters. As required by the AWA, APHIS consults and cooperates with other Federal agencies concerned with the welfare of animals used for research, experimentation, or exhibition. APHIS also routinely works closely with FEMA and other organizations on animal welfare issues prior to and during disasters and emergencies.

Several commenters stated that the facility and not the Government should decide what should be in contingency plans.

As stated in the proposed rule, because we recognize that individual circumstances for regulated entities may be different, it is difficult to go into specific detail as to what elements must be included in all contingency plans. Therefore, we have not sought to develop a one-size-fits-all plan but have instead provided a framework of four criteria, in § 2.38(l)(1) for research facilities and § 2.134 for dealers, exhibitors, intermediate handlers, and carriers, that we believe are the minimum criteria necessary to ensure a successful contingency plan. We have largely left to the discretion of each regulated entity how best to develop contingency plans that:

- Identify common emergencies such as electrical outages, faulty HVAC systems, fires, animal escapes, and natural disasters the facility is most likely to experience.
- Outline specific tasks required to be carried out in response to the identified emergencies including, but not limited to, specific animal evacuation plans or shelter-in-place plans and provisions for providing backup sources of food and water as well as sanitation, ventilation, bedding, veterinary care, etc.
- Identify a chain of command and who (by name or by position title) will be responsible for fulfilling these tasks.
- Address how response and recovery will be handled in terms of materials, resources, and training needed.

We believe that fulfilling these criteria is essential to the success of a contingency plan. In addition, we believe that these criteria provide an adequate degree of flexibility to allow all regulated entities to comply with the provisions of this final rule. These criteria are essential because they form a framework of what potential events to address, who has responsibility, and how to mitigate the potential events. These criteria form the basis of FEMA's ''Ready Business'' campaign, which

[2] *http://www.aphis.usda.gov/animal_welfare/awa_contingency_plan.shtml.*

provides information to businesses on how to plan for emergencies. We have modified that information to address animal welfare concerns.

Specific Criteria

One commenter stated that the contingency plan should identify and evaluate the location of the facility and the probable specific emergency situations that location is likely to experience. The commenter further stated that any facility-specific vulnerability should be identified and addressed. One commenter stated that facility grounds should be in areas not prone to flooding or earthquakes and that it is preferable to provide onsite care during an emergency.

One of the proposed criteria for development of contingency plans is that the plan identify situations, such as emergencies and natural disasters, that a regulated entity is most likely to experience that would trigger the need for the measures identified in a contingency plan to be put into action. We expect that, if a facility-specific vulnerability would impact the humane handling and care of AWA-regulated animals during an emergency, the vulnerability would be addressed within the regulated entity's contingency plan. While we agree that ideally a regulated entity would not be located in an area prone to flooding or earthquakes, we realize that is not always feasible to ensure. As stated in the proposed rule, such disasters, if likely to be encountered by a particular regulated entity, would be expected to be addressed in that regulated entity's contingency plan.

Several commenters stated that euthanasia should be considered a viable option in the event of a disaster. Several commenters stated that marine mammals should be microchipped to facilitate recovery in the event they are released into the wild. One commenter stated that all tasks necessary for ensuring the welfare of animals should be itemized and the time required for each task estimated. Several commenters recommended providing criteria for development of contingency plans by animal group or by species and, for marine mammals, criteria by geographic location. Several commenters stated that agreements with alternative facilities for evacuation should be part of the contingency plan.

Since each regulated entity has different needs, we have largely left to the discretion of each regulated entity how best to fulfill the criteria of this final rule. Details about elements to include in a contingency plan, such as whether to use microchip identification methods or euthanasia or whether to itemize and time tasks, are to be decided upon by the regulated entity. In addition, as long as a regulated entity addresses each of the elements required for contingency plans, it may divide its plan according to criteria such as animal group, species, or geographic location. While we encourage regulated entities to explore cost-efficient options such as entering into mutual aid agreements with nearby similar entities, we are not requiring them to do so, as long as their contingency plans are adequate to protect the animals' welfare.

As noted previously, the only contingency planning currently required for licensees and registrants are those requirements in § 3.101(b) which cover water and power supply requirements for facilities housing marine mammals. One commenter suggested that the requirements in § 3.101(b) be revised to require that contingency plans submitted for marine mammals include the proposed criteria for contingency plans included in § 2.134.

The regulations added in this final rule in § 2.134 for developing contingency plans apply to all dealers, exhibitors, intermediate handlers, and carriers, including those that handle marine mammals. We are amending § 3.101(b) in this final rule to make it clear that facilities housing marine mammals must comply with the contingency planning requirements in § 2.134.

Transportation

Several commenters stated that carriers and intermediate handlers should not have to develop contingency plans because it would be costly for them, because the number of animals lost or harmed in transit is miniscule, or because they have limited resources to respond to emergency situations. Given this, several commenters expressed concern that, if forced to comply with the proposed rule, carriers may not want to do business with research facilities.

We believe that all research facilities, dealers, exhibitors, intermediate handlers, and carriers should be required to develop a contingency plan for all animals regulated under the AWA. Although there may be costs associated with developing contingency plans, we expect such costs to be reasonable given that we have largely left it up to the discretion of regulated entities to determine the best way to fulfill the contingency plan criteria provided in this final rule for their own unique circumstances (i.e., size, type of entity, location, etc.). Therefore, we do not expect that developing contingency plans will cause a significant financial burden on carriers and intermediate handlers. At a minimum, we would expect that carriers, intermediate handlers, and traveling exhibitors would have provisions in place to respond to weather-related problems and animal escapes, as well as other problems, such as mechanical failures, most likely to be experienced during transit. We do not necessarily expect carriers and intermediate handlers to have backup sources of food and water on hand when traveling, but we would expect that their contingency plan would document how and where to get them if needed. In addition, we are clarifying in § 2.134(b) that all traveling entities must carry a copy of their contingency plan with them at all times and make it available for inspection while in travel status. Having a copy of their contingency plan on hand will allow regulated entities to refer directly to their plan in the event of an emergency while traveling. We believe this will result in preventing the loss or harm of regulated animals.

Several commenters stated that facilities should have backup carriers if their plans require evacuation. Also, the commenters stated that carriers should include in their plans which facility to service first in the event that a major disaster happens and multiple facilities are impacted.

While we do not require regulated entities to employ backup carriers, if a regulated entity's contingency plan includes a backup carrier, we expect that the regulated entity will ensure that the carrier is compliant with the elements of the contingency plan. In addition, we believe that carriers should coordinate with the facilities they serve.

Because we realize that some dealers, exhibitors, intermediate handlers, and carriers do not have stationary facilities, we are making a change to the requirements in § 2.134(a)(1) by removing the word ''facility'' and replacing it with the more inclusive words ''licensees and registrants.'' In addition, we are adding ''mechanical breakdowns'' to the list of likely emergencies that may be addressed in a contingency plan.

Several commenters stated that licensees who travel with animals should be required to submit contingency plans both for at home and on the road. Several commenters stated that travel as part of contingency plans for dangerous animals or for marine mammals should be prohibited unless necessary for the welfare of the animals because of the risks to public safety and animal welfare, particularly in emergency situations. One commenter asked how animals that cannot be

evacuated will be cared for and stated that there needs to be a requirement for securing a facility in the event animals cannot be evacuated. One commenter stated that the contingency plan must document how and by whom animals would be moved and what efforts will be made to ensure the relocation of animals is done in the most humane or least stressful manner possible.

The intent of the proposed rule was to safeguard the welfare of animals in emergency situations. There is no requirement to travel with animals unless it is part of a facility's contingency plan. As stated in the proposed rule, the contingency plan would have to provide detailed instructions for evacuation or shelter-in-place. Therefore, if a contingency plan includes provisions for evacuation, we expect that the plan will also include details on how and by whom the animals would be moved in a way that would be as humane as possible given the disaster circumstances a facility may be facing.

One commenter asked whether an outside carrier's equipment, if called upon, would have to comply with AWA requirements.

Regulated entities are expected to ensure that their routine and back-up carriers are compliant with all AWA requirements.

Disasters

Several commenters stated that detailed evacuation or shelter-in-place plans may be possible for emergencies, but are impractical for natural disasters because regulated entities rarely have advance notice of disasters and because there are so many variations in facilities and disasters that it does not make sense to have a one-size-fits-all plan. The commenters further stated that the rule should acknowledge this and allow for a ''best efforts'' approach when making contingency plans for unpredictable natural disasters. Several commenters expressed concern that the proposal seemed to require that all potential disasters be addressed no matter how likely they are to occur. However, one commenter stated that all potential disasters that might occur should be addressed in the contingency plan.

We recognize that it is not practical to prescribe detailed contingency plans for all situations. Therefore, we have not sought to develop a one-size-fits-all plan, but have largely left to the discretion of each regulated entity how best to fulfill the criteria described in the proposed rule. This rule intends to set the minimum criteria necessary to ensure a successful contingency plan. We believe this provides an adequate degree of flexibility to allow all regulated entities to comply with the provisions of the rule. As stated in the proposal, we would require that regulated entities address those emergencies and disasters most likely to occur, rather than requiring them to address all possible disasters and emergencies regardless of likelihood. We encourage regulated entities to consider all scales of emergencies, but recognize that highly localized events such as power disruptions and road closures (e.g., from a vehicular accident) are most likely. APHIS encourages the regulated communities to address these more routine events in their contingency plans, and to work with their local emergency management organization. APHIS understands that disaster and emergency events may be unpredictable and that it is impossible for every possible event to be addressed in a contingency plan.

One commenter stated that the contingency planning requirements are inconsistent with Homeland Security Presidential Directive 8: National Preparedness (HSPD–8) because terms used in the rule, such as ''major disaster'' and ''emergency,'' are not consistent with those used in the directive.

HSPD–8 establishes policy for dealing with terrorist attacks, major disasters, and other events of national scope. Section 2(e) of the directive states that the terms ''major disaster'' and ''emergency'' are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Under that Act, ''emergency'' is defined as any occasion or instance, as determined by the President, where Federal assistance is needed to save lives, protect property and public health and safety, or to lessen or avert a catastrophe. A ''major disaster'' is defined as any natural catastrophe, as determined by the President, which causes damage of sufficient severity and magnitude to warrant major disaster assistance in order to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused by the catastrophe. The Stafford Act is largely a framework for Federal assistance to State and local governments for disaster relief, and these terms require Presidential involvement. The scope of this rule is broader, and thus we use the terms ''disaster'' and ''emergency'' in more general terms. This rule considers ''disaster'' and ''emergency'' to mean those events which disrupt the ability of a licensee or registrant to continue with normal business routine and which are expected to be detrimental to the good health and well-being of the animals in the licensee's or registrant's care. A core concept of emergency management is that emergencies are managed at the most local level possible. The National Incident Management System, December 2008, supports this in stating that ''incidents typically begin and end locally, and are managed on a daily basis at the lowest possible geographical, organizational, and jurisdictional level.'' The document is available from the FEMA Web site at *http://www.fema.gov/pdf/emergency/nims/NIMS_core.pdf.* While emergencies and disasters may be Statewide or even national in scope, we expect that most often they will be events that do not generally involve disaster declarations and that remain localized, such as power outages, facility fires, or ice storms.

One commenter stated that contingency plans should be integrated into the overall hazard response plan for facilities.

Although we do not require regulated entities to integrate animal contingency plans into their business continuity plans, we encourage them to do so. APHIS believes that having a business continuity plan supports animal health and welfare as well as overall good business practices.

Backups

The proposed requirements in §§ 2.38(l)(1)(ii) and 2.134(a)(2) stated that regulated entities must include in their contingency plans provisions for providing backup sources of food and water as well as sanitation, ventilation, bedding, veterinary care, etc. Several commenters recommended that we remove the words ''backup sources of'' from this provision and insert the words ''as described in the contingency plan'' after the phrase ''as well as sanitation, ventilation, bedding, veterinary care, etc.'' These commenters stated that it may not be possible to maintain all of the veterinary care provisions listed in § 2.33(b) during a disaster.

While it may not be possible to provide the same level of veterinary care during an emergency or disaster as during normal business operations, APHIS believes that the veterinary care requirements in § 2.33(b) are the minimum requirements necessary to ensure the health and welfare of regulated animals. As with the contingency plan criteria, these veterinary care requirements are general rather than specific to allow regulated entities the discretion to determine how best to fulfill the requirements based on

their own unique situations. In addition, as backup veterinary care is an element that must be addressed within the contingency plan, APHIS will be able to assess the adequacy of the backup veterinary care as it assesses the adequacy of veterinary care overall during routine inspections.

Review and Enforcement

Several commenters expressed concern regarding APHIS' ability to provide adequate inspection and review of plans, stating that the review of plans would present an excessive burden to APHIS. One commenter suggested that APHIS could reduce the inspection burden by reviewing a random sampling of plans. Two commenters suggested that, at a minimum, APHIS should review the contingency plans of facilities with dangerous animals such as elephants, nonhuman primates, or large carnivores. One commenter asked who APHIS would pay to obtain the extra staff to enforce the rule. One commenter suggested that licensing fees be increased to fund additional inspectors or that APHIS stop issuing licenses until numbers of facilities drop to a manageable level.

We do not believe that our review of contingency plans would present an excessive burden on APHIS. As noted above, we would review contingency plans as a part of the routine inspection process, similar to the process for our review of dog exercise and nonhuman primate environment enhancement plans. We believe in this way we will be able to provide adequate review of the contingency plans for all regulated entities. We do not anticipate that additional APHIS staff will need to be hired as a result of this rule. Neither do we anticipate needing to contract out to other organizations to obtain additional staff.

Many commenters were concerned that there were not enough specifics about what would make a contingency plan acceptable and that facilities could be cited for failing to include certain items in their plans or for not following their plans exactly. Several commenters suggested punishments for facilities that either do not submit their plans or whose plans are inadequate. One commenter asked whether the judgment of noncompliance will be affected by whether animals were harmed in any way.

We have issued a guidance document along with this final rule that will assist licensees and registrants in determining what elements to include in their contingency plans. The guidance document is intended only to provide suggestions for how regulated entities may satisfy the criteria in the regulations rather than to prescribe specific measures that must be undertaken or equipment that must be purchased. For example, a regulated entity has multiple options to mitigate the potential failure of an HVAC system besides purchasing a backup generator, some of which are no-cost solutions. These no-cost solutions might include the use of a borrowed generator, opening windows, using existing fans, and/or moving the animals to a cooler location. Any of these actions could be considered adequate ways of responding to the potential failure of an HVAC system and could therefore be included in a contingency plan as long as the action listed is actually feasible. For instance, if a regulated entity's contingency plan calls for opening windows, but the facility's windows are incapable of opening, opening windows would not be a valid mitigation measure. We wish to emphasize that compliance with this final rule will be achieved through the development of an appropriate contingency plan and the training of facility personnel with respect to that plan. Nothing in this rule should be construed as requiring affected entities to make capital expenditures—for example, purchasing backup generators or making structural changes to a facility—in order to comply with the rule. As we do currently when enforcing the regulations, APHIS will assess the adequacy of a regulated entity's contingency plan using the Animal Welfare Act and Animal Welfare Regulations. This may be demonstrated by the plan itself, training records, the presence of materials and resources mentioned in the plan, or a documented history of responses to similar situations. An adequate contingency plan is one in which the minimum criteria considered necessary for a successful contingency plan have been addressed. Enforcement action may be taken on a case-by-case basis.

One commenter asked if missing the training deadline by a few days would result in noncompliance with the training requirements in the regulations regarding the contingency plan.

All noncompliant items, including failure to train employees on the components of the contingency plan, found during inspection would be documented on the inspection report and may be subject to enforcement action on a case-by-case basis. Enforcement actions may include issuance of official warnings, civil monetary penalties, license suspension, or license revocation. Licensees and registrants are expected to comply with all requirements of the regulations and standards, including training deadlines.

Several commenters asked who would be determining the adequacy of plans and what training they would have.

APHIS inspectors will review and determine the adequacy of contingency plans. We will provide training to the inspection personnel on evaluating contingency plans pursuant to the criteria set forth in this rule.

One commenter asked on what basis regulated entities would be expected to determine what natural disasters they may face and whether and how this determination will be evaluated by inspectors.

In the proposed rule we provided links to the U.S. Geological Survey ''Hazards'' Web site and the Weather Channel ''WeatherREADY'' Web site. These Web sites are good resources for determining the natural disasters facilities are most likely to encounter in their location. We would largely leave it up to the regulated entity to determine which natural disasters they may face. However, if it is apparent the regulated entity is likely to encounter a disaster that the contingency plan does not address (e.g., a facility in Florida that has experienced hurricanes in the past), APHIS inspectors will notify the entity and give the entity time to add provisions for responding to the disaster in the contingency plan. We anticipate that inspectors, who are typically stationed in the local area surrounding the facility, will be able to provide further guidance on potential natural disasters.

One commenter stated that the rule should be revised to include language relieving a regulated facility of responsibility if a higher emergency response authority steps in.

We expect that most emergencies will be of a local nature, such as facility fires or water main breaks. For emergencies or disasters of a larger scale, APHIS will consider the roles of jurisdictional emergency response authorities with respect to contingency plan implementation. It is not the intent of the rule to interfere with local, State, or Federal jurisdictional emergency response activities.

Training

As stated in the proposed rule, training of personnel could be developed and offered by the research facility, dealer, exhibitor, intermediate handler, or carrier or provided by an outside entity. Several commenters stated that training requirements should be identified, including how facilities will document training. One commenter stated that a checklist should be

implemented with staff signing off that they have read the standard operating procedures and completed training. Two commenters stated that there should be requirements for training and availability of backup personnel or for ensuring intermediate personnel replacement and training. Several commenters stated that trial runs of the contingency plan must be carried out.

As stated previously, because we recognize that individual circumstances for regulated entities may be different, it is difficult to go into specific detail as to what elements must be included in all contingency plans. Therefore, we do not believe it appropriate to provide technical and tactical requirements, such as protocols for personnel replacement and training, in the regulations. We anticipate that inspectors may confirm that contingency plan training is delivered in a similar manner to their current process for confirming that other required training has been delivered (e.g., for husbandry practices and veterinary care protocols). Such confirmation may include reviewing training documentation maintained by the regulated entity or asking involved employees questions about facility practices. While we have not specifically mandated trial runs of contingency plans, training may include trial runs in order to prepare licensees and registrants adequately in the event of a disaster or emergency.

One commenter stated that both position title and name of employees who play a part in implementing the contingency plan should be included in the contingency plan.

As stated in the proposed rule, regulated entities would need to identify a chain of command and who (by name or position title) will be responsible for fulfilling required tasks. We would leave it up to the regulated entity whether to include both position title and name or whether to include one or the other.

Several commenters stated that training should only apply to individuals who have a role to play within the contingency plan.

We believe the decision of which individuals should be trained is a decision best left up to the discretion of the regulated entity. However, we would expect all personnel who may be involved in or impacted by an emergency or disaster to be trained at an appropriate level.

Dates

In the proposed rule, we proposed to require that contingency plans be in place 180 days after the effective date of this final rule. In addition, we proposed that training of personnel would have to take place within 60 days following the adoption of a contingency plan by the research facility, dealer, exhibitor, intermediate handler, or carrier. Employees hired within 30 days or less after adoption of the contingency plan would have to be trained in that 60-day period while employees hired more than 30 days after adoption of the contingency plan would have to be trained within 30 days of their start date.

Several commenters asked that we further push back the effective date of the regulations to allow time to finalize contingency plans. One commenter stated that it was unclear whether the adoption date mentioned in the proposed rule is the date the rule is adopted or the date plans must be in place and that, if it is the former, the rule needs to be revised since this would require training to be completed before the contingency plan, which will guide the training, is in place. The commenter further stated that the 180-day period for having plans in place should begin at the later of either the effective date of the final rule or the date of issuance of guidance documents by APHIS. Two commenters asked whether the 180-day timeframe for having contingency plans in place includes procuring all necessary materials and resources for implementing the contingency plan. The commenters stated that if such is the case, it is too short of a timeframe to gather materials and resources that are not currently available within a facility.

As stated in the proposed rule, the adoption date is the date the contingency plan must be in place. For current licensees and registrants, this date is 180 days after the effective date of this final rule. For future licensees and registrants, we expect the licensee or registrant to have a contingency plan in place prior to conducting regulated activities. We are making changes to paragraphs (l)(2) and (l)(3) in § 2.38 and paragraphs (b) and (c) in § 2.134(b) in order to make it clearer that the adoption date is the date the contingency plans must be finalized. Training of personnel must take place within 60 days after the adoption date. We believe 180 days is a sufficient length of time to ensure that contingency plans are in place and to procure any necessary materials and resources for implementing contingency plans.

Several commenters stated that the 30-day training requirement for newly hired personnel is unnecessary and not in keeping with the lack of specificity for the rest of the plan.

We believe that it is important to ensure that employees of a regulated entity are familiar with the regulated entity's contingency plan. Therefore, it is appropriate to require that training occur within 30 days.

Guidance

One commenter stated that guidance documents for developing contingency plans should be developed by a lead organization with expertise in collaboration with outside organizations. One commenter stated that guidance documents should not be developed by entities outside of APHIS but that stakeholders/licensees should have input. Several commenters objected to guidance documents or other means for providing criteria outside of the regulations at all. Several commenters stated that the guidance document should be made available via the Internet, and released with the final rule.

APHIS has expertise in collaborating with outside organizations and is also responsible for enforcing the AWA. Therefore, it is appropriate for us to take the lead role in developing guidance documents to support contingency planning. As stated previously, we are providing a guidance document with this final rule. During the comment period for the proposed rule, we asked for public comment, including comment from stakeholders and licensees, on what elements should be included in the guidance document. To reiterate, APHIS will assess the adequacy of a regulated entity's contingency plan using the Animal Welfare Act and Animal Welfare Regulations. The guidance document provides suggestions for how regulated entities may satisfy the criteria in the regulations.

One commenter said that USDA should provide guidance on how contingency plans might address elements unique to each facility. One commenter suggested that APHIS create a Web site with more information that includes guidelines, checklists, and templates. Several commenters supplied examples of contingency plans, links to contingency plans, or resources for drafting contingency plans.

We are issuing a guidance document that may assist regulated entities in addressing the circumstances unique to their location or facility. We also reviewed the information provided by the commenters and will make a list of helpful resources available on our Web site (see footnote 2). The guidance document is intended to be only a tool

when considering how a facility might meet the regulatory requirements, and does not provide a new set of criteria.

Economic and Paperwork Concerns

Many commenters stated that the proposed rule will cause a serious financial impact, especially on small businesses, which make up the majority of those affected. Several commenters stated that a cost-benefit study has not been conducted and asked that APHIS withdraw the rule until one has been conducted or until APHIS has evaluated whether the rule is truly necessary.

A preliminary regulatory impact analysis was conducted for the proposed rule and a final regulatory impact analysis has been conducted for this rule. A summary of the final regulatory impact analysis appears in this document under the heading ''Executive Orders 12866 and 13563 and Regulatory Flexibility Act.'' The full analysis may be viewed on the Regulations.gov Web site (see footnote 1) or obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. One of the components of the preliminary regulatory impact analysis is a cost-benefit analysis. APHIS has estimated that about 5 hours, on average, will be required by a facility to develop a contingency plan, using guides provided and recommended by APHIS. Depending on the size and type of regulated entity and its circumstances, this cost, in terms of the time needed to develop a contingency plan, will vary; some facilities will require less than 5 hours to develop their plans and other entities will require more time. APHIS estimates that it will take 4 to 6 hours to develop and document a contingency plan. We note that many large regulated entities, in particular, already have contingency plans. In addition to the costs associated with the development of a contingency plan, there may also be certain expenditures necessitated by the regulated entity's plan itself. As an example, a particular regulated entity's plan may call for a backup generator to supply electricity in case of a power outage. We expect such costs to total within a reasonable range given that we have largely left it up to the discretion of facilities to determine the best way to fulfill the contingency plan criteria provided in the proposed rule for their own unique circumstances (i.e., size, type of entity, location, etc.). The costs of developing a plan and related equipment purchases should be viewed in terms of the benefits of reduced risk of harm to the animals under a regulated entity's care when there is an emergency or disaster. A reasonably scaled contingency plan that has identified potential emergencies and natural disasters therefore contributes to a regulated entity's long-term operational strength and financial security. To the extent to which the animals held by a licensee or registrant represent a capital asset or business investment, we do not believe it is unreasonable to expect that entities will have already put in place measures to ensure the continued well-being of those animals. Thus, the actual amount of new costs incurred by regulated entities due solely to the identification of a need during the development of a contingency plan should not be significant.

One commenter stated that the rule does not comply with the Regulatory Flexibility Act because it shifts the burden of investigating what would be required for a contingency plan to businesses. One commenter expressed concern that the Small Business Administration was not consulted when developing the proposed rule.

The Regulatory Flexibility Act requires that Federal agencies endeavor 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. APHIS recognizes that each regulated entity is the best judge of the particular measures that should be included in its contingency plan. APHIS is minimizing the burden of the rule for small entities by allowing each one to determine for itself how best to meet the requirements in accordance with the general criteria and guidance documents. APHIS also consulted with the Small Business Administration in the preparation of the proposed rule and this final rule.

One commenter stated that since the rule is significant and an Initial Regulatory Flexibility Analysis was prepared that APHIS is required to publish a compliance guide which will help regulated industries comply with the regulation.

The guidance document that we are making available concurrently with this rule will assist licensees and registrants in complying with the regulation. Any additional compliance guides will be posted on the APHIS Web site (see footnote 2) and made available to the public to further assist small entities in complying with this rule.

Two commenters asked whether they would have to build additional alternative facilities, or, if not, what shelter would be acceptable on a temporary basis, and whether USDA is ready to help shoulder some of the costs until a facility can be repaired. One commenter expressed concern that they would need to purchase disaster insurance.

We do not intend to require the building of alternative facilities. While the costs for development and execution of the plan are expected to be borne by the regulated entity, they will be determined based on the emergencies and potential natural disasters most likely to be experienced by the regulated entity. As stated previously, we expect that these costs will be reasonable. The purpose of a contingency plan is to help ensure that licensees and registrants are able to respond in a timely and appropriate manner should an emergency or disaster occur. Disaster insurance is not required by this rule, and promoting the purchase of disaster insurance is not an objective of this rule.

Three commenters expressed concern that the number of animals lost during Hurricane Katrina as stated in the economic analysis of the proposed rule is greater than the total number of regulated animals in Louisiana.

In the preliminary regulatory impact analysis, APHIS may have inadvertently implied that the number of animals covered under the Animal Welfare Act that were harmed or killed as a result of Hurricane Katrina was comparable to the 50,000 pets that reportedly were negatively impacted by the disaster. This is incorrect. There is a difference in scale between the number of animals for which pet owners are responsible versus the number of animals for which research facilities and other licensed and registered facilities are responsible. Therefore, AWA licensees and registrants caring for large numbers of animals who did not have contingency plans in place likely found it difficult to evacuate or otherwise ensure the animals' safety during Hurricane Katrina. Our intent in the proposed rule was to illustrate this fact rather than to compare the number of regulated animals negatively impacted to the number of pets that were negatively impacted. We have reexamined the available data and we present our findings in the full final regulatory flexibility analysis, which can be viewed on the Regulations.gov Web site (see the address listed in footnote 1).

One commenter suggested that a tiered contingency plan system be implemented to accommodate small businesses.

As a practical matter, one would expect that the smaller the business, the smaller the scale of the contingency

plan that the business would be expected to prepare, just as a large entity with numerous animals would require a larger scale, more complex contingency plan. Because we recognize that individual circumstances may be different between research facilities, dealers, exhibitors, carriers, and intermediate handlers, we have provided general contingency plan criteria and largely left it up to the discretion of regulated facilities to determine how best to fulfill the criteria. Because the response to each criterion will be appropriate to the size of each individual entity, it is reasonable to describe the contingency plan system provided for by this rule as tiered.

Several commenters expressed concern regarding the costs of and time for drafting a contingency plan. One commenter stated that the rule may be imposing redundant paperwork requirements because of similar requirements at the State and local levels.

Many regulated facilities are currently required to have contingency plans by other organizations (e.g., accrediting institutions, State and local regulators). Many of these plans will meet the proposed contingency plan requirements, and paperwork redundancies for entities with such plans should be minimal. Those regulated facilities that do not already have plans in place may incur an additional burden to develop contingency plans. However, we believe that having an established contingency plan promotes animal welfare and will aid in business continuity, therefore reducing the burden on facilities and regulated animals in the event of a natural disaster or emergency.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This proposed rule has been determined to be significant/economically significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which 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, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Preparedness for emergencies and disasters can reduce the harm to animals and their loss of life. The devastating impact of the 2005 hurricane season underscores the need for contingency planning for all animals covered under the Animal Welfare Act. Currently, only facilities that house marine mammals are required under 9 CFR 3.101 to develop contingency plans. The final rule requires that all of the more than 10,000 licensees and registrants develop and document contingency plans for all other animals covered under the Act. In addition, training to carry out contingency plans will be required of a regulated entity's employees. The majority of establishments that will be affected by this rule are small, based on industry estimates obtained from the Economic Census and the Census of Agriculture.

The full final regulatory flexibility analysis identifies breeders, wholesale dealers, licensed and registered exhibitors, registered research facilities, and registered transport carriers and handlers as those entities most likely to be impacted by the requirement for the development of contingency plans. While no economic data are available on business size for the specific entities, we may assume the majority of the potentially impacted establishments are small, based on the industry estimates obtained from the Economic Census and the Census of Agriculture.

The final rule will impose certain costs to develop and document the contingency plans and provide employee training, but these costs are not expected to be excessive. The cost of training personnel will vary depending on the type and size of business. However, many organizations offer training courses on general disaster planning specific to the type of animals at the particular facility or operation. FEMA offers free training, while some organizations offer courses with prices ranging from $50 to $300. These courses cover the development and implementation of contingency plans. In addition, many of the larger facilities, in particular, already have contingency plans in place. APHIS recognizes that each entity is the best judge of the particular measures that should be included in its contingency plan, and will provide general criteria and guidance documents to minimize compliance costs. Each entity will determine for itself how best to meet the rule's requirements.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0352.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance 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. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects

9 CFR Part 2

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

9 CFR Part 3

Animal welfare, Marine mammals, Pets, Reporting and recordkeeping requirements, Research, Transportation.

Accordingly, we are amending 9 CFR chapter I, subchapter A, as follows:

PART 2—REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

■ 2. Section 2.38 is amended by adding new paragraphs (i)(4) and (l) to read as follows:

§ 2.38 Miscellaneous.

* * * * *

(i) * * *

(4) The other person or premises must either be directly included in the research facility's contingency plan required under paragraph (l) of this section or must develop its own contingency plan in accordance with paragraph (l) of this section.

* * * * *

(l) *Contingency planning.* (1) Research facilities must develop, document, and follow an appropriate plan to provide for the humane handling, treatment, transportation, housing, and care of their animals in the event of an emergency or disaster (one which could reasonably be anticipated and expected to be detrimental to the good health and well-being of the animals in their possession). Such contingency plans must:

(i) Identify situations the facility might experience that would trigger the need for the measures identified in a contingency plan to be put into action including, but not limited to, emergencies such as electrical outages, faulty HVAC systems, fires, and animal escapes, as well as natural disasters the facility is most likely to experience.

(ii) Outline specific tasks required to be carried out in response to the identified emergencies or disasters including, but not limited to, detailed animal evacuation instructions or shelter-in-place instructions and provisions for providing backup sources of food and water as well as sanitation, ventilation, bedding, veterinary care, etc.;

(iii) Identify a chain of command and who (by name or by position title) will be responsible for fulfilling these tasks; and

(iv) Address how response and recovery will be handled in terms of materials, resources, and training needed.

(2) For current registrants, the contingency plan must be in place by July 29, 2013. For research facilities registered after this date, the contingency plan must be in place prior to conducting regulated activities. The plan must be reviewed by the research facility on at least an annual basis to ensure that it adequately addresses the criteria listed in paragraph (l)(1) of this section. Each registrant must maintain documentation of their annual reviews, including documenting any amendments or changes made to their plan since the previous year's review, such as changes made as a result of recently predicted, but historically unforeseen, circumstances (e.g., weather extremes). Contingency plans, as well as all annual review documentation and training records, must be made available to APHIS and any funding Federal agency representatives upon request. Facilities maintaining or otherwise handling marine mammals in captivity must also comply with the requirements of § 3.101(b) of this subchapter.

(3) The facility must provide and document participation in and successful completion of training for its personnel regarding their roles and responsibilities as outlined in the plan. For current registrants, training of facility personnel must be completed by September 27, 2013; for research facilities registered after July 29, 2013, training of facility personnel must be completed within 60 days of the facility putting its contingency plan in place. Employees hired 30 days or more before the contingency plan is put in place must also be trained by that date. For employees hired less than 30 days before that date or after that date, training must be conducted within 30 days of their start date. Any changes to the plan as a result of the annual review must be communicated to employees through training which must be conducted within 30 days of making the changes.

■ 3. Section 2.102 is amended by adding new paragraphs (a)(4) and (b)(3) to read as follows:

§ 2.102 Holding facility.

(a) * * *

(4) The other person or premises must either be directly included in the dealer's or exhibitor's contingency plan required under § 2.134 or must develop its own contingency plan in accordance with § 2.134.

(b) * * *

(3) The other person or premises must either be directly included in the intermediate handler's contingency plan required under § 2.134 or must develop its own contingency plan in accordance with § 2.134.

■ 4. A new section § 2.134 is added to read as follows:

§ 2.134 Contingency planning.

(a) Dealers, exhibitors, intermediate handlers, and carriers must develop, document, and follow an appropriate plan to provide for the humane handling, treatment, transportation, housing, and care of their animals in the event of an emergency or disaster (one which could reasonably be anticipated and expected to be detrimental to the good health and well-being of the animals in their possession). Such contingency plans must:

(1) Identify situations the licensee or registrant might experience that would trigger the need for the measures identified in a contingency plan to be put into action including, but not limited to, emergencies such as electrical outages, faulty HVAC systems, fires, mechanical breakdowns, and animal escapes, as well as natural disasters most likely to be experienced;

(2) Outline specific tasks required to be carried out in response to the identified emergencies or disasters including, but not limited to, detailed animal evacuation instructions or shelter-in-place instructions and provisions for providing backup sources of food and water as well as sanitation, ventilation, bedding, veterinary care, etc.;

(3) Identify a chain of command and who (by name or by position title) will be responsible for fulfilling these tasks; and

(4) Address how response and recovery will be handled in terms of materials, resources, and training needed.

(b) For current licensees and registrants, the contingency plan must be in place by July 29, 2013. For new dealers, exhibitors, intermediate handlers, and carriers licensed or registered after this date, the contingency plan must be in place prior to conducting regulated activities. The plan must be reviewed by the dealer, exhibitor, intermediate handler, or carrier on at least an annual basis to ensure that it adequately addresses the criteria listed in paragraph (a) of this section. Each licensee and registrant must maintain documentation of their annual reviews, including documenting any amendments or changes made to their plan since the previous year's review, such as changes made as a result of recently predicted, but historically unforeseen, circumstances (e.g., weather extremes). Contingency plans, as well as all annual review documentation and training records, must be made available to APHIS upon request. Traveling entities must carry a copy of their contingency plan with them at all times and make it available for APHIS inspection while in travel status. Dealers, exhibitors, intermediate handlers, and carriers maintaining or otherwise handling marine mammals in

captivity must also comply with the requirements of § 3.101(b) of this subchapter.

(c) Dealers, exhibitors, intermediate handlers, and carriers must provide and document participation in and successful completion of training for personnel regarding their roles and responsibilities as outlined in the plan. For current licensees and registrants, training of dealer, exhibitor, intermediate handler, and carrier personnel must be completed by September 27, 2013. For new dealers, exhibitors, intermediate handlers, or carriers licensed or registered after July 29, 2013, training of personnel must be completed within 60 days of the dealer, exhibitor, intermediate handler, or carrier putting their contingency plan in place. Employees hired 30 days or more before their contingency plan is put in place must also be trained by that date. For employees hired less than 30 days before that date or after that date, training must be conducted within 30 days of their start date. Any changes to the plan as a result of the annual review must be communicated to employees through training which must be conducted within 30 days of making the changes.

PART 3—STANDARDS

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

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

■ 6. In § 3.101, paragraph (b) is amended by adding a new sentence at the end of the paragraph to read as follows:

§ 3.101 Facilities, general.

* * * * *

(b) * * * Facilities handling marine mammals must also comply with the requirements of § 2.134 of this subchapter.

* * * * *

Done in Washington, DC, this 20th day of December 2012.

Rebecca Blue,

Deputy Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2012–31422 Filed 12–28–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. FSIS–2012–0039]

RIN 0583–AD05

Uniform Compliance Date for Food Labeling Regulations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is establishing January 1, 2016, as the uniform compliance date for new meat and poultry product labeling regulations that are issued between January 1, 2013, and December 31, 2014. FSIS periodically announces uniform compliance dates for new meat and poultry product labeling regulations to minimize the economic impact of label changes.

DATES: This rule is effective December 31, 2012. Comments on this final rule must be received on or before January 30, 2013.

ADDRESSES: FSIS invites interested persons to submit relevant comments on this proposed rule. 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 online instructions at that site for submitting comments.
- *Mail, including CD–ROMs:* Send to Docket Clerk, U.S. Department of Agriculture (USDA), FSIS, OPPD, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, 8–163A, Washington, DC 20250–3700.
- *Hand- or courier-delivered items:* Send to Docket Clerk, U.S. Department of Agriculture (USDA), FSIS, OPPD, Patriots Plaza 3, 355 E. Street SW., 8–163A, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2012–0039. 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 comments received, go to the FSIS Docket Room at the address listed above between 8 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Rosalyn Murphy-Jenkins, Director, Labeling and Program Delivery Division, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, Telephone: 301–504–0879.

SUPPLEMENTARY INFORMATION:

Background

FSIS periodically issues regulations that require changes in the labeling of meat and poultry food products. Many meat and poultry establishments also produce non-meat and non-poultry food products that are subject to the jurisdiction of the Food and Drug Administration (FDA). FDA also periodically issues regulations that require changes in the labeling of products under its jurisdiction.

On December 14, 2004, FSIS issued a final rule that established January 1, 2008, as the uniform compliance date for new meat and poultry labeling regulations issued between January 1, 2005, and December 31, 2006. The 2004 final rule also provided that the Agency would set uniform compliance dates for new labeling regulations in 2-year increments and periodically issue final rules announcing those dates. Consistent with that final rule, the Agency has published three final rules establishing the uniform compliance dates of January 1, 2010, January 1, 2012, and January 1, 2014 (72 FR 9651, 73 FR 75564, and 75 FR 71344).

The Final Rule

This final rule establishes January 1, 2016, as the uniform compliance date for new meat and poultry product labeling regulations that are issued between January 1, 2013 and December 31, 2014, and is consistent with the previous final rules that established uniform compliance dates. In addition, FSIS' approach for establishing uniform compliance dates for new food labeling regulations is consistent with FDA's approach. FDA is also planning to publish a final rule establishing a new compliance date.

Two-year increments enhance the industry's ability to make orderly adjustments to new labeling requirements without unduly exposing consumers to outdated labels. With this approach, the meat and poultry industry is able to plan for use of label inventories and to develop new labeling materials that meet the requirements of all labeling regulations made within the two year period, thereby minimizing the economic impact of labeling changes.

This compliance approach also serves consumers' interests because the cost of multiple short-term label revisions that

would otherwise occur would likely be passed on to consumers in the form of higher prices.

FSIS encourages meat and poultry companies to comply with new labeling regulations as soon as it is feasible. If companies initiate voluntary label changes, they should consider incorporating any new requirements that have been published as final regulations.

The new uniform compliance date will apply only to final FSIS regulations that require changes in the labeling of meat and poultry products and that are published after January 1, 2013, and before December 31, 2014. For each final rule that requires changes in labeling, FSIS will specifically identify January 1, 2016, as the compliance date. All meat and poultry food products that are subject to labeling regulations promulgated between January 1, 2013 and December 31, 2014, will be required to comply with these regulations when introduced into commerce on or after January 1, 2016. If any food labeling regulation involves special circumstances that justify a compliance date other than January 1, 2016, the Agency will determine an appropriate compliance date and will publish that compliance date in the rulemaking.

In rulemaking that began with the May 4, 2004, proposed rule, FSIS provided notice and solicited comment on the concept of establishing uniform compliance dates for labeling requirements (69 FR 24539). In the March 5, 2007, final rule, FSIS noted that the Agency received only four comments in response to the proposal, all fully supportive of the policy to set uniform compliance dates. Therefore, in the March 5, 2007, final rule, FSIS determined that further rulemaking for the establishment of uniform compliance dates for labeling requirements is unnecessary (72 FR 9651). The Agency did not receive comments on the final rule. Consistent with its statement in 2007, FSIS finds at this time that further rulemaking on this matter is unnecessary. However, FSIS is providing an opportunity for comment on the uniform compliance date established in this final rule.

Executive Order 12988

This final rule has been reviewed under the Executive Order 12988, Civil Justice Reform. Under this final rule: (1) All state and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no retroactive proceedings will be required before parties may file suit in court challenging this rule.

Executive Orders 12866 and 13563 and the Regulatory Flexibility Act

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 (E.O.) 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been reviewed under E.O. 12866. The Office of Management and Budget (OMB) has determined that it is not a significant regulatory action under section 3(f) of E.O. 12866 and, therefore, it has not been reviewed by OMB.

This rule does not have a significant economic impact on a substantial number of small entities; consequently, a regulatory flexibility analysis is not required (5 U.S.C. 601–612).

Paperwork Requirements

There are no paperwork or recordkeeping requirements associated with this policy under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

E-Government Act Compliance

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the Internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.)

Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY).

Additional Public Notification

FSIS will announce this rule online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Interim_&_Final_Rules/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: December 21, 2012.

Alfred V. Almanza,

Administrator.

[FR Doc. 2012–31398 Filed 12–28–12; 8:45 am]

BILLING CODE 3410–DM–P

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: Final rule.

SUMMARY: The U.S. Department of Energy (DOE or the ''Department'') is adopting amendments to the compliance dates for manufacturers to submit certification reports 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 extending the compliance date for the certification provisions for commercial refrigeration equipment; commercial heating, ventilating, air-conditioning (HVAC) equipment; and commercial water heating (WH) equipment to December 31, 2013. DOE is extending the certification date for automatic commercial ice makers to August 1, 2013. Lastly, DOE is adopting a correction to 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: This rule is effective December 31, 2012.

ADDRESSES: This rulemaking can be identified by docket number EERE–2012–BT–CE–0048 and/or RIN number 1904–AC90.

Docket: The docket is available for review at *http://www.regulations.gov,* including **Federal Register** notices, public meetings attendee lists, transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *http://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

For further information on how to submit or review public comments or view hard copies of the docket in the Resource Room, contact Ms. Brenda Edwards at (202) 586–2945 or email: *Brenda.Edwards@ee.doe.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. 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:

I. Introduction

A. Authority

Title III of the Energy Policy and Conservation Act of 1975, as amended (''EPCA'' or ''the Act'') sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291–6309) provides for the Energy Conservation Program for Consumer Products Other Than Automobiles. The National Energy Conservation Policy Act (NECPA), Public Law 95–619, amended EPCA to add Part A–1 of Title III, which established an energy conservation program for certain industrial equipment. (42 U.S.C. 6311–6317) [1]

Sections 6299–6305, and 6316 of EPCA authorize DOE to enforce compliance with the energy and water conservation standards (all non-product specific references herein referring to energy use and consumption include water use and consumption; all references to energy efficiency include water efficiency) established for certain consumer products and commercial equipment. (42 U.S.C. 6299–6305 (consumer products), 6316 (commercial equipment)) DOE has promulgated enforcement regulations that include specific certification and compliance requirements. *See* 10 CFR part 429; 10 CFR part 431, subparts B, U, and V.

B. Background

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 (March 2011 Final Rule). 76 FR 12421. This rule was largely procedural in nature; it did not amend pre-existing sampling provisions, test procedures, or conservation standard levels for any covered products or equipment. It did, however, impose new or revised reporting requirements for some types of covered products and equipment, including a requirement that manufacturers submit annual reports to the Department certifying compliance of their basic models with applicable standards. Finally, the Department emphasized that manufacturers could use their discretion in grouping individual models as a ''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 [2] stated that, for a variety of reasons, they would be unable to meet that deadline. As a result in a final rule published June 30, 2011, the Department extended the compliance date for certification of commercial refrigeration equipment; commercial HVAC equipment; commercial WH equipment; and walk-in coolers and freezers (June 30 Final Rule). 76 FR 38287 (June 30, 2011). 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 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 31, 2012, DOE published a proposed rule to revise and expand its regulations regarding alternative efficiency determination methods (AEDMs). (77 FR 32038). 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. *See* Docket EERE–2011–BT–TP–0024. The Department is also

[1] For editorial reasons, Parts B (consumer products) and C (commercial equipment) of Title III of EPCA were re-designated as parts A and A–1, respectively, in the United States Code.

[2] 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.

reviewing recommendations regarding the feasibility of a negotiated rulemaking to revise the certification requirements for commercial HVAC equipment and commercial refrigeration equipment.[3]

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, No. 1 at pp. 1–2). Specifically, 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.

On December 6, 2012, the Department proposed to extend compliance date an additional 12 months for commercial refrigeration equipment; commercial HVAC equipment; and commercial WH equipment (December 2012 NOPR). 77 FR 72763. DOE requested comment on its assumption regarding the existence of test data and on whether a longer or shorter period of time would be more appropriate. DOE also proposed to modify the regulatory text to reflect that the compliance dates for certification requirements for walk-in coolers and freezers, distribution transformers, and metal halide lamp ballasts have passed by removing the delayed compliance dates.

Lastly, the Department proposed 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 proposed to correct this error 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.

II. Discussion of Comments

The Department received 14 written comments on the NOPR from a number of interested commenters, including various manufacturers, trade associations, and advocacy groups. The following parties submitted comments for this rule:

Commenter name	Short name	Docket ID
Air-Conditioning, Heating and Refrigeration Institute	AHRI	EERE–2012–BT–CE–0048–0001 EERE–2012–BT–CE–0048–0014
Seasons 4, Incorporated	Seasons	EERE–2012–BT–CE–0048–0004
Scotsman Ice Systems	Scotsman	EERE–2012–BT–CE–0048–0005
Hoshizaki America, Inc	Hoshizaki	EERE–2012–BT–CE–0048–0006
UTC Climate, Controls & Security	UTC	EERE–2012–BT–CE–0048–0008
AAON, Inc	AAON	EERE–2012–BT–CE–0048–0009
Ingersoll Rand	Ingersoll Rand	EERE–2012–BT–CE–0048–0010
Lennox International, Inc	Lennox	EERE–2012–BT–CE–0048–0011
ASAP, ACEEE, ASE, and NRDC	Joint Comment	EERE–2012–BT–CE–0048–0012
Rheem Manufacturing Company	Rheem	EERE–2012–BT–CE–0048–0013
Traulsen & Company	Traulsen	EERE–2012–BT–CE–0048–0015
Burnham Commercial	Burnham	EERE–2012–BT–CE–0048–0016
Goodman Manufacturing	Goodman	EERE–2012–BT–CE–0048–0017
Mitsubishi Electric Cooling and Heating	Mitsubishi	EERE–2012–BT–CE–0048–0018

A. Extension of Certification Deadline for Commercial Refrigeration Equipment; HVAC Equipment; and Commercial WH Equipment

As stated above, DOE proposed an additional 12-month extension to the compliance date for filing complete certification reports for manufacturers of commercial refrigeration equipment; commercial HVAC equipment; and commercial WH equipment. 77 FR 72763. Most commenters supported an extension of at least twelve months. (Seasons, No. 4 at p. 1; UTC, No. 8 at pp. 1–2; AAON, No. 9 at pp. 1–2; Ingersoll Rand, No. 10 at pp. 1–2; Lennox, No. 11 at pp. 1–2; Joint Comment, No. 12 at pp. 1–2; Rheem, No. 13 at p. 3; AHRI, No. 14 at p. 1; Traulsen, No. 15 at pp. 2–3, Burnham, No. 16 at p. 1; Goodman, No. 17 at pp. 1–2; and Mitsubishi, No. 18 at pp. 1–2)

Many commenters believed that the compliance date should be tied to the completion of the AEDM rule. (Seasons, No. 4 at p. 1; UTC, No. 8 at pp 1–2; Lennox, No. 11 at p.2; Rheem, No. 13 at p. 3; AHRI, No. 14 at pp. 1–2, Traulsen, No. 15 at p. 2–3; Goodman, No. 17 at pp. 1–2; and Mitsubishi, No. 18 at pp. 1–2) Similarly, AAON commented that the AEDM rule would impact the length of the extension needed. (AAON, No. 9 at p. 2) In addition, AAON, Lennox AHRI, Goodman, and Mitsubishi commented that they believe that the compliance date should be extended a minimum of 18 months from the publication of the AEDM final rule. (AAON, No. 9 at p.2; Lennox, No. 11 at p.2; AHRI, No. 14 at p. 2; Goodman, No. 17 at pp. 1–2; and Mitsubishi, No. 18 at pp. 1–2) Goodman detailed a view shared by Seasons, UTC, AAON, Lennox, and AHRI that the length of the extension required would depend upon the actual results of the testing (due to measurement uncertainties, variances in testing set-ups and product variances) and the tolerances allowed by DOE (for both individual test-to-simulation results as well as average test-to-simulation results), additional testing or a significant amount of effort in development/specification of the internal AEDM procedure may be required. (Goodman, 17 at p. 1; Seasons, No. 4 at p. 1; UTC, No. 8 at pp. 1–2; AAON, No. 9 at p. 2; Lennox, No. 11 at p. 2 and AHRI, No. 14 at p. 2) Ingersoll Rand commented that it was concerned that a December 31, 2013 compliance date may not be sufficient to permit the Department to conduct a negotiated rulemaking and allow manufacturers to develop a means to comply with any modified requirements. (Ingersoll Rand, No. 10 at p. 1–2) In particular, Ingersoll Rand stated that it ''hope[s] the Department recognizes [the December 2013 date] is only a stopgap measure, not truly a feasible date for future

[3] 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.*

compliance.'' (Ingersoll Rand, No. 10 at p.2) Lennox also suggested that the compliance date should be aligned with the annual certification date for each product. (Lennox, No. 11 at pp. 2–3) Traulsen also supported extending the certification deadline stating that the commercial refrigeration industry may have collected energy consumption performance data for some base model of commercial refrigeration equipment, which may not be appropriate in all circumstances. (Traulsen, No. 15 at p. 2) Traulsen also noted that for certain low volume models of commercial refrigeration equipment current data may not be available because of previously conflicting priorities. (Id.) Mitsubishi also supported an 18-month extension from publication of the AEDM final rule and offered a specific path forward for the Department's consideration: (1) Finalize the AEDM rulemaking; (2) extend the certification compliance deadline for at least 18 months from the date of the AEDM final rule; (3) In the alternative, issue a written DOE Guidance Document regarding the delay of enforcement of commercial certification compliance until the AEDM rulemaking and accompanying extension are finalized; (4) begin the negotiated rulemaking process, which has already provided MEUS an opportunity to clarify the central issues and which is consistent with AHRI's proposed direction; and (5) develop a ''basic model'' definition that aligns with AHRI's definition—a basic model should be defined by the unit rather than levels of efficiency. (Id.)

One commenter supported the 12-month extension as proposed by the Department without modification. Specifically, Burnham commented in favor of a compliance extension similar to that proposed by the AHRI organization regarding the publication of the AEDM final rule. However, Burmham also clarified that a shorter timeframe would be feasible as well. (Burnham, No. 16 at p. 1)

Several commenters suggested that a significantly longer extension was needed. UTC noted that it believes an additional 12 to 36 months will be necessary after the issuance of a final AEDM rule prior to manufacturers being in a position to submit certification reports. (UTC, No. 8 at p.2) Hoshizaki requested a two-year extension for certification of commercial refrigeration equipment as it has not completed testing of its basic models and is waiting for DOE action on the AEDM rulemaking. (Hoshizaki, No. 6 at p. 1)

In light of the comments above, DOE is extending the compliance date for the certification provisions for commercial refrigeration equipment; commercial warm air furnaces, commercial packaged boilers, and commercial air conditioners and heat pumps (collectively referred to as commercial HVAC equipment); and commercial water heaters, commercial hot water supply boilers, and unfired hot water storage tanks (collectively referred to as commercial WH equipment) to December 31, 2013. DOE believes 12 months is a reasonable extension and will allow DOE time to complete the AEDM rulemaking and allow manufacturers to develop ratings in accordance with any revised AEDM provisions.

As noted above, the Department is reviewing the feasibility of a negotiated rulemaking to revise the certification requirements for commercial HVAC equipment and commercial refrigeration equipment. DOE is also considering the formation of an advisory committee in conjunction with such a rulemaking. Whether DOE proceeds with a negotiated rulemaking, and the outcome of a negotiated rulemaking, however, is uncertain. DOE believes that, should it proceed with a negotiated rulemaking, the process would, of its nature, involve discussion of any need to extend the new deadline further. Moreover, DOE believes that interested parties would raise the extension issue well in advance of December 31, 2013. Accordingly, DOE believes the 12-month extension is sufficient.

Many commenters submitted additional thoughts regarding the AEDM rulemaking, about the definition of ''basic model'' and about the potential for a negotiated rulemaking. (AAON, No. 9 at p.1; Ingersoll Rand, No. 10 at p. 1–2; Joint Comment, No. 12 at pp. 1–2; Rheem, No. 13 at pp. 1–3; AHRI, No. 14 at pp. 1–2, Goodman, No. 17 at pp. 1–2, and Mitsubishi, No. 18 at p. 2) DOE appreciates the information provided by parties on these matters. The substance of these comments is the subject of other rulemakings and should be raised in those proceedings. This rulemaking is limited to an extension of the compliance date for the March 2011 certification provisions for commercial HVAC equipment, commercial WH equipment, and commercial refrigeration equipment.

DOE emphasizes that the testing and sampling requirements for commercial refrigeration equipment; commercial HVAC equipment; and commercial WH equipment are unchanged by this extension. These regulations can be found on a per product basis in subpart B to part 429 (sampling plans for testing) and 10 CFR 431.64, 431.76, 431.86, 431.96, 431.106, and 431.134 (uniform test methods).

B. Extension of Certification Deadline for Automatic Commercial Ice Makers

In the December 2012 NOPR, DOE initially proposed to retain the December 31, 2012 deadline to certify compliance but sought comment on whether an extension was needed. Several commenters requested a six-month extension of time for submitting certification reports for automatic commercial ice makers (ACIM). (Scotsman, No. 5 at p. 1; Hoshizaki, No. 6 at p. 1; AHRI, No. 14 at p. 2) Scotsman requested additional time to work with AHRI so that AHRI could build a database to collect the required information and submit the certification reports on Scotsman's behalf. (Scotsman, No. 5 at p. 1) Hoshizaki explained that it has the required test reports but that AHRI's portal for reporting test data is not ready. (Id.) Scotsman, however, indicated that it will need to conduct additional testing prior to submitting certification reports. (Scotsman, No. 5 at p. 1) AHRI requested a six-month extension to allow manufacturers time to complete testing. (AHRI, No. 14 at p. 2)

Scotsman and Hoshizaki commented that DOE released the templates for certification of ACIM in December 2012 and stated that they did not have an automated process to provide many of the data elements contained in the templates. (Scotsman, No. 5 at p. 1; Hoshizaki, No. 6 at p. 1)

Traulsen, on the other hand, noted that it did not have a concern with the Department's proposed certification deadline of December 31, 2012 for ACIMs even though it does not manufacture or supply this type of equipment. (Traulsen, No. 15 at p. 3)

DOE expresses no view regarding an automated process that a regulated entity may develop to provide its certification reports. DOE notes that the data elements required for certification have been public since March 2011 and the CCMS templates for certification are available to manufacturers online. Given the concerns expressed by manufacturers, DOE is extending the compliance date for ACIM to align the compliance date with the next annual certification reporting date. Manufacturers would be required to submit only one certification report in 2013 for current basic models unless they implement design changes to those models resulting in lower efficiency or increased consumption. Consequently, DOE is adopting a compliance date of August 1, 2013, for submission of certification reports for ACIM.

C. Compliance and Enforcement

DOE emphasizes that all covered equipment must meet the applicable energy conservation standard. ASAP, ACEEE, ASE, and NRDC also noted in their joint comment that parties are not absolved of their obligations to comply with current standards and encouraged DOE to enforce those standards effectively. (Joint Comment, No. 12 at pp. 1–2) Furthermore, all testing procedures and sampling provisions are unaffected by this final rule. DOE is adopting a 12-month extension to the compliance date for certification only for the commercial refrigeration equipment; commercial HVAC equipment; and commercial WH equipment reporting requirements in the March 2011 final rule. DOE is adopting an 8-month extension to the compliance date for certification only for the ACIM reporting requirements in the March 2011 final rule.

DOE encourages manufacturers to become familiar with the CCMS prior to the certification deadline. The CCMS has templates currently available for all covered equipment available for manufacturers to use when submitting certification data to DOE.

DOE conducts assessment testing of products available for purchase in the United States, pursuant to 10 CFR 429.104. While certification is not required for commercial refrigeration equipment; commercial HVAC equipment; and commercial WH equipment until December 31, 2013, and for ACIM until August 1, 2013, DOE encourages manufacturers to submit to CCMS certification reports to DOE voluntarily prior to the compliance date required for certification. The Department will refrain from selecting models for assessment testing for which the manufacturer has submitted a valid certification report in CCMS. Specifically, in 2013, DOE will, in its enforcement discretion, limit any assessment testing of commercial refrigeration equipment, commercial HVAC equipment, commercial WH equipment, and automatic commercial ice makers to those models for which DOE does not have a valid certification report on file. If DOE purchases a unit for assessment testing prior to a manufacturer submitting a valid certification report, DOE will continue with the assessment test. A valid certification report is one that meets the requirements of 10 CFR part 429, including the manufacturer's determination of compliance being based either on testing in accordance with DOE sampling and test procedures (parts 429 and 431) or on the AEDM procedures in part 429.

DOE will continue to conduct enforcement testing when it has a reason to believe that products do not meet the applicable standard. In addition, DOE will continue to conduct limited testing in support of its rulemaking activities for these equipment types. DOE will also continue to conduct verification testing in support of the ENERGY STAR program.

AHRI commented that it supports DOE's enforcement policy. (AHRI, No. 14 at p. 2–3) DOE appreciates AHRI's support and notes that the enforcement policy is not tied to participation in a voluntary industry certification program and is based upon the voluntary submittal of a valid CCMS certification report to DOE in advance of the compliance date required for certification of the applicable equipment.

D. Other Compliance Dates

DOE proposed to modify the regulatory text to reflect that the compliance dates for walk-in coolers and freezers, distribution transformers, and metal halide lamp ballasts have passed. DOE did not receive any comments on this proposal. Thus, DOE is adopting these amendments to 10 CFR 429.12(i).

E. Technical Correction

The Department proposed 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 did not receive any comments on this proposal.

Consequently, DOE is correcting this error in today's final rule by adopting 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.

III. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

Today's regulatory action is not 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. Administrative Procedure Act

DOE has determined, pursuant to authority at 5 U.S.C. 553(d)(1), that this final rule is not subject to a 30-day delay in effective date because this rule extending the compliance date for a requirement relieves a restriction.

C. 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://energy.gov/gc/office-general-counsel*.

DOE reviewed this rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This rule merely extends 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 Certification, Compliance, and Enforcement for Consumer Products and Commercial and Industrial Equipment rulemaking. That analysis considered the impacts of that rulemaking on small entities. As a result, DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities.

D. 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

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's final rule.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Energy conservation, Commercial equipment, Reporting and recordkeeping requirements.

10 CFR Part 431

Administrative practice and procedure, Energy conservation, Commercial equipment, Reporting and recordkeeping requirements.

Issued in Washington, DC, on December 26, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE amends chapter II, subchapter D, of Title 10 of the Code of Federal Regulations to read as follows:

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. Revise § 429.12 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 enumerated below are subject to the stated compliance dates for certification:

(1) Automatic commercial ice makers, August 1, 2013;

(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. Revise Table 5 to § 431.97 to read as follows:

§ 431.97 Energy efficiency standards and their compliance dates.

* * * * *

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	October 8, 2012.
			COP = 3.3	
		≥7,000 Btu/h and ≤15,000 Btu/h	EER = 14.0 − (0.3 × Cap[1])	October 8, 2012.
			COP = 3.7 − (0.052 × Cap[1])	
		>15,000 Btu/h	EER = 9.5	October 8, 2012.
			COP = 2.9	
	Non-Standard Size	<7,000 Btu/h	EER = 9.3	October 7, 2010.
			COP = 2.7	
		≥7,000 Btu/h and ≤15,000 Btu/h	EER = 10.8 − (0.213 × Cap[1])	October 7, 2010.
			COP = 2.9 − (0.026 × Cap[1])	
		>15,000 Btu/h	EER = 7.6	October 7, 2010.
			COP = 2.5	

[1] "Cap" means cooling capacity in thousand Btu/h at 95 °F outdoor dry-bulb temperature.

* * * * *

[FR Doc. 2012–31373 Filed 12–28–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2011–BT–TP–0007]

RIN 1904–AC44

Energy Conservation Program for Consumer Products: Test Procedures for Residential Furnaces and Boilers (Standby Mode and Off Mode)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: In an earlier final rule, the U.S. Department of Energy (DOE) prescribed amendments to its test procedures for residential furnaces and boilers to include provisions for measuring the standby mode and off mode energy consumption of those products, as required by the Energy Independence and Security Act of 2007. These test procedure amendments were primarily based on provisions incorporated by reference from the International Electrotechnical Commission (IEC) Standard 62301 (First Edition), ''Household electrical appliances—Measurement of standby power.'' In this current final rule, DOE further amends its test procedure to incorporate by reference the latest edition of the IEC Standard, specifically IEC Standard 62301 (Second Edition). The new version of this IEC standard includes a number of methodological changes designed to increase accuracy while reducing testing burden. This final rule also clarifies the rounding guidance and sampling provisions for the new measurement of standby mode and off mode wattage.

DATES: This rule is effective January 30, 2013. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register on January 30, 2013.

For purposes of compliance with energy conservation standards, compliance with the amended test procedures is required on and after May 1, 2013 (for non-weatherized gas and oil furnaces including mobile home furnaces, and all electric furnaces). The compliance date for any representations relating to standby mode and off mode of residential furnaces and boilers is July 1, 2013; on and after this date, any such representations must be based upon results generated under these test procedures and sampling plans.

ADDRESSES: The docket for this rulemaking is available for review at *www.regulations.gov,* including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publically available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;dct=FR%252BPR%252BN%252BO%252BSR;rpp=25;po=0;D=EERE-2011-BT-TP-0007.* The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Mohammed Khan, 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) 586–7892. Email: *Mohammed.Khan@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 586–9507. Email: *Eric.Stas@hq.doe.gov.*

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I. Background and Authority

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) sets forth a variety of provisions designed to improve energy efficiency and established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, including residential furnaces and boilers (referenced below as one of the ''covered products'').[2] (42 U.S.C. 6292(a)(5) and 6295(f))

Under the Act, this program consists essentially of four parts: (1) Testing; (2) labeling; (3) Federal energy conservation standards; and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for certifying to DOE that their products comply with applicable energy conservation standards adopted pursuant to EPCA and for making representations about the efficiency of those products. (42 U.S.C. 6293(c); 42 U.S.C. 6295(s)) Similarly, DOE must use these test procedures in any enforcement action to determine whether covered products comply with these energy conservation standards. (42 U.S.C. 6295(s))

Under 42 U.S.C. 6293, EPCA sets forth criteria and procedures for DOE's adoption and amendment of such test procedures. Specifically, EPCA provides that ''[a]ny test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use * * * or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary [of Energy], and shall not be unduly burdensome to conduct.'' (42 U.S.C. 6293(b)(3)) In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) Finally, in

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] All references to EPCA in this rulemaking refer to the statute as amended through the Energy Independence and Security Act of 2007, Public Law 110–140.

any rulemaking to amend a test procedure, DOE must determine ''to what extent, if any, the proposed test procedure would alter the measured energy efficiency * * * of any covered product as determined under the existing test procedure.'' (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2))

On December 19, 2007, the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, was enacted. The EISA 2007 amendments to EPCA, in relevant part, require DOE to amend the test procedures for all covered products to include measures of standby mode and off mode energy consumption. Specifically, section 310 of EISA 2007 provides definitions of ''standby mode'' and ''off mode'' (42 U.S.C. 6295(gg)(1)(A)) and permits DOE to amend these definitions in the context of a given product (42 U.S.C. 6295(gg)(1)(B)). The statute requires integration of such energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product, unless the Secretary determines that: (1) The current test procedures for a covered product already fully account for and incorporate the standby mode and off mode energy consumption of the covered product; or (2) such an integrated test procedure is technically infeasible for a particular covered product, in which case the Secretary shall prescribe a separate standby mode and off mode energy use test procedure for the covered product, if technically feasible. (42 U.S.C. 6295(gg)(2)(A))

Under the statutory provisions adopted by EISA 2007, any such amendment must consider the most current versions of IEC Standard 62301, *Household electrical appliances—Measurement of standby power,* and IEC Standard 62087, *Methods of measurement for the power consumption of audio, video, and related equipment.*[3] *Id.* At the time of enactment of EISA 2007, the most current versions of these standards were IEC Standard 62301 (First Edition 2005–06) and IEC Standard 62087 (First Edition 2002).

DOE's current test procedure for residential furnaces and boilers is found at 10 CFR part 430, subpart B, appendix N, *Uniform Test Method for Measuring the Energy Consumption of Furnaces and Boilers.* This procedure establishes a means for determining annual energy efficiency and annual energy consumption of these products. On October 20, 2010, DOE published a final rule in the **Federal Register** (hereafter called the October 2010 final rule) amending the test procedures for residential furnaces and boilers to account for the standby mode and off mode energy consumption of these products, as required by EISA 2007. 75 FR 64621. For a more detailed procedural history of the test procedure rulemaking to address standby mode and off mode energy consumption of residential furnaces and boilers, please consult the October 2010 final rule. *Id.* at 64622.

II. Summary of the Final Rule

As discussed above, EISA 2007 amended EPCA to require that DOE test procedures for covered products include provisions for measuring standby mode and off mode energy consumption. (42 U.S.C. 6295(gg)(2)(A)) In establishing test procedures to address standby mode and off mode energy consumption, EISA 2007 requires consideration of the most current version of IEC Standard 62301 to support the added measurement provisions. *Id.* In the October 2010 final rule, DOE amended its test procedures to prescribe the use of IEC Standard 62301, ''Household electrical appliances—Measurement of standby power,'' Publication 62301 First Edition 2005–06, which was the most current version of this standard at the time of its incorporation into the DOE regulations. This final rule fulfilled DOE's obligation under EISA 2007.

However, since that time, DOE has continued to address the requirements of EISA 2007 as it relates to standby mode and off mode for other products. For example, DOE has issued similar test procedure amendments for other heating products (water heaters, direct heating equipment, and pool heaters), and during that rulemaking, commenters identified improvements to IEC Standard 62301 that were under development and nearly finalized. These commenters, representing both manufacturers and energy conservation advocacy groups, are presumably the same as those that would comment on the proposals for furnaces and boilers, and they supported the draft revisions to IEC Standard 62301 as applied to the other heating products. The second edition of IEC Standard 62301 has now been finalized. In the abstract of its January 27, 2011 publication, the IEC reports that the second edition provides practical improvement and possible reduction in testing burden. DOE has reviewed IEC Standard 62301 (Second Edition) and agrees that the second edition does provide for improvement in terms of measurement accuracy and, in addition, provides for possible reduced testing burden by allowing for direct meter reading techniques, where appropriate. DOE believes these improvements would be applicable to a variety of heating products, including furnaces and boilers, as well as the other heating products discussed above. Accordingly, after careful review, in a notice of proposed rulemaking (NOPR) published on September 13, 2011 (76 FR 56339; ''the September 2011 NOPR''). DOE decided to exercise its discretion to consider incorporation of the revised version of the industry standard into the DOE test procedure for residential furnaces and boilers. (42 U.S.C. 6293(b)(2)) In the September 2011 NOPR, DOE proposed to incorporate by reference the second edition of the IEC Standard 62301 standard in its entirety, calling out the appropriate provisions of that standard in DOE's test procedure regulations for residential furnaces and boilers. 76 FR 56339, 56341 (Sept. 13, 2011). This proposal also clarified the rounding guidance and sampling provisions for the new measurements of standby mode and off mode wattage. A public meeting was held on October 3, 2011 to discuss and receive comments on the issues presented in the September 2011 NOPR. The comment period ended on November 28, 2011.

III. Discussion

A. The September 2011 Proposed Rule

The September 2011 proposed rule was part of the continued efforts of DOE to address the requirements of EISA 2007 as it relates to standby mode and off mode for all covered products. In particular, after the standby mode and off mode amendments were developed for furnaces and boilers, DOE considered similar test procedure amendments for other heating products (water heaters, direct heating equipment, and pool heaters), and during that rulemaking, commenters identified improvements to IEC Standard 62301 that were under development and nearly finalized. These commenters, which are largely the same as those that would comment on the proposals for furnaces and boilers, supported the draft revisions to

[3] EISA 2007 directs DOE to also consider IEC Standard 62087 when amending its test procedures to include standby mode and off mode energy consumption. *See* 42 U.S.C. 6295(gg)(2)(A). However, IEC Standard 62087 addresses the methods of measuring the power consumption of audio, video, and related equipment. Accordingly, the narrow scope of this particular IEC standard reduces its relevance to today's final rule.

IEC Standard 62301. The second edition of the standard has now been finalized. In the abstract of that finalized publication, the IEC reported that the second edition would provide practical improvement and possible reduction in testing burden. DOE reviewed IEC Standard 62301 (Second Edition) and agrees that the second edition does provide for improvement in terms of measurement accuracy and, in addition, provides for possible reduced testing burden by allowing for direct meter reading techniques where appropriate. DOE believes these improvements are applicable to a variety of heating products, including furnaces and boilers, as well as the other heating products mentioned above. Accordingly, after careful review, DOE decided to exercise its discretion to consider incorporation by reference of the revised version of the industry standard into the DOE test procedure for residential furnaces and boilers. (42 U.S.C. 6293(b)(2)) Thus, in the September 2011 NOPR, DOE proposed to incorporate into DOE's test procedure regulations the second edition of IEC Standard 62301 in its entirety, and call out the appropriate provisions of that standard in DOE's test procedure regulations for residential furnaces and boilers.

More specifically, DOE's technical review of IEC Standard 62301 (Second Edition) determined that some improvement to the current DOE test procedure is possible with the incorporation of the second edition of the IEC standard as it applies to residential furnaces and boilers. First, a more comprehensive specification of required accuracy is provided in IEC Standard 62301 (Second Edition) that depends upon the characteristics of the power being measured. DOE believes that this most recent revision to the IEC standard provides improved and realistic accuracy provisions for a range of electricity consumption patterns, thereby making the updated test method appropriate for the variety of electricity-consuming devices that form part of residential furnaces and boilers. The new specification can be met by typical, commercially-available test equipment, whereas requirements in the first version may have necessitated specialized instrumentation that is not readily available.

Another important change in IEC Standard 62301 (Second Edition) that relates to the measurement of standby mode and off mode power consumption in residential furnaces and boilers involves the specification of the stability criteria required to measure that power. IEC Standard 62301 (Second Edition) contains more detailed techniques to evaluate the stability of the power consumption and to measure the power consumption for loads with different stability characteristics. In IEC Standard 62301 (First Edition), the stability of the system is determined by measuring the power consumption over a 5-minute period. If the variation over that period is less than 5 percent, the signal is considered to be stable. There are potential operational modes, however, that could show variation over longer time frames. For example, an electronic component could go into a sleep mode after a 10-minute period. This change in power consumption would not be captured in the 5-minute stability test. IEC Standard 62301 (Second Edition) acknowledges the existence of these different types of modes by creating stability tests for these variable power modes. For constant power modes, the test method specified in the second edition of IEC Standard 62301 matches that specified in the first edition. For cyclical power consumption, the second edition of IEC Standard 62301 adds measurement provisions for situations in which the variation in the signal might not be constant over a 5-minute period. The power measurements would take at least 60 minutes; a test period of this duration is required to accurately capture standby mode and off mode energy consumption for equipment with varying power consumption and is an improvement introduced by IEC Standard 62301 (Second Edition) compared to IEC Standard 62301 (First Edition). These techniques will result in more complete and accurate measures of standby mode and off mode energy consumption over a variety of operational modes. The manufacturer is given a choice of measurement procedures, including less burdensome methods such as direct meter reading methods if certain clearly-described stability conditions are met. DOE believes that the changes incorporated in IEC Standard 62301 (Second Edition) will allow for use of less burdensome methods when appropriate and will ensure accurate measures of standby energy consumption over a range of operating conditions that may be present in residential furnaces and boilers.

Accordingly, for the reasons discussed above, DOE proposed to incorporate IEC Standard 62301 (Second Edition) in its entirety into the overall list of incorporated references in 10 CFR 430.3 and to call out the appropriate provisions of that standard in DOE's test procedure regulations for residential furnaces and boilers.

In addition, the September 2011 NOPR clarified that the rounding guidance in the IEC Standard 62301 (Second Edition) should be used for the new proposed wattage measurements. Specifically, it was proposed that the following sentence be added to the measurement provisions in sections 8.6.1 and 8.6.2: ''The recorded standby power ($P_{W,SB}$) (or $P_{W,OFF}$ where appropriate) shall be rounded to the second decimal place, and for loads greater than or equal to 10W, at least three significant figures shall be reported.'' 76 FR 56339, 56342 (Sept. 13, 2011).

Finally, DOE proposed to apply the existing DOE sampling plans used by residential furnace and boiler manufacturers to determine the representative values for annual energy consumption to the newly proposed standby mode and off mode ratings ($P_{W,SB}$ and $P_{W,OFF}$). *Id.* at 56342–43. For a more complete discussion of DOE's analysis of IEC Standard 62301 (Second Edition), see sections III.A through III.C of the September 2011 NOPR. 76 FR 56339, 56341–43 (Sept. 13, 2011).

B. Public Comments on DOE's September 2011 Proposed Rule

In response to the September 2011 NOPR, DOE received very little in the way of comment on this matter. In particular, there was no objection expressed as to the use of the updated version of the IEC standard. Only two comments were received from Crown Boiler and the Air-Conditioning, Heating, and Refrigeration Institute (Crown, No. 5 and AHRI, No. 7, respectively), and they are discussed in detail below. In overview, these comments dealt with the overall burden of measuring standby mode and off mode energy consumption and the associated rounding guidance. No comments were received on the added clarification provisions related to sampling.

1. Crown Boiler Comments

Comments from Crown Boiler were supportive of the September 2011 NOPR, in that the company agreed that the use of the second edition of IEC Standard 62301 in lieu of the first edition would result in reduced cost of testing. However, despite this reduction in cost, Crown Boiler opposed testing provisions for standby mode and off mode energy consumption generally, applying to both the current rulemaking and the October 2010 final rule, stating, *''…[T]he rule imposes an undue regulatory burden on boiler manufacturers, given the fact that it is unlikely to result in any significant*

reduction in energy use. In light is this, and in light of Executive Order 13563 (''Improving Regulations and Regulatory Review''), we believe that DOE should modify this rule [in this case, the provisions prescribed by the October 2010 final rule] *so that the burden it imposes is commensurate with the real-world benefit it provides (essentially none).''* (emphasis added) (Crown, No. 5 at p.1–2)

Initially, DOE notes that most of Crown Boiler's comment involves provisions prescribed by the October 2010 final rule rather than those proposed in the September 2011 NOPR, which are matters beyond the scope of the current rulemaking. However, DOE is addressing the concerns of Crown Boiler here because of the interrelationship between these rules. Crown Boiler maintained that the energy savings potential associated with limiting the standby mode and off mode power consumption of residential boilers would be insignificant because of the small magnitude of energy consumption in these modes. In support of this position, Crown Boiler estimated that most residential boilers would consume less than 5W of standby mode and off mode power and that the annual shipments are only 400,000 units. In response, as summarized in the September 2011 NOPR and as Crown Boiler acknowledges, the EISA 2007 amendments to EPCA, in relevant part, statutorily require DOE to amend the test procedures for all covered products (including furnaces and boilers) to include measures of standby mode and off mode energy consumption. 76 FR 56339, 56341 (Sept. 13, 2011). Specifically, the statute requires integration of such energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product, unless the Secretary determines that: (1) The current test procedures for a covered product already fully account for and incorporate the standby mode and off mode energy consumption of the covered product; or (2) such an integrated test procedure is technically infeasible for a particular covered product, in which case the Secretary shall prescribe a separate standby mode and off mode energy use test procedure for the covered product, if technically feasible. (42 U.S.C. 6295(gg)(2)(A))

Furthermore, although DOE realizes that, as pointed out by Crown Boiler, the level of standby mode and off mode energy consumption of boilers is inherently smaller than that of other products, such as forced air furnaces, it nevertheless represents a significant level of energy consumption when viewed in the aggregate. For example, the cost of annual standby mode and off mode energy consumption for the commenter's estimate of annual shipments (400,000 units) and wattage would be nearly $2 million each year for a single year's shipments of boilers (400,000 × 8000 hours × 5W × .00012 $/whr = $1.92 million). Some amount of this energy consumption could be limited by an applicable energy conservation standard in the future. This energy saving potential would be part of the analysis in support of such a standard. Accordingly, for these reasons, DOE cannot eliminate the integration of standby mode and off mode into the residential furnaces and boilers test procedures on the basis of insignificant energy savings potential.

Crown Boiler also argued that the overall burden of conducting the additional tests for standby mode and off mode is significant for small businesses. The commenter specifically stated that the purchase cost of equipment needed to run the IEC Standard 62301 test is significant for small boiler manufacturers. On this matter, DOE certified in the October 2010 final rule that the added provisions to address standby mode and off mode energy consumption will not a have a significant economic impact on a significant number of small entities. 75 FR 64621, 64628–29 (Oct. 20, 2010). Furthermore, in the September 2011 NOPR, DOE tentatively certified that the possible additional burden represented by the adoption of the second edition of IEC Standard 62301 also would not have a significant economic impact on a substantial number of small entities. 76 FR 56339, 56343–44 (Sept. 13, 2011). In today's final rule, DOE affirms its certification, because it has concluded that the possible additional equipment cost for affected manufacturers is a small investment compared to manufacturers' overall financial investment needed to undertake the business enterprise of testing consumer products, including residential boilers.

Crown Boiler also commented on the additional testing time that IEC Standard 62301 (Second Edition) may require on units with unstable readings. DOE analyzed this issue in the September 2011 NOPR and tentatively concluded that in the worst case, the labor costs associated with wait time during testing would result in a small additional cost of $30 per test unit. *Id.* at 56344. Crown Boiler maintained that in addition to the possible labor cost, the waiting time would result in less availability for the test stand. In response, DOE does not view this as additional burden, since there is no provision in the rule that requires the standby mode and off mode measurements to be made on a particular test stand. Typically, a test stand for full efficiency testing of boilers would require fossil fuel and electricity connections, as well as venting arrangements. If such test stands are in demand, the standby mode and off mode testing could be done in a more convenient place where only an electrical connection is needed.

In its comments, Crown Boiler argued that a second testing burden would arise from the need to separately test different controls systems on various boiler models for standby mode and off mode energy consumption. If, in fact, the energy consumption is different for each type of control system and there are numerous control system options applied to a given basic model, additional testing may be required for those basic models. However, this situation is not unlike any other design feature of a covered product that affects energy consumption. DOE believes this possible difference between control systems, and its potential additional testing costs, could be mitigated by the existing rules regarding conservative ratings, while still satisfying the requirement in EISA 2007 for incorporation into the DOE test procedures. In a recent rulemaking on certification, compliance, and enforcement, DOE clarified the conservative ratings concept within that final rule's discussion of the concept of ''basic model.'' 76 FR 12422, 12428–29 (March 7, 2011). Specifically, that discussion elaborated on the permitted flexibility in determining how manufacturers choose to group individual models into a basic model with essentially identical energy consumption characteristics. Generally, characteristics, such as different control systems, that have a small effect on overall energy consumption or efficiency need not constitute different basic models and, therefore, would not require additional separate testing. Rather, at the manufacturer's discretion, a basic model could include a variety of control systems, provided that the resulting rated energy consumption would be sufficiently conservative to account for the least-efficient model within the basic model. DOE believes it is reasonable to assume that the manufacturer can determine which control system would be likely to have the highest energy consumption, thereby allowing the manufacturer to avail itself of the conservative ratings in lieu of additional testing, if it so chooses.

Finally, Crown Boiler mentioned as a burden the differences in ambient air specifications between IEC Standard 62301 and the existing DOE test procedure. This is not a valid point, because the October 2010 final rule specifies, expressly to eliminate unnecessary burden, that the existing test procedure specification for ambient air is to be used for all testing. 75 FR 64621, 64623–25 (Oct. 20, 2010). Today's final rule does nothing to alter DOE's existing specifications for ambient temperature.

In sum, the concerns raised by Crown Boiler have not demonstrated an undue burden associated with DOE's proposed standby mode and off mode measurement provisions, which have been adopted pursuant to DOE's mandate in EISA 2007.

Although Crown Boiler would prefer the elimination of standby mode and off mode measurements for residential boilers, in the alternative, it requested consideration of some simplification of the measurement procedures. Specifically, Crown Boiler asked that in lieu of requiring the IEC Standard 62301 measurements, that manufacturers could be allowed, as an option, to assess the standby mode and off mode wattage with a preliminary and less sophisticated measurement procedure. More specifically, Crown Boiler suggested that if that value is below some threshold, the manufacturer would be allowed to report a conservative default value (*i.e.,* a value greater than the measured value). If the preliminary value is above the relevant threshold, Crown Boiler suggested that the IEC Standard 62301 provisions must be used. Crown Boiler mentioned 7.5 watts and 10 watts as the threshold and default values respectively. This concept could have merit, in that it may reduce testing burden; however, it may not, in effect, be significantly different than the conservative rating concept discussed above. Specifically, the manufacturer, in its discretion, may assess the magnitude of the standby mode/off mode loss through limited testing and choose to make a conservative rating. Therefore, DOE believes the conservative rating allowance is a reasonable pathway for the commenter to use to reduce testing burden. Accordingly, DOE has concluded that there is not a compelling need to modify the test procedure to assign specific threshold and default values along with a defined, less-accurate test measurement procedure as the commenter suggested.

2. Air-Conditioning, Heating, and Refrigeration Institute Comments

In addition to proposing the use of the second edition of IEC Standard 62301, the September 2011 NOPR provided rounding guidance applicable to the new measures of energy consumption for furnaces and boilers (*i.e.,* $P_{W,SB}$ and $P_{W,OFF}$). For these values, the September 2011 NOPR clarified that the rounding guidance provided in IEC Standard 62301 (Second Edition) would apply. 76 FR 56339, 56342, 56347 (Sept. 13, 2011). Specifically, DOE proposed to add the following sentence to the measurement provisions of the proposed regulatory text, where appropriate: ''The recorded standby power ($P_{W,SB}$) (or off mode power $P_{W,OFF}$, where appropriate) shall be rounded to the second decimal place, and for loads greater than or equal to 10W, at least three significant figures shall be reported.'' *Id.* at 56342. DOE requested comments as to the adequacy and appropriateness of this clarification. Here, it is important to note that DOE has established energy conservation standards utilizing these power measurements (*see* 76 FR 37408 (June 27, 2011); 76 FR 67037 (Oct. 31, 2011)). These standards are expressed to two significant figures (*i.e.,* 10 watts $P_{W,SB}$ (or off mode power $P_{W,OFF}$, where appropriate) for gas-fired and electric furnaces and 11 watts $P_{W,SB}$ (or off mode power $P_{W,OFF}$, where appropriate) for oil-fired furnaces). Therefore, certification to these standards, utilizing the IEC rounding guidance, would likely require reporting to the second decimal place (*i.e.,* values below the 10 watt level where the IEC rounding guidance requires three significant figures or the second decimal place). Only reported values between 11 watts and 10 watts for oil-fired and electric furnaces would be allowed a single decimal place report using the IEC rounding guidance. AHRI, in its comments, opined that the second decimal place rounding represents an unnecessary rounding burden on manufacturers without adding any value when one considers the annualized accounting of total electrical energy consumption as represented in the term E_{SO}. (AHRI No. 7 at p. 1–2)

DOE believes that the IEC rounding provisions for wattage measurements are appropriate and within the capabilities of the instrumentation specified in the IEC standard. Specifically, DOE's review of IEC Standard 62301-compliant instrumentation has determined that one can easily support this level of reporting. Moreover, the test procedures for other DOE covered products already utilize IEC Standard 62301 for the wattage measurements, and DOE believes there is benefit in measuring the standby mode and off mode energy consumption of various covered products in a consistent manner for the various DOE requirements (*i.e.,* annual consumption representations or standards compliance reports). In sum, carrying the IEC level of precision (three significant figures) through the annualized consumption calculations does not represent any additional burden, because it is simply a matter of running a calculation and reporting the result. Accordingly, DOE has concluded that this comment does not justify a departure from the IEC provisions, so DOE is adopting the rounding guidance as proposed.

IV. Effective Date and Compliance Dates

The effective date for these amendments is January 30, 2013. At that time, representations may be made using the new metrics $P_{W,SB}$ and $P_{W,OFF}$ and any other measure of energy consumption which depends on $P_{W,SB}$ and $P_{W,OFF}$, which were adopted pursuant to these amendments. The compliance date for any representations relating to standby mode and off mode energy consumption of residential furnaces and boilers is July 1, 2013; on and after this date, any such representations must be based upon results generated under these test procedures and sampling plans.

However, DOE is clarifying here that use of these test procedure amendments related to standby mode and off mode energy consumption are not required for purposes of energy conservation standards compliance until May 1, 2013 (for non-weatherized gas and oil furnaces including mobile home furnaces, and all electric furnaces); this is the compliance date of the recently amended energy conservation standards for residential furnaces, which include standards for standby mode and off mode energy consumption. 76 FR 37408 (June 27, 2011); 76 FR 67037 (Oct. 31, 2011). Again, DOE makes this statement with the caveat that the amended standards only apply to furnaces and not boilers. Amended energy conservation standards addressing standby mode and off mode for boilers will be addressed and apply on the compliance date for the next energy conservation standards rulemaking for those products.

V. Compliance With Other EPCA Requirements

EPCA requires that any test procedures prescribed or amended must

be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use, and it must not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) If DOE amends its test procedures, it must determine to what extent, if any, the proposed test procedure would alter the measured energy efficiency or energy use of the covered product, as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured energy efficiency or energy use, it must amend the applicable energy conservation standard to reflect the average energy efficiency or energy use, as determined using the amended test procedure. (42 U.S.C. 6293(e)(2))

Today's amendments to the DOE test procedure for residential furnaces and boilers incorporates the most current version of IEC Standard 62301 in lieu of the previous version. DOE has concluded that these new provisions will continue to produce valid test results, while reducing testing burden. Accordingly, this final rule meets the requirements of 42 U.S.C. 6293(b)(3).

In addition, DOE has determined that these amendments will not alter the measured efficiency or energy use when determining compliance with the current energy conservation standards for these products or with future standards related to standby mode and off mode for furnaces. Accordingly, no modifications to the currently applicable energy conservation standards are required. This is because the currently applicable energy conservation standard is based on the annual fuel utilization efficiency (AFUE) metric which does not include or depend on the new measures of energy consumption regarding standby mode and off mode. In addition, consistent with its mandate pursuant to EISA 2007, DOE is further clarifying here that use of these test procedure amendments related to standby mode and off mode energy consumption are not required for purposes of energy conservation standards compliance, *until the compliance date of the next standards final rule that addresses standby mode and off mode.* As noted above, DOE has adopted amended energy efficiency standards, as well as standby mode and off mode energy conservation standards, for residential furnaces (but not boilers). 76 FR 37408 (June 27, 2011); 76 FR 67037 (Oct. 31, 2011).

Lastly, DOE does not believe that these test procedure amendments, which adopt a revised version of the IEC test procedure, would significantly alter the energy consumption as measured by the existing DOE test procedure provisions related to standby mode and off mode for residential furnaces and boilers, because the test procedure provisions of IEC Standard 62301 (Second Edition) are limited to providing additional accuracy for the measurements and clarification on the test method. Consequently, DOE does not believe that potential adoption of amendments pertaining to these clarifications and additions would alter any estimates of energy consumption under either DOE's current energy conservation standards or the recently promulgated amended standards.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (Oct. 4, 1993). Accordingly, this regulatory 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.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996) requires preparation of an initial regulatory flexibility analysis 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. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative effects. Also, 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 at *www.gc.doe.gov/gc/office-general-counsel.*

Today's final rule adopts test procedure provisions to measure standby mode and off mode energy consumption of residential furnaces and boilers, generally through the incorporation by reference of IEC Standard 62301 (Second Edition). DOE reviewed today's final rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. For the reasons explained below, DOE certifies that the final rule will not have a significant impact on a substantial number of small entities.

As noted above, the test procedure incorporates by reference provisions from IEC Standard 62301 for the measurement of standby mode and off mode energy consumption. IEC Standard 62301 is widely accepted and used internationally to measure electric power in standby mode and off mode.

Based on its analysis of IEC Standard 62301 (Second Edition), DOE has determined that the only possible additional burden represented by the adoption of IEC Standard 62301 (Second Edition) is associated with the testing time. For measurements of power consumption that are determined to be stable, test time would not change. Test time would increase under IEC Standard 62301 (Second Edition), as compared to IEC Standard 62301 (First Edition), should the stability test indicate that the power is being used in a variable manner. For these cases, the revised procedure would increase the time of measurement from the current 15 minutes to up to 60 minutes. No additional setup time would be required for these tests. This possible increase in test time does not necessarily require active labor, because no additional set up is required, and the additional time essentially amounts to a waiting period to determine stability. Nonetheless, assuming the 45 minutes additional test time does incur additional labor cost, the worst-case estimate of an additional $30 per test unit is a small incremental change compared to the overall financial investment needed to undertake the business enterprise of testing consumer products. For these reasons, DOE does not believe that this final rule adds significant costs nor requires any significant investment in test facilities or new equipment.

The Small Business Administration (SBA) considers an entity to be a small business if, together with its affiliates, it employs fewer than a threshold number of workers specified in 13 CFR part 121, which relies on size standards and codes established by the North American Industry Classification System (NAICS). The threshold number for NAICS classification 333415, which applies to Air-Conditioning and Warm

Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing (including residential furnaces and boilers), is 750 employees.[4] DOE reviewed the Air-Conditioning, Heating, and Refrigeration Institute's Directory of Certified Product Performance for Residential Furnaces and Boilers (June 7, 2010),[5] the ENERGY STAR Product Databases for Gas and Oil Furnaces (Jan. 4, 2010),[6] the California Energy Commission's Appliance Database for Residential Furnaces and Boilers,[7] and the Consortium for Energy Efficiency's Qualifying Furnace and Boiler List (2010).[8] From this review, DOE found that there are approximately 14 small businesses in the furnace and boiler industry. Even though there are a significant number of small businesses within the furnace and boiler industry, DOE has concluded that the test procedure amendments contained in this final rule would not represent a substantial burden to any manufacturer, including small manufacturers, as explained above.

Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis were provided to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b). DOE did not receive any comments demonstrating a significant economic impact on any small entities. Thus, DOE reaffirms and certifies that this rule will not have a significant economic impact on a substantial number of small entities.

C. Review Under the Paperwork Reduction Act of 1995

Today's final rule would impose no new information or recordkeeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act

In this rule, DOE is amending the test procedure for residential furnaces and boilers to address measurement of the standby mode and off mode energy consumption of these products. DOE has determined that this final rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (Pub. L. 91–190, codified at 42 U.S.C. 4321 *et seq.*), and DOE's implementing regulations at 10 CFR part 1021. Specifically, this final rule, which adopts an industry standard for measurement of standby mode and off mode energy consumption, amends an existing rule without changing its environmental effect, and, therefore, is covered by Categorical Exclusion A5 found in 10 CFR part 1021, subpart D, appendix A. Today's final rule does not affect the amount, quality, or distribution of energy usage, and, therefore, does not result in any environmental impacts.[9] Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. 64 FR 43255 (August 10, 1999). The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States, and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process that it will follow in developing such regulations. 65 FR 13735. DOE has examined this final rule and has determined that it does 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) Therefore, Executive Order 13132 requires no further action.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, codified at 2 U.S.C. 1501 *et seq.*) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For regulatory actions likely to result in a rule that may cause expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA

[4] U.S. Small Business Administration, Table of Small Business Size Standards (Nov. 5, 2010) (Available at: *http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf).*

[5] The Air-Conditioning, Heating and Refrigeration Institute, Directory of Certified Product Performance (June 7, 2010) (Available at: *http://www.ahridirectory.org/ahridirectory/pages/home.aspx).*

[6] The U.S. Environmental Protection Agency and the U.S. Department of Commerce, ENERGY STAR Furnaces—Product Databases for Gas and Oil Furnaces (Jan. 4, 2010) (Available at: *http://www.energystar.gov/index.cfm?c=furnaces.pr_furnaces).*

[7] The California Energy Commission, Appliance Database for Residential Furnaces and Boilers (2010) (Available at: *http://www.appliances.energy.ca.gov/QuickSearch.aspx).*

[8] Consortium of Energy Efficiency, Qualifying Furnace and Boiler List (2010) (Available at: *http://www.cee1.org/gas/gs-ht/gs-ht-main.php3).*

[9] Categorical Exclusion A5 provides: ''Rulemaking interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended.''

requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a) and (b)) Section 204 of UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate.'' UMRA also requires an agency plan for giving notice and opportunity for timely input to small governments that may be potentially affected before establishing any requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (This policy is also available at *http://www.gc.doe.gov/gc/office-general-counsel*). Today's final rule, which modifies the current test procedures for residential furnaces and boilers, contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by State, local, and Tribal governments, or by the private sector, of $100 million or more in any year. Accordingly, no further assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's final rule amending DOE test procedures would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 15, 1988), DOE has determined that this final rule will not result in any takings that might require compensation under the Fifth Amendment to the United States Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (Pub. L. 106–554, codified at 44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's final rule is not a significant regulatory action under Executive Order 12866 or any successor order; will not have a significant adverse effect on the supply, distribution, or use of energy; and has not been designated by the Administrator of OIRA as a significant energy action. Therefore, DOE has determined that this rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects for this rulemaking.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101 *et seq.*), DOE must comply with all laws applicable to the former Federal Energy Administration, including section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70). (15 U.S.C. 788) Section 32 provides that where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Federal Trade Commission (FTC) concerning the impact of commercial or industry standards on competition.

Certain of the amendments and revisions in this final rule incorporate testing methods contained in the following commercial standard, the International Electrotechnical Commission (IEC) Standard 62301, ''Household electrical appliances—Measurement of standby power'' (Second Edition 2011). DOE has evaluated this standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the Federal Energy Administration Act (*i.e.,* that it was developed in a manner that fully provides for public participation, comment, and review). DOE has consulted with the Attorney General and the Chairman of the FTC concerning the impact on competition of requiring manufacturers to use the test methods contained in this standard, and neither recommended against incorporation of this standard.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's final rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

VII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on November 16, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE is amending part 430 of Chapter II, Subchapter D of Title 10 of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

§ 430.3 [Amended]

■ 2. Section 430.3 is amended by:

■ a. Removing, in paragraph (m)(1), the words ''appendix I, and appendix N'' and adding in its place ''and appendix I'';

■ b. Adding after ''J2,'' in paragraph (m)(2), ''N,''.

■ 3. Appendix N to subpart B of part 430 is amended:

■ a. By revising the second sentence of the introductory note.

■ b. In section 2.4., by removing the phrase ''(First Edition 2005–06)'' and adding in its place ''(Edition 2.0 2011–01)'';

■ c. In section 8.6.1, by removing in the third sentence, the phrase ''4.5 *Power measurement accuracy''* and adding in its place, the phrase ''4.4 *Power measurement instruments''* and by adding a sentence at the end of the section.

■ d. In section 8.6.2, by removing in the third sentence, the phrase ''4.5 *Power measurement accuracy''* and adding in its place the phrase ''*4.4 Power measurement instruments'',* and by adding a sentence at the end of the section.

The additions and revisions read as follows:

Appendix N to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Furnaces and Boilers

Note: * * * However, any representation related to standby mode and off mode energy consumption of these products made after July 1, 2013 must be based upon results generated under this test procedure, consistent with the requirements of 42 U.S.C. 6293(c)(2). * * *

* * * * *

8.6.1 Standby power measurement. * * * The recorded standby power ($P_{W,SB}$) shall be rounded to the second decimal place, and for loads greater than or equal to 10W, at least three significant figures shall be reported.

8.6.2. Off mode power measurement. * * * The recorded off mode power ($P_{W,OFF}$) shall be rounded to the second decimal place, and for loads greater than or equal to 10W, at least three significant figures shall be reported.

* * * * *

[FR Doc. 2012–31175 Filed 12–28–12; 8:45 am]

BILLING CODE 6450–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1003

[Docket No. CFPB–2012–0049]

Home Mortgage Disclosure (Regulation C): Adjustment To Asset-Size Exemption Threshold

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official commentary.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is publishing a final rule amending the official commentary that interprets the requirements of the Bureau's Regulation C (Home Mortgage Disclosure) to reflect a change in the asset-size exemption threshold for banks, savings associations, and credit unions based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). The exemption threshold is adjusted to increase to $42 million from $41 million. The adjustment is based on the 2.23 percent increase in the average of the CPI–W for the 12-month period ending in November 2012. Therefore, banks, savings associations, and credit unions with assets of $42 million or less as of December 31, 2012, are exempt from collecting data in 2013.

DATES: This final rule is effective December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Joan Kayagil, Senior Counsel, Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

The Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801–2810) requires most mortgage lenders located in metropolitan areas to collect data about their housing-related lending activity. Annually, lenders must report those data to the appropriate Federal agencies and make the data available to the public. The Bureau's Regulation C (12 CFR part 1003) implements HMDA.

Prior to 1997, HMDA exempted certain depository institutions as defined in HMDA (*i.e.,* banks, savings associations, and credit unions) with assets totaling $10 million or less as of the preceding year-end. In 1996, HMDA was amended to expand the asset-size exemption for these depository institutions. 12 U.S.C. 2808(b). The amendment increased the dollar amount of the asset-size exemption threshold by requiring a one-time adjustment of the $10 million figure based on the percentage by which the CPI–W for 1996 exceeded the CPI–W for 1975, and it provided for annual adjustments thereafter based on the annual percentage increase in the CPI–W, rounded to the nearest multiple of $1 million dollars.

The definition of ''financial institution'' in Regulation C provides that the Bureau will adjust the asset threshold based on the year-to-year change in the average of the CPI–W, not seasonally adjusted, for each 12-month period ending in November, rounded to the nearest million. 12 CFR 1003.2. For 2012, the threshold was $41 million. During the 12-month period ending in November 2012, the CPI–W increased by 2.23 percent. As a result, the exemption threshold is increased to $42 million. Thus, banks, savings associations, and credit unions with assets of $42 million or less as of December 31, 2012, are exempt from collecting data in 2013. An institution's exemption from collecting data in 2013 does not affect its responsibility to report data it was required to collect in 2012.

II. Procedural Requirements

Administrative Procedure Act

Under the Administrative Procedure Act (APA), notice and opportunity for public comment are not required if the Bureau finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). Pursuant to this final rule, comment 1003.2 (Financial institution)–2 in Regulation C, supplement I, is amended to update the exemption threshold. The amendment in this final rule is technical and nondiscretionary, and it merely applies the formula established by Regulation C for determining any adjustments to the exemption threshold. For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary and the amendment is adopted in final form.

Under section 553(d) of the APA, the required publication or service of a substantive rule shall be made not less than 30 days before its effective date except for certain instances, including when a substantive rule grants or recognizes an exemption or relieves a restriction. 5 U.S.C. 553(d). As this rule increases the exemption threshold, and is therefore a substantive rule that grants or recognizes an exemption or relieves a restriction, the Bureau is publishing this final rule less than 30 days before its effective date. Additionally, as it is in the public interest to make the

updated threshold for the asset-size exemption available publicly as soon as possible after all data needed for the calculation are available, the Bureau is making the final rule effective immediately upon publication in the **Federal Register**.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the Bureau has determined that it is unnecessary to publish a general notice of proposed rulemaking for this final rule. Accordingly the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

List of Subjects in 12 CFR Part 1003

Banks, Banking, Credit unions, Mortgages, National banks, Savings associations, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau of Consumer Financial Protection amends 12 CFR part 1003 as follows:

PART 1003—HOME MORTGAGE DISCLOSURE (REGULATION C)

■ 1. The authority citation for part 1003 continues to read as follows:

Authority: 12 U.S.C. 2803, 2804, 2805, 5512, 5581.

■ 2. In Supplement I to part 1003, under *Section 1003.2—Definitions,* under the definition *''Financial institution'',* paragraph 2 is revised to read as follows:

Supplement I to Part 1003—Staff Commentary

* * * * *

Section 1003.2—Definitions

* * * * *

Financial institution.

* * * * *

2. *Adjustment of exemption threshold for banks, savings associations, and credit unions.* For data collection in 2013, the asset-size exemption threshold is $42 million. Banks, savings associations, and credit unions with assets at or below $42 million as of December 31, 2012, are exempt from collecting data for 2013.

* * * * *

Dated: December 21, 2012.

Richard Cordray,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2012–31311 Filed 12–28–12; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 3

Minimum Capital Ratios; Issuance of Directives

CFR Correction

In Title 12 of the Code of Federal Regulations, Parts 1 to 199, revised as of January 1, 2012, on page 52, in appendix C to Part 3, Part I, Section 1 is revised to read as follows:

Appendix C to Part 3—Capital Adequacy Guidelines for Banks: Internal-Ratings-Based and Advanced Measurement Approaches

* * * * *

Part I. General Provisions

Section 1. Purpose, Applicability, Reservation of Authority, and Principle of Conservatism

(a) *Purpose.* This appendix establishes:

(1) Minimum qualifying criteria for banks using bank-specific internal risk measurement and management processes for calculating risk-based capital requirements;

(2) Methodologies for such banks to calculate their risk-based capital requirements; and

(3) Public disclosure requirements for such banks.

(b) *Applicability.* (1) This appendix applies to a bank that:

(i) Has consolidated assets, as reported on the most recent year-end Consolidated Report of Condition and Income (Call Report) equal to $250 billion or more;

(ii) Has consolidated total on-balance sheet foreign exposure at the most recent year-end equal to $10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with head office or guarantor located in another country plus redistributed guaranteed amounts to the country of head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report);

(iii) Is a subsidiary of a depository institution that uses 12 CFR part 3, appendix C, 12 CFR part 208, appendix F, 12 CFR part 325, appendix D, or 12 CFR part 567, appendix C, to calculate its risk-based capital requirements; or

(iv) Is a subsidiary of a bank holding company that uses 12 CFR part 225, appendix G, to calculate its risk-based capital requirements.

(2) Any bank may elect to use this appendix to calculate its risk-based capital requirements.

(3) A bank that is subject to this appendix must use this appendix unless the OCC determines in writing that application of this appendix is not appropriate in light of the bank's asset size, level of complexity, risk profile, or scope of operations. In making a determination under this paragraph, the OCC will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 3.12.

(c) *Reservation of authority*—(1) *Additional capital in the aggregate.* The OCC may require a bank to hold an amount of capital greater than otherwise required under this appendix if the OCC determines that the bank's risk-based capital requirement under this appendix is not commensurate with the bank's credit, market, operational, or other risks. In making a determination under this paragraph, the OCC will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 3.12.

(2) *Specific risk-weighted asset amounts.* (i) If the OCC determines that the risk-weighted asset amount calculated under this appendix by the bank for one or more exposures is not commensurate with the risks associated with those exposures, the OCC may require the bank to assign a different risk-weighted asset amount to the exposures, to assign different risk parameters to the exposures (if the exposures are wholesale or retail exposures), or to use different model assumptions for the exposures (if relevant), all as specified by the OCC.

(ii) If the OCC determines that the risk-weighted asset amount for operational risk produced by the bank under this appendix is not commensurate with the operational risks of the bank, the OCC may require the bank to assign a different risk-weighted asset amount for operational risk, to change elements of its operational risk analytical framework, including distributional and dependence assumptions, or to make other changes to the bank's operational risk management processes, data and assessment systems, or quantification systems, all as specified by the OCC.

(3) *Regulatory capital treatment of unconsolidated entities.* If the OCC determines that the capital treatment for a bank's exposure or other relationship to an entity not consolidated on the bank's balance sheet is not commensurate with the actual risk relationship of the bank to the entity, for risk-based capital purposes, it may require the bank to treat the entity as if it were consolidated onto the bank's balance sheet and require the bank to hold capital against the entity's exposures. The OCC will look to the substance of and risk associated with the transaction as well as other relevant factors the OCC deems appropriate in determining whether to require such treatment and in determining the bank's compliance with minimum risk-based capital requirements. In making a determination under this paragraph, the OCC will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 3.12.

(4) *Other supervisory authority.* Nothing in this appendix limits the authority of the OCC under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions, deficient capital levels, or violations of law.

(d) *Principle of conservatism.* Notwithstanding the requirements of this appendix, a bank may choose not to apply a provision of this appendix to one or more exposures, provided that:

(1) The bank can demonstrate on an ongoing basis to the satisfaction of the OCC that not applying the provision would, in all circumstances, unambiguously generate a risk-based capital requirement for each such exposure greater than that which would otherwise be required under this appendix;

(2) The bank appropriately manages the risk of each such exposure;

(3) The bank notifies the OCC in writing prior to applying this principle to each such exposure; and

(4) The exposures to which the bank applies this principle are not, in the aggregate, material to the bank.

* * * * *

[FR Doc. 2012–31485 Filed 12–28–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 32

[Docket ID OCC–2012–0007]

RIN 1557–AD59

Lending Limits

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its lending limits rule to extend the rule's temporary exception for credit exposures arising from a derivative transaction or securities financing transaction from January 1, 2013 to July 1, 2013.

DATES: This final rule is effective December 31, 2012. The effective date of amendatory instruction 3a of the interim final rule published on June 21, 2012, 77 FR 37277, is delayed from January 1, 2013 to July 1, 2013.

FOR FURTHER INFORMATION CONTACT: Jonathan Fink, Assistant Director, Bank Activities and Structure Division, (202) 649–5593; Heidi M. Thomas, Special Counsel, Legislative and Regulatory Activities Division, (202) 649–5490; or Kurt Wilhelm, Director for Financial Markets, (202) 649–6437, Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Description of Final Rule

Section 5200 of the Revised Statutes, 12 U.S.C. 84, provides that the total loans and extensions of credit by a national bank to a person outstanding at one time shall not exceed 15 percent of the unimpaired capital and unimpaired surplus of the bank if the loan or extension of credit is not fully secured, plus an additional 10 percent of unimpaired capital and unimpaired surplus if the loan is fully secured. Section 5(u)(1) of the Home Owners' Loan Act (HOLA), 12 U.S.C. 1464(u)(1), provides that section 5200 of the Revised Statutes ''shall apply to savings associations in the same manner and to the same extent as it applies to national banks.'' In addition, section 5(u)(2) of HOLA, 12 U.S.C. 1464(u)(2), includes exceptions to the lending limits for certain loans made by savings associations. These HOLA provisions apply to both Federal and state-chartered savings associations.

Section 610 of the Dodd-Frank Wall Street Reform and Consumer Protection Act [1] (Dodd-Frank Act) amended section 5200 of the Revised Statutes to provide that the definition of ''loans and extensions of credit'' includes any credit exposure to a person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between a national bank and that person. This amendment was effective July 21, 2012. By virtue of section 5(u)(1) of the HOLA, this new definition of ''loans and extensions of credit'' applies to all savings associations as well as to national banks.

On June 21, 2012, the OCC published in the **Federal Register** an interim final rule that, among other things, amended the OCC's lending limits regulation, 12 CFR part 32, by implementing section 610 of the Dodd-Frank Act.[2] Specifically, the interim final rule amended part 32 to provide national banks and savings associations with different options for measuring the appropriate credit exposures of derivatives transactions and securities financing transactions, including an internal model option. The interim final rule was effective on July 21, 2012. Because the OCC recognized that national banks and savings associations would need additional time to comply with these new provisions, the interim final rule provided at 12 CFR 32.1(d) that the requirements of part 32 only apply to a credit exposure arising from a derivative transaction or securities financing transaction on or after January 1, 2013.[3]

Based on the public comments received on the interim final rule, the OCC concludes that institutions that wish to use an internal model method to determine credit exposure for derivative transactions and securities financing transactions may not have sufficient time to develop a model, receive approval for its use, and implement the model before the January 1, 2013 expiration of the temporary exception. Moreover, for many institutions with large portfolios, the other non-model methods to measure credit exposure provided by the rule often would not be optimal. For the foregoing reasons, the OCC is extending this exception to July 1, 2013,[4] in advance of finalizing the interim final rule. As indicated in the preamble to the interim final rule, notwithstanding this extension, the OCC retains full authority to address credit exposures that present undue concentrations on a case-by-case basis through our existing safety and soundness authorities.

II. Notice and Comment

This final rule is effective on December 31, 2012. Pursuant to the Administrative Procedure Act (APA), at 5 U.S.C. 553(b)(B), notice and comment are not required prior to the issuance of a final rule if an agency, for good cause, finds that ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''

This final rule extends the temporary exception from the lending limits rules for extensions of credit arising from derivative transactions or securities financing transactions from January 1, 2013 to July 1, 2013 in order to provide national banks and savings associations with additional time to comply with these provisions. The rule makes no substantive changes to the lending limits rule. Furthermore, on November 16, 2012, the OCC announced its intention to extend this temporary exception,[5] thereby giving notice to

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] 77 FR 37265 (June 21, 2012).

[3] The interim final rule also removed from the lending limits rule the securities reverse repurchase provision, redesignated as § 32.2(q)(1)(vii), on January 1, 2013 to correspond to the expiration of the exception for the section 610-related provisions. This final rule changes the date of this removal to July 1, 2013 as a conforming change.

[4] The OCC issued OCC Bulletin 2012–36 on November 16, 2012, to provide notice prior to finalizing the interim final rule of its intention to extend the exception to April 1, 2013 so that national banks and savings associations could adjust their preparations for compliance accordingly. Since then, the OCC has determined that it is more appropriate to extend the exception to July 1, 2013.

[5] *See* OCC Bulletin 2012–36.

interested parties that the January 1, 2013 date would likely be extended. For these reasons, the OCC finds that prior notice and comment are unnecessary.

III. Effective Date

This interim final rule is effective on December 31, 2012. A final rule may be effective without 30 days advance publication in the **Federal Register** if an agency finds good cause and publishes such with the final rule.[6] The purpose of a delayed effective date is to permit regulated entities to adjust their behavior before the final rule takes effect. As described above, national banks and savings associations are currently excepted from the lending limits rules for extensions of credit arising from derivative transactions or securities financing transactions until January 1, 2013. This final rule extends this exception through July 1, 2013 in order to provide national banks and savings associations with additional time to comply with these provisions. The rule makes no substantive changes to the lending limits rule. Because the current exception will expire less than 30 days from the date of this rule's publication, it is necessary to make this rule effective immediately. Not doing so would result in national banks and savings associations having to comply with these provisions for a limited amount of time before the July 1, 2013 exception is effective. For these reasons, the OCC finds good cause to dispense with a delayed effective date.

IV. Regulatory Analysis

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA),[7] 5 U.S.C. 603, an agency must prepare a regulatory flexibility analysis for all proposed and final rules that describe the impact of the rule on small entities, unless the head of an agency certifies that the rule will not have ''a significant economic impact on a substantial number of small entities.'' However, the RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b).[8] Pursuant to the APA at 5 U.S.C. 553(b)(B), general notice and an opportunity for public comment are not required prior to the issuance of a final rule when an agency, for good cause, finds that ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' For the reasons discussed above, the OCC did not publish a notice of proposed rulemaking. Therefore, the RFA does not apply to this final rule.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, § 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that there is no Federal mandate imposed by this rulemaking that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, final rule is not subject to § 202 of the Unfunded Mandates Act.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. This rule amends rules, which contain information collection requirements under the PRA, that have been previously approved by OMB under OMB Control No. 1557–0221. The amendments in this final rule do not introduce any new collections of information into the rules, nor do they amend the rules in a way that modifies the collection of information that OMB has previously approved for part 32. Therefore, no Paperwork Reduction Act submission to OMB is required.

List of Subjects in 12 CFR Part 32

National banks, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 12 CFR part 32 is amended as follows:

PART 32—LENDING LIMITS

■ 1. The authority citation for part 32 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 84, 93a, 1462a, 1463, 1464(u), and 5412(b)(2)(B).

§ 32.1 [Amended]

■ 2. Section 32.1(d) is amended by removing ''January 1, 2013'' and adding in its place ''July 1, 2013''.

Dated: December 21, 2012.

Thomas J. Curry,

Comptroller of the Currency.

[FR Doc. 2012–31267 Filed 12–26–12; 11:15 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 34 and 45

[Docket No.: FAA–2012–1333; Amendment Nos. 34–5 and 45–28]

RIN 2120–AK15

Exhaust Emissions Standards for New Aircraft Gas Turbine Engines and Identification Plate for Aircraft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action amends the emission standards for turbine engine powered airplanes to incorporate the standards promulgated by the United States Environmental Protection Agency (EPA) on June 18, 2012. This amendment fulfills the FAA's requirements under the Clean Air Act Amendments of 1970 to issue regulations ensuring compliance with the EPA standards. This action revises the standards for oxides of nitrogen and test procedures for exhaust emissions based on International Civil Aviation Organization standards, and for the identification and marking requirements for engines.

DATES: Effective December 31, 2012. Affected parties, however, are not required to comply with the information collection requirement in § 45.11 until the Office of Management and Budget (OMB) approves the collection and assigns a control number under the Paperwork Reduction Act of 1995. The FAA will publish in the **Federal Register** a notice of the control number assigned by the Office of Management and Budget (OMB) for this information collection requirement.

The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of December 31, 2012.

Submit comments on or before March 1, 2013.

ADDRESSES: You may send comments identified by Docket Number FAA–

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[6] 5 U.S.C. 553(d)(3).

[7] Public Law 96–354, Sept. 19, 1980.

[8] 5 U.S.C. 603(a), 604(a).

2012–1333 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to Docket Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to Docket Operations at 202–493–2251.

• *Hand Delivery:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holiday.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Aimee Fisher, Emissions Division (AEE–300), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7705; email *Aimee.Fisher@faa.gov.*

For legal questions concerning this rule contact Karen Petronis, International Law, Legislation and Regulations Division (AGC–200), Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3073, email *Karen.Petronis@faa.gov.*

SUPPLEMENTARY INFORMATION:

Good Cause for Immediate Adoption

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency for ''good cause'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking.

In July 2011, the United States Environmental Protection Agency (EPA) proposed new aircraft engine emission standards for oxides of nitrogen (NO_X), compliance flexibilities, and other regulatory requirements applicable to aircraft turbofan or turbojet engines with rated thrusts greater than 26.7 kilonewtons (kN) (76 FR 45012, July 27, 2011). The final rule adopting these proposals was published in the **Federal Register** on June 18, 2012 (77 FR 36342). The public had an opportunity to comment on the EPA's proposed rule, and the comments received were addressed in the EPA's final rule.

Section 232 of the Clean Air Act Amendments of 1970 (CAA) (42 U.S.C. 7572) directs the FAA to prescribe regulations to ensure compliance with the EPA's aircraft emission standards. The FAA is amending 14 CFR parts 34 and 45 to incorporate the changes promulgated by the EPA in the emission standards and the associated engine marking requirements. The FAA is not adopting any standards or requirements different from those promulgated by the EPA. Accordingly, the FAA finds that further public comment on these standards prior to promulgation is unnecessary, and that further delay in making the regulations consistent would be contrary to the public interest.

Section 553(d)(3) of the Administrative Procedure Act requires that agencies publish a rule not less than 30 days before its effective date, except as otherwise provided by the agency for good cause found and published with the rule.

This rule, as previously adopted by the EPA, contains a production cutoff date of December 31, 2012. In addition, it contains a new production marking requirement that is effective on aircraft engines produced after December 31. In order to give manufacturers the maximum amount of time to adjust their processes to these requirements, the FAA finds that good cause exists to make this rule effective in less than 30 days.

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. 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. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III. Under Section 232 of the CAA (42 U.S.C. 7571), the FAA is directed to prescribe regulations to ensure compliance with the standards prescribed by the EPA under § 7571, including making such standards applicable in the issuance, amendment, modification, suspension, or revocation of any certificate authorized by part A of subtitle VII of title 49. These regulations are within the scope of that authority, as the FAA is adopting the standards promulgated by the EPA and making them applicable to aircraft engine type certificates issued under the FAA's Title 49 authority.

Comments Invited

For the reasons noted above, the FAA is adopting this final rule without prior notice and public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979) provide that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice.

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the changes. The most helpful comments reference a specific portion of this rule, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

The FAA will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking. Once the comment period closes, the FAA will review and dispose of the comments filed in the rulemaking docket. Because this is a final rule, the FAA will publish a disposition of comments in the **Federal Register**. Based on the comments received, the FAA will state whether it has decided that (i) no action is necessary other than publishing the disposition of comments in the **Federal Register**, or (ii) the FAA should prepare a revised final rule.

Privacy: We will post all comments we receive, without change to *www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *DocketsInfo.dot.gov.*

Docket: To read background documents or comments received, go to *regulations.gov* at any time or to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. Mark the information that is considered proprietary or confidential. If the information is on a disk or CD ROM, mark the outside of the disk or CD ROM and also identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under § 11.35(b), when the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. The FAA holds it in a separate file to which the public does not have access, and the agency places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, the FAA treats it as any other request under the Freedom of Information Act, 5 U.S.C. 552. The FAA processes such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

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

(1) Searching the Federal eRulemaking portal at *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 Web page at *http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR.*

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 docket and amendment numbers of this rulemaking.

I. Background

Section 231(a)(2)(A) of the CAA (42 U.S.C. 7571) directs the Administrator of the EPA to propose aircraft emission standards applicable to the emission of any air pollutant from classes of aircraft engines which in the EPA Administrator's judgment causes or contributes to air pollution that may reasonably be anticipated to endanger public health or welfare. These emission standards have been promulgated by the EPA in 40 CFR part 87.

Section 232 of the CAA (42 U.S.C. 7572) then directs the FAA to prescribe regulations to ensure compliance with the EPA's standards. The FAA has promulgated these emission standards in 14 CFR part 34, and the engine marking requirements in part 45.

The EPA initially regulated gaseous exhaust emissions, smoke and fuel venting from aircraft in 1973, with occasional revision. Since the EPA's adoption of the initial regulations, the FAA has taken subsequent action to ensure that the regulations in 14 CFR are kept current with the EPA's standards. This final rule continues the revisions to the regulations in 14 CFR.

On July 27, 2011, the EPA proposed new aircraft engine emission standards for NO_X, compliance flexibilities, and other regulatory requirements for aircraft turbofan or turbojet engines with rated thrusts greater than 26.7 kilonewtons (kN) (76 FR 45012). The EPA also proposed adopting the gas turbine engine test procedures of ICAO. The final rule adopting these proposals was published on June 18, 2012 (77 FR 36342), and was effective July 18, 2012.

II. Summary of the Costs and Benefits of the Final Rule

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact 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 to 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.

III. Discussion of This Final Rule

1. New Naming Convention

The EPA has adopted a new naming convention, ''tier,'' in 40 CFR part 87. The tier numbers distinguish levels of increased stringency in the NO_X emission standards. This convention is consistent with the numeric identifier that the Committee on Aviation Environmental Protection (CAEP) of ICAO uses to differentiate the CAEP work cycles that produce new standards. For example, the standards that correspond to CAEP's sixth meeting (CAEP/6) are identified by the EPA as Tier 6, while the standards that correspond to CAEP/8 are called Tier 8. The naming convention is also being applied to previously effective less stringent standards, i.e., Tier 0, Tier 2, and Tier 4. None of the previous standards have been changed, only the tier designation has been added in the regulations for comparison and consistency. The following table identifies the various CAEP cycles and corresponding tier naming convention.

The tier designation departs from the previous FAA practice that described aircraft engine emission standards as amendments. The new designation is a valuable tool that provides a consistent reference to individual standards. The FAA is adopting this naming convention in the emission standards contained in this final rule; the designations appear in §§ 34.21 and 34.23.

TABLE 1—NAMING CONVENTIONS COMPARISON

CAEP meeting no. and Annex 16 amendment	Date CAEP adopted, effective, and applicable	FAA part 34 amendments	14 CFR part 34 rule promulgation	40 CFR part 87 tier
CAEP/1 Annex 16 Vol II, Amendment 1.	03/4/1988, 07/31/1998, 11/17/1988.	1. NPRM cancel SFAR 27 and add FAR 34–1;. 2. 14 CFR Part 34 Amendment 2.	1. 08/10/1990 ..... 2. 09/10/1990	Tier 0.
CAEP/2 Annex 16 Vol II, Amendment 2.	03/24/1993, 07/26/1993, 11/11/1993.	14 CFR Part 34 Amendment 3.	3/3/1999	Tier 2.
CAEP/4 Annex 16 Vol II, Amendment 4.	02/26/1999, 07/19/1999, 11/4/1999.	14 CFR Part 34 Amendment 4.	4/29/2009	Tier 4.
CAEP/6 Annex 16 Vol II, Amendment 5.	02/23/2005, 07/11/2005, 11/24/2005.	14 CFR Part 34 Amendment 5.	TBD (40 CFR Part 87 Effective July 18, 2012).	Tier 6.
CAEP/8 Annex 16 Vol II, Amendment 7.	03/4/2011, 07/18/2011, 11/17/2011.			Tier 8.

Note: The NO_X standards were not amended during CAEP/3, CAEP/5, and CAEP/7 meetings and are not included in the tier designations.

2. Changes to Part 34

This final rule adopts the same emissions standards in part 34 as the EPA promulgated for 40 CFR part 87. Any differences between the appearance of the regulations is the result of different regulatory formats between the two titles. No difference in the standards or the meaning of any term is implied nor should any difference be presumed. In the event that a substantive difference is identified, the regulation in 40 CFR part 87 is considered controlling and will be enforced.

The FAA is not changing any of its procedures for exemption requests submitted under part 34. The FAA intends to continue to work together with the EPA to jointly consider all exemption requests as we have in the past.

In this document we are revising paragraph 34.7(b) to add an additional sentence limiting the applicability to the requirements of § 34.21 (maintaining the current scope after § 34.23 is added).

3. NO_X Standards for Newly Certificated Engines

Table 2 below summarizes the NO_X standards for newly certificated engines that are adopted in this final rule, in § 34.23. The regulation establishes two levels of increasingly stringent NO_X emission standards for gas turbofan engines with maximum rated thrusts greater than 26.7 kN. The standard applicable to a particular engine is based on its type certification date. Newly certificated aircraft engines are those that receive a new type certificate after the effective date of the applicable standard. The two new standards are:

a. Tier 6/CAEP 6 NO_X Standards

The first set of standards is equivalent to the NO_X limits established at the CAEP/6 meeting. This level was originally adopted by ICAO and became internationally applicable after December 31, 2007. Engine manufacturers have been producing engines that meet Tier 6 standards even though the standard and the marking designation had not yet been adopted in the United States.

Overall, Tier 6 represents an approximate 12 percent reduction in NO_X emissions from Tier 4, § 34.21(d)(1)(vi). Tier 4 standards were adopted by ICAO in 2005 with an implementation date in 2008. The Tier 6 standard is incorporated in § 34.23(a).

Under the EPA rule, the Tier 6 standard was effective for engines produced on and after July 18, 2012, unless otherwise covered by an exception or exemption. These exceptions include:

1. The production of Tier 4 engines introduced before July 18, 2012, (including their derivatives) through December 31, 2012 (§ 34.23(c) and 40 CFR § 87.23(d)(1)); and

2. Up to six engines per manufacturer produced on and after July 18, 2012 and before August 31, 2013 (§ 34.9(b) and 40 CFR § 87.23(d)(3)). This exception is described more fully in section 4 below.

Exemptions to the standards of part 34 must be filed under the regulatory exemption process discussed in § 34.7 and part 11.

b. Tier 8/CAEP 8 NO_X Standards

The second set of new standards is equivalent to the CAEP/8 NO_X limits that were recommended at the February 2010 CAEP/8 meeting and applicable as ICAO standards and recommended practices in November 2011. These Tier 8 standards will be mandatory in the United States for engines for which the first individual production model is manufactured after December 31, 2013. Overall, Tier 8 represents an approximate 15 percent reduction in NO_X emissions from Tier 6. The Tier 8 standard is incorporated in § 34.23(b).

TABLE 2—TIER 6 AND TIER 8 STANDARDS FOR NO_X

Tier	Date	Class	Rated pressure ratio—rPR	Rated output rO (kN)	NO_X (g/kN)
Tier 6	Manufactured on and after July 18, 2012 and for which the first individual production model is manufactured on or before December 31, 2013 (subject to regulatory exceptions).	TF, T3, T8	rPR ≤ 30	26.7 < rO < 89.0	38.5486 + 1.6823 (rPR) − 0.2453 (rO) − (0.00308 (rPR) (rO))
				rO > 89.0	16.72 + 1.4080 (rPR)
			30 < rPR < 82.6	26.7 < rO ≤ 89.0	46.1600 + 1.4286 (rPR) − 0.5303 (rO) + (0.00642 (rPR) (rO))
				rO > 89.0	−1.04 + 2.0 (rPR)
			rPR ≥ 82.6	All	32 + 1.6 (rPR)
Tier 8	First individual production model manufactured after December 31, 2013.	TF, T3, T8	rPR ≤ 30	26.7 < rO < 89.0	40.052 + 1.5681 (rPR) − 0.3615 (rO) − (0.0018 (rPR) (rO))
				rO > 89.0	7.88 + 1.4080 (rPR)
			30 < rPR < 104.7	26.7 < rO < 89.0	41.9435 + 1.505 (rPR) − 0.5823 (rO) + (0.005562 (rPR) (rO))
				rO > 89.0	−9.88 + 2.0 (rPR)
			rPR ≥ 104.7	All	32 + 1.6 (rPR)

4. Standards for Engines Manufactured On and After July 18, 2012

This final rule applies to engines that are to be manufactured on and after July 18, 2012, the effective date for Tier 6 standards in the United States. However, Tier 4 engines introduced before July 18, 2012 (and their derivatives) may continue to be produced through December 31, 2012 without further action by the manufacturer. In addition, § 34.9(b) incorporates an exception that allows each engine manufacturer to produce up to six Tier 4 compliant engines with a date of manufacture on and after July 18, 2012 and before August 31, 2013 that do not meet the Tier 6 standards without further action by the manufacturer. Engines produced under this exception are required to meet Tier 4 standards.

The primary purpose of allowing limited continued production of Tier 4 engines is to provide for an orderly transition to Tier 6 standards as Tier 4 engines reach the end of their production cycles.

5. Spare Engines

This final rule allows for the production of a ''spare'' engine that is newly produced but meets the Tier 4 emission standard under which it was certificated rather than a more stringent standard that may be in place at the time of production. A spare engine may be produced as a replacement for an engine in service, whether installed temporarily during a repair or for permanent use. A spare engine may not be installed on a new aircraft. A spare engine may have different emission levels for individual pollutants than the engine being replaced, as long as the spare remains in overall compliance with the levels required for the original engine's type certificate.

The standard is incorporated in § 34.9(a). Spare engines must be marked in accordance with § 45.13(a)(7)(v).

6. Standards for Supersonic Aircraft Turbine Engines

This final rule contains carbon monoxide (CO) and NO_X emission standards for turbine engines that are used to propel aircraft at sustained supersonic speeds (i.e., supersonic aircraft). While emission standards for these aircraft were originally adopted by ICAO in the 1980s, the original U.S. adoption of emission standards for supersonic aircraft did not include CO or NO_X. The absence of U.S. standards for these pollutants has no practical effect because supersonic aircraft are not allowed to fly over the continental U.S. and no supersonic engines have been certificated since the Olympus 593 Mk. 610–14–28 installed on the Concorde. This certification has since been surrendered and the engines are no longer in production. We are adopting CO and NO_X standards that will apply to future engine designs used on supersonic aircraft and for harmonization with ICAO standards.

TABLE 3—GASEOUS EMISSION STANDARDS FOR SUPERSONIC ENGINES

Class	Rated output rO[1] (kN)	NO_X (g/kN)	CO (g/kN)
TSS	All	36 + 2.42 (rPR)	4,550 (rPR) $^{-1.03}$

[1] rO is the rated output with afterburning applied.

7. Test Procedures

The amended test procedures adopted in § 34.60 are based on ICAO Annex 16, Volume II. The amendments to Annex 16 Volume II include clarifications and add flexibilities for engine manufacturers. They are:

- Standardizing the terminology relating to engine thrust/power.
- Clarifying the need to correct measured results to standard reference day and reference engine conditions.
- Allowing a certificating authority to approve the use of test fuels other than those specified during certification testing.
- Allowing materials other than stainless steel in the sample collection equipment.
- Clarifying the appropriate value of fuel flow to be used at each LTO test point.
- Clarifying exhaust nozzle terminology for exhaust emissions sampling.
- Allowing an equivalent procedure for gaseous emission and smoke measurement if approved by the certificating authority.

Many manufacturers are already voluntarily complying with these changes. The U.S. adoption of these test procedure amendments is unlikely to require new action by manufacturers. To accomplish the above changes, we have revised § 34.60 and removed §§ 34.61 through 34.64, and 34.71. This action eliminates subpart H of part 34, and we have removed cross references to subpart H in the affected sections where they appear.

8. Definitions

In promulgating the new standards, the EPA adopted several new definitions for terms in its regulations. The FAA is including seven of these definitions in § 34.1 to avoid any uncertainty about their meaning and application. These definitions are consistent with CAEP/8 usage, and the common understanding of these terms as used by industry. The terms and definitions have the same scope and meaning as they have in 40 CFR part 87. Since the regulation includes the terms and their definitions, they are not being repeated here.

9. Derivative Engines

Often manufacturers will make changes to a type certificated engine that is in production while keeping the same basic engine core and combustor design. In some cases, these modifications may affect emissions. We are adopting the term ''derivative engine for emissions certification purposes'' to distinguish an engine model for which the emission characteristics vary from the original type certificated engine design, but remain within the criteria specified in § 34.48.

The FAA has adopted the EPA's rule text in § 34.48 that uses the phrase ''similar in design to a previously certificated (original) engine for purposes of compliance'' with the emissions standards. The FAA understands the ''original'' to be a previously type certificated engine for which there is test data. That test data will be used in determining whether the new engine may be considered a derivative using the criteria in § 34.48.

To qualify as a derivative engine for emissions certification purposes, an engine must comply with the emission standards associated with the original type certificated engine. The derivative engine must have the same or similar emission characteristics as the original type certificated engine; the original engine must be listed on a U.S. type certificate issued under part 33. The FAA will make the following determinations regarding derivatives:

• Whether the emission characteristics of the modified design are significantly different from the original type certificated engine's emissions such that a demonstration of compliance with more recent emission standards is necessary;

• Whether the changes are minor relative to the original type certificated engine's emissions, such that it may be considered a derivative version of the original type certificated engine model with no emissions changes;

• Whether iterative changes made over time resulted in a cumulative change that reaches the point at which a new demonstration of compliance is warranted.

In the past, these determinations were made for turbofan engines by an engineering evaluation that was performed by the engine manufacturer and then reviewed by the FAA. The definition of ''derivative engines for emissions certification purposes,'' along with the criteria for making this determination, will provide engine manufacturers and the FAA with more certainty regarding emission standard requirements for future modifications made to certificated models. The FAA will continue its existing practices for determining derivatives for part 33 engine certification, expanding those practices to make ''derivative engines for emissions certification'' determinations under the criteria promulgated by the EPA and adopted here into § 34.48.

If a derivative engine is sufficiently similar to its original type certificated engine so as to meet the criteria established in § 34.48, the manufacturer may demonstrate certification compliance and continue production of the engine model to the same extent as allowed for the original engine model. However, if a derivative engine is determined to be significantly different than the original type certificated engine, the manufacturer would be required to demonstrate compliance with the most recent emission standards. This determination will be made using numerical criteria consistent with ICAO provisions. An engine model may be considered a derivative only if:

1. It is a modification of an engine that received a U.S. type certificate;

2. The engine was certificated under 14 CFR part 33; and

3. One of the following conditions is met:

• If the FAA determines that a safety issue exists that requires an engine modification; or

• If emissions from the derivative engines are equivalent to or lower than the original type certificated engine.

This final rule provides that an engine manufacturer may show emissions equivalency by demonstrating that the difference between emission rates of a derivative engine and the original type certificated engine are within the following allowable ranges (unless otherwise adjusted using good engineering judgment as determined by the FAA):

• ± 3.0 g/kN for NO_X,
• ± 1.0 g/kN for HC,
• ± 5.0 g/kN for CO, and
• ± 2.0 SN for smoke.

This final rule also provides that an engine model whose characteristic level is at least 5 percent below all applicable standards would be allowed to demonstrate equivalency by engineering analysis. In all other cases, the manufacturer is required to test the new engine model to show emission equivalency.

10. Abbreviations

Similar to the new terms being defined in § 34.1, certain abbreviations have been added or corrected in § 34.2. No separate discussion of them is included here. We are amending the text of §§ 34.10(a) and (b), 34.21(b) and (d), and 34.31(b) to include the correct notation of these abbreviations.

11. Miscellaneous

In § 34.21(b) of the current regulation, there is a printing error. The formula for smoke number should have included '' − 0.274'' as a superscript notation. Instead, it was printed in regular size text, implying a very different mathematical calculation. Since all other instances of the notation in paragraphs (d) and (e) of that section are correct, we are not aware that there has been any misunderstanding from this printing error, but we are correcting it here.

The FAA is revising §§ 34.3(c) and (d), General requirements, to eliminate the use of the term Federal Aviation Regulation and its abbreviation, FAR. Neither term is correct. As regulations are amended, the FAA is removing these terms.

In addition, the FAA is revising § 34.3(d) to remove the reference to 40 CFR 87.1(c) and replacing it with a reference to 40 CFR 87.1 as the EPA regulation no longer uses subparagraph designations in that section.

12. Part 45—Identification Data

The new emission standards require the addition of new designations to identify the status of engines at manufacture. Section 45.13(a)(7) is being added to include the new designations EXEMPT NEW and EXCEPTED SPARE. Engines are already required to carry certain production markings, and this amendment merely adds the two new designations adopted in this final rule. The use of these new terms is required under §§ 34.7(h) and 34.9(a)(6).

IV. Regulatory Notices and Analyses

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This action contains an existing collection in use without an OMB control number. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted these information collection amendments to OMB for its review.

Summary: Under § 45.11, manufacturers of engines are required to mark each engine produced under a type certificate or production certificate by attaching a fireproof identification plate that contains the information specified in § 45.13. As part of the information required, § 45.13(a)(7) states that one of three designations (comply, exempt and non U.S.) that indicates compliance with the applicable exhaust emission provisions of part 34 and 40 CFR part 87 must be included. Under this final rule, the number of possible designations is being increased to five (comply, exempt, non U.S., excepted spare and exempt new), with the new designations having been adopted from the determinations made at ICAO CAEP/8.

Use: The information will be used by purchasers, owners, operators and FAA inspectors, periodically, to confirm that an engine meets the exhaust emission provisions of part 34 and 40 CFR part 87.

Respondents (including number of): There are currently 10 engine manufacturers that will be impacted by this requirement.

Frequency: This is a one time burden for each engine. The information required will be stamped on the

identification plate at the time of manufacture.

Annual Burden Estimate: We estimate that approximately 1,200 engines will be manufactured each year by 10 engine manufacturers and that stamping each identification plate will require 5 minutes. The annual burden is estimated to be 100 hours. We estimate that it will take 5 minutes to label each engine for an average cost of $3.75 for labor and materials for each engine. The total annual cost to respondents is estimated to be $4,500.

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may send comments on the information collection requirement to the address listed in the **ADDRESSES** section at the beginning of this preamble by March 1, 2013. Comments also should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Building, Room 10202, 725 17th Street NW., Washington, DC 20503.

B. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. 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 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 cost impact 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 to 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:

Rulemaking actions by the FAA usually trigger a full regulatory evaluation of the potential monetary costs that would be imposed and benefits generated (including separate analyses for regulatory flexibility, international trade impact, and unfunded mandates). However, this regulation brings the regulations in 14 CFR into conformity with the existing EPA regulations. A full regulatory evaluation is unwarranted because the FAA is not imposing any new standards on the aviation industry for engine emissions or test procedures. The EPA concluded (77 FR 36342, 36386, June 18, 2012) that its rule would impose minimal costs to manufacturers because the affected engines are designed for and marketed internationally, and thus are already being manufactured using the ICAO standards adopted in this rule.

The FAA has made one addition to the standards adopted by the EPA. Previously, each affected engine had to be marked pursuant to 14 CFR part 45 as falling under one of three engine categories. The rule now requires that each affected engine has to be marked as falling under one of five engine categories. As all affected engines had to be marked under the previous rule, increasing the number of categories from three to five will not change the number of engines that need to be marked. The EPA rule required these markings be effective, but the requirement that controls engine marking exists only in 14 CFR part 45. Accordingly, the FAA is simply implementing the EPA requirement. The 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.

C. 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 final rule revises the emission standards for turbine engine airplanes, the test procedures for gaseous emissions, and the different engine categories for marking purposes. Other than the FAA marking requirement that involves minimal cost changes to engine manufacturers, all of the costs associated with this rule have been addressed by the EPA in its rulemaking. The EPA determined that its rule would impose minimal costs to manufacturers because the affected engines are designed for and marketed internationally, and thus are already being manufactured using the ICAO standards adopted in the EPA rule. Thus, this rule has a minimal economic impact.

Therefore, as the FAA Acting Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. 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 is in accord with the Trade Agreements Act, as the rule uses the ICAO international standards as the basis for the U.S. regulation.

E. 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 final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

F. International Compatibility and Cooperation

(1) In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

(2) Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

G. Environmental Analysis

In accordance with FAA Order 1050.1E, the FAA has determined that this action is categorically excluded from environmental review under section 103(2)(c) of the National Environmental Policy Act (NEPA). This action is categorically excluded under FAA Order 1050.1E, Chapter 3, paragraph 312a, which covers ''all FAA actions to ensure compliance with EPA aircraft emission standards.'' This rule amends the emission standards for turbine engine powered airplanes and certain marking requirements for engines, to incorporate the standards adopted by EPA based on the ICAO standards for gaseous emissions of NO_X.

Executive Order Determinations

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use, 66 FR 28355 (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

14 CFR Part 34

Air pollution control, Aircraft, Incorporation by reference.

14 CFR Part 45

Aircraft, marking, identification data.

The Amendments

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

PART 34—FUEL VENTING AND EXHAUST EMISSION REQUIREMENTS FOR TURBINE ENGINE POWERED AIRPLANES

■ 1. The authority citation for part 34 is revised to read as follows:

Authority: 42 U.S.C 4321 *et seq.,* 7572l 49 U.S.C. 106(g), 40113, 44701–44702, 44704, 44714

Subpart A—[Amended]

■ 2. In § 34.1, add in alphabetical order, the definitions for the terms ''Characteristic level'', ''Derivative engine for emissions certification purposes'', ''Excepted'', ''Exempt'', ''Introduction date'', and ''Tier'', and revise the definitions of ''Commercial aircraft engine'', ''Rated output (rO),'' and ''Rated pressure ratio (rPR)'' to read as follows:

§ 34.1 Definitions.

* * * * *

Characteristic level has the meaning given in Appendix 6 of ICAO Annex 16 as of July 2008. The characteristic level is a calculated emission level for each pollutant based on a statistical assessment of measured emissions from multiple tests.[1]

* * * * *

Commercial aircraft engine means any aircraft engine used or intended for use by an ''air carrier'' (including those engaged in ''intrastate air transportation'') or a ''commercial operator'' (including those engaged in ''intrastate air transportation'') as these terms are defined in Title 49 of the United States Code and Title 14 of the Code of Federal Regulations.

* * * * *

Derivative engine for emissions certification purposes means an engine that has the same or similar emissions characteristics as an engine covered by a U.S. type certificate issued under 14

[1] This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This document can be obtained from the ICAO, Document Sales Unit, 999 University Street, Montreal, Quebec H3C 5H7, Canada, phone +1 514–954–8022, or *www.icao.int* or *sales@icao.int.* Copies can be reviewed at the FAA New England Regional Office, 12 New England Executive Park, Burlington, Massachusetts, 781–238–7101, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

CFR part 33. These characteristics are specified in § 34.48.

* * * * *

Excepted, as used in § 34.9, means an engine that may be produced and sold that does not meet otherwise applicable standards. Excepted engines must conform to regulatory conditions specified for an exception in § 34.9. Excepted engines are subject to the standards of this part even though they are not required to comply with the otherwise applicable requirements. Engines excepted with respect to certain standards must comply with other standards from which they are not specifically excepted.

Exempt means an engine that does not meet certain applicable standards but may be produced and sold under the terms allowed by a grant of exemption issued pursuant to § 34.7 of this part and part 11 of this chapter. Exempted engines must conform to regulatory conditions specified in the exemption as well as other applicable regulations. Exempted engines are subject to the standards of this part even though they are not required to comply with the otherwise applicable requirements. Engines exempted with respect to certain standards must comply with other standards as a condition of the exemption.

* * * * *

Introduction date means the date of manufacture of the first individual production engine of a given engine model or engine type certificate family to be certificated. Neither test engines nor engines not placed into service affect this date.

* * * * *

Rated output (rO) means the maximum power/thrust available for takeoff at standard day conditions as approved for the engine by the Federal Aviation Administration, including reheat contribution where applicable, but excluding any contribution due to water injection, expressed in kilowatts or kilonewtons (as applicable), rounded to at least three significant figures.

Rated pressure ratio (rPR) means the ratio between the combustor inlet pressure and the engine inlet pressure achieved by an engine operation at rated output, rounded to at least three significant figures.

* * * * *

Tier, as used in this part, is a designation related to the NO_X emission standard for the engine as specified in § 34.21 or § 34.23 of this part (e.g., Tier 0).

■ 3. In § 34.2, remove the abbreviation for the term ''W Watt(s)'' and add the abbreviations for the terms ''Carbon dioxide'', ''Gram(s)'', ''Kilonewton(s)'', ''Kilowatt(s)'', and ''Pound(s)'' to read as follows:

§ 34.2 Abbreviations.

* * * * *

CO_2 Carbon dioxide

* * * * *

g Gram(s)

* * * * *

kN Kilonewton(s)
kW Kilowatt(s)
lb Pound(s)

* * * * *

■ 4. In § 34.3, revise paragraphs (c) and (d) to read as follows:

§ 34.3 General requirements.

* * * * *

(c) *U.S. airplanes.* This part applies to civil airplanes that are powered by aircraft gas turbine engines of the classes specified herein and that have U.S. standard airworthiness certificates.

(d) *Foreign airplanes.* Pursuant to the definition of ''aircraft'' in 40 CFR 87.1, this regulation applies to civil airplanes that are powered by aircraft gas turbine engines of the classes specified herein and that have foreign airworthiness certificates that are equivalent to U.S. standard airworthiness certificates. This regulation applies only to those foreign civil airplanes that, if registered in the United States, would be required by applicable regulations to have a U.S. standard airworthiness certificate in order to conduct the operations intended for the airplane. Pursuant to 40 CFR 87.3(c), this regulation does not apply where it would be inconsistent with an obligation assumed by the United States to a foreign country in a treaty, convention, or agreement.

■ 5. In § 34.7, amend paragraph (b) by adding a sentence at the end of the paragraph and by revising paragraph (d) to read as follows:

§ 34.7 Exemptions.

* * * * *

(b) * * * This exemption is limited to the requirements of § 34.21 only.

* * * * *

(d) *Applicants seeking exemption from other emissions standards of this part and 40 CFR part 87.* Applicants must request exemption from both the FAA and the EPA, even where the underlying regulatory requirements are the same. The FAA and EPA will jointly consider such exemption requests, and will assure consistency in the respective agency determinations.

* * * * *

■ 6. Add § 34.9 to read as follows:

§ 34.9 Exceptions.

(a) *Spare engines.* Certain engines that meet the following description are excepted:

(1) This exception allows production of an engine for installation on an in-service aircraft. A spare engine may not be installed on a new aircraft.

(2) Each spare engine must be identical to a sub-model previously certificated to meet all applicable requirements.

(3) A spare engine may be used only when the emissions of the spare do not exceed the certification requirements of the original engine, for all regulated pollutants.

(4) No separate approval is required to produce spare engines.

(5) The record for each engine excepted under this paragraph (c) must indicate that the engine was produced as an excepted spare engine.

(6) Engines produced under this exception must be labeled ''EXCEPTED SPARE'' in accordance with § 45.13 of this chapter.

(b) On and after July 18, 2012, and before August 31, 2013, a manufacturer may produce up to six Tier 4 compliant engines that meet the NO_X standards of paragraph (d)(1)(vi) of this section rather than § 34.23(a)(2). No separate approval is required to produce these engines. Engines produced under this exception are to be labeled ''COMPLY'' in accordance with § 45.13 of this chapter.

Subpart B—Engine Fuel Venting Emissions (New and In-Use Aircraft Gas Turbine Engines)

■ 7. Revise § 34.10 to read as follows:

§ 34.10 Applicability.

(a) The provisions of this subpart are applicable to all new aircraft gas turbine engines of classes T3, T8, TSS, and TF equal to or greater than 36 kN (8,090 lb) rated output, manufactured on or after January 1, 1974, and to all in-use aircraft gas turbine engines of classes T3, T8, TSS, and TF equal to or greater than 36 kN (8,090 lb) rated output manufactured after February 1, 1974.

(b) The provisions of this subpart are also applicable to all new aircraft gas turbine engines of class TF less than 36 kN (8,090 lb) rated output and class TP manufactured on or after January 1, 1975, and to all in-use aircraft gas turbine engines of class TF less than 36 kN (8,090 lb) rated output and class TP manufactured after January 1, 1975.

Subpart C—Exhaust Emissions (New Aircraft Gas Turbine Engines)

■ 8. In § 34.21, revise paragraphs (b), (d), (e), and (f), and add paragraph (g) to read as follows:

§ 34.21 Standards for exhaust emission.

* * * * *

(b) Exhaust emissions of smoke from each new aircraft gas turbine engine of class TF and of rated output of 129 kN (29,000 lb) thrust or greater, manufactured on or after January 1, 1976, shall not exceed

$SN = 83.6\ (rO)^{-0.274}$ (rO is in kN).

* * * * *

(d) Gaseous exhaust emissions from each new aircraft gas turbine engine shall not exceed:

(1) For Classes TF, T3, T8 engines greater than 26.7 kN (6,000 lb) rated output:

(i) Engines manufactured on or after January 1, 1984:

Hydrocarbons: 19.6 g/kN rO.

(ii) Engines manufactured on or after July 7, 1997:

Carbon Monoxide: 118 g/kN rO.

(iii) Engines of a type or model of which the date of manufacture of the first individual production model was on or before December 31, 1995, and for which the date of manufacture of the individual engine was on or before December 31, 1999 (Tier 2):

Oxides of Nitrogen: (40+2(rPR)) g/kN rO.

(iv) Engines of a type or model of which the date of manufacture of the first individual production model was after December 31, 1995, or for which the date of manufacture of the individual engine was after December 31, 1999 (Tier 2):

Oxides of Nitrogen: (32+1.6(rPR)) g/kN rO.

(v) The emission standards prescribed in paragraphs (d)(1)(iii) and (iv) of this section apply as prescribed beginning July 7, 1997.

(vi) The emission standards of this paragraph apply as prescribed after December 18, 2005. For engines of a type or model of which the first individual production model was manufactured after December 31, 2003 (Tier 4):

(A) That have a rated pressure ratio of 30 or less and a maximum rated output greater than 89 kN:

Oxides of Nitrogen: (19 + 1.6(rPR)) g/kN rO.

(B) That have a rated pressure ratio of 30 or less and a maximum rated output greater than 26.7 kN but not greater than 89 kN:

Oxides of Nitrogen: (37.572 + 1.6(rPR) − 0.2087(rO)) g/kN rO.

(C) That have a rated pressure ratio greater than 30 but less than 62.5, and a maximum rated output greater than 89 kN:

Oxides of Nitrogen: (7 + 2(rPR)) g/kN rO.

(D) That have a rated pressure ratio greater than 30 but less than 62.5, and a maximum rated output greater than 26.7 kN but not greater than 89 kN:

Oxides of Nitrogen: (42.71 + 1.4286(rPR) − 0.4013(rO) + 0.00642(rPR × rO)) g/kN rO.

(E) That have a rated pressure ratio of 62.5 or more:

Oxides of Nitrogen: (32 + 1.6(rPR)) g/kN rO.

(2) For Class TSS Engines manufactured on or after January 1, 1984:

Hydrocarbons: $140\ (0.92)^{rPR}$ g/kN rO.

(e) Smoke exhaust emissions from each gas turbine engine of the classes specified below shall not exceed:

(1) For Class TF of rated output less than 26.7 kN (6,000 lb) manufactured on or after August 9, 1985:

$SN = 83.6(rO)^{-0.274}$ (rO is in kN) not to exceed a maximum of SN = 50.

(2) For Classes T3, T8, TSS, and TF of rated output equal to or greater than 26.7 kN (6,000 lb) manufactured on or after January 1, 1984:

$SN = 83.6(rO)^{-0.274}$ (rO is in kN) not to exceed a maximum of SN = 50.

(3) For Class TP of rated output equal to or greater than 1,000 kW manufactured on or after January 1, 1984:

$SN = 187(rO)^{-0.168}$ (rO is in kW).

(f) The standards set forth in paragraphs (a), (b), (c), (d), and (e) of this section refer to a composite gaseous emission sample representing the operation cycles and exhaust smoke emission emitted during operation of the engine as specified in the applicable sections of subpart G of this part, and measured and calculated in accordance with the procedures set forth in subpart G.

(g) Where a gaseous emission standard is specified by a formula, calculate and round the standard to three significant figures or to the nearest 0.1 g/kN (for standards at or above 100 g/kN). Where a smoke standard is specified by a formula, calculate and round the standard to the nearest 0.1 SN. Engines comply with an applicable standard if the testing results show that the engine type certificate family's characteristic level does not exceed the numerical level of that standard, as described in § 34.60.

■ 9. Add § 34.23 to read as follows:

§ 34.23 Exhaust Emission Standards for Engines Manufactured On and After July 18, 2012.

The standards of this section apply to aircraft engines manufactured on and after July 18, 2012, unless otherwise exempted or excepted. Where a gaseous emission standard is specified by a formula, calculate and round the standard to three significant figures or to the nearest 0.1 g/kN (for standards at or above 100 g/kN). Where a smoke standard is specified by a formula, calculate and round the standard to the nearest 0.1 SN. Engines comply with an applicable standard if the testing results show that the engine type certificate family's characteristic level does not exceed the numerical level of that standard, as described in § 34.60.

(a) Gaseous exhaust emissions from each new aircraft gas turbine engine shall not exceed:

(1) For Classes TF, T3 and T8 of rated output less than 26.7 kN (6,000 lb) manufactured on and after July 18, 2012:

$SN = 83.6(rO)^{-0.274}$ or 50.0, whichever is smaller

(2) Except as provided in §§ 34.9(b) and 34.21(c), for Classes TF, T3 and T8 engines manufactured on and after July 18, 2012, and for which the first individual production model was manufactured on or before December 31, 2013 (Tier 6):

TIER 6 OXIDES OF NITROGEN EMISSION STANDARDS FOR SUBSONIC ENGINES

Class	Rated pressure ratio—rPR	Rated output rO (kN)	NO_X (g/kN)
TF, T3, T8	rPR ≤ 30	26.7 < rO < 89.0	38.5486 + 1.6823 (rPR) − 0.2453 (rO) − (0.00308 (rPR) (rO))
		rO > 89.0	16.72 + 1.4080 (rPR)

TIER 6 OXIDES OF NITROGEN EMISSION STANDARDS FOR SUBSONIC ENGINES—Continued

Class	Rated pressure ratio—rPR	Rated output rO (kN)	NO_X (g/kN)
	30 < rPR < 82.6	26.7 < rO ≤ 89.0	46.1600 + 1.4286 (rPR) − 0.5303 (rO) + (0.00642 (rPR) (rO))
		rO > 89.0	−1.04 + 2.0 (rPR)
	rPR ≥ 82.6	All	32 + 1.6 (rPR)

(3) Engines exempted from paragraph (a)(2) of this section produced on or before December 31, 2016 must be labeled ''EXEMPT NEW'' in accordance with § 45.13 of this chapter. No exemptions to the requirements of paragraph (a)(2) of this section will be granted after December 31, 2016.

(4) For Class TSS Engines manufactured on and after July 18, 2012:

GASEOUS EMISSION STANDARDS FOR SUPERSONIC ENGINES

Class	Rated output rO [1] (kN)	NO_X (g/kN)	CO (g/kN)
TSS	All	36 + 2.42 (rPR)	4,550 $(rPR)^{-1.03}$

[1] rO is the rated output with afterburning applied.

(b) Gaseous exhaust emissions from each new aircraft gas turbine engine shall not exceed:

(1) For Classes TF, T3 and T8 engines of a type or model of which the first individual production model was manufactured after December 31, 2013 (Tier 8):

TIER 8 OXIDES OF NITROGEN EMISSION STANDARDS FOR SUBSONIC ENGINES

Class	Rated pressure ratio—rPR	Rated output rO (kN)	NOx (g/kN)
TF, T3, T8	rPR ≤ 30	26.7 < rO < 89.0	40.052 + 1.5681 (rPR) − 0.3615 (rO) − (0.0018 (rPR) (rO))
		rO > 89.0	7.88 + 1.4080 (rPR)
	30 < rPR < 104.7	26.7 < rO < 89.0	41.9435 + 1.505 (rPR) − 0.5823 (rO) + (0.005562 (rPR) (rO))
		rO > 89.0	−9.88 + 2.0 (rPR)
	rPR ≥ 104.7	All	32 + 1.6 (rPR)

(c) Engines (including engines that are determined to be derivative engines for the purposes of emission certification) type certificated with characteristic levels at or below the NO_X standards of § 34.21(d)(1)(vi) of this part (as applicable based on rated output and rated pressure ratio) and introduced before July 18, 2012, may be produced through December 31, 2012, without meeting the NO_X standard of paragraph (a)(2) of this section.

■ 10. In § 34.31, revise paragraphs (b) and (c) to read as follows:

§ 34.31 Standards for exhaust emissions.

* * * * *

(b) Exhaust emissions of smoke from each in-use aircraft gas turbine engine of Class TF and of rated output of 129 kN (29,000 lb) thrust or greater, beginning January l, 1976, shall not exceed

$SN=83.6(rO)^{-0.274}$ (rO is in kN).

(c) The standards set forth in paragraphs (a) and (b) of this section refer to exhaust smoke emission emitted during operation of the engine as specified in the applicable sections of subpart G of this part, and measured and calculated in accordance with the procedures set forth in subpart G.

Subpart E—Certification Provisions

■ 11. Add § 34.48 to read as follows:

§ 34.48 Derivative engines for emissions certification purposes.

(a) *General.* A derivative engine for emissions certification purposes is an engine configuration that is determined to be similar in design to a previously certificated (original) engine for purposes of compliance with exhaust emissions standards (gaseous and smoke). A type certificate holder may request from the FAA a determination that an engine configuration is considered a derivative engine for emissions certification purposes. To be considered a derivative engine for emission purposes under this part, the configuration must have been derived from the original engine that was certificated to the requirements of part 33 of this chapter and one of the following:

(1) The FAA has determined that a safety issue exists that requires an engine modification.

(2) Emissions from the derivative engines are determined to be similar. In general, this means the emissions must meet the criteria specified in paragraph (b) of this section. The FAA may amend the criteria of paragraph (b) in unusual circumstances, for individual cases, consistent with good engineering judgment.

(3) All of the regulated emissions from the derivative engine are lower than the original engine.

(b) *Emissions similarity.* (1) The type certificate holder must demonstrate that the proposed derivative engine model's emissions meet the applicable standards and differ from the original model's emission rates only within the following ranges:

(i) ± 3.0 g/kN for NO_X.

(ii) ± 1.0 g/kN for HC.

(iii) ± 5.0 g/kN for CO.

(iv) ± 2.0 SN for smoke.

(2) If the characteristic level of the original certificated engine model (or any other sub-models within the emission type certificate family tested for certification) before modification is at or above 95% of the applicable standard for any pollutant, an applicant must measure the proposed derivative engine model's emissions for all pollutants to demonstrate that the derivative engine's resulting characteristic levels will not exceed the applicable emission standards. If the characteristic levels of the originally certificated engine model (and all other sub-models within the emission type certificate family tested for certification) are below 95% of the applicable standard for each pollutant, the applicant may use engineering analysis consistent with good engineering judgment to demonstrate that the derivative engine will not exceed the applicable emission standards. The engineering analysis must address all modifications from the original engine, including those approved for previous derivative engines.

(c) *Continued production allowance.* Derivative engines for emissions certification purposes may continue to be produced after the applicability date for new emissions standards when the engines conform to the specifications of this section.

(d) *Non-derivative engines.* If the FAA determines that an engine model does not meet the requirements for a derivative engine for emissions certification purposes, the type certificate holder is required to demonstrate that the engine complies with the emissions standards applicable to a new engine type.

Subpart G—Test Procedures for Engine Exhaust Gaseous Emissions (Aircraft and Aircraft Gas Turbine Engines)

■ 12. Revise § 34.60 to read as follows:

§ 34.60 Introduction.

(a) Use the equipment and procedures specified in Appendix 3, Appendix 5, and Appendix 6 of ICAO Annex 16, as applicable, to demonstrate whether engines meet the applicable gaseous emission standards specified in subpart C of this part. Measure the emissions of all regulated gaseous pollutants. Use the equipment and procedures specified in Appendix 2 and Appendix 6 of ICAO Annex 16 to determine whether engines meet the applicable smoke standard specified in subpart C of this part. The compliance demonstration consists of establishing a mean value from testing the specified number of engines, then calculating a ''characteristic level'' by applying a set of statistical factors that take into account the number of engines tested. Round each characteristic level to the same number of decimal places as the corresponding emission standard. For turboprop engines, use the procedures specified for turbofan engines, consistent with good engineering judgment.

(b) Use a test fuel that meets the specifications described in Appendix 4 of ICAO Annex 16. The test fuel must not have additives whose purpose is to suppress smoke, such as organometallic compounds.

(c) Prepare test engines by including accessories that are available with production engines if they can reasonably be expected to influence emissions. The test engine may not extract shaft power or bleed service air to provide power to auxiliary gearbox-mounted components required to drive aircraft systems.

(d) Test engines must reach a steady operating temperature before the start of emission measurements.

(e) In consultation with the EPA, the FAA may approve alternative procedures for measuring emissions, including testing and sampling methods, analytical techniques, and equipment specifications that differ from those specified in this part. Manufacturers and operators may request approval of alternative procedures by written request with supporting justification to the FAA Aircraft Certification Office and to the Designated EPA Program Officer. To be approved, one of the following conditions must be met:

(1) The engine cannot be tested using the specified procedures; or

(2) The alternative procedure is shown to be equivalent to, or more accurate or precise than, the specified procedure.

(f) The following landing and takeoff (LTO) cycles apply for emissions testing and for calculating weighted LTO values:

LTO Test Cycles and Time in Mode

Mode	Class					
	TP		TF, T3, T8		TSS	
	TIM (min)	% of rO	TIM (min)	% of rO	TIM (min)	% of rO
Taxi/idle	26.0	7	26.0	7	26.0	5.8
Takeoff	0.5	100	0.7	100	1.2	100
Climbout	2.5	90	2.2	85	2.0	65
Descent	NA	NA	NA	NA	1.2	15
Approach	4.5	30	4.0	30	2.3	34

(g) Engines comply with an applicable standard if the testing results show that the engine type certificate family's characteristic level does not exceed the numerical level of that standard, as described in the applicable appendix of Annex 16.

(h) The system and procedure for sampling and measurement of gaseous emissions shall be as specified by in Appendices 2, 3, 4, 5 and 6 to the International Civil Aviation Organization (ICAO) Annex 16, Environmental Protection, Volume II, Aircraft Engine Emissions, Third Edition, July 2008. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This document can be obtained from the ICAO, Document Sales Unit, 999 University Street, Montreal, Quebec H3C 5H7, Canada, phone +1 514–954–8022, or *www.icao.int* or *sales@icao.int.* Copies can be reviewed at the FAA New England Regional Office, 12 New

England Executive Park, Burlington, Massachusetts, 781–238–7101, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

§§ 34.61–34.64 [Reserved]

■ 13. Remove and reserve §§ 34.61–34.64.

§ 34.71 [Reserved]

■ 14. Remove and reserve § 34.71.

Subpart H—[Removed]

■ 15. Remove subpart H, consisting of §§ 34.80 through 34.89.

PART 45—IDENTIFICATION AND REGISTRATION MARKING

■ 16. The authority citation for part 45 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113–40114, 44101–44105, 44107–44111, 44504, 44701, 44708–44709, 44711–44713, 44725, 45302–45303, 46104, 46304, 46306, 47122.

Subpart B—Identification of Aircraft and Related Products

■ 17. In § 45.13, revise paragraph (a)(7) introductory text and add paragraphs (a)(7)(iv) and (a)(7)(v) to read as follows:

§ 45.13 Identification data.

(a) * * *

(7) On or after January 1, 1984, for aircraft engines specified in part 34 of this chapter, the date of manufacture as defined in § 34.1 of this chapter, and a designation, approved by the FAA, that indicates compliance with the applicable exhaust emission provisions of part 34 of this chapter and 40 CFR part 87. Approved designations include COMPLY, EXEMPT, and NON–US, as appropriate. After December 31, 2012, approved designations also include EXEMPT NEW, and EXCEPTED SPARE, as appropriate.

* * * * *

(iv) The designation EXEMPT NEW indicates that the engine has been granted an exemption pursuant to the applicable provision of § 34.7(h) of this chapter; the designation must be noted in the permanent powerplant record that accompanies the engine from the time of its manufacture.

(v) The designation EXCEPTED SPARE indicates that the engine has been excepted pursuant to the applicable provision of § 34.9(b) of this chapter; the designation must be noted in the permanent powerplant record that accompanies the engine from the time of its manufacture.

* * * * *

Issued in Washington, DC, on December 14, 2012.

Michael P. Huerta,

Acting Administrator.

[FR Doc. 2012–31109 Filed 12–28–12; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–3522; File No. S7–23–07]

RIN 3235–AL28

Temporary Rule Regarding Principal Trades With Certain Advisory Clients

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is amending rule 206(3)–3T under the Investment Advisers Act of 1940, a temporary rule that establishes an alternative means for investment advisers who are registered with the Commission as broker-dealers to meet the requirements of section 206(3) of the Investment Advisers Act when they act in a principal capacity in transactions with certain of their advisory clients. The amendment extends the date on which rule 206(3)–3T will sunset from December 31, 2012 to December 31, 2014.

DATES: The amendments in this document are effective December 28, 2012 and the expiration date for 17 CFR 275.206(3)–3T is extended to December 31, 2014.

FOR FURTHER INFORMATION CONTACT: Melissa S. Gainor, Attorney-Adviser, Vanessa M. Meeks, Attorney-Adviser, Sarah A. Buescher, Branch Chief, or Daniel S. Kahl, Assistant Director, at (202) 551–6787 or *IArules@sec.gov,* Office of Investment Adviser Regulation, Division of Investment Management, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting an amendment to temporary rule 206(3)–3T [17 CFR 275.206(3)–3T] under the Investment Advisers Act of 1940 [15 U.S.C. 80b] that extends the date on which the rule will sunset from December 31, 2012 to December 31, 2014. Note that previous related releases used RIN 3235–AJ96. (*See Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 2653 (Sep. 24, 2007) [72 FR 55022 (Sep. 28, 2007)]; *Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 2965 (Dec. 23, 2009) [74 FR 69009 (Dec. 30, 2009)]; *Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 2965A (Dec. 31, 2009) [75 FR 742 (Jan. 6, 2010)]; *Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 3118 (Dec. 1, 2010) [75 FR 75650 (Dec. 6, 2010)]; *Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 3128 (Dec. 28, 2010) [75 FR 82236 (Dec. 30, 2010)]; *Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 3483 (October 9, 2012), [77 FR 62185 (October 12, 2012)].)

I. Background

On September 24, 2007, we adopted, on an interim final basis, rule 206(3)–3T, a temporary rule under the Investment Advisers Act of 1940 (the ''Advisers Act'') that provides an alternative means for investment advisers that are registered with us as broker-dealers to meet the requirements of section 206(3) of the Advisers Act when they act in a principal capacity in transactions with certain of their advisory clients.[1] In December 2009, we extended the rule's sunset date by one year to December 31, 2010.[2] In December 2010, we further extended the rule's sunset date by two years to December 31, 2012.[3] We deferred final action on rule 206(3)–3T at that time in

[1] Rule 206(3)–3T [17 CFR 275.206(3)–3T]. All references to rule 206(3)–3T and the various sections thereof in this release are to 17 CFR 275.206(3)–3T and its corresponding sections. *See also Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 2653 (Sep. 24, 2007) [72 FR 55022 (Sep. 28, 2007)] (''2007 Principal Trade Rule Release'').

[2] *See Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 2965 (Dec. 23, 2009) [74 FR 69009 (Dec. 30, 2009)] (''2009 Extension Release''); *Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 2965A (Dec. 31, 2009) [75 FR 742 (Jan. 6, 2010)] (making a technical correction to the 2009 Extension Release).

[3] See *Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 3118 (Dec. 1, 2010) [75 FR 75650 (Dec. 6, 2010)] (proposing a two-year extension of rule 206(3)–3T's sunset date) (''2010 Extension Proposing Release''); *Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 3128 (Dec. 28, 2010) [75 FR 82236 (Dec. 30, 2010)] (''2010 Extension Release'').

order to complete a study required by section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') [4] and to consider more broadly the regulatory requirements applicable to broker-dealers and investment advisers, including whether rule 206(3)–3T should be substantively modified, supplanted, or permitted to sunset.[5]

The study mandated by section 913 of the Dodd-Frank Act was prepared by the staff and delivered to Congress on January 21, 2011.[6] Since that time, we have considered the findings, conclusions, and recommendations of the 913 Study in order to determine whether to promulgate rules concerning the legal or regulatory standards of care for broker-dealers and investment advisers. In addition, since issuing the 913 Study, Commissioners and the staff have held numerous meetings with interested parties on the study and related matters.[7]

On October 9, 2012, we proposed to extend the date on which rule 206(3)–3T will sunset for a limited amount of time, from December 31, 2012 to December 31, 2014.[8] We received five comment letters addressing our proposal.[9] Four of these commenters generally supported extending rule 206(3)–3T for at least two years,[10] and one opposed a two-year extension.[11] The comments we received on our proposal are discussed below. After considering each of the comments, we are extending the rule's sunset date by two years to December 31, 2014, as proposed.

II. Discussion

We are amending rule 206(3)–3T only to extend the rule's sunset date by two additional years.[12] We are not adopting any substantive amendments to the rule at this time. Absent further action by the Commission, the rule would sunset on December 31, 2012. We are adopting this extension because, as we discussed in the Proposing Release, we continue to believe that the issues raised by principal trading, including the restrictions in section 206(3) of the Advisers Act and our experiences with, and observations regarding, the operation of rule 206(3)–3T, should be considered as part of our broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers in connection with the Dodd-Frank Act.[13]

Section 913 of the Dodd-Frank Act provides that we may commence a rulemaking concerning, among other things, the legal or regulatory standards of care for broker-dealers, investment advisers, and persons associated with these intermediaries when providing personalized investment advice about securities to retail customers. Since the completion of the 913 Study in 2011, we have been considering the findings, conclusions, and recommendations of the study and the comments we have received from interested parties.[14] In addition, our staff has been working to obtain data and economic analysis related to standards of conduct and enhanced regulatory harmonization of broker-dealers and investment advisers to inform the Commission as it considers any future rulemaking. At this time, our consideration of the regulatory requirements applicable to broker-dealers and investment advisers and the recommendations from the 913 Study is ongoing. We will not complete our consideration of these issues before December 31, 2012, the current sunset date for rule 206(3)–3T.

If we permit rule 206(3)–3T to sunset on December 31, 2012, after that date investment advisers registered with us as broker-dealers that currently rely on rule 206(3)–3T would be required to comply with section 206(3)'s transaction-by-transaction written disclosure and consent requirements without the benefit of the alternative means of complying with these requirements currently provided by rule 206(3)–3T. This could limit the access of non-discretionary advisory clients of

[4] Public Law 111–203, 124 Stat. 1376 (2010). Under section 913 of the Dodd-Frank Act, we were required to conduct a study and provide a report to Congress concerning the obligations of broker-dealers and investment advisers, including standards of care applicable to those intermediaries and their associated persons. Section 913 also provides that we may commence a rulemaking concerning the legal or regulatory standards of care for broker-dealers, investment advisers, and persons associated with these intermediaries for providing personalized investment advice about securities to retail customers, taking into account the findings, conclusions, and recommendations of the study.

[5] *See* 2010 Extension Release, Section II.

[6] *See Study on Investment Advisers and Broker-Dealers* (''913 Study'') (Jan. 21, 2011), available at *http://www.sec.gov/news/studies/2011/913studyfinal.pdf.* For a discussion regarding principal trading, *see* section IV.C.1.(b) of the 913 Study. *See also* Commissioners Kathleen L. Casey and Troy A. Paredes, *Statement by SEC Commissioners: Statement Regarding Study on Investment Advisers and Broker-Dealers* (Jan. 21, 2011), available at *http://www.sec.gov/news/speech/2011/spch012211klctap.htm.*

[7] *See Comments on Study Regarding Obligations of Brokers, Dealers, and Investment Advisers,* File No. 4–606, available at *http://sec.gov/comments/4–606/4–606.shtml.*

[8] *See Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 3483 (October 9, 2012), [77 FR 62185 (October 12, 2012)] (''Proposing Release'').

[9] *See* Comment Letter of Chris Barnard (Oct. 26, 2012) (''Barnard Letter''); Comment Letter of fi360, Inc. (Nov. 13, 2012) (''fi360 Letter''); Comment Letter of the Financial Services Institute (Nov. 5, 2012) (''FSI Letter''); Comment Letter of the Securities Industry and Financial Markets Association (Nov. 13, 2012) (''SIFMA Letter''); Comment Letter of Wells Fargo Advisors (Nov. 13, 2012) (''Wells Fargo Letter'').

[10] *See* Barnard Letter; FSI Letter; SIFMA Letter; Wells Fargo Letter.

[11] *See* fi360 Letter.

[12] The rule includes a reference to an ''investment grade debt security,'' which is defined as ''a non-convertible debt security that, at the time of sale, is rated in one of the four highest rating categories of at least two nationally recognized statistical rating organizations (as defined in section 3(a)(62) of the Exchange Act).'' Rule 206(3)–3T(a)(2) and (c). Section 939A of the Dodd-Frank Act requires that we ''review any regulation issued by [us] that requires the use of an assessment of the credit-worthiness of a security or money market instrument; and any references to or requirements in such regulations regarding credit ratings.'' Once we have completed that review, the statute provides that we modify any regulations identified in our review to ''remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness'' as we determine appropriate. We believe that the credit rating requirement in the temporary rule would be better addressed after the Commission completes its review of the regulatory standards of care that apply to broker-dealers and investment advisers. One commenter addressed credit ratings and agreed with us that the issue would be better addressed after the Commission completes its review. *See* SIFMA Letter. We are not adopting any substantive amendments to the rule at this time. *See generally Report on Review of Reliance on Credit Ratings* (July 21, 2011), available at *http://www.sec.gov/news/studies/2011/939astudy.pdf* (staff study reviewing the use of credit ratings in Commission regulations).

[13] *See* Proposing Release, Section II. The 913 Study is one of several studies relevant to the regulation of broker-dealers and investment advisers mandated by the Dodd-Frank Act. *See, e.g., Study on Enhancing Investment Adviser Examinations* (Jan. 19, 2011), available at *http://sec.gov/news/studies/2011/914studyfinal.pdf* (staff study required by section 914 of the Dodd-Frank Act, which directed the Commission to review and analyze the need for enhanced examination and enforcement resources for investment advisers); Commissioner Elisse B. Walter, *Statement on Study Enhancing Investment Adviser Examinations* (*Required by Section 914 of Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act*) (Jan. 19, 2011), available at *http://sec.gov/news/speech/2011/spch011911ebw.pdf. See also Study and Recommendations on Improved Investor Access to Registration Information About Investment Advisers and Broker-Dealers* (Jan. 26, 2011), available at *http://sec.gov/news/studies/2011/919bstudy.pdf* (staff study required by section 919B of the Dodd-Frank Act that directed the Commission to complete a study, including recommendations (some of which have been implemented) of ways to improve investor access to registration information about investment advisers and broker-dealers, and their associated persons); *United States Government Accountability Office Report to Congressional Committees on Private Fund Advisers* (July 11, 2011), available at *http://www.gao.gov/new.items/d11623.pdf* (study required by section 416 of the Dodd-Frank Act, which directed the Comptroller General of the United States to study the feasibility of forming a self-regulatory organization to oversee private funds).

[14] Section 913(f) of the Dodd-Frank Act requires us to consider the 913 Study in any rulemaking authorized by that section of the Dodd-Frank Act. *See also Comments on Study Regarding Obligations of Brokers, Dealers, and Investment Advisers,* File No. 4–606, available at *http://sec.gov/comments/4-606/4-606.shtml.*

advisory firms that are registered with us as broker-dealers to certain securities.[15] In addition, firms would be required to make substantial changes to their disclosure documents, client agreements, procedures, and systems.

As noted above, four commenters generally supported our proposal to amend rule 206(3)–3T to extend it,[16] and one commenter opposed the two-year extension.[17] Commenters who supported the extension cited the disruption to investors that would occur if the rule expired at this time, asserting that investors would lose access to the securities currently offered through principal trades, receive less favorable pricing on such securities, or be forced to buy such securities through brokerage accounts.[18] These commenters further explained that, if the rule were allowed to expire, firms relying on the rule would be required to make considerable changes to their operations, client relationships, systems, policies and procedures at substantial expense, without substantial benefits to investors.[19] One commenter described a recent survey it conducted that indicated reliance on rule 206(3)–3T by dual registrants in order to engage in principal trades.[20] In addition, two commenters specifically addressed Commission consideration of requests for exemptive orders as an alternative means of compliance with section 206(3). Both commenters strongly supported the two-year extension instead of Commission consideration of requests for exemptive orders.[21] One commenter expressed concern about the potential inefficiency and uncertainty created by the need to submit individual requests for exemptive relief.[22] Commenters supporting the extension agreed that extending the rule while the Commission conducted its review of the obligations of broker-dealers and investment advisers, as mandated by the Dodd-Frank Act, would be the least disruptive option.[23]

One commenter opposed extending the rule for more than a limited period of time (no more than six months) and questioned maintaining investor choice as a rationale for extending rule 206(3)–3T.[24] This commenter also noted that although instances of ''dumping'' have not been discovered, the staff has observed related compliance problems in the past. The commenter asserted that a more detailed analysis of principal trades executed in reliance on rule 206(3)–3T, including spreads paid by investors and investment returns, be conducted and suggested that the Commission extend rule 206(3)–3T for no more than six months to conduct such an assessment.[25] The commenter also expressed concern about the open-ended nature of extending this temporary rule.[26]

On balance, and after careful consideration of these comments, we conclude that extending the rule for two years is the most appropriate course of action at this time. First, with respect to investors, we agree with commenters that permitting the rule to sunset before we complete our consideration of the regulatory requirements applicable to broker-dealers and investment advisers could produce substantial disruption for investors with advisory accounts serviced by firms relying on the rule.[27] These investors might lose access to securities available through principal transactions and be forced to convert their accounts in the interim, only to face the possibility of future change—and the costs and uncertainty such additional change may entail.[28] We believe that the rule benefits investors because it provides them with greater access to a wider range of securities and includes provisions designed to protect them.

Second, with respect to firms, the letters submitted by three commenters demonstrate that firms in fact do rely on the rule, and that those firms will be faced with uncertainty and disruption of operations should the rule expire just as the Commission is engaging in a comprehensive review process that may ultimately produce different regulatory requirements.[29] One commenter that represents securities firms provided data showing that a substantial number of accounts and volume of trades would be affected by a change in the rule.[30] This disruption will be avoided if the rule remains available while we engage in our broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers.

We believe that the requirements of rule 206(3)–3T, coupled with regulatory oversight, will adequately protect advisory clients for an additional limited period of time while we consider more broadly the regulatory requirements applicable to broker-dealers and investment advisers.[31] In the 2010 Extension Proposing Release, we discussed certain compliance issues identified by the Office of Compliance, Inspections and Examinations.[32] One matter identified in the staff's review resulted in a settlement of an enforcement proceeding and other matters continue to be reviewed by the staff.[33] We are sensitive to the concerns regarding compliance issues with respect to rule 206(3)–3T raised by one commenter.[34] Since 2010 and throughout the period of the extension,

[15] For a discussion of the costs and benefits underlying rule 206(3)–3T, *see* 2007 Principal Trade Rule Release, Section VI.C.

[16] *See* Barnard Letter; FSI Letter; SIFMA Letter; Wells Fargo Letter.

[17] *See* fi360 Letter.

[18] *See* FSI Letter; SIFMA Letter (noting that of seven advisory firms that responded to a recent SIFMA survey, two firms indicated that they would not be able to elicit customer consent in accordance with section 206(3) of the Advisers Act, and the other five firms indicated that although they would be able to elicit customer consent in accordance with section 206(3), they would nonetheless significantly limit their volume of principal trading); Wells Fargo Letter.

[19] *See* FSI Letter; SIFMA Letter; Wells Fargo Letter.

[20] *See* SIFMA Letter (SIFMA noted responses from seven dual-registrant firms that, in the aggregate, manage over $325 billion of assets in over 1.1 million non-discretionary advisory accounts. The firms indicated that 459,507 of these accounts with aggregate assets of over $125 billion are eligible to engage in principal trading in reliance on rule 206(3)–3T. These firms also indicated that, during the previous two years, they engaged in principal trades in reliance on rule 206(3)–3T with 106,682 accounts and executed an average of 12,009 principal trades per month in reliance on the rule.)

[21] *See* SIFMA Letter; Wells Fargo Letter.

[22] *See* SIFMA Letter.

[23] *See* Barnard Letter; SIFMA Letter; Wells Fargo Letter.

[24] *See* fi360 Letter. This commenter also raised concerns regarding the effectiveness of disclosure generally, including the disclosures required by the temporary rule. Such concerns are beyond the scope of this rulemaking.

[25] *See* fi360 Letter.

[26] *Id.*

[27] *See* Barnard Letter; SIFMA Letter; Wells Fargo Letter.

[28] As discussed in each of the 2007 Principal Trade Rule Release, 2009 Extension Release and 2010 Extension Release, firms have explained that they may refrain from engaging in principal trading with their advisory clients in the absence of the rule given the practical difficulties of complying with section 206(3), and thus may not offer principal trades through advisory accounts. *See* 2007 Principal Trade Rule Release, Section I.B; 2009 Extension Release, Section I; 2010 Extension Release, Section II. *See also* SIFMA Letter.

[29] *See* FSI Letter; SIFMA Letter; Wells Fargo Letter.

[30] *See* SIFMA Letter.

[31] In addition, rule 206(3)–3T(b) provides that the rule does not relieve an investment adviser from acting in the best interests of its clients, or from any obligation that may be imposed by sections 206(1) or (2) of the Advisers Act or any other applicable provisions of the federal securities laws.

[32] *See* 2010 Extension Proposing Release, Section II (discussing certain compliance issues identified by the Office of Compliance Inspections and Examinations with respect to the requirements of section 206(3) or rule 206(3)–3T and noting that the staff did not identify any instances of ''dumping'' as part of its review).

[33] *See In the Matter of Feltl & Company, Inc.,* Investment Advisers Act Release No. 3325 (Nov. 28, 2011) (settled order finding, among other things, violations of section 206(3) of the Advisers Act for certain principal transactions and section 206(4) of the Advisers Act and rule 206(4)-7 thereunder for failure to adopt written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules).

[34] *See* fi360 Letter.

the staff has and will continue to examine firms that engage in principal transactions and will take appropriate action to help ensure that firms are complying with section 206(3) or rule 206(3)–3T (as applicable), including possible enforcement action.

We received four comment letters specifically addressing the duration of our proposed extension of rule 206(3)–3T.[35] Three of these commenters expressed support for extending the rule for an additional two years, although two of these commenters suggested that an extension of five years would be more appropriate.[36] One commenter opposed extending the rule for more than a six-month period, during which the rule's effectiveness could be further assessed.[37]

As we noted in the Proposing Release, we believe that the rule's sunset date should be extended only for a limited amount of time.[38] That period of time, however, must be long enough to permit us to engage in any rulemaking prompted by our broader review of regulatory requirements applicable to investment advisers and broker-dealers. We do not believe that six months is long enough to engage in this process, and we do not believe that it is appropriate at this time to extend the temporary rule for an additional five years. We are sensitive to comments regarding the duration of the extension and the uncertainty caused by extending a temporary rule, but we believe that a two-year extension is necessary to provide investors uninterrupted access to securities available through principal trades and to provide us adequate time to engage in any rulemaking or other process.

Three commenters addressed the question of whether we should consider changing the requirements for adviser disclosures to have registered advisers provide more information to us and their clients about whether they are relying on rule 206(3)–3T.[39] Each of these commenters asserted that additional requirements for adviser disclosures are unnecessary, noting that certain additional disclosures may be redundant, and that current disclosures appear to be adequate.[40] We are not adopting amendments requiring additional adviser disclosures at this time, but will consider the need for such disclosures in future rulemakings or other processes as necessary.[41]

As noted above, one commenter suggested that there be a more detailed analysis of data, including spreads paid and investor returns.[42] These factors are relevant to principal trades in general, and are not specific to rule 206(3)–3T. This commenter also raised the concern that the Commission may ultimately apply a ''uniform'' fiduciary standard to broker-dealers and investment advisers in two different ways.[43] These comments pertain to our broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers, and we will consider these comments in conducting this broader review.

III. Certain Administrative Law Matters

The amendment to rule 206(3)–3T is effective on December 28, 2012. The Administrative Procedure Act generally requires that an agency publish a final rule in the **Federal Register** not less than 30 days before its effective date.[44] However, this requirement does not apply if the rule is a substantive rule which grants or recognizes an exemption or relieves a restriction, or if the rule is interpretive.[45] Rule 206(3)–3T is a rule that recognizes an exemption and relieves a restriction and in part has interpretive aspects.

IV. Paperwork Reduction Act

Rule 206(3)–3T contains ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[46] The Office of Management and Budget (''OMB'') last approved the collection of information with an expiration date of May 31, 2014. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The title for the collection of information is: ''Temporary rule for principal trades with certain advisory clients, rule 206(3)–3T'' and the OMB control number for the collection of information is 3235–0630. The Proposing Release solicited comments on our PRA estimates, but we did not receive comment on them.[47]

The amendment to the rule we are adopting today—to extend rule 206(3)–3T's sunset date for two years—does not affect the current annual aggregate estimated hour burden of 378,992 hours.[48] Therefore, we are not revising the Paperwork Reduction Act burden and cost estimates submitted to OMB as a result of this amendment.

V. Economic Analysis

A. Introduction

We are sensitive to the costs and benefits of our rules. The discussion below addresses the costs and benefits of extending rule 206(3)–3T's sunset date for two years, as well as the effect of the extension on the promotion of efficiency, competition, and capital formation as required by section 202(c) of the Advisers Act.[49]

Rule 206(3)–3T provides an alternative means for investment advisers that are registered with the Commission as broker-dealers to meet the requirements of section 206(3) of the Advisers Act when they act in a principal capacity in transactions with their non-discretionary advisory clients. Other than extending the rule's sunset date for two additional years, we are not modifying the rule from its current form. We previously considered and discussed the economic analysis of rule 206(3)–3T in its current form in the 2007 Principal Trade Rule Release, the 2009 Extension Release, and the 2010 Extension Release.[50]

The baseline for the following analysis of the benefits and costs of the amendment is the situation in existence today, in which investment advisers that are registered with us as broker-dealers can choose to use rule 206(3)–3T as an alternative means to comply with section 206(3) of the Advisers Act when engaging in principal transactions with their non-discretionary advisory clients. The amendment, which will extend rule 206(3)–3T's sunset date by

[35] *See* fi360 Letter; FSI Letter; SIFMA Letter; Wells Fargo Letter.

[36] *See* FSI Letter; SIFMA Letter; Wells Fargo Letter. Two of these commenters also recommended that the rule should ultimately be made permanent. *See* FSI Letter; SIFMA Letter.

[37] *See* fi360 Letter.

[38] *See* Proposing Release, Section II.

[39] *See* FSI Letter; SIFMA Letter; Wells Fargo Letter. *See also* Proposing Release, Section III (requesting comment on whether we should consider changing the requirements in Form ADV for adviser disclosures to have registered advisers provide more information to us and their clients about whether they are relying on the rule).

[40] *See* FSI Letter; SIFMA Letter; Wells Fargo Letter.

[41] *See supra* note 25.

[42] *See* fi360 Letter.

[43] *See* fi360 Letter. We note that the standard of care to which advisers are subject and the duties they owe clients are in no way diminished by their reliance on rule 206(3)–3T. *See supra* note 30.

[44] 5 U.S.C. 553(d).

[45] *Id.*

[46] 44 U.S.C. 3501 et seq.

[47] *See* Proposing Release, Section IV.

[48] *See Proposed Collection; Comment Request,* 75 FR 82416 (Dec. 30, 2010); *Submission for OMB Review; Comment Request,* 76 FR 13002 (Mar. 9, 2011).

[49] 15 U.S.C. 80b–2(c). Section 202(c) of the Advisers Act mandates that the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

[50] *See* 2007 Principal Trade Rule Release, Sections VI–VII; 2009 Extension Release, Sections V–VI; 2010 Extension Release, Sections V–VI.

two additional years, will affect investment advisers that are registered with us as broker-dealers and engage in, or may consider engaging in, principal transactions with non-discretionary advisory clients, as well as the non-discretionary advisory clients of these firms that engage in, or may consider engaging in, principal transactions. The extent to which firms currently rely on the rule is unknown.[51] Past comment letters have indicated that since its implementation in 2007, both large and small advisers have relied upon the rule.[52] A recent letter submitted by one commenter describes survey results of several of its members that rely on the rule.[53]

B. Benefits and Costs of Rule 206(3)–3T

As stated in previous releases, we believe the principal benefit of rule 206(3)–3T is that it maintains investor choice among different types of accounts and protects the interests of investors. Rule 206(3)–3T also provides a lower cost and more efficient alternative for an adviser that is registered with us as a broker-dealer to comply with the requirements of section 206(3) of the Advisers Act. This, in turn, may provide non-discretionary advisory clients greater access to a wider range of securities. Non-discretionary advisory clients also benefit from the protections of the sales practice rules of the Securities Exchange Act of 1934 (the ''Exchange Act'') and the relevant self-regulatory organization(s) and the fiduciary duties and other obligations imposed by the Advisers Act. Greater access to a wider range of securities may also allow non-discretionary advisory clients to better allocate capital. In the long term, the more efficient allocation of capital may lead to an increase in capital formation.

We received one comment on our economic analysis.[54] The commenter questioned the importance of investor choice as the principal benefit of rule 206(3)–3T.[55] We continue to believe that providing non-discretionary advisory clients with greater access to a wider range of securities is beneficial. As we have previously stated, many clients wish to access the securities inventory of a diversified broker-dealer through their non-discretionary advisory accounts.[56] We believe that it is appropriate to preserve investors' access to the securities available through principal transactions made in reliance on rule 206(3)–3T while consideration of the regulatory requirements applicable to broker-dealers and investment advisers is ongoing.

Also, in connection with the 2010 extension of the rule, one commenter had disagreed with a number of the benefits of rule 206(3)–3T described above, but did not provide any specific data, analysis, or other information in support of its comment.[57] That commenter argued that rule 206(3)–3T would impede, rather than promote, capital formation because it would lead to ''more numerous and more severe violations * * * of the trust placed by individual investors in their trusted investment adviser.'' [58] While we understand the view that numerous and severe violations of trust could impede capital formation, we have not seen any evidence that rule 206(3)–3T has caused this result. The staff has not identified instances where an adviser has used the temporary rule to ''dump'' unmarketable securities or securities that the adviser believes may decline in value into an advisory account, a harm that section 206(3) and the conditions and limitations of rule 206(3)–3T are designed to redress.[59] No commenter provided any substantive or specific evidence to contradict our previous conclusion that the rule benefits investors, and we continue to believe that the rule provides those benefits.[60]

We also received comments on the 2007 Principal Trade Rule Release from commenters who opposed the limitation of the temporary rule to investment advisers that are registered with us as broker-dealers, as well as to accounts that are subject to both the Advisers Act and Exchange Act as providing a competitive advantage to investment advisers that are registered with us as broker-dealers.[61] Based on our experience with the rule to date, and as we noted in previous releases, we have no reason to believe that broker-dealers (or affiliated but separate investment advisers and broker-dealers) are put at a competitive disadvantage to advisers that are themselves also registered as broker-dealers.[62] Commenters on the Proposing Release did not address this specific issue, but we intend to continue to evaluate the effects of the rule on efficiency, competition, and capital formation in connection with our broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers.

As we discussed in previous releases, there are also several costs associated with rule 206(3)–3T, including the operational costs associated with complying with the rule.[63] In the 2007 Principal Trade Rule Release, we presented estimates of the costs of each of the rule's disclosure elements, including: prospective disclosure and consent; transaction-by-transaction disclosure and consent; transaction-by-transaction confirmations; and the annual report of principal transactions. We also provided estimates for the following related costs of compliance with rule 206(3)–3T: (i) The initial distribution of prospective disclosure and collection of consents; (ii) systems programming costs to ensure that trade confirmations contain all of the information required by the rule; and (iii) systems programming costs to aggregate already-collected information to generate compliant principal transactions reports. Although one commenter noted that the Commission's cost analysis had remained unchanged, we do not believe the extension we are adopting today materially affects the cost estimates associated with the rule.[64] The commenter did not provide supporting data discrediting the cost

[51] As of November 1, 2012, we estimate that there are 491registered investment advisers that also are registered broker-dealers. Based on IARD data as of November 1, 2012, we estimate that there are approximately 100 registered advisers that also are registered as broker-dealers that have non-discretionary advisory accounts and that engage in principal transactions.

[52] *See* Comment Letter of Securities Industry and Financial Markets Association (Dec. 20, 2010); Comment Letter of Winslow, Evans & Crocker (Dec. 8, 2009) (''Winslow, Evans & Crocker Letter''); Comment Letter of Bank of America Corporation (Dec. 20, 2010) (''Bank of America Letter'').

[53] *See supra* notes 18, 20.

[54] *See* fi360 Letter.

[55] *Id.*

[56] *See* 2007 Principal Trade Rule Release, Section I.B.

[57] *See* Comment Letter of the National Association of Personal Financial Advisors (Dec. 20, 2010) (''NAPFA Letter'') (questioning the benefits of the rule in: (1) Providing protections of the sales practice rules of the Exchange Act and the relevant self-regulatory organizations; (2) allowing non-discretionary advisory clients of advisory firms that are also registered as broker-dealers to have easier access to a wider range of securities which, in turn, should continue to lead to increased liquidity in the markets for these securities; (3) maintaining investor choice; and (4) promoting capital formation).

[58] *See id.*

[59] *See supra* note 32.

[60] *See* 2007 Principal Trade Rule Release, Section VI.C; 2009 Extension Release, Section V; 2010 Extension Release, Section V.

[61] *See* Comment Letter of the Financial Planning Association (Nov. 30, 2007); Comment Letter of the American Bar Association, section of Business Law's Committee on Federal Regulation of Securities (Apr. 18, 2008). *See also* 2009 Extension Release, Section VI.

[62] *See* 2009 Extension Release, Section VI; 2010 Extension Release, Section VI.

[63] *See supra* note 50.

[64] *See* 2007 Principal Trade Rule Release, Section VI.D. In the 2007 Principal Trade Rule Release, we estimated the total overall costs, including estimated costs for all eligible advisers and eligible accounts, relating to compliance with rule 206(3)–3T to be $37,205,569.

analysis we presented in the 2007 Principal Trade Rule Release.[65]

C. Benefits and Costs of the Extension

In addition to the benefits of rule 206(3)–3T described above and in previous releases, we believe there are benefits to extending the rule's sunset date for an additional two years. The temporary extension of rule 206(3)–3T will have the benefit of providing the Commission with additional time to consider principal trading as part of the broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers without causing disruption to the firms and clients relying on the rule.

One alternative to the extension of the rule's sunset date would be to let the temporary rule sunset on its current sunset date, and so preclude investment advisers from engaging in principal transactions with their advisory clients unless in compliance with the requirements of section 206(3) of the Advisers Act. As explained in the 2010 Extension Release, if we did not extend rule 206(3)–3T's sunset date, firms currently relying on the rule would be required to restructure their operations and client relationships on or before the rule's current expiration date—potentially only to have to do so again later (first when the rule sunsets or is modified, and again if we adopt a new approach in connection with our broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers).[66] As a result of the two-year extension of the rule's sunset date, firms relying on the rule will continue to be able to offer clients and prospective clients the same level of access to certain securities on a principal basis and will not need to incur the cost of adjusting to a new set of rules or abandoning the systems established to comply with the current rule during this two-year period. The extension of the rule will also permit non-discretionary advisory clients who have had greater access to certain securities because of their advisers' reliance on the rule to trade on a principal basis to continue to have the same level of access to those securities without disruption.

Although we did not receive any comments on the rule's compliance costs, we recognize that, as a result of our amendment, firms relying on the rule will incur the costs associated with complying with the rule for two additional years. We also recognize that a temporary rule, by nature, creates long-term uncertainty, which in turn, may result in a reduced ability of firms to coordinate and plan future business activities.[67] However, we believe that it would be premature to allow the rule to sunset or to adopt the rule on a permanent basis while consideration of the regulatory requirements applicable to broker-dealers and investment advisers is ongoing. We also considered extending the rule's sunset date for a period other than two years. Two commenters suggested an extension of five years, noting that this period of time would provide greater certainty for firms and more ample time for the Commission to consider its broader regulation of broker-dealers and investment advisers.[68] Another commenter stated that the rule should be extended for no more than six months.[69] We do not believe that six months is long enough to engage in a review of the regulatory obligations of broker-dealers and investment advisers, and we do not believe that it is appropriate at this time to extend the temporary rule for an additional five years. Should our consideration of the fiduciary obligations and other regulatory requirements applicable to broker-dealers and investment advisers extend beyond the sunset date of the temporary rule, a longer period may be appropriate. On balance, however, we continue to believe that the two-year extension of rule 206(3)–3T appropriately addresses the needs of firms and clients relying on the rule while preserving the Commission's ability to address principal trading as part of its broader consideration of the standards applicable to investment advisers and broker-dealers. We will continue to assess the rule's operation and impact along with intervening developments during the period of the extension.

VI. Final Regulatory Flexibility Act Analysis

The Commission has prepared the following Final Regulatory Flexibility Analysis (''FRFA'') regarding the amendment to rule 206(3)–3T in accordance with 5 U.S.C. 604. We prepared and included an Initial Regulatory Flexibility Analysis (''IRFA'') in the Proposing Release.[70]

A. Need for the Rule Amendment

We are adopting an amendment to extend rule 206(3)–3T's sunset date for two years because we believe that it would be premature to require firms relying on the rule to restructure their operations and client relationships before we complete our broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers. The objective of the amendment to rule 206(3)–3T, as discussed above, is to permit firms currently relying on rule 206(3)–3T to limit the need to modify their operations and relationships on multiple occasions before we complete our broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers. Absent further action by the Commission, the rule will sunset on December 31, 2012.

We are amending rule 206(3)–3T pursuant to sections 206A and 211(a) of the Advisers Act [15 U.S.C. 80b–6a and 15 U.S.C. 80b-11(a)].

B. Significant Issues Raised by Public Comments

We did not receive any comment letters related to our IRFA.

C. Small Entities Subject to the Rule

Rule 206(3)–3T is an alternative method of complying with Advisers Act section 206(3) and is available to all investment advisers that: (i) Are registered as broker-dealers under the Exchange Act; and (ii) effect trades with clients directly or indirectly through a broker-dealer controlling, controlled by or under common control with the investment adviser, including small entities. Under Advisers Act rule 0–7, for purposes of the Regulatory Flexibility Act an investment adviser generally is a small entity if it: (i) Has assets under management of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year.[71]

As noted in the Proposing Release, we estimated that as of August 1, 2012, 547 SEC-registered investment advisers were

[65] *See* fi360 Letter.

[66] *See* 2010 Extension Release, Section V.

[67] One of the two commenters who argued that the rule should eventually be made permanent specifically noted the uncertainty caused by the need for additional extensions in the future. *See* SIFMA Letter. We also received several comments in connection with prior extensions of the rule urging us to make the rule permanent to avoid such uncertainty. *See e.g.,* Winslow, Evans & Crocker Letter; Bank of America Letter.

[68] *See* SIFMA Letter; Wells Fargo Letter.

[69] *See* fi360 Letter.

[70] *See* Proposing Release, Section VII.

[71] *See* 17 CFR 275.0–7.

small entities.[72] As discussed in the 2007 Principal Trade Rule Release, we opted not to make the relief provided by rule 206(3)–3T available to all investment advisers, and instead have restricted it to investment advisers that also are registered as broker-dealers under the Exchange Act.[73] We therefore estimated for purposes of the IRFA that 7 of these small entities (those that are both investment advisers and registered broker-dealers) could rely on rule 206(3)–3T.[74] We did not receive any comments on these estimates.

D. Projected Reporting, Recordkeeping, and other Compliance Requirements

The provisions of rule 206(3)–3T impose certain reporting or recordkeeping requirements and our amendment will extend the imposition of these requirements for an additional two years. The two-year extension will not alter these requirements.

Rule 206(3)–3T is designed to provide an alternative means of compliance with the requirements of section 206(3) of the Advisers Act. Investment advisers taking advantage of the rule with respect to non-discretionary advisory accounts are required to make certain disclosures to clients on a prospective, transaction-by-transaction and annual basis.

Specifically, rule 206(3)–3T permits an adviser, with respect to a non-discretionary advisory account, to comply with section 206(3) of the Advisers Act by, among other things: (i) Making certain written disclosures; (ii) obtaining written, revocable consent from the client prospectively authorizing the adviser to enter into principal trades; (iii) making oral or written disclosure and obtaining the client's consent orally or in writing prior to the execution of each principal transaction; (iv) sending to the client a confirmation statement for each principal trade that discloses the capacity in which the adviser has acted and indicating that the client consented to the transaction; and (v) delivering to the client an annual report itemizing the principal transactions. Advisers are already required to communicate the content of many of the disclosures pursuant to their fiduciary obligations to clients. Other disclosures are already required by rules applicable to broker-dealers.

Our amendment will only extend the rule's sunset date for two years in its current form. Advisers currently relying on the rule already should be making the disclosures described above.

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small entities.[75] Alternatives in this category would include: (i) Establishing different compliance or reporting standards or timetables that take into account the resources available to small entities; (ii) clarifying, consolidating, or simplifying compliance requirements under the rule for small entities; (iii) using performance rather than design standards; and (iv) exempting small entities from coverage of the rule, or any part of the rule.

We believe that special compliance or reporting requirements or timetables for small entities, or an exemption from coverage for small entities, may create the risk that the investors who are advised by and effect securities transactions through such small entities would not receive adequate disclosure. Moreover, different disclosure requirements could create investor confusion if it creates the impression that small investment advisers have different conflicts of interest with their advisory clients in connection with principal trading than larger investment advisers. We believe, therefore, that it is important for the disclosure protections required by the rule to be provided to advisory clients by all advisers, not just those that are not considered small entities. Further consolidation or simplification of the proposals for investment advisers that are small entities would be inconsistent with our goal of fostering investor protection.

We have endeavored through rule 206(3)–3T to minimize the regulatory burden on all investment advisers eligible to rely on the rule, including small entities, while meeting our regulatory objectives. It was our goal to ensure that eligible small entities may benefit from our approach to the rule to the same degree as other eligible advisers. The condition that advisers seeking to rely on the rule must also be registered with us as broker-dealers and that each account with respect to which an adviser seeks to rely on the rule must be a brokerage account subject to the Exchange Act, and the rules thereunder, and the rules of the self-regulatory organization(s) of which the broker dealer is a member, reflect what we believe is an important element of our balancing between easing regulatory burdens (by affording advisers an alternative means of compliance with section 206(3) of the Act) and meeting our investor protection objectives.[76] Finally, we do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection in the present context.

VII. Statutory Authority

The Commission is amending rule 206(3)–3T pursuant to sections 206A and 211(a) of the Advisers Act [15 U.S.C. 80b–6a and 80b–11(a)].

List of Subjects in 17 CFR Part 275

Investment advisers, Reporting and recordkeeping requirements.

Text of Rule Amendment

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 1. The authority citation for Part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(11)(H), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

§ 275.206(3)–3T [Amended]

■ 2. In § 275.206(3)–3T, amend paragraph (d) by removing the words ''December 31, 2012'' and adding in their place ''December 31, 2014.''

Dated: December 20, 2012.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–31221 Filed 12–28–12; 8:45 am]

BILLING CODE 8011–01–P

[72] IARD data as of August 1, 2012. As of November 1, 2012, based on IARD data, we estimate that 502 SEC-registered investment advisers were small entities.

[73] *See* 2007 Principal Trade Rule Release, Section VIII.B.

[74] IARD data as of August 1, 2012. As of November 1, 2012, based on IARD data, we estimate that 6 of these small entities could rely on rule 206(3)–3T.

[75] *See* 5 U.S.C. 603(c).

[76] *See* 2007 Principal Trade Rule Release, Section II.B.7 (noting commenters that objected to this condition as disadvantaging small broker-dealers (or affiliated but separate investment advisers and broker-dealers)).

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 626, 627, 628, 631, 632, 633, 634, 636, 637, and 638

RIN 1205–AB68

Removal of Job Training Partnership Act Implementing Regulations

AGENCY: Employment and Training Administration, Labor.

ACTION: Direct final rule.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department) is removing the regulations at 20 CFR parts 626, 627, 628, 631, 632, 633, 634, 636, 637, and 638, which implemented the Job Training Partnership Act (JTPA or the Act). These regulations were designed to improve the employment status of disadvantaged youth, adults, dislocated workers, and other individuals facing barriers to employment. In 1998, Congress passed the Workforce Investment Act (WIA), which required the Secretary of Labor to transition any authority under the JTPA to the system created by WIA. Therefore, the Department is taking this action to remove regulations for a program that is no longer operative.

DATES: This Direct Final Rule is effective April 1, 2013 without further action, unless significant adverse comment is received by January 30, 2013. If significant adverse comment is received, the Department of Labor will publish a timely withdrawal of the rule in the **Federal Register.**

ADDRESSES: You may submit comments, identified by RIN 1205–AB68, by one of the following methods:

Federal e-Rulemaking Portal: http://www.regulations.gov. Follow the Web site instructions for submitting comments.

Mail and hand delivery/courier: Written comments, disk, and CD–ROM submissions may be mailed to Michael S. Jones, Acting Administrator, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–5641, Washington, DC 20210.

Instructions: Label all submissions with ''RIN 1205–AB68.''

Please submit your comments by only one method. Please be advised that the Department will post all comments on this Direct Final Rule on *http://www.regulations.gov* without making any change to the comments or redacting any information. The *http://www.regulations.gov* Web site is the Federal e-rulemaking portal and all comments posted there are available and accessible to the public. Therefore, the Department recommends that commenters remove personal information such as Social Security Numbers, personal addresses, telephone numbers, and email addresses included in their comments as such information may become easily available to the public via the *http://www.regulations.gov* Web site. It is the responsibility of the commenter to safeguard their personal information.

Also, please note that due to security concerns, postal mail delivery in Washington, DC may be delayed. Therefore, the Department encourages the public to submit comments on *http://www.regulations.gov.*

Docket: All comments on this Direct Final Rule will be available on the *http://www.regulations.gov* Web site, posted without change, and can be found using RIN 1205–AB68. The Department also will make all the comments it receives available for public inspection by appointment during normal business hours at the above address. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of the rule available, upon request, in large print and electronic file on computer disk. To schedule an appointment to review the comments and/or obtain the rule in an alternative format, contact the Office of Policy Development and Research at (202) 693–3700 (this is not a toll-free number). You may also contact this office at the address listed below.

FOR FURTHER INFORMATION CONTACT: Michael S. Jones, Acting Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, Room N–5641, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–3700 (this is not a toll-free number). This notice is available through the printed **Federal Register,** and electronically at *http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR.*

SUPPLEMENTARY INFORMATION:

I. Direct Final Rule Procedure

Since removal of the Job Training Partnership Act implementing regulations is not controversial, and the authorizing legislation for these regulations has been repealed, these regulations govern a program that is no longer in operation. The Department therefore has determined that good cause exists to remove these regulations using a Direct Final Rule. No significant adverse comments are anticipated. All interested parties should comment at this time because we will not initiate an additional comment period.

If significant adverse comments are received, we will publish a timely notice in the **Federal Register** withdrawing this Direct Final Rule. For purposes of withdrawing this Direct Final Rule, a significant adverse comment is one that explains: (1) why the Direct Final Rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the Direct Final Rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of this Direct Final Rule, we will consider whether the comment raises an issue serious enough to warrant a substantive response through the notice and comment process.

II. Background

Through this Direct Final Rule, the Department is removing and reserving the JTPA regulations at 20 CFR parts 626, 627, 628, 631, 632, 633, 634, 636, 637, and 638, which were designed to improve the employment status of disadvantaged young adults, dislocated workers, and individuals facing barriers to employment. These regulations have been superseded by the regulations promulgated under the Workforce Investment Act of 1998 (WIA), 29 U.S.C. 2801 *et seq.*

The statutory purpose of the JTPA was to establish programs that prepared disadvantaged youth and adults who faced serious barriers to employment for participation in the labor force by providing job training and other services that would result in increased employment and earnings, increased educational and occupational skills, and decreased welfare dependency. *See* 20 CFR part 626. To carry out this purpose, the Department published regulations that implemented adult and youth training programs, summer youth employment and training programs, provided employment and training assistance for dislocated workers, and authorized programs for other individuals facing barriers to employment. *See* 20 CFR parts 628, 631. The JTPA regulations also established corrective action and sanctions for instances of noncompliance, provided procedures for hearings, and established standards and expectations for the programs authorized under the Act. *See* 20 CFR part 627.

On August 7, 1998, Congress passed WIA. Under WIA, which superseded the JTPA, Congress required the Secretary of Labor to develop and publish interim final regulations (IFR) to implement this transition no later than 180 days after WIA's enactment date. *See* 20 U.S.C. 9276(c)(1). The Department published the WIA IFR on April 15, 1999. *See* 64 FR 18662. In that IFR, the Department explicitly provided for the phased transition of the JTPA programs to WIA, to be fully completed by July 1, 2000. *See* 64 FR 18662, 18663 (Apr. 15, 1999). The final rule implementing WIA was published on August 11, 2000. *See* 65 FR 49293 (Aug. 11, 2000).

Initially, although the JTPA authorizing legislation was repealed, the Department retained the JTPA regulations in the Code of Federal Regulations for grant closeout and auditing purposes. However, now that the JTPA programs have been transitioned to WIA for over a decade, the Department finds no reason to retain the JTPA regulations. Furthermore, the Department has previously removed several other JTPA regulatory provisions. Parts 629 and 630 were removed at 57 FR 62004 (Dec. 29, 1992). Part 635 was re-designated as 20 CFR part 1005 at 54 FR 39352 (Sept. 26, 1989), and the Department later removed part 1005 at 59 FR 26601 (May 23, 1994). Finally, the Department notes that it re-designated part 684 as part 638 at 55 FR 12992 (Apr. 6, 1990). Those JTPA regulatory provisions that remain are subject to this removal notice.

List of Subjects

20 CFR Parts 626, 627, 628, 631 and 637

Accounting, Administrative practice and procedure, Disaster assistance, Grant programs—Labor, Manpower training programs, Reporting and recordkeeping requirements, Youth.

20 CFR Part 632

Administrative practice and procedure, Fraud, Grant programs—Indians, Grant programs—labor, Hawaiian Natives, Manpower training programs, Reporting and recordkeeping requirements Youth.

20 CFR Part 633

Grant programs—labor, Manpower training programs, Migrant labor, Recording and record keeping requirements.

20 CFR Part 634

Grant Programs—labor, Manpower training programs, Statistics.

20 CFR Part 636

Administrative practice and procedure, Grant programs—labor, Manpower training programs.

20 CFR Part 638

Grant programs—labor, Job Corps, Lobbying, Manpower training programs, Recording and record keeping requirements, Youth.

Accordingly, under the authority of the Workforce Investment Act of 1998 (WIA), 29 U.S.C. 9276(a), and for the reasons discussed in the preamble, the Department amends 20 CFR Chapter V by removing Parts 626, 627, 628, 631, 632, 633, 634, 636, 637, and 638 as follows:

PART 626—[REMOVED AND RESERVED]

■ 1. Remove and reserve part 626, consisting of §§ 626.1 through 626.5.

PART 627—[REMOVED AND RESERVED]

■ 2. Remove and reserve part 627, consisting of §§ 627.100 through 627.906.

PART 628—[REMOVED AND RESERVED]

■ 3. Remove and reserve part 628, consisting of §§ 628.100 through 628.804.

PART 631—[REMOVED AND RESERVED]

■ 4. Remove and reserve part 631, consisting of §§ 631.1 through 631.87.

PART 632—[REMOVED AND RESERVED]

■ 5. Remove and reserve part 632, consisting of §§ 632.1 through 632.263.

PART 633—[REMOVED AND RESERVED]

■ 6. Remove and reserve part 633, consisting of §§ 633.102 through 633.322.

PART 634—[REMOVED AND RESERVED]

■ 7. Remove and reserve part 634, consisting of §§ 634.1 through 634.5.

PART 636—[REMOVED AND RESERVED]

■ 8. Remove and reserve part 636, consisting of §§ 636.1 through 636.11.

PART 637—[REMOVED AND RESERVED]

■ 9. Remove and reserve part 637, consisting of §§ 637.100 through 637.310.

PART 638—[REMOVED AND RESERVED]

■ 10. Remove and reserve part 638, consisting of §§ 638.100 through 638.815.

Signed at Washington, DC, this 18th day of December, 2012.

Jane Oates

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2012–31029 Filed 12–28–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520, 522, 529, and 558

[Docket No. FDA–2012–N–0002]

New Animal Drugs; Enrofloxacin; Melengestrol; Meloxicam; Pradofloxacin; Tylosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval actions for new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs) during November 2012. FDA is also informing the public of the availability of summaries the basis of approval and of environmental review documents, where applicable.

DATES: This rule is effective December 31, 2012.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9019, email: *george.haibel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is amending the animal drug regulations to reflect original and supplemental approval actions during November 2012, as listed in table 1 of this document. In addition, FDA is informing the public of the availability, where applicable, of documentation of environmental review required under the National Environmental Policy Act (NEPA) and, for actions requiring

review of safety or effectiveness data, summaries of the basis of approval (FOI Summaries) under the Freedom of Information Act (FOIA). These public documents may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday. Persons with access to the Internet may obtain these documents at the Center for Veterinary Medicine FOIA Electronic Reading Room: *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofFoods/CVM/CVMFOIAElectronicReadingRoom/default.htm.*

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

TABLE 1—ORIGINAL AND SUPPLEMENTAL NADAS AND ANADAS APPROVED DURING NOVEMBER 2012

NADA/ ANADA	Sponsor	New animal drug product name	Action	21 CFR Section	FOIA summary	NEPA review
141–344	Bayer HealthCare LLC, Animal Health Division, P.O. Box 390, Shawnee Mission, KS 66201.	VERAFLOX (pradofloxacin) Oral Suspension for Cats.	Original approval for the treatment of skin infections (wounds and abscesses) in cats caused by susceptible strains of *Pasteurella multocida, Streptococcus canis, S. aureus, S. felis,* and *S. pseudintermedius.*	520.1860	Yes	CE [1]
141–346	Abbott Laboratories, Inc., North Chicago, IL 60064.	OROCAM (meloxicam) Transmucosal Oral Spray.	Original approval for the control of pain and inflammation associated with osteoarthritis in dogs.	529.1350	Yes	CE [1]
141–068	Bayer HealthCare LLC, Animal Health Division, P.O. Box 390, Shawnee Mission, KS 66201.	BAYTRIL 100 (enrofloxacin) Injectable Solution.	Supplemental approval adding treatment and control of swine respiratory disease associated with *Bordetella bronchiseptica* and *Mycoplasma hyopneumoniae.*	522.812	Yes	CE [1]
200–534	Huvepharma AD, 5th Floor, 3A Nikolay Haitov St., 1113 Sophia, Bulgaria.	TYLOVET 100 (tylosin phosphate) and RUMENSIN (monensin) and MGA (melengestrone acetate) liquid and dry, combination drug Type C medicated feeds.	Original approval as a generic copy of NADA 138–870.	558.342	Yes	CE [1]

[1] The Agency has determined under 21 CFR 25.33 that this action is categorically excluded (CE) from the requirement to submit an environmental assessment or an environmental impact statement because it is of a type that does not individually or cumulatively have a significant effect on the human environment.

List of Subjects

21 CFR Parts 520, 522, and 529

Animal drugs.

21 CFR Part 558

Animal drugs, animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520, 522, 529, and 558 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Add § 520.1860 to read as follows:

§ 520.1860 Pradofloxacin.

(a) *Specifications.* Each milliliter of suspension contains 25 milligrams (mg) pradofloxacin.

(b) *Sponsor.* See No. 000859 in § 510.600(c) of this chapter.

(c) *Special considerations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian. Federal law prohibits the extralabel use of this drug in food-producing animals.

(d) *Conditions of use in cats*—(1) *Amount.* Administer 3.4 mg/lb (7.5 mg/kg) body weight once daily for 7 consecutive days.

(2) *Indications for use.* For the treatment of skin infections (wounds and abscesses) in cats caused by susceptible strains of *Pasteurella multocida, Streptococcus canis, Staphylococcus aureus, Staphylococcus felis,* and *Staphylococcus pseudintermedius.*

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 4. In § 522.812, revise paragraph (e)(3)(ii) to read as follows:

§ 522.812 Enrofloxacin.

* * * * *

(e) * * *

(3) * * *

(ii) *Indications for use.* For the treatment and control of swine respiratory disease (SRD) associated with *Actinobacillus pleuropneumoniae, Pasteurella multocida, Haemophilus parasuis, Streptococcus suis, Bordetella bronchiseptica,* and *Mycoplasma hyopneumoniae.*

* * * * *

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 5. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 6. Add § 529.1350 to read as follows:

§ 529.1350 Meloxicam.

(a) *Specifications.* Each milliliter of solution contains 5 milligrams (mg) meloxicam.

(b) *Sponsor.* See No. 000074 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* Administer 0.1 mg per kilogram of body weight once daily using the metered dose pump.

(2) *Indications for use.* For the control of pain and inflammation associated with osteoarthritis in dogs.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 7. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.342 [Amended]

■ 8. In § 558.342, in the table, in paragraph (e)(1)(xi), in the ''Limitations'' column, revise the last sentence to read ''Monensin provided by No. 000986 and tylosin provided by Nos. 000986 and 016592 in § 510.600(c) of this chapter.''; and in the ''Sponsor'' column, add ''016592''.

Dated: December 26, 2012.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2012–31397 Filed 12–28–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF STATE

22 CFR Parts 120 and 126

[Public Notice 8135]

RIN 1400–AD26

Amendment to the International Traffic in Arms Regulations: Afghanistan and Change to Policy on Prohibited Exports

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to list Afghanistan as a major non-NATO ally, and to make available the use of two additional defense export license exemptions for proscribed destinations.

DATES: *Effective Date:* This rule is effective December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Candace M. J. Goforth, Director, Office of Defense Trade Controls Policy, U.S. Department of State, telephone (202) 663–2792, or email *DDTCResponseTeam@state.gov.* ATTN: Regulatory Change, Afghanistan and 126.1.

SUPPLEMENTARY INFORMATION: On July 6, 2012, President Obama exercised his authority under section 517 of the Foreign Assistance Act of 1961 (FAA) to designate the Islamic Republic of Afghanistan as a major non-NATO ally (MNNA) for purposes of the FAA and the Arms Export Control Act. This final rule amends ITAR § 120.32, which lists major non-NATO allies, to account for this designation. Section 126.1 is amended to except the exemptions at ITAR §§ 126.4 and 126.6 from the prohibitions therein and the text is further amended to clarify the requirements therein. Additionally, § 126.1(g) is amended to clarify references to United Nations Security Council resolutions.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act. Since the Department is of the opinion that this rule is exempt from 5 U.S.C. 553, it is the view of the Department that the provisions of section 553(d) do not apply to this rulemaking. Therefore, this rule is effective upon publication. The Department also finds that, given the national security issues surrounding U.S. policy towards Afghanistan, notice and public procedure on this rule would be impracticable, unnecessary, or contrary to the public interest; for the same reason, the rule will be effective immediately.

Regulatory Flexibility Act

Since the Department is of the opinion that this rule is exempt from the rulemaking provisions of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Act of 1995

This rulemaking does not involve a mandate that will 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 year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rulemaking has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This rulemaking will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

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, distributed impacts, and equity). These Executive Orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated ''significant regulatory actions,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, this rule has been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

The Department of State has reviewed this rulemaking in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirement of Executive Order 13175 does not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements

subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Parts 120 and 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 120 and 126 are amended as follows:

PART 120—PURPOSE AND DEFINITIONS

■ 1. The authority citation for part 120 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; E.O. 11958, 42 FR 4311; E.O. 13284, 68 FR 4075; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920; Pub. L. 111–266.

■ 2. Section 120.32 is revised to read as follows:

§ 120.32 Major non-NATO ally.

Major non-NATO ally, as defined in section 644(q) of the Foreign Assistance Act of 1961 (22 U.S.C. 2403(q)), means a country that is designated in accordance with section 517 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321(k)) as a major non-NATO ally for purposes of the Foreign Assistance Act of 1961 and the Arms Export Control Act (22 U.S.C. 2151 *et seq.* and 22 U.S.C. 2751 *et seq.*). The following countries are designated as major non-NATO allies: Afghanistan (*see* § 126.1(g) of this subchapter), Argentina, Australia, Bahrain, Egypt, Israel, Japan, Jordan, Kuwait, Morocco, New Zealand, Pakistan, the Philippines, Thailand, and Republic of Korea. Taiwan shall be treated as though it were designated a major non-NATO ally.

PART 126—GENERAL POLICIES AND PROVISIONS

■ 3. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p. 899; Sec. 1225, Pub. L. 108–375; Sec. 7089, Pub. L. 111–117; Pub. L. 111–266; Section 7045, Pub. L. 112–74; Section 7046, Pub. L. 112–74.

■ 4. Section 126.1 is amended by revising paragraphs (a) and (g) to read as follows:

§ 126.1 Prohibited exports, imports, and sales to or from certain countries.

(a) *General.* It is the policy of the United States to deny licenses and other approvals for exports and imports of defense articles and defense services destined for or originating in certain countries. This policy applies to Belarus, Cuba, Eritrea, Iran, North Korea, Syria, and Venezuela. This policy also applies to countries with respect to which the United States maintains an arms embargo (*e.g.,* Burma, China, and the Republic of the Sudan) or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. Information regarding certain other embargoes appears elsewhere in this section. Comprehensive arms embargoes are normally the subject of a State Department notice published in the **Federal Register**. The exemptions provided in this subchapter, except §§ 123.17, 126.4, and 126.6 of this subchapter or when the recipient is a U.S. Government department or agency, do not apply with respect to defense articles or defense services originating in or for export to any proscribed countries, areas, or persons identified in this section.

* * * * *

(g) *Afghanistan.* It is the policy of the United States to deny licenses or other approvals for exports and imports of defense articles and defense services, destined for or originating in Afghanistan, except that a license or other approval may be issued, on a case-by-case basis, for the Government of Afghanistan or coalition forces. In addition, the names of individuals, groups, undertakings, and entities subject to arms embargoes, due to their affiliation with the Taliban, Al-Qaida, or those associated with them, are published in lists maintained by the United Nations Security Council's Sanctions Committees (established pursuant to United Nations Security Council resolutions (UNSCR) 1267, 1988, and 1989).

* * * * *

Dated: December 18, 2012.

Rose E. Gottemoeller,

Acting Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2012–31217 Filed 12–28–12; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AO58

Copayments for Medications in 2013

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its medical regulations concerning the copayment required for certain medications. But for this rulemaking, beginning on January 1, 2013, the copayment amount would increase based on a formula set forth in regulation. The maximum annual copayment amount payable by veterans would also increase. For 2012, VA ''froze'' the copayment amount for veterans in VA's health care system enrollment priority categories 2 through 6, but allowed copayments to increase based on the regulatory formula for veterans in priority categories 7 and 8. However, that formula did not trigger an increase in the copayment amount for veterans in priority categories 7 and 8. This rulemaking freezes copayments at the current rate for veterans in priority categories 2 through 8 for 2013, and thereafter resumes increasing copayments in accordance with the regulatory formula.

DATES: *Effective Date:* This rule is effective on December 31, 2012.

Comments must be received on or before March 1, 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–AO58, Copayments for Medications in 2013.'' 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: Kristin Cunningham, Director, Business Policy, Chief Business Office, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–1599. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 1722A(a), VA must require veterans to pay a $2 copayment for each 30-day supply of medication furnished on an outpatient basis for the treatment of a non-service-connected disability or

condition unless a veteran has a service-connected disability rated 50 percent or more, is a former prisoner of war, or has an annual income at or below the maximum annual rate of VA pension that would be payable if the veteran were eligible for pension. Under 38 U.S.C. 1722A(b), VA ''may,'' by regulation, increase that copayment amount and establish a maximum annual copayment amount (a ''cap''). We have consistently interpreted section 1722A(b) to mean that VA has discretion to determine the appropriate copayment amount and annual cap amount for medication furnished on an outpatient basis for covered treatment, provided that any decision by VA to increase the copayment amount or annual cap amount is the subject of a rulemaking proceeding. We have implemented this statute in 38 CFR 17.110.

Under 38 CFR 17.110(b)(1), veterans are obligated to pay VA a copayment for each 30-day or less supply of medication provided by VA on an outpatient basis (other than medication administered during treatment). Under the current regulation, for the period from July 1, 2010, through December 31, 2012, the copayment amount for veterans in priority categories 2 through 6 of VA's health care system is $8. 38 CFR 17.110(b)(1)(ii). Thereafter, the copayment amount for all affected veterans is to be established using a formula based on the prescription drug component of the Medical Consumer Price Index (CPI–P), set forth in 38 CFR 17.110(b)(1)(iv). For veterans in priority categories 7 and 8, the copayment amount from July 1, 2010, through December 31, 2011, was $9. 38 CFR 17.110(b)(1)(iii). After December 31, 2011, copayments for veterans in priority categories 7 and 8 were subject to the regulatory formula; however, that formula did not trigger an increase in the copayment amount, so it remains $9.

Current § 17.110(b)(2) also includes a ''cap'' on the total amount of copayments in a calendar year for a veteran enrolled in one of VA's health care enrollment system priority categories 2 through 6. Through December 31, 2012, the annual cap is set at $960. Thereafter, the cap is to increase ''by $120 for each $1 increase in the copayment amount'' applicable to veterans enrolled in one of VA's health care enrollment system priority categories 2 through 6.

On December 20, 2011, we published a final rulemaking that ''froze'' copayments for veterans in priority categories 2 through 6 at $8, through December 31, 2012. 76 FR 78824, Dec. 20, 2011. In that rulemaking, we stated that this freeze was appropriate because this group would be impacted more by the increase due to their likely greater need for medical care as a result of their service-connected disabilities or conditions. This continues to be true, and therefore we are continuing to freeze copayments for these veterans for the next 12 months.

We also believe that a freeze of the copayment rate is now appropriate for veterans enrolled in priority categories 7 and 8. Prior rulemakings justified freezing copayment rates on the basis that higher copayments reduced the utilization of VA pharmacy benefits. The ability to ensure that medications are taken as prescribed is essential to effective health care management. VA can monitor whether its patients are refilling prescriptions at regular intervals while also checking for medications that may conflict with each other when these prescriptions are filled by VA. When non-VA providers are also issuing prescriptions, there is a greater risk of adverse interactions and harm to the patient because it is more difficult for each provider to know if the patient is taking any other medications.

At the end of calendar year 2013, unless additional rulemaking is initiated, VA will once again utilize the CPI–P methodology in § 17.110(b)(1)(iv) to determine whether to increase copayments and calculate any mandated increase in the copayment amount for veterans in priority categories 2 through 8. At that time, the CPI–P as of September 30, 2013, will be divided by the index as of September 30, 2001, which was 304.8. The ratio will then be multiplied by the original copayment amount of $7. The copayment amount of the new calendar year will be rounded down to the whole dollar amount. As mandated by current § 17.110(b)(2), the annual cap will be calculated by increasing the cap by $120 for each $1 increase in the copayment amount. Any change in the copayment amount and cap, along with the associated calculations explaining the basis for the increase, will be published in a **Federal Register** notice. Thus, the intended effect of this rule is to temporarily prevent increases in copayment amounts and the copayment cap for veterans in priority categories 2 through 8, following which copayments and the copayment cap will increase as prescribed in current § 17.110(b).

Administrative Procedure Act

In accordance with 5 U.S.C. 553(b)(B) and (d)(3), the Secretary of Veterans Affairs finds that there is good cause to dispense with the opportunity for advance notice and opportunity for public comment and good cause to publish this rule with an immediate effective date. As stated above, this rule freezes at current rates the prescription drug copayment that VA charges certain veterans. The Secretary finds that it is impracticable and contrary to the public interest to delay this rule for the purpose of soliciting advance public comment or to have a delayed effective date. Increasing the copayment amount on January 1, 2013, might cause a significant financial hardship for some veterans.

For the above reasons, the Secretary issues this rule as an interim final rule. VA will consider and address comments that are received within 60 days of the date 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 interim 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

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

Executive Orders 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,'' which requires review by the Office of Management and Budget (OMB), as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the

economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined 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 an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This rule will have no such effect on State, local, and tribal governments, or on the private sector.

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 temporarily freeze the copayments that certain veterans are required to pay for prescription drugs furnished by VA. The interim final rule affects individuals and has no impact on any 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 sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number and title for this rule are as follows: 64.005, Grants to States for Construction of State Home Facilities; 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; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

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 7, 2012, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: December 7, 2012.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

For the reasons set forth in the preamble, VA amends 38 CFR part 17 as follows:

PART 17—MEDICAL

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

Authority: 38 U.S.C. 501(a), and as noted in specific sections.

§ 17.110 [Amended]

■ 2. Amend § 17.110 as follows:

■ a. In paragraphs (b)(1)(ii) and (b)(2), remove ''December 31, 2012'' each place it appears and add, in each place, ''December 31, 2013''.

■ b. In paragraphs (b)(1)(iii) and (b)(1)(iv), remove ''December 31, 2011'' each place it appears and add, in each place, ''December 31, 2013''.

[FR Doc. 2012–31432 Filed 12–28–12; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. EPA–R02–OAR–2012–0504; FRL–9763–6]

Approval and Promulgation of Air Quality Implementation Plans; New York, New Jersey, and Connecticut; Determination of Attainment of the 2006 Fine Particle Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is determining that the New York-N. New Jersey-Long Island, NY–NJ–CT fine particle ($PM_{2.5}$) nonattainment area for the 2006 24-hour $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) has attained the 2006 24-hour $PM_{2.5}$ NAAQS. The determination of attainment will suspend the requirements for the New York-N. New Jersey-Long Island, NY–NJ–CT $PM_{2.5}$ nonattainment area to submit an attainment demonstration, associated reasonably available control measures, reasonable further progress, contingency measures, and other planning state implementation plans (SIPs) related to attainment of the 2006 24-hour $PM_{2.5}$ NAAQS for so long as the area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS.

DATES: *Effective Date:* This rule is effective on December 31, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2012–0504. All documents in the docket are listed in the *http://www.regulations.gov* web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Programs Branch, U.S. Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007.

FOR FURTHER INFORMATION CONTACT: Gavin Lau, (212) 637–3708, or by email at *lau.gavin@epa.gov* if you have questions related to New York or New Jersey. If you have questions related to Connecticut, please contact Alison C.

Simcox, (617) 918–1684, or by email at *simcox.alison@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

The **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. What action Is EPA taking?
II. What is the background for EPA's action?
III. What comments did EPA receive on its proposal and what is EPA's response?
IV. What Is the effect of this action?
V. What is EPA's final action?
VI. Statutory and executive order reviews

I. What action Is EPA taking?

EPA is determining that the New York-N. New Jersey-Long Island, NY-NJ-CT fine particle ($PM_{2.5}$) nonattainment area for the 2006 24-hour $PM_{2.5}$ NAAQS, referred to from this point forward as the NY-NJ-CT $PM_{2.5}$ nonattainment area, has attained the 2006 24-hour $PM_{2.5}$ NAAQS. This determination is based upon quality-assured, quality-controlled and certified ambient air monitoring data that show the area has monitored attainment of the 2006 24-hour $PM_{2.5}$ NAAQS for the 2007–2009, 2008–2010, and 2009–2011 monitoring periods. Specific details regarding the determination and the rationale for EPA's action are explained in the proposed rulemaking published in the **Federal Register** (FR) on August 30, 2012 (77 FR 52626).

II. What is the background for EPA's action?

EPA's determination is being made in accordance with its longstanding interpretation under the Clean Data Policy, and with previously issued rules and determinations of attainment. A brief description of the Clean Data Policy with respect to the 2006 $PM_{2.5}$ standard is set forth below. In addition, the docket for this rulemaking includes documentation providing more detail regarding the application of EPA's Clean Data Policy to determinations of attainment for the 2006 $PM_{2.5}$ NAAQS.

In April 2007, EPA issued its $PM_{2.5}$ Implementation Rule for the 1997 $PM_{2.5}$ standard. 72 FR 20586; (April 25, 2007). In March, 2012, EPA published implementation guidance for the 2006 $PM_{2.5}$ standard. *See* Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, ''Implementation Guidance for the 2006 24-Hour Final Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)'' (March 2, 2012). In that guidance, EPA stated its view ''that the overall framework and policy approach of the 2007 $PM_{2.5}$ Implementation Rule continues to provide effective and appropriate guidance on the EPA's interpretation of the general statutory requirements that states should address in their SIPs. In general, the EPA believes that the interpretations of the statute in the framework of the 2007 $PM_{2.5}$ Implementation Rule are relevant to the statutory requirements for the 2006 24-hour $PM_{2.5}$ NAAQS * * *'' *Id.,* page 1. With respect to the statutory provisions applicable to 2006 $PM_{2.5}$ implementation, the guidance emphasized that ''EPA outlined its interpretation of many of these provisions in the 2007 $PM_{2.5}$ Implementation Rule. In addition to regulatory provisions, the EPA provided substantial general guidance for attainment plans for $PM_{2.5}$ in the preamble to the final the [*sic*] 2007 $PM_{2.5}$ Implementation Rule.'' *Id.,* page 2. In keeping with the principles set forth in the guidance, and with respect to the effect of a determination of attainment for the 2006 $PM_{2.5}$ standard, EPA is applying the same interpretation here with respect to the implications of clean data determinations that it set forth in the preamble to the 1997 $PM_{2.5}$ standard and in the regulation that embodies this interpretation. 40 CFR 51.1004(c).[1] EPA has long applied this interpretation in regulations and individual rulemakings for the 1-hour ozone and 1997 8-hour ozone standards, the PM–10 standard, and the lead standard.

In 1995, based on the interpretation of Clean Air Act (CAA) sections 171 and 172, and section 182 in the General Preamble, EPA set forth what has become known as its ''Clean Data Policy'' for the 1-hour ozone NAAQS. *See* Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard'' (May 10, 1995). In 2004, EPA indicated its intention to extend the Clean Data Policy to the $PM_{2.5}$ NAAQS. *See* Memorandum from Steve Page, Director, EPA Office of Air Quality Planning and Standards, ''Clean Data Policy for the Fine Particle National Ambient Air Quality Standards'' (December 14, 2004).

The Clean Data Policy represents EPA's interpretation that certain requirements of subpart 1 of part D of the Act are by their terms not applicable to areas that are currently attaining the NAAQS.[2] The specific requirements that are inapplicable to an area attaining the standard are the requirements to submit a SIP that provides for: attainment of the NAAQS; implementation of all reasonably available control measures; reasonable further progress (RFP); and implementation of contingency measures for failure to meet deadlines for RFP and attainment.

It is important to note that the obligation of a State with respect to an area which attains the 2006 $PM_{2.5}$ standard based on three years of data, to submit an attainment demonstration and related planning submissions is suspended only for so long as the area continues to attain the standard. If EPA subsequently determines, after notice-and-comment rulemaking, that the area has violated the NAAQS, the requirements for the State to submit a SIP to meet the previously suspended requirements would be reinstated. It is likewise important to note that the area remains designated nonattainment pending a further redesignation action.

III. What comments did EPA receive on its proposal and what is EPA's response?

EPA received one adverse comment on the proposal, from a pseudonymous commenter. A summary of the comment submitted and EPA's response is provided below.

Comment: The commenter alleges that the determination of attainment for the NY-NJ-CT $PM_{2.5}$ nonattainment area is inappropriate due to particulate matter released from burning and allegedly inadequate air quality monitoring. The commenter also questioned the interaction between the New Jersey Department of Environmental Protection and EPA.

Response: In this rulemaking, EPA is making the determination that the NY-NJ-CT $PM_{2.5}$ nonattainment area has attained the 2006 $PM_{2.5}$ NAAQS. EPA is finalizing its determination only after conducting notice and comment rulemaking, through a transparent process in which the information on which the determination is based has been made available in the docket and also placed in the Technical Support Document for this rulemaking. EPA's determination of attainment is based on quality-assured, quality-controlled, and certified ambient air monitoring data. These data establish that, for 2007–2009, 2008–2010, and 2009–2011 the NY-NJ-CT $PM_{2.5}$ nonattainment area

[1] While EPA recognizes that 40 CFR 51.1004(c) does not itself expressly apply to the 2006 $PM_{2.5}$ standard, the statutory interpretation that it embodies is identical and is applicable to both the 1997 and 2006 $PM_{2.5}$ standards.

[2] This discussion refers to subpart 1 because subpart 1 contains the requirements relating to attainment of the 2006 $PM_{2.5}$ NAAQS.

meets the 2006 24-hour $PM_{2.5}$ NAAQS. Air monitoring data available for 2012 also indicate that the NY-NJ-CT $PM_{2.5}$ nonattainment area is continuing to meet the 2006 24-hour $PM_{2.5}$ NAAQS. Contrary to the commenter's contention, the air monitoring networks for Connecticut, New Jersey, and New York are adequate, and meet the requirements for monitoring as specified in 40 CFR Part 58. EPA meets annually with the states to determine the adequateness of the monitoring networks. Air monitoring network approval letters are included in the Technical Support Document and docket for the proposed rule. In conclusion, the determination of attainment is being made based on quality-assured air quality data from approved monitoring networks. The suspension of requirements for this area to submit attainment-related planning SIP submission requirements lasts only as long as the area continues to meet that standard. No other requirements are suspended and no control measures in the SIP are being relaxed. This action does not change the implementation of control measures, or air quality, in the area.

Table 1 shows the design values by county (i.e., the 3-year average of 98th percentile 24-hour $PM_{2.5}$ concentrations) for the 2006 24-hour $PM_{2.5}$ NAAQS for the NY–NJ–CT $PM_{2.5}$ nonattainment area monitors for the years 2007 through 2011 based on complete (except where otherwise noted), quality-assured and certified air quality monitoring data. As shown in Table 1, none of the design values for the periods of 2007–2009, 2008–2010, and 2009–2011 in the NY–NJ–CT $PM_{2.5}$ nonattainment area exceeds the 2006 24-hour $PM_{2.5}$ NAAQS of 35.0 micrograms per cubic meter (μg/m³).

TABLE 1—DESIGN VALUES[3] BY COUNTY FOR THE 2006 24-HOUR $PM_{2.5}$ NAAQS FOR THE NY–NJ–CT MONITORS IN MICROGRAMS PER CUBIC METER (μG/M³). THE STANDARD FOR THE 2006 24-HOUR $PM_{2.5}$ NAAQS IS 35.0 μG/M³

County	2007–2009 $PM_{2.5}$ Design Values	2008–2010 $PM_{2.5}$ Design Values	2009–2011 $PM_{2.5}$ Design Values
New York			
Bronx	33	29	28
Kings	30	27	25
Nassau[4]	INC	25	23
New York[5]	[6]33	[6]31	28
Orange	26	24	23
Queens	30	28	26
Richmond	29	26	24
Rockland	NM	NM	NM
Suffolk	26	25	23
Westchester	29	28	25
NJ			
Bergen	31	28	25
Essex[7]	[6]30	[6]26	INC
Hudson	32	29	28
Mercer	29	27	26
Middlesex	27	23	20
Monmouth	NM	NM	NM
Morris	26	23	23
Passaic	30	INC	25
Somerset	NM	NM	NM
Union	[6]32	30	30
Connecticut			
Fairfield	31	28	26
New Haven	31	29	28

NM—No monitor located in county.
INC—Counties listed as INC did not meet 75 percent data completeness requirement for the relevant time period.

[3] $PM_{2.5}$ Design Values can be found at: *http://www.epa.gov/airtrends/values.html.*

[4] The monitor located in Nassau County had incomplete data for 2007 which led to inability to calculate design values for the period of 2007–2009. The monitor did not show previous violations and therefore it was deemed that determining the design values though alternative procedures was not necessary.

[5] The monitor in New York County located at Public School 59 was the highest reading monitor in the County at the time EPA made designations for the 2006 $PM_{2.5}$ NAAQS. Midway through 2008, the monitor at PS 59 was shut down due to the demolition of the building site. Since missing 2008 data affected calculation of the design value for the 24-hour standard, EPA used an alternative procedure to determine the design value for the 24-hour standard. Detailed information on this alternative procedure can be found in the Technical Support Document for this rulemaking.

[6] Design Value was calculated using the alternative procedure described in the Technical Support Document for this rulemaking.

[7] The air monitor at the Newark Willis Center station in Essex County was discontinued on July 24, 2008 due to an unexpected loss of access, and replaced with a new monitor at the Newark Firehouse. $PM_{2.5}$ monitoring was established at the firehouse on May 13, 2009. EPA used an alternative procedure to determine the design value for the 24-hour standard for 2007–2009 and 2008–2010. The monitor did not show any violations in 2009 and 2010, therefore it was deemed that determining the design value for 2009–2011 through alternative procedures was not necessary. For 2009 and 2010, the 98th percentile value for the new monitor was 24 μg/m³. Detailed information on this alternative procedure can be found in the Technical Support Document for this rulemaking.

IV. What is the effect of this action?

This final action, in accordance with the Clean Data Policy, which is reflected in 40 CFR 51.1004(c), suspends the requirements for the States of Connecticut, New Jersey, and New York, to submit an attainment demonstration, associated reasonably available control measures, RFP, contingency measures, and other planning SIPs related to attainment of the 2006 24-hour $PM_{2.5}$ NAAQS for the NY-NJ-CT $PM_{2.5}$ nonattainment area for so long as the area continues to attain the 2006 $PM_{2.5}$ NAAQS.

This action does not constitute a redesignation to attainment under section 107(d)(3) of the CAA, because the area does not have an approved maintenance plan as required under section 175A of the CAA. Nor is it a determination that the area has met the other requirements for redesignation. The designation status of the area remains nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS until such time as EPA determines that the area, and/or a State portion thereof, meets the CAA requirements for redesignation to attainment.

V. What is EPA's final action?

EPA is determining that the NY-NJ-CT $PM_{2.5}$ nonattainment area for the 2006 24-hour $PM_{2.5}$ NAAQS has attained the 2006 24-hour $PM_{2.5}$ NAAQS. This determination is based upon quality-assured, quality-controlled, and certified ambient air monitoring data that show that the area has monitored attainment of the 2006 24-hour $PM_{2.5}$ NAAQS for the 2007–2009 and 2008–2010 and 2009–2011 monitoring periods. Preliminary air monitoring data available for 2012 are consistent with the determination that the NY-NJ-CT $PM_{2.5}$ nonattainment area is continuing to meet the 2006 24-hour $PM_{2.5}$ NAAQS. This final action, in accordance with the Clean Data Policy, suspends the requirements for the States of New York, New Jersey and Connecticut to submit, for the NY-NJ-CT $PM_{2.5}$ nonattainment area, an attainment demonstration, associated reasonably available control measures, RFP, contingency measures, and other planning SIPs related to attainment of the 2006 24-hour $PM_{2.5}$ NAAQS in the area for so long as the area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS. If EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the NY-NJ-CT $PM_{2.5}$ nonattainment area has violated the 2006 24-hour $PM_{2.5}$ NAAQS, the basis for the suspension of the specific requirements would no longer exist for the area, and the affected States would thereafter have to address the applicable requirements for the 2006 24-hour $PM_{2.5}$ NAAQS.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective immediately upon publication. A delayed effective date is unnecessary due to the nature of a determination of attainment, which suspends the obligation to submit certain attainment-related CAA planning requirements that would otherwise apply. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction,'' and section 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the affected States of the obligation to submit certain attainment-related planning requirements for this $PM_{2.5}$ nonattainment area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective on the date of publication of this notice.

VI. Statutory and Executive Order Reviews

This action makes an attainment determination based on air quality and results in the suspension of certain Federal requirements, and it does not impose additional requirements beyond those imposed by state law.

For these reasons, this action:

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 1, 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

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: November 28, 2012.

Judith A. Enck,

Regional Administrator, Region II.

Dated: December 11, 2012.

H. Curtis Spalding,

Regional Administrator, Region I.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart H—Connecticut

■ 2. Section 52.379 is amended by adding paragraph (g) to read as follows:

§ 52.379 Control strategy: $PM_{2.5}$.

* * * * *

(g) *Determination of Attainment.* EPA has determined, as of December 31, 2012, that the New York-N. New Jersey-Long Island, NY-NJ-CT fine particle ($PM_{2.5}$) nonattainment area has attained the 2006 $PM_{2.5}$ National Ambient Air Quality Standard. This determination suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as the area continues to attain the 2006 $PM_{2.5}$ NAAQS.

Subpart FF—New Jersey

■ 3. Section 52.1602 is amended by adding paragraph (e) to read as follows:

§ 52.1602 Control strategy and regulations: $PM_{2.5}$.

* * * * *

(e) *Determination of Attainment.* EPA has determined, as of December 31, 2012, that the New York-N. New Jersey-Long Island, NY-NJ-CT fine particle ($PM_{2.5}$) nonattainment area has attained the 2006 $PM_{2.5}$ National Ambient Air Quality Standard. This determination suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as the area continues to attain the 2006 $PM_{2.5}$ NAAQS.

Subpart HH—New York

■ 4. Section 52.1678 is amended by adding paragraph (f) to read as follows:

§ 52.1678 Control strategy and regulations: Particulate matter.

* * * * *

■ (f) *Determination of Attainment.* EPA has determined, as of December 31, 2012, that the New York-N. New Jersey-Long Island, NY-NJ-CT fine particle ($PM_{2.5}$) nonattainment area has attained the 2006 $PM_{2.5}$ National Ambient Air Quality Standard. This determination suspends the requirements for this area to submit an attainment demonstration, associated reasonably control available measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as the area continues to attain the 2006 $PM_{2.5}$ NAAQS.

[FR Doc. 2012–31214 Filed 12–28–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2011–0770, FRL–9734–8]

Approval and Promulgation of Implementation Plans; State of Colorado; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Colorado on May 25, 2011 that addresses regional haze. Colorado submitted this SIP revision to meet the requirements of the Clean Air Act (CAA or ''the Act'') and our rules that require states to prevent any future and remedy any existing man-made impairment of visibility in mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program''). EPA is taking this action pursuant to section 110 of the CAA.

DATES: This final rule is effective January 30, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2011–0770. All documents in the docket are listed on the *www.regulations.gov* Web site.

Publicly available docket materials are available either electronically through *www.regulations.gov*, or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if, at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, Air Program, Mailcode 8P–AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6144, *dygowski.laurel@epa.gov.*

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Definitions

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

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

ii. The initials *APEN* mean or refer to Air Pollution Emissions Notice.

iii. The initials *AQCC* mean or refer to the Air Quality Control Commission.

iv. The initials *BACT* mean or refer to Best Available Control Technology.

v. The initials *BART* mean or refer to Best Available Retrofit Technology.

vi. The initials *CMA* mean or refer to the Colorado Mining Association.

vii. The words *Colorado* and *the State* mean the State of Colorado.

viii. The initials *EGUs* mean or refer to Electric Generating Units.

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

x. The initials *LNB* mean or refer to low NO_X burner.

xi. The initials *NAAQS* mean or refer to the National Ambient Air Quality Standards.

xii. The initials NO_X mean or refer to nitrogen oxides.

xiii. The initials *NPS* mean or refer to National Park Service.

xiv. The initials $PM_{2.5}$ mean or refer to particulate matter with an aerodynamic diameter of less than 2.5 micrometers.

xv. The initials *SCR* mean or refer to selective catalytic reduction.

xvi. The initials *SIP* mean or refer to State Implementation Plan.

xvii. The initials *SNCR* mean or refer to selective non-catalytic reduction.

xviii. The initials SO_2 mean or refer to sulfur dioxide.

xix. The initials *TSD* mean or refer to Technical Support Document.

I. Background

The CAA requires each state to develop plans, referred to as SIPs, to meet various air quality requirements. A state must submit its SIPs and SIP revisions to us for approval. Once approved, a SIP is enforceable by EPA and citizens under the CAA, also known as being federally enforceable. This action addresses the requirement that states have SIPs that address regional haze.

A. Regional Haze

In 1990, Congress added section 169B to the CAA to address regional haze issues, and we promulgated regulations addressing regional haze in 1999 (64 FR 35714, July 1, 1999, codified at 40 CFR part 51, subpart P). The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in our visibility protection regulations at 40 CFR 51.300–309. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia and the Virgin Islands. States were required to submit a SIP addressing regional haze visibility impairment no later than December 17, 2007 (40 CFR 51.308(b)).

Few states submitted a regional haze SIP prior to the December 17, 2007, deadline, and on January 15, 2009, EPA found that 37 states, including Colorado, the District of Columbia, and the Virgin Islands, had failed to submit SIPs addressing the regional haze requirements (74 FR 2392). Once EPA has found that a state has failed to make a required submission, EPA is required to promulgate a Federal Implementation Plan (FIP) within 2 years unless the state submits a SIP and the Agency approves it within the 2-year period. CAA section 110(c)(1).

Colorado submitted a SIP addressing regional haze on May 25, 2011.

B. Lawsuits

In a lawsuit in the U.S. District Court for the District of Colorado, environmental groups sued us for our failure to take timely action with respect to the regional haze requirements of the CAA and our regulations. In particular, the lawsuits alleged that we had failed to promulgate FIPs for these requirements within the 2-year period allowed by CAA section 110(c) or, in the alternative, fully approve SIPs addressing these requirements.

As a result of these lawsuits, we entered into a consent decree. The consent decree requires that we sign a notice of final rulemaking addressing the regional haze requirements for Colorado by September 10, 2012. We are meeting that requirement with the signing of this notice of final rulemaking.

C. Our Proposal

We signed our notice of proposed rulemaking on March 15, 2012, and it was published in the **Federal Register** on March 26, 2012 (77 FR 18052). In that notice, we provided a detailed description of the various regional haze requirements. We are not repeating that description here; instead, the reader should refer to our notice of proposed rulemaking for further detail.[1] In our proposal, we proposed to approve Colorado's May 25, 2011, regional haze SIP.

D. Public Participation

We requested comments on all aspects of our proposed action and provided a 60-day comment period, with the comment period closing on May 25, 2012. We received comments on our proposed rule that generally supported our proposed action and comments that were critical of certain aspects of our proposed action. In this action, we are responding to the comments we have received, taking final rulemaking action, and explaining the bases for our action.

II. Final Action

With this action, EPA is approving a SIP revision submitted by the State of Colorado on May 25, 2011, that addresses regional haze. We are approving the State's regional haze SIP, including revisions submitted as part of the regional haze SIP to:

- Regulation No. 3, Part F, Section VI and Section VII.
- Regulation No. 3, Part D, Section XIV.F.
- Regulation No. 7, Section XVII.E.3.a.

III. Basis for Our Final Action

We have fully considered all significant comments on our proposal and have concluded that no changes from our proposal are warranted. Our action is based on an evaluation of Colorado's regional haze SIP submittal against the regional haze requirements at 40 CFR 51.300–51.309 and CAA sections 169A and 169B. All general SIP requirements contained in CAA section 110, other provisions of the CAA, and our regulations applicable to this action were also evaluated. The purpose of this action is to ensure compliance with these requirements. Our authority for action on Colorado's SIP submittal is based on CAA section 110(k).

We are approving the State's regional haze SIP provisions because they meet the relevant regional haze requirements. Most of the adverse comments we received concerning our proposed approval of the regional haze SIP pertained to the State's best available retrofit technology (BART) and reasonable progress determinations. With respect to the BART determinations, we understand that there is room for disagreement about certain aspects of the State's analyses. Furthermore, we may have reached different conclusions had we been performing the determinations in the first instance. However, the comments have not convinced us that the State, conducting specific case-by-case analyses for the relevant units, acted unreasonably or that we should disapprove the State's BART determinations.

With respect to the State's reasonable progress determinations, the State

[1] We note that our proposed rule contained certain errors, as follows: (1) In Table 2, at 77 FR 18060, ''Tri-State Generation and Transmission, Inc.'' should have read ''Tri-State Generation and Transmission Association, Inc.;'' (2) In Table 13, at 77 FR 18068, the visibility improvement for SCR for Craig Unit 2 should have read 0.98 deciviews instead of 1.01 deciviews; and (3) In Table 38, at 77 FR 18085, the annualized costs for the limestone injection improvements (LII) option should have read $2,188,595 instead of $914,290. None of these errors impact our analysis or decision. In particular, the cost effectiveness value for the LII option in Table 38 already accounted for the correct annualized cost value.

included emission limits in the SIP that reflect reasonable levels of control for reasonable progress for this initial planning period. Here again, we understand that there is room for disagreement about the State's analyses and appropriate limits. And, again, we may have reached different conclusions had we been performing the determinations. However, the comments have not convinced us that the State, conducting specific case-by-case analyses for the relevant units, made unreasonable determinations for this initial planning period or that we should disapprove the State's SIP.

IV. Issues Raised by Commenters and EPA's Response

A. NO_X BART for Tri-State Craig Unit 1 and Unit 2

Comment: We received comments that the State and EPA did not follow the BART guidelines or otherwise meet the intent of the BART requirements because the State and we did not evaluate the most stringent control efficiencies associated with operating selective catalytic reduction (SCR). The commenters pointed out that State and EPA evaluations assumed that SCR is capable of achieving 0.07 lb/MMBtu on an annual average and 0.07–0.08 lb/MMBtu on a 30-day rolling average. Commenters stated that this level reflects 74–75% reduction from baseline emissions from these units, and SCR is well known to be capable of control efficiencies greater than 90% and limits of 0.05 lb/MMBtu or less on a 30-day rolling average. One commenter pointed out that in a November 2010 report, Tri-State's own consultants evaluated a 0.05 lb/MMBtu design emission rate for SCR. One commenter also pointed out that previous statements by EPA and the National Park Service (NPS) to the State about the Colorado regional haze plan reflect this.[2] [3]

One commenter went on to say that if an emission rate of 0.05 lb/MMBtu had been used to assess the cost of SCR, the State would have found the cost to be $5,879 per ton of NO_X reduced for Unit 1 and $5,728 per ton of NO_X reduced for Unit 2. Commenters provided numerous examples of electric generating units (EGUs) that are achieving or will be required to achieve a NO_X emission rate of 0.05 lb/MMBtu or less on an annual and 30-day rolling average.

Response: We agree that SCR in some cases can achieve annual NO_X emission rates as low as 0.05 lb/MMBtu. However, the annual emission rate assumed by Colorado, 0.07 lb/MMBtu, is within the range of actual emission rates demonstrated at similar facilities in EPA's Clean Air Markets Division (CAMD) emission database.

Comment: The proposed emission limit of 0.27 lb/MMBtu for selective non-catalytic reduction (SNCR) does not reflect what is achievable for that control technology. The State's technical support document (TSD) shows that Craig Unit 1 is already meeting an emission rate of 0.27 lb/MMBtu, even without SNCR. Furthermore, as noted by EPA in its October 26, 2010, letter, SNCR is capable of achieving emission reductions of 20–30% below baseline. This would mean that SNCR would actually be capable of achieving an emission rate of around 0.20 lb/MMBtu or lower at Units 1 and 2, not 0.27 lb/MMBtu.

Response: We disagree that the State's TSD shows that Craig 1 is already achieving a 30-day rolling average emission rate of 0.27 lb/MMBtu, even without SNCR. The commenter has confused actual average annual emission rates that Colorado used for cost calculations with 30-day rolling average emission rates. Colorado's TSD shows that the maximum actual 30-day rolling average emission rate during this period was 0.304 lb/MMBtu. Therefore, Craig 1 is currently operating above, not below, the BART emission limit. However, we understand that the commenter's larger point is that the emission limit for Craig Unit 1 does not reflect the level of control that can be achieved with SNCR.

As noted by the commenter, SNCR can typically achieve a 20–30% reduction after combustion controls. By contrast, Colorado assumed that at Craig SNCR could achieve a 15% reduction after combustion controls. This in turn was based on Tri-State's assertion that the Craig BART units can only meet this level of control since the effectiveness of SNCR is lower for wall-fired boilers similar to those at Craig. Under the circumstances, we do not find that the State's conclusion was unreasonable.

Comment: EPA provided no insight as to what it considers presumptive BART to be for Craig Units 1 and 2. Presumptive BART for the Craig units should be based on the primary type of coal burned there, which is sub-bituminous. EPA should establish the presumptive BART limit for Craig at 0.23 lb/MMBtu. On this basis, the limits proposed by EPA exceed presumptive BART.

Response: The presumptive limits for EGUs, which are reflective of combustion controls for all but cyclone boilers, are clearly stated in the BART guidelines. The presumptive limit for dry-bottom wall-fired EGUs firing sub-bituminous coal, such as the Craig BART units, is 0.23 lb/MMBtu (70 FR 39172, July 6, 2005).

Colorado has stated that the Craig BART units fire sub-bituminous coal that is ''bituminous-like'' with respect to NO_X formation.[4] That is, they exhibit relatively higher NO_X emissions. This is supported by actual emissions data, which show that the units fail to achieve the presumptive limit with the existing ultra low-NO_X burners and overfire air, the same combustion controls that EPA assumed for sources when it established the presumptive limit. The State's analysis of CEMs data in EPA's CAMD emissions database shows an actual maximum 30-day rolling average emission rate of 0.304 lb/MMBtu at each unit (2006–2008). Thus, we conclude that the presumptive limit that applies to Craig—0.23 lb/MMBtu—does not provide a meaningful benchmark for evaluating the State selected limits at Craig. Furthermore, our BART guidelines are clear that the BART analysis may result in a limit that differs from the presumptive limit.

Comment: One of the options suggested by the BART Guidelines to evaluate cost effectiveness is cost/deciview. Applying the cost/deciview metric to SCR at Craig yields about $10 million/deciview for Mt. Zirkel and $2.6 million/deciview on a cumulative basis. Both values are reasonable when compared to the national average of $14–$18 million/deciview.

Response: The BART Guidelines require that cost effectiveness be calculated in terms of annualized dollars per ton of pollutant removed, or $/ton (70 FR 39167). The commenters are correct in that the BART Guidelines list the $/deciview ratio as an additional cost effectiveness metric that can be employed along with $/ton for use in a BART evaluation. However, the State was not required to use this metric. We do not generally recommend the use of this metric as it can be complicated to use and the results can be difficult to assess. We also note that the $/deciview metric has not been widely used as a comparative tool. It is sufficient to analyze the cost effectiveness of

[2] Letter from Callie A. Videtich, Director, Air Program, EPA Region 8, to Paul Tourangeau, Air Director, Colorado Department of Public Health and the Environment, October 26, 2010, Re: Regional Haze State Implementation Plan. (October 26, 2010 letter).

[3] NPS Comments on Best Available Retrofit Technology (BART) Analysis of Control Options for Tri-State Generation & Transmission Association, Inc.—Craig Station Units 1 & 2, December 1, 2010.

[4] The presumptive limit for dry-bottom wall-fired EGUs firing bituminous coal is 0.39 lb/MMBtu (70 FR 39172).

potential BART controls using $/ton, in conjunction with an assessment of the modeled visibility benefits of the BART control.

Comment: Because the control efficiency for SCR was underestimated, the visibility benefits from SCR are underestimated by the modeling.

Response: We disagree with this comment. As stated above, while we recognize that lower annual emission rates for SCR have been demonstrated at some facilities, the annual emission rate of 0.07 lb/MMBtu assumed by Colorado in estimating the costs and benefits of SCR is within the overall range for similar facilities in EPA's CAMD emission database. Given this, we find that it was not unreasonable for Colorado to use 0.07 lb/MMBtu to model the predicted visibility improvement from SCR.

Other Comments: A number of commenters objected to our proposed approval of the State's BART determination for Craig Unit 1 on other grounds and asserted that the State should have selected SCR as BART. These commenters articulated several bases for their comments. The comments fall into four main categories, as follows:

(1) Costs

We received numerous comments that the State, relying on Tri-State's cost analysis, significantly overestimated capital costs for SCR at Craig Unit 1 and Unit 2, and that EPA did not conduct a detailed review of Tri-State's cost analysis. Commenters cited numerous sources to show that the expected capital costs for SCR at Unit 1 and Unit 2 should be lower than what Tri-State assumed in its cost estimates. Commenters noted limited or missing information, such as lack of vendor quotes or detailed cost estimates. According to a commenter, this type of information is necessary for the public or other agencies to be able to thoroughly review and comment on the proposed determinations. According to commenters, the absence of this underlying information renders EPA's proposed approval of the BART determinations for these sources arbitrary. Commenters said that, to the extent that the State or EPA relied on such information, failure to include it in the docket further illegally impaired and deprived the public of its notice and comment rights, by concealing important grounds for the proposed action and preventing the public from examining and offering meaningful comment thereon.

Commenters noted several items in Tri-State's and the State's cost analyses that are not allowed by or are inconsistent with EPA's Control Cost Manual (CCM). According to commenters, Tri-State and the State: (1) Disregarded EPA's cost method, often referred to as the ''overnight cost method;'' [5] (2) included Allowance for Funds During Construction (AFUDC);[6] (3) used escalation, which is inappropriate and generally not allowed; (4) included lost generation costs with no support or justification for the costs, the duration of outages needed, and why time beyond normal scheduled outages would be necessary; (5) provided no justification for the inclusion of owner's costs as 10% of the direct cost; (6) included a 50-hour workweek in their cost estimate without any justification; (6) included no consideration of the cost savings when controls like SCR are applied to multiple units at the same facility; and (7) used an unrealistic equipment life and interest rate.

Commenters provided revised cost analyses for SCR at Craig Units 1 and 2. One commenter calculated that a more accurate cost effectiveness value would be no higher than $3,460/ton and $3,370/ton at Unit 1 and Unit 2, respectively. Another commenter calculated that average costs would be $2,209/ton for Unit 1 and $1,962/ton for Unit 2. Commenters pointed out that these costs were below the threshold established by the State for choosing SCR.

(2) Visibility Improvement

Commenters point out that EPA only provides the impacts to the most impacted Class I area, Mt. Zirkel, and that the cumulative impact of a source's emissions on visibility, as well as the cumulative benefit of emission reductions, is a necessary consideration as part of the fifth step in the BART analysis. Commenters provided examples where other EPA regions (Region 6 and Region 9) have considered cumulative visibility benefits. The NPS performed modeling and submitted the results as part of its comments. NPS modeling shows that the cumulative visibility impact from Craig Units 1 and 2 is 17.61 deciviews, while SCR at both units would provide a cumulative visibility improvement of 8.99 deciviews. The modeling also shows that SCR at both units would achieve at least a 0.5 deciview improvement at each of five Class I areas.

(3) Determination of BART

Commenters identified numerous issues with the State's determination of BART and consideration of the five factors. First, commenters pointed out that the State relied on a predetermined set of thresholds applicable only to post-combustion NO_X controls for determining what is BART,[7] and that the State attempted to justify this by a short discussion of its belief that ''the costs of control should have a relationship to visibility improvement.'' According to commenters, the State articulated no governing principle or rational explanation for how it considered the five factors within the context of this threshold.

Commenters asserted that EPA, in its October 26, 2010, comment letter to Colorado, anticipated some of the reasons the State's threshold is untenable. One commenter went on to say that in the unlikely scenario that the appropriate cost of SCR at Craig Units 1 and 2 is in fact above $5,000/ton, the State's criteria ''preclude a reasonable weighing of the five factors,'' as EPA had foretold. Commenters indicated that EPA relied on the State's vague and unsubstantiated criteria without resolving or even discussing its prior concerns.

Commenters noted that the Craig analysis presented data for each of the five BART factors, but pointed out that when it came to the crux of the BART determination, the actual weighing of the factors, EPA's proposed rulemaking failed to explain how EPA determined

[5] The overnight cost method represents the cost of building the plant as if all the supplies could be purchased and all the labor paid within a very short period of time. In contrast, when forecasting revenue requirements for environmental retrofits, utilities typically attempt to estimate the costs that would actually be reflected in their future rate cases as a result of the retrofits in what is known as the ''all in'' method. According to commenters, the results from these two cost calculating methods cannot and should not be compared. Commenters also asserted the following: (1) Relative to the EPA CCM, the utility method typically overstates the cost of control per ton of avoided emissions by about 36%; and (2) National consistency in cost allocation method is necessary to ensure that no company or state receives an economic advantage by using a different cost method.

[6] According to commenters, this cost is not allowed because Tri-State is not a rate-regulated utility and the AFUDC cost is not already included in the base case, as per a utility commission decision.

[7] For the highest-performing NO_X post-combustion control options (*i.e.,* SCR systems for EGUs) that do not exceed $5,000/ton of pollutant reduced by the State's calculation, and which provide a modeled visibility benefit of 0.5 deciview or greater at the primary Class I Area affected, the State views that level of control as generally reasonable. For lesser-performing NO_X post-combustion control options (*e.g.,* SNCR technologies for EGUs) that do not exceed $5,000/ton of pollutant reduced by the State's calculation, and which provide a modeled visibility benefit of 0.2 deciview or greater at the primary Class I Area affected, the State views that level of control as generally reasonable.

that costs were unjustified in light of anticipated visibility benefits and the other considerations. As such, commenters said that EPA had failed to require a reasoned basis for weighing the five factors in the Craig BART analysis and determination. One commenter went on to say that to comply with the Administrative Procedure Act, the Agency must provide a reasoned basis for its BART determination, including a reasonable explanation why certain benefits do not justify certain costs, why EPA's chosen methods for evaluating costs and benefits are appropriate, and what significance the Agency has accorded to each of the five BART factors. The commenter argued that EPA's failure to identify its method of decision making amounts to an arbitrary decision.

One commenter stated that it was concerned that, although the State found SCR to be reasonable as BART for Craig Unit 2, it found the control technology to be unreasonable for Unit 1, even though according to the five factors, it would meet the same reasonability threshold as for Unit 2. Notably, the State found the cost of SCR for Unit 2, $5,728 per ton of NO_X reduced, to be reasonable as it was ultimately adopted as BART.

(4) BART Alternative

Commenters pointed out that the Craig BART alternative fails to provide for greater reasonable progress than would be achieved if an adequate source-specific BART limit were required of both subject-to-BART Craig units. Commenters went on to say that BART should have been SCR on both Craig units and thus, the BART alternative of SNCR on Unit 1 and SCR on Unit 2 is not better than BART. According to commenters, given that 40 CFR 51.308(e)(2)(C) requires states to make a BART determination for any source subject to an alternative to BART, the State's flawed BART analysis fails to support an alternative to BART pursuant to EPA regulations.

Response: While we agree with some aspects of the commenters' assertions in these four categories, we disagree with others and ultimately conclude that Colorado's plan achieves a reasonable result overall. We acknowledged in our October 26, 2010, comment letter to the State that the cost analysis was not conducted by Colorado in accordance with EPA's Control Cost Manual, and we agreed that the costs for SCR at Craig Units 1 and 2 appeared to be substantially overestimated, which the commenters also pointed out. In addition, as we suggested during the State's public comment period, the State should have more thoroughly considered the visibility impacts of controlling emissions from Craig 1 on the various impacted Class I areas and not just have focused on the most impacted Class I area.

EPA acknowledges that Colorado's approach appears to be a novel and comprehensive strategy for addressing regional haze requirements and other air quality goals. In 2010, the Colorado General Assembly adopted legislation authorizing the Air Quality Control Commission and the Public Utilities Commission to develop a comprehensive plan for coal-fired electric generating units in the state that would address not only regional haze but also potential new ozone standards and mercury standards, as well as other requirements that, in the State's view, could apply to coal-fired electric generation units in the foreseeable future. The State desired to address these issues in a coordinated way in order to achieve the most cost-effective strategy that accounted for not only current, but other imminent regulatory requirements. This approach appears to be unique and, as noted below, will yield significant emissions reductions not only of pollutants that affect visibility in Class I areas, but also significant reductions in pollutants that contribute to ozone formation, nitrogen deposition, and mercury emissions and deposition. The State spent considerable time and conducted sequential and extended hearings to develop a plan which seeks to balance a number of variables beyond those that would be involved in a simpler and narrower regional haze determination.

Colorado's BART requirements for the Craig units reflect a balance struck by Tri-State Generation & Transmission Association, Inc. and several environmental groups before the Colorado Air Quality Control Commission during an extensive and formal proceeding; at the conclusion of the proceeding, the Commission adopted the agreement reached by Tri-State and those environmental groups as part of Colorado's regional haze plan. As a result, the plan requires installation of SCR at one of the two Craig BART-eligible units even though the Commission previously had concluded that installation of SCR was not warranted at either unit. In addition, we note that Colorado has imposed SCR as BART on two other EGUs in western Colorado—Hayden Units 1 and 2—and at the Pawnee plant in eastern Colorado. Moreover, Colorado has exceeded the minimum requirements for BART and reasonable progress for sources included in the PSCO BART Alternative (as described in our notice of proposed rulemaking, 77 FR 18073–18075), and has imposed substantial and meaningful controls, that go beyond what EPA's regulations otherwise might have required, to address reasonable progress sources for the initial planning period.

Under the unique circumstances discussed above, EPA concludes that Colorado's plan achieves a reasonable result overall. Based on this, we are approving the entirety of the Colorado regional haze SIP, even though the State's BART analysis for Craig 1 only analyzed visibility impacts at the most impacted Class I area and appears to overestimate the costs of SCR controls. We expect Colorado to revisit the appropriateness of SCR controls on Craig Unit 1 in the next reasonable progress planning period.

Finally, we note that the State's plan will result in NO_X emission reductions of 34,774 tons per year, SO_2 emission reductions of 35,776 tons per year, and PM reductions of 532 tons per year. As many of the NO_X emission reductions will occur along Colorado's Front Range, the State's plan should help reduce ozone levels in Colorado's ozone non-attainment area and nitrogen deposition in Rocky Mountain National Park. In addition, portions of Colorado's plan includes retirement and fuel-switching of existing coal-fired units, resulting in significant reductions of emissions of mercury into the atmosphere at levels that exceed what a straightforward application of emission reduction technology to satisfy BART and reasonable progress would have conferred on sources throughout the state.

B. NO_X BART Determination for Martin Drake Units 5, 6, and 7

Comment: The NO_X BART determination for Martin Drake underestimates the control efficiency of SCR. A conservative, but more appropriate control efficiency would be an annual average of 0.05 lb/MMBtu. This would result in additional reductions of 41, 69, and 105 tons of NO_X per year at Units 5, 6, and 7, respectively. This would also result in larger modeled visibility benefits.

Response: We agree that at some facilities, SCR has achieved annual NO_X emission rates as low as 0.05 lb/MMBtu; however, the annual emission rate of 0.07 lb/MMBtu assumed by Colorado in estimating the costs and benefits of SCR is within the range of actual emission rates demonstrated at similar facilities in EPA's CAMD emission database. Given this, we find that it was not unreasonable for Colorado to use 0.07 lb/MMBtu to model the predicted

visibility improvement from SCR. Moreover, while we do agree that assuming a control efficiency of 0.05 lb/MMBtu would have resulted in greater modeled visibility benefits, we do not agree that the difference in visibility benefits would have led Colorado to a different conclusion given the magnitude of the benefits associated with SCR.

Comment: The costs of SCR were overestimated in the Martin Drake analysis in the following ways: (1) The SCR costs were estimated using the Integrated Emissions Control Cost (IECCOST) model, not the CCM as required by the BART Guidelines; (2) the calculated costs included items that are expressly disallowed or typically excluded when following the CCM methodology, including royalties, initial catalyst and chemicals, and escalation. These costs add millions of dollars to the total amount attributed to SCR; (3) the $/kW costs were extremely high. While SCR retrofits typically range from $83—$300/kW, including the most complex and space constrained projects, the costs for the Martin Drake units were $558/kW, $448/kW, and $325/kW, for Units 5, 6, and 7, respectively; and (4) the analysis did not consider the cost savings when controls like SCR are applied to multiple units at the same facility. This discount is on the order of 4–10%.

Response: We agree with several points in this comment. In fact, we raised many of the same issues related to cost analysis in our October 26, 2010, comment letter to the State. However, we note that Colorado eliminated SCR from consideration for the Martin Drake BART units primarily on the basis of the level of visibility improvement. The visibility improvement associated with SCR at Units 5, 6, and 7, is 0.12, 0.27, and 0.37 deciviews, respectively. In addition, as the State noted, the incremental visibility improvement from SCR versus ultra-low NO_X burners and overfire air (the control technology upon which the State's NO_X BART limits are based) is even lower—0.04, 0.07, and 0.11 deciview, respectively, at Units 5, 6, and 7. The State concluded that lower costs would not change its BART determination. Based on these visibility improvement values and the expectation that cost effectiveness values for SCR calculated in accordance with the CCM would still be relatively high compared to the selected control option, we find that the State's NO_X BART determination for Martin Drake Units 5, 6, and 7 was reasonable.

Comment: A cost analysis consistent with the CCM would indicate that SCR is cost effective for the Martin Drake units. A revised costs analysis would show that the revised cost effectiveness for SCR is under the State's $5000/ton threshold.

Response: The commenter did not provide sufficient data or analysis to support this assertion regarding a revised cost analysis. Regardless, for the reasons stated above, we conclude that the State's BART determination was reasonable. Even if a control technology is arguably cost-effective on a dollar per ton basis, a State may conclude that the control technology is not warranted based on a consideration of all BART factors.

Comment: EPA failed to consider the cumulative visibility benefits on all of the impacted Class I areas. Additionally, the predicted improvement for SCR at the most affected Class I area, at least 0.12 deciview, 0.27 deciview, and 0.37 deciview, for Units 5, 6, and 7, respectively, are not insignificant.

Response: While we agree that Colorado should have considered impacts to the various impacted Class I areas, we have no reason to believe that the cumulative visibility benefits would warrant a change in our approval of the State's NO_X BART determination for Martin Drake Units 5, 6, and 7. Regarding the predicted improvement at the most affected Class I area, while we agree that the levels are not insignificant, they are not significant enough for us to conclude that the State's BART determination was unreasonable, particularly when the incremental visibility improvement and expected costs of SCR are considered.

Comment: Cost-effective visibility benefits were rejected as a result of Colorado's criteria that holds post-combustion controls and SCR in particular to a higher standard of visibility benefits. As EPA itself previously pointed out in its October 26, 2010, letter: ''* * * the criteria appear to discriminate against SCR as a potential control option. Under the criteria, if the cost of SCR is under $5,000/ton and the modeled visibility benefit is 0.20 delta-deciview or greater but less than 0.50 delta-deciview, the State would reject SCR. Using the State's criteria, the State would find SNCR reasonable with the same $/ton and delta-deciview values. We are not aware of a valid basis for applying different criteria to the two control options.''

This example proves EPA's point. By this logic, if the evaluated technology in this instance were SNCR instead of SCR, it would be BART for at least Units 6 and 7, and possibly Unit 5. We concur with EPA's previous critique: this distinction has no basis and is untenable.

Response: While we do not necessarily agree with the State's criteria for post-combustion controls, we find the State's NO_X BART determination for Martin Drake Units 5, 6, and 7 to be reasonable within the context of the five factors for the reasons stated above.

C. BART Determination for Colorado Energy Nations (CENC) Unit 4 and Unit 5

Comment: In determining BART for Units 4 and 5, the State failed to identify and analyze alternative fueling scenarios that would lead to greater reductions in NO_X, sulfur dioxide (SO_2), and particulate matter. The proposed rule notes, and the underlying record clearly explains, that Units 4 and 5 are capable of burning (and do in fact burn) fuels other than coal. In particular, the proposed rule states that Unit 4 can and does burn natural gas or fuel oil and that Unit 5 can and does burn fuel oil. Both boilers may fire ethanol or sludge from the Coors Brewery.

Despite this, the State did not assess whether alternative fueling scenarios, such as a full or partial shift from coal to natural gas or fuel oil at Units 4 and 5 would represent BART. This is a concern because according to the CAA Title V Operating Permit for the facility, both Units 4 and 5 could meet stronger SO_2 and NO_X emission rates than have been proposed by the State as BART. The operating permit shows that the permitted emission rates for Units 4 and 5, when firing natural gas and/or fuel oil, are already lower than the proposed BART emission rates.[8] Given that permitted emission rates are higher than actual emissions, this means that the facility is most likely capable of achieving far greater emission reductions under an alternative fueling scenario. Indeed, for Unit 4, whether firing natural gas or fuel oil, both permitted SO_2 and NO_X emission rates are lower than the proposed BART limits. For Unit 5, when firing fuel oil, the permitted SO_2 emission rate is lower than proposed BART. Furthermore, although the permitted NO_X emission rate for Unit 5 when firing fuel oil is higher than the proposed BART, it is based on a 3-hour average (as opposed to a 30-day average) and even then, actual emissions are likely to be lower than the proposed BART

Here, alternative fueling scenarios, such as a full or partial shift away from

[8] *See* Colorado Department of Public Health and Environment, Operating Permit, Trigen-Colorado Energy Corporation Golden Facility (Feb. 1, 2003). Attached as Exhibit 1 to the comment.

coal to fuels that are already being burned in Units 4 and 5 (including natural gas and fuel oil) both seem to represent the ''best system of continuous emission control technology'' and seem entirely reasonable when considering the five factors required to be assessed by states when determining BART. The State failed to analyze alternative fueling in its SIP. Alternative fueling is an available technology that should have been analyzed by the State given that the visibility benefits to Class I areas could be tremendous. Although the State purported to identify ''all available technologies'' in its BART analysis, clearly it did not identify all available technologies.

The failure to analyze alternative fueling scenarios is especially confusing because the State did, apparently, identify in its TSD for the CENC facility a fuel switch to natural gas as an available technology and in analyzing ''SO_2 Emissions Management'' as potential BART, noted that an option to reduce emissions could involve a ''dispatch [of] natural gas-fired capacity.'' There is, however, no explanation in the TSD as to why ''fuel switching,'' or otherwise increased reliance on natural gas, would not constitute BART or would be contrary to the five factors required to be considered in establishing BART under the CAA.

The failure to analyze alternative fueling scenarios is further confusing because the EPA's BART guidelines indicate that alternative fueling scenarios should be analyzed by states when determining BART. The guidelines specifically state that ''potentially applicable retrofit control alternatives'' can include the ''use of inherently lower-emitting processes/practices'' or ''combinations of inherently lower-emitting processes and add-on controls.'' Appendix Y at Section IV.D.3. Above all, states should ''identify potentially applicable retrofit technologies that represent the full range of demonstrated alternatives.'' *Id.* The guidelines clearly indicate that inherently ''lower-emitting processes,'' such as alternative fueling, are squarely within the realm of what may be considered BART.

Given the State's failure to take into consideration an available technology, the EPA must disapprove the BART determinations for CENC Units 4 and 5 and in accordance with the CAA promulgate a FIP that establishes BART limits based on a full consideration of alternative fueling scenarios.

Response: Although the State did not present the information in the SIP and was not required to analyze such scenarios, the State in fact analyzed alternative fueling scenarios for Unit 4 and Unit 5.[9] The State examined fuel switching to a number of different fuels. The State determined that Units 4 and 5 are not capable of burning wood or other biomass fuels and the use of sludge as the primary fuel is not technically feasible due to handling and storage issues. The State determined residual oil, distillate oil, ethanol, and natural gas were technically feasible options.

The State determined residual oil would not result in pollutant reductions, and that distillate oil, ethanol, and biodiesel are high cost fuels for boilers of this size, with prices about two to three times the cost of natural gas, and six to seven times the cost of coal (at the time of analysis—December 2009) and highly volatile. Thus, the State eliminated these fuels from further consideration.

Furthermore, the State determined the cost effectiveness of fuel-switching to natural gas for SO_2 and NO_X control for Units 4 and 5. The State determined the costs for fuel switching to natural gas for SO_2 would be $29,985/ton removed for Unit 4 and $30,945/ton removed for Unit 5. The State determined the costs for fuel switching to natural gas for NO_X would be $64,102/ton removed for Unit 4 and $82,834/ton removed for Unit 5. Because of the high cost effectiveness values, the State did not perform any visibility modeling for fuel switching to natural gas and the State eliminated it from further consideration for BART. We have reviewed the State's cost calculations and find them reasonable.

Based on the above statement from our BART guidelines, and based on the State's analysis, we agree with the State's conclusion that fuel switching to natural gas is not BART at CENC Units 4 and 5.

D. NO_X BART Determination for Cemex Lyons Kiln

Comment: Colorado did not appropriately analyze whether SCR was reasonable as BART for the kiln at the Cemex Lyons cement plant. In particular, the State rejected SCR as not an available technology. EPA itself did not agree with this finding. Despite this, EPA allowed the State to reject SCR due to perceived uncertainty over its cost effectiveness. However, because the State rejected SCR as an available technology, no analysis of the costs of SCR was actually undertaken and therefore, EPA's claims are baseless.

SCR has been an available emission control technology for NO_X emissions for many years. Although its use on cement kilns has come about recently, several sources indicate that the technology is available and cost-effective, contrary to claims by the State. A report commissioned by Rocky Mountain Clean Air Action, which later merged with WildEarth Guardians, found that SCR ''is an effective and proven technology to reduce nitrogen oxide emissions from cement kilns.''[10] The report concluded that: ''The installation of SCR on the [Cemex] Lyons Cement Plant could be expected to achieve substantial reductions (85–95%) in emissions of NO_X.'' The report also found that the cost effectiveness of utilizing SCR ranges between $1,500 and $3,800 per ton of NO_X reduced, which is ''easily within regulatory cost thresholds for many NO_X control programs.'' Follow up correspondence from the author of the report, Dr. Armendariz to the State further confirmed that SCR was available and cost-effective.[11]

EPA cannot come to conclusions on the cost effectiveness of SCR without analytical support, and there is no support for approving the State BART determination for the Cemex Lyons cement kiln. We request the EPA promulgate a FIP that objectively and thoroughly analyzes SCR as an available technology for purposes of establishing BART limits for the Cemex Lyons cement kiln.

Response: We disagree with this comment and stand by the rationale presented in our proposal (77 FR 18062). As we said there, we accept the State's decision, not to analyze SCR further for the purposes of regional haze. EPA has acknowledged, in the context of establishing the New Source Performance Standards (NSPS) for Portland Cement Plants, substantial uncertainty regarding the cost effectiveness associated with the use of SCR at such plants (75 FR 54995). In particular, while EPA noted that SCR had been used at three cement kilns in Europe, and had been agreed to by one domestic cement kiln as part of a settlement, EPA also noted the potential for dust buildup on the catalyst, ''which

[9] The State sent an email to EPA Region 8 on July 16, 2012 containing its cost estimates for fuel switching. The cost analysis can be found in the docket.

[10] See Armendariz, A, The Costs and Benefits of Selective Catalytic Reduction on Cement Kilns for Multi-Pollutant Control and the Applicability to the CEMEX Lyons Cement Plant (February 15, 2008) at 19. This report is attached as Exhibit 2 to this comment.

[11] See Letter from Armendariz, A. to Dann, C. in re: SCR and Cement Kilns (July 22, 2008). This letter is attached as Exhibit 3 to this comment.

[could] be influenced by site specific raw material characteristics present in the facility's proprietary quarry, such as trace contaminants that may produce a stickier particulate than is experienced at sites where the technology has been installed.'' *Id.* at 54994, 54995. EPA went on to state in the NSPS rulemaking that ''[t]his buildup could reduce the effectiveness of the SCR technology, and make cleaning of the catalyst difficult resulting in kiln downtime and significant costs.'' *Id.* Because of the uncertainty, EPA was unable to estimate these costs. *Id.* For the reasons stated in our NSPS rulemaking and in the State's regional haze SIP, there is also substantial uncertainty regarding the costs and control effectiveness of SCR at Cemex. We are not convinced that cost and control effectiveness information from the European plants or from SCR applications at other types of sources is sufficiently reliable to guide a BART determination for Cemex.[12] Under the circumstances, we find that Colorado reasonably eliminated SCR as a potential BART control technology. As we stated in our proposal, we expect the State to reevaluate SCR technology in subsequent reasonable progress planning periods as more information regarding the use of SCR at cement kilns becomes available.

E. NO_X BART Determination for Comanche Unit 1 and Unit 2

Comment: Comanche Units 1 and 2 are currently meeting lower NO_X emission rates than the emission limits the State proposed for BART. With regard to the proposed BART limits, the State has proposed, and EPA has proposed to approve, a 30-day emission rate for Units 1 and 2 of 0.20 lb/MMBtu and a combined annual average emission rate of 0.15 lb/MMBtu for Units 1 and 2. According to the State, these limits will be met with no additional controls on Unit 1 or Unit 2.

The State's own BART analysis notes that currently Unit 1 is emitting at an average annual rate of 0.124 lb/MMBtu and Unit 2 is emitting at an average annual rate of 0.165 lb/MMBtu. This means that both on a 30-day rolling average basis and on an annual average basis, both units are capable of emitting, and indeed do emit, at rates below the proposed BART limits of 0.20 lb/MMBtu on a 30-day rolling average and 0.15 lb/MMBtu on an annual basis. In essence, Colorado's BART proposal actually allows Comanche Units 1 and 2 to emit more pollution than what they currently emit.

Under the State's proposed BART, emissions will be allowed to increase on an annual basis. Using annual heat input totals from the baseline year of 2009 obtained from the EPA's Air Markets Program Data Web site (24,247,113.27 MMBtu for unit 1 and 27,423,612.26 MMBtu for unit 2) and using the proposed annual combined average BART limits, it appears that under the annual BART limits, NO_X emissions will be allowed to increase by at least 14 tons per year (tpy).

Concerning the 30-day rolling average limits, there will definitely be allowed emission increases. During the baseline year of 2009, both Comanche Unit 1 and Unit 2 emitted far lower than the proposed BART limit of 0.20 lb/MMBtu. During the baseline year of 2009, 30-day rolling average NO_X emissions were consistently far below 0.20 lb/MMBtu for the year. Even the peak 30-day rolling averages of 0.142 and 0.179 lb/MMBtu for Units 1 and 2, respectively, are below the proposed limit. Based on this, the proposed BART would actually allow Unit 1 to emit at least 40% more NO_X than the baseline 30-day rolling average peak and Unit 2 to emit 12% more NO_X. However, this is just in the context of the baseline peak 30-day rolling average. In all reality, actual 30-day rolling average emission will remain even further below the proposed BART limit of 0.20 lb/MMBtu.

Clearly, Comanche Units 1 and 2 could easily meet lower emission limits as BART. We do not suggest that the State was required to set the emission limits exactly at the levels emitted, but clearly when the data demonstrates that Unit 1 could meet a 30-day rolling average NO_X emission limit of 0.15 lb/MMBtu and Unit 2 could meet a limit of 0.18 lb/MMBtu without any trouble, the BART limits should reflect what is achievable.

Although the State and the EPA may claim the proposed limits are necessary to provide a margin or cushion of compliance, nothing in the CAA or the EPA's regulations suggests that it is appropriate to build in such margins or cushions into BART limits, especially given that BART must represent that ''best system of continuous emission reduction.'' If Comanche Units 1 and 2 can do better, than clearly, the proposed BART limits are not the best. Nothing in the CAA or the EPA's regulations implementing the regional haze program suggest or remotely imply that a state could allow emission increases as BART.

Accordingly, EPA must disapprove of Colorado's NO_X BART determinations for Comanche Unit 1 and Unit 2 and adopt a FIP that establishes BART limits that are consistent with the CAA and that represent actual emission reductions.

Response: In our October 26, 2010, comment letter to Colorado, we asked Colorado to evaluate tightening Comanche's NO_X limits as potential BART. As discussed in Colorado's BART analysis for the Comanche units, Colorado did in fact evaluate emission limit tightening in response to our concerns. Colorado subsequently concluded that a 0.20 lb/MMBtu 30-day rolling average emission limit was necessary to account for uncertainty regarding load fluctuations, cold-weather operating, start-up, and cycling for renewable energy. Colorado noted that greater future reliance on renewable energy will lead to increased cycling of the Comanche units and more frequent start-ups. This in turn may lead to increased emissions over shorter averaging periods compared to past actual emissions. Colorado also noted the limited amount of actual emissions data for the two units since controls were installed for SO_2, and the same is true for NO_X. Thus, while Colorado established an annual NO_X BART limit of 0.15 lb/MMBtu that is lower than the average actual emissions of 0.16 lb/MMBtu for Units 1 and 2 between January and October 2010, Colorado allowed greater leeway in the 30-day rolling average limit than would result from the strict application of a 15% buffer to 0.16 lb/MMBtu (0.20 lb/MMBtu versus 0.184 lb/MMBtu). Given some of the uncertainties regarding future operations and emissions, we have determined that the State acted reasonably in setting the emission limits for Comanche Units 1 and 2. We also note that commenter's own analysis suggests that the difference in annual emissions between maximum emissions under the BART limit using 2009 heat inputs and 2009 actuals would only be 14 tons per year. This is not significant when compared to Comanche's annual NO_X emissions of approximately 3,860 tons; it does not warrant disapproval and a subsequent FIP.

In addition, Comanche's actual emissions following the installation of low NO_X burners and over-fire air occurred under permit limits that are identical to those the State selected as BART. The commenter has provided no evidence that the State's adoption of the same limits as BART limits will cause an increase in actual emissions.

Comment: The State failed to assess appropriately the cost of SCR. In particular, the State assumed that SCR would achieve an emission rate of 0.07

[12] The State indicated that CEMEX consulted four potential SCR vendors but was unable to obtain meaningful quotes from any of them.

lb/MMBtu. However, as EPA itself noted in its October 26, 2010, comment letter to the State, SCR does achieve emission rates as low as 0.04 lb/MMBtu on an annual basis, and a 0.05 lb/MMBtu emission rate is a more appropriate benchmark from which to assess the cost effectiveness of SCR.

In this case, the State did not assess the cost effectiveness of SCR based on a rate of 0.05 lb/MMBtu. Thus, it did not reasonably take into account the cost of compliance with SCR in accordance with the CAA. Without an adequate case-specific cost analysis, there is simply no support for concluding SCR, particularly for Unit 2, is unreasonable.

Response: As stated above, we agree that SCR has in some cases achieved annual NO_X emission rates as low as 0.05 lb/MMBtu, the emission rate that commenters suggest would have been a more appropriate benchmark in assessing the costs of SCR at Commanche; however, the 0.07 lb/MMBtu annual emission rate assumed by Colorado in estimating the costs and visibility benefits associated with SCR is within the range of actual emission rates demonstrated at similar facilities in EPA's CAMD emission database. Moreover, as with Martin Drake, we do not believe that if Colorado had used a more stringent emission rate that the impact on the BART analysis would have led Colorado to a different conclusion given the magnitude of the benefits associated with SCR. Given this, we conclude that the State's use of 0.07 lb/MMBtu to evaluate the cost effectiveness of SCR at Comanche was not unreasonable.

Comment: The State appears to have overestimated the capital cost of SCR. Both the EPA and the NPS previously commented to the State that the State should have used the EPA's CCM and noted that the CUECost model relied upon by the State is not appropriate. Nowhere in the record does the State explain why CUECost was reasonable, particularly in light of the concerns expressed by the EPA and the NPS. It appears that the reliance on CUECost led to artificially inflated capital costs, which in turn overestimated the true cost of SCR.

Response: We agree that there were flaws in Colorado's approach to estimating the costs of SCR for the Comanche BART units. However, we find that the State's NO_X BART determination to be reasonable within the context of the five factors, particularly based on the relatively modest visibility improvement associated with SCR—0.14 deciviews at Unit 1, and 0.17 deciviews at Unit 2—and the expectation that cost effectiveness values for SCR calculated in accordance with the CCM would still be relatively high compared to the selected control option.

Comment: Although the State and EPA may claim that, even if the costs were accurately assessed, the visibility benefits of SCR would not be significant, even for Unit 2, there is no support for this assertion. In particular, it appears as if the State's assessment of visibility improvements is based on an assumption that the proposed BART limits (*i.e.,* the ''do nothing'' BART) would actually improve visibility. Given that the proposed BART limits would allow increased emissions, it would not actually improve visibility. When compared to the real impacts of the State's proposed BART for Comanche unit 1, SCR would appear to provide significant visibility improvements because, as opposed to the proposed BART, SCR would actually achieve improvements. For Unit 2, this is especially significant because SCR was the only available technology analyzed for BART. Thus, by all indications, SCR is the only means of actually achieving visibility improvements at Comanche Unit 2.

Response: We disagree with this comment. As shown in Colorado's visibility impact analysis for the Comanche BART units, Colorado assessed the benefit of control options relative to both the subject-to-BART baseline and to the installation of new LNB in 2007 and 2008. In addition, the subject-to-BART modeling emission rates were based on the maximum 24-hr rate consistent with the BART guidelines. Colorado's analysis shows visibility benefits for all of the control options considered, not just SCR. Moreover, relative to the subject-to-BART baseline, Colorado's BART selection (combustion controls), does in fact show visibility improvement (0.16 deciview and 0.31 deciview for Units 1 and 2, respectively). Therefore, EPA finds that no changes to the BART determinations or to the SIP are needed in response to this comment.

Comment: It is unclear why the State rejected SNCR for Comanche Unit 1, particularly given that the proposed BART limit for Unit 1 is less stringent than Unit 1's current actual emissions. Under an SNCR scenario, Unit 1 would meet a 30-day rolling average emission rate of 0.10 lb/MMBtu according to the EPA. According to the State, the cost, coupled with the State's perceived ''low visibility improvement'' warranted a determination that SNCR was not reasonable. However, according to the State's analysis, SNCR is cost effective at Unit 1, costing $3,644 per ton of NO_X reduced, which is squarely within the range of what the State considers to be cost-effective.

Response: We find that the State's rejection of SNCR was reasonable based on its weighing of the BART factors. The State reasonably concluded that the cost of SNCR was not warranted given the relatively modest visibility improvement that would result—0.11 deciviews. Even if a control technology is arguably cost-effective on a dollar per ton basis, a State may conclude that the control technology is not warranted based on a reasonable consideration of all BART factors.

Comment: With regard to visibility benefits, the State's analysis also indicates that SNCR would achieve greater improvement than an emission rate of 0.20 lb/MMBtu on a 30-day rolling average. Although the State asserts that the improvement would amount to 0.11 deciviews, it is unclear why such improvements are not reasonable or are otherwise insignificant, particularly given that the purpose of BART is to reduce or eliminate visibility impairment, and indeed there is no explanation in the record supporting the State's assertion. It also appears as if the State's assessment of visibility improvements is based on an assumption that the proposed BART limits would actually improve visibility. Given that the proposed BART allows increased emissions, it would not improve visibility. When compared to the real impacts of the State's proposed BART for Comanche Unit 1, SNCR appears to provide significant visibility improvements because, as opposed to the proposed BART, SNCR would actually achieve improvements. This further underscores why the State's BART determination for Comanche Unit 1 is flawed and why EPA must promulgate a FIP that establishes appropriate NO_X BART limits.

Response: The commenter is correct that the State predicted that SNCR would result in additional improvement in visibility over the control technology the State selected as BART. However, this does not mean the CAA or our regulations required the State to select SNCR as BART. For the reasons stated above, we find that it was reasonable for the State to reject SNCR based on consideration of all the BART factors. Regarding the commenter's suggestion that the State's selected limits will lead to an increase in emissions, as noted above, the commenter has presented no evidence that this will occur. Moreover, as indicated in a separate response to comments, above, Colorado assessed the benefit of control options relative to

both the subject-to-BART baseline and to the installation of new LNB in 2007 and 2008. Relative to the subject-to-BART baseline, Colorado's BART determination does in fact result in visibility benefits. The installation of LNB resulted in a visibility improvement of 0.16 deciview and 0.31 deciview for Comanche Units 1 and 2, respectively.

F. NO_X Reasonable Progress Determination for Craig Unit 3

Comment: We received comments that the reasonable progress evaluation of Craig Unit 3 includes the same flaws as for Units 1 and 2 (see comments in section IV.A.1—4 above). One commenter indicated that the estimated cost effectiveness is no higher than $3,190/ton, and likely lower, considering the conservative $300/kW starting point for their analysis. Another commenter estimated the cost effectiveness of SCR at Unit 3 as $2,385/ton.

Based on visibility modeling from the NPS, commenters pointed out that the visibility benefits of adding SCR to Unit 3 are similar to those at Units 1 and 2—over 0.5 deciview at five Class I areas, and additional benefits at several more. The commenters asserted that, cumulatively, Unit 3 has an 8.39 deciview impact, with SCR providing a cumulative visibility improvement of 4.56 deciviews. Commenters went on to say that SCR at a limit of 0.05 lb/MMBtu should be required as reasonable progress for Craig Unit 3.

Response: We agree that the State likely overestimated the cost associated with SCR at Unit 3, but we are not prepared to disapprove the State's reasonable progress determination for Craig Unit 3. Assuming the commenters' assessments of the cost effectiveness of SCR are reasonably accurate, the values are not so low that it is clear that the State would have been unreasonable to reject SCR, especially given the State's requirement that Craig Unit 3 install SNCR and the resulting visibility benefits. We expect the State to re-evaluate SCR for Unit 3 in the next planning period.

G. NO_X Reasonable Progress Determination for Nucla

Comment: The State's proposed SIP appears to allow increased emissions from the Nucla coal fired power plant under the reasonable progress aspect of the proposed SIP. In light of this, it is unclear how the proposed emission limits for NO_X and SO_2 actually meet the State's reasonable progress goals. Under the reasonable progress prong of the regional haze requirements of the CAA, the State determined that additional controls at the Nucla plant were reasonable to protect Class I areas. Accordingly, the State proposed to require the power plant to achieve a NO_X emission limit of 0.5 lb/MMBtu and an SO_2 limit of 0.4 lb/MMBtu, both over a 30-day rolling average period. However, according to data from EPA's Air Markets Program Database, Nucla has been meeting emission rates far below these proposed reasonable progress limits.

Indeed, data from the EPA demonstrates that between January 1, 2009, and December 31, 2011, Nucla has been meeting an average monthly NO_X emission rate of 0.367 lb/MMBtu and an average monthly SO_2 emission rate of 0.301 lb/MMBtu. These rates indicate that Nucla is able to meet more stringent emission rates at no additional cost. The monthly SO_2 and NO_X emission rates actually achieved by Nucla in the past 3 years clearly demonstrate that the power plant has consistently emitted at rates below the reasonable progress limits proposed by the State. Nucla is capable of achieving NO_X and SO_2 emission rates lower than 0.30 lb/MMBtu on a 30-day basis.

More importantly though, these rates indicate that the State's proposed reasonable progress limits actually allow more air pollution to be emitted from Nucla than is currently emitted. An increase in emissions would not appear to ensure reasonable progress in restoring visibility in Colorado's Class I areas. Thus, the State's proposed SIP is not approvable by EPA because it fails to ensure reasonable progress in accordance with 42 U.S.C. 7491(g)(1) and 40 CFR 51.308(d)(1)(i). At the least, the proposed reasonable progress emission limits for Nucla demonstrate that the State failed to appropriately assess the costs of compliance in accordance with the CAA. Indeed, if the State had appropriately assessed the costs of compliance, it would have found that lower emission rates would be equally cost-effective and more protective of visibility. Such a flawed analysis of reasonable progress in relation to the Nucla plant cannot be approved by EPA.

The EPA must promulgate a FIP that establishes reasonable progress limits at the Nucla plant that actually achieve cost-effective emissions reductions. To this end, we request EPA adopt reasonable progress limits that limit NO_X emissions to no more than 0.25 lb/MMBtu and SO_2 emissions to no more than 0.28 lb/MMBtu. Such limits are achievable and appear to be very cost-effective given that they would cost nothing.

Response: We disagree with this comment. Colorado based the SO_2 emission limit of 0.4 lb/MMBtu on the existing limestone injection system for SO_2, and it based the NO_X limit of 0.5 lb/MMBtu on the inherent low-NO_X nature of the circulating fluidized bed boiler. A review of recent (2008–2010) monthly data in EPA's CAMD emissions database shows monthly NO_X emission rates as high as 0.45 lb/MMBtu and monthly SO_2 emission rates as high as 0.33 lb/MMBtu. These rates are commensurate with the reasonable progress emission limits established by Colorado. Based on its reasonable progress analysis, Colorado concluded that no additional controls were reasonable. We concur with that conclusion.

H. Reasonable Progress for Rio Grande Cement Company (GCC)

Comment: The State should have analyzed visibility impacts due to GCC, as either a permit modification or as a reasonable progress source. To date, the State has not considered the impacts of the source under either program. Had the State compared GCC's emissions (Q) as a function of distance (d) to the threshold Q/d > 20 used to determine whether a source would be included in the reasonable progress analysis, GCC would have qualified for reasonable progress review. The State contends that GCC was not included in the reasonable progress review because the State used 2007 emissions to determine which sources were subject to reasonable progress review, and GCC did not begin normal operations until 2009. However, in its analysis of the proposed permit modification, the State asserts that GCC's actual emissions should be based upon the current permit limits, not zero emissions. In that case, GCC's permit emissions should have been used to trigger inclusion in the Colorado reasonable progress analysis.

It is essential that any regulatory program try to maintain a ''level playing field.'' There are two other cement plants in Colorado, and additional NO_X controls are being required on both under Colorado's regional haze SIP.

GCC has installed SNCR but the current permit does not require these controls to be operated. We believe that, because the GCC permit allows emissions that exceed the State's threshold for determining which sources are subject to a reasonable progress analysis, GCC should have been included as a reasonable progress source. It is likely, based on the State's actions regarding the other two cement plants that the State would have required continuous operation of SNCR.

EPA should require GCC to reduce NO_X emissions by 45% on a continuous basis.

Response: The State based its evaluation of potential reasonable progress sources on stationary sources with actual emissions of 100 tpy or greater of PM, NO_X, and SO_2 based on Air Pollution Emissions Notice (APEN) reports from 2007. The APEN reports for 2007 are based on data reported to the State by April 30, 2007, which is based on the previous full year of production (2006). The State formalized its reasonable progress analysis process in 2009. At that time, the APEN report data the State had (that had undergone full quality assurance and quality control) were the 2007 APEN reports based on the source reported 2006 data.

In 2006, Rio Grande Cement reported zero emissions because it did not operate. In 2007, Rio Grande Cement did report APEN emissions (based on permitted limits) resulting in a Q/d≤20, but those emissions were not actual emissions because the source did not actually begin producing cement until April 2008. Because the State based its reasonable progress evaluation on 2006 actual emissions, we find it reasonable that the State did not further evaluate GCC for purposes of reasonable progress. We expect the State to do so for the next reasonable progress planning period.

I. Legal Issues

1. Public Service Company of Colorado (PSCO) BART Alternative

Comment: Phase III of the SIP Rulemaking (at which the PSCO BART Alternative was adopted), to which Colorado Mining Association (CMA) was a party, was based upon numerous irregularities and violations of the Colorado Administrative Procedures Act, the Colorado Air Pollution Prevention and Control Act, and H. B. 10–1365. CMA filed a complaint challenging the Air Quality Control Commission's (AQCC) SIP Rulemaking on March 16, 2011, in Denver District Court. The CMA case is pending review by the District Court. The issues before the court are numerous and establish the AQCC's Phase III rulemaking was improper and that the PSCO BART Alternative should be stricken from the Colorado regional haze SIP. If the Court determines that the Phase III rulemaking was improper, and therefore, portions of the proposed Colorado SIP were invalid under State law, those same portions of the proposed Colorado SIP would be unenforceable under federal law.

As a result of the AQCC's egregious failures in Phase III of the SIP Rulemaking, the PSCO BART Alternative should not be included in the Colorado regional haze SIP. Until the Court has completed its review, EPA should not act to include the PSCO BART Alternative in the State's regional haze SIP.

Response: Once a state has submitted a SIP revision to us, we must approve it if it meets the CAA's minimum requirements. One of the relevant requirements is that the State have adequate authority under State law to carry out the plan. See CAA section 110(a)(2)(E). Absent a stay or determination by a court that a plan is invalid, or some other clear indication that the State lacks authority to implement the plan, we have no basis to disapprove it under 110(a)(2)(E). Here, there is no indication that Colorado lacks authority to implement the PSCO BART Alternative. Indeed, it is our understanding that CMA's lawsuit has been dismissed by the Denver District Court as moot. We have included a copy of the court's June 6, 2012 order in the docket for this action. If a court subsequently invalidates the PSCO BART Alternative, we will need to evaluate the Colorado SIP at that time, but the possibility of future invalidation does not provide a basis for us to disapprove the PSCO BART Alternative.

2. Timing of Implementation

Comment: Colorado's proposed SIP appears to contain a blanket schedule of BART compliance that states, ''sources must comply as expeditiously as practicable, but no later than 5 years from EPA approval of the SIP.'' This blanket schedule of compliance, which applies to all subject-to-BART sources under the proposed Colorado SIP, is contrary to the CAA. It is true that the CAA requires that subject-to-BART sources ''procure, install, and operate, as expeditiously as practicable'' any additional controls that may represent BART. However, simply stating verbatim in the SIP that ''sources must comply as expeditiously as practicable'' fails to give force and effect to this statutory provision. In this case, it is unclear what ''as expeditiously as practicable'' means, particularly in the context of individual subject-to-BART sources. The lack of any specificity renders this provision unenforceable, which further undermines the adequacy of the SIP under CAA section 110 and frustrates the statutory mandate set forth under the CAA.

Additionally, the CAA is clear that in mandating ''expeditious'' compliance, SIPs must ensure that subject-to-BART sources comply as soon as possible. In this case, Colorado's SIP simply fails to ensure compliance with BART as soon as possible. It lacks any concrete dates by which subject-to-BART sources must comply, other than to state that sources must comply within the statutory maximum compliance date of 5 years. However, the CAA is clear that if a source can comply with BART before 5 years, it must comply by that earlier date. See 42 U.S.C. 7491(g)(4). Simply deferring to the 5-year deadline undermines the Congressional intent behind the ''as expeditiously as practicable'' provision.

It is notable that in other situations, the EPA has proposed to require concrete compliance dates to satisfy the CAA's ''as expeditiously as practicable'' provisions under the regional haze program. For example, in proposing a FIP for BART for the San Juan Generating Station in New Mexico, the EPA proposed a 3-year compliance date, finding it to be ''as expeditiously as practicable'' (76 FR 504). Although EPA ultimately concluded that a 5-year schedule of compliance was appropriate, the Agency's proposed action clearly signaled that a concrete date is needed to satisfy the CAA.

The EPA must therefore disapprove of Colorado's blanket schedule of BART compliance. In its place, the Agency must promulgate a FIP that sets forth concrete dates by which all subject-to-BART sources must ''procure, install, and operate'' BART that represent the most expeditious dates practicable.

Response: We have reviewed the compliance dates for meeting BART limits that are contained in the SIP. These dates are reasonable given the magnitude of the retrofits being undertaken. We note that the State's Regulation Number 3—*Stationary Source Permitting And Air Pollutant Emission Notice Requirements* that we are approving as part of this action provides for compliance as expeditiously as practicable, but in no event later than 5 years from EPA final approval of the SIP.

3. Compliance With Section 110(l)

Comment: The EPA is duty-bound to ensure the proposed SIP does not interfere with attainment and maintenance of the National Ambient Air Quality Standards (NAAQS), in accordance with section 110(l) of the CAA. Thus, the EPA must ensure that the proposed SIP adequately limits air pollution in order to safeguard public health.

In this case, we are concerned that in proposing to approve Colorado's regional haze plan that the EPA has not demonstrated that the proposal

adequately safeguards the 2008 8-hour ozone NAAQS, the newly promulgated 1-hour nitrogen dioxide NAAQS, the newly promulgated 1-hour SO_2 NAAQS, and the 2006 fine particulate matter ($PM_{2.5}$) NAAQS. Thus, EPA has not shown the extent to which public health is likely to be protected under the proposed SIP.

We are particularly concerned that the EPA overlooked its 110(l) obligations under the CAA given that, although the proposed rule may lead to emission reductions, no analysis or assessment has been prepared to demonstrate that even after these emission reductions, the recently promulgated NAAQS will be met. In this case, we are particularly concerned that the recently promulgated 1-hour NO_2 and SO_2 NAAQS could be jeopardized. Indeed, many, if not most, of the proposed emission rates are based on 30-day rolling averages. There is no indication that meeting emission rates on a 30-day rolling average will ensure that 1-hour NAAQS will be sufficiently protected. Indeed, a source could comply with a 30-day rolling average limit, yet still emit enough pollution on an hourly basis to cause or contribute to violations of the NAAQS, thereby interfering with attainment or maintenance.

We are further concerned over the fact that several BART limits allow for increased emissions. For example, the proposed NO_X BART determinations for Comanche Units 1 and 2 allow for greater emissions than are currently released by the units. This raises concerns over the impacts to the NAAQS. These impacts must be addressed by EPA.

In this case, the EPA must either disapprove of the Colorado SIP over the State's failure to perform a 110(l) analysis or prepare its own 110(l) analysis to demonstrate that the SIP will effectively protect public health and not interfere with attainment or maintenance of the NAAQS.

Response: CAA section 110(l) provides that EPA ''shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * *, or any other applicable requirement of'' the CAA. It is not clear that the regional haze SIP submitted by Colorado is a ''revision of a plan'' within the meaning of CAA section 110(l) as it is the first implementation plan due under the regional haze program. See, *e.g.,* § 51.308(b). However, even if such an analysis were required, the commenter has not provided any evidence that the Colorado regional haze SIP will interfere with any applicable requirement concerning attainment and reasonable progress or any other applicable requirement of the CAA, or that further analysis under 110(l) is necessary.

Although the Colorado regional haze SIP will lead to emission reductions, the commenter asserts that that even so EPA must determine that the SIP revision will ensure the NAAQS are met. We disagree with this interpretation of CAA section 110(l). The Act and EPA's regulations require the regional haze SIP to address visibility impairment in mandatory Class I areas—attainment of the NAAQS is provided for through a separate SIP process. It is EPA's consistent interpretation of section 110(l) that a SIP revision does not interfere with attainment and maintenance of the NAAQS if the revision at least preserves the status quo air quality by not relaxing or removing any existing emissions limitation or other SIP requirement. EPA does not interpret section 110(l) to require a full attainment or maintenance demonstration for each NAAQS for every SIP revision. *See, e.g., Kentucky Resources Council, Inc.,* v. *EPA,* 467 F.3d 986 (6th Cir. 2006); *see also,* 61 FR 16050, 16051 (April 11, 1996) (actions on which the *Kentucky Resources Council* case were based).

Thus, in this action, we need not determine whether a 30-day limit is adequate to protect a shorter-term NAAQS because the regional haze SIP is not required to ensure attainment of the NAAQS. The fact that the regional haze SIP specifies 30-day limits will not preclude Colorado from adopting limits with a shorter averaging time, if at some future date such limits are found to be necessary and required by the CAA to protect the NAAQS.

The commenter also alleges that ''several BART limits allow for increased emissions'' over current actual source emissions and cites as an example the NO_X BART limits for Comanche Units 1 and 2. The commenter claims this raises concerns over impacts to the NAAQS. However, the Colorado regional haze SIP imposes new emissions limits on a number of existing sources, and it does not relax any existing emissions limits or other SIP requirements. In fact, the regional haze SIP makes violations of the NAAQS less likely because without the BART limits, actual emissions could increase even more. And, the regional haze SIP does not prevent the State from adopting lower limits in the future as necessary to protect the NAAQS. Thus, the regional haze SIP revision and its BART limits will not interfere with ''any applicable requirement concerning attainment and reasonable further progress * * *, or any other applicable requirement of'' the CAA.

J. Comments Generally in Favor of our Proposal

Comment: We received comment letters fully in support of our rulemaking from Xcel Energy, Tri-State Generation, and a letter on behalf of Colorado Environmental Coalition, Environment Colorado, Environmental Defense Fund, and Western Resource Advocates. We received 84 comments from members of National Parks Conservation Association generally in support of our action. These comments from National Parks Conservation Association members also urged EPA to finalize stricter NO_X controls on Tri-State Craig Unit 1, which we have addressed above. We also received comments from National Parks Conservation Association, the NPS, and WildEarth Guardians that supported the majority of our action, but pointed out some concerns, to which we have responded above.

Response: We acknowledge the support of these commenters for part or all of our proposed action.

V. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive

Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 1, 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 CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: September 10, 2012.

James B. Martin,

Regional Administrator, Region 8.

For the reasons discussed in the preamble, 40 CFR chapter I is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart G—Colorado

■ 2. Section 52.320 is amended by adding paragraph (c)(108)(i)(C) and adding paragraph (c)(124) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(108) * * *

(i) * * *

(C) Colorado Air Quality Control Commission, Regulation Number 3, 5 CCR 1001–5, *Stationary Source Permitting and Air Pollutant Emission Notice Requirements,* Part D, *Concerning Major Stationary Source New Source Review and Prevention of Significant Deterioration,* Section XIV.F, *Long Term Strategy,* subsection XIV.F.1. introductory text and XIV.F.1.c; adopted January 7, 2011; effective February 14, 2011.

* * * * *

(124) On May 25, 2011 the State of Colorado submitted revisions to its State Implementation Plan to address the requirements of EPA's regional haze rule.

(i) Incorporation by reference.

(A) Colorado Air Quality Control Commission, Regulation Number 3, 5 CCR 1001–5, *Stationary Source Permitting and Air Pollutant Emission Notice Requirements,* Part F, *Regional Haze Limits—Best Available Retrofit Technology (BART) and Reasonable Progress (RP),* Section VI, *Regional Haze Determinations,* and Section VII, *Monitoring, Recordkeeping, and Reporting for Regional Haze Limits;* adopted January 7, 2011; effective February 14, 2011.

(B) Colorado Air Quality Control Commission, Regulation Number 7, 5 CCR 1001–9, *Control of Ozone via Ozone Precursors (Emissions of Volatile Organic Compounds and Nitrogen Oxides),* Section XVII, *(State Only, except Section XVII.E.3.a. which was submitted as part of the Regional Haze SIP) Statewide Controls for Oil and Gas Operations and Natural Gas-Fired Reciprocating Internal Combustion Engines,* subsection E.3.a, *(Regional Haze SIP) Rich Burn Reciprocating Internal Combustion Engines;* adopted January 7, 2011; effective February 14, 2011.

[FR Doc. 2012–31192 Filed 12–28–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2011–0468; FRL–9764–9]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio; Redesignation of the Ohio Portion of the Huntington-Ashland 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving, under the Clean Air Act (CAA), the state of Ohio's request to redesignate the Ohio portion of the Huntington-Ashland (OH–WV–KY) nonattainment area (Lawrence, Scioto, and portions of Adams and Gallia Counties) to attainment for the 1997 annual National Ambient Air Quality Standard (NAAQS or standard) for fine particulate matter ($PM_{2.5}$). The Ohio Environmental Protection Agency (Ohio EPA) submitted its request on May 4, 2011. EPA determined that the entire Huntington-Ashland area has attained the 1997 annual $PM_{2.5}$ standard, and proposed to approve Ohio's request to redesignate the Ohio portion of the area on December 22, 2011. EPA's final rulemaking involves several related actions. EPA has determined that the entire Huntington-Ashland area continues to attain the 1997 annual $PM_{2.5}$ standard. EPA is approving, as a revision to the Ohio State Implementation Plan (SIP), the state's plan for maintaining the 1997 annual $PM_{2.5}$ NAAQS in the area through 2022. EPA is also approving the 2005 and 2008 emissions inventories for the Ohio portion of the Huntington-Ashland area as meeting the comprehensive emissions inventory requirement of the CAA. EPA finds adequate and is making a finding of

insignificance for Ohio motor vehicle emissions of nitrogen oxides (NO_X) and direct $PM_{2.5}$ for the Huntington-Ashland area. EPA, therefore, grants Ohio's request to redesignate the Ohio portion of the Huntington-Ashland area to attainment for the 1997 $PM_{2.5}$ annual standard.

DATES: *Effective Date:* This rule will be effective December 31, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification EPA–R05–OAR–2011–0468. All documents in these dockets are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Carolyn Persoon at (312) 353–8290 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Carolyn Persoon, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8290, persoon.carolyn@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background for the actions?
II. What actions is EPA taking?
III. What is EPA's response to comments?
IV. Why is EPA taking these actions?
V. Final action
VI. Statutory and executive order reviews

I. What is the background for the actions?

On May 4, 2011 the Ohio EPA submitted its request to redesignate the Ohio portion of the Huntington-Ashland nonattainment area to attainment for the 1997 annual $PM_{2.5}$ NAAQS, and for EPA approval of the state's SIP revision containing an emissions inventory and a maintenance plan for the area. On December 22, 2011 (76 FR 79593), EPA proposed approval of Ohio's redesignation request, emissions inventories and plan for maintaining the 1997 annual $PM_{2.5}$ NAAQS. EPA also proposed approval of Ohio's determination that on-road emissions of $PM_{2.5}$ and NO_X are insignificant contributors to $PM_{2.5}$ concentrations in the area. Additional background for today's action is set forth in EPA's December 22, 2011, proposed rulemaking.

In the proposed redesignation of the Huntington-Ashland area, EPA proposed to determine that the emission reduction requirements that contributed to attainment of the 1997 annual $PM_{2.5}$ standard in the nonattainment area could be considered permanent and enforceable. At the time of proposal, EPA noted that the Clean Air Interstate Rule (CAIR), which had been in place through 2011, had been replaced by the recently promulgated Cross-State Air Pollution Rule (CSAPR). 76 FR 48208, August 8, 2011. CSAPR included regulatory changes to sunset (i.e., discontinue) CAIR and the CAIR Federal Implementation Plans (FIPs) for control periods in 2012 and beyond. *See* 76 FR 48322. Although Ohio's redesignation request and maintenance plan relied on reductions associated with CAIR, EPA proposed to approve the request based in part on the fact that CSAPR achieved ''similar or greater reductions in the relevant areas in 2012 and beyond.'' 76 FR 79598. On December 30, 2011, eight days after the proposed redesignation, the U.S. Court of Appeals for the D.C. Circuit (referred to as D.C. Circuit or court hereafter) issued an order addressing the status of CSAPR and CAIR in response to motions filed by numerous parties seeking a stay of CSAPR pending judicial review. In that order, the court stayed CSAPR pending resolution of the petitions for review of that rule in *EME Homer Generation, L.P.* v. *EPA* (No. 11–1302 and consolidated cases). The court also indicated that EPA was expected to continue to administer CAIR in the interim until judicial review of CSAPR was completed.

On August 21, 2012, the D.C. Circuit issued a decision in *EME Homer Generation, L.P.* v. *EPA,* to vacate and remand CSAPR and ordered EPA to continue administering CAIR pending the promulgation of a valid replacement. That judgment is not yet final as the mandate has not been issued by the court and on October 5, 2012, EPA filed a petition for rehearing *en banc* asking the full court to reconsider that decision. EPA has determined that it is appropriate to move forward with final approval of this redesignation action, even though the emission reductions associated with CSAPR that EPA referenced in the proposal notice may not be relied upon at this time given the rule's legal status. As discussed in greater detail in this notice, the submission received from the state relied on reductions achieved from CAIR and demonstrated that the Huntington-Ashland area achieved attainment due in part to emission reductions required by CAIR. The D.C. Circuit's order that EPA continue administering CAIR until a valid replacement rule is developed ensures that the reductions that led to attainment are sufficiently permanent and enforceable to meet the requirements of CAA section 107(d)(3)(E)(iii).

II. What actions is EPA taking?

EPA has determined that the entire Huntington-Ashland area has attained and continues to attain the 1997 annual $PM_{2.5}$ standard [1] (76 FR 55542) and that the Ohio portion of the area meets the requirements for redesignation under section 107(d)(3)(E) of the CAA. On September 7, 2011, at 76 FR 55542, EPA finalized its determinations that the Huntington-Ashland area attained the 1997 $PM_{2.5}$ NAAQS and that the area attained the 1997 $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. Subsequent to EPA's final determination of attainment and proposed redesignation of the Ohio portion of the Huntington-Ashland area, additional monitoring data have become available, quality-assured, and certified. Table 1 below sets forth design values for 2007–2009, 2008–2010, and 2009–2011, last of which is based on the most current 3-years of data, which shows that the area continues to attain. Preliminary data available for 2012 also are consistent with continued attainment.

[1] On September 7, 2011 EPA published a final determination that the Huntington-Ashland area has attained the 1997 annual $PM_{2.5}$ standard. 76 FR 55542, September 7, 2011.

TABLE 1—DESIGN VALUE CONCENTRATIONS FOR THE HUNTINGTON-ASHLAND AREA FOR THE 1997 ANNUAL $PM_{2.5}$ NAAQS MICROGRAM PER CUBIC METER (μG/M³)

Location	County, State	Monitor ID	3-Year Design Values		
			2007–2009	2008–2010	2009–2011
Huntington	Cabell, WV	54–011–0006	14.3	13.1	12.1
Ashland Primary (FIVCO)	Boyd, KY	21–019–0017	12.4	11.4	10.8
Lawrence County Hospital (LCH)[2]	Lawrence, OH	39–087–0010	13.3	NA	NA
Ironton Department of Transportation (DOT)[3].	Lawrence, OH	39–087–0012	12.2	12.2	11.4
Portsmouth	Scioto, OH	39–145–0013	12.3	11.6	10.9

[2] The Lawrence County Hospital Site was shut down in February 2008. The Ironton DOT site began operation on the same day the Lawrence County Hospital Site ceased monitoring.

[3] The Ironton DOT site did not begin operation until February 2008; however, an analysis of air quality data at this location, as provided for in 40 CFR part 50 appendix N, was done showing that the area would attain the standard for the 2007–2009 and 2008–2010 monitoring periods.

Because the area continues to attain and meets all other requirements for redesignation under CAA section 107(d)(3)(E), EPA is approving the request from the state of Ohio to change the legal designation of the Ohio portion of the Huntington-Ashland area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS.[4]

EPA is taking several actions related to Ohio's $PM_{2.5}$ redesignation request, as discussed below.

EPA is approving, pursuant to CAA section 175A, Ohio's 1997 annual $PM_{2.5}$ maintenance plan for the Huntington-Ashland area as a revision to the Ohio SIP (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to keep the Huntington-Ashland area in attainment of the 1997 annual $PM_{2.5}$ NAAQS through 2022.

EPA is approving, pursuant to CAA section 172(c)(3), both the 2005 and 2008 emission inventories for primary $PM_{2.5}$,[5] NO_X, and SO_2,[6] documented in Ohio's $PM_{2.5}$ redesignation request submittal. These emission inventories satisfy the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory.

Finally, for transportation conformity purposes EPA is approving Ohio's determination that on-road emissions of $PM_{2.5}$ and NO_X are insignificant contributors to $PM_{2.5}$ concentrations in the area. Further discussion of the basis for these actions was provided in the proposed rulemaking on December 22, 2011 (76 FR 79593).

III. What is EPA's Response to Comments?

EPA received two sets of comments on its proposed rulemaking. The Ohio Utilities Group submitted comments in support of the redesignation of the Ohio portion of the Huntington-Ashland area, and on behalf of Sierra Club, Robert Ukeiley submitted adverse comments. A summary of Sierra Club's comments and EPA's responses are provided below.

Comment 1a: The Commenter contends that EPA cannot rely on reductions associated with the NO_X SIP Call,[7] CAIR, and CSAPR in order to redesignate the Huntington-Ashland area because reductions from these programs are not permanent and enforceable. The Commenter points out that EPA noted that the area is impacted by pollution from electric generating units (EGUs) and that the Ohio submittal ''credits reductions'' to three rules that reduce SO_2 and NO_X emissions from power plants, the NO_X SIP Call, CAIR, and CSAPR.

Specifically, the Commenter argues that CAIR reductions are not permanent and enforceable because EPA stated in the proposal that CAIR emission reductions only run through 2011. The Commenter also cites statements by EPA made in the context of other rules indicating that CAIR is legally deficient, remanded, and therefore temporary, in both the regional haze proposed rulemakings (76 FR 78194, 78200, December 16, 2011), as well as a redesignation proposal for Cincinnati (76 FR 65458, 65460, October 21, 2011). The Commenter argues that EPA cannot rely on CAIR because it is a cap-and-trade program. The Commenter cites to *NRDC* v. *EPA,* 571 F.3d 1245, 1257 (D.C. Cir. 2009) for support of the proposition that, because EPA cannot predict which sources will reduce emissions, EPA cannot rely on cap-and-trade programs for future reductions. The Commenter states that any source could decide at any time in the future to purchase emissions credits and increase its emissions and impacts to the Huntington-Ashland area. The Commenter adds that emissions banking can also lead to violations of the NAAQS and prevents CAIR emission budgets from being permanent and enforceable emission limits.

Response 1a: EPA disagrees with Commenter that it must disapprove Ohio's redesignation request because the submittal relies on CAIR. First, although Ohio's redesignation request references CAIR and includes emission reductions associated with CAIR, EPA's modeling indicates that the area would attain and maintain the 1997 $PM_{2.5}$ NAAQS even in the absence of CAIR. Second, the EPA statements cited by the Commenter regarding the status of CAIR were made prior to the D.C. Circuit's decision to vacate CSAPR and to leave CAIR in place. Third, EPA disagrees with the Commenter's assertion that reductions may not be relied upon for redesignation purposes if those reductions stem from an emissions trading program. Finally, EPA believes that the area meets all the requirements for redesignation regardless of the status of CAIR, because the area has other measures, such as consent decrees on EGUs.

As an initial matter, EPA notes that the modeling EPA conducted during the rulemaking for the CSAPR rulemaking demonstrates that the Huntington-Ashland area would attain and maintain the 1997 $PM_{2.5}$ NAAQS even without CAIR or a rule to replace CAIR. Nothing in the *EME Homer* decision undermines that conclusion or suggests that the air quality modeling conducted during the rulemaking was flawed. As such, there

[4] EPA in this notice is not addressing the requests of Kentucky and West Virginia for redesignation of those states' portions of the Huntington-Ashland area.

[5] Fine particulates directly emitted by sources and not formed in a secondary manner through chemical reactions or other processes in the atmosphere.

[6] NO_X and SO_2 are precursors for fine particulates through chemical reactions and other related processes in the atmosphere.

[7] The Commenter mentions that EPA may not rely on emission reductions associated with the NO_X SIP Call but does not provide any specific arguments to support this contention.

is no basis to conclude that it would be improper to redesignate the area even in the absence of CAIR. Moreover, the commenter's assertions regarding the status of CAIR and the extent to which emission reductions associated with CAIR may be relied upon in redesignations are flawed for the reasons described below.

The Commenter points out that EPA made statements that CAIR reductions were expiring in 2011 (76 FR 79593, December 22, 2011) and were temporary (76 FR 78194, 78200, December 16, 2011; 76 FR 65458, 65460, October 21, 2011). However, these statements should be viewed in light of changes in the legal context of CAIR and CSAPR, which occurred subsequent to those statements and had a significant effect on the status of CAIR.

On May 12, 2005, EPA published CAIR, which requires significant reductions in emissions of SO_2 and NO_X from electric generating units to limit the interstate transport of these pollutants and the ozone and fine particulate matter they form in the atmosphere. *See* 76 FR 70093. The D.C. Circuit initially vacated CAIR, *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008). In response to the court's decision, EPA issued CSAPR, to address interstate transport of NO_X and SO_2 in the eastern United States. *See* 76 FR 48208 (August 8, 2011). On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR. In that decision, it also ordered EPA to continue administering CAIR ''pending * * * development of a valid replacement.'' *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012).[8]

The agency's statements cited by the Commenter must be viewed in context: They were made after CSAPR had been promulgated to sunset and replace CAIR, and before the D.C. Circuit stayed CSAPR and issued its decision in *EME Homer* to vacate the rule. In that decision, the court ordered EPA to continue implementing CAIR until a valid replacement rule is promulgated. The decision thus had a significant impact on the CAIR programs and EPA's evaluation of the status of emission reductions achieved pursuant to those programs. In light of these unique circumstances and for the reasons explained below, EPA is finalizing the redesignation and the related SIP revision for the Huntington-Ashland area, including Ohio's plan for maintaining attainment of the $PM_{2.5}$ standard. The air quality modeling analysis conducted for CSAPR demonstrates that the Huntington-Ashland area would be able to attain the $PM_{2.5}$ standard even in the absence of either CAIR or CSAPR. *See* ''Air Quality Modeling Final Rule Technical Support Document,'' appendix B, B–55 to B–56. This modeling is available in the docket for this proposed redesignation action. Nothing in the D.C. Circuit's August 2012 decision disturbs or calls into question that conclusion or the validity of the air quality analysis on which it is based.

In addition, CAIR remains in place and enforceable until substituted by a ''valid'' replacement rule. Ohio's CAIR provisions can be found in Ohio Administrative Code Chapter 3745–109. On February 1, 2008, at 73 FR 6034, EPA approved an ''abbreviated SIP'' covering several of Ohio's CAIR provisions, including CAIR NO_X allocations. On September 25, 2009 (74 FR 48857), EPA approved a full CAIR SIP for Ohio incorporating all of Ohio's CAIR provisions. These SIP provisions remain in place and are federally enforceable. And, because CAIR has been in force since 2005, the monitoring data used to demonstrate the area's attainment of the 1997 annual $PM_{2.5}$ NAAQS by the April 2010 attainment deadline were impacted by CAIR. CAIR reductions began as early as 2007, with full program requirements beginning in 2009. However, to the extent that Ohio's redesignation request and maintenance plan rely on CAIR, the recent directive from the D.C. Circuit in *EME Homer* ensures that the reductions associated with CAIR will be permanent and enforceable for the necessary time period. EPA has been ordered by the court to develop a new rule and the opinion makes clear that after promulgating that new rule EPA must provide states an opportunity to draft and submit SIPs to implement that rule. CAIR thus cannot be replaced until EPA has promulgated a final rule through a notice-and-comment rulemaking process, states have had an opportunity to draft and submit SIPs, EPA has reviewed the SIPs to determine if they can be approved, and EPA has taken action on the SIPs, including promulgating a FIP if appropriate. These steps alone will take many years, even with EPA and the states acting expeditiously. The court's clear instruction to EPA that it must continue to administer CAIR until a ''valid replacement'' exists provides an additional backstop; by definition, any rule that replaces CAIR and meets the court's direction would require upwind states to have SIPs that eliminate significant contributions to downwind nonattainment and prevent interference with maintenance in downwind areas.

Further, in vacating CSAPR and requiring EPA to continue administering CAIR, the D.C. Circuit emphasized that the consequences of vacating CAIR ''might be more severe now in light of the reliance interests accumulated over the intervening four years.'' *EME Homer,* 696 F.3d at 38. The accumulated reliance interests include the interests of states who reasonably assumed they could rely on reductions associated with CAIR which brought certain nonattainment areas into attainment with the NAAQS. If EPA were prevented from relying on reductions associated with CAIR in redesignation actions, states would be forced to impose additional, redundant reductions on top of those achieved by CAIR. EPA believes this is precisely the type of irrational result the court sought to avoid by ordering EPA to continue administering CAIR. For these reasons also, EPA believes it is appropriate to allow states to rely on CAIR, and the existing emissions reductions achieved by CAIR, as sufficiently permanent and enforceable for purposes such as redesignation. Following promulgation of the replacement rule, EPA will review SIPs as appropriate to identify whether there are any issues that need to be addressed.

EPA also disagrees with the Commenter that emission reductions occurring within the relevant nonattainment area cannot be relied upon for the purpose of redesignations if they are associated with the emissions trading programs established in CAIR. The case cited by the Commenter, *NRDC* v. *EPA,* 571 F.3d 1245 (D.C. Cir. 2009), does not support the Commenter's position and is entirely consistent with EPA's position here. That case addressed EPA's determination that the nonattainment Reasonably Available Control Technology (RACT) requirement was satisfied by the NO_X SIP Call trading program. The court emphasized that reductions outside the nonattainment area do not satisfy the RACT requirement and thus held that because EPA had not shown the trading program would result in sufficient reductions *in a nonattainment area,* its determination that the program satisfied RACT was not supported.[9] *Id.* at 1256–

[8] The court's judgment is not yet final as the mandate has not issued and on October 5, 2012, EPA filed a petition asking for rehearing *en banc.*

[9] The court specifically elected not to vacate the RACT provision and left open the possibility that

58. The court did not hold, as Commenter suggests, that emissions trading programs must be ignored when evaluating redesignation requests.

There is simply no support for the Commenter's argument that, in determining whether to redesignate an area, EPA must ignore all emission reductions achieved by CAIR simply because the mechanism used to achieve the reductions is an emissions trading program. As a general matter, trading programs require total mass emission reductions by establishing mandatory caps on total emissions to permanently reduce the total mass emissions allowed by sources subject to the programs, validated through rigorous continuous emission monitoring and reporting regimens. The emission caps and associated controls are enforced through the associated SIP rules or FIPs. Any purchase of allowances and increase in emissions by one source necessitates a corresponding sale of allowances and reduction in emissions by another covered source. Given the regional nature of $PM_{2.5}$, the corresponding emission reduction will have an air quality benefit that will compensate, at least in part, for the impact of any emission increase. In contrast, emission rate limits serve a different purpose and do not limit total mass emissions. Total mass emissions can vary greatly under emission rate programs as demand and production vary from year to year.

There is no support for the Commenter's contention that the presence of allowance banking in a program somehow renders those programs' emission reduction requirements impermanent or unenforceable, such that EPA must ignore reductions associated with any trading program that allows banking. In general, banking provides economic incentives for early reductions in emissions and encourages sources to install controls earlier than required for compliance with future caps on emissions. As Commenter points out, Ohio's submittal states that ''companies installed more controls'' during the time period that CAIR was being developed and promulgated. The flexibility under a cap and trade system is not about whether to reduce emissions. Rather, it is about how to reduce them at the lowest possible cost. The fact that companies anticipate the economic benefits of installing controls earlier, and reductions thus may occur more quickly than required (freeing up allowances that may then be banked and providing earlier health and environmental benefits to the public) does not, in any way, undermine the permanence or enforceability of the requirements in the underlying rule. The bank itself was factored into the CAIR cap levels that were chosen. The bank allows for a ''glide path'' to final cap levels (70 FR 25194, May 12, 2005). Further, evaluations have been made to see whether banking and trading have created emissions ''hot spots.'' For example, since the beginning of the Acid Rain Program, there have been no emissions hot spots identified or created as a result of the program (see ''The Acid Rain Program Experience: Should We Be Concerned About SO_2 Emissions Hotspots?'' at *http://epa.gov/airmarkets/resource/acidrain-resource.html*).

Additionally, states and localities may impose stricter limits on sources to address specific local air quality concerns. These limits must be met regardless of a source's accumulated allowances.

In sum, contrary to Commenter's contention, the decision of the D.C. Circuit in *NRDC* v. *EPA* does not establish that emission reductions from cap-and-trade programs, or emission reductions from cap-and-trade programs that allow banking, may not be relied upon for redesignations. For the reasons explained above, EPA disagrees that the Commenter has identified a basis on which EPA should disapprove Ohio's redesignation request.

EPA also notes that CAIR is not the only permanent and enforceable measure affecting EGU emission reductions in the Huntington-Ashland area. There have been several consent decrees in the area affecting EGUs. First, in the Kentucky portion of the Huntington-Ashland Area, the Big Sandy Power Station was required by a federally enforceable consent decree [10] and 2007 settlement agreement to install and continuously operate selective catalytic reduction (SCR) to reduce NO_X emissions from Unit 2 beginning January 1, 2009. The plant is also required to install and continuously operate flue gas desulfurization (FGD) to reduce SO_2 emissions from Unit 2 beginning December 31, 2015. Operation of FGD controls has a co-benefit of reducing direct $PM_{2.5}$ emissions as well. In the Ohio and West Virginia portions of the Area, a federally enforceable consent decree [11] and 2007 settlement agreement require the General James M. Gavin Power Plant (Ohio) and Mountaineer Power Plant (West Virginia) to install and continuously operate SCR and FGD on specified units and the Philip Sporn Plant (West Virginia) to retire, retrofit, or re-power one unit. Another consent decree,[12] to which EPA was not a party, requires the J.M. Stuart Power Plant (Ohio) to install and continuously operate SCR on all of its units. To the extent that power plant emission reductions contributed to attainment in the Huntington-Ashland Area, these reductions are permanent and enforceable.

Comment 1b: The Commenter claims that ''EPA's proposal indicates that is relying heavily on CSAPR to justify its redesignation of the Huntington-Ashland area.'' The Commenter argues that EPA cannot rely on CSAPR, because it has been stayed,[13] thus imposing no emission reductions or emission limits, and therefore cannot be found to impose permanent and enforceable emission reductions. The Commenter also notes that EPA's proposal of revisions to CSAPR undermines EPA's ability to analyze whether reductions required by CSAPR will achieve attainment in the Huntington-Ashland area. Furthermore, Commenter argues that CSAPR cannot be relied upon to redesignate the Huntington-Ashland area into attainment unless the D.C. Circuit affirms the rule. The Commenter also objects to reliance on CSAPR because CSAPR, as a trading program, does not impose emission limits on the sources impacting air quality in the Huntington-Ashland area that are at least as stringent as those sources' actual 2008 emission rates. Specifically, the Commenter argues that CSAPR does not result in permanent and enforceable reductions because individual sources that impact the area can comply with the rule by either meeting their emission budgets or by obtaining emission credits from other sources that do not impact the air quality in the Huntington-Ashland area; and because under CSAPR, sources can bank emissions.

Response 1b: Contrary to Commenter's contention, EPA's

EPA may be able to reinstate the provision for particular nonattainment areas if, upon conducting a technical analysis, it finds the NO_X SIP Call results in greater emissions reductions in a nonattainment area than would be achieved if RACT-level controls were installed in that area. *Id.* at 1258.

[10] Entered with the United States District Court For The Southern District Of Ohio Eastern Division (United States of America and State Of New York, *et al.,* v. American Electric Power Service Corp., *et al.,* No. C2–99–1250 and 1182 (consolidated)).

[11] *Id.*

[12] Entered with the United States District Court For The Southern District Of Ohio, Eastern Division (*Sierra Club and Marilyn Wall* v. *The Dayton Power and Light Company, Duke Energy Ohio, Inc., and Columbus Southern Power Co.,* Civil Action No. 2: 04-cv-905).

[13] The rule was stayed as of the time of submission of comments; it has since been vacated by the D.C. Circuit and petitions for rehearing *en banc* are pending.

conclusion that the area has met the requirements for redesignation does not rely on and is not dependent on CSAPR being in place. Ohio's maintenance plan does not rely on future emission reductions from CSAPR, and thus EPA's basis for redesignation of the area from nonattainment to attainment is unaffected by the status of CSAPR. Instead, Ohio relied on CAIR in its maintenance plan, and as discussed in EPA's response to comment 1a, such reliance is appropriate in this context. EPA did not rely on CSAPR to provide a basis for redesignating the area from nonattainment to attainment. Rather, EPA's statements about CSAPR in the proposal were made in the context of CAIR's imminent replacement by CSAPR. The Huntington-Ashland area has attained the 1997 annual $PM_{2.5,}$ and continues to attain the standard as shown in the monitoring data provided above. The state of Ohio has shown that the emission reductions that led to the monitored attainment were due to many permanent and enforceable measures, including federal mobile vehicle standards, CAIR and consent decrees. At proposal, EPA noted that CSAPR had been promulgated to replace CAIR but that redesignation of Huntington-Ashland was still appropriate, because reductions achieved by CSAPR in this area would be equivalent to or greater than those achieved by CAIR. Since the proposal, the D.C. Circuit has issued a decision to vacate CSAPR; thus in this action EPA is evaluating Ohio's maintenance plan as submitted, including the emission reductions associated with CAIR. The redesignation of the Ohio portion of the Huntington-Ashland area meets the requirements under section 107(d)(3)(iii) without any reductions associated with CSAPR.

Comment 1c: The Commenter states that it is arbitrary for EPA to use only one year in determining whether permanent and enforceable emission reductions led to air quality improvements, because cap-and-trade programs allow for varied emissions year to year. Moreover, the Commenter states that analyzing the year 2008 poses further problems, because it marked the beginning of a major economic downturn and EPA provided no analysis of whether the recession was a factor in the improvements in air quality.

Response 1c: EPA's conclusion here is fully supported by the facts and applicable legal criteria. EPA's longstanding practice and policy [14] provides for states to demonstrate permanent and enforceable emissions reductions by comparing nonattainment area emissions occurring during the nonattainment period (represented by emissions during one of the years during the 3-year nonattainment period, in this case 2005) with emissions in the area during the attainment period (represented by emissions during one of the three attainment years, in this case 2008, which is included in the 3-year period, 2007–2009, that the State used to show attainment with the 1997 annual $PM_{2.5}$ standard). A determination that an area has attained the 1997 annual $PM_{2.5}$ standard is based on an objective review of air quality data in accordance with 40 CFR 50.13 and Appendix N of part 50, based on 3 complete, consecutive calendar years of quality-assured air quality monitoring data. In the State's redesignation request, Ohio considered data for the 2007–2009 time period to demonstrate attainment. In EPA's determination of attainment and proposed approval of the redesignation request, EPA considered data for the 2008–2010 time period, which was the most recent quality-assured, certified data available. See 76 FR 55542 (September 7, 2011), 76 FR 79593 (December 22, 2011). In this final rulemaking, EPA is also considering the area's continued attainment based on complete, quality-assured certified data for 2009–2011. EPA has also considered preliminary data showing the area has continued to monitor attainment through 2012. Therefore, selecting 2008 as a representative attainment year, and comparing emissions for this year to those for a representative year during the nonattainment period, 2005, is an appropriate and long-established approach that demonstrates improvements in air quality as a result of the imposition of emission reductions in the area between the years of nonattainment and attainment. For example, see recent redesignations such as Indianapolis $PM_{2.5}$ annual standard (76 FR 59512), Lake and Porter 8-hour ozone standard (75 FR 12090), and Northwest Indiana $PM_{2.5}$ annual standard (76 FR 59600).

EPA disagrees with the Commenter's contention that using a single attainment year is arbitrary due to year to year variations in emission levels resulting from cap-and-trade programs, and that 2008 was a ''problematic'' year to select for analysis. As noted above, data for 2008–2010 and 2009–2011 as well as preliminary data for 2012 show continued attainment of the standard. Although the Commenter points out one monitor's reading that approached the threshold in 2010, the fact remains that Huntington-Ashland is in attainment and has been in attainment.

With respect to the Commenter's assertion that EPA has conducted no analyses to prove that emission reductions between 2005 and 2008 led to reduced $PM_{2.5}$ concentrations, as noted above, comparing emissions for a representative nonattainment year to emissions for a representative attainment year is consistent with longstanding practice and EPA policy for making such a demonstration. The CAA does not specifically require the use of modeling in making any such demonstration and it has not been the general practice to do so. While the Commenter expressed concerns that an economic downturn was responsible for the improvement in air quality, the Commenter has made no demonstration that the reduction in emissions and observed improvement in air quality is due to an economic recession, changes in meteorology, or temporary or voluntary emissions reductions.

In contrast, in EPA's proposed redesignation of the Kentucky portion of the Huntington-Ashland area 77 FR 69409 (November 19,2012), EPA provided a technical analysis showing that emission reductions from EGUs in the Huntington-Ashland area exceed average emission reductions seen in EGUs subject to decreased electrical demand, i.e., the economic recession. A summary of the emission changes from 2005 to 2011 for the entire Huntington-Ashland Area is provided in Table 2 below. Table 3 summarizes EPA's analysis showing reductions of SO_2 and NO_X emissions, in tons per year (tpy) across the Huntington-Ashland area for 2005–2011 for all the coal-fired EGUs in the area. There were reductions in SO_2 and NO_X emissions for all facilities with two exceptions. At the General J.M. Gavin facility, the 2011 SO_2 emission rate was nearly the same as the 2005 rate, but production was higher in 2011 than in 2005. Thus the slight increase in emissions was in no way related to the fact that CAIR is an emissions trading program. As stated earlier, limitations on emission rates do not ensure total mass emissions are limited. And at the Kyger Creek facility, the 2011 emission rate was slightly higher than the 2005 rate; however, the slight increase was directly related to the facility's strategy to reduce emissions. The facility installed a scrubber to control SO_2 in 2012. The company originally planned to install the controls by 2011 and therefore switched to higher sulfur coal

[14] See September 4, 1992 memorandum from John Calcagni entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' pp. 4 and 8–9.

then. Now that the scrubber is installed, 2012 emission reductions are on track to be as much as 65,000 tons lower than in 2005 putting Ohio reductions for 2012 around 169,000 tons,[15] as compared to 2005 emissions. Emission reductions have been greater than decreases in emissions that could be attributed to any decrease in electrical demand in the Huntington-Ashland Area. While the average SO_2 and NO_X emission reductions from coal fired power plants in the Huntington-Ashland Area for the period 2005–2011 were 31 percent and 68 percent, respectively, the average facility power production in terms of heat input decreased by only about 5 percent during the same period. EPA finds that Ohio's 2008 inventory is a suitable representation of emissions during the period when the Huntington-Ashland area came to attain the standard.

TABLE 2—ACTUAL EMISSION REDUCTIONS FROM COAL FIRED EGUS IN THE HUNTINGTON-ASHLAND AREA FOR THE PERIOD 2005–2011[16]

Facility—county	Emissions differences from 2005 to 2011 (tpy)			
	SO_2	Percent reduction	NO_X	Percent reduction
KY: Big Sandy—Lawrence County	7,958	16	5,862	47
WV:				
Mountaineer—Mason County	40,972	95	10,395	82
Phil Sporn—Mason County	28,334	72	6,896	77
OH:				
JM Stuart—Adams County	97,784	92	16,662	68
Killen Station—Adams County	11,845	61	2,353	39
Gen J M Gavin—Gallia County	−5,299	−19	31,720	82
Kyger Creek—Gallia County	−70,497	−97	9,144	50

TABLE 3—ACTUAL EMISSION REDUCTIONS FROM COAL FIRED EGUS IN THE HUNTINGTON-ASHLAND AREA FOR THE PERIOD 2005–2011, BY STATE

[Emissions differences from 2005 to 2011 (tpy)]

State	SO_2	Percent reduction	NO_X	Percent reduction
KY	7,958	16	5,862	47
WV	69,306	84	17,291	80
OH	33,833	15	59,878	68
Total	111,097	31	83,030	68

Comment 1d: The Commenter observes that Ohio cites the availability of cheap natural gas as one of the causes of attainment. The Commenter asserts that cheap natural gas is not a permanent and enforceable emissions limit, and states that because EPA has not determined whether the improvement in air quality was dependent on the presence of cheap natural gas, EPA must disapprove the redesignation request.

Response 1d: In determining that the improvement in air quality was due to permanent and enforceable emissions reductions, EPA did not cite or rely upon cheap natural gas as a permanent and enforceable limit. In its proposed rulemaking, EPA identified multiple permanent and enforceable measures (76 FR 79593), including, but not limited to Tier 2 vehicle standards, heavy-duty gasoline and diesel highway vehicle standards, nonroad spark-ignition engines and recreational engines standards, large nonroad diesel engine standards, consent decrees, CAIR, and the NO_X SIP Call. Permanent and enforceable measures set an enforceable limit, and the emission standard that must be met is independent of the choice of fuel. Further, as mentioned above, the large coal-fired electric generating units continued to run at or near the same amount over the years evaluated.

Comment 2a: The Commenter claims that ''EPA has failed to conduct an adequate analysis under CAA section 110(l) on what effect redesignation will have on the 2006 24-hour $PM_{2.5}$ NAAQS, the 1-hour NO_X NAAQS, the 1-hour SO_2 NAAQS and the 1997 and 2008 75 parts per billion ozone NAAQS.'' In subsequent comments, the Commenter also states, ''EPA has not conducted an adequate analysis of the effect redesignation will have on other National Ambient Air Quality Standards''.

Response 2a: Section 110(l) provides in part: ''the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * *, or any other applicable requirement of this chapter.'' As a general matter, EPA is obligated under section 110(l) to consider whether a revision would ''interfere with'' attainment or applicable requirements. For example, 70 FR 53, 57 (January 3, 2005); 70 FR 17029, 17033 (April 4, 2005); 70 FR 28429, 28431 (May 18, 2005); and 70 FR 58119, 58134 (October 5, 2005). In its review, EPA has indeed considered its obligations under section 110(l). In acting on Ohio's redesignation request and maintenance plan for the 1997 annual $PM_{2.5}$ NAAQS, Ohio did not revise or remove any existing emissions limit for any NAAQS, nor do they alter any existing control requirements. Thus, EPA concludes that

[15] Final 2012 emission reductions will not be known until early 2013 when fourth quarter emissions data is submitted by the facilities.

[16] Data reflects reported actual emissions from the Clean Air Markets Division Database at *http://ampd.epa.gov/ampd/*.

the redesignation will not interfere with attainment or maintenance of any other air quality standard. The Commenter provides no information in its comment to indicate that redesignation would have any impact on the area's ability to comply with the 2006 24-hour $PM_{2.5}$ NAAQS, the 1-hour NO_2 NAAQS, the 1-hour SO_2 NAAQS or the 1997 8-hour ozone NAAQS and 2008 75 parts per billion ozone NAAQS. The redesignation does not relax any existing rules or limits, nor will it adversely alter the status quo air quality.[17] In fact, the maintenance plan submitted by Ohio demonstrates a decline in the direct $PM_{2.5}$ and $PM_{2.5}$ precursor emissions over the timeframe of the maintenance period. EPA therefore concludes that there is no basis for concluding that the redesignation might interfere with attainment of any standard or with satisfaction of any other requirement, and thus EPA finds that section 110(l) does not prohibit EPA from approving the redesignation request and the maintenance SIP revision.

Comment 2b: The Commenter states that the Ohio SIP does not currently have RACT standards in place for $PM_{2.5}$, and that implementation of such standards would have reduced NO_X and SO_2, and helped with the 2006 24-hour $PM_{2.5}$ NAAQS, the 1-hour NO_X NAAQS, the 1-hour SO_2 NAAQS, and the 1997 and 2008 ozone NAAQS as well as visibility. The Commenter contends that EPA should demonstrate that the absence of this alleged co-benefit will not interfere with attainment, reasonable further progress and any other applicable requirement.''

Response 2b: EPA disagrees with the Commenter that the Ohio SIP does not comply with the applicable RACT requirements. EPA has previously set forth its interpretation of RACT for $PM_{2.5}$ as linked to attainment needs of the area. If an area is attaining the $PM_{2.5}$ standard, it clearly does not need further measures to reach attainment. Therefore, under EPA's interpretation of the RACT requirement, as it applies to $PM_{2.5}$, Ohio has satisfied the RACT requirement without need for further measures. EPA's memorandum of May 22, 2008, clarified and fully explained EPA's view of the relationship between $PM_{2.5}$ attainment and RACT requirements. Memorandum from William T. Harnett, Director, Air Quality Policy Division to Regional Air Division Directors, entitled, ''$PM_{2.5}$ Clean Data Policy Clarification.''

This memorandum explained that 40 CFR 51.1004(c) provides that a determination that an area has attained the $PM_{2.5}$ standard suspends the requirements to submit RACT and Reasonably Achieved Control Measures (RACM) requirements.

40 CFR 51.1010 provides in part: ''For each $PM_{2.5}$ nonattainment area, the state shall submit with the attainment demonstration a SIP revision demonstrating that it has adopted all reasonably available control measures (including RACT for stationary sources) necessary to demonstrate attainment as expeditiously as practicable and to meet any Reasonable Further Progress (RFP) requirements.''

Thus the regulatory text itself defines RACT as included in RACM, and provides that it is required only insofar as it is necessary to advance attainment. See also section 51.1010(b). Thus, EPA is correct in its conclusion here that the RACT requirement has been satisfied, and it does not result in interference with attainment or with other applicable requirements. The mere fact that EPA has correctly determined that the area meets the RACT requirements for the 1997 $PM_{2.5}$ standard, and that thus no more is required under that standard, does not result in interference with attainment of other standards.

The Commenter claims that *Wall* v. *EPA,* 265 F.3d 426, 442 (6th Cir. 2001), establishes that fully adopted RACT is nonetheless required. The Wall case, however, is not applicable to RACT requirements for the $PM_{2.5}$ standard. The Wall decision addressed entirely different statutory provisions for ozone RACT under CAA part D subpart 2, which do not apply or pertain to the subpart 1 RACT requirements for $PM_{2.5}$.

Comment 2c: The Commenter contends that it is inappropriate for EPA to redesignate the area to attainment at this time, claiming that EPA is illegally delaying issuing a final rule to revise the annual $PM_{2.5}$ NAAQS, and that EPA's Clean Air Science Advisory Committee has recommended adoption of a lower NAAQS. The Commenter alleges that EPA is removing the protection of the 1997 NAAQS, while not adopting a more protective standard.

Response 2c: EPA finds that the concerns expressed by the Commenter are unfounded here. First, this redesignation does not remove the protection of the 1997 annual $PM_{2.5}$ NAAQS; it does not relax control requirements or implementation for the 1997 NAAQS. Nor does the redesignation in any way address or affect the area's obligations under the new NAAQS. Its purpose and function is to focus solely on the 1997 annual $PM_{2.5}$ NAAQS, and it has no impact on EPA's position with respect to requirements for the area under a revised NAAQS.

Also, on December 14, 2012, EPA finalized a rule revising the $PM_{2.5}$ annual standard to 12 $\mu g/m^3$ based on current scientific evidence regarding the protection of public health. EPA notes that the newly proposed standard is independent of this action, and the newly proposed standard does not affect the redesignation of the Huntington-Ashland area for the 1997 annual $PM_{2.5}$ standard.

Comment 3: The Commenter asserts that ''Emissions calculations for on-road mobile sources fail to consider 15% ethanol in gasoline (E15).''

Response 3: In 2010 and 2011, EPA granted partial waivers for use of E15 in model year (MY) 2001 and newer light-duty motor vehicles (75 FR 68094 and 76 FR 4662). As discussed in the waiver decisions, there may be some small emission impacts from the use of E15. E15 is expected to cause a small immediate emissions increase in NO_X emissions. However, due to its lower volatility than the 10% ethanol gasoline currently in-use, its use is also expected to result in lower evaporative emissions. Other possible emissions impacts may be from the misfueling of E15 in vehicles or engines for which its use is not approved, i.e., MY2000 and older motor vehicles, heavy-duty engines and vehicles, motorcycles and all nonroad engines, vehicles and equipment. EPA has promulgated a separate rule dealing specifically with the mitigation of misfueling to reduce the potential emissions impacts from misfueling (76 FR 44406).

However, the E15 partial waivers do not require that E15 be made or sold and it is unclear if and to what extent E15 may even be used in Ohio. Even if E15 is introduced into commerce in Ohio, considering the likely small and offsetting direction of the emission impacts, the limited set of motor vehicles approved for its use, and the measures required to mitigate misfueling, EPA believes that any potential emission impacts of E15 will be less than the maintenance plan safety margin by which Ohio shows maintenance.

Commment 4a: The Commenter asserts that the Ohio maintenance plan is deficient in part because the contingency measures it includes provide for their implementation within 18 months of a monitored violation, if

[17] EPA notes that the Huntington-Ashland Area does not have violating monitors for the 2006 24-hour $PM_{2.5}$ NAAQS, the 1-hour NO_X NAAQS, or the 1-hour SO_2 NAAQS, the 1-hour and 8-hour ozone NAAQS, and that this Area has never been designated nonattainment for 2006 24-hour $PM_{2.5}$ NAAQS, the 1-hour NO_X NAAQS, or the 1-hour SO_2 NAAQS.

one occurs. The Commenter claims that as a consequence, the ''contingency measures do not provide for prompt correction of violations.''

Response 4a: The Commenter overlooks the provisions of the CAA applicable to contingency measures. Section 175A(d) provides that ''[e]ach plan revision submitted under this section shall contain such contingency provisions as *the Administrator deems necessary* to assure that the state will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area.'' (emphasis added). Thus Congress gave EPA discretion to evaluate and determine the contingency measures EPA ''deems necessary'' to assure that the state will promptly correct any subsequent violation. EPA has long exercised this discretion in its rulemakings on section 175A contingency measures in redesignation maintenance plans, allowing as contingency measures commitments to adopt and implement in lieu of fully adopted contingency measures, and finding that implementation *within* 18 months of a violation complies with the requirements of section 175A.[18] See recent redesignations, e.g. Lake and Porter 8-hour ozone standard (75 FR 12090), and Northwest Indiana $PM_{2.5}$ annual standard (76 FR 59600). Section 175A does not establish any deadlines for implementation of contingency measures after redesignation to attainment. It also provides far more latitude than does section 172(c)(9), which applies to a different set of contingency measures applicable to nonattainment areas. Section 172(c)(9) contingency measures must ''take effect * * * without further action by the state or [EPA].'' By contrast, section 175A confers upon EPA the discretion to determine what constitutes adequate assurance, and thus permits EPA to take into account the need of a state to assess, adopt implement contingency measures if and when a violation occurs after an area's redesignation to attainment. Therefore, in accordance with the discretion accorded it by statute, EPA may allow reasonable time for states to analyze data and address the causes and appropriate means of remedying a violation. In assessing what ''promptly'' means in this context, EPA also may take into account time for adopting and implementation of the appropriate measure. In the case of the Huntington-Ashland area, EPA reasonably concluded that 18 months constitutes a timeline consistent with prompt correction of a potential monitored violation. This timeframe also conforms with EPA's many prior rulemakings on acceptable schedules for implementing section 175A contingency measures.

Comment 4b: The Commenter asserts the maintenance plan does not demonstrate maintenance because EPA cannot rely on CSAPR to ensure maintenance in the Huntington-Ashland area.

Response 4b: EPA disagrees with the Commenter's assertion that the Huntington-Ashland area relies on CSAPR for maintenance. Ohio has used future emission reduction projects to meet the maintenance plan requirement under section 175A of the CAA, and has submitted a maintenance plan that extends 10 years past the redesignation. The Commenter improperly interprets EPA's references to CSAPR reductions in the proposal redesignation notice (found in Tables 5 and 6). EPA referred to CSAPR because Ohio had incorporated CAIR reductions in the emissions inventory, and that EPA believed at the time of proposal that CSAPR (which at the time had not yet been stayed) would allow for greater emission reductions both regionally and from local implementation than CAIR had provided. EPA therefore concluded in the proposal that the emission projections cited in Ohio's submittal were conservative, and still well below attainment year emissions. Since the proposal, CSAPR has been stayed; however, the emission reductions projected by Ohio, which were based on continued implementation of CAIR, in Ohio's maintenance plan are still valid and are significantly less than attainment year emissions. Ohio has met the requirements of 175A, without CSAPR in place.

EPA also has modeling, included in the docket for this rulemaking, which projects that the Huntington-Ashland area will maintain the 1997 annual $PM_{2.5}$ NAAQS without CSAPR or CAIR. *See* appendix B to the Air Quality Modeling Final Rule Technical Support Document for CSAPR. The modeling analysis was a rigorous analysis using CAMx, a photochemical grid model which models $PM_{2.5}$ concentrations arising both from direct $PM_{2.5}$ emissions, as well as from formation from precursors (NO_X and SO_2) on a regional scale level. Extensive quality assurance and control measures, such as model calibration and sensitivity were taken into account. An in-depth discussion of the modeling is found in the docket. The analysis projected concentrations at current monitor locations for the Huntington-Ashland area using emissions inventories without CAIR and CSAPR for 2012 and 2014. Modeled results projected maximum concentrations of $PM_{2.5}$ at 13.92 $\mu g/m^3$ (Lawrence County), and 13.26 $\mu g/m^3$ (Scioto County) for 2012. Those sites have current design values 2–3 μ/m^3 lower than the conservative modeled results. For the year 2014, EPA modeled maximum concentrations at these two sites as 13.32 and 12.71 $\mu g/m^3$, respectively, without CAIR or CSAPR emission reductions.

Further, Ohio's maintenance plan provides for verification of continued attainment by performing future reviews of triennial emissions inventories. It also includes contingency measures to ensure that the NAAQS is maintained into the future if monitored increases in ambient $PM_{2.5}$ concentrations occur (76 FR 79593, December 22, 2012). For these reasons, EPA finds that Ohio has submitted a maintenance plan that meets the requirements of 107(d)(3)(E)(iv) and 175A.

Comment 5: The Commenter argues that due to certain start-up, shutdown and malfunction (SSM) provisions contained in the Ohio SIP, emission reductions in Ohio cannot be due to ''permanent and enforceable reductions in emissions resulting from implementation of applicable implementation plan and Federal air pollutant control regulations and other permanent and enforceable reductions;'' and the state cannot have met ''all requirements applicable to the area under section 7410 of this title and part D of this subchapter,'' citing 42 U.S.C. 7407(d)(3)(E). The Commenter points out that excess emissions from sources during SSM events may be subject to automatic or discretionary 'exemption' under the Ohio SIP as currently constituted. The Commenter urges that Ohio's SSM regulations should be revised to ''clearly comply'' with the CAA and with EPA guidance (providing citations) such that all excess emissions are violations of the CAA, and to preserve the authority of EPA and citizens to enforce the SIP standards and limitations. The Commenter argues that these existing provisions in the Ohio SIP preclude redesignation of this area to attainment for the 1997 $PM_{2.5}$ standards.

Response 5: EPA does not agree that the SSM provisions in the Ohio SIP provide a basis for disapproving the redesignation request for this area at this time. The provisions that the Commenter objects to are approved provisions of the Ohio SIP. As such, the

[18] See examples in recent redesignations, e.g. Lake and Porter County portion of Chicago 1997 8-hour ozone nonattainment area 75 FR 12090 May 11, 2010, and Lake and Porter County portion of Chicago 1997 $PM_{2.5}$ annual standard 76 FR 59600, September 27, 2011.

emission limits that contain the SSM provisions objected to by the Commenter are ''permanent and enforceable'' SIP provisions. The Commenter expresses concerns about certain exemptions for excess emissions within those existing provisions, but that does not affect whether the provisions are permanent and enforceable for purposes of redesignations. Similarly, the Commenter expresses concern that these existing provisions are not consistent with other requirements of the CAA, but as of this time those provisions are part of the approved Ohio SIP. EPA is in the process of addressing SSM provisions in the Ohio SIP through an on-going nationwide process, and in the event that EPA determines the provisions to be problematic, EPA can address them in that more appropriate context.

The CAA sets forth the general criteria for redesignation of an area from nonattainment to attainment in section 107(d)(3)(E). These criteria include that the Administrator has fully approved the implementation plan for area for applicable requirements, 42 U.S.C. 7407(d)(3)(E)(ii)and (v). EPA must also determine that the improvement in air quality is due to reductions that are ''permanent and enforceable'' (iii), and that the area has an approved maintenance plan under section 175A. EPA has fully addressed all these criteria in its proposed and final rulemakings on the redesignation of the Ohio portion of the Huntington-Ashland Area. The SSM-related SIP provisions identified in the Commenter's letter are already approved, portions of the Ohio SIP, and EPA is not required to re-evaluate or revise them as part of this redesignation. EPA's review here is limited to whether the already approved SSM provisions impact any redesignation requirement in section 107(d)(3)(E), so as to preclude EPA from approving the redesignation request. There is no basis for EPA to conclude that these provisions have such effect. First, it has long been established that in approving a redesignation request EPA may rely on prior SIP approvals plus any additional measures it may approve in conjunction with a redesignation action. See John Calcagni Memorandum (September 4, 1992 at 3); *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001); 68 FR 25413, 25426 (May 12, 2003).

While the Commenter takes the position that specific SSM provisions in the Ohio rules result in a ''regulatory structure that is inconsistent with the fundamental requirement that all excess emissions be considered violations,'' the Commenter does not link this concern with any specific deficiencies in Ohio's redesignation submittal for the Huntington-Ashland Area.[19]

The Commenter expressed concerns that some specific existing SIP provisions contain exemptions for excess emissions such that the emission limits are not ''permanent and enforceable'' for purposes of section 107(d)(3)(E)(iii). EPA disagrees with this conclusion because the provisions are contained within the existing approved SIP and thus, in the context of 107(d)(3), are both ''permanent and enforceable''. The Commenter may take issue with some features of those provisions, which contain automatic and discretionary exemptions for excess emissions, but these provisions, in the form in which they exist, are currently approved in the SIP and thus considered ''permanent and enforceable''.

EPA is in the process of evaluating SSM provisions in a separate context. While EPA understands that the Commenter wishes to raise concerns that about Ohio's existing SIP provisions with SSM exemptions, in the context of a redesignation action, EPA is not required to re-evaluate the validity of previously approved SIP provisions. In the context of a redesignation action, that generally a state has met the requirements of section 107(d)(3)(E)(ii) and (v), because the provisions have been previously approved into the SIP by EPA. If these provisions are later or separately determined to be deficient, such as compliance with other relevant requirements of the CAA, then EPA will be able to evaluate those concerns in the appropriate context. EPA notes that, in another, separate proceeding, EPA is in the process of evaluating similar comments relating to other SSM provisions.

On June 30, 2011, Sierra Club filed a ''Petition to Find Inadequate and Correct Several State Implementation Plans under section 110 of the Clean Air Act Due to Startup, Shutdown, Malfunction, and/or Maintenance Provisions''. As part of settlement of a lawsuit, EPA has agreed to take action in response to this petition. See *Sierra Club et al.* v. *Jackson,* No. 3:10–cv–04060–CRB (N.D. Cal). The comments regarding Ohio SSM provisions submitted in this redesignation action raise similar concerns to those identified by the petitioner in the Ohio-specific portion of the above-referenced petition. EPA is currently reviewing these Ohio SSM provisions as part of EPA's evaluation of the petition, and of other SSM provisions across the nation. Thus, EPA will be addressing those concerns in that separate action. EPA's redesignation of the Ohio portion Huntington-Ashland area to attainment for 1997 annual $PM_{2.5}$ does not affect or preclude EPA from taking appropriate action on the from requiring the State of Ohio and other states to address excess emissions during SSM events correctly for purposes of CAA requirements in both nonattainment and attainment areas.

At this time, with regard to the redesignation of the Ohio portion of the Huntington-Ashland area, Ohio has a fully approved SIP. The provisions to which the Commenter objects are permanent and enforceable, as those terms are meant in section 107(d)(3). In addition, the area has attained the annual $PM_{2.5}$ standard since 2009, and has demonstrated that it can maintain the standard for at least ten years. EPA notes, moreover, that it is approving contingency measures under section 175A(d), as part of the area's maintenance plan. These measures provide assurance that the area can promptly correct a violation that might occur after redesignation. Finally, if, in the future, EPA concludes the provisions identified by the Commenter are problematic, EPA will be able to address that concern in a separate action.

Comment 6a: The Commenter contends that the Ohio SIP lacks required SIP provisions, asserting that section 172(c) of the CAA requires SIPs to include a RFP plan, a $PM_{2.5}$ attainment demonstration, contingency measures, nonattainment New Source Review (NSR) rules, and RACM/RACT rules and that EPA has not approved these items into the Ohio SIP.

Response 6a: For a number of reasons, EPA disagrees with the Commenter's contentions that approvals of the cited measures is required for purposes of redesignation. First, pursuant to 40 CFR 51.1004(c), EPA's final determination that the Huntington-Ashland area has attained the $PM_{2.5}$ standard suspended Ohio's obligation to submit attainment-related planning requirements that would otherwise apply, including an attainment demonstration, RFP, RACM/RACT, and contingency measures under section 172(c). The substance and legal basis of 40 CFR 51.1004(c), which

[19] The Commenter also cites the EPA action on a Utah SIP at 75 FR 70888, 70892 (Nov. 19, 2010) as a redesignation that was disapproved due to SSM provisions. However, this action was not a redesignation disapproval. That rulemaking was in fact a ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision'', otherwise known as a ''SIP Call,'' and not a redesignation.

embodies EPA's interpretation under its ''Clean Data Policy,'' has been upheld by the D.C. Circuit Court. *NRDC* v. *EPA,* 571 F.3d 1245 (D.C. Cir. 2009).[20]

Moreover, prior to the promulgation of 40 CFR 51.1004(c) the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992) addressed the role of attainment-related planning requirements in the specific context of EPA's consideration of a redesignation request. The General Preamble sets forth EPA's view of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard (General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992)).

In the context of redesignations, EPA has interpreted requirements related to attainment as not applicable for purposes of redesignation.

The General Preamble explains that, in the context of a redesignation to attainment, when EPA determines that attainment has been reached, no additional measures are needed to provide for attainment. Thus section 172(c)(1) requirements for an attainment demonstration and RACM are no longer considered to be applicable for purposes of redesignation as long as the area continues to attain the standard until redesignation. The RFP requirement under section 172(c)(2) and contingency measures requirement under section 172(c)(9) are similarly not relevant for purposes of redesignation. The General Preamble stated:

> [t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans * * * provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas. ''General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990,'' (General Preamble) 57 FR 13498, 13564 (April 16, 1992).

See also Calcagni memorandum at 6 (''The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.''). With respect to nonattainment NSR requirements, see EPA's response to Comment 6c, below.

Comment 6b: The Commenter contends that the Ohio SIP lacks approved contingency measures. The Commenter asserts that contingency measures must be in place so that, if an area monitor shows a violation of the NAAQS in the future, that violation of the NAAQS is quickly addressed, minimizing the number of people that will be harmed by air quality levels above the NAAQS.

Response 6b: As explained in the response to the previous comment (6a), the nonattainment area contingency measure requirements of section 172(c)(9) are directed at ensuring RFP and attainment by the applicable date. These nonattainment area requirements no longer apply after an area has attained the standard and after the area has been redesignated to attainment. Under section 175A of the CAA, a maintenance plan must contain contingency provisions, ''as deemed necessary by the Administrator,'' and it is these contingency measures that apply to the area after redesignation to attainment. Ohio has included such provisions in its maintenance plan, which EPA is approving in this action.

Ohio has committed to remedy a future violation that may occur after redesignation, and has included measures to address potential violations from a range of sources, as well as a timeline for promptly completing adoption and implementation. The state has identified measures that are sufficiently specific but which allow for latitude in potential scope. EPA believes that the contingency measures set forth in the submittal, combined with the state's commitment to an expeditious timeline and process for implementation, provide assurance that the State will promptly correct a future potential violation. The contingency measures, as part of the maintenance plan, are codified into the state's SIP at the time the area is redesignated to attainment effective upon publication.

Comment 6c: The Commenter asserts that the Ohio SIP lacks a $PM_{2.5}$ nonattainment NSR program. The Commenter also contends that the prevention of significant deterioration (PSD) program that is part of the SIP that an area being redesignated needs to ensure that the area will stay in attainment. The Commenter takes the position that EPA cannot approve the redesignation request because Ohio does not have an adequate $PM_{2.5}$ PSD program. The Commenter bases his conclusion that Ohio's PSD program is inadequate for $PM_{2.5}$ on the contention that the programs do not contain significant emission rates for $PM_{2.5}$ and its precursors, and that the programs do not include $PM_{2.5}$ increments.

Response 6c: Ohio has an approved nonattainment NSR program in its SIP. EPA approved Ohio's current NSR program on January 10, 2003 (68 FR 1366). Nonetheless, for purposes of evaluating a request for redesignation to attainment, because PSD requirements will apply after redesignation, EPA's longstanding view is that the area need not have a fully-approved nonattainment NSR program, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' The memo states, ''nonattainment areas may be redesignated to attainment notwithstanding the lack of a fully-approved part D NSR program, provided the program is not relied upon for maintenance.'' In this case, Ohio has not relied upon NSR to maintain the standard.

Congress used the undefined term ''measure'' differently in various provisions of the CAA, which indicates that the term is susceptible to more than one interpretation and that EPA has the discretion to interpret it in a reasonable manner in the context of section 175A. See *Greenbaum* v. *United States EPA,* 370 F. 3d 527, 535–38 (6th Cir. 2004). (court ''find[s] persuasive the EPA's argument that the very nature of the NSR permit program supports its interpretation that it is not intended to be a contingency measure pursuant to section 175A(d).'') It is reasonable to interpret ''measure'' to exclude part D NSR in this context because PSD, a program that is the corollary of part D NSR for attainment areas, goes into effect in lieu of part D NSR upon redesignation. PSD requires that new sources demonstrate that emissions from their construction and operation will not cause or contribute to a violation of any NAAQS or PSD increment. The state has demonstrated that the area will be able to maintain the standard without part D NSR in effect, and the state's PSD program will become effective in the area upon redesignation to attainment. See the rationale set forth at length in the Nichols Memorandum. For other explanations of why full approval and retention of NSR is not required in redesignation actions, see the following redesignation rulemakings: 60 FR 12459, 12467–12468 (March 7, 1995)(Redesignation of Detroit, MI); 61 FR 20458, 20469–20470 (May 7,

[20] See also *Sierra Club* v. *EPA,* 99 F. 3d 1551 (10th Cir. 1996); *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004); and *Our Children's Earth Foundation* v. *EPA,* No. 04–73032 (9th Cir. June 28, 2005) (memorandum opinion).

1996)(Cleveland-Akron-Lorrain, OH); 66 FR 53665, 53669 (October 23, 2001) (Louisville, KY); 61 FR 31831, 31836–31837 (June 21, 1996) (Grand Rapids, MI). Contrary to the Commenter's assertion, the *Greenbaum* court declined to reach the issue of whether full approval of a part D NSR program is required prior to redesignation. See *Greenbaum,* 370 F. 3d at 534–35.

Ohio also has an EPA approved PSD program that includes $PM_{2.5}$ as a NSR pollutant. While the Commenter is correct in stating that both Ohio approved PSD SIPs do not include specific significant emissions rates for $PM_{2.5}$ or its precursors, the Ohio SIP does include a provision that sets ''any emission rate'' as the significant emission rate for any regulated NSR pollutant that does not have a specific significant emission rate listed in the state rule.

Therefore, any increase in direct $PM_{2.5}$ emissions or emissions of its precursors (SO_2 and NO_X) will trigger the requirements to obtain a PSD permit; to perform an air quality analysis that demonstrates that the proposed source or modification will not cause or contribute to a violation of the $PM_{2.5}$ NAAQS; and to apply best available control technology for direct $PM_{2.5}$ and/or the pertinent precursor.

In addition, the fact that Ohio's approved PSD SIPs lack $PM_{2.5}$ increments does not prevent the program from addressing and helping to assure maintenance of the $PM_{2.5}$ standard in accordance with CAA section 175A. A PSD increment is the maximum increase in concentration that is allowed to occur above a baseline concentration for a pollutant. Even in the absence of an approved PSD increment, the approved PSD program prohibits air quality from deteriorating beyond the concentration allowed by the applicable NAAQS. Thus Ohio's approved PSD program is adequate for purposes of assuring maintenance of the 1997 annual $PM_{2.5}$ standard as required by section 175A.

Comment 6d: The Commenter contends that the Ohio SIP does not have approved RACT rules.

Response 6d: This comment has been addressed above, in response 2b.

Comment 6e: The Commenter claims that 42 U.S.C. 7502(c)(7) requires that the nonattainment SIP meet all the requirements of 42 U.S.C. 7410(a)(2). EPA interprets this to mean only the Infrastructure elements that are linked to the nonattainment area. EPA's position contradicts the plain language of the statute. The Commenter also states that EPA says that it disapproved the Section 110(a)(2)(D)(i) portion of the Ohio Infrastructure submittal but did not take action on the rest of the September 4, 2009, submittal. 76 FR 79595. However, EPA did not explain what is included in the September 4, 2009, submittal and did not provide the September 4, 2009, submittal in the docket.

Response 6e: For a number of reasons, the concerns expressed by the Commenter are unfounded. First, EPA has issued final approvals of Ohio's infrastructure SIP for 1997 ozone and PM standards for all portions of 110(a) 2 requirements (76 FR 23757, April 28, 2011). EPA also acted on Ohio's submittal of the 2006 PM infrastructure SIP (proposed 76 FR 6376, February 4, 2011, finalized 76 FR 43175, July 20, 2011) where EPA disapproved the state's use of CAIR to fulfill the requirements of 110(a)2(D). EPA notes that there was an editorial error in the **Federal Register** citation (but not the date of publication) of the 2006 infrastructure disapproval in the proposed redesignation; however, this has been fixed in the reference above, and a full submittal can be found in that docket. Even with this disapproval on February 4, 2011, the approval of the 1997 PM infrastructure elements on April 28, 2011, fulfills the ''fully approved'' SIP elements associated with redesignation, with exceptions unrelated to the requirements for redesignation.

The requirements applicable for purposes of redesignation are those which at a minimum are linked to the attainment status of the area being redesignated. As noted in the proposal (76 FR 23757, April 28, 2011), all areas, regardless of their designation as attainment or nonattainment, are subject to section 110(a)(2)(D). The applicability of this provision is not connected with nonattainment plan submissions or with the attainment status of an area. A nonattainment area remains subject to the requirements of section 110(a)(2)(D) after it has been redesignated to attainment. Therefore EPA has long interpreted the 110(a)(2)(D) requirements as a not applicable requirement for purposes of redesignation. EPA has leeway to determine what constitutes an ''applicable'' requirement under section 107(d)(3)(E), and EPA's interpretation is entitled to deference. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). EPA has consistently interpreted only those section 110 requirements that are linked with a particular area's designation as the requirements to be considered in evaluating a redesignation request. See, e.g., EPA's position on the applicability of conformity, oxygenated fuels requirements for purposes of redesignations. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996, and 62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio 1-hour ozone redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania 1-hour ozone redesignation (66 FR 50399, October 19, 2001).

Comment 7: The Commenter contends that Ohio must restore an ambient air monitor to Lawrence County, in order to meet the monitoring network requirements.

Response 7: EPA disagrees with the Commenter that the monitoring network must restore a monitor in Lawrence County. Currently, Ohio operates a monitor in Lawrence County, the Ironton Department of Transportation (DOT) site monitor, and the monitoring network for the area has met and continues to meet monitoring network requirements. The Ironton DOT site address for the monitor in Lawrence County was moved to a location within 1.5 miles of the former site location (Lawrence County Hospital). The Lawrence County Hospital site was demolished on February 12, 2008, and a new site in the Lawrence County, Ohio portion of the Huntington-Ashland area, known as the Ironton DOT site, began operation on the same day. To date the Ironton DOT site has collected a complete design value for the monitoring period 2009–2011, which shows that the area continues to attain the 1997 annual standard. A full discussion of this aspect of the monitoring history is contained in the proposed determination of attainment for the Huntington-Ashland area (76 FR 27290, May 11, 2011).

Comment 8: The Commenter asserts that the 2005 emissions inventory that EPA is proposing to approve as meeting the emission inventory requirement of section 172(c)(3) of the CAA is inadequate and EPA cannot approve this emissions inventory. The Commenter notes that the emissions inventory is 6 years old. In addition, the commenter contends that portions of the emissions inventory were estimated, as opposed to being actual emissions, and claims that EPA has included in the docket only a summary of the emissions inventory. The Commenter asserts that EPA must place in the docket a comprehensive emissions inventory, including information for each point

source, so as to allow the public to review the inventory and comment on it.

Response 8: Ohio developed a 2005 comprehensive inventory to meet the requirement of section 172(c)(3) of the CAA in accordance with EPA's November 18, 2002, policy memorandum from Lydia N. Wegman entitled ''2002 Base Year Emission Inventory SIP Planning: 8-hr Ozone, $PM_{2.5}$ and Regional Haze Programs,''.

The Commenter observes that portions of the emissions inventory were estimated. This method is entirely consistent with accepted EPA procedures for emissions inventory development procedures. It is common practice, and consistent with EPA emissions inventory guidance, for states to estimate emissions for any given year using related activity factors or to project emissions based on information from prior years and associated activity growth factors. See ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' dated August 2005. For mobile sources, it is standard and accepted practice for states to estimate emissions using an EPA- approved emissions model coupled with the output of a transportation model, which provides traffic levels by roadway and activity type. The Commenter provided no information or specific details that show that the 2005 inventory was inaccurate.

While we believe the 2005 inventory submitted by the state meets the inventory requirements section 172(c)(3) of the CAA, EPA notes that Ohio also submitted a comprehensive 2008 emissions inventory to serve as the attainment year inventory as part of the maintenance plan. EPA's longstanding view, as set forth in the September 4, 1992, Calcagni memorandum is that the ''requirements for an emission inventory [under section 172(c)] will be satisfied by the inventory requirements of the maintenance plan.'' See Calcagni memorandum at 6.

When preparing the comprehensive 2008 emissions inventory, Ohio compiled point source information from the 2008 annual emissions reports submitted to Ohio EPA by sources and EPA's Clean Air Markets Division database for electric utilities. Area source emissions were calculated using the most recently available methodologies and emissions factors from EPA along with activity data (population, employment, fuel use, etc.) specific to 2008. Nonroad mobile source emissions were calculated using EPA's NONROAD emissions model. In addition, emissions estimates were calculated for commercial marine vessels, aircraft, and railroads, three non-road categories not included in the NONROAD model. On-road mobile source emissions were calculated using EPA's MOVES emissions model with 2008 Vehicle Miles Traveled data provided by the Tri-state planning agency KYOVA.

Therefore, the state has satisfied the CAA inventory requirements by its submittal of two inventories that meet the applicable emissions inventory requirement.

The docket associated with the proposal contained Ohio's submittal including appendix B, which contains the state's method and analysis of sources for the 2005 inventory year. The Clean Air Fine Particle Implementation Rule (72 FR 20586) states that the 3-year emissions inventory that fulfills the SIP requirement under 172(c)(3) must provide documentation on the development of the SIP inventory (appendix B of the proposal docket). The rule also states that all source types must be reported, but does not specify the resolution of the data reporting as a source by source report. Ohio has interpreted the source type reporting requirement as reported by county, which they have provided in their submittal. EPA also believes that its summary provided in the notice of proposed rulemaking, along with appendix B description of development, provides an adequate basis for the public to identify pertinent issues and evaluate EPA's analysis and conclusions regarding satisfaction of section 172(c)(3). Much of the information in Ohio's inventory also was used in EPA's National Emissions Inventory, which can be examined in considerable detail at *http://www.epa.gov/ttn/chief/net/2008inventory.html*. EPA acknowledges that an in-depth inventory was unintentionally omitted from the electronic docket at *www.regulations.gov*. However, the document was available to the public in hard copy at the EPA Region 5 office, and had the Commenter contacted the Region, the inventory could have been provided. The facility-specific inventory has since been added to the electronic docket.

IV. Why is EPA taking these actions?

EPA has determined that the Huntington-Ashland area has continued to attain the 1997 annual $PM_{2.5}$ NAAQS. EPA has also determined that all other criteria have been met for the redesignation of the Ohio portion of the Huntington-Ashland area from nonattainment to attainment of the 1997 annual $PM_{2.5}$ NAAQS and for approval of Ohio's maintenance plan for the area. *See* CAA sections 107(d)(3)(E) and 175A. The detailed rationale for EPA's findings and actions is set forth in the proposed rulemaking of December 22, 2011 (76 FR 79593) and in this final rulemaking.

V. Final Action

EPA has previously made the determination that the Huntington-Ashland area has attained the 1997 annual $PM_{2.5}$ standard (76 FR 55541). EPA is determining that the area continues to attain the standard and that the Ohio portion of the area meets the requirements for redesignation to attainment of that standard under sections 107(d)(3)(E) and 175A of the CAA. Thus, EPA is granting the request from Ohio to change the legal designation of its portion of the Huntington-Ashland area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS. EPA is also approving Ohio's 1997 annual $PM_{2.5}$ maintenance plan for the Huntington-Ashland area as a revision to the SIP because the plan meets the requirements of section 175A of the CAA. EPA is approving the 2005 and 2008 emissions inventories for primary $PM_{2.5}$, NO_X, and SO_2, documented in Ohio's May 4, 2011, submittals as satisfying the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory. Finally, for transportation conformity purposes, EPA is approving Ohio's determination that on-road emissions of $PM_{2.5}$ and NO_X are insignificant contributors to $PM_{2.5}$ concentrations in the area.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule—grants or recognizes an exemption or relieves a restriction, and section 553(d)(3), which allows an effective date less than 30 days after publication—as otherwise provided by the agency for good cause found and published with the rule. The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before

the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the Ohio of various requirements for the Ohio portion of the Huntington-Ashland area. For these reasons, EPA finds good cause under 5 U.S. C. 553(d)(3) for this action to become effective on the date of publication of this action.

VI. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For these reasons, these actions:

- Are 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);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Do 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 final 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 Commonwealth, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 1, 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

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

40 CFR Part 81

Environmental protection, Air pollution control, National parks.

Dated: December 18, 2012.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR parts 52 and 81 are amended as follows:

PART 52—[AMENDED]

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

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

■ 2. Section 52.1880 is amended by adding paragraphs (p)(2) and (q)(2) to read as follows:

§ 52.1880 Control strategy: Particulate matter.

* * * * *

(p) * * *

(2) The Ohio portion of the Huntington-Ashland nonattainment area (Lawrence and Scioto Counties and portions of Adams and Gallia Counties). The maintenance plan establishes a determination of insignificance for both NO_X and primary $PM_{2.5}$ for conformity purposes.

(q) * * *

(2) Ohio's 2005 and 2008 NO_X, directly emitted $PM_{2.5}$, and SO_2 emissions inventory satisfies the emission inventory requirements of section 172(c)(3) for the Huntington-Ashland area.

* * * * *

PART 81—[AMENDED]

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. Section 81.336 is amended by removing the entry for Huntington-Ashland, WV-KY-OH and adding in its place an entry for Huntington-Ashland, OH in the table entitled ''Ohio $PM_{2.5}$ (Annual NAAQS)'' to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO $PM_{2.5}$ (ANNUAL NAAQS)

Designated area	Designation [a]	
	Date [1]	Type
* * * * *	*	*
Huntington-Ashland, OH.		
Adams County (part).		
Monroe Township.		
Sprigg Township.		
Gallia County (part).		
Addison Township.		
Cheshire Township.		
Lawrence County.		
Scioto County	12/31/12	Attainment.
* * * * *	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.

* * * * *

[FR Doc. 2012–31276 Filed 12–28–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2011–0941; FRL–9369–8]

RIN 2070–AB27

Significant New Use Rule on Certain Chemical Substances; Removal of Significant New Use Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is removing significant new use rules (SNURs) promulgated under the Toxic Substances Control Act (TSCA) for four chemical substances which were the subject of premanufacture notices (PMNs). EPA published these SNURs using direct final rulemaking procedures. EPA received notice of intent to submit adverse comments on these rules. Therefore, the Agency is removing these SNURs, as required under the expedited SNUR rulemaking process. EPA intends to publish in the near future proposed SNURs for these four chemical substances under separate notice and comment procedures.

DATES: This final rule is effective December 31, 2012.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *Moss.Kenneth@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave. Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

A list of potentially affected entities is provided in the **Federal Register** of September 21, 2012 (77 FR 58666) (FRL–9357–2). If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What rules are being removed?

In the **Federal Register** of September 21, 2012 (77 FR 58666), EPA issued several direct final SNURs, including SNURs for the chemical substances that are the subject of this removal. These direct final rules were issued pursuant to the procedures in 40 CFR part 721, subpart D. In accordance with § 721.160(c)(3)(ii), EPA is removing these rules issued for four chemical substances which were the subject of PMNs P–07–204, P–10–58, P–10–59, and P–10–60, because the Agency received notice of intent to submit adverse comments without sufficient time to respond prior to the effective date of the rules. EPA intends to publish proposed SNURs for these chemical substances under separate notice and comment procedures.

For further information regarding EPA's expedited process for issuing SNURs, interested parties are directed to 40 CFR part 721, subpart D, and the **Federal Register** of July 27, 1989 (54 FR 31314). The record for the direct final SNURs for the chemical substances that are being removed was established at EPA–HQ–OPPT–2011–0941. That record includes information considered by the Agency in developing this rule and the notice of intent to submit adverse comments.

III. How do I access the docket?

To access the electronic docket, please go to *http://www.regulations.gov* and follow the online instructions to access docket ID number EPA–HQ–OPPT–2011–0941. Additional information about the Docket Facility is provided under **ADDRESSES** in the **Federal Register** of September 21, 2012 (77 FR 58666). If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

IV. Statutory and Executive Order Reviews

This final rule removes existing regulatory requirement and does not contain any new or amended requirements. As such, the Agency has determined that this removal will not have any adverse impacts, economic or otherwise. The statutory and executive order review requirements applicable to the direct final rule were discussed in the **Federal Register** of September 21, 2012 (77 FR 58666). Those review requirements do not apply to this action because it is a removal and does not contain any new or amended requirements.

V. Congressional Review Act (CRA)

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

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

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 17, 2012.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR parts 9 and 721 are amended as follows:

PART 9—[AMENDED]

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

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

§ 9.1 [Amended]

■ 2. The table in § 9.1 is amended by removing the entries ''§ 721.10509'' and ''§ 721.10515'' under the undesignated center heading ''Significant New Uses of Chemical Substances.''

PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.10509 [Removed]

■ 4. Remove § 721.10509.

§ 721.10515 [Removed]

■ 5. Remove § 721.10515.

[FR Doc. 2012–31403 Filed 12–28–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 2

RIN 1093–AA15

Freedom of Information Act Regulations

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: This rule revises the regulations that the Department of the Interior (the ''Department'') follows in processing records under the Freedom of Information Act (''FOIA''). The revisions clarify and update procedures for requesting information from the Department and procedures that the Department follows in responding to requests from the public. The revisions also incorporate clarifications and updates resulting from changes to the FOIA and case law. Finally, the revisions include current cost figures to be used in calculating and charging fees and increase the amount of information that members of the public may receive from the Department without being charged processing fees.

DATES: Effective January 30, 2013.

SUPPLEMENTARY INFORMATION:

I. Why We're Publishing This Rule and What It Does

A. Introduction

The regulations are being revised to update, clarify, and streamline the language of procedural provisions, and to incorporate certain changes brought about by the amendments to the FOIA under the OPEN Government Act of 2007, Public Law 110–175, 121 Stat. 2524. Additionally, the regulations are being updated to reflect developments in the case law and to include current cost figures to be used in calculating and charging fees.

The revisions also incorporate changes to the language and structure of the FOIA regulations in order to improve the Department's FOIA performance. More nuanced multitrack processing can be found at § 2.15. Partial fee waivers are expressly permitted under § 2.45. Revisions of the Department's fee schedule can be found at §§ 2.42, 2.49(a)(1), and Appendix A. The duplication charge for physical records or scanning records increased from thirteen to fifteen cents a page. The amount at or below which the Department will not charge a fee increased from $30.00 to $50.00.

On September 13, 2012, the Department published a proposed rule in the **Federal Register** (77 FR 56592) and requested comments over a 60-day period ending on November 13, 2012. All comments received were considered in drafting this final rule.

B. Discussion of Comments

Six commenters responded to the invitation for comments, including one commenter from a subcomponent of a Federal agency and five commenters from non-Federal sources. While most of the commenters generally supported the proposed changes, they identified thirty specific issues or recommendations, which the Department addressed as follows:

The Final Rule Should Include More Information in Its Introductory Section

One commenter suggested that § 2.1 discuss how to submit a FOIA request (and also expressed concern that the regulations might only allow FOIA requests to be submitted to the Department electronically). Because § 2.3 directly addresses where to send a FOIA request (and specifically discusses where to find the physical and email addresses of each bureau's FOIA Officer), the Department has not adopted this suggestion.

The Final Rule Should Not Create Unnecessary Burdens for Requesters

One commenter suggested that requiring requesters to ''write directly to the bureau that you believe maintains those records'' in § 2.3(b) was overly burdensome and creates barriers to access, because requesters may not know where the records are maintained. However, § 2.3(d) specifically notes that ''[q]uestions about where to send a FOIA request should be directed to the bureau that manages the underlying program or to the appropriate FOIA Public Liaison, as discussed in § 2.66.'' Therefore, the Department does not believe § 2.3 is unduly burdensome and has not amended it.

The Final Rule Should Provide Examples of How Requesters Can Reasonably Describe the Records They Seek

One commenter suggested that examples of how requesters can reasonably describe the records they seek be added to § 2.5(b), and the Department has adopted this suggestion.

The Final Rule Should Not Use the Ambiguous Phrase ''Does Not Hear From You''

One commenter suggested, in the context of § 2.5, that the use of ''does not hear from you'' was ambiguous. The Department has adopted this suggestion

by replacing the ambiguous phrase with ''does not receive a written response from you'' everywhere it occurred (§§ 2.5, 2.6, and 2.51).

The Final Rule Should Allow Requesters More Time To Respond to the Department's Communications and Make Advance Payments

One commenter suggested that the time for requesters to respond to the Department in §§ 2.5(c), 2.6(c), and 2.50(e) be expanded from 20 workdays (the time period in the draft version of the final rule, as well as in the Department's previous version of the final rule) to 30 workdays. As the commenter notes, the Department does ''expend[] numerous resources to produce documents pursuant to the FOIA, and the agency has an interest in resolving FOIA matters in an organized and timely fashion.'' Although the commenter believes the 20 workday deadline is ''unreasonable and arbitrary,'' it has been the standard for the Department for over a decade and the Department believes that it is reasonable and comports with the statutory FOIA processing deadlines. The Department therefore declines to adopt this suggestion.

The Final Rule Should Require the Department To Notify Requesters in Advance Before Charging Them the Direct Costs of Converting Records to the Format They Request

One commenter suggested § 2.8(b) be revised to require a bureau to inform requesters in advance if it intends to charge the requester any direct costs for converting the requested records into a requested format. The Department has adopted this suggestion by adding a cross reference to § 2.44 and adding this scenario to the examples given in § 2.44(b).

The Final Rule Should Not Confuse Expedited Processing Requests and FOIA Requests

One commenter suggested that the juxtaposition of §§ 2.10 and 2.11 could lead to confusion about what kinds of ''requests'' were being referenced in these sections. The Department agrees and has adopted this suggestion by amending § 2.10.

The Final Rule Should Elaborate on the Department's Consultation and Referral Process

One commenter suggested that, in § 2.13(c) and (e), the Department notify requesters of whether part of the request or entire request has been referred, and the Department has adopted this suggestion. The same commenter also suggested that the Department provide the requester with the contact information (in addition to the name) of the person the request had been referred to, and the Department has adopted this suggestion. Another commenter expressed concerns about § 2.13, stating that portions of it were ''ambiguous and have no legal basis.'' This commenter specified that § 2.13(e) permitted the Department to withhold the identity of outside agencies to which the Department refers FOIA requests, under limited circumstances, and §§ 2.13(f)(2) and 2.13(f)(4) did not have concrete examples. The Department has carefully reviewed § 2.13(e) and finds it to be unambiguous and consistent with law and policy. The Department has also concluded that adding examples to §§ 2.13(f)(2) and 2.13(f)(4) would not be beneficial, as the situations that will arise under these sections are highly fact specific and general examples would be bulky and would not be illuminating. However, the Department agrees that the previous versions of §§ 2.13(a) and 2.13(h) were unintentionally confusing. The Department therefore has adopted this suggestion in part and revised these sections for clarity.

The Final Rule Should Not Expand the Time Period for Determining Whether the Department Will Comply With a Request

One commenter suggested that the multiple tracks for processing FOIA requests outlined in § 2.15 violated FOIA's requirement that agencies ''determine within 20 days [or longer in unusual circumstances] * * * after the receipt of any [FOIA] request whether to comply with such request * * * '' 5 U.S.C. 552(a)(6)(A). However, § 2.15 does not alter the statutory requirement for a bureau to determine whether it will comply with a request. To the contrary, it implements 5 U.S.C. 552(a)(6)(D)(i), which specifically permits agencies to promulgate regulations ''providing for multitrack processing of requests for records based on the amount of work or time (or both) involved in processing requests.'' This provision of the FOIA recognizes that a bureau exercising due diligence can determine whether it will comply with a request within the statutory timeframe, but may need additional time to search for and process the records in question. It also recognizes that simple requests should not have to wait for long periods of time while more complex requests are processed. To clarify this point, the Department has added paragraph (f) to this section. (The Department has also corrected a typographical error in § 2.15(c)(3) that may have created confusion about processing times.) The same commenter also suggested the definition of ''review'' in § 2.70 would violate FOIA's mandated time limits. However, the definition addresses when fees will be charged to a requester, not how long a bureau has to respond to a FOIA request. Neither § 2.15 nor § 2.70 expands the time period for determining whether to comply with a request and therefore neither have been amended.

The Final Rule Should Help Set Requesters' Expectations of When To Expect a Response

One commenter suggested a clause and a sentence be added to § 2.16(a) referring to the potential of a 10-day extension, to help set the requester's expectations of when to expect a response. The Department has adopted the suggestion to refer to the potential extension, but consolidated the suggested language. The final rule already has a provision discussing when the bureau may extend the basic time limit (§ 2.19) and a cross reference to it has been added to § 2.16(a). The Department has also amended § 2.16(a) to more exactly track the language of 5 U.S.C. 552(a)(6)(A)(i).

The Final Rule Should Not Exceed the FOIA's Temporary Suspension Authority

One commenter expressed concern that the provisions in § 2.18(b) exceeded the FOIA's provisions for temporarily suspending the statutory response period because a temporary suspension was allowed to occur more than once if the bureau needed to clarify issues regarding fee assessments. However, 5 U.S.C. 552(a)(6)(A) makes it clear that, although a temporary suspension can occur only once when a bureau is reasonably asking for clarifying information unrelated to fee assessments (and the temporary suspension ends with a requester's response), temporary suspensions of the statutory response period can occur as many times as is necessary when a bureau needs clarifying information regarding a fee assessment. This section therefore does not exceed FOIA's temporary suspension authority and has not been amended.

The Final Rule Should Require the Department To Include a Brief Description of the Subject of the Request in Acknowledgement Letters

One commenter suggested that the Department add a clause to § 2.21(b) requiring bureaus to provide a brief description of the subject of the request in its acknowledgment letter. The

Department declines to adopt the portion of the suggestion about making this description mandatory, due to the increased burden it would place on bureaus (especially those with a high rate of FOIA requests) and the dampening effect this would have on experimenting with new forms of written acknowledgments that could more quickly serve requesters (such as post cards). The Department has, however, added a sentence to § 2.21(b) noting this information may be included.

The Final Rule Should Clarify When Procedural Benefits Are Denied Versus When Records Are Denied

A commenter suggested modifying § 2.23 to clarify when a request is being denied as opposed to the denial of procedural benefits under FOIA. The Department agrees this would be helpful and has made the suggested modifications, along with a few minor clarifications. The Department also made a minor change to paragraph (a)(3) of this section because a some material that had previously been included in § 2.13(h), amendments to which were discussed above, made more sense in this context.

The Final Rule Should Require the Department to State the Precise Volume of Denied Material and Provide a Detailed Justification of Its Withholdings

One commenter suggested § 2.24 be amended to state that, where possible, the requester will be provided with the precise volume of denied material, rather than an estimated volume. Although the Department has declined to adopt this exact suggestion (because it believes the change would have a significant negative impact on the Department's processing and response times while providing the requester with very little, if any, additional, meaningful information), it has amended § 2.25 to more exactly track the language of 5 U.S.C. 552(b), which the commenter referenced. Another commenter suggested § 2.24 be amended to require ''a detailed justification for [a] denial,'' citing case law requiring detailed justifications in a litigation context. The Department has considered this suggestion, but declined to adopt it because it is not required at an administrative level and would have a tremendous negative impact on the Department's processing and response times.

The Final Rule Should Correctly State What Types of Information Can Be Protected Under the Trade Secrets Act

One commenter suggested that § 2.36 be amended to state that only trade secrets can be withheld under the Trade Secrets Act, 18 U.S.C. 1905. However, the Trade Secrets Act is a broadly worded criminal statute that prohibits the unauthorized disclosure of more than simply ''trade secrets.'' *See, e.g., Bartholdi Cable Co.* v. *FCC,* 114 F.3d 274, 281 (D.C. Cir. 1997) (citing *CAN Fin. Corp* v. *Donovan,* 830 F.2d 1132, 1140 (D.C. Cir. 1987) and declaring: ''[W]e have held that information falling within Exemption 4 of FOIA also comes within the Trade Secrets Act.''); *Parker* v. *Bureau of Land Mgmt.,* 141 F. Supp. 2d 71, 77 n.5 (D.D.C. 2001) (''Although FOIA exemptions are normally permissive rather than mandatory, the D.C. Circuit has held that the disclosure of material which is exempted under [Exemption 4 of the FOIA] is prohibited under the Trade Secrets Act''). This section therefore has not been amended.

The Final Rule Should Reflect Three Fee Categories, Rather Than Four

One commenter suggested that §§ 2.38 and 2.70 be amended to reflect that the FOIA provides for three fee categories, not four. While the Department agrees that only three categories are referred to in the FOIA, it has found over many years that requesters appreciate and benefit from the additional clarity provided by having one of the broader categories split in two. The Department therefore has not adopted this suggestion.

The Final Rule Should Use Individualized Local Locality Payments

One commenter suggested that § 2.41(b) be amended from ''the fees will be the average hourly General Schedule (''GS'') base salary, plus the District of Columbia locality payment'' to ''the fees will be the average hourly General Schedule (''GS'') base salary, plus any applicable locality payment.'' The Department utilized the District of Columbia (''DC'') locality payments as its standardized locality payment in its previous version of the final rule and found it to be both efficient and reasonable. It allows the Department to create a standard chart that all bureaus can use to calculate fees, rather than each bureau calculating different amounts for different employees (in the Department, it is not unusual for people who work on the same request to be in multiple geographic locations) and requesters being confused by widely varying charges for the same work. It makes sense to use the DC locality as the standard, given the large numbers of the Department's FOIA professionals and processors that are based in DC The Department therefore has not adopted this suggestion.

The Final Rule Should Not Unduly Limit Agency Decisions on Fee Waivers and Appeals

One commenter suggested that § 2.45(c) unduly limits bureau decisions on fee waivers and this would negatively impact appeal decisions under § 2.57. However, § 2.45(c) merely allows a bureau to make fee waiver decisions based on what is submitted to it by the requester, rather than being required to seek additional information (although it is free to do so, at its discretion). The Department therefore has not amended these sections.

The Final Rule Should Further Clarify When Fees May Be Waived

One commenter suggested adding the following sentence to § 2.45(d) in order to further assist the Department in setting expectations for requesters regarding fee waivers: ''A fee waiver is tied to the subject of the request in addition to the identity of the requester.'' The Department is concerned that adopting this suggestion would give the mistaken impression that only these two criteria are at issue in fee waiver determinations. But, in response to this comment, § 2.45(d) now includes two cross references. These cross references, to the fee waiver criteria in §§ 2.45(a) and 2.48, will help set requesters' expectations regarding fee waivers.

The Final Rule Should Say More About Where and How To File a Fee Waiver

One commenter suggested that § 2.46 discuss where and how to file a fee waiver request. Because § 2.6 directly addresses where and how to file fee waiver requests (and § 2.46 already cross references § 2.6), the Department believes adopting this suggestion is not necessary.

The Final Rule Should Not Be Narrower than FOIA's Fee Waiver Standards

One commenter expressed concern that § 2.48(a)(4), which outlines one of the four criteria bureaus are asked to consider when evaluating a fee waiver request, was narrower than FOIA's fee waiver standards. However, this provision does not narrow the scope of 5 U.S.C. 552(a)(4)(A)(iii), it simply helps the Department analyze whether the disclosure of the information is likely to contribute significantly to public understanding of the operations or

activities of the government. Because § 2.48(a)(4) is not narrower than FOIA's fee waiver standards, the Department has not adopted this suggestion. The same commenter also expressed concern about a change of phrasing in § 2.48(a)(3)(iv) from the parallel provision in the previous version of the final rule. The Department did not intend to change the provision's meaning. Therefore, in accordance with the commenter's suggestion, the word ''unlikely'' has been removed and the phrase ''less likely'' restored.

The Final Rule Should Require the Department to Allow Requesters To Pay in Installments

One commenter suggested that § 2.50(e) be amended to require the Department to ''collaborate with FOIA requesters to establish a payment schedule that would permit requesters to pay [advance payments] in installments instead of closing out requests.'' As the commenter notes, this provision mirrors the applicable provision in the previous version of the final rule. Changing it would greatly add to the complexity, uncertainty, and time spent processing advance fee payments, impairing the Department's FOIA processing. The Department therefore declines to adopt this suggestion.

The Final Rule Should Clearly Articulate its Rationale for Combining or Aggregating Requests

One commenter suggested the Department should articulate its rationale for combining or aggregating requests more clearly in § 2.54. The Department agrees the previous version of this section was unintentionally confusing. The lettering/numbering therefore has been amended. Additionally, a ''will'' in § 2.54(a)(2) has been amended to ''may.''

The Final Rule Should Provide Examples of Types of Records the Department May Charge Fees for Outside the Scope of FOIA

One commenter suggested it may be helpful to include examples of the particular types of records that a bureau may charge fees for outside of the scope of the FOIA in § 2.55. The Department has carefully considered this suggestion and has concluded that examples in this area would be so specific and narrow that they would be more distracting than illuminating. The Department therefore has not adopted this suggestion.

The Final Rule Should Allow Bureaus Not Only To Waive Fees Discretionarily, But Also To Reduce them Discretionarily

One commenter suggested that § 2.56 be amended to allow for the discretionary reduction of fees (in addition to the discretionary waiver of fees) and the Department has adopted this suggestion. The same commenter also suggested that new language be added to give Department employees additional, broader discretion for waiving or reducing fees, for example, whenever ''the interest of the United States Government would be served.'' The Department has declined to adopt this suggestion, because it is concerned that it would create unrealistic expectations on the part of requesters, undercut FOIA's statutory fee requirements, and provide Department employees with an unacceptably vague standard.

The Final Rule Should Strengthen the Regulations to Expand Online Disclosures

One commenter suggested that the Department require all responses to FOIA requests be posted online (except those that implicate the Privacy Act) and that it adopt a policy to proactively disclose information to the greatest extent possible. The Department has carefully considered this suggestion, but declines to adopt it because it believes the final rule reflects the appropriate balance between providing useful information and an appropriate use of the Department's resources.

The Final Rule Should Specifically Discuss Working With the Office of Government Information Services (''OGIS'')

Two commenters suggested the final rule discuss the services offered by OGIS. The Department agrees that OGIS's role in the FOIA process should be noted in the final rule. Rather than waiting until after an appeal decision has been made to introduce this information (as one of the commenters suggested), the Department has adopted this suggestion by requiring bureaus to provide information on OGIS in letters taking final action on a request, which will ensure maximum dissemination of the information at the most appropriate stage of the process. The revised § 2.21(a) both clarifies the provision and requires the Department to provide notice of the services offered by OGIS to all of the Department's FOIA requesters, rather than just the ones that file appeals.

The Final Rule Should Include Procedures for Confidential Business Information

One commenter suggested the Department require submitters of older records to provide additional information to explain why the information is still confidential and its release would still be harmful after the passage of time. However, § 2.28(g) already requires this, so the Department believes adopting this suggestion is not necessary.

The Final Rule Should Not Contravene Transparency Goals

One commenter asserted, in addition to a number of specific comments, that the final rule directly contravenes transparency goals. The Department has carefully considered this assertion, but believes the final rule improves overall processing and increases transparency, so no changes have been made based on this comment.

The Final Rule Should Not Change the FOIA, Exceed the Scope of the Department's Rulemaking Authority, or Be Contrary to Law

One commenter's entire comment was: ''NO.Do not change the freedom of info act.'' As noted above, this rule consists of the regulations that the Department follows in processing records under the FOIA. It does not change the FOIA itself in any way. Another commenter asserted, in addition to a number of specific comments, that the final rule exceeded the scope of the Department's rulemaking authority and was ''contrary to law.'' The Department has carefully considered these assertions, but believes the final rule was fully within the scope of the Department's rulemaking authority and completely consistent with all applicable laws, so no changes have been made based on this comment.

C. Technical and Procedural Comments

A number of commenters made suggestions related to minor word choices, minor clarifications, and additional citations, many of which have been adopted without further comment. The Department has also fixed a few minor typographical errors. Additionally, the Department added cross references, and/or made very minor clarifications in the following sections: 2.7(a) and (b), 2.15(a), 2.17, 2.19(c), 2.20(c), 2.22(c), 2.33, 2.41(a) and (c), 2.42(a), 2.43(a), and 2.60(b). Finally, in the interests of clarity, the Department also added phrases to §§ 2.31(a) and 2.63(c) and a second paragraph to § 2.37(f).

II. Compliance With Laws and Executive Orders

1. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

3. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This rule does not have a significant or unique effect on State, local or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Takings (E.O. 12630)

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required.

6. Federalism (E.O. 13132)

In accordance with Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. It would not substantially and directly affect the relationship between the Federal and state governments. A Federalism Assessment is not required.

7. Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

8. Consultation With Indian Tribes (E.O. 13175)

Under the criteria in Executive Order 13175, we have evaluated this rule and determined that it has no potential effects on federally recognized Indian tribes. This rule does not have tribal implications that impose substantial direct compliance costs on Indian Tribal governments.

9. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required.

9. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required. Pursuant to Department Manual 516 DM 2.3A(2), Section 1.10 of 516 DM 2, Appendix 1 excludes from documentation in an environmental assessment or impact statement ''policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject late to the NEPA process, either collectively or case-by-case.''

10. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required. This rule will not have a significant effect on the nation's energy supply, distribution, or use.

List of Subjects in 43 CFR Part 2

Freedom of information.

David J. Hayes,

Deputy Secretary of the Interior.

For the reasons stated in the preamble, the Department of the Interior amends 43 CFR subtitle A as follows:

PART 2—FREEDOM OF INFORMATION ACT; RECORDS AND TESTIMONY

■ 1. The authority citation for part 2 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 3717; 43 U.S.C. 1460, 1461.

■ 2. The heading of part 2 is revised to read as set forth above.

Subparts F through H [Redesignated as Subparts J through L]

■ 3. Subpart F (consisting of § 2.41), subpart G (consisting of §§ 2.45 through 2.79), and subpart H (consisting of §§ 2.80 through 2.90) are redesignated as subpart J, subpart K, and subpart L.

■ 4. Subparts A through E are revised to read as follows:

Subpart A—Introduction

Sec.

2.1 What should you know up front?

2.2 What kinds of records are not covered by the regulations in subparts A through I of this part?

Subpart B—How to Make a Request

2.3 Where should you send a FOIA request?

2.4 Does where you send your request affect its processing?

2.5 How should you describe the records you seek?

2.6 How will fee information affect the processing of your request?

2.7 What information should you include about your fee category?

2.8 Can you ask for records to be disclosed in a particular form or format?

2.9 What if your request seeks records about another person?

2.10 May you ask for the processing of your request to be expedited?

2.11 What contact information should your request include?

Subpart C—Processing Requests

2.12 What should you know about how bureaus process requests?

2.13 How do consultations and referrals work?

Subpart D—Timing of Responses to Requests

2.14 In what order are responses usually made?
2.15 What is multitrack processing and how does it affect your request?
2.16 What is the basic time limit for responding to a request?
2.17 When does the basic time limit begin for misdirected FOIA requests?
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2.21 How will the bureau respond to requests?
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Subpart A—Introduction

§ 2.1 What should you know up front?

(a) Subparts A through I of this part contain the rules that the Department follows in processing records under the Freedom of Information Act (FOIA), 5 U.S.C. 552.

(b) Definitions of terms used in Subparts A through I of this part are found at § 2.70.

(c) Subparts A through I of this part should be read in conjunction with the text of the FOIA and the OMB Fee Guidelines.

(d) The Department's FOIA Handbook and its attachments contain detailed information about Department procedures for making FOIA requests and descriptions of the types of records maintained by different Department bureaus or offices. This resource is available at *http://www.doi.gov/foia/guidance.cfm.*

(e) Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed under subparts A through I and subpart K of this part.

(f) Part 2 does not entitle any person to any service or to the disclosure of any record that is not required under the FOIA.

(g) Before you file a FOIA request, you are encouraged to review the Department's electronic FOIA libraries at *http://www.doi.gov/foia/libraries.cfm.* The material you seek may be immediately available electronically at no cost.

§ 2.2 What kinds of records are not covered by the regulations in subparts A through I of this part?

Subparts A through I of this part do not apply to records that fall under the law enforcement exclusions in 5 U.S.C. 552(c)(1)–(3). These exclusions may be used only in the limited circumstances delineated by the statute and require both prior approval from the Office of the Solicitor and the recording of their use and approval process.

Subpart B—How To Make a Request

§ 2.3 Where should you send a FOIA request?

(a) The Department does not have a central location for submitting FOIA requests and it does not maintain a central index or database of records in its possession. Instead, the Department's records are decentralized and maintained by various bureaus and offices throughout the country.

(b) To make a request for Department records, you must write directly to the bureau that you believe maintains those records.

(c) Address requests to the appropriate FOIA contact in the bureau that maintains the requested records. The Department's FOIA Web site, *http://www.doi.gov/foia/index.cfm*, lists the physical and email addresses of each bureau's FOIA Officer, along with other appropriate FOIA contacts at *http://www.doi.gov/foia/contacts.cfm.*

(d) Questions about where to send a FOIA request should be directed to the bureau that manages the underlying program or to the appropriate FOIA Public Liaison, as discussed in § 2.66 of this part.

§ 2.4 Does where you send your request affect its processing?

(a) A request to a particular bureau component (for example, a request addressed to a regional or field office) will be presumed to seek only records from that particular component.

(b) If you seek records from an entire bureau, submit your request to the bureau FOIA Officer. The bureau FOIA Officer will forward it to the bureau component(s) that he or she believes has or are likely to have responsive records.

(c) If a request to a bureau states that it seeks records located at another specific component of the same bureau, the appropriate FOIA contact will forward the request to the other component.

(d) If a request to a bureau states that it seeks records from other unspecified components within the same bureau, the appropriate FOIA contact will send the request to the Bureau FOIA Officer. He or she will forward it to the components that the bureau FOIA Officer believes have or are likely to have responsive records.

(e) If a request to a bureau states that it seeks records of another specified bureau, the bureau will route the misdirected request to the specified bureau for response.

(f) If a request to a bureau states that it seeks records from other unspecified bureaus, the bureau's FOIA Officer may forward the request to those bureaus which he or she believes have or are likely to have responsive records. If the bureau FOIA Officer forwards the request, they will notify you in writing and provide the name of a contact in the other bureau(s). If it does not forward the request, the bureau will return it to you, advise you to submit the request directly to the other bureaus, notify you that it cannot comply with the request, and close the request.

§ 2.5 How should you describe the records you seek?

(a) You must reasonably describe the records sought. A reasonable description contains sufficient detail to enable bureau personnel familiar with the subject matter of the request to locate the records with a reasonable amount of effort.

(b) You should include as much detail as possible about the specific records or types of records that you are seeking. This will assist the bureau in identifying the requested records (for example, time frames involved or specific personnel who may have the requested records). For example, whenever possible, identify:

(1) The date, title or name, author, recipient, and subject of any particular records you seek;

(2) The office that created the records you seek;

(3) The timeframe for which you are seeking records; and

(4) Any other information that will assist the bureau in locating the records.

(c) The bureau's FOIA Public Liaison can assist you in formulating or reformulating a request in an effort to better identify the records you seek.

(d) If the request does not reasonably describe the records sought, the bureau will inform you what additional information is needed. It will also notify you that it will not be able to comply with your FOIA request unless you provide the additional information requested within 20 workdays. If you receive this sort of response, you may wish to discuss it with the bureau's designated FOIA contact or its FOIA Public Liaison (see § 2.66 of this part). If the bureau does not hear from you within 20 workdays after asking for

additional information, it will presume that you are no longer interested in the records and will close the file on the request.

§ 2.6 How will fee information affect the processing of your request?

(a) Your request must explicitly state that you will pay all fees associated with processing the request, that you will pay fees up to a specified amount, and/or that you are seeking a fee waiver.

(b) If the bureau anticipates that the fees for processing the request will exceed the amount you have agreed to pay, or if you did not agree in writing to pay processing fees and the bureau anticipates the processing costs will exceed your entitlements, the bureau will notify you:

(1) Of the estimated processing fees;

(2) Of its need for either an advance payment (see § 2.50 of this part) or your written assurance that you will pay the anticipated fees (or fees up to a specified amount); and

(3) That it will not be able to fully comply with your FOIA request unless you provide the written assurance or advance payment requested.

(c) If the bureau does not receive a written response from you within 20 workdays after requesting the information in paragraph (b) of this section, it will presume that you are no longer interested in the records and will close the file on the request.

(d) If you are seeking a fee waiver, your request must include sufficient justification (see the criteria in §§ 2.45, 2.48, and 2.56 of this part). Failure to provide sufficient justification will result in a denial of the fee waiver request. If you are seeking a fee waiver, you may also indicate the amount you are willing to pay if the fee waiver is denied. This allows the bureau to process the request for records while it considers your fee waiver request.

(e) The bureau will begin processing the request only after the fee issues are resolved.

(f) If you are required to pay a fee and it is later determined on appeal that you were entitled to a full or partial fee waiver, you will receive an appropriate refund.

§ 2.7 What information should you include about your fee category?

(a) A request should indicate your fee category (that is, whether you are a commercial-use requester, news media, educational or noncommercial scientific institution, or other requester as described in §§ 2.38 and 2.39 of this part).

(b) If you submit a FOIA request on behalf of another person or organization (for example, if you are an attorney submitting a request on behalf of a client), the bureau will determine the fee category by considering the underlying requester's identity and intended use of the information.

(c) If your fee category is unclear, the bureau may ask you for additional information (see § 2.51 of this part).

§ 2.8 Can you ask for records to be disclosed in a particular form or format?

(a) Generally, you may choose the form or format of disclosure for records requested. The bureau must provide the records in the requested form or format if the bureau can readily reproduce the record in that form or format.

(b) The bureau may charge you the direct costs involved in converting records to the requested format if the bureau does not normally maintain the records in that format (see § 2.44 of this part).

§ 2.9 What if your request seeks records about another person?

(a) When a request seeks records about another person, you may receive greater access by submitting proof that the person either:

(1) Consents to the release of the records to you (for example, a notarized authorization signed by that person); or

(2) Is deceased (for example, a copy of a death certificate or an obituary).

(b) At its discretion, the bureau can require you to supply additional information if necessary to verify that a particular person has consented to disclosure or is deceased.

§ 2.10 May you ask for the processing of your request to be expedited?

You may ask for the processing of your request to be expedited. The bureau will determine whether to expedite the processing of your request using the criteria outlined in § 2.20.

§ 2.11 What contact information should your request include?

A request should include your name, mailing address, daytime telephone number (or the name and telephone number of an appropriate contact), email address, and fax number (if available) in case the bureau needs additional information or clarification of your request.

Subpart C—Processing Requests

§ 2.12 What should you know about how bureaus process requests?

(a) Except as described in §§ 2.4 and 2.13 of this part, the bureau to which the request is addressed is responsible for responding to the request and for making a reasonable effort to search for responsive records.

(b) In determining which records are responsive to a request, the bureau will include only records in its possession and control on the date that it begins its search.

(c) The bureau will make reasonable efforts to search for the requested records in electronic form or format, except when these efforts would significantly interfere with the operation of the bureau's automated information system.

(d) If a bureau receives a request for records in its possession that it did not create or that another bureau or a Federal agency is substantially concerned with, it may undertake consultations and/or referrals as described in § 2.13.

§ 2.13 How do consultations and referrals work?

(a) Consultations and referrals can occur within the Department or outside the Department.

(1) Paragraphs (b) and (c) of this section addresses consultations and referrals that occur within the Department when the bureau has responsive records.

(2) Paragraphs (d) through (g) of this section address consultations and referrals that occur outside the Department when the bureau has responsive records.

(3) Paragraph (h) of this section addresses what happens when the bureau has no responsive records but believes responsive records may be in the possession of a Federal agency outside the Department.

(b) If a bureau (other than the Office of Inspector General) receives a request for records in its possession that another bureau created or is substantially concerned with, it will either:

(1) Consult with the other bureau before deciding whether to release or withhold the records; or

(2) Refer the request, along with the records, to that other bureau for direct response.

(c) The bureau that originally received the request will notify you of the referral in writing. When the bureau notifies you of the referral, it will tell you whether the referral was for part or all of your request and provide the name and contact information for the other bureau.

(d) If, while responding to a request, the bureau locates records that originated with another Federal agency, it usually will refer the request and any responsive records to that other agency for a release determination and direct response.

(e) If the bureau refers records to another agency, it will document the

referral and maintain a copy of the records that it refers and notify you of the referral in writing, unless the notification will itself disclose a sensitive, exempt fact. When the bureau notifies you of the referral, it will tell you whether the referral was for part or all of your request and provide the name and contact information for the other agency. You may treat such a response as a denial of records and file an appeal, in accordance with the procedures in § 2.59 of this part.

(f) If the bureau locates records that originated with another Federal agency while responding to a request, the bureau will make the release determination itself (after consulting with the originating agency) when:

(1) The record is of primary interest to the Department (for example, a record may be of primary interest to the Department if it was developed or prepared according to the Department's regulations or directives, or in response to a Departmental request);

(2) The Department is in a better position than the originating agency to assess whether the record is exempt from disclosure;

(3) The originating agency is not subject to the FOIA; or

(4) It is more efficient or practical depending on the circumstances.

(g) If the bureau receives a request for records that another Federal agency has classified under any applicable executive order concerning record classification, it must refer the request to that agency for response.

(h) If the bureau receives a request for records not in its possession, but that the bureau believes may be in the possession of a Federal agency outside the Department, the bureau will return the request to you, may advise you to submit it directly to the agency, will notify you that the bureau cannot comply with the request, and will close the request.

Subpart D—Timing of Responses to Requests

§ 2.14 In what order are responses usually made?

The bureau ordinarily will respond to requests according to their order of receipt within their processing track.

§ 2.15 What is multitrack processing and how does it affect your request?

(a) Bureaus use processing tracks to distinguish simple requests from more complex ones on the basis of the estimated number of workdays needed to process the request.

(b) In determining the number of workdays needed to process the request, the bureau considers factors such as the number of pages involved in processing the request or the need for consultations.

(c) The basic processing tracks are designated as follows:

(1) Simple: requests in this track will take between one to five workdays to process;

(2) Normal: requests in this track will take between six to twenty workdays to process;

(3) Complex: requests in this track will take between twenty-one workdays and sixty workdays to process; or

(4) Exceptional/Voluminous: requests in this track involve very complex processing challenges, which may include a large number of potentially responsive records, and will take over sixty workdays to process.

(d) Bureaus also have a specific processing track for requests that are granted expedited processing under the standards in § 2.20 of this part. These requests will be processed as soon as practicable.

(e) Bureaus must advise you of the track into which your request falls and, when appropriate, will offer you an opportunity to narrow your request so that it can be placed in a different processing track.

(f) The use of multitrack processing does not alter the statutory deadline for a bureau to determine whether to comply with your FOIA request (see § 2.16 of this part).

§ 2.16 What is the basic time limit for responding to a request?

(a) Ordinarily, the bureau has 20 workdays after the date of receipt to determine whether to comply with (for example, grant, partially grant, or deny) a FOIA request, but unusual circumstances may allow the bureau to take longer than 20 workdays (see § 2.19).

(b) A consultation or referral under § 2.13 of this part does not restart the statutory time limit for responding to a request.

§ 2.17 When does the basic time limit begin for misdirected FOIA requests?

The basic time limit for a misdirected FOIA request (see § 2.4(e) of this part) begins no later than ten workdays after the request is first received by any component of the Department that is designated to receive FOIA requests.

§ 2.18 When can the bureau suspend the basic time limit?

(a) The basic time limit in § 2.16 of this part may be temporarily suspended for the time it takes you to respond to one written communication from the bureau reasonably asking for clarifying information.

(b) The basic time limit in § 2.16 may also repeatedly be temporarily suspended for the time it takes you to respond to written communications from the bureau that are necessary to clarify issues regarding fee assessment (see § 2.51 of this part).

§ 2.19 When may the bureau extend the basic time limit?

(a) The bureau may extend the basic time limit if unusual circumstances exist. Before the expiration of the basic 20 workday time limit to respond, the bureau will notify you in writing of:

(1) The unusual circumstances involved; and

(2) The date by which it expects to complete processing the request.

(b) If the processing time will extend beyond a total of 30 workdays, the bureau will:

(1) Give you an opportunity to limit the scope of the request or agree to an alternative time period for processing; and

(2) Make available its FOIA Public Liaison (see § 2.66 of this part) to assist in resolving any disputes between you and the bureau.

(c) If the bureau extends the time limit under this section and you do not receive a response in accordance with § 2.16(a) in that time period, you may consider the request denied and file an appeal in accordance with the procedures in § 2.59.

(d) Your refusal to reasonably modify the scope of a request or arrange an alternative time frame for processing a request after being given the opportunity to do so may be considered for litigation purposes as a factor when determining whether exceptional circumstances exist.

§ 2.20 When will expedited processing be provided and how will it affect your request?

(a) The bureau will provide expedited processing upon request if you demonstrate to the satisfaction of the bureau that there is a compelling need for the records. The following circumstances demonstrate a compelling need:

(1) Where failure to expedite the request could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) Where there is an urgency to inform the public about an actual or alleged Federal Government activity and the request is made by a person primarily engaged in disseminating information.

(i) In most situations, a person primarily engaged in disseminating

information will be a representative of the news media.

(ii) If you are not a full time member of the news media, to qualify for expedited processing here, you must establish that your main professional activity or occupation is information dissemination, although it need not be your sole occupation.

(iii) The requested information must be the type of information which has particular value that will be lost if not disseminated quickly; this ordinarily refers to a breaking news story of general public interest.

(iv) Information of historical interest only or information sought for litigation or commercial activities would not qualify, nor would a news media deadline unrelated to breaking news.

(b) If you seek expedited processing, you must submit a statement that:

(1) Explains in detail how your request meets one or both of the criteria in paragraph (a) of this section; and

(2) Certifies that your explanation is true and correct to the best of your knowledge and belief.

(c) You may ask for expedited processing at any time by writing to the appropriate FOIA contact in the bureau that maintains the records requested. When making a request for expedited processing of an administrative appeal, submit the request to the FOIA Appeals Officer.

(d) The bureau must notify you of its decision to grant or deny expedited processing within 10 calendar days of receiving an expedited processing request.

(e) If expedited processing is granted, the request will be given priority, placed in the processing track for expedited requests, and be processed as soon as practicable.

(f) If expedited processing is denied, the bureau will notify you of the right to appeal the decision on expedited processing in accordance with the procedures in subpart H of this part.

(g) If you appeal the decision on expedited processing, your appeal (if it is properly formatted under § 2.59 of this part) will be processed ahead of other appeals.

(h) If the bureau has not responded to the request for expedited processing within 10 calendar days, you may file an appeal (for nonresponse in accordance with § 2.57(a)(8) of this part).

Subpart E—Responses to Requests

§ 2.21 How will the bureau respond to requests?

(a) When the bureau informs you of its decision to comply with a request by granting, partially granting, or denying the request, it will do so in writing and in accordance with the deadlines in subpart D of this part. The bureau's written response will include a statement about the services offered by the Office of Government Information Services (OGIS), using standard language that can be found at: *http://www.doi.gov/foia/news/guidance/index.cfm*.

(b) If the bureau determines that your request will take longer than 10 workdays to process, the bureau immediately will send you a written acknowledgment that includes the request's individualized tracking number and processing track (see § 2.15(e)). The acknowledgement may also include a brief description of the subject of your request.

§ 2.22 How will the bureau grant requests?

(a) Once the bureau makes a determination to grant a request in full or in part, it must notify you in writing.

(b) The notification will inform you of any fees charged under subpart G of this part.

(c) The bureau will release records (or portions of records) to you promptly upon payment of any applicable fees (or before then, in accordance with § 2.37(c) of this part).

(d) If the records (or portions of records) are not included with the bureau's notification, the bureau will advise you how, when, and where the records will be made available.

§ 2.23 When will the bureau deny a request or procedural benefits?

(a) A bureau denies a request when it makes a decision that:

(1) A requested record is exempt, in full or in part;

(2) The request does not reasonably describe the records sought;

(3) A requested record does not exist, cannot be located, or is not in the bureau's possession; or

(4) A requested record is not readily reproducible in the form or format you seek.

(b) A bureau denies a procedural benefit only, and not access to the underlying records, when it makes a decision that:

(1) A fee waiver, or another fee-related issue, will not be granted; or

(2) Expedited processing will not be provided.

(c) The bureau must consult with the Office of the Solicitor before it denies a fee waiver request or withholds all or part of a requested record.

§ 2.24 How will the bureau deny requests?

(a)The bureau must notify you in writing of any denial of your request.

(b) The denial notification must include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reasons for the denial, including a reference to any FOIA exemption(s) applied by the bureau to withhold records in full or in part;

(3) An estimate of the volume of any records or information withheld, for example, by providing the number of pages or some other reasonable form of estimation, unless such an estimate would harm an interest protected by the exemption(s) used to withhold the records or information;

(4) The name and title of the Office of the Solicitor attorney consulted (if the bureau is denying a fee waiver request or withholding all or part of a requested record); and

(5) A statement that the denial may be appealed under subpart H of this part and a description of the requirements set forth therein.

§ 2.25 What if the requested records contain both exempt and nonexempt material?

If responsive records contain both exempt and nonexempt material, the bureau will consult with the Office of the Solicitor, as discussed in § 2.23(c). After consultation, the bureau will partially grant and partially deny the request by:

(a) Segregating and releasing the nonexempt information, unless the nonexempt material is so intertwined with the exempt material that disclosure of it would leave only meaningless words and phrases;

(b) Indicating on the released portion of the record the amount of information deleted and the FOIA exemption under which the deletion was made, unless doing so would harm an interest protected by the FOIA exemption used to withhold the information; and

(c) If technically feasible, placing the information required by paragraph (b) of this section at the place in the record where the deletion was made.

■ 5. Subparts F through I are added to read as follows:

Subpart F—Handling Confidential Information

Sec.

2.26 How will the bureau interact with the submitter of possibly confidential information?
2.27 When will the bureau notify a submitter of a request for their possibly confidential information?
2.28 What information will the bureau include when it notifies a submitter of a request for their possibly confidential information?

2.29 When will the bureau not notify a submitter of a request for their possibly confidential information?
2.30 How and when may a submitter object to disclosure of confidential information?
2.31 What must a submitter include in a detailed Exemption 4 objection statement?
2.32 How will the bureau consider the submitter's objections?
2.33 What if the bureau determines it will disclose information over the submitter's objections?
2.34 Will a submitter be notified of a FOIA lawsuit?
2.35 Will you receive notification of activities involving the submitter?
2.36 Can a bureau release information protected by Exemption 4?

Subpart G—Fees

2.37 What general principles govern fees?
2.38 What are the requester fee categories?
2.39 Does your requester category affect the fees you are charged?
2.40 How will fee amounts be determined?
2.41 What search fees will you have to pay?
2.42 What duplication fees will you have to pay?
2.43 What review fees will you have to pay?
2.44 What fees for other services will you have to pay?
2.45 When will the bureau waive fees?
2.46 When may you ask the bureau for a fee waiver?
2.47 How will the bureau notify you if it denies your fee waiver request?
2.48 How will the bureau evaluate your fee waiver request?
2.49 When will you be notified of anticipated fees?
2.50 When will the bureau require advance payment?
2.51 What if the bureau needs clarification about fee issues?
2.52 How will you be billed?
2.53 How will the bureau collect fees owed?
2.54 When will the bureau combine or aggregate requests?
2.55 What if other statutes require the bureau to charge fees?
2.56 May the bureau waive or reduce your fees at its discretion?

Subpart H—Administrative Appeals

2.57 When may you file an appeal?
2.58 How long do you have to file an appeal?
2.59 How do you file an appeal?
2.60 Who makes decisions on appeals?
2.61 How are decisions on appeals issued?
2.62 When can you expect a decision on your appeal?
2.63 Can you receive expedited processing of appeals?
2.64 Must you submit an appeal before seeking judicial review?

Subpart I—General Information

2.65 Where are records made available?
2.66 What are public liaisons?
2.67 When will the Department make records available without a FOIA request?
2.68 How will FOIA materials be preserved?
2.69 How will a bureau handle a request for federally-funded research data?
2.70 What definitions apply to subparts A through I of this part?

Subpart F—Handling Confidential Information

§ 2.26 How will the bureau interact with the submitter of possibly confidential information?

(a) The Department encourages, but does not require, submitters to designate confidential information in good faith at the time of submission. Such designations assist the bureau in determining whether information obtained from the submitter is confidential information, but will not always be determinative.

(b) If, in the course of responding to a FOIA request, a bureau cannot readily determine whether information is confidential information, the bureau will:

(1) Consult with the submitter under §§ 2.27 and 2.28; and

(2) Provide the submitter an opportunity to object to a decision to disclose the information under §§ 2.30 and 2.31 of this subpart.

§ 2.27 When will the bureau notify a submitter of a request for their possibly confidential information?

(a) Except as outlined in § 2.29 of this subpart, a bureau must promptly notify a submitter in writing when it receives a FOIA request if either:

(1) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4 of the FOIA, found at 5 U.S.C. 552(b)(4); or

(2) The bureau believes that requested information may be protected from disclosure under Exemption 4.

(b) If a large number of submitters are involved, the bureau may publish a notice in a manner reasonably calculated to reach the attention of the submitters (for example, in newspapers or newsletters, the bureau's Web site, or the **Federal Register**) instead of providing a written notice to each submitter.

§ 2.28 What information will the bureau include when it notifies a submitter of a request for their possibly confidential information?

A notice to a submitter must include:

(a) Either a copy of the FOIA request or the exact language of the request;

(b) Either a description of the possibly confidential information located in response to the request or a copy of the responsive records, or portions of records, containing the information;

(c) A description of the procedures for objecting to the release of the possibly confidential information under §§ 2.30 and 2.31 of this subpart;

(d) A time limit for responding to the bureau—no less than 10 workdays from receipt or publication of the notice (as set forth in § 2.27(b) of this subpart)—to object to the release and to explain the basis for the objection;

(e) Notice that information contained in the submitter's objections may itself be subject to disclosure under the FOIA;

(f) Notice that the bureau, not the submitter, is responsible for deciding whether the information will be released or withheld;

(g) A request for the submitter's views on whether they still consider the information to be confidential if the submitter designated the material as confidential commercial or financial information 10 or more years before the request; and

(h) Notice that failing to respond within the time frame specified under § 2.28(d) of this subpart will create a presumption that the submitter has no objection to the disclosure of the information in question.

§ 2.29 When will the bureau not notify a submitter of a request for their possibly confidential information?

The notice requirements of § 2.28 of this subpart will not apply if:

(a) The information has been lawfully published or officially made available to the public; or

(b) Disclosure of the information is required by a statute other than the FOIA or by a regulation (other than this part) issued in accordance with the requirements of Executive Order 12600.

§ 2.30 How and when may a submitter object to the disclosure of confidential information?

(a) If a submitter has any objections to the disclosure of confidential information, the submitter should provide a detailed written statement to the bureau that specifies all grounds for withholding the particular information under any FOIA exemption (see § 2.31 of this subpart for further discussion of Exemption 4 objection statements).

(b) A submitter who does not respond within the time period specified under § 2.28(d) of this subpart will be considered to have no objection to disclosure of the information. Responses received by the bureau after this time period will not be considered by the bureau unless the appropriate bureau FOIA contact determines, in his or her sole discretion, that good cause exists to accept the late response.

§ 2.31 What must a submitter include in a detailed Exemption 4 objection statement?

(a) To rely on Exemption 4 as basis for nondisclosure, the submitter must explain why the information is confidential information. To do this, the submitter must give the bureau a detailed written statement. This statement must include a specific and detailed discussion of why the information is a trade secret or, if the information is not a trade secret, the following three categories must be addressed (unless the bureau informs the submitter that a response to one of the first two categories will not be necessary):

(1) Whether the Government required the information to be submitted, and if so, how substantial competitive or other business harm would likely result from release;

(2) Whether the submitter provided the information voluntarily and, if so, how the information fits into a category of information that the submitter does not customarily release to the public; and

(3) A certification that the information is confidential, has not been disclosed to the public by the submitter, and is not routinely available to the public from other sources.

(b) If not already provided, the submitter must include a daytime telephone number, an email and mailing address, and a fax number (if available).

§ 2.32 How will the bureau consider the submitter's objections?

(a) The bureau must carefully consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(b) The bureau, not the submitter, is responsible for deciding whether the information will be released or withheld.

§ 2.33 What if the bureau determines it will disclose information over the submitter's objections?

If the bureau decides to disclose information over the objection of a submitter, the bureau must notify the submitter by certified mail or other traceable mail, return receipt requested. The notification must be sent to the submitter's last known address and must include:

(a) The specific reasons why the bureau determined that the submitter's disclosure objections do not support withholding the information;

(b) Copies of the records or information the bureau intends to release; and

(c) Notice that the bureau intends to release the records or information no less than 10 workdays after receipt of the notice by the submitter.

§ 2.34 Will a submitter be notified of a FOIA lawsuit?

If you file a lawsuit seeking to compel the disclosure of confidential information, the bureau must promptly notify the submitter.

§ 2.35 Will you receive notification of activities involving the submitter?

If any of the following occur, the bureau will notify you:

(a) The bureau provides the submitter with notice and an opportunity to object to disclosure;

(b) The bureau notifies the submitter of its intent to disclose the requested information; or

(c) A submitter files a lawsuit to prevent the disclosure of the information.

§ 2.36 Can a bureau release information protected by Exemption 4?

If a bureau determines that the requested information is protected from release by Exemption 4 of the FOIA, the bureau has no discretion to release the information. Release of information protected from release by Exemption 4 is prohibited by the Trade Secrets Act, a criminal provision found at 18 U.S.C. 1905.

Subpart G—Fees

§ 2.37 What general principles govern fees?

(a) The bureau will charge for processing requests under the FOIA in accordance with this subpart and with the OMB Fee Guidelines.

(b) The bureau may contact you for additional information to resolve fee issues.

(c) The bureau ordinarily will collect all applicable fees before sending copies of records to you.

(d) You may usually pay fees by check, certified check, or money order made payable to the ''Department of the Interior'' or the bureau.

(1) Where appropriate, the bureau may require that your payment be made in the form of a certified check.

(2) You may also be able to pay your fees by credit card. You may contact the bureau to determine what forms of payment it accepts.

(e) The bureau should ensure that it conducts searches, review, and duplication in the most efficient and the least expensive manner so as to minimize costs for both you and the bureau.

(f) If the Department does not comply with any of the FOIA's statutory time limits:

(1) The bureau cannot assess search fees for your FOIA request, unless unusual or exceptional circumstances apply; and

(2) Depending on your fee category, the bureau may not be able to assess duplication fees for your FOIA request, as discussed in § 2.39(b) of this subpart.

§ 2.38 What are the requester fee categories?

(a) There are four categories of requesters for the purposes of determining fees—commercial-use, educational and noncommercial scientific institutions, representatives of news media, and all others.

(b) The bureau's decision to place you in a particular fee category will be made on a case-by-case basis based on your intended use of the information and, in most cases, your identity. If you do not submit sufficient information in your FOIA request for the bureau to determine your proper fee category, the bureau may ask you to provide additional information (see § 2.51 of this subpart).

(c) See § 2.70 of this part for the definitions of each of these fee categories.

§ 2.39 How does your requester category affect the fees you are charged?

(a) You will be charged as shown in the following table:

Requester Category	Search fees	Review fees	Duplication fees
Commercial use requester	Yes	Yes	Yes.
Educational and non-commercial scientific institutions	No	No	Yes (first 100 pages, or equivalent volume, free).
Representative of news media requester	No	No	Yes (first 100 pages, or equivalent volume, free).
All other requesters	Yes (first 2 hours free)	No	Yes (first 100 pages, or equivalent volume, free).

(b) If you are in the fee category of a representative of the news media or an educational and noncommercial scientific institution and the Department does not comply with any of the FOIA's statutory time limits, the Department cannot assess duplication fees for the FOIA request in question, unless unusual or exceptional circumstances apply to the processing of the request.

§ 2.40 How will fee amounts be determined?

(a) The bureau will charge the types of fees discussed below unless a waiver of fees is required under § 2.39 of this subpart or has been granted under § 2.45 or § 2.56.

(b) Because the types of fees discussed below already account for the overhead costs associated with a given fee type, the bureau should not add any additional costs to those charges.

§ 2.41 What search fees will you have to pay?

(a) The bureau will charge search fees for all requests, subject to the restrictions of §§ 2.37(f), 2.39, and 2.40(a) of this subpart. The bureau may charge you for time spent searching even if it does not locate any responsive records or if it determines that the records are entirely exempt from disclosure.

(b) For each quarter hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees will be the average hourly General Schedule (GS) base salary, plus the District of Columbia locality payment, plus 16 percent for benefits, of employees in the following three categories, as applicable:

(1) Clerical—Based on GS–6, Step 5, pay (all employees at GS–7 and below are classified as clerical for this purpose);

(2) Professional—Based on GS–11, Step 7, pay (all employees at GS–8 through GS–12 are classified as professional for this purpose); and

(3) Managerial—Based on GS–14, Step 2, pay (all employees at GS–13 and above are classified as managerial for this purpose).

(c) You can review the current fee schedule for the categories discussed above in paragraph (b) of this section at *http://www.doi.gov/foia/fees-waivers.cfm.*

(d) Some requests may require retrieval of records stored at a Federal records center operated by the National Archives and Records Administration. For these requests, bureaus will charge additional costs in accordance with the Transactional Billing Rate Schedule established by the National Archives and Records Administration.

§ 2.42 What duplication fees will you have to pay?

(a) The bureau will charge duplication fees, subject to the restrictions of §§ 2.37(f), 2.39, and 2.40(a) of this subpart.

(b) If photocopies or scans are supplied, the bureau will provide one copy per request at the cost determined by the table in appendix A to this part.

(c) For other forms of duplication, the bureau will charge the actual costs of producing the copy, including the time spent by personnel duplicating the requested records. For each quarter hour spent by personnel duplicating the requested records, the fees will be the same as those charged for a search under § 2.41(b) of this subpart.

(d) If the bureau must scan paper records to accommodate your preference to receive records in an electronic format, you will pay both the per page amount noted in Appendix A to this part and the time spent by personnel scanning the requested records. For each quarter hour spent by personnel scanning the requested records, the fees will be the same as those charged for a search under § 2.41(b) of this subpart.

§ 2.43 What review fees will you have to pay?

(a) The bureau will charge review fees if you make a commercial-use request, subject to the restrictions of §§ 2.37(f), 2.39, and 2.40(a) of this subpart.

(b) The bureau will assess review fees in connection with the initial review of the record (the review conducted by the bureau to determine whether an exemption applies to a particular record or portion of a record).

(c) The Department will not charge for reviews at the administrative appeal stage of exemptions applied at the initial review stage. However, if the appellate authority determines that an exemption no longer applies, any costs associated with the bureau's re-review of the records to consider the use of other exemptions may be assessed as review fees.

(d) The bureau will charge review fees at the same rates as those charged for a search under § 2.41(b) of this subpart.

(e) The bureau can charge review fees even if the record(s) reviewed ultimately is not disclosed.

§ 2.44 What fees for other services will you have to pay?

(a) Although not required to provide special services, if the bureau chooses to do so as a matter of administrative discretion, it will charge you the direct costs of providing the service.

(b) Examples of these services include certifying that records are true copies under subpart L of this part, providing multiple copies of the same record, converting records to a requested format, obtaining research data under § 2.69 of this part, or sending records by means other than first class mail.

(c) The bureau will notify you of these fees before they accrue and will obtain your written assurance of payment or an advance payment before proceeding. See §§ 2.49 and 2.50 of this subpart.

§ 2.45 When will the bureau waive fees?

(a) The bureau will release records responsive to a request without charge (in other words, it will give you a full fee waiver) or at a reduced charge (in other words, it will give you a partial fee waiver, as discussed further in paragraph (b) of this section) if the bureau determines, based on all available information, that you have demonstrated (under the factors listed in § 2.48 of this subpart) that disclosing the information is:

(1) In the public interest because it is likely to contribute significantly to public understanding of government operations or activities, and

(2) Not primarily in your commercial interest.

(b) A partial fee waiver may be appropriate if some but not all of the requested records are likely to contribute significantly to public understanding of the operations and activities of the government.

(c) When deciding whether to waive or reduce fees, the bureau will rely on the fee waiver justification submitted in your request letter. If the letter does not include sufficient justification, the bureau will deny the fee waiver request. The bureau may, at its discretion, request additional information from you (see § 2.51 of this subpart).

(d) The burden is on you to justify entitlement to a fee waiver. Requests for fee waivers are decided on a case-by-case basis under the criteria discussed above in paragraph (a) of this section and § 2.48 of this subpart. If you have received a fee waiver in the past, that does not mean you are automatically entitled to a fee waiver for every request submitted.

(e) Discretionary fee waivers are addressed in § 2.56 of this subpart.

(f) The bureau must not make value judgments about whether the information at issue is ''important'' enough to be made public; it is not the bureau's role to attempt to determine the level of public interest in requested information.

§ 2.46 When may you ask the bureau for a fee waiver?

(a) You should request a fee waiver when your request is first submitted to the bureau (see § 2.6 of this part).

(b) You may submit a fee waiver request at a later time if the underlying record request is still either pending or on administrative appeal.

§ 2.47 How will the bureau notify you if it denies your fee waiver request?

If the bureau denies your request for a fee waiver, it will notify you, in writing, of the following:

(a) The basis for the denial, including a full explanation of why the fee waiver request does not meet the Department's fee waiver criteria in § 2.48 of this subpart.

(b) The name and title or position of each person responsible for the denial;

(c) The name and title of the Office of the Solicitor attorney consulted; and

(d) Your right to appeal the denial to the FOIA Appeals Officer, under the procedures in § 2.57 of this part, within 30 workdays after the date of the fee waiver denial letter.

§ 2.48 How will the bureau evaluate your fee waiver request?

(a) In deciding whether your fee waiver request meets the requirements of § 2.45(a)(1) of this subpart, the bureau will consider the criteria listed in paragraphs one through four below. You must address each of these criteria.

(1) How the records concern the operations or activities of the Federal government.

(2) How disclosure is likely to contribute to public understanding of those operations or activities, including:

(i) How the contents of the records are meaningfully informative;

(ii) The logical connection between the content of the records and the operations or activities;

(iii) How disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding;

(iv) Your identity, vocation, qualifications, and expertise regarding the requested information and information that explains how you plan to disclose the information in a manner that will be informative to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding

(v) Your ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject (for example, how and to whom do you intend to disseminate the information).

(3) How disclosure is likely to significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding, including:

(i) Whether the information being requested is new;

(ii) Whether the information would confirm or clarify data that has been released previously;

(iii) How disclosure will increase the level of public understanding of the operations or activities of the Department or a bureau that existed prior to disclosure; and

(iv) Whether the information is already publicly available. If the Government previously has published the information you are seeking or it is routinely available to the public in a library, reading room, through the Internet, or as part of the administrative record for a particular issue, it is less likely that there will be a significant contribution from release.

(4) How the public's understanding of the subject in question will be enhanced to a significant extent by the disclosure.

(b) In deciding whether the fee waiver meets the requirements in § 2.45(a)(2) of this subpart, the bureau will consider any commercial interest of yours that would be furthered by the requested disclosure.

(1) You are encouraged to provide explanatory information regarding this consideration.

(2) The bureau will not find that disclosing the requested information will be primarily in your commercial interest where the public interest is greater than any identified commercial interest in disclosure.

(3) If you do have a commercial interest that would be furthered by disclosure, explain how the public interest in disclosure would be greater than any commercial interest you or your organization may have in the documents.

(i) Your identity, vocation, and intended use of the requested records are all factors to be considered in determining whether disclosure would be primarily in your commercial interest.

(ii) If you are a representative of a news media organization seeking information as part of the news gathering process, we will presume that the public interest outweighs your commercial interest.

(iii) If you represent a business/corporation/association or you are an attorney representing such an organization, we will presume that your commercial interest outweighs the public interest unless you demonstrate otherwise.

§ 2.49 When will you be notified of anticipated fees?

(a) The bureau will notify you under this section unless:

(1) The anticipated fee is less than $50 (you will not be charged if the fee for processing your request is less than $50, unless multiple requests are aggregated under § 2.54 of this subpart).

(2) You have been granted a full fee waiver; or

(3) You have previously agreed to pay all the fees associated with the request.

(b) If none of the above exceptions apply, the bureau will:

(1) Promptly notify you of the estimated costs for search, review, and/or duplication;

(2) Ask you to provide written assurance within 20 workdays that you will pay all fees or fees up to a designated amount;

(3) Notify you that it will not be able to comply with your FOIA request unless you provide the written assurance requested; and

(4) Give you an opportunity to reduce the fee by modifying the request.

(c) If the bureau does not receive your written assurance of payment under paragraph (b)(2) of this section within 20 workdays, the request will be closed.

(d) After the bureau begins processing a request, if it finds that the actual cost will exceed the amount you previously agreed to pay, the bureau will:

(1) Stop processing the request;

(2) Promptly notify you of the higher amount and ask you to provide written assurance of payment; and

(3) Notify you that it will not be able to fully comply with your FOIA request unless you provide the written assurance requested; and

(4) Give you an opportunity to reduce the fee by modifying the request.

(e) If you wish to modify your request in an effort to reduce fees, the bureau's FOIA Public Liaison can assist you.

§ 2.50 When will the bureau require advance payment?

(a) The bureau will require advance payment before starting further work when it finds the estimated fee is over $250 and:

(1) You have never made a FOIA request to the Department requiring the payment of fees; or

(2) You did not pay a previous FOIA fee within 30 calendar days of the date of billing.

(b) If the bureau believes that you did not pay a previous FOIA fee within 30 calendar days of the date of billing, the bureau will require you to either:

(1) Demonstrate you paid prior fee within 30 calendar days of the date of billing; or

(2) Pay any unpaid amount of the previous fee, plus any applicable interest penalties (see § 2.53 of this subpart), and pay in advance the estimated fee for the new request.

(c) When the bureau notifies you that an advance payment is due, it will give you an opportunity to reduce the fee by modifying the request.

(d) The bureau may require payment before records are sent to you; such a payment is not considered an ''advance payment'' under § 2.50(a) of this subpart.

(e) If the bureau requires advance payment, it will start further work only after receiving the advance payment. It will also notify you that it will not be able to comply with your FOIA request unless you provide the advance payment. Unless you pay the advance payment within 20 workdays after the date of the bureau's fee letter, the bureau will presume that you are no longer interested and will close the file on the request.

§ 2.51 What if the bureau needs clarification about fee issues?

(a) If your FOIA request does not contain sufficient information for the bureau to determine your proper fee category or leaves another fee issue unclear, the bureau may ask you to provide additional clarification. If it does so, the bureau will notify you that it will not be able to comply with your FOIA request unless you provide the clarification requested.

(b) If the bureau asks you to provide clarification, the 20-workday statutory time limit for the bureau to respond to the request is temporarily suspended.

(1) If the bureau hears from you within 20 workdays, the 20-workday statutory time limit for processing the request will resume (see § 2.16 of this part).

(2) If you still have not provided sufficient information to resolve the fee issue, the bureau may ask you again to provide additional clarification and notify you that it will not be able to comply with your FOIA request unless you provide the additional information requested within 20 workdays.

(3) If the bureau asks you again for additional clarification, the statutory time limit for response will be temporarily suspended again and will resume again if the bureau hears from you within 20 workdays.

(c) If the bureau asks for clarification about a fee issue and does not receive a written response from you within 20 workdays, it will presume that you are no longer interested and will close the file on the request.

§ 2.52 How will you be billed?

If you are required to pay a fee associated with a FOIA request, the bureau processing the request will send a bill for collection.

§ 2.53 How will the bureau collect fees owed?

(a) The bureau may charge interest on any unpaid bill starting on the 31st day following the billing date.

(b) The bureau will assess interest charges at the rate provided in 31 U.S.C. 3717 and implementing regulations and interest will accrue from the billing date until the bureau receives payment.

(c) The bureau will follow the provisions of the Debt Collection Act of 1982 (Public Law 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset to collect overdue amounts and interest.

(d) This section does not apply if you are a state, local, or tribal government.

§ 2.54 When will the bureau combine or aggregate requests?

(a) The bureau may aggregate requests and charge accordingly when it reasonably believes that you, or a group of requesters acting in concert with you, are attempting to avoid fees by dividing a single request into a series of requests on a single subject or related subjects.

(1) The bureau may presume that multiple requests of this type made within a 30-day period have been made to avoid fees.

(2) The bureau may aggregate requests separated by a longer period only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved.

(b) The bureau will not aggregate multiple requests involving unrelated matters.

§ 2.55 What if other statutes require the bureau to charge fees?

(a) The fee schedule in appendix A to this part does not apply to fees charged under any statute that specifically requires the bureau to set and collect fees for particular types of records.

(b) If records otherwise responsive to a request are subject to a statutorily-based fee schedule, the bureau will inform you whom to contact to obtain the records.

§ 2.56 May the bureau waive or reduce your fees at its discretion?

(a) The bureau may waive or reduce fees at its discretion if a request involves furnishing:

(1) A copy of a record that the bureau has reproduced for free distribution;

(2) One copy of a personal document (for example, a birth certificate) to a person who has been required to furnish it for retention by the Department;

(3) One copy of the transcript of a hearing before a hearing officer in a grievance or similar proceeding to the employee for whom the hearing was held;

(4) Records to donors with respect to their gifts;

(5) Records to individuals or private nonprofit organizations having an official, voluntary, or cooperative relationship with the Department if it will assist their work with the Department;

(6) A reasonable number of records to members of the U.S. Congress; state, local, and foreign governments; public international organizations; or Indian tribes, when to do so is an appropriate courtesy, or when the recipient is carrying on a function related to a Departmental function and the waiver will help accomplish the Department's work;

(7) Records in conformance with generally established business custom (for example, furnishing personal reference data to prospective employers of current or former Department employees); or

(8) One copy of a single record to assist you in obtaining financial benefits to which you may be entitled (for example, veterans or their dependents, employees with Government employee compensation claims).

(b) You cannot appeal the denial of a discretionary fee waiver or reduction.

Subpart H—Administrative Appeals

§ 2.57 When may you file an appeal?

(a) You may file an appeal when:

(1) The bureau withholds records, or parts of records;

(2) The bureau informs you that your request has not adequately described the records sought;

(3) The bureau informs you that it does not possess or cannot locate responsive records and you have reason to believe this is incorrect or that the search was inadequate;

(4) The bureau did not address all aspects of the request for records;

(5) You believe there is a procedural deficiency (for example, fees are improperly calculated);

(6) The bureau denied a fee waiver;

(7) The bureau did not make a decision within the time limits in § 2.16 or, if applicable, § 2.18; or

(8) The bureau denied, or was late in responding to, a request for expedited

processing filed under the procedures in § 2.20 of this part.

(b) An appeal under paragraph (a)(8) of this section relates only to the request for expedited processing and does not constitute an appeal of the underlying request for records. Special procedures apply to requests for expedited processing of an appeal (see § 2.63 of this subpart).

(c) Before filing an appeal, you may wish to communicate with the contact person listed in the FOIA response, the bureau's FOIA Officer, and/or the FOIA Public Liaison to see if the issue can be resolved informally. However, appeals must be received by the FOIA Appeals Officer within the time limits in § 2.58 of this subpart or they will not be processed.

§ 2.58 How long do you have to file an appeal?

(a) Appeals covered by § 2.57(a)(1) through (5) of this subpart must be received by the FOIA Appeals Officer no later than 30 workdays from the date of the final response.

(b) Appeals covered by § 2.57(a)(6) of this subpart must be received by the FOIA Appeals Officer no later than 30 workdays from the date of the letter denying the fee waiver.

(c) Appeals covered by § 2.57(a)(7) of this subpart may be filed any time after the time limit for responding to the request has passed.

(d) Appeals covered by § 2.57(a)(8) of this subpart should be filed as soon as possible.

(e) Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

§ 2.59 How do you file an appeal?

(a) You must submit the appeal in writing by mail, fax or email to the FOIA Appeals Officer (using the address available at *http://www.doi.gov/foia/appeals.cfm)*. Your failure to send an appeal directly to the FOIA Appeals Officer may delay processing.

(b) The appeal must include:

(1) Copies of all correspondence between you and the bureau concerning the FOIA request, including the request and the bureau's response (if there is one); and

(2) An explanation of why you believe the bureau's response was in error.

(c) The appeal should include your name, mailing address, daytime telephone number (or the name and telephone number of an appropriate contact), email address, and fax number (if available) in case the Department needs additional information or clarification.

(d) An appeal concerning a denial of expedited processing or a fee waiver denial should also demonstrate fully how the criteria in § 2.20 or §§ 2.45 and 2.48 of this part are met.

(e) All communications concerning an appeal should be clearly marked with the words: ''FREEDOM OF INFORMATION APPEAL.''

(f) The Department will reject an appeal that does not attach all correspondence required by paragraph (b)(1) of this section, unless the FOIA Appeals Officer determines, in his or her sole discretion, that good cause exists to accept the defective appeal. The time limits for responding to an appeal will not begin to run until the correspondence is received.

§ 2.60 Who makes decisions on appeals?

(a) The FOIA Appeals Officer is the deciding official for FOIA appeals.

(b) When necessary, the FOIA Appeals Officer will consult other appropriate offices, including the Office of the Solicitor for denials of records and fee waivers.

(c) The FOIA Appeals Officer normally will not make a decision on an appeal if the request becomes a matter of FOIA litigation.

§ 2.61 How are decisions on appeals issued?

(a) A decision on an appeal must be made in writing.

(b) A decision that upholds the bureau's determination will notify you of the decision and your statutory right to file a lawsuit.

(c) A decision that overturns, remands, or modifies the bureau's determination will notify you of the decision. The bureau then must further process the request in accordance with the appeal determination.

§ 2.62 When can you expect a decision on your appeal?

(a) The basic time limit for responding to an appeal is 20 workdays after receipt of an appeal meeting the requirements of § 2.59 of this subpart.

(b) The FOIA Appeals Officer may extend the basic time limit, if unusual circumstances exist. Before the expiration of the basic 20-workday time limit to respond, the FOIA Appeals Officer will notify you in writing of the unusual circumstances involved and of the date by which he or she expects to complete processing of the appeal.

(c) If the Department is unable to reach a decision on your appeal within the given time limit for response, the FOIA Appeals Officer will notify you of:

(1) The reason for the delay; and

(2) Your statutory right to seek review in a United States District Court.

§ 2.63 Can you receive expedited processing of appeals?

(a) To receive expedited processing of an appeal, you must demonstrate to the Department's satisfaction that the appeal meets one of the criteria under § 2.20 of this part and include a statement that the need for expedited processing is true and correct to the best of your knowledge and belief.

(b) The FOIA Appeals Officer will advise you whether the Department will grant expedited processing within 10 calendar days of receiving the appeal.

(c) If the FOIA Appeals Officer decides to grant expedited processing, he or she will give the appeal priority over other pending appeals and process it as soon as practicable.

§ 2.64 Must you submit an appeal before seeking judicial review?

Before seeking review by a court of the bureau's adverse determination, you generally must first submit a timely administrative appeal.

Subpart I—General Information

§ 2.65 Where are records made available?

Records that are required by the FOIA to be made proactively available for public inspection and copying are accessible on the Department's Web site, *http://www.doi.gov/foia/libraries.cfm*. They may also be available at bureau office locations.

§ 2.66 What are public liaisons?

(a) Each bureau has a FOIA Public Liaison that can assist individuals in locating bureau records.

(b) FOIA Public Liaisons report to the Department's Chief FOIA Officer and you can raise concerns to them about the service you have received.

(c) FOIA Public Liaisons are responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in resolving disputes.

(d) A list of the Department's FOIA Public Liaisons is available at *http://doi.gov/foia/servicecenters.cfm*.

§ 2.67 When will the Department make records available without a FOIA request?

(a) Each bureau must:

(1) Determine which of its records must be made publicly available under the FOIA (for example, certain frequently requested records);

(2) Identify additional records of interest to the public that are appropriate for public disclosure; and

(3) Post those records in FOIA libraries.

(b) Because of these proactive disclosures, you are encouraged to review the Department's FOIA libraries

before filing a FOIA request. The material you seek may be immediately available electronically at no cost.

§ 2.68 How will FOIA materials be preserved?

(a) Each bureau must preserve all correspondence pertaining to the requests that it receives under subpart B of this part, as well as copies of all requested records, until disposition or destruction is authorized by the General Records Schedule 14 of the National Archives and Records Administration (NARA) or another NARA-approved records schedule.

(b) Materials that are identified as responsive to a FOIA request will not be disposed of or destroyed while the request or a related appeal or lawsuit is pending. This is true even if they would otherwise be authorized for disposition or destruction under the General Records Schedule 14 of NARA or another NARA-approved records schedule.

§ 2.69 How will a bureau handle a request for federally-funded research data?

(a) If you request research data that were used by the Federal Government in developing certain kinds of agency actions, and the research data relate to published research findings produced under an award, in accordance with OMB Circular A–110:

(1) If the bureau was the awarding agency, it will request the research data from the recipient;

(2) The recipient must provide the research data within a reasonable time; and

(3) The bureau will review the research data to see if it can be released under the FOIA.

(b) If the bureau obtains the research data solely in response to your FOIA request, the bureau may charge you a reasonable fee equaling the full incremental cost of obtaining the research data.

(1) This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients.

(2) This fee is in addition to any fees the agency may assess under the FOIA.

(c) The bureau will forward a copy of the request to the recipient, who is responsible for searching for and reviewing the requested information in accordance with these FOIA regulations. The recipient will forward a copy of any responsive records that are located, along with any recommendations concerning the releasability of the data, and the total cost incurred in searching for, reviewing, and providing the data.

(d) The bureau will review and consider the recommendations of the recipient regarding the releasability of the requested research data. However, the bureau, not the recipient, is responsible for deciding whether the research data will be released or withheld.

§ 2.70 What definitions apply to subparts A through I of this part?

For the purposes of subparts A through I of this part, the following definitions apply:

Bureau means any major component of the Department administering its own FOIA program. A list of these components is available at: *http://www.doi.gov/foia/contacts.cfm.*

Commercial interest means a commercial, trade, or profit interest as these terms are commonly understood. Your status as profitmaking or non-profitmaking is not the deciding factor in determining whether you have a commercial interest.

Commercial use means a use that furthers your commercial, trade or profit interests or that of the person on whose behalf the request is made.

Confidential information means trade secrets or commercial or financial information (that is privileged or confidential and obtained by the Department from a person) that may be protected from disclosure under Exemption 4 of the FOIA.

Department means the Department of the Interior.

Direct costs means those resources that the bureau expends in searching for and duplicating (and, in the case of commercial-use requests, reviewing) records to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space and of heating or lighting a facility.

Duplication means reproducing a copy of a record or of the information contained in it necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

Educational institution means any school that operates a program of scholarly research. In order to fall within this category, you must show that the request is authorized by and made under the auspices of, a qualifying institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research.

Exceptional circumstances means a delay that does not result from a predictable workload of requests (unless the bureau demonstrates reasonable progress in reducing its backlog of pending requests).

Exempt means the record in question, or a portion thereof, is not subject to disclosure due to one or more of the FOIA's nine statutory exemptions, found at 5 U.S.C. 552(b)(1)–(9).

Exemption means one or more of the FOIA's nine statutory exemptions, found at 5 U.S.C. 552(b)(1)–(9).

Expedited processing means giving a FOIA request priority and processing it ahead of other requests pending in the bureau because you have shown a compelling need for the records.

Fee category means one of the four categories, discussed in §§ 2.38 and 2.39, that agencies place you in for the purpose of determining whether you will be charged fees for search, review, and duplication.

FOIA means the Freedom of Information Act, 5 U.S.C. 552, as amended.

FOIA libraries means a physical or electronic compilation of records required to be made available to the public for inspection and copying under 5 U.S.C. 552(a)(2). It also includes a physical or electronic compilation of records that the bureau, at its discretion, makes available to the public for inspection and copying.

Frequently requested records means records that have been released to any person in response to a FOIA request and that have been requested, or that the bureau anticipates will be requested, at least two more times under the FOIA.

Multitrack processing means placing simple requests, requiring relatively minimal review, in one processing track and more voluminous and complex requests in one or more other tracks. Requests in each track are processed on a first-in/first-out basis.

Noncommercial scientific institution means an institution that is not operated for commerce, trade or profit, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be in this category, you must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

OMB Fee Guidelines means the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget at 52 FR 10012 (Mar. 27, 1987).

Published means, for the purposes of § 2.69 of this subpart only, when:

(1) Research findings are published in a peer-reviewed scientific or technical journal; or

(2) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

Recipient means, for the purposes of § 2.69 of this subpart only, an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Federal awarding agency. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

Record means an agency record that is either created or obtained by an agency and is under agency possession and control at the time of the FOIA request, or is maintained by an entity under Government contract for the purposes of records management.

Representative of the news media means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term *news* as used in this definition means information that is about current events or that would be of current interest to the public. Examples of news media entities are newspapers, television, Web sites, or radio stations broadcasting to the public at large, and publishers of periodicals (but only if such entities qualify as disseminators of news) who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all inclusive. As methods of news delivery evolve, alternative representatives of news media may come into being. A freelance journalist will qualify as a news-media entity if he or she can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by that entity (for example, a publication contract would present a solid basis for such an expectation).

Research data means, for the purposes of § 2.69 of this subpart only, the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. The term *recorded* as used in this definition excludes physical objects (e.g., laboratory samples). Research data also do not include:

(1) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(2) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

Review means the examination of a record located in response to a request to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential information submitter under subpart G of this part, but it excludes time spent resolving general legal or policy issues regarding the application of FOIA exemptions.

Search means the process of looking for and retrieving records responsive to a request. Search time includes page-by-page or line-by-line identification of information within records; and the reasonable efforts expended to locate and retrieve electronic records.

Submitter means any person or entity outside the Federal Government from whom the Department obtains confidential information, directly or indirectly. The term includes, but is not limited to individuals, corporations, and state, local, tribal, and foreign governments.

Unusual circumstances means the need to search for and collect requested records from field facilities or other establishments that are separate from the office processing the request; the need to search for, collect, and examine a voluminous amount of separate and distinct records which are demanded in a single request; or the need for consultation, which shall be conducted with all practicable speed, with another agency, or among two or more components of the Department, having a substantial interest in the determination of the request.

Workday means a regular Federal workday. It excludes Saturdays, Sundays, or Federal legal public holidays. Items arriving or delivered after 5 p.m. Eastern Time will be deemed received on the next workday.

You means a person requesting records, or filing an appeal, under the FOIA.

Appendix A to Part 2 [Removed]

■ 6. Appendix A to Part 2 is removed.

Appendix B to Part 2 [Removed]

■ 7. Appendix B to Part 2 is removed.

Appendix C to Part 2 [Redesignated as Appendix A to Part 2]

■ 8. Appendix C to Part 2 is redesignated as Appendix A to Part 2 and revised to read as follows.

Appendix A to Part 2—Fee Schedule

Types of Records	Fee
(1) Physical records:	
Pages no larger than 8.5 × 14 inches, when reproduced by standard office copying machines or scanned into an electronic format	$.15 per page ($.30 for double-sided copying).
Color copies of pages no larger than 8.5 × 11 inches	$.90 per page.
Pages larger than 8.5 × 14 inches	Direct cost to DOI.
Color copies of pages no larger than 11 × 17 inches	$1.50 per page.
Photographs and records requiring special handling (for example, because of age, size, or format).	Direct cost to DOI.
(2) Electronic records:	
Charges for services related to processing requests for electronic records.	Direct cost to DOI.

Types of Records	Fee
(3) Certification	Fee.
Each certificate of verification attached to authenticate copies of records.	$.25
(4) Postage:	
Charges that exceed the cost of first class postage, such as express mail or overnight delivery.	Postage or delivery charge.
(5) Other Services:	
Cost of special services or materials, other than those provided for by this fee schedule, when requester is notified of such costs in advance and agrees to pay them.	Direct cost to DOI.

Appendix D to Part 2 [Removed]

■ 9. Appendix D to Part 2 is removed.

Appendix E to Part 2 [Removed]

■ 10. Appendix E to Part 2 is removed.

Appendix F to Part 2 [Redesignated as Appendix B to Part 2]

■ 11. Appendix F to Part 2 is redesignated as Appendix B to Part 2.

[FR Doc. 2012–31117 Filed 12–28–12; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2012–0003]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below of the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p.376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Texas: Tarrant (FEMA Docket No.: B–1225).	City of Keller (11–06–2181P).	June 24, 2011, July 1, 2011, *The Fort Worth Star-Telegram.*	The Honorable Pat McGrail, Mayor, City of Keller, 1100 Bear Creek Parkway, Keller, TX 76248.	October 31, 2011	480602

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

James A. Walke,

Acting Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–31348 Filed 12–28–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2012–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) modified	Communities affected
Cobb County, Georgia, and Incorporated Areas Docket No.: FEMA–B–1233			
Buttermilk Creek	At the Sweetwater Creek confluence	+892	City of Austell, Unincorporated Areas of Cobb County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
	Approximately 1.0 mile upstream of the Sweetwater Creek confluence.	+892	
Chattahoochee River	Approximately 2.9 miles downstream of I–20	+760	City of Smyrna, Unincorporated Areas of Cobb County.
	Approximately 1.8 miles upstream of Morgan Falls Dam	+861	
Concord Creek	At the Nickajack Creek confluence	+894	Unincorporated Areas of Cobb County.
	Approximately 720 feet upstream of Auldyn Drive	+999	
Cooper Lake Creek	Approximately 1,200 feet upstream of the Nickajack Creek confluence.	+825	City of Smyrna, Unincorporated Areas of Cobb County.
	At the upstream side of Gann Road Southeast	+892	
Favor Creek	At the Nickajack Creek confluence	+913	Unincorporated Areas of Cobb County.
	Approximately 1.55 miles upstream of the Nickajack Creek confluence.	+1001	
Gilmore Creek	At the Chattahoochee River confluence	+774	Unincorporated Areas of Cobb County.
	Approximately 0.64 mile upstream of the Chattahoochee River confluence.	+774	
Gothards Creek	At the Sweetwater Creek confluence	+905	Unincorporated Areas of Cobb County.
	At the Douglas County boundary	+905	
Harmony Grove Creek	At the Willeo Creek confluence	+898	Unincorporated Areas of Cobb County.
	At the upstream side of Johnson Ferry Road	+1052	
Laurel Creek	At the Nickajack Creek confluence	+802	City of Smyrna, Unincorporated Areas of Cobb County.
	Approximately 500 feet upstream of Lee Street Southeast	+984	
Liberty Hill Branch	At the Queen Creek confluence	+774	Unincorporated Areas of Cobb County.
	Approximately 0.95 mile upstream of the Queen Creek confluence.	+911	
Little Noonday Creek	At the Noonday Creek confluence	+905	Unincorporated Areas of Cobb County.
	Approximately 0.5 mile upstream of the Noonday Creek confluence.	+905	
Lost Mountain Creek	At the Wildhorse Creek confluence	+903	City of Powder Springs, Unincorporated Areas of Cobb County.
	Approximately 1,250 feet upstream of Macedonia Road Southwest.	+943	
Milam Branch	At the Queen Creek confluence	+904	Unincorporated Areas of Cobb County.
	Approximately 200 feet upstream of Francis Circle Southwest.	+1013	
Mill Creek No. 2	At the Nickajack Creek confluence	+902	Unincorporated Areas of Cobb County.
	Approximately 150 feet upstream of Hicks Road Southwest.	+963	
Mud Creek	At the Noses Creek confluence	+908	Unincorporated Areas of Cobb County.
	Approximately 0.4 mile upstream of the Noses Creek confluence.	+911	
Nickajack Creek	At the Chattahoochee River confluence	+764	City of Smyrna, Unincorporated Areas of Cobb County.
	Approximately 200 feet upstream of South Cobb Drive	+1049	
Noonday Creek	At the Cherokee County boundary	+895	City of Kennesaw, City of Marietta, Unincorporated Areas of Cobb County.
	Approximately 350 feet upstream of New Salem Road	+1023	
Noonday Creek Tributary No. 4	At the Noonday Creek confluence	+927	Unincorporated Areas of Cobb County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
	Approximately 1,800 feet upstream of the Noonday Creek confluence.	+928	
Noses Creek	At the Sweetwater Creek confluence	+895	City of Austell, City of Marietta, City of Powder Springs, Unincorporated Areas of Cobb County.
	Approximately 450 feet upstream of Kennesaw Avenue	+1081	
Olley Creek	At the Sweetwater Creek confluence	+895	City of Austell, Unincorporated Areas of Cobb County.
	At the upstream side of Clay Road Southwest	+895	
Powder Springs Creek	At the Sweetwater Creek confluence	+901	City of Austell, City of Powder Springs, Unincorporated Areas of Cobb County.
	Approximately 1,750 feet upstream of Oglesby Road	+901	
Powers Branch	At the Chattahoochee River confluence	+795	Unincorporated Areas of Cobb County.
	Approximately 1,060 feet upstream of the Chattahoochee River confluence.	+795	
Queen Creek	At the Nickajack Creek confluence	+764	Unincorporated Areas of Cobb County.
	At the upstream side of Mableton Parkway	+999	
Rottenwood Creek	At the Chattahoochee River confluence	+781	Unincorporated Areas of Cobb County.
	Approximately 1,300 feet upstream of the Chattahoochee River confluence.	+781	
Smyrna Branch	At the Theater Branch confluence	+930	City of Smyrna.
	Approximately 200 feet upstream of Powder Springs Street Southeast.	+998	
Sweat Mountain Creek	At the Willeo Creek confluence	+941	Unincorporated Areas of Cobb County.
	Approximately 950 feet upstream of Wesley Chapel Road	+1000	
Sweetwater Creek	Approximately 200 feet downstream of Old Alabama Road	+891	City of Austell, Unincorporated Areas of Cobb County.
	At the Paulding County boundary	+909	
Theater Branch	At the Nickajack Creek confluence	+923	City of Smyrna, Unincorporated Areas of Cobb County.
	At the downstream side of Parkway Drive Southeast	+975	
Timber Ridge Branch	At the Willeo Creek confluence	+863	Unincorporated Areas of Cobb County.
	Approximately 1.22 miles upstream of the Willeo Creek confluence.	+879	
Ward Creek	At the Noses Creek confluence	+924	Unincorporated Areas of Cobb County.
	Approximately 0.4 mile upstream of the Noses Creek confluence.	+925	
Wildhorse Creek	At the Noses Creek confluence	+903	City of Powder Springs, Unincorporated Areas of Cobb County.
	Approximately 700 feet upstream of Arapaho Drive	+953	
Willeo Creek	Approximately 1,000 feet upstream of the Chattahoochee River confluence.	+863	Unincorporated Areas of Cobb County.
	Approximately 400 feet upstream of the Sweat Mountain Creek confluence.	+942	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Austell

Maps are available for inspection at City Hall, 2716 Broad Street Southwest, Austell, GA 30106.

City of Kennesaw

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) modified	Communities affected

Maps are available for inspection at City Hall, 2529 J.O. Stephenson Avenue, Kennesaw, GA 30144.

City of Marietta

Maps are available for inspection at the Public Works Department, 205 Lawrence Street, Marietta, GA 30060.

City of Powder Springs

Maps are available for inspection at City Hall, 4484 Marietta Street, Powder Springs, GA 30127.

City of Smyrna

Maps are available for inspection at the Engineer's Office, 2800 King Street, Smyrna, GA 30080.

Unincorporated Areas of Cobb County

Maps are available for inspection at the Cobb County Development and Inspection Department, 205 Lawrence Street, Marietta, GA 30060.

Douglas County, Georgia, and Incorporated Areas
Docket No.: FEMA–B–1233

Anneewakee Creek	At the Chattahoochee River confluence	+749	Unincorporated Areas of Douglas County.
	Approximately 1,900 feet upstream of the Anneewakee Creek Tributary B confluence.	+749	
Anneewakee Creek Tributary A	At the Anneewakee Creek confluence	+749	Unincorporated Areas of Douglas County.
	Approximately 910 feet upstream of the Anneewakee Creek confluence.	+749	
Anneewakee Creek Tributary B	At the Anneewakee Creek confluence	+749	Unincorporated Areas of Douglas County.
	Approximately 500 feet upstream of the Anneewakee Creek confluence.	+749	
Bear Creek	At the upstream side of the Chattahoochee River confluence.	+740	Unincorporated Areas of Douglas County.
	Approximately 2,000 feet upstream of State Route 166	+740	
Beaver Creek	At the Sweetwater Creek confluence	+871	Unincorporated Areas of Douglas County.
	Approximately 500 feet upstream of Patty Court	+1006	
Beaver Creek Tributary A	At the Beaver Creek confluence	+914	Unincorporated Areas of Douglas County.
	Approximately 0.52 mile upstream of the Beaver Creek confluence.	+953	
Camp Branch	At the Hurricane Creek confluence	+975	Unincorporated Areas of Douglas County.
	Approximately 1,200 feet upstream of the Camp Branch Tributary A confluence.	+1062	
Camp Branch Tributary A	At the Camp Branch confluence	+1043	Unincorporated Areas of Douglas County.
	Approximately 750 feet upstream of the Camp Branch confluence.	+1066	
Chattahoochee River	At the Carroll County boundary	+730	City of Douglasville, Unincorporated Areas of Douglas County.
	At the Cobb County boundary	+760	
Dog River	At the Chattahoochee River confluence	+736	Unincorporated Areas of Douglas County.
	Approximately 1,200 feet upstream of the Chattahoochee River confluence.	+736	
Dry Creek	At the Beaver Creek confluence	+891	Unincorporated Areas of Douglas County.
	Approximately 1,050 feet upstream of Lee Road	+988	
Dry Creek Tributary A	At the Dry Creek confluence	+898	Unincorporated Areas of Douglas County.
	Approximately 0.53 mile upstream of the Dry Creek confluence.	+925	
Dry Creek Tributary B	At the Dry Creek confluence	+928	Unincorporated Areas of Douglas County.
	Approximately 1,170 feet upstream of the Dry Creek confluence.	+944	
Dry Creek Tributary C	At the Dry Creek confluence	+943	Unincorporated Areas of Douglas County.
	Approximately 1,900 feet upstream of the Dry Creek confluence.	+969	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) modified	Communities affected
Gordon Creek	At the Sweetwater Creek confluence	+881	City of Douglasville, Unincorporated Areas of Douglas County.
	At the Cobb County boundary	+898	
Gothards Creek	At the Cobb County boundary	+905	Unincorporated Areas of Douglas County.
	Approximately 1.35 miles upstream of Cedar Mountain Road.	+1042	
Gothards Creek Tributary 1	At the Gothards Creek confluence	+906	Unincorporated Areas of Douglas County.
	Approximately 1,040 feet upstream of the Gothards Creek confluence.	+908	
Gothards Creek Tributary 10	At the Gothards Creek confluence	+946	Unincorporated Areas of Douglas County.
	Approximately 0.68 mile upstream of the Gothards Creek confluence.	+970	
Gothards Creek Tributary 11	Approximately 250 feet upstream of the Gothards Creek confluence.	+948	Unincorporated Areas of Douglas County.
	Approximately 1.03 miles upstream of the Gothards Creek Tributary 11.3 confluence.	+1063	
Gothards Creek Tributary 11.1	At the Gothards Creek Tributary 11 confluence	+972	Unincorporated Areas of Douglas County.
	Approximately 200 feet upstream of Cedar Mountain Road.	+987	
Gothards Creek Tributary 11.2	At the Gothards Creek Tributary 11 confluence	+985	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 1.05 miles upstream of the Gothards Creek Tributary 11 confluence.	+1100	
Gothards Creek Tributary 11.3	At the Gothards Creek Tributary 11 confluence	+1006	Unincorporated Areas of Douglas County.
	Approximately 0.49 mile upstream of the Gothards Creek Tributary 11 confluence.	+1042	
Gothards Creek Tributary 12	At the Gothards Creek confluence	+961	Unincorporated Areas of Douglas County.
	Approximately 0.60 mile upstream of the Gothards Creek confluence.	+1000	
Gothards Creek Tributary 15	At the Gothards Creek confluence	+980	Unincorporated Areas of Douglas County.
	Approximately 350 feet upstream of County Services Road.	+1013	
Gothards Creek Tributary 2	At the Gothards Creek confluence	+909	Unincorporated Areas of Douglas County.
	Approximately 0.78 mile upstream of the Gothards Creek confluence.	+995	
Gothards Creek Tributary 2.1	At the Gothards Creek confluence	+907	Unincorporated Areas of Douglas County.
	At the Gothards Creek Tributary 2 divergence	+966	
Gothards Creek Tributary 3	At the Gothards Creek confluence	+910	Unincorporated Areas of Douglas County.
	Approximately 1,100 feet upstream of Boyd Road	+1095	
Gothards Creek Tributary 3.1	At the Gothards Creek Tributary 3	+917	Unincorporated Areas of Douglas County.
	Approximately 640 feet upstream of Greystone Lane	+1057	
Gothards Creek Tributary 3.2	At the Gothards Creek Tributary 3 confluence	+928	Unincorporated Areas of Douglas County.
	At the upstream side of Cody Lane	+951	
Gothards Creek Tributary 4	At the Paulding County boundary	+935	Unincorporated Areas of Douglas County.
	Approximately 1,650 feet upstream of the Paulding County boundary.	+961	
Gothards Creek Tributary 4.1	At the Paulding County boundary	+938	Unincorporated Areas of Douglas County.
	Approximately 0.39 mile upstream of the Paulding County boundary.	+980	
Gothards Creek Tributary 4.1.1	At the Paulding County boundary	+933	Unincorporated Areas of Douglas County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) modified	Communities affected
	Approximately 650 feet upstream of Bearden Road	+972	
Gothards Creek Tributary 6	At the Gothards Creek confluence	+926	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 300 feet upstream of Maroney Mill Road	+941	
Gothards Creek Tributary 8	At the Gothards Creek confluence	+940	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 0.95 mile upstream of the Gothards Creek Tributary 8.1 confluence.	+1084	
Gothards Creek Tributary 8.1	At the Gothards Creek Tributary 8 confluence	+977	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 0.67 mile upstream of the Gothards Creek Tributary 8 confluence.	+1030	
Gothards Creek Tributary 9	At the Gothards Creek confluence	+945	Unincorporated Areas of Douglas County.
	Approximately 0.46 mile upstream of the Gothards Creek confluence.	+962	
Hickory Creek	At the Beaver Creek confluence	+926	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 0.52 mile upstream of Burnt Hickory Road	+1043	
Hickory Creek Tributary A	At the Hickory Creek confluence	+958	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 1,650 feet upstream of U.S. Route 20	+999	
Hickory Creek Tributary B	At the Hickory Creek confluence	+959	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 650 feet upstream of September Way	+1036	
Hickory Creek Tributary C	At the Hickory Creek confluence	+983	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 350 feet upstream of Magnolia Trail	+1036	
Hickory Creek Tributary D	At the Hickory Creek confluence	+999	Unincorporated Areas of Douglas County.
	Approximately 1,250 feet upstream of Lakeland Hills Drive	+1046	
Hickory Creek Tributary E	At the Hickory Creek confluence	+1007	Unincorporated Areas of Douglas County.
	Approximately 0.47 mile upstream of the Hickory Creek confluence.	+1056	
Huey Creek	At the Paulding County boundary	+931	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 1,150 feet upstream of Brown Street	+1083	
Huey Creek Tributary 1	At the Huey Creek confluence	+940	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 0.91 mile upstream of the Huey Creek Tributary 1.1 confluence.	+1095	
Huey Creek Tributary 1.1	At the Huey Creek Tributary 1 confluence	+1004	Unincorporated Areas of Douglas County.
	Approximately 1,550 feet upstream of the Huey Creek Tributary 1 confluence.	+1067	
Huey Creek Tributary 2	At the Huey Creek confluence	+976	Unincorporated Areas of Douglas County.
	Approximately 350 feet upstream of Huey Road	+1017	
Huey Creek Tributary 3	At the Huey Creek confluence	+976	Unincorporated Areas of Douglas County.
	Approximately 300 feet upstream of Pirkle Road	+1038	
Hurricane Creek	At the Carroll County boundary	+727	Unincorporated Areas of Douglas County.
	Approximately 1.10 miles upstream of the Tyree Branch confluence.	+1201	
Hurricane Creek Tributary A	At the Hurricane Creek confluence	+747	Unincorporated Areas of Douglas County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) modified	Communities affected
	Approximately 0.66 mile upstream of the Hurricane Creek confluence.	+796	
Hurricane Creek Tributary B	At the Hurricane Creek confluence	+784	Unincorporated Areas of Douglas County.
	Approximately 1,450 feet upstream of the Hurricane Creek confluence.	+832	
Hurricane Creek Tributary C	At the Hurricane Creek confluence	+940	Unincorporated Areas of Douglas County.
	Approximately 0.38 mile upstream of the Hurricane Creek confluence.	+980	
Hurricane Creek Tributary D	At the Hurricane Creek confluence	+958	Unincorporated Areas of Douglas County.
	Approximately 0.53 mile upstream of the Hurricane Creek confluence.	+1012	
Hurricane Creek Tributary E	At the Hurricane Creek confluence	+976	Unincorporated Areas of Douglas County.
	Approximately 1,921 feet upstream of Tweeddale Drive	+1022	
Kraft Creek	At the Hurricane Creek confluence	+1019	Unincorporated Areas of Douglas County.
	Approximately 450 feet upstream of Kraft Drive	+1045	
Kraft Creek Tributary A	At the Kraft Creek confluence	+1031	Unincorporated Areas of Douglas County.
	Approximately 950 feet upstream of the Kraft Creek confluence.	+1057	
Lion Branch	At the Beaver Creek confluence	+900	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 200 feet upstream of East Melissa Lane	+1060	
Lion Branch Tributary A	At the Lion Branch confluence	+932	Unincorporated Areas of Douglas County.
	Approximately 0.50 mile upstream of Trail Creek Drive	+992	
Lion Branch Tributary B	At the Lion Branch confluence	+962	Unincorporated Areas of Douglas County.
	Approximately 250 feet upstream of Bottlebrush Drive	+987	
Little Hurricane Creek	At the Hurricane Creek confluence	+866	Unincorporated Areas of Douglas County.
	Approximately 450 feet upstream of Summer Hill Drive	+1066	
Little Hurricane Creek Tributary A.	At the Little Hurricane Creek confluence	+927	Unincorporated Areas of Douglas County.
	Approximately 0.73 mile upstream of Gable Drive	+990	
Margie Branch	At the Beaver Creek confluence	+942	Unincorporated Areas of Douglas County.
	Approximately 0.45 mile upstream of the Margie Branch Tributary A confluence.	+1074	
Margie Branch Tributary A	At the Margie Branch confluence	+1028	Unincorporated Areas of Douglas County.
	Approximately 1,800 feet upstream of the Margie Branch confluence.	+1079	
Mill Creek	At the Gothards Creek confluence	+931	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 200 feet upstream of Crystal Creek Place	+1091	
Mill Creek Tributary 1	At the Mill Creek confluence	+972	City of Douglasville.
	Approximately 0.85 mile upstream of the Mill Creek confluence.	+1061	
Miller Creek	At the Beaver Creek confluence	+927	Unincorporated Areas of Douglas County.
	Approximately 600 feet upstream of Miller Street	+969	
Miller Creek Tributary A	At the Miller Creek confluence	+927	Unincorporated Areas of Douglas County.
	Approximately 1,450 feet upstream of the Miller Creek confluence.	+983	
Palmer Branch	At the Sweetwater Creek confluence	+757	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 0.56 mile upstream of the Palmer Branch Tributary C confluence.	+900	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) modified	Communities affected
Palmer Branch Tributary A	At the Palmer Branch confluence	+789	City of Douglasville.
	Approximately 0.55 mile upstream of the Palmer Branch confluence.	+935	
Palmer Branch Tributary B	At the Palmer Branch confluence	+807	City of Douglasville.
	Approximately 0.53 mile upstream of the Palmer Branch confluence.	+882	
Palmer Branch Tributary C	At the Palmer Branch confluence	+855	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 1,850 feet upstream of Washington Drive	+1005	
Park Creek	At the Sweetwater Creek confluence	+885	Unincorporated Areas of Douglas County.
	Approximately 800 feet upstream of Sinyard Road	+968	
Pine Creek	At the Sweetwater Creek confluence	+889	Unincorporated Areas of Douglas County.
	At the Cobb County boundary	+890	
Pinewood Branch	At the Park Creek confluence	+885	Unincorporated Areas of Douglas County.
	Approximately 600 feet upstream of Paces Drive	+949	
Pinewood Branch Tributary A	At the Pinewood Branch confluence	+900	Unincorporated Areas of Douglas County.
	Approximately 1,100 feet upstream of Plantation Drive	+987	
Shell Creek	At the Hurricane Creek confluence	+994	Unincorporated Areas of Douglas County.
	Approximately 0.78 mile upstream of Shell Road	+1099	
Shoals Branch	At the Sweetwater Creek confluence	+768	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 1.27 miles upstream of the Shoals Branch Tributary B confluence.	+975	
Shoals Branch Tributary A	At the Shoals Branch confluence	+827	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 0.44 mile upstream of the Shoals Branch confluence.	+923	
Shoals Branch Tributary B	At the Shoals Branch confluence	+842	Unincorporated Areas of Douglas County.
	Approximately 1,100 feet upstream of the Shoals Branch confluence.	+877	
Spivey Branch	At the Hickory Creek confluence	+944	Unincorporated Areas of Douglas County.
	Approximately 0.82 mile upstream of the Spivey Branch Tributary B confluence.	+1086	
Spivey Branch Tributary A	At the Spivey Branch confluence	+965	Unincorporated Areas of Douglas County.
	Approximately 550 feet upstream of Ivy Brooke Drive	+1040	
Spivey Branch Tributary B	At the Spivey Branch confluence	+978	Unincorporated Areas of Douglas County.
	Approximately 0.38 mile upstream of the Spivey Branch confluence.	+1007	
Sweetwater Creek	Approximately 85 feet downstream of the Palmer Branch confluence.	+757	City of Austell, City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 450 feet upstream of the Cobb County boundary.	+892	
Sweetwater Creek Tributary A	Approximately 1,450 feet upstream of the Sweetwater Creek confluence.	+758	City of Douglasville.
	Approximately 1,000 feet upstream of Riverside Parkway	+799	
Sweetwater Creek Tributary B	Approximately 1,400 feet upstream of the Sweetwater Creek confluence.	+757	City of Douglasville.
	Approximately 0.47 mile upstream of the Sweetwater Creek confluence.	+788	
Sweetwater Creek Tributary C	Approximately 1,800 feet upstream of the Sweetwater Creek confluence.	+758	City of Douglasville, Unincorporated Areas of Douglas County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
	Approximately 0.77 mile upstream of the Sweetwater Creek confluence.	+797	
Sweetwater Creek Tributary D	Approximately 0.48 mile upstream of the Sweetwater Creek confluence.	+758	City of Douglasville.
	Approximately 1.52 miles upstream of the Sweetwater Creek confluence.	+856	
Sweetwater Creek Tributary E	At the Sweetwater Creek confluence	+778	Unincorporated Areas of Douglas County.
	Approximately 0.88 mile upstream of the Sweetwater Creek confluence.	+900	
Sweetwater Creek Tributary F	At the Sweetwater Creek confluence	+876	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 750 feet upstream of Factory Shoals Road	+964	
Sweetwater Creek Tributary G	At the Sweetwater Creek confluence	+878	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 800 feet upstream of Trae Lane	+1002	
Sweetwater Creek Tributary H	At the Sweetwater Creek confluence	+879	City of Douglasville, Unincorporated Areas of Douglas County.
	At the Cobb County boundary	+911	
Sweetwater Creek Tributary I	At the Sweetwater Creek confluence	+882	Unincorporated Areas of Douglas County.
	Approximately 250 feet upstream of White Flag Trail	+918	
Sweetwater Creek Tributary J	At the Sweetwater Creek confluence	+887	City of Austell, Unincorporated Areas of Douglas County.
	Approximately 1,200 feet upstream of State Route 6 (Thornton Road).	+946	
Sweetwater Creek Tributary K	At the Sweetwater Creek confluence	+887	City of Austell, Unincorporated Areas of Douglas County.
	Approximately 0.51 mile upstream of U.S. Route 78 (Bankhead Highway).	+921	
Sweetwater Creek Tributary L	At the Cobb County boundary	+906	Unincorporated Areas of Douglas County.
	Approximately 1,250 feet upstream of Brownsville Road	+1057	
Sweetwater Creek Tributary L.2	At the Sweetwater Creek Tributary L confluence	+907	Unincorporated Areas of Douglas County.
	Approximately 750 feet upstream of North Sweetwater Road.	+966	
Sweetwater Creek Tributary L.3	At the Sweetwater Creek Tributary L confluence	+934	Unincorporated Areas of Douglas County.
	Approximately 1,500 feet upstream of Union Grove Road	+990	
Sweetwater Creek Tributary L.3.1.	At the Sweetwater Creek Tributary L.3 confluence	+955	Unincorporated Areas of Douglas County.
	Approximately 1,600 feet upstream of the Sweetwater Creek Tributary L.3 confluence.	+999	
Tyree Branch	At the Hurricane Creek confluence	+1044	Unincorporated Areas of Douglas County.
	Approximately 1.10 miles upstream of the Hurricane Creek confluence.	+1171	
Zion Branch	At the Hurricane Creek confluence	+736	Unincorporated Areas of Douglas County.
	Approximately 0.53 mile upstream of State Route 5	+988	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Austell

Maps are available for inspection at the City of Austell-Threadmill Complex, 5000 Austell-Powder Springs Road, Austell, GA 30106.

City of Douglasville

Maps are available for inspection at City Hall, 6695 Church Street, Douglasville, GA 30134.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
Unincorporated Areas of Douglas County			
Maps are available for inspection at the Douglas County Courthouse, 8700 Hospital Drive, Douglasville, GA 30134.			
Forsyth County, Georgia, and Incorporated Areas Docket No.: FEMA–B–1233			
Baldridge Creek	At Pilgrim Mill Road	+1088	Unincorporated Areas of Forsyth County.
	Approximately 0.75 mile upstream of U.S. Route 19 (State Route 400).	+1299	
Bentley Creek	Approximately 1,460 feet upstream of the Big Creek confluence.	+1025	Unincorporated Areas of Forsyth County.
	Approximately 1,800 feet upstream of Bentley Road	+1047	
Big Creek	At the Fulton County boundary	+1000	City of Cumming, Unincorporated Areas of Forsyth County.
	Approximately 1,490 feet upstream of Canton Road (State Route 20).	+1142	
Camp Creek Tributary	At the Fulton County boundary	+1012	Unincorporated Areas of Forsyth County.
	Approximately 350 feet upstream of James Road	+1062	
Chattahoochee River	At the Fulton County boundary	+904	Unincorporated Areas of Forsyth County.
	At the Buford Dam	+920	
Cheatam Creek	At the Big Creek confluence	+1029	Unincorporated Areas of Forsyth County.
	Approximately 1,250 feet upstream of Kelly Mill Road	+1056	
Daves Creek	At the James Creek confluence	+946	Unincorporated Areas of Forsyth County.
	Approximately 1,070 feet upstream of Northside Forsyth Drive.	+1203	
Dick Creek	At the Chattahoochee River confluence	+906	Unincorporated Areas of Forsyth County.
	At Mathis Airport Parkway	+1042	
Haw Creek	At the Chattahoochee River confluence	+919	Unincorporated Areas of Forsyth County.
	Approximately 400 feet upstream of Habersham Gate Drive.	+1179	
James Creek	At the Chattahoochee River confluence	+912	Unincorporated Areas of Forsyth County.
	Approximately 700 feet upstream of Oak Industrial Lane	+1204	
Johns Creek	At the upstream side of McGinnis Ferry Road	+1023	Unincorporated Areas of Forsyth County.
	At the Fulton County boundary	+1041	
Sawnee Creek	At the downstream side of the Sawnee Creek Tributary 2 confluence.	+1085	Unincorporated Areas of Forsyth County.
	Approximately 1,050 feet upstream of Jackson Court	+1261	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Cumming

Maps are available for inspection at City Hall, 100 Main Street, Cumming, GA 30040.

Unincorporated Areas of Forsyth County:

Maps are available for inspection at the Forsyth County Administration Building, Department of Engineering, 110 East Main Street, Suite 120, Cumming, GA 30040.

Gwinnett County, Georgia, and Incorporated Areas Docket No.: FEMA–B–1233			
Brushy Creek	At the Chattahoochee River confluence	+904	City of Suwanee, Unincorporated Areas of Gwinnett County.
	Approximately 100 feet upstream of Suwanee Dam Road	+1010	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) modified	Communities affected
Chattahoochee River	Approximately 800 feet upstream of Holcomb Bridge Road (at the Fulton County boundary).	+884	City of Berkeley Lake, City of Duluth, City of Sugar Hill, City of Suwanee, Unincorporated Areas of Gwinnett County.
	Approximately 0.6 mile upstream of the Chattahoochee River (Bowmans East) divergence.	+920	
Chattahoochee River (Bowmans East).	At the Chattahoochee River confluence	+915	City of Sugar Hill, Unincorporated Areas of Gwinnett County.
	Approximately 0.71 mile upstream of the Chattahoochee River confluence.	+917	
Duncan Creek	Approximately 1.14 miles downstream of Crimson King Drive.	+817	Town of Braselton, Unincorporated Areas of Gwinnett County.
	Approximately 0.43 mile upstream of East Rock Quarry Road.	+1082	
Level Creek	At the Chattahoochee River confluence	+907	City of Sugar Hill, City of Suwanee, Unincorporated Areas of Gwinnett County.
	Approximately 250 feet upstream of Peachtree Industrial Boulevard.	+1045	
Level Creek Tributary No. 1	At the Level Creek confluence	+951	City of Suwanee, Unincorporated Areas of Gwinnett County.
	At the downstream side of Suwanee Dam Road	+995	
Level Creek Tributary No. 2	At the upstream side of Whitehead Road	+976	City of Sugar Hill, Unincorporated Areas of Gwinnett County.
	Approximately 160 feet upstream of Sugar Ridge Drive	+1021	
Little Mulberry River	Approximately 0.47 mile downstream of Mount Moriah Road.	+836	Unincorporated Areas of Gwinnett County.
	Approximately 550 feet upstream of Millwater Crossing	+995	
Little Mulberry River Tributary A	At the Little Mulberry River confluence	+846	Unincorporated Areas of Gwinnett County.
	Approximately 175 feet upstream of Mineral Springs Road	+986	
Little Mulberry River Tributary B	At the Little Mulberry River confluence	+849	Unincorporated Areas of Gwinnett County.
	Approximately 125 feet upstream of Hog Mountain Road	+929	
Little Mulberry River Tributary C	At the Little Mulberry River confluence	+858	Unincorporated Areas of Gwinnett County.
	Approximately 125 feet upstream of the private driveway	+889	
Little Mulberry River Tributary D	At the upstream side of Hog Mountain Road	+896	Unincorporated Areas of Gwinnett County.
	Approximately 270 feet upstream of Hog Mountain Road	+896	
Little Mulberry River Tributary E	Approximately 100 feet upstream of Hog Mountain Road	+908	Unincorporated Areas of Gwinnett County.
	Approximately 100 feet downstream of Patrick Road	+908	
Mill Creek (Stream 6)	Approximately 950 feet upstream of the Mill Creek Tributary (Stream 6.1) confluence.	+896	City of Berkeley Lake, Unincorporated Areas of Gwinnett County.
	At the upstream side of Bush Road	+926	
Mill Creek Tributary (Stream 6.1).	At the Mill Creek (Stream 6) confluence	+895	City of Berkeley Lake, Unincorporated Areas of Gwinnett County.
	Approximately 270 feet upstream of Bayway Circle	+976	
Mitchell Creek	Approximately 1.34 miles downstream of Thompson Mill Road.	+1015	Unincorporated Areas of Gwinnett County.
	Approximately 850 feet upstream of South Puckett Lane	+1136	
Richland Creek	At the Chattahoochee River confluence	+914	City of Buford, City of Sugar Hill, Unincorporated Areas of Gwinnett County.
	Approximately 80 feet upstream of Cole Road Northeast	+1096	
Richland Creek Tributary No. 1	At the Richland Creek confluence	+951	City of Sugar Hill, Unincorporated Areas of Gwinnett County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
	Approximately 100 feet upstream of Stewart Road Northeast.	+1010	
Richland Creek Tributary No. 2	At the Richland Creek confluence	+1010	City of Buford, Unincorporated Areas of Gwinnett County.
	Approximately 450 feet upstream of Pine Hollow Way	+1055	
Rock Creek	Approximately 950 feet downstream of Bailey Road	+961	Unincorporated Areas of Gwinnett County.
	Approximately 1.68 miles upstream of Bailey Road	+999	
Rogers Creek	Approximately 1,160 feet upstream of the Chattahoochee River confluence.	+899	City of Duluth, Unincorporated Areas of Gwinnett County.
	Approximately 0.83 mile upstream of Bridlewood Drive	+1039	
Sherwood Creek	Approximately 0.66 mile downstream of Old Thompson Mill Road.	+922	Unincorporated Areas of Gwinnett County.
	Approximately 1,950 feet upstream of Rock Quarry Road	+964	
Stream 1	At the Chattahoochee River confluence	+887	Unincorporated Areas of Gwinnett County.
	Approximately 450 feet upstream of Allenhurst Drive	+932	
Stream 10	At the Chattahoochee River confluence	+902	City of Duluth, Unincorporated Areas of Gwinnett County.
	Approximately 0.47 mile upstream of Buford Highway	+1031	
Stream 2	At the Chattahoochee River confluence	+888	Unincorporated Areas of Gwinnett County.
	Approximately 1,650 feet upstream of the pedestrian bridge.	+947	
Stream 3	At the Chattahoochee River confluence	+890	Unincorporated Areas of Gwinnett County.
	Approximately 0.55 mile upstream of Edgerton Drive	+948	
Stream 4	Approximately 950 feet upstream of the Chattahoochee River confluence.	+891	Unincorporated Areas of Gwinnett County.
	Approximately 100 feet upstream of the Detention Pond	+950	
Stream 5	Approximately 1,150 feet upstream of the Chattahoochee River confluence.	+895	Unincorporated Areas of Gwinnett County.
	Approximately 275 feet upstream of Bush Road	+920	
Stream 8	At the Chattahoochee River confluence	+898	City of Duluth.
	At the upstream side of Howell Springs Drive	+972	
Suwanee Creek	At the Chattahoochee River confluence	+903	Unincorporated Areas of Gwinnett County.
	Approximately 0.91 mile upstream of the Chattahoochee River confluence.	+909	
Swilling Creek	At the Chattahoochee River confluence	+897	City of Duluth.
	Approximately 1,680 feet upstream of Tree Summit Parkway.	+977	
Swilling Creek Tributary	At the Swilling Creek confluence	+928	City of Duluth.
	Approximately 100 feet downstream of Whippoorwill Drive	+966	
Wheeler Creek	Approximately 1.2 miles downstream of Wheeler Road	+838	Unincorporated Areas of Gwinnett County.
	Approximately 435 feet upstream of Flowery Branch Road	+931	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Berkeley Lake
Maps are available for inspection at City Hall, 4040 Berkeley Lake Road, Berkeley Lake, GA 30096.

City of Buford
Maps are available for inspection at City Hall, 95 Scott Street, Buford, GA 30518.

City of Duluth
Maps are available for inspection at the Department of Planning and Development, 3578 West Lawrenceville Street, Duluth, GA 30096.

City of Sugar Hill
Maps are available for inspection at City Hall, Planning and Zoning Department, 4988 West Broad Street, Sugar Hill, GA 30518.

City of Suwanee
Maps are available for inspection at the Crossroads Center, 323 Buford Highway, Suwanee, GA 30024.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected

Town of Braselton
Maps are available for inspection at the Town Hall, 4982 State Route 53, Braselton, GA 30517.

Unincorporated Areas of Gwinnett County
Maps are available for inspection at the Gwinnett County Office, 75 Langley Drive, Lawrenceville, GA 30045.

Mille Lacs County, Minnesota, and Incorporated Areas
Docket No.: FEMA–B–1161

Mille Lacs Lake	Entire shoreline within community	+1254	City of Wahkon, Unincorporated Areas of Mille Lacs County.
Rum River (Lower Reach)	Approximately 2.25 miles downstream of State Highway 95.	+962	Unincorporated Areas of Mille Lacs County.
	Approximately 0.82 mile upstream of State Highway 95	+967	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Wahkon
Maps are available for inspection at City Hall, 151 2nd Street East, Wahkon, MN 56386.

Unincorporated Areas of Mille Lacs County
Maps are available for inspection at the Mille Lacs County Courthouse Annex, 246 6th Avenue Southeast, Milaca, MN 56353.

Putnam County, New York (All Jurisdictions)
Docket No.: FEMA–B–1137

Barrett Pond	At the confluence with Clove Creek	+361	Town of Philipstown.
	Approximately 2,741 feet upstream of Fishkill Road	+378	
Clove Creek	Approximately 50 feet downstream of U.S. Route 9	+259	Town of Philipstown.
	Approximately 1.6 miles upstream of Briars Road	+517	
Croton Falls Diverting Reservoir	Entire shoreline within the Town of Southeast	+310	Town of Southeast
Croton Falls Reservoir	Entire shoreline	+311	Town of Carmel, Town of Southeast.
East Branch Croton River Reach 1.	At the confluence with the Croton Falls Diverting Reservoir.	+310	Town of Southeast, Village of Brewster.
	Approximately 777 feet upstream of State Route 22	+359	
Foundry Brook	Approximately 1,320 feet downstream of State Route 9D	+8	Town of Philipstown, Village of Cold Spring, Village of Nelsonville.
	Approximately 852 feet upstream of Fishkill Road	+369	
Holly Stream	Approximately 1,099 feet downstream of State Route 22	+273	Town of Southeast.
	Approximately 854 feet upstream of I–684	+312	
Lake Mahopac	Entire shoreline within the Town of Carmel	+660	Town of Carmel.
Lost Lake	Entire shoreline	+466	Town of Patterson.
Michael Brook	At the confluence with the Croton Falls Reservoir	+311	Town of Carmel, Town of Kent.
	Approximately 0.9 mile upstream of Fair Street	+593	
Middle Branch Croton River	At confluence with the Middle Branch Reservoir	+371	Town of Carmel, Town of Kent, Town of Southeast.
	Approximately 101 feet upstream of Lakeshore Drive	+620	
Middle Branch Reservoir	Entire shoreline within the Town of Southeast	+371	Town of Southeast.
Muscoot River	At the county boundary	+509	Town of Carmel.
	Approximately 1,009 feet upstream of Stillwater Road	+511	
Oscawana Brook	At the county boundary	+115	Town of Putnam Valley.
	Approximately 1,550 feet upstream of Oscawana Lake Road.	+516	
Putnam Lake	Entire shoreline	+494	Town of Patterson.
Secor Brook	At the confluence with the Muscoot River	+511	Town of Carmel.
	Approximately 1,396 feet upstream of Secor Road	+566	
Shrub Oak Brook	Approximately 500 feet upstream of the confluence with Peekskill Hollow Creek.	+219	Town of Putnam Valley.
	At the county boundary	+393	
Stephens Brook	Approximately 250 feet upstream of the confluence with East Branch Croton River Reach 2.	+433	Town of Patterson.
	Approximately 31 feet upstream of Thunder Ridge Road	+473	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
Tonetta Brook	At the confluence with East Branch Croton River Reach 1	+313	Town of Southeast, Village of Brewster.
	Approximately 351 feet upstream of Pumphouse Road	+444	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Town of Carmel
Maps are available for inspection at the Carmel Town Hall, 60 McAlpin Avenue, Mahopac, NY 10541.

Town of Kent
Maps are available for inspection at the Town of Kent Administration Office, 25 Sybils Crossing, Kent Lakes, NY 10512.

Town of Patterson
Maps are available for inspection at the Town Hall, 1142 Route 311, Patterson, NY 12563.

Town of Philipstown
Maps are available for inspection at the Philipstown Town Hall, 238 Main Street, Cold Spring, NY 10516.

Town of Putnam Valley
Maps are available for inspection at the Town Hall, 265 Oscawana Lake Road, Putnam Valley, NY 10579.

Town of Southeast
Maps are available for inspection at the Southeast Town Building Department, 1 Main Street, Brewster, NY 10509.

Village of Brewster
Maps are available for inspection at the Village Hall, Larry T. Jewell Municipal Building, 50 Main Street, Brewster, NY 10509.

Village of Cold Spring
Maps are available for inspection at the Village Hall, 85 Main Street, Cold Spring, NY 10516.

Village of Nelsonville
Maps are available for inspection at the Village Hall, 258 Main Street, Nelsonville, NY 10516.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

James A. Walke,

Acting Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–31349 Filed 12–28–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2012–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) modified	Communities affected
Shelby County, Alabama, and Incorporated Areas Docket No.: FEMA–B–1233			
Acton Creek	Approximately 0.78 mile downstream of Indian Valley Road.	+428	City of Hoover, Unincorporated Areas of Shelby County.
	Approximate 595 feet upstream of Caldwell Mill Road	+472	
Beaverdam Creek	At the Cahaba River confluence	+394	City of Helena, Unincorporated Areas of Shelby County.
	Approximately 775 feet downstream of County Road 17	+424	
Bishop Creek	At the downstream side of Industrial Park Drive	+423	City of Helena, City of Pelham, Town of Indian Springs Village, Unincorporated Areas of Shelby County.
	Approximately 483 feet upstream of Surrey Lane	+525	
Buck Creek	Approximately 800 feet upstream of U.S. Route 261	+412	City of Alabaster, City of Helena, City of Pelham, Unincorporated Areas of Shelby County.
	Approximately 0.9 mile upstream of County Road 340	+567	
Camp Creek (backwater effects from Kelly Creek).	Approximately 841 feet upstream of the Kelly Creek confluence.	+439	Unincorporated Areas of Shelby County.
	Approximately 0.7 mile upstream of the Kelly Creek confluence.	+439	
Coales Branch	At the upstream side of CSX Railroad Bridge	+444	City of Pelham.
	Approximately 1,350 feet upstream of Dow Street	+494	
Dodd Branch	Approximately 174 feet upstream of Lake Forest Circle	+421	City of Hoover, City of Pelham, Unincorporated Areas of Shelby County.
	Approximately 730 feet upstream of Indian Lake Lane	+499	
Dodd Branch Tributary 1	Approximately 908 feet downstream of Baneberry Drive	+445	City of Hoover, City of Pelham, Unincorporated Areas of Shelby County.
	Approximately 1,670 feet upstream of Indian Lake Way	+487	
Dodd Branch Tributary 1.1	At the downstream side of Stratshire Lane	+453	City of Helena, City of Pelham.
	Approximately 413 feet upstream of Aaron Road	+485	
Dry Creek I	Approximately 0.47 mile downstream of Fox Valley Farms Road.	+422	City of Alabaster, City of Helena, Unincorporated Areas of Shelby County.
	Approximately 531 feet downstream of Fox Valley Farms Road.	+423	
Hogpen Creek	At the upstream side of the railroad	+452	City of Pelham, Unincorporated Areas of Shelby County.
	Approximately 1,390 feet upstream of Berry Lane	+510	
Hurricane Creek (backwater effects from Cahaba River).	Approximately 0.75 mile downstream of County Road 13	+381	City of Helena, Unincorporated Areas of Shelby County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) modified	Communities affected
	Approximately 0.8 mile upstream of County Road 13	+381	
Hurricane Creek I (backwater effects from Bear Creek).	Approximately 1,365 feet downstream of Rocky Hollow Lane.	+464	Unincorporated Areas of Shelby County.
	Approximately 416 feet upstream of Rocky Hollow Lane	+464	
Ivy Branch (backwater effects from North Fork Yellowleaf Creek).	At the downstream side of County Road 280 (Old Highway 280).	+683	City of Chelsea, Unincorporated Areas of Shelby County.
	Approximately 469 feet upstream of County Road 280 (Old Highway 280).	+683	
Lee Branch	Approximately 884 feet upstream of Cahaba Valley Road	+553	City of Birmingham, City of Hoover, Unincorporated Areas of Shelby County.
	Approximately 350 feet upstream of Hugh Daniel Drive	+608	
Lee Brook	At the upstream side of County Road 95	+417	City of Helena.
	Approximately 965 feet upstream of Wynwood Drive	+477	
Little Beeswax Creek	Approximately 0.86 mile downstream of County Road 28	+405	Unincorporated Areas of Shelby County.
	Approximately 0.52 mile upstream of County Road 61	+463	
North Fork Yellowleaf Creek	Approximately 0.9 mile downstream of U.S. Route 280	+575	City of Chelsea, Unincorporated Areas of Shelby County.
	Approximately 1.2 miles upstream of Highland Lakes Road.	+783	
North Fork Yellowleaf Creek Tributary I (backwater effects from North Fork Yellowleaf Creek).	At the North Fork Yellowleaf Creek confluence	+688	City of Chelsea, Unincorporated Areas of Shelby County.
	Approximately 946 feet upstream of the North Fork Yellowleaf confluence.	+688	
Peavine Creek	Approximately 1,213 feet downstream of U.S. Route 31	+441	City of Alabaster, City of Pelham, Unincorporated Areas of Shelby County.
	Approximately 1.7 miles upstream of County Road 334	+577	
Poplar Branch (backwater effects from North Fork Yellowleaf Creek).	Approximately 138 feet upstream of U.S. Route 280	+531	City of Chelsea, Unincorporated Areas of Shelby County.
	Approximately 1,967 feet upstream of U.S. Route 280	+531	
Prairie Brook	At the downstream side of Railroad Avenue East	+416	City of Helena.
	Approximately 0.45 mile upstream of County Road 95	+425	
Trigger Creek (backwater effects from North Fork Yellowleaf Creek).	Approximately 1,024 feet downstream of County Road 13	+399	City of Hoover, Unincorporated Areas of Shelby County.
	Approximately 1.02 miles upstream of County Road 13	+399	
Wolf Creek I (backwater effects from Kelly Creek).	Approximately 0.45 mile upstream of the Kelly Creek confluence.	+456	Unincorporated Areas of Shelby County.
	Approximately 0.66 mile upstream of the Kelly Creek confluence.	+456	
Yellowleaf Creek Tributary 1 (backwater effects from North Fork Yellowleaf Creek).	Approximately 0.91 mile upstream of the Yellowleaf Creek confluence.	+456	City of Chelsea, Unincorporated Areas of Shelby County.
	Approximately 1.33 miles upstream of the Yellowleaf Creek confluence.	+456	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Alabaster
Maps are available for inspection at 201 1st Street North, Alabaster, AL 35007.

City of Birmingham
Maps are available for inspection at 710 20th Street North, Birmingham, AL 35203.

City of Chelsea
Maps are available for inspection at 11611 Chelsea Road, Chelsea, AL 35043.

City of Helena
Maps are available for inspection at 816 State Route 82, Helena, AL 35080.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) modified	Communities affected

City of Hoover
Maps are available for inspection at 100 Municipal Drive, Hoover, AL 35216.

City of Pelham
Maps are available for inspection at 3162 Pelham Parkway, Pelham, AL 35124.

Town of Indian Springs Village
Maps are available for inspection at 2635 Cahaba Valley Road, Indian Springs, AL 35124.

Unincorporated Areas of Shelby County
Maps are available for inspection at 200 West College Street, Columbiana, AL 35051.

Henderson County, Kentucky, and Incorporated Areas
Docket No.: FEMA–B–1007

Canoe Creek	At the upstream side of U.S. Route 41	+376	City of Henderson, Unincorporated Areas of Henderson County.
	At the Elam Ditch confluence	+383	
Canoe Creek Tributary 1 (backwater effects from Ohio River).	From approximately 500 feet upstream of the Canoe Creek confluence to approximately 900 feet upstream of KY–136.	+376	City of Henderson, Unincorporated Areas of Henderson County.
Cash Creek (backwater effects from Ohio River).	From the Green River confluence to approximately 800 feet upstream of Griffin and Griffin Road.	+386	Unincorporated Areas of Henderson County.
Elam Ditch	At the Canoe Creek confluence	+383	Unincorporated Areas of Henderson County.
	At Airline Road (KY–812)	+393	
Elam Ditch Tributary 1	At the Elam Ditch confluence	+384	Unincorporated Areas of Henderson County.
	Approximately 1,250 feet downstream of Toy Anthoston Road (KY–2677).	+395	
Elam Ditch Tributary 1.1 (backwater effects from Elam Ditch Tributary 1).	From the Elam Ditch Tributary 1 confluence to approximately 1,200 feet upstream of the Elam Ditch Tributary 1 confluence.	+384	Unincorporated Areas of Henderson County.
Elam Ditch Tributary 2	At the Elam Ditch confluence	+384	Unincorporated Areas of Henderson County.
	At the downstream side of Airline Road (KY–812)	+395	
Elam Ditch Tributary 3	At the Elam Ditch confluence	+384	Unincorporated Areas of Henderson County.
	At the downstream side of Toy Anthoston Road	+389	
Elam Ditch Tributary 4 (backwater effects from Elam Ditch).	From the Elam Ditch confluence to approximately 0.5 mile upstream of the Elam Ditch confluence.	+383	Unincorporated Areas of Henderson County.
Elam Ditch Tributary 8 (backwater effects from Elam Ditch).	From the Elam Ditch confluence to approximately 1,100 feet upstream of the Elam Ditch confluence.	+393	Unincorporated Areas of Henderson County.
Grane Creek (backwater effects from Ohio River).	From approximately 1,200 feet downstream of Quinns Landing Road to approximately 1.0 mile upstream of Quinns Landing Road.	+386	Unincorporated Areas of Henderson County.
Grane Creek Tributary 1 (backwater effects from Ohio River).	From approximately 0.2 mile downstream of Quinns Landing Road to the upstream side of Quinns Landing Road.	+386	Unincorporated Areas of Henderson County.
Grane Creek Tributary 5 (backwater effects from Ohio River).	From the Grane Creek confluence to approximately 1,800 feet upstream of the Grane Creek confluence.	+386	City of Robards, Unincorporated Areas of Henderson County.
Kimsey Lane Left Tributary	At the North Fork Canoe Creek confluence	+388	City of Henderson, Unincorporated Areas of Henderson County.
	Approximately 750 feet upstream of Van Wyk Road	+388	
Kimsey Lane Right Tributary	At the North Fork Canoe Creek confluence	+388	City of Henderson, Unincorporated Areas of Henderson County.
	At Kinsey Lane (KY–6112)	+388	
Lick Creek (backwater effects from Ohio River).	From the upstream side of Sportsville-Bluff City Road to approximately 1.1 miles downstream of Zion Road.	+383	Unincorporated Areas of Henderson County.
Lick Creek Tributary 2 (backwater effects from Ohio River).	From the Lick Creek confluence to the downstream side of Zion Road.	+383	Unincorporated Areas of Henderson County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
Lick Creek Tributary 2.1 (backwater effects from Ohio River).	From the Lick Creek Tributary 2 confluence to approximately 1,600 feet upstream of the Lick Creek Tributary 2 confluence.	+383	Unincorporated Areas of Henderson County.
Lick Creek Tributary 4 (backwater effects from Ohio River).	From the Lick Creek confluence to approximately 0.9 mile upstream of the Lick Creek confluence.	+383	Unincorporated Areas of Henderson County.
Middle Canoe Creek	At the Sellers Ditch confluence	+382	City of Henderson, Unincorporated Areas of Henderson County.
	At the Elam Ditch confluence	+382	
North Fork Canoe Creek	At the Canoe Creek confluence	+382	City of Henderson, Unincorporated Areas of Henderson County.
	Approximately 4,000 feet upstream of Kimsey Lane (KY–6112).	+389	
Ohio River	Approximately 2.4 miles upstream of the northwest county boundary (at River Mile Marker 829.7).	+372	City of Henderson, Unincorporated Areas of Henderson County.
	Approximately 5.0 miles upstream of the northeast county boundary (at River Mile Marker 766.5).	+386	
Old Knoblick Road Creek (backwater effects from Ohio River).	From approximately 0.6 mile downstream of Knoblick Road to approximately 800 feet downstream of Knoblick Road.	+386	Unincorporated Areas of Henderson County.
Pond Creek (overflow effects from Ohio River).	At the downstream side of Gray-Aldridge Road	+372	Unincorporated Areas of Henderson County.
	Approximately 0.9 mile upstream of Martin and Martin Road.	+373	
Pond Creek Tributary 6 (overflow effects from Ohio River).	At the Pond Creek confluence	+373	Unincorporated Areas of Henderson County.
	Approximately 600 feet downstream of KY–268	+374	
Race Creek (backwater effects from Ohio River).	From the Green River confluence to approximately 200 feet upstream of KY–1078.	+381	Unincorporated Areas of Henderson County.
Sellers Ditch	At the Canoe Creek confluence	+376	Unincorporated Areas of Henderson County.
	Approximately 200 feet upstream of Old Madison Road	+382	
Sputzman Creek (backwater effects from Ohio River).	From approximately 0.8 mile upstream of the Green River confluence to approximately 2.0 miles upstream of the Green River confluence.	+386	Unincorporated Areas of Henderson County.
Sputzman Creek Tributary 1 (backwater effects from Ohio River).	From the Sputzman Creek confluence to approximately 1.2 miles upstream of the Sputzman Creek confluence.	+386	Unincorporated Areas of Henderson County.
Sputzman Creek Tributary 2 (backwater effects from Ohio River).	From the Sputzman Creek confluence to approximately 0.6 mile upstream of Sputzman Creek.	+386	Unincorporated Areas of Henderson County.
Sugar Creek (backwater effects from Ohio River).	From the Ohio River confluence to approximately 1,700 feet upstream of the Ohio River confluence.	+376	City of Henderson.
Tiger Ditch (formerly Highway 812 Tributary).	At the North Fork Canoe Creek confluence	+382	City of Henderson, Unincorporated Areas of Henderson County.
	Approximately 150 feet downstream of Zion Road	+391	
Tiger Ditch Tributary 1	At the Tiger Ditch (formerly Highway 812 Tributary) confluence.	+385	City of Henderson, Unincorporated Areas of Henderson County.
	At the downstream side of Adams Lane	+390	
Upper Canoe Creek	At the Sellers Ditch confluence	+382	Unincorporated Areas of Henderson County.
	Approximately 3,800 feet upstream of the East Fork Canoe Creek confluence.	+385	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Henderson

Maps are available for inspection at 222 1st Street, Henderson, KY 42419.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
City of Robards			
Maps are available for inspection at 20 North Main Street, Henderson, KY 42420.			
Unincorporated Areas of Henderson County			
Maps are available for inspection at 20 North Main Street, Henderson, KY 42420.			
Coos County, New Hampshire (All Jurisdictions) **Docket No.: FEMA–B–1213**			
Androscoggin River	Approximately 3.5 miles downstream of Meadow Road	+691	City of Berlin, Town of Dummer, Town of Errol, Town of Gorham, Town of Milan, Town of Shelburne, Unincorporated Areas of Coos County.
	At the downstream side of Umbagog Lake Dam	+1231	
Clear Stream	At the Androscoggin River confluence	+1222	Town of Errol.
	Approximately 1.1 miles upstream of White Mountain Highway.	+1227	
Clement Brook	At the Androscoggin River confluence	+700	Town of Shelburne.
	Approximately 0.7 mile upstream of U.S. Route 2	++752	
Connecticut River	Approximately 0.8 mile downstream of Janice Peaslee Bridge (formerly Maidstone-Stratford Hollow Bridge).	+865	Town of Stratford.
	Approximately 1,180 feet downstream of Janice Peaslee Bridge (formerly Maidston-Stratford Hollow Bridge).	+865	
Connecticut River	Approximately 2.1 miles upstream of State Route 105	+932	Town of Clarksville, Town of Colebrook, Town of Columbia, Town of Stewartstown.
	Approximately 0.6 mile downstream of U.S. Route 3	+1106	
Dead River	At the Androscoggin River confluence	+950	City of Berlin.
	Approximately 0.4 mile upstream of Hillside Avenue	+1049	
Greenough Brook	At the Androscoggin River confluence	+1226	Town of Errol.
	At the downstream side of the Akers Pond Dam	+1230	
Moose Brook	At the Androscoggin River confluence	+793	Town of Gorham.
	Approximately 840 feet upstream of Jimtown Road	+1128	
Moose Brook Split	At the Moose Brook confluence	+924	Town of Gorham.
	At the Moose Brook divergence	+937	
Moose River	At the Androscoggin River confluence	+787	Town of Gorham.
	Approximately 0.4 mile upstream of Main Street	+830	
Peabody River	At the Androscoggin River confluence	+755	Town of Gorham, Town of Shelburne.
	Approximately 1.8 miles upstream of Glen Road	+1060	
Tinker Brook	At the Androscoggin River confluence	+842	Town of Gorham.
	Approximately 0.9 mile upstream of Main Street	+1206	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Berlin
Maps are available for inspection at City Hall, 168 Main Street, Berlin, NH 03570.

Town of Clarksville
Maps are available for inspection at the Town Office, 408 New Hampshire Route 145, Clarksville, NH 03592.

Town of Colebrook
Maps are available for inspection at the Town Hall, 17 Bridge Street, Colebrook, NH 03576.

Town of Columbia
Maps are available for inspection at the Town Hall, 1679 U.S. Route 3. Columbia, NH 03576.

Town of Dummer
Maps are available for inspection at the Town Office, 75 Hill Road, Dummer, NH 03588.

Town of Errol
Maps are available for inspection at the Selectmen's Office, 33 Main Street, Errol, NH 03579.

Town of Gorham
Maps are available for inspection at the Town Hall, 20 Park Street, Gorham, NH 03581.

Town of Milan
Maps are available for inspection at the Municipal Building, 20 Bridge Street, Milan, NH 03588.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) modified	Communities affected

Town of Shelburne
Maps are available for inspection at the Town Hall, 74 Village Road, Shelburne, NH 03581.

Town of Stewartstown
Maps are available for inspection at the Stewartstown Town Clerk's Office, 888 Washington Street, West Stewartstown, NH 03597.

Town of Stratford
Maps are available for inspection at the Town Hall, 10 Town Common Road, Stratford, NH 03590.

Unincorporated Areas of Coos County
Maps are available for inspection at the Coos County Commissioner's Office, 136 County Farm Road, West Stewartstown, NH 03597.

Cleveland County, Oklahoma, and Incorporated Areas
Docket No.: FEMA–B–1233

Dave Blue Creek	At the downstream side of North Main Street	+1118	City of Noble, City of Norman.
	Approximately 0.4 mile upstream of Post Oak Road	+1177	
Little River	Approximately 600 feet downstream of 12th Avenue Northeast.	+1097	City of Moore, City of Norman.
	Approximately 1.0 mile downstream of Southwest 34th Street.	+1159	
Stream E (backwater effects from Little River).	At the Little River confluence	+1159	City of Moore, City of Norman.
	Approximately 1,480 feet upstream of the Little River confluence.	+1159	
Stream E	Approximately 0.42 mile downstream of Southwest 19th Street.	+1191	City of Moore.
	Approximately 60 feet downstream of Southwest 4th Street.	+1226	
Tributary 1 to Unnamed Tributary to Cow Creek Tributary 2 North Branch (backwater effects from Unnamed Tributary to Cow Creek Tributary 2 North Branch).	At the Unnamed Tributary to Cow Creek Tributary 2 North Branch confluence.	+1236	City of Oklahoma City.
	Approximately 660 feet upstream of the Unnamed Tributary to Cow Creek Tributary 2 North Branch confluence.	+1236	
Tributary 3 of Canadian River Tributary 1.	Approximately 800 feet downstream of Southwest 119th Street.	+1198	City of Oklahoma City.
	Approximately 250 feet downstream of Southwest 106th Street.	+1239	
Tributary A to Tributary 3 of Canadian River Tributary 1 (backwater effects from Tributary 3 of Canadian River Tributary 1).	At the Tributary 3 of Canadian River Tributary 1 confluence.	+1233	City of Oklahoma City.
	Approximately 1,080 feet upstream of the Tributary 3 of Canadian River Tributary 1 confluence.	+1233	
Tributary B to Tributary 3 of Canadian River Tributary 1 (backwater effects from Tributary 3 of Canadian River Tributary 1).	At the Tributary 3 of Canadian River Tributary 1 confluence.	+1211	City of Oklahoma City.
	Approximately 1,100 feet upstream of the Tributary 3 of Canadian River Tributary 1 confluence.	+1211	
Unnamed Tributary to Cow Creek Tributary 2 North Branch.	Approximately 240 feet upstream of the Cow Creek Tributary 2 North Branch confluence.	+1224	City of Oklahoma City.
	Approximately 0.8 mile upstream of the Cow Creek Tributary 2 North Branch confluence.	+1240	
Unnamed Tributary to Little River.	At the Little River confluence	+1150	City of Moore, City of Norman.
	Approximately 300 feet upstream of Southwest 34th Street.	+1185	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected

∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Moore
Maps are available for inspection at City Hall, 301 North Broadway, Moore, OK 73160.

City of Noble
Maps are available for inspection at City Hall, 304 South Main Street, Noble, OK 73068.

City of Norman
Maps are available for inspection at City Hall, 201 West Gray Street, Building A, Norman, OK 73069.

City of Oklahoma City
Maps are available for inspection at the Public Works Department, 420 West Main Street, Suite 700, Oklahoma City, OK 73102.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

James A. Walke,

Acting Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–31394 Filed 12–28–12; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 12–237; RM–11672; DA 12–1978]

Radio Broadcasting Services; Tignall, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Georgia-Carolina Radiocasting Company, LLC, allots FM Channel 287A and deletes FM Channel 244A at Tignall, Georgia. The allotment change is part of a hybrid rule making and FM application proposal. Channel 287A can be allotted at Tignall, consistent with the minimum distance separation requirements of the Commission's rules, at coordinates 33–45–22 NL and 82–42–56 WL.

DATES: Effective January 30, 2013.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 12–237, adopted December 5, 2012, and released December 7, 2012. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *www.bcpiweb.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended at Tignall by removing Channel 244A and by adding Channel 287A.

[FR Doc. 2012–31408 Filed 12–28–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 201, 203, 204, 215, 219, 245, and 252

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to provide needed editorial changes.

DATES: *Effective Date:* December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Manuel Quinones, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6088; facsimile 571–372–6094.

SUPPLEMENTARY INFORMATION:

■ This final rule amends the DFARS as follows:

1. Corrects fax number at 201.201–1(d)(i).

2. Corrects DODOIG address at 203.1003.

3. Corrects typographical error at 204.1104. Redesignates 204.1104 as 204.1105 to correctly align with FAR 4.1105;

4. Clarifies terminology at 204.7102 and 204.7106 relating to contract line items.

5. Updates DPAP directorate office symbol at 215.403–1(c)(4)(B).

6. Corrects cross-reference to PGI at 219.202–1.

7. Redesignates 245.103(1) as 245.103–70, redesignates 245.103(2) as 245.103–71, adds new 245.103–72 and 103–73 to direct contracting officers to additional DFARS procedures, guidance, and information at PGI 245.103–72 and PGI 245.103–73 respectively.

8. Removes 245.201–71 and 245.201.72, and redesignates 245.201–73 as 245.201–71 Security Classification.

9. Corrects address of the DoD Office of Inspector General (DODOIG) at 252.203–7003;

10. Removes DODOIG address at 252.203.7004 and adds a hyperlink to obtain Hotline posters; and

11. Corrects title of statute and clause date at 252.227–7037 and 252.227–7038.

12. Corrects typographical error at 252.247–7023;

List of Subjects in 48 CFR Parts 201, 203, 204, 215, 219, 245, and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 201, 203, 204, 215, 219, 245, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 201, 203, 204, 215, 219, 245, and 252 continue to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

201.201–1 [Amended]

■ 2. Section 201.201–1 paragraph (d)(i) is amended by removing ''datafax (703) 602–0350'' and adding ''datafax (571) 372–6094'' in its place.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 3. Section 203.1003 is revised to read as follows:

203.1003 Requirements.

(b) Notification of possible contractor violation. Upon notification of a possible contractor violation of the type described in FAR 3.1003(b), coordinate the matter with the following office:

Department of Defense Office of Inspector General, Investigative Policy and Oversight Contractor Disclosure Program, 4800 Mark Center Drive, Suite 11H25, Arlington, VA 22350–1500.

Toll-Free Telephone: 866–429–8011.

PART 204—ADMINISTRATIVE MATTERS

204.1104 [Redesignated as 204.1105]

■ 4. Section 204.1104 is redesignated as section 204.1105.

204.7102 [Amended]

■ 5. Section 204.7102 paragraph (a)(6) is amended by removing '''Exhibit line and subline items; and'' and adding ''Exhibit line items; and'' in its place.

204.7106 [Amended]

■ 6. Section 204.7106 is amended by—

■ a. In paragraph (b)(2)(i)(C), removing ''contract or exhibit line item or subline item'' and adding ''contract line item or subline item or exhibit line item'' in its place wherever it appears; and

■ b. In paragraphs (b)(2)(ii)(B), (b)(2)(ii)(C) and (b)(2)(ii)(D), removing ''contract or exhibit line item or subline item'' and adding ''contract line item or subline item or exhibit line item'' in its place wherever it appears.

PART 215—CONTRACTING BY NEGOTIATION

215.403–1 [Amended]

■ 7. Section 215.403–1 paragraph (c)(4)(B) is amended by removing ''DPAP/CPF'' and adding ''DPAP/CPIC'' in its place.

PART 219—SMALL BUSINESS PROGRAMS

219.202–1 [Amended]

■ 8. Section 219.202–1 is amended by removing ''PGI 205.207(d)(iii)'' and adding ''PGI 205.207(d)(ii)'' in its place.

PART 245—GOVERNMENT PROPERTY

245.103 [Amended]

■ 9a. Section 245.103 is amended by redesignating 245.103(1) as 245.103–70 and 245.103(2) as 245.103–71;

■ 9b. A section heading is added to section 245.103–70 to read as follows:

245.103–70 Furnishing Government property to contractors.

■ 9c. A section heading is added to section 245.103–71 to read as follows:

245.103–71 Transferring Government property accountability.

■ 9d. Add new sections 245.103–72 and 245.103–73 to read as follows:

245.103–72 Government-furnished property attachments to solicitations and awards.

When performance will require the use of Government-furnished property, contracting officers shall use the fillable electronic ''Requisitioned Government Furnished Property'' and/or ''Scheduled Government Furnished Property'' formats as attachments to solicitations and awards. See *PGI 245–103–72* for links to the formats and procedures for preparing Government-furnished property attachments to solicitations and awards.

245.103–73 Contracting office responsibilities.

See *PGI 245.103–73* for contracting office responsibilities.

Subpart 245.2 Solicitation and Evaluation Procedures

245.201–71 and 245.201–72 [Removed]

■ 10a. Remove 245.201–71 and 245.201–72.

245.201–73 [Redesignated and amended]

■ 10b. Redesignate 245.201–73 as 245.201–71, and in newly designated 245.201–71, remove ''PGI 245.201–73'' and add ''PGI 245.201–71'' in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.203.7003 [Amended]

■ 11. Section 252.203–7003 is revised as follows:

252.203–7003 Agency Office of the Inspector General.

As prescribed in 203.1004(a), use the following clause:

AGENCY OFFICE OF THE INSPECTOR GENERAL (DEC 2012)

The agency office of the Inspector General referenced in paragraphs (c) and (d) of FAR clause 52.203–13, Contractor Code of Business Ethics and Conduct, is the DoD Office of Inspector General at the following address:

Department of Defense Office of Inspector General, Investigative Policy and Oversight, Contractor Disclosure Program, 4800 Mark Center Drive, Suite 11H25, Alexandria, VA 22350–1500.

Toll Free Telephone: 866–429–8011.

(End of clause)

■ 12. Section 252.203–7004 is amended by—

■ a. Removing clause date ''(SEP 2011)'' and adding ''(DEC 2012)'' in its place; and

■ b. Revising paragraph (b)(1) to read as follows:

252.203–7004 Display of fraud hotline poster(s).

* * * * *

(b) * * *

(1) The Contractor shall display prominently in common work areas within business segments performing work in the United States under Department of Defense (DoD) contracts DoD hotline posters prepared by the DoD Office of the Inspector General. DoD hotline posters may be obtained via the Internet at *http://www.dodig.mil/HOTLINE/hotline_posters.htm.*

* * * * *

252.227–7037 [Amended]

■ 13. Section 252.227–7037 is amended—

■ a. By removing the clause date ''(APR 2012)'' and adding ''(JUN 2012)'' in its place;

■ b. In paragraph (e)(3), by removing ''the Contract Disputes Act of 1978 (41 U.S.C. 7101)'' and adding ''41 U.S.C. 7101, Contract Disputes'' in its place; and

■ c. In paragraph (g)(2)(iv), removing ''Act'' and adding ''statute'' in its place.

252.227–7038 [Amended]

■ 14. Section 252.227–7038 is amended by removing the clause date ''(DEC 2007)'' and adding ''(JUN 2012)'' in its place and in paragraph (l)(2)(ii), by removing ''Act'' and adding ''statute'' in its place.

252.247–7023 [Amended]

■ 15. Section 252.247–7023 introductory text is amended by removing ''As prescribed in 247.573(b)(1)'' and adding ''As prescribed in 247.574(b)(1)''.

[FR Doc. 2012–31092 Filed 12–28–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 202

RIN 0750–AH81

Defense Federal Acquisition Regulation Supplement: Contracting Activity Updates (DFARS Case 2012–D045)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise the definitions of ''contracting activity'' and ''departments and agencies'' found at DFARS subpart 202.101.

DATES: *Effective Date:* January 30, 2013.

FOR FURTHER INFORMATION CONTACT: Ms. Lesa Scott, telephone 571–372–6104.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule updates the list of contracting activities and moves the list to the DFARS Procedures, Guidance, and Instruction (PGI) at 202.101. The reorganization of DFARS 202.101 will facilitate the rapid updating of contracting activities as organizational changes occur. This final rule—

- Revises the definition of ''contracting activity'' at DFARS 202.101 by removing the list of contracting activities;
- Inserts a pointer at DFARS 202.101 to direct readers to PGI 202.101 for the list of contracting activities that have been delegated broad authority regarding acquisition functions;
- Adds the updated list of contracting activities to the PGI at 202.101; and
- Updates the definition of ''departments and agencies.''

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

''Publication of proposed regulations,'' 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it merely updates and moves the list of contracting activities from DFARS 202.101, Definitions, to a new DFARS PGI section at 202.101, Definitions. These requirements affect only the internal operating procedures of the Government.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 202

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 202 is amended as follows:

PART 202—DEFINITIONS OF WORDS AND TERMS

■ 1. The authority citation for 48 CFR part 202 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Section 202.101 is amended by—

■ a. Revising the ''contracting activity'' definition; and

■ b. Revising the ''departments and agencies'' definition.

The revisions read as follows:

202.101 Definitions.

* * * * *

Contracting activity for DoD also means elements designated by the director of a defense agency which has been delegated contracting authority through its agency charter. DoD contracting activities are listed at PGI 202.101.

* * * * *

Departments and agencies, as used in DFARS, means the military departments and the defense agencies. The military departments are the Departments of the Army, Navy, and Air Force (the Marine

Corps is a part of the Department of the Navy). The defense agencies are the Defense Advanced Research Projects Agency, the Defense Commissary Agency, the Defense Contract Management Agency, the Defense Finance and Accounting Service, the Defense Information Systems Agency, the Defense Intelligence Agency, the Defense Logistics Agency, the Defense Security Cooperation Agency, the Defense Security Service, the Defense Threat Reduction Agency, the Missile Defense Agency, the National Geospatial-Intelligence Agency, the National Security Agency, the United States Special Operations Command, and the United States Transportation Command.

* * * * *

[FR Doc. 2012–31086 Filed 12–28–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 215, 217, 219, 225, 239, 241, 242, and 252

RIN 0750–AH49

Defense Federal Acquisition Regulation Supplement: Definition of Cost or Pricing Data (DFARS Case 2011–D040)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update the text to reflect the distinction between ''certified cost or pricing data'' and ''data other than certified cost or pricing data.'' The DFARS changes are necessary to ensure consistency with the Federal Acquisition Regulation (FAR) which had been amended to clarify the distinction between those terms, as well as the requirements for the submission of cost or pricing data.

DATES: December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, telephone 571–372–6099.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 77 FR 2680 on January 19, 2012. The comment period closed on March 19, 2012. This final rule updates the DFARS for consistency with FAR changes addressing the definition of cost or pricing data which clarified the distinction between ''certified cost or pricing data'' and ''data other than certified cost or pricing data,'' as well as the requirements for the submission of cost or pricing data (75 FR 53135, August 30, 2010).

II. Discussion and Analysis

Two respondents submitted comments. One respondent supported the rule without further comment, and the second respondent's comment was non-substantive. Therefore, the DFARS is revised as proposed.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule merely aligns the DFARS with the FAR. However, a final regulatory flexibility analysis has been performed consistent with 5 U.S.C. 604. This rule amends the DFARS to update the text addressing the definition of cost or pricing data by inserting the word ''certified'' in front of ''cost or pricing data.'' The DFARS changes are necessary to ensure consistency with the FAR. The rule does not expand or diminish the existing rights of the contracting officer to obtain cost data or pricing data. Instead, this rule will benefit all entities, both large and small, by clarifying the requirements for the submission of ''certified cost or pricing data'' and ''data other than certified cost or pricing data.'' No comments were received in response to the initial regulatory flexibility analysis published with the proposed rule on January 19, 2012. No comments were filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the rule. The rule does not require any reporting, recordkeeping, or other compliances, or compel contractors to expend significant effort or cost. No known significant alternatives to the rule have been identified. A copy of the analysis may be obtained from the point of contact specified herein.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C chapter 35).

List of Subjects in 48 CFR Parts 204, 215, 217, 219, 225, 239, 241, 242, and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, DoD amends 48 CFR parts 204, 215, 217, 219, 225, 239, 241, 242, 244, and 252 as follows:

■ 1. The authority citation for 48 CFR parts 204, 215, 217, 219, 225, 239, 241, 242, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE MATTERS

204.805 [Amended]

■ 2. Section 204.805 is amended in paragraph (5) by removing ''subject to cost or pricing data'' and adding ''subject to certified cost or pricing data'' in its place.

PART 215—CONTRACTING BY NEGOTIATION

■ 3. Section 215.403 is amended by revising the section heading to read as follows:

215.403 Obtaining certified cost or pricing data.

215.403–1 [Amended]

■ 4. Section 215.403–1 is amended by—

■ a. In paragraph (b) and the heading of paragraph (c) removing ''*cost or pricing data requirements*'' and adding ''*certified cost or pricing data requirements*'' in its place;

■ b. In paragraph (c)(4)(C) and the introductory text of paragraph (c)(4)(D) removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place;

■ c. In paragraph (c)(4)(D)(*1*) removing ''information other than cost or pricing

data'' and adding ''data other than certified cost or pricing data'' in its place; and

■ d. In paragraph (c)(4)(D)(*2*) removing ''Cost or pricing data'' and adding ''Certified cost or pricing data'' in its place and removing ''cost or pricing data threshold'' and adding ''certified cost or pricing data threshold'' in its place.

■ 5. Section 215.403–3 is amended by revising the section heading to read as follows:

215.403–3 Requiring data other than certified cost or pricing data.

* * * * *

215.404–1 [Amended]

■ 6. Section 215.404–1 is amended in paragraph (2)(i) by removing the word ''information'' and adding the word ''data'' in its place.

215.404–2 [Amended]

■ 7. Section 215.404–2 is amended by revising the section heading to read as follows:

215.404–2 Data to support proposal analysis.

* * * * *

215.404–4 [Amended]

■ 8. Section 215.404–4 is amended by—

■ a. In the introductory text of paragraph (b)(1) removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place; and

■ b. In paragraph (c)(2)(C)(*1*)(*i*) removing ''cost or pricing data threshold'' and adding ''certified cost or pricing data threshold'' in its place.

215.407–5–70 [Amended]

■ 9. Section 215.407–5–70 is amended in paragraphs (b)(2)(i) and (ii) by removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place.

215.408 [Amended]

■ 10. Section 215.408 is amended by—

■ a. In paragraphs (1)(i) through (iii) by removing ''Cost or Pricing Data'' and adding ''Certified Cost or Pricing Data'' in its place;

■ b. In paragraph (2) by removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place.

PART 217—SPECIAL CONTRACTING METHODS

217.7401 [Amended]

■ 11. Section 217.7401 is amended by—

■ a. In the introductory text of paragraph (c) by removing the word ''information'' and adding the word ''data'' in its place;

■ b. In paragraph (c)(1) by removing ''Information in the proposal'' and adding ''Data in the proposal'' in its place; and

■ c. In paragraph (c)(2) by removing the word ''information'' and adding the word ''data'' in its place.

217.7406 [Amended]

12. Section 217.7406 is amended in paragraph (b)(3) by removing ''of cost or pricing data'' and adding ''of certified cost or pricing data'' in its place and removing ''and cost or pricing data'' and adding ''and certified cost or pricing data'' in its place.

PART 219—SMALL BUSINESS PROGRAMS

219.806 [Amended]

■ 13. Section 219.806 is amended in paragraph (1) by removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place and removing ''FAR Subpart 15.4'' and adding ''FAR subpart 15.4'' in its place.

PART 225—FOREIGN ACQUISITION

225.7303 [Amended]

■ 14. Section 225.7303 is amended in paragraph (b) by removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place.

225.7304 [Amended]

■ 15. Section 225.7304 is amended by—

■ a. In paragraph (c) by removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place,

■ b. In paragraph (e)(3) by removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place, and removing ''Subpart 201.4'' and adding ''subpart 201.4'' in its place, and

■ c. In paragraph (h) by removing ''additional information concerning'' and adding ''additional data concerning'' in its place and removing ''sufficient information to'' and adding ''sufficient data to demonstrate'' in its place and removing ''This information—'' and adding ''This data—'' in its place.

PART 239— ACQUISITION OF INFORMATION TECHNOLOGY

■ 16. Section 239.7406 is revised to read as follows:

239.7406 Certified cost or pricing data and data other than certified cost or pricing data.

(a) Common carriers are not required to submit certified cost or pricing data before award of contracts for tariffed services. Rates or preliminary estimates quoted by a common carrier for tariffed telecommunications services are considered to be prices set by regulation within the provisions of 10 U.S.C. 2306a. This is true even if the tariff is set after execution of the contract.

(b) Rates or preliminary estimates quoted by a common carrier for nontariffed telecommunications services or by a noncommon carrier for any telecommunications service are not considered prices set by law or regulation.

(c) Contracting officers shall obtain sufficient data to determine that the prices are reasonable in accordance with FAR 15.403–3 or 15.403–4. See *PGI 239.7406* for examples of instances where additional data may be necessary to determine price reasonableness.

PART 241— ACQUISITION OF UTILITY SERVICES

241.201 [Amended]

■ 17. Section 241.201 is amended in paragraph (3)(ii) by removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place and removing ''FAR Subpart 15.4'' and adding ''FAR subpart 15.4'' in its place.

PART 242— CONTRACT ADMINISTRATION AND AUDIT SERVICES

242.7203 [Amended]

■ 18. Section 242.7203 is amended in paragraph (b) by removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place.

242.7301 [Amended]

■ 19. Section 242.7301 is amended in paragraph (c) by removing the word ''Subparts'' and adding the word ''subparts'' in its place.

242.7302 [Amended]

■ 20. Section 242.7302 is amended by—

■ a. In paragraph (a)(2) by removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place.

■ b. In paragraph (b)(1) by removing ''Information reveals'' and adding ''Data reveals'' in its place.

242.7502 [Amended]

■ 21. Section 242.7502 is amended in paragraph (g)(3)(ii) by removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.209–7009 [Amended]

■ 22. Section 252.209–7009 is amended by removing the clause date ''(DEC

2010)'' and adding ''(DEC 2012)'' in its place, redesignating paragraphs (a)(1) and (2) as (a)(i) and (ii), and in newly designated paragraph (a)(i) removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place.

252.215–7000 [Amended]

■ 23. Section 252.215–7000 is amended by removing the clause date ''(DEC 1991)'' and adding ''(DEC 2012)'' in its place and removing ''Cost or Pricing Data-Modifications'' and adding ''Certified Cost or Pricing Data-Modifications'' in its place wherever it appears.

252.215–7002 [Amended]

■ 24. Section 252.215–7002 is amended by—

■ a. Removing the clause date ''(FEB 2012)'' and adding ''(DEC 2012)'' in its place;

■ b. In the definition of ''*Significant Deficiency''* in paragraph (a), removing ''rely upon information'' and adding ''rely upon data and information'' in its place;

■ c. In paragraph (d)(1) removing ''protect the information as privileged'' and adding ''protect the data and information as privileged'' in its place;

■ d. In paragraph (d)(4)(ix) removing the word ''information'' and adding the word ''data'' in its place; and

■ e. In paragraph (d)(4)(xi) removing ''Integrate information available'' and adding ''Integrate data and information available'' in its place.

252.217–7027 [Amended]

■ 25. Section 252.217–7027 is amended by removing the clause date ''(OCT 1998)'' and adding ''(DEC 2012)'' in its place, in paragraph (a) removing ''*cost or pricing data''* and adding ''*certified cost or pricing data''* in its place, and in paragraph (b) removing ''*cost or pricing data''* and adding ''*certified cost or pricing data''* in its place.

252.243–7002 [Amended]

■ 26. Section 252.243–7002 is amended by removing the clause date ''(MAR 1998)'' and adding ''(DEC 2012)'' in its place, in paragraph (c)(1) removing ''Cost or pricing data'' and adding ''Certified cost or pricing data,'' in its place, and in paragraph (c)(2) removing ''Information other than cost or pricing data'' and adding ''Data other than certified cost or pricing data'' in its place and removing ''cost or pricing data'' and adding ''certified cost or pricing data'' in its place.

[FR Doc. 2012–31088 Filed 12–28–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

RIN 0750–AH82

Defense Federal Acquisition Regulation Supplement: New Qualifying Country—Poland (DFARS Case 2012–D049)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add Poland as a qualifying country.

DATES: *Effective Date:* December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to add the Republic of Poland as a qualifying country. On August 27, 2011, the U.S. Secretary of Defense signed a new reciprocal defense procurement agreement with the Polish Minister of National Defense. This agreement was placed into force on July 19, 2012. The agreement removes discriminatory barriers to procurements of supplies and services produced by industrial enterprises of the other country to the extent mutually beneficial and consistent with national laws, regulations, policies, and international obligations. The agreement does not cover construction or construction material. Poland is already a designated country under the World Trade Organization Government Procurement Agreement.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

''Publication of proposed regulations'', 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, does not have a significant effect beyond the internal operating procedures of DoD, and will not have a significant cost or administrative impact on contractors or offerors. Poland is added to the list of 22 other countries that have similar reciprocal defense procurement agreements with DoD.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1 and 41 U.S.C. 1707 does not require publication for public comment.

V. Paperwork Reduction Act

This rule affects the certification and information collection requirements in the provisions at DFARS 252.225–7000 and 252.225–7035, currently approved under OMB Control Number 0704–0229, titled DFARS Part 225, Foreign Acquisition, and Associated Clauses, in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The impact, however, is negligible, because it merely shifts the category under which items from Poland must be listed.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 225 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 225 and 252 continue to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 225—FOREIGN ACQUISITION

225.003 [Amended]

■ 2. Section 225.003 is amended in paragraph (10), the definition of ''qualifying country'' by adding in alphabetical order the country ''Poland''.

225.872–1 [Amended]

■ 3. Section 225.872–1 paragraph (a) is amended by adding, in alphabetical order, the country of ''Poland'' to the list of qualifying countries.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

■ 4. Section 252.212–7001 is amended as follows:

■ a. In the clause heading, by removing the clause date ''(NOV 2012)'' and adding ''(DEC 2012)'' in its place;

■ b. In paragraph (b)(6)(i), by removing the clause date ''(JUN 2012)'' and adding ''(DEC 2012)'' in its place;

■ c. In paragraph (b)(9) by revising the clause date to read ''(DEC 2012);

■ d. In paragraph (b)(12), by removing the clause date ''(NOV 2012)'' and adding ''(DEC 2012)'' in its place;

■ e. In paragraph (b)(13)(i), by removing the clause date ''(NOV 2012)'' and adding ''(DEC 2012)'' in its place;

■ f. In paragraph (b)(16)(i), by removing the clause date ''(NOV 2012)'' and adding ''(DEC 2012)'' in its place;

252.225–7001 [Amended]

■ 5. Section 252.225–7001 is amended as follows:

■ a. In the clause heading, by removing the clause date ''(JUN 2012)'' and adding ''(DEC 2012)'' in its place;

■ b. In paragraph (a), the definition of ''qualifying country'', by adding, in alphabetical order, the country of ''Poland'' to the list of qualifying countries.

252.225–7002 [Amended]

■ 6. Section 252.225–7002 is amended as follows:

■ a. In the clause heading, by removing the clause date ''(JUN 2012)'' and adding ''(DEC 2012)'' in its place;

■ b. In paragraph (a), the definition of ''qualifying country'', by adding in alphabetical order the country of ''Poland'' to the list of qualifying countries.

252.225–7012 [Amended]

■ 7. Section 252.225–7012 is amended as follows:

■ a. In the clause heading, by removing the clause date ''(JUN 2012)'' and adding ''(DEC 2012)'' in its place;

■ b. In paragraph (a), the definition of ''qualifying country'', by adding in alphabetical order the country of ''Poland'' to the list of qualifying countries.

252.225–7017 [Amended]

■ 8. Section 252.225–7017 is amended as follows:

■ a. In the clause heading, by removing the clause date ''(NOV 2012)'' and adding ''(DEC 2012)'' in its place;

■ b. In paragraph (a), the definition of ''qualifying country'', by adding in alphabetical order the country of ''Poland'' to the list of qualifying countries.

252.225–7021 [Amended]

■ 9. Section 252.225–7021 is amended as follows:

■ a. In the clause heading, by removing the clause date ''(NOV 2012)'' and adding ''(DEC 2012)'' in its place;

■ b. In paragraph (a), the definition of ''qualifying country'', by adding in alphabetical order the country of ''Poland'' to the list of qualifying countries.

252.225–7036 [Amended]

■ 10. Section 252.225–7036 is amended as follows:

■ a. In the clause heading, by removing the clause date ''(NOV 2012)'' and adding ''(DEC 2012)'' in its place;

■ b. In paragraph (a), the definition of ''qualifying country'', by adding in alphabetical order the country of ''Poland'' to the list of qualifying countries.

[FR Doc. 2012–31083 Filed 12–28–12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 121009528–2729–02]

RIN 0648–XC287

2013–2014 Summer Flounder and Scup Specifications; 2013 Black Sea Bass Specifications; Preliminary 2013 Quota Adjustments; 2013 Summer Flounder Quota for Delaware

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues final specifications for the 2013 summer flounder, scup, and black sea bass fisheries, as well as the 2014 summer flounder and scup fisheries. This final rule specifies allowed harvest limits for both commercial and recreational fisheries. This action prohibits federally permitted commercial fishing vessels from landing summer flounder in Delaware in 2013 due to continued quota repayment from previous years' overages.

These actions are necessary to comply with regulations implementing the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, as well as to ensure compliance with the Magnuson-Stevens Fishery Conservation and Management Act.

The intent of this action is to establish harvest levels and other management measures to ensure that these species are not overfished or subject to overfishing in 2013 and 2014.

DATES: Effective January 1, 2013, through December 31, 2014.

ADDRESSES: Copies of the specifications document, consisting of an Environmental Assessment (EA), Initial Regulatory Flexibility Analysis (IRFA), and other supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and Scientific and Statistical Committee (SSC), are available from Dr. Christopher Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The specifications document is also accessible via the Internet at *http://www.nero.noaa.gov.* The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and

alternatives contained in this final rule. Copies of the small entity compliance guide are available from John K. Bullard, Regional Administrator, Northeast Region, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Management Specialist, (978) 281–9224.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) cooperatively manage the summer flounder, scup, and black sea bass fisheries under the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). Fishery specifications in these fisheries include various catch and landing subdivisions, such as the commercial and recreational sector annual catch limits (ACLs), annual catch targets (ACTs), sector-specific landing limits (i.e., the commercial fishery quota and recreational harvest limit (RHL)), and research set-aside (RSA) established for the upcoming fishing year. Details of each subdivision appear later in this rule.

The FMP and its implementing regulations establish the Council's process for establishing specifications. All requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), including the 10 national standards, also apply to specifications.

The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the U.S./Canada border, scup (*Stenotomus chrysops*), and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35° 13.3' N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border. Detailed background information regarding the status of the summer flounder, scup, and black sea bass stocks and the development of the 2013 and 2014 specifications for these fisheries was provided in the proposed specifications (77 FR 68723; November 16, 2012). That information is not repeated here.

NMFS will establish the 2013 recreational management measures (i.e., minimum fish size, possession limits, and fishing seasons) for summer flounder, scup, and black sea bass by publishing proposed and final rules in the **Federal Register** at a later date, after the Council concludes its deliberations and submits its recommendations as specified in the FMP.

2013 and 2014 Specifications

This final rule implements TAL, RSA, and RHL for each management unit for 2013 and 2014, consistent with the recommendations of the Council:

Summer Flounder: For 2013, a TAL of 19.07 million lb (8,650 mt), including RSA of 589,800 lb (267 mt); a commercial quota of 11.44 million lb (5,189 mt); and an RHL of 7.63 million lb (3,459 mt). For 2014, a TAL of 19.98 million lb (8,609 mt), including proposed RSA of 587,100 lb (266 mt); a commercial quota of 11.39 million lb (5,166 mt); and an RHL of 7.59 million lb (3,444 mt).

Scup: For 2013, a TAL of 31.08 million lb (14,098 mt), including RSA of 958,950 lb (435 mt); a commercial quota of 23.53 million lb (10,671 mt); and an RHL of 7.55 million lb (3,425 mt). For 2014, a TAL of 28.98 million lb (13,145 mt), including proposed RSA of 896,100 lb (406 mt); a commercial quota of 21.95 million lb (9,955 mt); and an RHL of 7.03 million lb (3,188 mt).

Black Sea Bass: For 2013, a TAL of 3.63 million lb (1,646 mt), including RSA of 111,900 lb (50.8 mt); a commercial quota of 1.78 million lb (805 mt); and an RHL of 1.85 million lb (838 mt).

TABLE 1—SUMMARY OF THE 2013–2014 SPECIFICATIONS

		Summer Flounder		Scup		Black Sea Bass
		2013	2014	2013	2014	2013
ABC	million lb	22.34	22.24	38.71	35.99	4.50
	mt	10,133	10,088	17,557	16,325	2,041
Commercial ACL	million lb	12.11	12.05	30.19	28.07	2.13
	mt	5,491	5,467	13,694	12734	966
Recreational ACL	million lb	10.23	10.19	8.52	7.92	2.37
	mt	4,642	4,621	3,863	3,592	1,075
Commercial ACT	million lb	12.11	12.05	30.19	28.07	2.13
	mt	5,491	5,467	13,694	12734	966
Recreational ACT	million lb	10.23	10.19	8.52	7.92	2.37
	mt	4,642	4,621	3,863	3,592	1,075
Commercial Quota	million lb	11.44	11.39	23.53	21.95	1.78
	mt	5,189	5,166	10,671	9,955	805
RHL	million lb	7.63	7.59	7.55	7.03	1.85
	mt	3,459	3,444	3,425	3,188	838

Note: Commercial Quotas and RHLs include the 3-percent RSA reduction.

Additional detail for each species' specifications is provided, as follows.

Summer Flounder

The summer flounder stock was declared rebuilt in 2011. The stock assessment update utilized to derive specification recommendations determined that summer flounder are not overfished and that overfishing did not occur in 2011, the most recent year of available data. This stock assessment update did, however, indicate that biomass is currently lower than in recent years. As a result, the catch limits for 2013 and 2014 are slightly lower than in 2012.

The overfishing limit (OFL) for summer flounder for 2013 was estimated to be 29.81 million lb (13,523 mt). Based on this information, the 2013 ABC for summer flounder is 22.34 million lb (10,133 mt), and, using a strategy of a constant fishing mortality rate, that the 2014 ABC for summer flounder is 22.24 million lb (10,088 mt).

Consistent with the summer flounder regulations, the sum of the recreational and commercial sector ACLs is equal to the ABC. ACL is an expression of total catch (i.e., landings and dead discarded fish) in each sector. To derive the ACLs, the sum of the sector-specific estimated discards is removed from the ABC to derive the landing allowance. The resulting landing allowance is apportioned to the commercial and recreational sectors by applying the FMP allocation criteria: 60 percent to the commercial fishery and 40 percent to the recreational fishery. Although the derived ACLs are not split exactly at 60/40, the landing portions of the ACLs preserve the 60/40 allocation split, consistent with the FMP. This process results in a commercial ACL for summer flounder of 12.11 million lb (5,491 mt) for 2013, and 12.05 million lb (5,467 mt) for 2014. The recreational ACLs are 10.23 million lb (4,642 mt) for 2013 and 10.19 million lb (4,621 mt) for 2014.

Consistent with the quota-setting procedures for the FMP, summer flounder overages are determined based upon landings for the period January–October 2012, plus any previously unaccounted for overages. Table 2 summarizes, for each state, the commercial summer flounder percent shares as outlined in § 600.100(d)(1)(I), the resultant 2013 commercial quotas (both initial and after deducting the RSA), the quota overages as described above, and the final adjusted 2013 commercial quotas, after deducting the RSA.

TABLE 2. FINAL STATE-BY-STATE COMMERCIAL SUMMER FLOUNDER ALLOCATIONS FOR 2013

	FMP Percent Share	Initial Quota (TAL)		Initial Quota, less RSA		2012 Quota Overages (through 10/31/12)		Adjusted Quota, less RSA	
State		lb	kg	lb	kg	lb	kg	lb	kg
ME	0.04756	5,609	2,544	5,441	2,468	0	0	5,441	2,468
NH	0.00046	54	25	53	24	0	0	53	24
MA	6.82046	804,377	364,866	780,246	353,920	0	0	780,246	353,920
RI	15.68298	1,849,587	838,973	1,794,100	813,804	0	0	1,794,100	813,804
CT	2.25708	266,191	120,744	258,205	117,122	0	0	258,205	117,122
NY	7.64699	901,855	409,081	874,799	396,809	32,194	14,603	842,605	382,206
NJ	16.72499	1,972,478	894,716	1,913,303	867,874	0	0	1,913,303	867,874
DE	0.01779	2,098	952	2,035	923	53,489	24,263	-51,454	-23,340
MD	2.03910	240,483	109,083	233,269	105,811	0	0	233,269	105,811
VA	21.31676	2,514,012	1,140,356	2,438,592	1,106,145	0	0	2,438,592	1,106,145
NC	27.44584	3,236,851	1,468,236	3,139,746	1,424,189	0	0	3,139,746	1,424,189
Total	100.00	11,793,596	5,349,575	11,439,789	5,189,088	85,683	38,866	11,405,560	5,173,562

Notes: 2012 quota overage is determined by comparing landings for January through October 2012, plus any landings in 2011 in excess of the 2011 quota (that were not previously addressed in the 2012 specifications) for each state. For Delaware, this includes continued repayment of overharvest from previous years. Total quota is the sum for all states with an allocation. A state with a negative number has a 2013 allocation of zero (0). Kilograms are as converted from pounds and may not necessarily add due to rounding.

Table 3 presents the initial allocations with and without the commercial state quota allocations for 2014 are of summer flounder for 2014, by state, portion of the RSA deduction. These preliminary and are subject to change if

there are overages of states' quotas carried over from a previous fishing year, as well as any adjustments needed after the 2014 RSA projects are awarded. The final commercial quota allocations will be announced in a **Federal Register** notice prior to the start of the 2014 fishing year.

TABLE 3—2014 PRELIMINARY SUMMER FLOUNDER STATE COMMERCIAL QUOTAS

State	Percent Share	Initial Commercial Quota		Commercial Quota less RSA [1]	
		lb	kg [2]	lb	kg [2]
ME	0.04756	5,579	2,533	5,417	2,457
NH	0.00046	54	24	52	24
MA	6.82046	800,091	363,242	776,788	352,345
RI	15.68298	1,839,732	835,240	1,786,147	810,183
CT	2.25708	264,772	120,207	257,061	116,601
NY	7.64699	897,050	407,261	870,922	395,044
NJ	16.72499	1,961,967	890,735	1,904,823	864,013
DE	0.01779	2,087	947	2,026	919
MD	2.03910	239,202	108,598	232,235	105,340
VA	21.31676	2,500,616	1,135,282	2,427,783	1,101,224
NC	27.44584	3,219,604	1,461,703	3,125,829	1,417,852
Total [3]	100.00001	11,730,754	5,326,000	11,389,082	5,166,000

[1] Preliminary Research Set-Aside amount is 587,100 lb (266 mt).
[2] Kilograms are as converted from pounds and do not sum to the converted total due to rounding.
[3] Rounding of quotas results in totals exceeding 100 percent.

Delaware Summer Flounder Closure

Table 2 shows that, for Delaware, the amount of overharvest from previous years is greater than the amount of commercial quota allocated to Delaware for 2013. As a result, there is no quota available for 2013 in Delaware. The regulations at § 648.4(b) provide that Federal permit holders, as a condition of their permit, must not land summer flounder in any state that the Administrator, Northeast Region, NMFS, has determined no longer has commercial quota available for harvest. Therefore, effective January 1, 2013, landings of summer flounder in Delaware by vessels holding commercial Federal summer flounder permits are prohibited for the 2013 calendar year, unless additional quota becomes available through a quota transfer and is announced in the **Federal Register**. Federally permitted dealers are advised that they may not purchase summer flounder from federally permitted vessels that land in Delaware for the 2013 calendar year, unless additional quota becomes available through a transfer, as mentioned above.

Scup

The OFL for scup is 47.80 million lb (21,680 mt). Using the appropriate control rule and applying the Council's risk policy, the ABC for scup is 38.71 million lb (17,557 mt) for 2013, and, using a constant fishing mortality rate of 0.142, the 2014 ABC is 35.99 million lb (16,325 mt). Similar to summer flounder, the stock assessment update upon which the specifications are based indicates that scup biomass is currently lower than in recent years. Therefore, the 2013 and 2014 catch limits are slightly lower than in 2012, but are still relatively high compared to recent landings.

The scup management measures specify that the ABC is equal to the sum of the commercial and recreational sector ACLs. The ACTs (both commercial and recreational) are equal to the respective ACL for 2013–2014. Therefore, commercial sector ACLs/ACTs are 30.19 million lb (13,694 mt) for 2013, and 28.07 million lb (12,734 mt) for 2014. The recreational sector ACLs/ACTs are 8.52 million lb (3,863 mt) and 7.92 million lb (3,592 mt) for 2013 and 2014, respectively.

After deducting 958,950 lb (435 mt) from the ACL for 2013 RSA, the scup commercial quota is reduced to 23.53 million lb (10,671 mt), with an RHL of 7.55 million lb (3,425 mt). Using the preliminary 2014 RSA amount of 3 percent, the scup commercial for 2014 is 21.95 million lb (9,955 mt), and the RHLs is 7.03 million lb (3,188 mt). The quota allocations for 2014 are preliminary and are subject to reductions if there are overages that occur in the 2013 fishing year, as well as any adjustments needed after the 2014 RSA projects are awarded. Any necessary quota adjustments will be included in a **Federal Register** notice prior to the start of the 2014 fishing year.

TABLE 4—SCUP SPECIFICATIONS

Year		ABC	Commercial ACL	Recreational ACL	Comm. ACT	Rec. ACT	Comm. Quota	RHL
2012	million lb	40.88	31.89	8.99	31.89	8.99	27.91	8.45
	mt	18,543	14,464	4,079	14,464	4,079	12,659	3,831
2013	million lb	38.71	30.19	8.52	30.19	8.52	23.53	7.55
	mt	16,325	13,694	3,863	13,694	3,863	10,671	3,425
2014	million lb	35.99	28.07	7.92	28.07	7.92	21.95	7.03
	mt	16,325	12,734	3,592	12,734	3,592	9,955	3,188

NOTE: Commercial Quotas and RHLs include the 3-percent RSA reduction

The scup commercial quota is divided into three commercial fishery quota periods. Consistent with the quota setting procedures established for the FMP, scup overages are determined based upon landings for the Winter I

and Summer 2012 periods, plus any previously unaccounted for overages. There are no previous commercial overages applicable to the 2013 scup commercial quota; therefore, no adjustment to the 2013 scup specifications is required in this final rule. Any overage of the 2012 Winter II period will be addressed in July 2013, prior to the start of the 2013 Winter II fishery. The period quotas, after deducting for RSA, are detailed in Tables 5 and 6. Unused Winter I quota may be carried over for use in the Winter II period.

Per the quota accounting procedures in the FMP, after June 30, 2013, NMFS will compile all available landings data for the 2012 Winter II quota period and compare the landings to the 2012 Winter II quota period allocation, inclusive of any transfer from the 2012 Winter I quota period. Any overages will be determined, and deductions, if needed, will be made to the Winter II 2013 allocation and published in the **Federal Register**. Table 5 contains the quota period allocations for the 2013 commercial scup fishery.

TABLE 5—COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2013 BY QUOTA PERIOD

Quota Period	Percent Share	Initial Quota		Initial Quota less Overages (through 10/31/2012)		Adjusted Quota less Overages and RSA		Federal Possession Limits (Per Trip)	
		lb	mt	lb	mt	lb	mt	lb	mt
Winter I	45.11	10,940,583	4,963	N/A	N/A	10,613,157	4,814	50,000	22,680
Summer	38.95	9,446,591	4,285	N/A	N/A	9,163,877	4,156	N/A	N/A
Winter II	15.94	3,865,948	1,754	N/A	N/A	3,750,249	1,701	2,000	907
Total ..	100.0	24,253,122	11,001	N/A	N/A	23,527,283	10,671	N/A	N/A

Notes: The Winter I possession limit will drop to 1,000 lb (454 kg) upon attainment of 80 percent of that period's allocation. The Winter II possession limit may be adjusted (in association with a transfer of unused Winter I quota to the Winter II period) via notification in the FEDERAL REGISTER.
Metric tons are as converted from pounds and may not necessarily total due to rounding.
N/A=Not applicable.

Table 6 presents the allocations for 2014, by period, with and without the commercial portion of the RSA deduction. These period allocations for 2014 are preliminary and are subject to change if there are overages in the 2013 fishing year, as well as any adjustments needed after the 2013 RSA projects are awarded. Any commercial quota adjustments from 2013 will be announced in a **Federal Register** notice prior to the start of the 2014 fishing year.

TABLE 6—PRELIMINARY COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2014 BY QUOTA PERIOD

Quota Period	Percent Share	Initial Quota		Initial Quota less Overages (through 10/31/2012)		Adjusted Quota less Overages and RSA		Federal Possession Limits (Per Trip)	
		lb	mt	lb	mt	lb	mt	lb	mt
Winter I	45.11	10,206,495	4,630	N/A	N/A	9,900,300	4,491	50,000	22,680
Summer	38.95	8,812,746	3,997	N/A	N/A	8,548,364	3,877	N/A	N/A
Winter II	15.94	3,606,551	1,636	N/A	N/A	3,498,355	1,587	2,000	907
Total ..	100.0	22,625,792	10,263	N/A	N/A	21,947,018	9,955	N/A	N/A

Notes: The Winter I possession limit will drop to 1,000 lb (454 kg) upon attainment of 80 percent of that period's allocation. The Winter II possession limit may be adjusted (in association with a transfer of unused Winter I quota to the Winter II period) via notification in the FEDERAL REGISTER.
Metric tons are as converted from pounds and may not necessarily add due to rounding.
N/A=Not applicable.

Consistent with the unused Winter I commercial scup quota rollover provisions at § 648.120(a)(3), this final rule maintains the Winter II possession limit-to-rollover amount ratios that have been in place since the 2007 fishing year, as shown in Table 7. The Winter II possession limit will increase by 1,500 lb (680 kg) for each 500,000 lb (227 mt) of unused Winter I period quota transferred, up to a maximum possession limit of 8,000 lb (3,629 kg).

TABLE 7—POTENTIAL INCREASE IN WINTER II POSSESSION LIMITS BASED ON THE AMOUNT OF SCUP ROLLED OVER FROM WINTER I TO WINTER II PERIOD

Initial winter II possession limit		Rollover from winter I to winter II		Increase in initial winter II possession limit		Final winter II possession limit after rollover from winter I to winter II	
lb	kg	lb	mt	lb	kg	lb	kg
2,000	907	0–499,999	0–227	0	0	2,000	907
2,000	907	500,000–999,999	227–454	1,500	680	3,500	1,588
2,000	907	1,000,000–1,499,999	454–680	3,000	1,361	5,000	2,268
2,000	907	1,500,000–1,999,999	680–907	4,500	2,041	6,500	2,948
2,000	907	2,000,000–2,500,000	907–1,134	6,000	2,722	8,000	3,629

Black Sea Bass

The SSC rejected the OFL estimate provided from the most recent black sea bass stock assessment, stating that it was highly uncertain and not sufficiently reliable to use as the basis for management advice. Therefore, the 2013 ABC for black sea bass is the status quo ABC of 4.50 million lb (2,041 mt), and the 2013 ACTs (both commercial and recreational) are equal to the respective ACLs.

The 2013 black sea bass commercial ACL and ACT is 2.13 million lb (966 mt), and the recreational ACL and ACT is 2.37 million lb (1,075 mt). After removing discards and RSA of 111,900 lb (50.8 mt), the commercial quota is 1.78 million lb (805 mt) and the RHL is 1.85 million lb (838 mt). While the ABC is the same as 2012, the ACLs/ACTs and quotas are different from 2012 because the updated discard estimate is higher than the previous year. Recent data indicate that the 2012 recreational black sea bass ACL has been exceeded by a significant amount. The regulations require that we deduct the amount of landings that exceeded the RHL from a single subsequent year's ACT as soon as possible. However, NMFS has determined that because the data are preliminary and will not be finalized until April 2013, any deduction necessary to account for the overage will be applied to the fishing year 2014 RHL.

Consistent with the quota-setting procedures for the FMP, commercial black sea bass overages are determined based upon landings for the period January-October 2012, plus any previously unaccounted for landings. Table 8 details the specifications for the black sea bass fishery.

TABLE 8—BLACK SEA BASS 2013 SPECIFICATIONS

Year		ABC	Commercial ACL	Recreational ACL	Comm. ACT	Rec. ACT	Comm. Quota	RHL
2012	million lb	4.50	1.98	2.52	1.98	1.86	1.71	1.32
	mt	2,041	898	1,143	898	844	774	598
2013	million lb	4.50	2.13	2.37	2.13	2.37	1.78	1.85
	mt	2,041	966	1,075	966	1075	805	838

Comments and Responses

NMFS received three comments during the 15-day comment period for the November 16, 2012, proposed rule (77 FR 68723).

Comment 1: One commenter suggested that the quotas should be reduced by 50 percent, that RSA was unnecessary, and that the summer flounder stock is not actually rebuilt.

Response: NMFS disagrees. In accordance with the Magnuson-Stevens Act, the quotas established through this final rule and the 2011 determination that summer flounder has been rebuilt are based on the best available science. The quotas were recommended by the Council's SSC, and the summer flounder stock assessment underwent a rigorous peer review through the Northeast Fisheries Science Center's Stock Assessment Workshop review process. The RSA program continues to provide a mechanism to fund research and compensate vessel owners through the sale of fish harvested under the research quota. This program provides valuable scientific information and fosters cooperative research throughout the Northeast Region.

Comment 2: One comment addressed the 2012 in-season ''emergency'' closure of the recreational black sea bass fishery. The commenter was concerned that the recreational industry would not be able to economically ''wait a few years'' to access more of the black sea bass stock.

Response: The 2012 in-season closure of the recreational black sea bass fishery was a non-discretionary requirement of the black sea bass regulations, and was not an emergency rule. The recreational measures for 2013 will be published in a subsequent rule in late spring 2013. The RHL established through this rule is based on the best available science, consistent with the recommendation of the Council's SSC.

Comment 3: Another commenter expressed concern about the number of people affected by the 2012 in-season closure of the recreational black sea bass fishery.

Response: The 2012 in-season closure of the recreational black sea bass fishery was a non-discretionary requirement of the black sea bass regulations, and the closure at issue in the comment will expire before this final rule is effective. The recreational measures for 2013 will be published in a subsequent rule in late spring 2013. The RHL established through this rule is based on the best available science, consistent with the recommendation of the Council's SSC. NMFS understands that the 2012 in-season closure may have impacted the recreational fishery, but, as noted, NMFS had no discretion but to close the fishery in order to protect both the black sea bass species as well as preserve the fishery for future harvests.

Changes from the Proposed to Final Specifications Rule

Other than to specify the final summer flounder state allocations after accounting for prior overages and the RSA allocation, no other changes were made from the proposed rule.

Classification

The Administrator, Northeast Region, NMFS, determined that this final rule is necessary for the conservation and management of the summer flounder, scup, and black sea bass fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay of effectiveness period for this rule, to ensure that the final specifications are in place on January 1, 2013. This action establishes specifications (i.e., annual quotas) for the summer flounder, scup, and black sea bass fisheries.

This rule is being issued at the earliest possible date. Preparation of the proposed rule was dependent on the submission of the EA/IRFA in support of the specifications that is developed by the Council. This document was received by NMFS in early October 2012. Documentation in support of the Council's recommended specifications is required for NMFS to provide the public with information from the environmental and economic analyses as required in rulemaking. The proposed rule published on November 16, 2012, with a comment period ending December 3, 2012. Publication of the adjusted summer flounder quota at the start of the fishing year that begins January 1, 2013, is required by the order of Judge Robert Doumar in *North Carolina Fisheries Association* v. *Daley.*

However, if the 30-day delay in effectiveness is not waived, there will be no quota specifications for the affected

fisheries on January 1, 2013, which would significantly confuse the public and the complex cooperative management regime governing these fisheries. The summer flounder, scup, and black sea bass fisheries are all expected, based on historic participation and harvest patterns, to be very active at the start of the fishing season in 2013. Without these specifications in place on January 1, 2013, individual states will be unable to set commercial possession and/or trip limits, which apportion the catch over the entirety of the calendar year. NMFS will be unable to control harvest in any way, as there will be no quotas in place for any of the three species until the regulations are effective. NMFS will be unable to control harvest or close the fishery, should landings exceed the quotas. Moreover, the Delaware summer flounder fishery would be open for fishing, but in a negative quota situation. All of these factors would result in a race for fish, wherein uncontrolled landings could occur. Disproportionately large harvest occurring within the first weeks of 2013 could have distributional effects on other quota periods, and would disadvantage some gear sectors or owners and operators of smaller vessels that typically fish later in the fishing season. There is no historic precedent by which to gauge the magnitude of harvest that might occur, should quotas for these three species not be in place during the first weeks of 2013. It is reasonable to conclude that the commercial fishing fleet possesses sufficient capacity to exceed the established quotas for these three species before the regulations would become effective, should quotas not be in place on January 1, 2013. Should this occur, the fishing mortality objectives for all three species could be compromised.

For these reasons, the 30-day delay in effectiveness is contrary to the public interest, and NMFS is waiving the requirement.

These specifications are exempt from the procedures of E.O. 12866 because this action contains no implementing regulations.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

A FRFA was prepared pursuant to 5 U.S.C. 604(a), and incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the action. A copy of the EA//IRFA is available from the Council (see **ADDRESSES**).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being taken, and the objectives of and legal basis for this final rule, is contained in the preambles to the proposed rule and this final rule and is not repeated here.

Summary of Significant Issues Raised in Public Comments

No changes to the proposed rule were required to be made as a result of public comments. None of the comments received raised specific issues regarding the economic analyses summarized in the IRFA or the economic impacts of the rule more generally. For a summary of the comments received, and the responses thereto, refer to the ''Comments and Responses'' section of this preamble.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

The categories of small entities likely to be affected by this action include commercial and charter/party vessel owners holding an active Federal commercial or charter/party permit for summer flounder, scup, or black sea bass, as well as owners of vessels that fish for any of these species in state waters. Under the Small Business Administration's regulations implementing the Regulatory Flexibility Act, these vessels are considered ''small entities'' if their revenues are less than $4 million per year. The Council estimates that the proposed 2013–2014 specifications could affect 2,039 vessels that held a Federal summer flounder, scup, and/or black sea bass permit in 2011 (the most recent year of complete permit data). However, the more immediate impact of this rule will likely be realized by the 870 vessels that actively participated in these fisheries (i.e., landed these species) in 2011.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

Description of the Steps Taken to Minimize Economic Impact on Small Entities

Specification of commercial quotas and possession limits is constrained by the conservation objectives set forth in the FMP and implemented at 50 CFR part 648 under the authority of the Magnuson-Stevens Act. Economic impacts of changes in year-to-year quota specifications may be offset by adjustments to such measures as commercial fish sizes, changes to mesh sizes, gear restrictions, or possession and trip limits that may increase efficiency or value of the fishery. For 2013 and 2014, no such adjustments were recommended by the Council; therefore, this final rule contains no such measures. Therefore, the economic impact analysis of the action is evaluated solely on the different levels of quota specified in the alternatives. The ability of NMFS to minimize economic impacts for this action is constrained to approving quota levels that provide the maximum availability of fish while still ensuring that the required objectives and directives of the FMP, its implementing regulations, and the Magnuson-Stevens Act are met. In particular, the Council's SSC has made recommendations for the 2013–2014 ABC level for all three stocks. NMFS considers these recommendations to be consistent with National Standard 2. Establishing catch levels higher than the SSC ABC recommendations is not permitted under the Magnuson-Stevens Act.

The economic analysis for the 2013–2014 specification assessed the impacts for quota alternatives that achieve the aforementioned objectives. The no action alternative, wherein no quotas are established for 2013 or 2014, was excluded from analysis because it is not consistent with the goals and objectives of the FMP and the Magnuson-Stevens Act. Implementation of the no action alternative in 2013 or 2014 would substantially complicate the approved management programs for these three species. NMFS is required under the FMP's implementing regulations to implement specifications for these fisheries on an annual basis, and for up to 3 years. The no action alternative would result in no fishing limits for 2013 or 2014, and could result in overfishing of the resources and substantially compromise the mortality and/or stock rebuilding objectives for each species, contrary to laws and regulations.

The Council analyzed three sets of combined catch limit alternatives for the 2013–2014 summer flounder, scup, and

black sea bass fisheries. Of these, one alternative, labeled Alternative 3 for each species, contained the most restrictive options (i.e., lowest total landing levels). While the Alternative 3 measures would achieve the objectives of the proposed action for each of three species, they have the highest potential adverse economic impacts on small entities in the form of potential foregone fishing opportunities. Alternative 3 was not preferred by the Council because the other alternatives considered are expected have lower adverse impacts on small entities while achieving the stated objectives of sustaining the summer flounder, scup, and black sea bass stocks, consistent with the FMP and Magnuson-Stevens Act.

Through this final rule, NMFS implements the Council's preferred ABCs in 2013 for summer flounder (22.34 million lb (10,133 mt)), scup (38.71 million lb (17,577 mt)), and black sea bass (4.5 million lb (2,041 mt)). This final rule also implements the following ABCs for 2014: Summer flounder, 22.24 million lb (10,088 mt); and scup, 35.99 million lb (16,325 mt). This alternative consists of the quota levels that pair the lowest economic impacts to small entities and meet the required objectives of the FMP and the Magnuson-Stevens Act. The respective specifications contained in this final rule for all three species were selected because they satisfy NMFS' obligation to implement specifications that are consistent with the goals, objectives, and requirements of the FMP, its implementing regulations, and the Magnuson-Stevens Act. The F rates associated with the catch limits for all three species all have very low likelihoods of causing overfishing to occur in 2013.

The revenue decreases associated with allocating a portion of available catch to the RSA program are expected to be minimal (approximately between $300 and $1,000 per vessel), and are expected to yield important benefits associated with improved fisheries data. It should also be noted that fish harvested under the RSA program can be sold, and the profits used to offset the costs of research. As such, total gross revenues to the industry are not expected to decrease substantially, if at all, as a result of this final rule authorizing RSA for 2013 and 2014.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of Federal permits issued for the summer flounder, scup, and black sea bass fisheries. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following Web site: *http://www.nero.noaa.gov.*

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

Dated: December 26, 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. 2012–31424 Filed 12–28–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 111220786–2728–03]

RIN 0648–XA795

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2012 Summer Flounder, Scup, and Black Sea Bass Specifications; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule, correction.

SUMMARY: On April 23, 2012, NMFS published in the **Federal Register** the final rule to implement the 2012 summer flounder, scup, and black sea bass specifications, which established commercial summer flounder allocations for each coastal state from North Carolina to Maine, and the summer flounder recreational harvest limit. Following publication, an error was identified in the commercial summer flounder quota and recreational harvest limit. This rule corrects that error.

DATES: Effective December 26, 2012, through December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fisheries Management Specialist, (978) 281–9224, *carly.bari@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

NMFS publishes this rule to correct an error in the commercial summer flounder quota and recreational harvest limit, which was implemented in the April 23, 2012 final rule on the 2012 summer flounder, scup, and black sea bass specifications. Regulations for the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine and a coastwide recreational harvest limit. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.102.

Need for Correction

The final rule implementing 2012 summer flounder, scup, and black sea bass specifications published on April 23, 2012 (77 FR 24151). An error was found in the summer flounder commercial quota and recreational harvest limit. The 3-percent research set-aside (RSA) was mistakenly deducted twice from the quotas. The revised 2012 summer flounder commercial quota, less RSA, is 13,136,000 lb (5,958,490 kg), and the revised 2012 summer flounder recreational harvest limit, less RSA, is 8,758,000 lb (3,972,629 kg). Table 1 presents the allocations of summer flounder by state with the corrected commercial quota including RSA, overages, and transfers through December 11, 2012.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive prior notice and opportunity for additional public comment for this action because this would be impracticable and contrary to the public interest. The interim final rule for the 2012 summer flounder, scup, and black sea bass specification already took comment on the initial summer flounder quota with the understanding that overage adjustments would be made. This action is correcting an error found in the specifications regarding the summer flounder commercial quota and recreational harvest limit. In the April 23, 2012 rule, the 3-percent research set-aside (RSA) was mistakenly deducted twice from the quotas. Thus, this rule corrects this error by increasing the summer flounder commercial and recreational quotas by 3-percent. Delaying the implementation of this action to allow for prior notice and

opportunity for comment of this correction could result in premature closures of the summer flounder fishery in states that have the potential to fully harvest their quotas. Given that states have surpassed their summer flounder quota in the past, if the revised quota is not implemented, there is the potential that the fishery would reach the erroneous harvest quota amount, and could produce unnecessary adverse economic consequences for fishermen that participate in this fishery. The measures in the interim final rule for the 2012 summer flounder, scup, and black sea bass specifications, for which the opportunity for public comment was already given, are unaffected by this correction.

Moreover, pursuant to 5 U.S.C. 553(d), the Assistant Administrator finds good cause to waive the 30-day delay in effective date. This action is correcting an error found in the specifications regarding the summer flounder commercial quota and recreational harvest limit. Delaying the effective date of this correction to allow for the 30-day delay could result in premature closures of the summer flounder fishery in states that have the potential to fully harvest their quotas. Given that states have surpassed their summer flounder quota in the past, if the revised quota is not implemented immediately, there is the potential that the fishery would reach the erroneous harvest quota amount, and could produce unnecessary adverse economic consequences for fishermen that participate in this fishery.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* do not apply.

This final rule is exempt from review under Executive Order 12866.

Correction

In the **Federal Register** of April 23, 2012, in FR Doc. 2012–9755, on page 24152, Table 1 is corrected as follows:

TABLE 1—FINAL STATE-BY-STATE COMMERCIAL SUMMER FLOUNDER ALLOCATIONS FOR 2012

State	FMP Percent share	Initial quota, less RSA		2011 Quota overages (through 10/31/11)		2012 Quota transfers (through 12/11/12)		2012 Corrected quotas, accounting for RSA, overages, and transfers to date	
		lb	kg	lb	kg	lb	kg	lb	kg
ME	0.04756	6,247	2,834	0	0	−6,000	−2,722	247	112
NH	0.00046	60	27	0	0	0	0	60	27
MA	6.82046	895,936	406,396	0	0	0	0	895,936	406,396
RI	15.68298	2,060,116	934,469	0	0	13,925	6,316	2,074,041	940,785
CT	2.25708	296,490	134,488	0	0	6,000	2,722	302,490	137,209
NY	7.64699	1,004,509	455,645	50,736	23,014	0	0	953,773	432,631
NJ	16.72499	2,196,995	996,557	0	0	0	0	2,196,995	996,557
DE	0.01779	2,337	1,060	54,982	24,940	0	0	−52,645	−23,880
MD	2.0391	267,856	121,500	0	0	0	0	267,856	121,500
VA	21.31676	2,800,170	1,270,157	0	0	1,890,420	857,495	4,690,590	2,127,651
NC	27.44584	3,605,286	1,635,358	0	0	−1,904,345	−863,811	1,700,941	771,547
Total	100.00	13,136,001	5,958,490	105,718	47,954	N/A	N/A	13,030,283	5,910,537

Notes: 2011 quota overage is determined through comparison of landings for January through October 2011, plus any landings in 2010 in excess of the 2010 quota (that were not previously address in the 2011 specifications) for each state. For Delaware, this includes continued repayment of overharvest from previous years. Total quota is the sum for all state with an allocation. A state with a negative number has a 2012 allocation of zero (0). Kilograms are as converted from pounds and may not necessarily add due to rounding.

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

Dated: December 21, 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. 2012–31423 Filed 12–26–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 250
Monday, December 31, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

[Docket No. PRM–51–29; NRC–2012–0215]

Rescinding Spent Fuel Pool Exclusion Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt; supplemental information.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is providing supplemental information to a notice of receipt that appeared in the **Federal Register** on December 19, 2012. This document informed the public of a petition for rulemaking submitted by the Commonwealth of Massachusetts (Commonwealth) requesting that the NRC institute a rulemaking to rescind the regulations excluding consideration of spent fuel pool storage impacts from license renewal environmental reviews. This action is necessary to provide the public with supplemental information on how to access documents referenced in the Commonwealth's petition.

ADDRESSES: Please refer to Docket ID NRC–2012–0215 when contacting the NRC about the availability of information for this petition. You may access information related to this petition, which the NRC possesses and is publicly available, by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0215. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–492–3667, email: *Cindy.Bladey@nrc.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) is providing supplemental information to a notice of receipt that appeared in the **Federal Register** (77 FR 75065; December 19, 2012). In particular, the NRC is providing supplemental information regarding public access to documents referenced in the petition for rulemaking filed by the Commonwealth of Massachusetts (ADAMS Accession No. ML12254A005). The Commonwealth states that its petition ''is supported by the Declaration and expert report of Dr. Gordon R. Thompson.'' These documents are available in ADAMS and in the docket for this action (NRC–2012–0215) on *www.regulations.gov.* The ''Declaration of Dr. Gordon R. Thompson in Support of Massachusetts Contention and Related Petitions and Motions'' is available in ADAMS under Accession No. ML111530345. Dr. Thompson's report, titled ''New and Significant Information From the Fukushima Daiichi Accident in the Context of Future Operation of the Pilgrim Nuclear Power Plant,'' is available in ADAMS under Accession No. ML12094A183.

Dated at Rockville, Maryland, this 20th day of December, 2012.

For the Nuclear Regulatory Commission.

Cindy Bladey,

Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 2012–31132 Filed 12–28–12; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–BT–PET–0053]

Energy Conservation Program for Consumer Products: Association of Home Appliance Manufacturers Petition for Reconsideration

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Petition for Reconsideration; Request for Comments.

SUMMARY: The Department of Energy (DOE) received a petition from the Association of Home Appliance Manufacturers (AHAM) requesting reconsideration of the U.S. Department of Energy's (DOE) final rule to amend the test procedures for residential dishwashers, dehumidifiers, and conventional cooking products, published on October 31, 2012, and DOE's direct final rule to amend energy conservation standards for dishwashers, published on May 30, 2012. Specifically, AHAM requested that DOE stay the effectiveness of the test procedure final rule and final standards rule until DOE either: Revises the standards in the final standards rule to account for the impact on measured energy resulting from test procedure amendments to measure fan-only mode and standby and off mode energy use; or delays requirements regarding measurement of fan-only mode and standby and off mode energy use until promulgation of a revised standard for dishwashers. DOE seeks comment on whether to grant the petition and proceed with a rulemaking on this matter.

DATES: Any comments must be received by DOE not later than January 30, 2013.

ADDRESSES: Comments must be submitted, identified by docket number EERE–BT–PET–0053, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
2. *Email: AHAMPetition2012PET0053@ee.doe.gov.* Include either the docket number EERE–BT–PET–0053, and/or ''AHAM Petition'' in the subject line of the message.
3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building

Technologies Program, Mailstop EE–2J, Room 1J–018, 1000 Independence Avenue SW., Washington, DC 20585–0121. Please submit one signed original paper copy.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Room 1J–018, 1000 Independence Avenue SW., Washington, DC 20585–0121.

5. *Instructions:* All submissions received must include the agency name and docket number for this proceeding.

Docket: For access to the docket to read background documents, or comments received, go to the *Federal eRulemaking Portal* at *http://www.regulations.gov.* In addition, electronic copies of the Petition are available online at DOE's Web site at the following URL address: *http://www.regulations.gov/#!docketDetail;D=EERE-2012-BT-PET-0053.*

FOR FURTHER INFORMATION CONTACT:

Steven Witkowski, 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, (202) 586–7892, or email: *Steven.Witkowski@ee.doe.gov.*

Elizabeth Kohl, U.S. Department of Energy, Office of General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–7796, email: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, provides among other things that, ''[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.'' (5 U.S.C. 553(e)). The Association of Home Appliance Manufacturers (AHAM) petitioned DOE for reconsideration of its final test procedure rule to amend the test procedures for dishwashers, dehumidifiers and conventional cooking products (77 FR 65942 (Oct. 31, 2012)) and its direct final rule to amend the energy conservation standards applicable to dishwashers (77 FR 31918 (May 30, 2012)). Specifically, AHAM requested that DOE stay the effectiveness of the test procedure final rule and final standards rule until DOE either: (1) Revises the standards in the final standards rule to account for the impact on measured energy resulting from test procedure amendments to measure fan-only mode and standby and off mode energy use; or (2) delays requirements regarding measurement of fan-only mode and standby and off mode energy use until promulgation of a revised standard for dishwashers. In promulgating this petition for public comment, DOE seeks views on whether to grant the petition and undertake a rulemaking to consider the proposals contained in the petition. By seeking such comment, DOE takes no position at this time on the merits of the suggested rulemaking.

Issued in Washington, DC, on December 21, 2012.

Gregory H. Woods,

Office of General Counsel, U.S. Department of Energy.

Set forth below is the full text of the AHAM petition.

Before the

United States Department of Energy

Office of Energy Efficiency and Renewable Energy

In the Matter of: Docket No. EERE–2010–BT–TP–0039, RIN: 1904–AC01, Energy Conservation Program: Test Procedures for Residential Dishwashers, Dehumidifiers, and Conventional Cooking Products and Docket No. EERE–2011–BT–STD–0060, RIN No. 1904–AC64, Energy Conservation Program: Energy Conservation Standards For Residential Dishwashers

10 CFR Parts 429 and 430

Petition for Reconsideration

The Association of Home Appliance Manufacturers (AHAM) respectfully petitions the Department of Energy (DOE) for reconsideration of its final rule on Test Procedures for Residential Dishwashers, Dehumidifiers, and Conventional Cooking Products, Docket No. EERE–2010–BT–TP–0039, RIN 1904–AC01, 77 FR 65942 (Oct. 31, 2012) (Test Procedure Final Rule) and its direct final rule on Energy Conservation Standards for Dishwashers, Docket No. EERE–2011–BT–STD–0060, RIN No. 1904–AC64, 77 FR 31918 (May 30, 2012) (Direct Final Rule).

AHAM believes that, overall, the amendments made to the residential dishwasher test procedure are critical amendments, many of which will enhance the repeatability and reproducibility of the test procedure. AHAM requested many of the amendments, and we thank DOE for acting quickly to address the issues we raised. But, despite DOE's conclusions that amendments to the residential dishwasher test procedure regarding fan-only mode and standby and off mode would impact measured energy and AHAM's comments to the same effect, DOE has ignored and violated its statutory obligations under 42 U.S.C. 6293(e) and 42 U.S.C. 6295(gg)(2). These provisions require analysis of test procedure revisions to determine whether they affect the stringency of the underlying standard, and, if so, DOE must adjust the standards accordingly. This is to prevent ''back-door'' rulemakings that effectively decrease or increase the appliance standards. DOE's action is incompatible with and undermines the consensus agreement which underlies the amended residential dishwasher standard.

AHAM thus requests an immediate stay of the effectiveness of both the Direct Final Rule and the Test Procedure Final Rule until DOE either (1) revises the standards in the Direct Final Rule to account for the impact on measured energy resulting from test procedure amendments regarding fan-only mode and standby and off mode energy; or (2) delays requirements regarding measurement of fan-only mode and the revised standby and off mode procedures until such time as a revised standard is promulgated for residential dishwashers.

Facts

On July 30, 2010, AHAM and energy efficiency advocates submitted energy conservation standards proposals for residential dishwashers and other products that had been the subject of intensive negotiations (Joint Stakeholder Agreement). DOE encouraged these negotiations, supplied technical support to the parties, and considered the standards under the fast track consensus standards provision in 42 U.S.C. 6295(p)(4). That agreement included agreed-to energy conservation standards levels and a compliance date for dishwashers which the parties to the agreement jointly submitted to DOE via petition dated September 25, 2010. Notably, the Joint Stakeholder Agreement expressly states that ''[t]he Joint Stakeholders have made no agreement concerning the appropriate levels for standby or off mode energy consumption and agree that stakeholders will comment to DOE as they view appropriate during DOE's rulemaking process for each of the affected products, as applicable.'' Joint Stakeholder Agreement, at ¶ 4. And the Joint Stakeholders ''agree[d] that pending amendments to test procedures for the affected products should be completed by DOE, subject to input from all stakeholders and agree[d] to recommend that DOE translate the standards contained in this agreement to equivalent levels specified under revised test procedures.'' *Id.* at ¶ 5. In addition, the Joint Stakeholder Agreement provides, in proposed statutory language, that, if the residential dishwasher test procedure is amended prior to the compliance date of the proposed standards (2013), the

standards should be amended consistent with 42 U.S.C. 6293(e)(2). *See* Joint Stakeholder Agreement, at 7. On May 30, 2012, DOE published the Direct Final Rule and, as required by the Energy Policy and Conservation Act of 1975 (EPCA), as amended by the Energy Information and Security Act of 2007 (EISA), a Notice of Proposed Rulemaking. 77 FR 31964 (May 30, 2012). The Direct Final Rule promulgated standards levels consistent with those the Joint Stakeholder Agreement and September 25, 2010 petition proposed. Compliance with those standards is mandatory on May 30, 2013.

In a separate rulemaking, on December 2, 2010, DOE published a notice of proposed rulemaking in which it proposed amendments to the residential dishwasher test procedure, Appendix C to Subpart B of Part 430 (Appendix C), to address standby and off mode, including incorporation by reference of IEC Standard 62301, First Edition. *See* Energy Conservation Program for Consumer Products: Test Procedures for Residential Dishwashers, Dehumidifiers, and Conventional Cooking Products (Standby Mode and Off Mode), Notice of Proposed Rulemaking and Announcement of Public Meeting, 75 FR 75290 (Dec. 2, 2010) [hereinafter December 2010 NOPR]. DOE also held a public meeting on December 17, 2010. Appendix C already included measurement of standby mode, but the proposed amendments proposed some changes to the energy that would be measured. For example, DOE proposed to define an ''inactive mode'' as ''a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.'' December 2010 NOPR, at 75298. DOE stated that proposed amendments would not apply to, and would have no impact on, existing standards. *See* December 2010 SNOPR, at 75316. DOE did not propose amendments to the dishwasher active mode test procedure. DOE next issued a supplemental notice of proposed rulemaking on September 20, 2011, in which it proposed to incorporate by reference IEC Standard 62301, Second Edition. *See* Energy Conservation Program: Test Procedures for Residential Dishwashers, Dehumidifiers, and Conventional Cooking Products (Standby Mode and Off Mode), Supplemental Notice of Proposed Rulemaking, 76 FR 58346 (Sept. 20, 2011) [hereinafter September 2011 SNOPR]. DOE did not propose amendments to the dishwasher active mode test procedure. DOE did not expand upon or revise its December 2010 NOPR discussion about compliance dates. In response to the September 2011 SNOPR, AHAM commented that ''[a]lthough the dishwasher test procedure currently measures standby, the proposed amendments change what energy will be measured. For example, the end of cycle energy will now be measured, including cycle finished mode.'' AHAM Comments on the SNOPR for Test Procedures for Residential Dishwashers, Dehumidifiers, and Conventional Cooking Products 3 (Oct. 20, 2011) [hereinafter AHAM October 2011 Comments]. In response to comments from AHAM and its members, DOE published a second supplemental notice of proposed rulemaking. *See* Energy Conservation Program: Test Procedures for Residential Dishwashers, Dehumidifiers, and Conventional Cooking Products (Standby Mode and Off Mode), Supplemental Notice of Proposed Rulemaking, 77 FR 31444 (May 25, 2012) [hereinafter May 2012 SNOPR]. In the May 2012 SNOPR, DOE proposed to amend the residential dishwasher test procedure to, among other things, include measures of energy consumption in fan-only mode. This was the first time DOE proposed amendments to the active mode test procedure and the first time DOE proposed a procedure to measure fan-only mode.

In its comments on the May 2012 SNOPR, AHAM commented that it was ''somewhat unclear when compliance with the proposed revisions to the dishwasher test procedure would be required. Some of the proposals would impact measured energy (e.g., fan-only mode, water softener regeneration). Accordingly, if those amendments would be effective under the existing standards and/or the pending direct final rule, DOE would need to do a crosswalk to ensure that the stringency of those standards does not change. * * * Alternatively, DOE would need to address the changes in measured energy in a future standards rulemaking.'' AHAM Comments on the SNOPR for Test Procedures for Residential Dishwashers, Dehumidifiers, and Conventional Cooking Products 2 (June 25, 2012) [hereinafter AHAM June 2012 Comments] (emphasis in original). AHAM also proposed that DOE incorporate by reference ANSI/AHAM DW–1–2009 in Appendix C. *See* AHAM June 2012 Comments, at 12–13.

In response to comments it received from AHAM and others on the May 2012 SNOPR, DOE published a third supplemental notice of proposed rulemaking on August 15, 2012. *See* Energy Conservation Program: Test Procedures for Residential Dishwashers and Cooking Products, Supplemental Notice of Proposed Rulemaking, 77 FR 49064 (Aug. 15, 2012) [hereinafter August 2012 SNOPR]. In the August 2012 SNOPR, DOE proposed to, among other things, revise the test procedure proposed in the May 2012 SNOPR for measuring energy use in fan-only mode and update the referenced industry test method to ANSI/AHAM DW–1–2010 (AHAM DW–1–2010). Except with regard to replacements proposed for obsolete dishware, flatware, and food items, DOE did not clarify or propose specific compliance dates in the August 2012 SNOPR preamble, including responding to AHAM's previous comment requesting clarification about compliance dates. DOE did, however, include language in the proposed regulatory text addressing the compliance date for fan-only mode and water softener energy consumption: ''The procedures and calculations that refer to the combined low-power mode, fan-only mode, and water softener energy consumption * * * need not be performed to determine compliance with energy conservation standards for dishwashers at this time.'' August 2012 SNOPR, at 49072.

In response to the August 2012 SNOPR, AHAM commented ''that it is still somewhat unclear when compliance with some of the proposed revisions to the dishwasher test procedure would be required'' and requested ''that DOE clarify which amendments are to be effective at which time.'' AHAM Comments on the SNOPR for Test Procedures for Residential Dishwashers, Dehumidifiers, and Conventional Cooking Products 2 (Aug. 30, 2012) [hereinafter AHAM August 2012 Comments]. In addition, AHAM commented that, because some of the proposals would or could impact measured energy, DOE would need to ensure that the stringency of the standards does not change if it intended to require the amendments be used for compliance with existing or 2013 standards. *See id.* On October 31, 2012, DOE published the Test Procedure Final Rule in which it established a new test procedure for residential dishwashers, Appendix C1 to Subpart B of Part 430 (Appendix C1). Relevant to the instant petition, the Test Procedure Final Rule:

- Added provisions for measuring standby mode and off mode energy consumption, including incorporating specific sections of IEC Standard 62301, Second Edition by reference;

• Added a provision for measuring energy use in fan-only mode; and

• Updated the referenced industry test method to ANSI/AHAM DW–1–2010;

DOE determined that ''the date upon which the use of new appendix C1 will be required will be May 30, 2013, the compliance date of the direct final rule published on May 30, 2012 * * *'' Test Procedure Final Rule, at 65947.

DOE did not revise the standards promulgated in the Direct Final Rule to account for changes in measured energy as a result of amendments requiring measurement of fan-only mode. DOE reasoned that ''energy use in [fan-only mode] is estimated to be less than 5 percent of the total energy use of standard dishwashers. Given that 65 percent of all standard dishwashers currently on the market meet or exceed the minimum energy conservation standards established in the direct final rule, inclusion of this small amount of energy use would not impact compliance with the revised standard. Therefore, DOE has determined that the energy use in fan-only mode is *de minimus* and insufficient to alter in a material manner the measured energy use of dishwashers.'' Test Procedure Final Rule, at 65947 (emphasis in original).

Nor did DOE adjust the standards in the Direct Final Rule to account for the standby and off-mode test procedure amendments. *See id.* at 65961. DOE relied on its conclusion that ''the proposed amendments to the dishwasher test procedure regarding standby mode and off mode would not alter the measured efficiency of any covered product under the existing test procedure.'' *Id.* And, DOE concluded, because it was not presented with data showing otherwise, that the incorporation by reference of AHAM DW–1–2010 in the dishwasher test procedure would not impact measured energy. *See id.* at 65966.

Argument

When DOE amends a test procedure, it must determine ''to what extent, if any, the proposed test procedure would alter the measured energy efficiency, measured energy use, or measured water use of any covered product as determined under the existing test procedure.'' 42 U.S.C. 6293(e)(1). And, if DOE determines that the amended test procedure will alter measured energy or water use, DOE ''shall amend the applicable energy conservation standard during the rulemaking carried out with respect to such test procedure.'' 42 U.S.C. 6293(e)(2). There is a specific procedure, involving evaluating minimally compliant products, set forth in the law for making that adjustment. *See id.* Furthermore, DOE was required to prescribe in a final rule, no later than March 31, 2011, test procedure amendments with regard to standby and off mode for residential dishwashers. 42 U.S.C. 6295(gg)(2)(B). Those test procedure amendments ''shall not to be used to determine compliance with product standards established prior to the adoption of the amended test procedures.'' 42 U.S.C. 6295(gg)(2)(C). DOE did not satisfy its statutory obligations with regard to the fan-only mode, standby and off-mode, and updated industry test procedure amendments.[1]

Amendments Regarding Fan-Only Mode on Measured Energy and Ensure That the Stringency of the Standard Does Not Change

DOE determined, and, as discussed below, AHAM data confirms, that the fan-only mode amendments to the residential dishwasher test procedure impact measured energy. DOE stated that the impact would be ''*de minimus,*'' but gives no justification, quantification, standard, or criteria for that determination. It is a textbook arbitrary and capricious determination. As discussed more fully below, AHAM disagrees with the *de minimus* determination and believes that such a determination violates DOE's statutory obligations under 42 U.S.C. 6293(e). DOE should have accounted for the impact of the fan-only mode changes to the test procedure in the May 2013 standard or should not have required measurement of fan-only mode for compliance with those standards. AHAM thus requests that DOE adjust the May 2013 standards to account for the impact of the fan-only mode amendments on measured energy or not require measurement of fan-only mode until a later standard is promulgated that does account for that increase in measured energy.

A. DOE Concluded That the Fan-Only Mode Amendments Impact Measured Energy

In the May 2012 SNOPR, when DOE first proposed amendments to the residential test procedure to measure fan-only mode, DOE found that the proposed measurement would increase measured energy. DOE calculated the range of annual energy consumption associated with an air circulation fan operating after the end of the active cycle, according to the proposed test procedure, to be from 0.4 to 17 kilowatt hours (kWh) per year. *See* May 2012 SNOPR, at 31448. DOE stated that the ''higher end of the range is greater than 5 percent of the maximum allowable annual energy consumption for a standard dishwasher (355 kWh).'' *Id.* DOE also stated that ''the energy use associated with this mode may in some cases represent a larger percentage of annual energy consumption than the energy use in the low-power modes'' and that, accordingly, ''[t]his energy consumption would be required to be included in the annual energy consumption metric upon the compliance date of any updated dishwasher energy conservation standards addressing standby and off mode energy use.'' *Id.* at 31451.

AHAM, though it did not oppose measurement of fan-only mode, agreed that it would increase measured energy, and, thus, requested clarification as to when the measurement would be required for compliance with the energy conservation standards for dishwashers:

DOE should also clarify when this measurement would be required for compliance with energy conservation standards for dishwashers. DOE stated that this would be ''required in the annual energy metric upon the compliance date of any updated dishwasher energy conservation standards addressing standby mode and off mode energy use.'' Especially because this measurement would impact measured energy, AHAM assumes that statement is referencing a future standard that has not yet been proposed and that the fan-only measurement would not be required for compliance with the standards in the current direct final rule for dishwashers, 77 FR 31918 (May 30, 2012). An express statement to that effect would provide clarity to regulated parties.

AHAM June 2012 Comments, at 3. Importantly, AHAM specifically stated its assumption that DOE's statement regarding the compliance date did not

[1] AHAM notes that it commented that the proposed amendments to measure water softener regeneration would also impact measured energy. *See* AHAM June 2012 Comments, at 2. Our understanding is that DOE determined that there would not be a change in measured energy as a result of the test procedure amendments to measure water softener regeneration because that energy is currently required to be included for compliance with the standards under existing waivers. *See* Final Test Procedure Rule, at 65946–97 (''In the test procedure waivers granted for water softening dishwashers, DOE has required that such models meet the current energy conservation standards with the additional energy and water use associated with water softener regeneration included in the annual energy use and per-cycle water consumption metrics. * * * In accordance with the approach specified in these waivers, DOE determines that the energy and water use must be included in the metrics used to demonstrate compliance with any amended dishwasher energy conservation standards, including those in the direct final rule.'').

refer to the then-pending standards in the Direct Final Rule. *See id.; see also id.* at 2 (''AHAM notes that it is somewhat unclear when compliance with the proposed revisions to the dishwasher test procedure would be required. Some of the proposals would impact measured energy (e.g., fan-only mode, water softener regeneration). Accordingly, if those amendments would be effective under the existing standards and/or the pending direct final rule, DOE would need to do a crosswalk to ensure that the stringency of those standards does not change. * * * Alternatively, DOE would need to address the changes in measured energy in a future standards rulemaking. AHAM requests that DOE clarify which amendments are to be effective at which time.'') (emphasis in original).

In the subsequent August 2012 SNOPR, in response to AHAM's comments, DOE proposed an alternative approach for measurement of fan-only mode, but DOE did not alter its analysis regarding the impact of the amendments on measured energy or respond to AHAM's request for clarity regarding the compliance date for the proposed fan-only mode amendments. Thus, AHAM again requested clarity and argued that, because the proposed amendments to measure fan-only mode would impact measured energy, DOE would need to either amend the standards in the Direct Final Rule to ensure that the stringency of those standards did not change or not require measurement of fan-only mode for compliance with the current or May 2013 standards:

AHAM notes that it is still somewhat unclear when compliance with some of the proposed revisions to the dishwasher test procedure would be required. Some of the proposals would or could impact measured energy. Accordingly, if those amendments would be effective under the existing standards and/or the pending direct final rule, DOE would need to do a crosswalk to ensure that the stringency of those standards does not change.[1] Alternatively, DOE would need to address the changes in measured energy in a future standards rulemaking. AHAM requests that DOE clarify which amendments are to be effective at which time.[1] 77 FR 31918 (May 30, 2012). AHAM August 2012 Comments, at 2.

Then, in the Test Procedure Final Rule, DOE adopted amendments to measure fan-only mode and confirmed its estimates of the upper end of the range of annual energy consumption associated with fan-only mode. *See* Test Procedure Final Rule, at 65959. Yet, despite the fact that it concluded that the amendments would impact measured energy, DOE determined that the amendments would be required for compliance with the May 2013 standards: DOE has determined that use of the test procedures to measure the energy use in fan-only mode on the compliance date of any amended standards is appropriate. * * * The energy use in these modes is estimated to be less than 5 percent of the total energy use of standard dishwashers. Given that 65 percent of all standard dishwashers currently on the market meet or exceed the minimum energy conservation standards established in the direct final rule, inclusion of this small amount of energy use would not impact compliance with the revised standard. * * * Therefore, DOE has determined that the energy use in fan-only mode is *de minimus* and insufficient to alter in a material manner the measured energy use of dishwashers. Therefore, DOE is not considering amending the standards set forth in the direct final rule.'' Test Procedure Final Rule, at 65947 (emphasis in original).

B. AHAM Data Show That the Fan-Only Mode Amendments Impact Measured Energy

Based on data AHAM collected, the fan-only mode amendments to the residential dishwasher test procedure will add a shipment weighted average of 0.29 kWh per year in measured energy. That energy takes into account the market penetration of fan-only mode—it does not assume that all basic models have fan-only mode. In addition, the shipment weighted average number includes a wide range of impacts on manufacturers and individual models, some much greater than 0.29 kWh per year. AHAM thus encourages DOE to interview individual manufacturers about the impact based on different technologies. AHAM's data show that, the fan-only mode amendments could add up to two percent of the 2013 standard in measured energy for some models. For models with fan-only mode, this is a significant impact on measured energy, particularly for minimally compliant products, and could not only require manufacturers to re-certify some or all of their models, but could also impact compliance with the standards. DOE should adjust the May 2013 standard to account for this impact on measured energy or, alternatively delay the requirement to measure fan-only mode until the compliance date of a future standard (i.e., after the May 2013 standards). AHAM's preference would be that DOE revise the standards with which compliance is required on May 30, 2013, to account for the impact on measured energy.

C. DOE Must Account for the Impact of the Fan-Only Mode Amendments on Measured Energy

In making its determination not to adjust the May 2013 standards to account for the impact on measured energy resulting from the fan-only mode amendments, DOE seems to have relied upon (1) its estimation that energy use in fan-only mode is less than five percent of the total energy use of standard dishwashers; and (2) the fact that 65% of dishwashers currently on the market meet or exceed the energy conservation standards in the Direct Final Rule. *See* Test Procedure Final Rule, at 65947. But neither of these reasons is sufficient for not ensuring that the stringency of the May 2013 standards remains unchanged.

DOE determined that its amendments to require measurement of fan-only mode would impact measured energy. It must, therefore, amend the May 2013 standard to ensure that the stringency of those standards does not change. *See* 42 U.S.C. 6293(e). As noted, DOE cannot simply ignore its statutory obligations because it does not deem the impact of the test procedure amendments to be significant. DOE stated that it considers the energy use in fan-only mode to be ''*de minimus* and insufficient to alter in a material manner the energy use of dishwashers.'' Test Procedure Final Rule, at 65947. But DOE has not defined, justified, or quantified what it considers to be *de minimus* for these purposes. Nor did Congress provide a *de minimus* exception to the requirements in 42 U.S.C. 6293. DOE's determination that the energy use in fan-only mode is ''*de minimus*'' is a textbook arbitrary and capricious determination.

Furthermore, DOE's statement that 65% of dishwashers currently on the market meet or exceed the May 2013 standards misses the point. First, even if it is true that most dishwashers already meet or exceed the upcoming standards, because fan-only mode impacts measured energy, manufacturers may need to re-certify and re-label models with fan-only mode, depending on the magnitude of the impact on each model and whether the manufacturer conservatively rated the product originally. The resources required to re-certify and re-label models is significant. And the result will be confusion to consumers. Second, DOE's own analysis itself is contradictory and belies its conclusions. That most products, but hardly all, already meet the new standards levels, leads to the conclusion that some do not

(i.e., 35%) and, further, that minimally compliant products might well be affected by a five percent change (if that is the right number) in the stringency of the standard.

Nor is the fact that DOE is requiring measurement of fan-only mode for compliance with future standards sufficient to relieve DOE of its obligation to ensure that the stringency of those standards does not change. The standards in the Direct Final Rule did not contemplate measurement of fan-only mode, as evidenced by the facts that (1) the Joint Stakeholder Agreement on which the standards in the Direct Final Rule were based was finalized on July 30, 2010, over two years before the fan-only mode amendments were adopted; (2) the Direct Final Rule was published on May 30, 2012, only five days after DOE first proposed to require measurement of fan-only mode, and specifically stated that it was consistent with the proposed standards levels in the Joint Stakeholder Agreement; and (3) the Direct Final Rule became effective on September 27, 2012, a little over one month before publication of the Final Test Procedure Rule in the **Federal Register**.

The Joint Stakeholder Agreement specifically contemplated just this situation by providing, in proposed statutory language, that, should the residential test procedure be amended prior to the compliance date of the agreed-to amended standards, the procedures of 42 U.S.C. 6293(e)(2) must be followed. *See* Joint Stakeholder Agreement, at 7. And the Joint Stakeholders ''agree[d] that pending amendments to test procedures for the affected products should be completed by DOE, subject to input from all stakeholders and agree[d] to recommend that DOE translate the standards contained in this agreement to equivalent levels specified under revised test procedures.'' *Id.* at ¶ 5. But, because stakeholders did not know what action DOE would take with regard to fan-only mode, stakeholders could not have effectively or meaningfully commented to oppose application of the fan-only mode amendments for compliance with the May 2013 standards in comments on the Direct Final Rule.

DOE authorized the Test Procedure Final Rule on September 17, 2012, which was the same date comments on the Direct Final Rule and accompanying Notice of Proposed Rulemaking were due to DOE. Notice of that authorization was not sent to stakeholders until 6:06 p.m. on September 17, 2012, thus not affording stakeholders sufficient time to be able to review and develop comments prior to the end of the comment period on the Direct Final Rule.

Accordingly, AHAM requests that DOE either: (1) Revise the May 2013 standards to account for the impact on measured energy resulting from the fan-only mode amendments; or (2) not require measurement of fan-only mode until such time as a future revised standard is promulgated for residential dishwashers. AHAM's preference would be that DOE revise the standards with which compliance is required on May 30, 2013, to account for the impact on measured energy.

II. DOE Must Account for the Impact of Test Procedure Amendments Regarding Standby and Off Mode on Measured Energy

DOE determined, and AHAM data confirms, that the standby and off mode amendments to the residential dishwasher test procedure impact measured energy. DOE determined that because the amendments would not be required to determine compliance with the current standards, it did not need to adjust the standards to account for the increase in measured energy. AHAM disagrees—DOE's decision not to adjust the standards violates DOE's statutory obligations under 42 U.S.C. 6295(gg)(2) and 42 U.S.C. 6293(e). AHAM thus requests that DOE adjust the May 2013 standards to account for the impact of the standby and off mode amendments on measured energy or not require those amendments to determine compliance with the May 2013 standard.

A. DOE Concluded That the Standby and Off Mode Amendments Impact Measured Energy

DOE determined that the amendments to the dishwasher test procedure regarding standby and off mode would impact measured energy and, thus, proposed that those amendments not be required until the compliance date of amended dishwasher standards that address standby mode and off mode energy use. *See* December 2010 SNOPR, at 75317; U.S. Department of Energy, Test Procedure for Dishwashers, Dehumidifiers, and Conventional Cooking Products, Notice of Proposed Rulemaking Public Meeting 71 (Dec. 17, 2010) [hereinafter Public Meeting Presentation] (stating that ''inactive, off, and cycle finished modes measured under the proposed test procedure may result in energy consumption levels slightly higher than the current test procedure. The proposed amendments would clarify that provisions related to the new measures of energy consumption in standby mode and off mode would not be required to be used by manufacturers until the compliance date of any amended dishwasher standards addressing standby mode and off mode energy use'') (emphasis added).

Throughout the rulemaking, it seemed that DOE would, appropriately, use the standards-setting process to account for the increase in measured energy due to the standby and off mode test procedure amendments. For example, DOE stated ''that the standby mode and off mode energy use is of a magnitude that it would materially affect that standard-setting process without overwhelming the effects of differing levels of active mode energy use.'' *Id.* at 70 (emphasis added). And DOE further explained ''that the magnitude of standby and off-mode energy use is such that integrating it would be measurable in changes in standby power, it would produce a measureable difference in EAEU so, therefore, would factor into any standard setting process, but is not so great that it would overwhelm the effect of variations in active energy—active-mode energy use, how that would contribute to the EAEU.'' Public Meeting, Energy Conservation Standard NOPR for Test Procedure for Dishwashers, Dehumidifiers and Conventional Cooking Products, Transcript 111–12 (Dec. 17, 2010) (emphasis added). DOE did not, however, expect the estimated annual energy use (EAEU) and estimated annual energy cost (EAOC) for dishwashers to be significantly affected by its proposed amendments to the test procedure. *See, e.g.,* Public Meeting Presentation, at 83.

In the September 2011 SNOPR, DOE continued to conclude that no amendments to the existing energy conservation standards would be required because the ''proposed amendments would not measurably alter the existing energy efficiency and energy use metrics for residential dishwashers . * * * [and because] those proposed amendments would clarify that manufacturers would not be required to use the provisions relating to standby mode and off mode energy use until the compliance of new energy conservation standards addressing such energy use.'' September 2011 SNOPR, at 58355. AHAM commented that it did not agree with DOE's conclusion that there would be no change in measured energy resulting from the standby and off mode test procedure changes:

AHAM does not agree, however, that there would be no change in measured energy resulting from the changes to the dishwasher test procedure. Although the dishwasher test procedure currently

measures standby, the proposed amendments change what energy will be measured. For example, the end of cycle energy will now be measured, including cycle finished mode. DOE should amend the reporting requirements, and standards, to account for this change.

AHAM October 2011 Comments, at 3. Yet DOE did not change its position in the Test Procedure Final Rule. *See* Test Procedure Final Rule, at 65946–47.

B. AHAM Data Show That the Standby and Off Mode Amendments Impact Measured Energy

Based on data AHAM collected, the standby and off mode amendments to the residential dishwasher test procedure will add a shipment weighted average of 1.10 kWh per year. This amount could be enough, especially combined with the increase in measured energy due to the fan-only mode amendments, to require a manufacturer to re-certify and re-label some or all of its dishwasher models. In addition, the shipment weighted average number includes a wide range of impacts on manufacturers and individual models, some much greater than 1.10 kWh per year. AHAM thus encourages DOE to interview individual manufacturers about the impact based on different technologies.

C. DOE Must Account for the Impact of the Standby and Off Mode Amendments on Measured Energy

DOE did not address the impact of the standby or off mode as measured per Appendix C1 in the Direct Final Rule. Nor could it have because DOE adopted Appendix C1 on October 31, 2012, over a month after the Direct Final Rule became effective. Furthermore, the Joint Stakeholder Agreement did not contemplate the standby and off mode amendments to the test procedure and the Joint Stakeholders made no agreement regarding the proper standards for standby and off mode energy consumption. *See* Joint Stakeholder Agreement, at ¶ 4. In fact, the Joint Stakeholder Agreement included proposed statutory language for implementing the agreement which expressly stated that ''[a]ny final rule amending the dishwasher test procedure after July 9, 2010, and before January 1, 2013 shall also amend the standards contained in [the agreement] according to the procedures in section 323(e) [of the Energy Policy and Conservation Act]. Section 323(e)(3) shall not apply to these amended standards.'' Joint Stakeholder Agreement, at 7 (emphasis added). It also stated, more generally, that the Joint Stakeholders ''agree[d] that pending amendments to test procedures for the affected products should be completed by DOE, subject to input from all stakeholders and agree to recommend that DOE translate the standards contained in this agreement to equivalent levels specified under revised test procedures.'' *Id.* at ¶ 5.

Thus, in order to require use of the amendments for compliance with the May 2013 standards, DOE must account for the increase in measured energy due to the standby and off mode amendments. DOE followed this approach in its implementation of the Joint Stakeholder Agreement's recommendations for clothes dryers, room air conditioners, and clothes washer standards. *See, e.g.,* Energy Conservation Program: Energy Conservation Standards for Residential Clothes Dryers and Room Air Conditioners, Final Rule, 76 FR 22454, 22477 (Apr. 21, 2011). And DOE should have done the same thing with regard to dishwashers. Accordingly, we respectfully request that DOE either do the same analysis here as it did for those products, or delay the compliance date of the standby and off mode amendments until the compliance date of a future standard that addresses standby and off mode. AHAM's preference would be that DOE revise the standards with which compliance is required on May 30, 2013, to account for the impact on measured energy.

In the Test Procedure Final Rule, DOE concluded, based only on a lack of data to the contrary, that the incorporation by reference of AHAM DW–1–2010 would not impact measured energy. *See* Test Procedure Final Rule, at 65966. AHAM proposed that DOE should incorporate AHAM DW–1–2010 by reference in the dishwasher test procedure. AHAM also commented that to do so, ''DOE would need to determine whether this change would result in changes to measured energy (resulting from a change in dishware, for example) * * *'' AHAM June 2012 Comments, at 12–13; *see also* AHAM August 2012 Comments, at 8. AHAM also volunteered to work together with DOE to make that determination. *See* AHAM August 2012 Comments, at 8. DOE did seek data regarding the impact incorporating AHAM DW–1–2010 by reference would have on measured energy. AHAM indicated that it did not have data indicating what the effect on measured energy would be were DOE to incorporate AHAM DW–1–2010 by reference, and DOE did not receive data from other stakeholders in response to its request. *See* AHAM August 2012 Comments, at 8; Test Procedure Final Rule, at 65966.

In the Test Procedure Final Rule, DOE responded to the lack of data by identifying the differences between AHAM DW–1–1992 and AHAM DW–1–2010 and stating that it had ''not been presented with any data or information that would show that these differences would impact the results from the DOE dishwasher test procedure for specific dishwasher models. DOE also notes the uniform support from commenters to reference the most recent version of industry standards in its test procedures and observes that some test laboratories are already conducting dishwasher testing according to ANSI/AHAM DW–1–2010. Further, these amendments will not be required until the compliance date of new standards, which will be May 30, 2013. * * * If manufacturers determine that the new DOE test procedure does not measure energy and water use that is representative for their products, they may submit to DOE a petition for waiver from the DOE test procedure to determine an appropriate method.'' Test Procedure Final Rule, at 65966.

AHAM fully supports incorporation of AHAM DW–1–2010 by reference in Appendix C1 and thanks DOE for incorporating by reference the most recent industry test procedure. Like DOE, AHAM does not believe that the differences between AHAM DW–1–1992 and AHAM DW–1–2010 would noticeably impact measured energy. Accordingly, we are not asking DOE to reconsider its decision to incorporate AHAM DW–1–2010 by reference. Nevertheless, DOE should ensure in future rulemakings that it fulfills its duty under the law to investigate the impact on measured energy and should not act on its own non-empirical belief about the impact of a test procedure change on measured energy. If DOE does not get the data it requests, it must gather the data itself, continue seeking it from sources likely to have it, or accept that there is no available data on the point and thus, no rational, empirically based action can be taken.

Conclusion

DOE concluded during the rulemaking process that amendments to the residential dishwasher test procedure regarding fan-only mode and standby and off mode impact measured energy. And, as discussed above, AHAM's data further quantifies that impact. Furthermore, the shipment weighted average of the impact of both the fan-only mode and standby and off mode amendments is 1.38 kWh per year. That energy takes into account the market penetration of fan-only mode—it does not assume that all basic models

have fan-only mode. Accordingly, we request that DOE either: (1) Revise the May 2013 standards to account for the impact on measured energy using the data AHAM presented in this petition or through comprehensive testing that compares total measured energy under Appendix C versus Appendix C1; or (2) not require measurement of fan-only mode or the revised standby and off mode procedures until such time as a revised standard is promulgated for residential dishwashers.

AHAM believes that, overall, the amendments made to the test procedure, which reside in Appendix C1, are critical amendments, many of which will enhance the repeatability and reproducibility of the test procedure. And we thank DOE for making those amendments, many of which AHAM requested. Thus, AHAM's preference would be that DOE revise the standards with which compliance is required on May 30, 2013, to account for the impact on measured energy. AHAM would be glad to assist DOE in determining the appropriate amended energy conservation standard under 42 U.S.C. 6293(e)(2). Pending resolution of the instant petition, AHAM requests that DOE stay compliance with the May 30, 2013, standards and Appendix C1.

Respectfully submitted,

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[Docket Number EERE–2010–BT–PET–0047]

RIN 1904–AC57

Energy Conservation Program: Request for Exclusion of 100 Watt R20 Short Incandescent Reflector Lamp From Energy Conservation Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking (NOPR).

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including incandescent reflector lamps (IRLs). The U.S. Department of Energy (DOE) received a petition from the National Electrical Manufacturers Association requesting the initiation of a rulemaking to exclude from coverage under EPCA standards a certain type of IRL marketed for use in pool and spa applications. Specifically, the lamp at issue is a 100-watt R20 short (having a maximum overall length of 3 and 5/8 or 3.625 inches) IRL (''R20 short lamp''). DOE published this petition and a request for comment in the **Federal Register** on December 23, 2010. From its evaluation of the petition and careful consideration of the public comments, DOE decided to grant the petition for rulemaking. DOE published a request for information in the **Federal Register** on September 8, 2011. Based on the comments received and additional data gathered by DOE, DOE proposes to exclude R20 short lamps from coverage under the EPCA energy conservation standards.

DATES: DOE will accept comments, data, and information regarding this NOPR no later than March 1, 2013. See section 0 Public Participation for details.

ADDRESSES: Any comments submitted must identify the NOPR for Energy Conservation Standards for R20 Short Lamps, and provide docket number EERE–2010–BT–PET–0047 and/or regulatory information number (RIN) number 1904–AC57. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: ShortLampsPetition-2010-PET-0047@ee.doe.gov.* Include the docket number and/or RIN in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a CD. It is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Written comments regarding the burden-hour estimates or other aspects of collection-of-information requirements may be submitted to Office of Energy Efficiency and Renewable Energy through the methods listed above and by email to *Chad_S_Whiteman@omb.eop.gov.*

For detailed instructions on submitting comments and additional information on the rulemaking process, see section 0 of this document (Public Participation).

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The regulations.gov Web page will contain simple instructions on how to access all documents, including public comments, in the docket. See section 0 for more information on how to submit comments through *www.regulations.gov.*

For further information on how to submit a comment or review other public comments and the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *brenda.edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Lucy deButts, 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) 287–1604. Email: *lucy.debutts@ee.doe.gov.*

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I. Summary of the Rulemaking

The Energy Policy and Conservation Act of 1975 (EPCA; 42 U.S.C. 6291 *et seq.*), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including incandescent reflector lamps (IRLs). The National Electrical Manufacturers Association (NEMA) has petitioned the U.S. Department of Energy (DOE) to undertake a rulemaking to exclude from coverage under energy conservation standards a certain type of IRL that is marketed for use in pool and spa applications. Specifically, the lamp at issue is a 100-watt (W) R20 [1] short (having a maximum overall length [MOL] of 3 and ⅝ [or 3.625] inches) lamp that falls within the voltage range of covered IRLs (hereafter ''R20 short lamp''). 75 FR 80731 (Dec. 23, 2010). In this notice of proposed rulemaking (NOPR), DOE considers whether R20 short lamps should be excluded from coverage under the applicable energy conservation standards for IRLs. Such a review is authorized under 42 U.S.C. 6291(30)(E), which allows the Secretary, by rule, to exclude from the terms ''fluorescent lamp'' and ''incandescent lamp'' any lamp for which standards would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types.

Accordingly, DOE has assessed the impact of the application of R20 short lamps on the potential energy savings from energy conservation standards for these lamps. The characteristics of R20 short lamps, as well as their distribution channels and marketing, indicate that they are designed for pool and spa applications. DOE determined that because the R20 short lamps serve a very small market, they will result in insignificant energy savings from the applicable conservation standards.

Additionally, DOE analyzed the characteristics of R20 short lamps to determine if they were available in reasonably substitutable lamp types. Because the most likely substitute lamp required a modification to the fixture lens in order to maintain the same light distribution, DOE has tentatively concluded that no currently commercially available lamp can serve as a reasonable substitute for the R20 short lamp.

Therefore, under 42 U.S.C. 6291(30)(E), DOE proposes to exclude R20 short lamps from coverage of energy conservation standards by modifying the definition of ''Incandescent reflector lamp'' and proposing a new definition for ''R20 short lamp'' in 10 CFR 430.2. Based on consideration of the public comments DOE receives in response to this notice and related information collected and analyzed during the course of this rulemaking effort, DOE may revise the proposal in this document.

II. Introduction

A. Authority

Title III, Part B of EPCA (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles,[2] a program covering most major household appliances. Subsequent amendments expanded Title III of EPCA to include additional consumer products and commercial and industrial equipment, including IRLs—the product that is the focus of this document.

In particular, amendments to EPCA in the Energy Policy Act of 1992 (EPAct 1992), Public Law 102–486, established energy conservation standards for certain classes of IRLs and authorized DOE to conduct two rulemaking cycles to determine whether those standards should be amended. (42 U.S.C. 6291(1), 6295(i)(1) and (3)–(4)) DOE completed the first cycle of amendments by publishing a final rule in July 2009 (hereafter ''2009 Lamps Rule''). 74 FR 34080 (July 14, 2009).[3]

The EPAct 1992 amendments to EPCA also added as covered products certain IRLs with wattages of 40W or higher and established energy conservation standards for these IRLs. Section 322(a)(1) of the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, subsequently expanded EPCA's definition of ''incandescent reflector lamp'' to include lamps with a diameter between 2.25 and 2.75 inches.[4] (42 U.S.C. 6291(30)(C)(ii)) This addition made R20 lamps (having a diameter of 2⅝, or 2.5, inches) covered products subject to EPCA's standards for IRLs.

Although these lamps are covered products, 42 U.S.C. 6291(30)(E) gives DOE the authority to exclude these lamps upon a determination that standards ''would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types.''

B. Background

The Administrative Procedure Act (APA; 5 U.S.C. 551 *et seq.*), provides, among other things, that ''[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.'' (5 U.S.C. 553(e)) Pursuant to this provision of the APA, NEMA petitioned DOE for a rulemaking to exclude a type of IRL from coverage of energy conservation standards. Specifically, NEMA sought exclusion for R20 short lamps marketed for use in pools and spas. These lamps are sold in jurisdictions that allow pools and spas to be supplied with 120V electricity. 75 FR 80731 (Dec. 23, 2010)

As stated in the previous section 0, amendments to EPCA in EISA 2007 expanded EPCA's definition of IRLs to include smaller diameter lamps, such as the R20 lamps that are the subject of this rulemaking. (42 U.S.C. 6291(30)(C)(ii)) The related statutory standards went into effect on June 15, 2008—180 days after the date of enactment of EISA 2007. (42 U.S.C. 6295(i)(1)(D)(ii)) Although R20 short lamps were required to comply with these standards, noncompliant R20 short lamps remained on the market until September 2010 because the manufacturers of these lamps mistakenly believed the lamps were excluded from coverage. 75 FR at 80732 (Dec. 23, 2010). The manufacturers had relied upon the Federal Trade

[1] ''R'' denotes a reflector lamp type, and ''20'' denotes diameter in ⅛ inch increments, which translates to 2.5 inches.

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[3] Information regarding the 2009 Lamps Rule can be found at DOE's Building and Technologies Web page for Incandescent Reflector Lamps: *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/58.*

[4] Prior to the enactment of EISA 2007, this definition applied to lamps with a diameter which exceeds 2.75 inches. EISA 2007 modified this definition to make it applicable to IRLs with a diameter which exceeds 2.25 inches.

Commission's (FTC's) labeling rule, 16 CFR part 305, which, until July 19, 2011, published the previous lamp definitions from the EPAct 1992 amendments of EPCA.[5] Before July 19, 2011, the FTC labeling regulations treated IRLs as general service incandescent lamps (GSILs), and erroneously continued to define GSILs as not including lamps specifically designed for ''[s]wimming pool or other underwater service.'' 16 CFR 305.3(m)(3) (2010). This exclusion was eliminated from EPCA by section 321 of EISA 2007. Upon realization that the FTC definitions were incorrect and the R20 short lamps were subject to energy conservation standards, the manufacturers removed the product from the market. Subsequently, in November 2010, NEMA submitted its petition to exclude R20 short lamps from coverage under EPCA standards. DOE published the petition in the **Federal Register** on December 23, 2010, and requested public comment. 75 FR 80731.

In the petition, NEMA asked both for a rulemaking to exclude R20 short lamps from coverage of energy conservation standards, and for a stay of enforcement pending that rulemaking. As grounds for the petition, NEMA stated that R20 short lamps qualify for exclusion under 42 U.S.C. 6291(30)(E), which allows the Secretary to exclude a fluorescent or incandescent lamp ''as a result of a determination that standards for such lamp would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types.'' In its petition, NEMA contended that a rulemaking would find that energy conservation standards for R20 short lamps would not result in significant energy savings and that the lamp was designed for special applications or has special characteristics not available in substitute lamp types. Specifically, as the lamp has a particular MOL and is specially designed to meet underwater illumination requirements of pool and spa manufacturers (including designated beam spread and lumen output), there are no substitute products on the market for this application. 75 FR at 80732 (Dec. 23, 2010).

Additionally, NEMA asserted that having energy conservation standards for this lamp type would lead to its unavailability in the United States. To the best of NEMA's and manufacturers' knowledge, the decision of the two manufacturers of R20 short lamps to withdraw the product from the market has already resulted in its current unavailability. 75 FR at 80732–33 (Dec. 23, 2010).

DOE received several comments on the petition from manufacturers, utilities, and environmental and energy efficiency organizations.[6] After reviewing NEMA's petition and all comments, DOE concluded it has the legal authority to grant exclusions for IRLs under 42 U.S.C. 6291(30)(E) and initiated a rulemaking to make a determination on exclusion. DOE granted NEMA's petition for a rulemaking in a request for information (RFI) published in the **Federal Register** on September 8, 2011, announcing its decision and requesting more information on this product. 76 FR 55609. The RFI stated that DOE granted the petition for a rulemaking pursuant to the requirements specified in section 6291(30)(E), and would also grant a stay of enforcement pending the outcome of the rulemaking. In the RFI, DOE also specifically asked for comment on (1) the potential for unregulated R20 short lamps to be used as substitutes for other lamps subject to energy conservation standards; (2) whether the distinctive features, pricing, and application-specific labeling and marketing of R20 short lamps provide a sufficient deterrent to their use in other applications; (3) the availability of substitute lamps that would meet both energy conservation standards and relevant pool and spa application requirements; and (4) the technological feasibility of R20 short lamps complying with the prescribed energy conservation standards and also meeting relevant pool and spa application requirements. 76 FR at 55614.

DOE received comments in response to the RFI from utilities and environmental and energy efficiency organizations.[7] The following section addresses these comments.

III. Determination of R20 Short Lamp Exclusion

A. Authority

In response to the RFI, DOE received comments from interested parties regarding DOE's authority to exclude R20 short lamps under 42 U.S.C. 6291(30)(E). Earthjustice and National Resources Defense Council (hereafter ''Earthjustice and NRDC'') reiterated their previous comment made in response to NEMA's petition that section 6291(30)(E) can only apply to lamps for which significant energy savings would not be captured under future standards; the language of the provision (i.e., ''would not result'') does not permit DOE to apply it retroactively to lamps with existing standards. (Earthjustice and NRDC, No. 8 at p. 1)[8]

As stated in the RFI, DOE does not believe the plain language of section 6291(30)(E) compels an interpretation that the section only applies to standards before their compliance date. DOE finds this reading would prevent application of section 6291(30)(E). Under 42 U.S.C. 6295(o)(3), DOE is already barred from adopting standards for any product for which the standards would not result in significant conservation of energy. Therefore, if interpreted to apply to products for which standards are not yet in effect, section 6291(30)(E) would be rendered redundant and superfluous, as both it and section 6295(o)(3) would evaluate potential energy savings from future standards. Instead, DOE concluded in the RFI that section 6291(30)(E) contains no time bar for undertaking a rulemaking action to address a lamp for which standards would not result in significant energy savings because it is designed for special applications or has special characteristics not available in substitutable lamp types. Given the broad and growing coverage of DOE's energy conservation standards for lamps, DOE believes that Congress intended section 6291(30)(E) to provide a mechanism to address both those lamps inadvertently covered by existing standards, as well as new lamps subsequently developed to which standards would otherwise apply. 76 FR at 55611 (Sept. 8, 2011).

Earthjustice and NRDC disagreed that section 6291(30)(E) would be redundant if not applicable to standards that already require compliance. Earthjustice

[5] The FTC published a final rule in the **Federal Register** on July 19, 2010, which updated its regulations regarding its definition of general service incandescent lamp to reflect the definitional changes provided in EISA 2007. 75 FR 41696, 41713–14. These changes were effective July 19, 2011, at which time the amendments were reflected in the Code of Federal Regulations.

[6] NEMA's petition and associated comments can be found at regulations.gov under Docket No. EERE–2010–BT–PET–0047.

[7] The RFI and associated comments can also be found at regulations.gov under Docket No. EERE–2010–BT–PET–0047.

[8] A notation in the form ''Earthjustice and NRDC, No. 8 at p. 1'' identifies a written comment that DOE has received and has included in the docket of this rulemaking. This particular notation refers to a comment: (1) Submitted by the Earthjustice and NRDC; (2) in document number 8 of the docket; and (3) on page 1 of that document.

and NRDC commented that section 6291(30)(E) retains a separate relevance from section 6295(o)(3) because it enables DOE to exclude lamps from statutory standards that do not yet apply whereas section 6295(o)(3) only applies to DOE's adoption of standards via rulemakings. (Earthjustice and NRDC, No. 8 at pp. 1–2)

The language in section 6291(30)(E) does not explicitly condition exclusions from coverage of standards based on the authority under which the standards were developed. Interpreting section 6291(30)(E) as applying to only statutory standards in order to distinguish it from section 6295(o)(3) would limit the scope of section 6291(30)(E). The language in section 6291(30)(E) does not indicate that it was Congress's intent to limit the Secretary's authority of exemption. Therefore, DOE preliminarily concludes it has the authority under section 6291(30)(E) to consider excluding R20 short lamps from energy conservation standards. DOE assessed whether the lamps qualify for exclusion under each criteria set forth in that section.

B. R20 Short Lamp Special Application Design and Impact on Energy Savings

1. Special Application of R20 Short Lamps

a. R20 Short Lamp Design for Special Applications

NEMA's original petition stated that the R20 short lamp was specifically designed to meet the underwater illumination requirements of pool and spa part manufacturers. NEMA stated that the R20 short lamp's MOL, heat shield, filament, lumen output, and beam spread indicate the lamp was specifically designed for its application. 75 FR at 80733 (Dec. 23, 2010) Through interviews with lamp manufacturers and pool and spa part manufacturers, DOE was able to confirm that the R20 short lamp's MOL of 3 and ⅝ inches is required for compatibility with pool and spa fixtures; the heat shield is necessary for operation in a high temperature environment; and the lumen output range between 637 and 1022 lumens, and beam spread between 70 and 123 degrees are designed to satisfy consumer preferences as well as building codes and standards. DOE determined that the filament in R20 short lamps is specifically placed to achieve the required beam spread. Therefore, DOE has tentatively concluded that filament placement does not stand on its own as a requirement for pools and spas, but is rather encompassed within the requirement for a specific beam spread. Because the described R20 short lamp characteristics are designed to meet requirements specific to pools and spas, DOE believes that R20 short lamps are designed for a special application. For more discussion on DOE's analysis of R20 short lamp features, see section 0.

b. Marketing and Distribution Channels of R20 Short Lamps

In addition to design features, DOE also analyzed distribution channels and marketing literature for R20 short lamps. NEMA commented that along with R20 short lamps' design characteristics, their application-specific marketing and specialty distribution methods deter any use in other applications. (NEMA, No. 7 at p. 1) DOE found R20 short lamps are marketed and clearly packaged in a way that indicates the lamps are specifically for pool and spa use. Through lamp manufacturer interviews and research conducted by DOE using publicly available information, DOE found that R20 short lamp manufacturers do not sell lamps directly to consumers. The commercial market is supplied through catalog warehouses, maintenance supply, maintenance, repair, operations (MRO) distributors, and pool and spa distributors. The residential market is primarily supplied through pool and spa distributors, which include large retail pool outlets and online retailers. Additionally, a small portion of products are sold to online retailers for pool and spa replacement parts, electrical distributors for direct installation in new pool construction, and hospitality and specialty lighting suppliers (e.g., medical equipment retail) for use with pools and spas.

Given the preceding information, DOE tentatively concludes that the non-traditional distribution channels and application-specific packaging indicates R20 short lamps are designed for pool and spa applications. Combined with the application-specific characteristics described in the previous section, DOE preliminary concludes that R20 short lamps are designed for a special application and therefore fulfill the special application condition in section 6291(30)(E).

2. Impact on Energy Savings

As mentioned in the previous sections, under 42 U.S.C. 6291(30)(E), DOE may determine to exclude a fluorescent or incandescent lamp provided standards for the lamp would not result in significant energy savings because the lamp is designed for special applications. As stated in section 0, DOE preliminarily concluded that certain features of R20 short lamps and manufacturers' use of specialty distribution channels and application-specific marketing indicate that R20 short lamps are designed for a special application. Given that R20 short lamps met this criterion, DOE then considered the impact on energy savings from regulation of R20 short lamps.

NEMA commented that R20 short lamps have a minimal potential for energy savings because of low sales and operating hours due to their use in specialty task lighting rather than in general applications. (NEMA, No. 7 at p. 2) As part of its analysis, DOE evaluated the market share of R20 short lamps put forth by NEMA. In its petition, NEMA stated there are only two known manufacturers of the 100W R20 short lamp in the United States. Both manufacturers submitted their confidential R20 short lamps 2009 shipment data to NEMA. In interviews, these lamp manufacturers commented that the shipment data from 2009 is representative of the R20 short lamp market before they stopped making the lamp available to consumers in 2010. For comparison, NEMA used an adjusted estimate of covered IRL shipments from the 2009 Lamps Rule. In the 2009 Lamps Rule, DOE estimated the shipments of covered IRLs to be 181 million units in the year 2005. Based on a decline in shipments of all IRLs in 2009, NEMA assumed covered IRLs would also decline, but estimated the shipments to still remain above 100 million. Based on a minimum of 100 million and a maximum of 181 million shipments of covered IRLs, NEMA calculated that the shipments of R20 short lamps represented significantly less than 0.1 percent of 2009 shipments of covered IRLs. 75 FR at 80733 (Dec. 23, 2010).

DOE independently obtained shipment information from lamp manufacturers that confirmed NEMA's estimate of R20 short lamps being significantly less than 0.1 percent of 2009 shipments of covered IRLs. Therefore, DOE determined this to be an accurate assessment of the R20 short lamp market share and concluded that less than 0.1 percent of covered IRLs indicated a small market share for R20 short lamps. (More information on R20 short lamp energy use can be found in appendix B.[9])

DOE also analyzed the potential for market migration of R20 short lamps. Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas and Electric, and Southern California Edison (hereafter ''CA

[9] Appendices can be found on DOE's Building and Technologies Web page for Incandescent Reflector Lamps under Standards section via the Technical Support Document link: *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/58.*

Utilities'') commented that consumers are likely to substitute R20 short lamps in other IRL applications because the price is not significantly higher than other residential IRLs. CA Utilities added that if production of R20 short lamps increased, the price could decrease further due to economies of scale. (CA Utilities, No. 9 at pp. 1–2) NEMA disagreed, stating that R20 short lamps have a high price point of $15.88 and therefore would be unlikely to be used as a substitute for general service lamps. (NEMA, No. 7 at p. 2)

DOE received information from lamp manufacturers stating that the end-user price varies, but typically ranges from $12 to $25. DOE research confirmed this large variation, finding prices ranging from as low as $2 to as high as $25. DOE acknowledges that the price of R20 short lamps can be competitive with other IRLs. Even with low prices, however, substitution of R20 short lamps in general applications is unlikely as consumers are unable to purchase R20 short lamps at typical retail outlets such as large home improvement stores. In interviews, lamp manufacturers stated that the R20 short lamp market is primarily for replacement lamps and, therefore, historically had shown very little growth or decay. Further, despite lamp manufacturers never previously considering the lamps as regulated, the market share has remained extremely low and there has been no indication of market migration. Therefore, DOE has preliminarily concluded that the R20 short lamp market has limited potential for growth and it is unlikely the lamps will migrate to general lighting applications.

CA Utilities also cited the R20 short lamp MOL as a reason for potential market migration, stating that there are commercially available lamps that have the same shortened 3 and ⅝ inches MOL as the R20 short lamp and are used in other lighting applications. CA Utilities concluded that the presence of these other short lamps indicated significant energy savings would be at risk because length would not prevent the use of R20 short lamps in other applications. (CA Utilities, No. 9 at p. 1) Earthjustice and NRDC agreed with CA Utilities and added that the potential use of R20 short lamps in applications other than pools and spas demonstrated that R20 short lamps could become a low cost alternative to compliant IRLs. (Earthjustice and NRDC, No. 8 at p. 2) As noted in section 0, the majority of R20 short lamps are purchased from pool and spa distributors and specialty retail stores, and are not available where general service IRLs are typically sold. R20 short lamps are also marketed and clearly packaged in a way that indicates the lamps are specifically for pool and spa use. Because of the limited distribution channels and specific marketing of R20 short lamps, DOE has tentatively concluded their use in general lighting applications is unlikely.

Because the specialty application of the R20 short lamps results in a small market share and limited potential for growth for these lamps, DOE determined that the regulation of R20 short lamps would not result in significant energy savings. For these same reasons, DOE has also tentatively concluded that the exclusion of R20 short lamps would not significantly impact the energy savings resulting from energy conservation standards. DOE requests comment on its assessment of the potential energy savings from standards for R20 short lamps.

C. Availability of R20 Short Lamp Special Characteristics in Substitutes

DOE may also exclude a lamp type because its special characteristics are not available in reasonably substitutable lamp types. 42 U.S.C. 6291(30)(E) To determine whether an exclusion was also acceptable based on this second condition, DOE ascertained whether special characteristics of R20 short lamps are available in reasonable substitutes. The following sections detail DOE's analysis, which consisted of identifying the special characteristics of R20 short lamps and determining whether these characteristics existed in other lamp types that would qualify as reasonable substitutes.

1. Special Characteristics of R20 Short Lamps

As discussed in section 0, DOE received comments that the R20 short lamps' shortened MOL, heat shield, specially engineered filament, and lamp performance (including a wide beam spread and high lumen output) indicate that the lamp was designed specifically for pool and spa applications. Therefore, DOE evaluated these lamp characteristics to determine if they should be considered as necessary in potential substitute lamps. DOE considered a lamp characteristic special if, without it, the R20 short lamp would not be able to provide the special application for which it was designed (i.e. use in pools and spas). Therefore, even if the lamp characteristic was not unique to the R20 short lamp, it was deemed special if it was required for the lamp to function in pools and spas. DOE identified a set of features that in combination allow the lamp to be used in a specialty application.

Beyond the characteristics mentioned above, DOE did not find any other R20 short lamp feature that should be considered a necessary special characteristic. DOE requests comments on any additional characteristics, other than those identified, that should be considered special characteristics.

a. Shortened MOL

The R20 short lamp has a MOL of 3 and ⅝ inches. NEMA stated that this shortened MOL is a distinct characteristic that allows the lamp to fit the fixture dimensions in pool and spa applications. 75 FR at 80732 (Dec. 23, 2010). CA Utilities disagreed and stated that the descriptor ''short'' is not a unique size distinction because many small diameter reflector lamps have MOLs less than or equal to 3 and ⅝ inches despite not being marketed as ''short.'' (CA Utilities, No. 3 at p. 2)

DOE notes that there are currently several lamps in the marketplace that are labeled as short lamps, but are not designed for specific applications. These commercially available lamps have the same shortened MOL of 3 and ⅝ inches as the R20 short lamp and can be used in various general service lighting applications. This indicates that the desired MOL is a common feature available in other lamp types. However, DOE considers the shortened MOL a special characteristic of the R20 short lamp because it is necessary for use of the lamp in a fixture used in pool or spa applications. As stated by NEMA and confirmed with spa lamp manufacturers, the shortened MOL allows the lamp to fit inside pool and spa fixtures. Therefore, while a shortened MOL is not unique to R20 short lamps, without this feature, the lamp could not be used for the special application it was designed. In combination with the lamp's other special characteristics, the shortened MOL allows the lamp to be used in a specialty application.

b. Heat Shield

DOE received comments that the heat shield in the R20 short lamp was a special characteristic that is required to prevent high heat from damaging the cement that joins the glass envelope and base. 75 FR at 80732 (Dec. 23, 2010). Heat shields are metal rings constructed of either aluminum or steel and located in the narrow portion of the reflector below the filament. In lamp manufacturer interviews, DOE learned that heat shields are used to reflect radiant energy away from the lamp base. DOE further confirmed with lamp manufacturers that because of the high operating temperatures of pools and

spas, a heat shield is a necessary feature in R20 short lamps that allow them to be used in these environments. After surveying the market, DOE notes that heat shields may be included in lamps used in environments other than pools and spas. In particular, DOE received manufacturer feedback that heat shields are often routinely added to reflector lamps to prevent seal failure. However, because heat shields are a necessary component in order for the R20 short lamp to be used in pools and spas, DOE considers it to be a special characteristic of the R20 short lamp. In combination with the lamp's other special characteristics, the presence of a heat shield allows the lamp to provide a specialty application.

c. Specially Engineered Filament

NEMA stated that the R20 short lamp's filament was specially engineered to provide a required beam spread. 75 FR at 80732 (Dec. 23, 2010). DOE attempted to identify how the filament was specially engineered and if the design change was necessary for the lamp's use in pools and spas.

Through teardowns and interviews with lamp manufacturers, DOE verified that R20 short lamps use a C–9 filament. This filament type is a single-coil filament that is commonly used in indoor IRLs. DOE received feedback from lamp manufacturers that although the filament type is not unique, the filament has been specifically placed within the lamp in order to achieve the same beam spread as a standard R20 lamp. Therefore, it is the placement of the filament, rather than the filament itself, that is distinct. Because the filament is placed to produce a specific beam spread, DOE does not consider filament placement to be a special characteristic, but a method of achieving a specific beam spread. The beam spread characteristic is discussed further in the following section.

d. Lamp Performance: Lumen Output, Beam Spread, and Illumination

In its petition NEMA stated that R20 short lamps are required to meet a specific beam spread and lumen output identified by pool and spa part manufacturers. 75 FR at 80733 (Dec. 23, 2010). In interviews with lamp manufacturers DOE learned that R20 short lamps have a lumen output between 900 and 1,000 lumens and a beam angle between 70 and 80 degrees. Additionally, DOE received comments that public pools and spas are often required to achieve minimum illumination levels. (NEMA, No. 2 at p. 1) DOE conducted independent testing on each of the two known lamp manufacturer's R20 short lamp models to confirm the lumen output and beam angle specifications, and also further researched illumination requirements.

The measured lumen output of the two R20 short lamp models indicated a lumen output range of 637 lumens to 1,022 lumens. The average lumen output of the first model was 967 lumens and within lamp manufacturer specified range. The second model's average lumen output was 720 lumens, which was considerably lower. DOE did not find any information indicating that these lower lumen output R20 short lamp models produced an inadequate lumen output or had any issues in their use in pool and spa applications. DOE considered both the measured and the rated lumen output to determine a broad lumen output range. DOE therefore concluded that a potential substitute lamp would need to achieve a measured lumen output between 637 and 1,022 lumens.

The measured beam angle of the R20 short lamp models indicated a range of 111 to 123 degrees and was relatively consistent between the two models. The average beam angle of the first model was 117 degrees and the average beam angle of the second was 116 degrees. The measured beam angle range did not correspond to the 70- to 80-degree beam angle range identified by lamp manufacturers. However, because lamp manufacturer feedback indicated R20 short lamps can have a 70-degree beam angle, DOE decided to establish a range encompassing both measured and manufacturer-provided beam angles. DOE therefore concluded that a potential substitute lamp would need to achieve a measured beam angle between 70 and 123 degrees.

Additionally, as previously stated, DOE further researched illumination requirements based on wattage. Pool and spa part manufacturers confirmed during interviews that R20 short lamps are designed to provide 0.5W of input power per square foot of water surface area, or equivalent level of illumination, to account for commercial building code requirements pertaining to products for pool and spa lighting. In researching building codes, DOE found that while commercial building codes exist on both state and local levels, and vary by jurisdiction, there is no evidence of pools and spas in the residential sector being subject to building code requirements for lighting.

CA Utilities commented that minimum power density requirements prescribed in some local safety ordinances are often waived when replacement light sources are proven to provide adequate illumination comparable to incandescent lighting. For example, CA Utilities stated that California State regulations only specify that underwater lighting be adequate to see a person at the bottom of the pool and assure water quality. Therefore, CA Utilities concluded that low-wattage replacement lamps can be used as substitutes provided they have been demonstrated to provide acceptable levels of light. (CA Utilities, No. 9 at pp. 2–3)

DOE agrees with CA Utilities that building code requirements vary by jurisdiction and some waive requirements when replacement light sources are proven to provide adequate lighting. However, it appears that not all jurisdictions have explicitly included this caveat in their building codes and some seem to maintain minimum requirements based on input power alone. DOE requests further comment on whether reduced wattage lamps can be used in all jurisdictions, provided that adequate illumination is proven.

In order to account for the variation in commercial building code requirements, DOE used the design specification of 0.5W per square foot of water surface area, or the equivalent illumination for reduced wattage lamps, to determine if potential substitutes were in compliance. DOE requests comment on whether this specification for underwater illumination is accurate for commercial building code compliance.

2. Reasonable Substitutes With R20 Short Lamp Special Characteristics

Given the criteria discussed in the previous section, DOE evaluated lamps that could serve as potential substitutes by determining whether they contained all of the following special characteristics of R20 short lamps:

- Shortened MOL: An MOL of 3 and ⅝ inches or less;
- Heat Shield: A shield reflecting radiant energy from lamp base;
- Beam Spread: A beam angle between 70 and 123 degrees;
- Lumen Output: A lumen output between 637 and 1,022 lumens; and
- Illumination: 0.5W per square foot of water surface area or the equivalent.

With regards to potential substitutes, in its petition NEMA stated that Pentair, a pool and spa part manufacturer, had noted only an R20 short lamp can be used with the existing fixtures because the lamp is listed on the fixture's Underwriters Laboratory (UL) listing. (NEMA, No. 2 at p. 3) All underwater pool and spa lighting must adhere to the applicable UL standards in the United

States. UL Standard 676 [10] covers electric luminaires that are installed underwater in pools and spas. The UL listing is granted on a fixture level; however, the UL listing of underwater lighting fixtures mandates certain compatible lamp types. Because the fixtures are tested during the UL certification process with specific lamp types, the UL listing requires the use of those certified lamp types to remain valid. Therefore, if a lamp is used that has not been UL listed for use in a specific lighting fixture, manufacturers void the warranty because the performance of the fixture and lamp is unknown. Based on interviews with pool and spa part manufacturers, DOE does not believe that reasonable substitutes will encounter barriers when obtaining a UL listing. In fact, one pool and spa part manufacturer has already UL listed a smaller diameter IRL for use in the existing fixture. Therefore, DOE does not consider a current UL listing to be a necessary characteristic when identifying potential substitutes.

NEMA commented that underwater lamp fixtures are tightly sealed to prevent water intrusion and therefore experience elevated temperatures that typically exceed the recommended operating temperature of any electronically self-ballasted lamps. NEMA added that current compact fluorescent lamp (CFL) and light-emitting diode (LED) PAR lamp [11] designs are also unable to meet the MOL and beam spread requirements for pool and spa applications. NEMA therefore concluded that there are no available substitutes for pool and spa applications. (NEMA, No. 7 at p. 1) However, Earthjustice and NRDC stated that exclusion of R20 short lamps is unwarranted because substitute lighting technologies, such as LED lamps, exist. (Earthjustice and NRDC, No. 8 at p. 2)

DOE surveyed the market and identified several commercially available lamps that were marketed or evaluated by manufacturers as potential substitutes for an R20 short lamp. These lamps included more efficacious R20 short lamps, smaller diameter IRLs, and LED lamps. When analyzing each of the likely replacements, DOE focused on whether they possessed the special characteristics of the R20 short lamp. DOE's initial findings are outlined below.

a. Improved R20 Short Lamp

Currently available R20 short lamps do not meet existing energy conservation standards. When examining substitute lamps, DOE explored the possibility of a halogen-based R20 short lamp with an improved efficacy that would meet standards. Specifically, DOE examined the addition of halogen capsules to existing R20 short lamps. Tungsten-halogen lamps are a specific type of IRL that contain a small diameter, fused quartz envelope, referred to as a capsule, filled with a halogen molecule that surrounds the filament. The use of halogen capsules is known to improve the efficacy of IRLs.

In the RFI, DOE requested additional information on the feasibility of improving the efficacy of R20 short lamps while maintaining the necessary characteristics required for pool and spa applications. 76 FR at 55614 (Sept. 8, 2011). DOE received several comments in response to this request, mainly regarding halogen-based technology. NEMA commented that incorporating halogen capsules currently used in PAR lamps in R20 short lamps will not allow R20 short lamps to meet energy conservation standards established by the 2009 Lamps Rule that require compliance on July 14, 2012. NEMA stated that lamp manufacturers attempted to improve the efficacy of R20 short lamps through the use of an incandescent halogen capsule, but found it technically infeasible either due to MOL constraints, internal dimensional compatibility of the halogen capsule, or meeting light output or beam spread requirements. (NEMA, No. 7 at p. 1)

CA Utilities and Earthjustice and NRDC disagreed with NEMA's comment and stated that the efficacy of existing lamps can be improved while still maintaining the necessary requirements for pool and spa applications. CA Utilities commented that single-ended and double-ended halogen burners are frequently used in small diameter reflector lamps to improve efficacy. CA Utilities suggested that because PAR20 lamps, which typically do not have MOLs exceeding 3 and 5/8 inches, can accommodate single-ended halogen burners, R20 short lamps could also use single-ended halogen burners to improve efficiency. They added that these long life halogen PAR20 lamps are now also available in a wide variety of beam spreads. CA Utilities also commented that Philips offers two small diameter, high efficacy lamps with double-ended halogen burners, long lifetime, and wide beam spread. CA Utilities concluded that these product offerings indicate that single- and double-ended halogen burners are the appropriate size for R20 short lamps. (Earthjustice and NRDC, No. 8 at p. 2; CA Utilities, No. 9 at p. 2)

In order to determine if an improved R20 short lamp could be a substitute, DOE modeled the performance of an R20 short lamp with a halogen capsule. DOE then determined if the halogen-based R20 short lamp would meet energy conservation standards and the special characteristic requirements.

First, DOE determined the dimensional compatibility of incorporating halogen technology in R20 short lamps. DOE performed teardowns of a 60W PAR16 lamp containing a single-ended halogen burner, a 60W PAR30 lamp containing a double-ended halogen burner, and a 100W R20 short lamp to determine the dimensional compatibility of the halogen capsules within an R20 short lamp. Based on the dimensions of the burners and the R20 short lamp, DOE has tentatively concluded that it is possible to fit both the single-ended and double-ended halogen burners in an R20 short lamp. DOE notes that single-ended halogen burners are already present in commercially available R20 lamps that have a listed MOL of 3.54 inches and are intended for use in general lighting applications. Given this availability and the results of the teardown analysis, DOE agrees with CA Utilities and Earthjustice and NRDC that single-ended and double-ended halogen burners are the appropriate size for R20 short lamps. For more information on the teardowns, see appendix A.

DOE next performed testing to determine the potential improvement in efficacy for R20 short lamps through the use of single-ended and double-ended halogen burners. DOE performed independent testing and analysis to determine what the theoretical increase in efficacy would be, given the successful incorporation of each burner type.

To determine the efficacy of a theoretical R20 short lamp with a single-ended halogen burner, DOE tested a 120V, 45W halogen R20 lamp with a MOL of 3.92 inches that contained a single-ended burner. Using equations relating lumens and wattage from the Illuminating Engineering Society of North America (IESNA) Lighting Handbook (see appendix A), DOE scaled the lumen output of the 45W lamp such that it was within the desired range. Based on the calculations, DOE expects that when designing a more efficient version of an R20 short lamp, lamp manufacturers will be able to reduce the

[10] "Underwater Luminaires and Submersible Junction Boxes" (Approved June 9, 2003, Revised July 6, 2011).

[11] A lamp that has a parabolic aluminum reflector shape.

wattage to at least 75W. DOE determined through this scaling calculation that the efficacy of an R20 short lamp improves with the use of a single-ended halogen burner. The efficacy of the 100W R20 short lamp was measured to be 8.5 lumens per watt (lm/W), while the theoretical efficacy of the 75W halogen R20 with a single-ended burner was calculated to be 10.3 lm/W. However, the efficacy does not increase enough to allow the lamp to meet the current energy conservation standard of 12.5 lm/W set forth by EISA 2007, or the standard of 16.0 lm/W prescribed in the 2009 Lamps Rule that requires compliance on July 14, 2012. Therefore, DOE has tentatively concluded that while a single-ended burner is dimensionally compatible with an R20 short lamp, this improved halogen R20 short lamp is not a suitable replacement as it would not meet current standards. For more information on the improved efficacy calculation, see appendix A.

To determine the efficacy of a theoretical R20 short lamp with a double-ended burner, DOE tested a 120V, 60W PAR30 short lamp that contained a double-ended burner dimensionally compatible with an R20 short lamp. DOE then applied a reflector efficiency factor (see appendix A) to scale the lumen output of the PAR lamp to that of an R lamp. Again using IESNA equations relating lumen output and wattage, DOE scaled the 60W lamp to a 75W lamp. The efficacy of the 100W R20 lamp was measured to be 8.5 lm/W, while the efficacy of the 75W halogen R20 lamp was calculated to be 13.8 lm/W. DOE determined that the use of a double-ended halogen burner would likely enable the 75W R20 halogen short lamp to meet the EISA 2007 standard of 12.5 lm/W; however, the efficacy would not increase enough to meet the 2009 Lamps Rule standard of 16.0 lm/W. Therefore, DOE has tentatively concluded that while a double-ended burner is dimensionally compatible with an R20 short lamp, this improved halogen R20 short lamp is not a viable substitute because the lamp would not meet July 2012 standards. For more information on the improved efficacy calculation, see appendix A.

DOE confirmed during interviews that lamp manufacturers had attempted to improve the efficacy of R20 short lamps through the use of halogen capsules. The information shared by lamp manufacturers supports DOE's findings that while some halogen capsules are dimensionally compatible with the R20 short lamp envelope, the use of halogen capsules does not improve the efficacy enough to meet the July 2012 standards.

Although the two model lamps do not comply with upcoming standards, DOE evaluated whether they could include the R20 short lamp special characteristics as listed in the beginning of section 0. As incorporating the halogen capsule does not affect the lamp length, the shortened MOL is retained. The heat shield could also be included in the improved R20 short lamp. The addition of a halogen capsule would, however, affect the lumen output and beam spread. Based on its theoretical modeling, DOE determined that the halogen-based R20 short lamp with single-ended burner would likely have a lumen output within the established range of 637 to 1,022 lumens, and the R20 short lamp with double-ended burner would have a slightly higher, but comparable lumen output. Additionally, because the position of the filament impacts the beam angle, DOE anticipates that the beam angle could be affected by the use of a halogen capsule; however, prototypes would need to be constructed and tested in order to confirm. Because DOE determined that the halogen-based R20 short lamp was not a viable option due to insufficient efficacy improvement, DOE did not conduct prototype testing to verify the effect on beam angle.

Further, DOE preliminarily concluded that the halogen-based R20 short lamp would meet the 0.5 watts per square foot of water surface area or equivalent illumination requirements because the theoretical lamp would deliver a higher lumen output with a reduced input wattage compared to the R20 short lamp. However, additional testing would be required to confirm this conclusion. DOE notes an improved R20 short lamp would need to be separately listed on the UL certification for a fixture because the lamp would have different specifications than current R20 short lamps.

DOE has tentatively concluded that because the improved efficacy of a halogen-based R20 short lamp would not meet or exceed the July 2012 standards, it is not a reasonable substitute.

b. 60W PAR16 Substitute

Through market research and manufacturer interviews, DOE determined that 60W PAR16 lamps are currently being distributed and sold for use in pool and spa applications as a replacement for R20 short lamps. Existing energy conservation standards cover PAR lamps that have diameters exceeding 2.25 inches. Therefore, PAR16 lamps, which have a diameter of 2 inches, are not covered under standards. Through research DOE identified two 60W PAR16 models marketed for use in pool and spa applications. DOE tested these two models to determine if this lamp type contained the R20 short lamp special characteristics identified and could serve as a reasonable substitute. In manufacturer interviews, DOE was able to identify an additional 60W PAR16 model that can be used in pool and spa applications. This model was not tested as DOE determined it had adequate information to make a conclusion regarding the substitutability of this lamp type.

The 60W PAR16 lamp is a small diameter halogen lamp with a parabolic aluminized reflector. DOE found some variation in MOL of the 60W PAR16 lamps, ranging from a minimum MOL of 2.86 inches to a maximum of 3.31 inches. However, all models had a MOL less than the R20 short lamp MOL of 3.625 inches. In addition, the 60W PAR16 lamps tested contained heat shields.

After DOE confirmed that the physical specifications of the 60W PAR16 were equivalent to those of the R20 short lamp, DOE considered the performance specifications. DOE received feedback from lamp manufacturers that the lumen output of 60W PAR16 lamps was between 600 and 700 lumens and the beam angle was 30 degrees. DOE conducted independent testing and determined that the average lumen output of the models tested was 733 lumens.[12] DOE concluded that the lumen output of the 60W PAR16 lamp was comparable to that of the R20 short lamp because the measured lumen output was within the lumen output range of the R20 short lamps (637 to 1,022 lumens).

DOE also measured beam angles and determined that the average beam angle was 34 degrees.[13] DOE concluded that the beam angle of the 60W PAR16 lamp did not meet the beam angle range of the R20 short lamps (70 to 123 degrees).

Additionally, DOE interviewed lamp manufacturers to determine if they considered the 60W PAR16 as a suitable replacement for the R20 short lamp. Lamp manufacturers commented that while the 60W PAR16 is being used in pools and spas, the lamp was not designed for such applications. The lamp was not utilized in pools and spas until September 2010, when an alternate lamp was needed until the R20 short lamp exclusion rulemaking was

[12] The maximum lumen output of the lamps tested was 780 lumens and the minimum was 685 lumens.

[13] The maximum beam angle was 40 degrees and the minimum beam angle was 28 degrees.

completed. DOE received varying comments on the satisfaction of 60W PAR16 lamps in pool and spa applications. While the rated lifetime of these lamps is in the same range as the rated lifetime of R20 short lamps (2,000 to 2,500 hours), some lamp manufacturers have received consumer feedback that the lifetime of the 60W PAR16 lamp is shortened when used in pool and spa applications. However, DOE also received feedback from pool and spa part manufacturers that the performance of the 60W PAR16 has proven to be more robust than the R20 short lamp, and that they have seen no issues with shortened lifetime. DOE welcomes further clarification on this issue, including test data regarding the impact on lifetime of the 60W PAR16 lamps when used in pool and spa applications.

During interviews, some lamp manufacturers commented that the lumen output and beam angle of the 60W PAR16 were not sufficient for use in pool and spa applications. However, DOE also received comments that the performance of the 60W PAR16 was comparable to the R20 short lamp when installed in a fixture with optimized components. Pool and spa part manufacturers develop underwater lighting based on the performance of a lamp and fixture together and optimize the fixture's components in order to achieve suitable illumination. A manufacturer of pool and spa parts commented that by adding an optimized lens to the R20 short lamp fixture, the measured light output and beam angle of the 60W PAR16 lamp within the fixture was comparable to the R20 short lamp within the fixture with a standard lens. The lens added to the R20 short lamp fixture was an existing component, developed for use with underwater LED lighting in order to provide a more diffuse beam spread. The pool and spa part manufacturer provided test results of the 60W PAR16 within the R20 short lamp fixture both with and without the optimized LED lens. When the LED lens was used, the beam angle was substantially increased and fell within the required beam angle range. However, because the subject of this rulemaking is specific to the lamp, DOE must evaluate the performance of the lamp alone when determining the availability of reasonable substitutes.

The 60W PAR16 is currently being marketed and sold for use in pool and spa applications and therefore likely to be compliant with building code requirements for appropriate illumination of pool/spas. DOE also notes that the 60W PAR16 lamp is UL listed for use in R20 short lamp fixtures.

The 60W PAR16 lamp is physically compatible with an underwater light fixture due to its short MOL and also contains a heat shield. However, in order for the 60W PAR16 to serve as a replacement for the R20 short lamp, modifications must be made to achieve the acceptable beam spread. Specifically, the 60W PAR16 must be partnered with a fixture with an optimized LED lens to achieve the appropriate beam angle. Because the 60W PAR16 lamp alone does not contain all of the special characteristics of a R20 short lamp, DOE has tentatively concluded that this is not a reasonable substitute.

c. LED Replacement Lamp

CA Utilities commented that several commercially available LED lamps could serve as replacements for R20 short lamps. CA Utilities added that while the products are currently more expensive, they offer longer lifetimes with lower maintenance costs. In addition, LED prices are expected to decrease as the technology matures. (CA Utilities, No. 9 at p. 2) DOE did confirm that LED replacement lamps are currently being sold for use in pool and spa fixtures. DOE researched three LED models that were determined to be compatible with the R20 short lamp fixture in order to determine if the lamps offered the special characteristics of the R20 short lamp and could therefore be considered a substitutable lamp type.

One of the LED models that can be used as a replacement for R20 short lamps has a rated wattage of 8 W, a diameter of 2.5 inches, and has a listed MOL of 3.5 inches, which is less than that of a R20 short lamp MOL of 3.625 inches. The lamp has a lumen output of 500 lumens and a 40 degree beam angle. Additionally, the lamp has a rated lifetime of 40,000 hours. While the use of a heat shield is not applicable to LED lamps, the lamp manufacturer indicated that the lamp was adapted for use in underwater pool and spa applications and certain components were changed in order to withstand the high heat environment.

This LED lamp has the required MOL for pool and spa applications, however, the lamp does not achieve the required lumen output and beam angle. The LED lamp's rated lumen output of 500 lumens is notably less than the established acceptable range of 637 and 1,022 lumens. Additionally, the LED lamp's beam angle of 40 degrees is also considerably less than specified beam angle range of 70 to 123 degrees. DOE has tentatively concluded based on the lamp manufacturer-provided specifications, that this LED model is not a reasonable substitute because the lamp does not have the required special characteristics of the R20 short lamp.

The remaining two LED models for use in the R20 short lamp fixture did not have published performance specifications. DOE contacted the lamp manufacturers, but was able to obtain only limited information on the models. DOE was able to determine that one model has a rated wattage of 20 W, an MOL of 3.3 inches, and a diameter of 3.0 inches. DOE was unable to find information on the lamp shape, lumen output, beam angle, and rated lifetime of the model. For the other model, DOE was able to determine that it has a rated wattage of 12 W, an MOL of 2.41 inches, and a diameter of 3.07 inches. Similarly, DOE was unable to find information on the lamp shape, lumen output, beam angle, and rated lifetime of the model. Because of the limited information on these two LED models, DOE cannot conclude that the lamps have the required special characteristics of R20 short lamps. DOE welcomes further information on potential LED replacement models.

DOE assumed that because the LED lamps are currently being marketed and sold for use in pool and spa applications, these lamps provide the equivalent illumination of 0.5 watts per square foot of water surface area. DOE notes that the LED lamps are not UL listed for use in R20 short lamp fixtures.

DOE also identified an LED lamp that is being sold for use in pool and spa applications, but cannot be installed in an R20 short lamp fixture and, therefore, requires a compatible LED fixture. The LED lamp and fixture are intended to be a direct replacement for the R20 short lamp and fixture. Because the replacement option requires a completely new fixture and this rulemaking is evaluating the lamp alone, DOE has determined that this LED lamp is not a reasonable substitute.

Based on the foregoing, DOE has tentatively concluded that commercially available LED lamps are not reasonable substitutes because they do not have the required special characteristics of R20 short lamps. DOE also tentatively concluded that the LED lamp and fixture replacement identified is not a reasonable substitute because it requires more than the lamp to be replaced.

DOE requests comment on the analysis of potential R20 short lamp substitutes and its initial conclusion that there are no reasonable substitutes for this lamp type.

D. Conclusion

In interviews with manufacturers, DOE established that R20 short lamps were designed for pool and spa applications based on industry need and consumer preference. The design requirements included a wide beam spread, high lumen output and adequate illumination; a heat shield to withstand the high operating temperatures of spas; and a shortened MOL, allowing the lamp to fit in underwater pool or spa fixtures. Further, DOE determined that the majority of R20 short lamps are purchased from pool and spa distributors and specialty retail stores, and are not available where IRLs are typically sold for general lighting applications. R20 short lamps are also marketed and clearly packaged in a way that indicates the lamps are specifically for pools and spas. Therefore, DOE has preliminarily concluded that R20 short lamps are designed for pool and spa applications. Due to the special application of R20 short lamps, DOE assessed the impact on energy savings from the exclusion of these lamps from energy conservation standards. As R20 short lamps have a small market share and limited potential for growth, DOE tentatively determined that the regulation of R20 short lamps would not result in significant energy savings.

DOE also evaluated lamps that could serve as potential substitutes by analyzing their ability to replicate the specialized characteristics of the R20 short lamp, specifically a shortened MOL, heat shield, high lumen output, wide beam spread, and adequate illumination. DOE considered a halogen-based R20 short lamp with improved efficacy, a commercially available 60W PAR16 lamp, and LED lamps as potential substitutes. DOE has tentatively disqualified these lamps as reasonable substitutes for the following reasons: (1) The halogen-based R20 short lamp would not comply with standards; (2) the 60W PAR16 can only achieve the required beam spread when partnered with a fixture with an optimized LED lens; and (3) the LED replacement does not have the necessary lumen output.[14] Therefore, DOE has tentatively concluded that there are no reasonably substitutable lamp types currently available that offer the special characteristics of R20 short lamps.

Based on the previous assessments, DOE proposes to exclude R20 short lamps from energy conservation standards. DOE's analysis has initially found that energy conservation standards for R20 short lamps would not result in significant energy savings because the lamps are designed for special applications, and also that the lamps have special characteristics that are not available in reasonably substitutable lamp types. Therefore, under section 6291(30)(E), DOE proposes to exclude R20 short lamps from energy conservation standards by modifying the definition of ''Incandescent reflector lamp'' and proposing a new definition for ''R20 Short Lamp'' in 10 CFR 430.2. DOE requests comment on its proposed determination that R20 short lamps should be excluded from energy conservation standards.

E. Options for Conditional Exclusions

Stakeholders provided additional suggestions on how to exclude R20 short lamps from energy conservation standards. Earthjustice and NRDC commented that if DOE excludes R20 short lamps from coverage under EPCA energy conservation standards, measures must be taken to ensure that the blanket exclusion does not become a loophole. Earthjustice and NRDC provided four recommendations for conditional exclusions. In one recommendation, Earthjustice and NRDC suggested that DOE could provide exclusion only for R20 short lamps installed in states where 120V electricity supplies pools and spas. This would prevent R20 short lamps from migrating to states where the only use would be as a substitute for an IRL that meets standards. Earthjustice and NRDC suggested in another recommendation that DOE limit the exclusion to a specified number of R20 short lamps. They stated DOE has the authority to do this because section 6291(30)(E) authorizes DOE to grant exclusion from standards at the individual lamp level. Another recommendation was to exclude the first 100,000 R20 short lamps produced after the final rule effective date on the basis that subsequent production would abate findings that standards would not result in significant energy savings. In addition, Earthjustice and NRDC suggested DOE could establish an annual sales limit, restricting the market share and thereby ensuring that standards for R20 short lamps would not result in significant energy savings. They stated that this could be accomplished by requiring manufacturers to report sales quarterly and terminating the exclusion when reported sales exceed an established percentage of historic annual sales. (Earthjustice and NRDC, No. 8 at pp. 2–4)

Finally, Earthjustice and NRDC also suggested that any exclusion expire after five years, regardless of lamp sales. This would allow R20 short lamp manufacturers enough time to perform necessary redesign for incorporating more energy-efficient lighting technologies at the lowest possible cost, while not greatly reducing energy savings achieved through standards. *Ibid.*

As mentioned previously, DOE does not anticipate market growth or market migration of R20 short lamps due to their application-specific marketing and unique distribution channels. DOE's proposed definition for R20 short lamps requires them to be designed, labeled, and marketed for pool and spa applications. However, DOE would consider reevaluating the exclusion of R20 short lamps from energy conservation standards, if it was found that lamp sales were increasing due to market migration after an exclusion of R20 short lamps was granted. DOE invites the submission of shipment information that supports increased lamp sales following an exclusion of R20 short lamps.

Earthjustice and NRDC also suggested that DOE require a technical specification for R20 short lamps, such as a specific correlated color temperature value, that would not significantly affect quality or efficiency but would ensure the lamp would not be used in other applications. (Earthjustice and NRDC, No. 8 at p. 4) EPCA authorizes DOE to consider and adopt only performance-based energy conservation standards for this product. (42 U.S.C. 6291(6)) DOE cannot, therefore, specify R20 short lamps to have certain technical characteristics. Further, as stated previously, DOE does not anticipate that R20 short lamps would be used in other applications and therefore, does not see a need for such a requirement.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Today's regulatory action has been determined to not be a ''significant regulatory action'' under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). Accordingly, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) is not required to review this action.

DOE has also reviewed this proposed regulation pursuant to Executive Order 13563, issued on January 18, 2011 (76

[14] Performance information was not available for all LED replacements.

FR 3281 (Jan. 21, 2011)). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, OIRA has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that today's NOPR is consistent with these principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized.

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 (IRFA) 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 rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*http://energy.gov/gc/office-general-counsel*).

DOE reviewed today's proposed rulemaking under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. This proposed rulemaking would set no standards; it would only determine whether exclusion from standards is warranted for R20 short lamps. DOE certifies that this proposed rulemaking will not have a significant impact on a substantial number of small entities. The factual basis for this certification is as follows.

For manufacturers of 100W R20 IRLs with an MOL of 3 and ⅝ inches, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 65 FR 30836, 30849 (May 15, 2000), as amended at 65 FR 53533, 53545 (Sept. 5, 2000) and codified at 13 CFR 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.* The manufacturing of R20 short lamps is classified under NAICS 335110, ''Electric Lamp Bulb and Part Manufacturing.'' The SBA sets a threshold of 1,000 employees or less for an entity to be considered as a small business for this category. DOE identified two small business manufacturers of R20 short lamps.

Amendments to EPCA in the Energy Policy Act of 1992 (EPAct 1992), Public Law 102–486, established the current energy conservation standards for certain classes of IRLs. On July 14, 2009, DOE published a final rule in the **Federal Register** that amended these standards, with a compliance date of July 14, 2012. 74 FR 34080. In that rulemaking, DOE concluded that the standards would not have a substantial impact on small entities and, therefore, did not prepare a regulatory flexibility analysis. 74 FR at 34174–75 (July 14, 2009). On the basis of the foregoing and because this rulemaking to establish an exclusion would decrease regulatory burden, DOE certifies that this rulemaking will have no significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared an IRFA for this NOPR. DOE will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

This rulemaking, which proposes an exclusion from energy conservation standards for R20 short lamps, would impose no new information or record keeping requirements. Accordingly, the OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act (NEPA) of 1969, DOE has determined that this proposed rulemaking fits within the category of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (Pub. L. 91–190, codified at 42 U.S.C. 4321 *et seq.*), and DOE's implementing regulations at 10 CFR part 1021. Specifically, the proposed rulemaking amends an existing rule without changing its environmental effect, and, therefore, is covered by Categorical Exclusion (CX) A5 found in 10 CFR part 1021, subpart D, appendix A. Therefore, as DOE has made a CX determination for the proposed rulemaking, DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement. DOE's CX determination is available at *http://cxnepa.energy.gov/.*

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999) imposes certain requirements on federal agencies formulating and implementing policies or regulations that preempt state laws or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the states and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the

development of such regulations. 65 FR 13735. EPCA governs and prescribes federal preemption of state regulations as to energy conservation for the covered product that is the subject of today's proposed rulemaking. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' imposes on federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rulemaking meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each federal agency to assess the effects of federal regulatory actions on state, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by state, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)). The UMRA also requires a federal agency to develop an effective process to permit timely input by elected officers of state, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *http://energy.gov/gc/office-general-counsel.*

DOE examined today's proposed rulemaking according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year. Instead, if adopted in a final rulemaking, the rule would exclude R20 IRLs with an MOL of 3 and ⅝ inches from standards, thereby eliminating any existing compliance costs. Accordingly, no further assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rulemaking would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (Mar. 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for federal agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's proposed rulemaking under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' 66 FR 28355 (May 22, 2001), requires federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that today's proposed regulatory action, which excludes R20 short lamps from coverage under energy conservation standards, is not a significant energy action because the proposed exclusion from standards is not a significant regulatory action under Executive Order 12866, is not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on the proposed rulemaking.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions. 70 FR at 2667 (Jan. 14, 2005).

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report'' dated February 2007 has been disseminated and is available at the following Web site: *www1.eere.energy.gov/buildings/appliance_standards/peer_review.html*.

V. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this NOPR no later than the date provided in the **DATES** section at the beginning of this notice. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting comments via regulations.gov. The regulations.gov Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through regulations.gov cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that regulations.gov provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 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 via email, postal mail, or hand delivery/courier two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. 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 passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received,

including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

B. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. DOE's assessment of the identified special characteristics of R20 short lamps and any other features that should be considered special characteristics;

2. The proposal that R20 short lamps qualify for an exclusion from energy conservation standards because of insignificant energy savings attributable to their design for specialty applications;

3. Whether reduced wattage lamps can be used as reasonable substitutes in pool and spa applications in all jurisdictions provided that they meet the 0.5W of input power per square foot of water surface area, or equivalent level of illumination;

4. The identified specifications for underwater illumination (0.5W of input power per square foot of water surface area, or equivalent level of illumination) for building code compliance and whether this requirement is appropriate when qualifying a lamp as a reasonable substitute; and

5. DOE's analysis of potential R20 short lamp substitutes and the conclusion that there are no reasonably substitutable lamps for this lamp type.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's proposed rulemaking.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential Business Information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on December 21, 2012.

David T. Danielson,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

2. In § 430.2, revise the definition for ''Incandescent reflector lamp'' and add the definition for ''R20 short lamp,'' in alphabetical order, to read as follows:

§ 430.2 Definitions.

* * * * *

Incandescent reflector lamp (commonly referred to as a reflector lamp) means any lamp in which light is produced by a filament heated to incandescence by an electric current, which: Contains an inner reflective coating on the outer bulb to direct the light; is not colored; is not designed for rough or vibration service applications; is not an R20 short lamp; has an R, PAR, ER, BR, BPAR, or similar bulb shapes with an E26 medium screw base; has a rated voltage or voltage range that lies at least partially in the range of 115 and 130 volts; has a diameter that exceeds 2.25 inches; and has a rated wattage that is 40 watts or higher.

* * * * *

R20 short lamp means a lamp that is an R20 incandescent reflector lamp that has a rated wattage of 100 watts; has a maximum overall length of 3 and ⅝, or 3.625, inches; and is designed, labeled, and marketed specifically for pool and spa applications.

* * * * *

[FR Doc. 2012–31396 Filed 12–28–12; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2012–BT–DET–0033]

RIN 1904–AC83

Energy Conservation Program for Consumer Products and Certain Commercial and Industrial Equipment: Proposed Determination of Commercial and Industrial Compressors as Covered Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed determination of coverage.

SUMMARY: The U.S. Department of Energy (DOE) proposes to determine that commercial and industrial compressors meet the criteria for covered equipment under Part A–1 of Title III of the Energy Policy and Conservation Act (EPCA), as amended. DOE proposes that classifying equipment of such type as covered equipment is necessary to carry out the purpose of Part A–1 of EPCA, which is to improve the efficiency of electric motors and pumps and certain other industrial equipment to conserve the energy resources of the nation.

DATES: DOE will accept written comments, data, and information on this notice, but no later than January 30, 2013.

ADDRESSES: Interested persons may submit comments, identified by docket number EERE–2012–BT–DET–0033 or RIN 1904–AC83, by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov* Follow the instructions for submitting comments.
- *Email: CompressorsDetermination 2012DET0033@ee.doe.gov.* Include EERE–2012–BT–DET–0033 and/or RIN 1904–AC83 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Notice of Proposed Determination for Compressors, EERE–2012–BT–DET–0033 and/or RIN 1904–AC83, 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, Suite 600, 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: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, comments, and other supporting documents/materials. All documents in the docket are listed in the *http://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket web page can be found at: *www.regulations.gov* docket no. EERE–2012–BT–DET–0033. This web page contains a link to the docket for this notice on the *www.regulations.gov* site. The regulations.gov web page contains instructions on how to access all

documents, including public comments, in the docket. See section VII for further information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121, Telephone: (202) 586–8654. Email: *Jim.Raba@ee.doe.gov.*

In the Office of General Counsel, contact Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov.*

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I. Statutory Authority

Title III of the Energy Policy and Conservation Act of 1975 (EPCA), as amended (42 U.S.C. 6291 *et seq.*), sets forth various provisions designed to improve energy efficiency. Part C of Title III of EPCA (42 U.S.C. 6311–6317), which was re-designated for editorial reasons as Part A–1 upon codification in the U.S. Code, establishes the ''Energy Conservation Program for Certain Industrial Equipment,'' which covers certain commercial and industrial equipment (hereafter referred to as ''covered equipment'').

EPCA specifies a list of equipment that constitutes covered commercial and industrial equipment. (42 U.S.C. 6311(1)(A) – (L). The list identifies 11 types of equipment and sets forth a twelfth provision for any other type of industrial equipment which the Secretary of Energy (Secretary) classifies as covered equipment. EPCA also specifies the types of industrial equipment that can be classified as covered in addition to the equipment enumerated in 42 U.S.C. 6311(1). This equipment includes compressors. (42 U.S.C. 6311(2)(B)(i)). Industrial equipment must also, without regard to whether such equipment is in fact distributed in commerce for industrial or commercial use, be of a type that:

(1) In operation consumes, or is designed to consume, energy in operation;

(2) to any significant extent, is distributed in commerce for industrial or commercial use; and

(3) is not a covered product as defined in 42 U.S.C. 6291(a)(2) of EPCA, other than a component of a covered product with respect to which there is in effect a determination under 42 U.S.C. 6312(c). (42 U.S.C. 6311 (2)(A)).

To classify equipment as covered commercial or industrial equipment, the Secretary must determine that classifying the equipment as covered equipment is necessary for the purposes of Part A–1 of EPCA. The purpose of Part A–1 is to improve the efficiency of electric motors, pumps and certain other industrial equipment to conserve the energy resources of the nation. (42 U.S.C. 6312 (a), (b))

II. Current Rulemaking Process

DOE has not previously conducted an energy conservation standard rulemaking for compressors. If after public comment, DOE issues a final determination of coverage for this equipment, DOE would consider both test procedures and energy conservation standards for this equipment.

With respect to test procedures, DOE would consider proposed test procedures for measuring the energy efficiency, energy use, or estimated annual operating cost of compressors during a representative average use cycle or period of use that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) In a test procedure rulemaking, DOE initially prepares a test procedure notice of proposed rulemaking (NOPR) and allows interested parties to present oral and written data, views, and arguments with respect to such procedures. In prescribing new test procedures, DOE takes into account relevant information including technological developments relating to energy use or energy efficiency of compressors.

With respect to energy conservation standards, DOE typically prepares initially an energy conservation standards rulemaking framework document (the framework document). The framework document explains the issues, analyses, and process that it is considering for the development of energy conservation standards for compressors. After DOE receives comments on the framework document, DOE typically prepares an energy conservation standards rulemaking preliminary analysis and technical support document (the preliminary analysis). The preliminary analysis typically provides initial draft analyses of potential energy conservation standards on consumers, manufacturers, and the nation. Neither of these steps is legally required.

DOE is required to publish a NOPR setting forth DOE's proposed energy conservations standards and a summary of the results of DOE's supporting technical analysis. The details of DOE's analysis are provided in a technical support document (TSD) that describes the details of DOE's analysis of both the burdens and benefits of potential standards, pursuant to 42 U.S.C. 6295(o). DOE affords interested persons an opportunity during a period of not less than 60 days after the publication of the NOPR to provide oral and written comment. (42 U.S.C. 6295(p)(2)) After receiving and considering the comments on the NOPR and not less than 90 days after the publication of the NOPR, DOE would issue the final rule prescribing any new energy conservation standards for compressors. (42 U.S.C. 6295(p)(3))

III. Definition(s)

DOE is considering a definition for ''Commercial and Industrial Compressors'' to clarify coverage of any potential test procedure or energy conservation standard that may arise from today's proposed determination. There is currently no statutory definition of compressors, and DOE is considering the following definition of compressors to provide clarity for interested parties as it continues its analyses:

Compressor: A compressor is an electric-powered device that takes in air or gas at atmospheric pressure and delivers the air or gas at a higher

pressure.[1] Compressors typically have a specific ratio, the ratio of delivery pressure to supply pressure, greater than 1.20. Compressors are classified as positive-displacement, dynamic, or hybrid. A positive-displacement compressor increases the pressure of the intake air pressure through a compression container. A dynamic compressor increases pressure of the air it intakes by continuously imparting velocity energy into the air flow, which is then converted into pressure energy. A hybrid compressor is some combination of positive-displacement and dynamic compressors.

A compressor may have some or all of the following components: piston, roller, rotor(s), impeller wheel, spiral disks, cylinder(s), lubricant, motor and transmission, controls, treatment equipment (after cooler and lubricant cooler), filter(s), and/or a lubricant/air separator.

DOE seeks feedback from interested parties on this definition for compressors.

IV. Evaluation of Compressors as a Covered Equipment

The following sections describe DOE's evaluation of whether compressors fulfill the criteria for being added as covered equipment pursuant to 42 U.S.C. 6311(2) and 42 U.S.C. 6312.

Compressors are listed as a type of industrial equipment at 42 U.S.C. 6311(2)(B)(i). The following discussion addresses DOE's consideration of the three requirements of 42 U.S.C. 6311(2)(A) and 42 U.S.C. 6312.

A. Energy Consumption in Operation

Data from the 2002 United States Industrial Electric Motor Systems Market Opportunities Assessment estimate total annual industrial compressor energy use (from Manufacturing SIC codes 20–39) at 91,050 million kWh per year.[2] Since industrial activity in 2012 is greater than it was in 2002, it is likely that current annual compressor energy use is higher than this figure.

B. Distribution in Commerce

Compressors are distributed in commerce for both the industrial and commercial sectors. Based on the 2011 International Energy Agency (IEA) Survey, DOE estimated that 1.3 million motors are shipped annually to drive compressors in the U.S. commercial and industrial sectors.[3] Based on additional 2004 U.S. Census data,[4] DOE assumes that only a small fraction of these motors are used as a motor only replacement in compressor systems. Therefore, DOE estimates that there are nearly 1.3 million compressors distributed in commerce annually for industrial or commercial use.

C. Prior Inclusion as a Covered Product

Compressors are not currently included as covered products under Title 10 of the Code of Federal Regulations, part 430 (10 CFR part 430).

D. Coverage Necessary To Carry Out Purposes of Part A–1 of the Energy Policy and Conservation Act

The purpose of part A–1 of EPCA is to improve the energy efficiency of electric motors, pumps and certain other industrial equipment to conserve the energy resources of the nation. Coverage of compressors is necessary to carry out the purposes of part A–1 of EPCA because coverage will promote the conservation of energy supplies. Efficiency standards that may result from coverage would help to capture some portion of the potential for improving the efficiency of compressors.

Based on the information in section IV of this notice, DOE proposes to determine that commercial and industrial compressors qualify as covered equipment under part A–1 of Title III of EPCA, as amended (42 U.S.C. 6311 *et seq.*).

V. Procedural Issues and Regulatory Review

DOE has reviewed its proposed determination of compressors under the following executive orders and acts.

A. Review Under Executive Order 12866

The Office of Management and Budget has determined that coverage determination rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this proposed 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.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), requires preparation of an initial regulatory flexibility analysis for any rule that, by law, must be proposed for public comment, unless the agency certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative effects. Also, as required by E.O. 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 impact of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990 (February 19, 2003). DOE makes its procedures and policies available on the Office of the General Counsel's Web site at *http://energy.gov/gc/office-general-counsel.*

DOE reviewed today's proposed determination under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. If adopted, today's proposed determination would set no standards and would only positively determine that future standards may be warranted and should be explored in an energy conservation standards rulemaking. The proposed determination also does not establish any test procedures. If a positive determination is made, DOE would consider test procedures in a subsequent rulemaking. Economic impacts on small entities would be considered in the context of such rulemakings. On the basis of the foregoing, DOE certifies that the proposed determination, if adopted, would have no significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this proposed determination. DOE will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

This proposed determination, which proposes to determine that compressors meet the criteria for classification as covered equipment, will impose no new information or recordkeeping

[1] Compressors are mostly driven by electric motors but may also be driven by diesel or natural gas, and steam or combustion engines. At present, DOE envisions including compressors driven only by electric motors as covered equipment.

[2] U.S. DOE Office of Industrial Technologies. *United States Industrial Electric Motor Systems Market Opportunities Assessment.* December 2002.

[3] International Energy Agency. Energy-Efficiency Policy Opportunities for Electric Motor-Driven Systems. Paris, 2011.

[4] U.S. Census Bureau, MA335H(03)–1, issued Nov 2004.

requirements. Accordingly, the Office of Management and Budget (OMB) clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act of 1969

In this notice, DOE proposes to positively determine that compressors meet the criteria for classification as covered equipment. Environmental impacts would be explored in any future energy conservation standards rulemaking for compressors. DOE has determined that review under the National Environmental Policy Act of 1969 (NEPA), Public Law 91–190, codified at 42 U.S.C. 4321 *et seq.* is not required at this time. NEPA review can only be initiated ''as soon as environmental impacts can be meaningfully evaluated'' (10 CFR 1021.213(b)). This proposed determination would only determine that compressors meet the criteria for classification as covered equipment, but would not itself propose to set any specific standard. DOE has, therefore, determined that there are no environmental impacts to be evaluated at this time. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order (E.O.) 13132, ''Federalism'' 64 FR 43255 (August 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to assess carefully the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in developing regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process that it will follow in developing such regulations. 65 FR 13735 (March 14, 2000). DOE has examined today's proposed determination and concludes that it would not preempt State law or have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that is the subject of today's proposed determination. States can petition DOE for exemption from such preemption to the extent permitted, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by E.O. 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the duty to: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation specifies the following: (1) The preemptive effect, if any; (2) any effect on existing Federal law or regulation; (3) a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) the retroactive effect, if any; (5) definitions of key terms; and (6) other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether these standards are met, or whether it is unreasonable to meet one or more of them. DOE completed the required review and determined that, to the extent permitted by law, this proposed determination meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, codified at 2 U.S.C. 1501 *et seq.*) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. For regulatory actions likely to result in a rule that may cause expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any 1 year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a) and (b)) UMRA requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' UMRA also requires an agency plan for giving notice and opportunity for timely input to small governments that may be potentially affected before establishing any requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820 (March 18, 1997). (This policy also is available at *http://energy.gov/gc/office-general-counsel*). DOE reviewed today's proposed determination pursuant to these existing authorities and its policy statement and determined that the proposed determination contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year, so the UMRA requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed determination would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 15, 1988), DOE determined that this proposed determination would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act of 2001

The Treasury and General Government Appropriations Act of 2001 (44 U.S.C. 3516, note) requires agencies to review most disseminations of information they make to the public under guidelines established by each agency pursuant to general guidelines issued by the Office of Management and Budget (OMB). The OMB's guidelines

were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's proposed determination under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates a final rule or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under E.O. 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of the Office of Information and Regulatory Affairs (OIRA) as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the proposal is implemented, and of reasonable alternatives to the proposed action and their expected benefits on energy supply, distribution, and use.

DOE has concluded that today's regulatory action proposing to determine that compressors meet the criteria for classification as covered equipment would not have a significant adverse effect on the supply, distribution, or use of energy. This action is also not a significant regulatory action for purposes of E.O. 12866, and the OIRA Administrator has not designated this proposed determination as a significant energy action under E.O. 12866 or any successor order. Therefore, this proposed determination is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects for this proposed determination.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (January 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the Government's scientific information. DOE has determined that the analyses conducted for this rulemaking do not constitute ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.'' 70 FR 2667 (January 14, 2005). The analyses were subject to pre-dissemination review prior to issuance of this rulemaking.

DOE will determine the appropriate level of review that would be applicable to any future rulemaking to establish energy conservation standards for compressors.

VI. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this notice of proposed determination no later than the date provided at the beginning of this notice. After the close of the comment period, DOE will review the comments received and determine whether compressors are covered equipment under EPCA.

Comments, data, and information submitted to DOE's email address for this proposed determination should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Submissions should avoid the use of special characters or any form of encryption, and wherever possible comments should include the electronic signature of the author. No telefacsimiles (faxes) will be accepted.

According to 10 CFR Part 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 should have all the information believed to be confidential deleted. DOE will make its own determination as to 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 or available from public sources; (4) whether the information has previously been made available to others without obligations concerning its confidentiality; (5) an explanation of the competitive injury to the submitting persons which would result from public disclosure; (6) a date after which such information might no longer be considered confidential; and (7) why disclosure of the information would be contrary to the public interest.

B. Issues on Which the Department of Energy Seeks Comments

DOE welcomes comments on all aspects of this proposed determination. DOE is particularly interested in receiving comments from interested parties on the following issues related to the proposed determination for compressors:

- Definition of compressors;
- Whether classifying compressors as covered equipment is necessary to carry out the purposes of Part A–1 of EPCA;
- Availability or lack of availability of technologies for improving the energy efficiency of compressors.

DOE invites all interested parties to submit, in writing and by January 30, 2013, comments and information on matters addressed in this notice and on other matters relevant to a determination for compressors. DOE is also interested in receiving views concerning other issues relevant to establishing a test procedure and energy conservation standard for compressors.

After the expiration of the period for submitting written statements, DOE will consider all comments and additional information that is obtained from interested parties or through further analyses, and it will prepare a final determination. If DOE determines that compressors qualify as covered equipment, DOE will consider a test procedure and energy conservation standards for compressors. Members of the public will be given an opportunity to submit written and oral comments on any proposed test procedure and standards.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Reporting and recordkeeping requirements.

Issued in Washington, DC, on December 21, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2012–31393 Filed 12–28–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0817; Directorate Identifier 99–NE–24–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

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 General Electric Company (GE) CF6–80C2 series turbofan engines. That NPRM proposed to supersede an AD that required replacement of fuel tubes connected to the fuel flowmeter. That NPRM was prompted by several reports of fuel leaks, and two reports of engine fire, due to mis-assembled supporting brackets on the fuel tube connecting the flowmeter to the Integrated Drive Generator (IDG) fuel-oil cooler. That NPRM required installation of a new simplified one-piece supporting bracket to eliminate mis-assembly. This supplemental action adds an engine model, alters the list of affected part numbers (P/Ns), changes the replacement schedule, and revises our estimated cost of compliance. We are reopening the comment period to allow the public the opportunity to comment on these proposed changes. We are proposing this AD to prevent high-pressure fuel leaks caused by improper seating of fuel tube flanges, which could result in an engine fire and damage to the airplane.

DATES: We must receive comments on this supplemental NPRM by March 1, 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.

For service information identified in this AD, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215, phone: (513) 552–3272; email: *geae.aoc@ge.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket 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: Kasra Sharifi, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7773; fax: 781–238–7199; email: *kasra.sharifi@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–2012–0817; Directorate Identifier 99–NE–24–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 GE CF6–80C2 series turbofan engines. That NPRM published in the **Federal Register** on August 13, 2012 (77 FR 48110). That NPRM proposed to supersede AD 2000–04–14, Amendment 39–11597 (65 FR 10698, February 29, 2000) which had required replacement of certain fuel tubes. That NPRM proposed to require installation of a new simplified one-piece bracket to eliminate mis-assembly.

Actions Since Previous NPRM Was Issued

Since we issued the previous NPRM (77 FR 48110, August 13, 2012), we received and evaluated comments from the public. The nature of the comments caused us to issue this supplemental NRPM to reopen the comment period and allow the public the opportunity to comment on the changes we have made.

Comments

The following presents the comments received on the previous NPRM (77 FR 48110, August 13, 2012) and the FAA's response to each comment.

Request To Remove Certain Part Number From Final Rule

Seven air carriers requested that we exclude bolt P/N MS9557–12 from the final rule because this is a common part used in other components of the engine besides the main engine control to flowmeter fuel tube.

We agree. We changed the proposed AD by removing reference to P/N MS9557–12 from the compliance and prohibition paragraphs.

Request To Remove Idle Leak Check Requirement

The Boeing Company (Boeing) and FEDEX Express requested that we remove the idle leak check requirement, which they contend is not necessary to address the unsafe condition and which is included in normal maintenance, and so does not need to be mandated.

We disagree. We are issuing this AD to prevent fuel leak and fire due to mis-assembled connections, and idle leak check is necessary to ensure no fuel leaks occur after tube or bracket replacement. We did not change the proposed AD.

Request To Alter Mandate for Replacement of Hardware

Boeing, General Electric Company, and American Airlines requested that we change the AD to mandate replacement of only the disconnected hardware during on-wing maintenance, and then the remaining balance of affected hardware during the next shop visit.

We agree. We changed the proposed AD to require that for on-wing maintenance, only those tubes and

brackets that had been disconnected would be replaced at that time.

Request To Expand the Applicability

GE and Boeing requested that we add the GE CF6–80C2B5F engine model to the list of applicable engines. Even though the production model of this engine used a one-piece design (2021M83G01), some engines may have subsequently received bracket P/N 1321M88P001A, allowed by GE Alert Service Bulletin (SB) 73–A0401 for the purpose of hardware interchangeability.

We agree. We changed the proposed AD by adding the GE CF6–80C2BF5 engine to the list of applicable engines specified in paragraph (c).

Request To Incorporate by Reference (IBR) Applicable GE SBs

Four air carriers requested that applicable GE SBs be incorporated by reference in the AD to provide more specific and detailed instructions to aid operators in part replacement.

We partially agree. We agree that GE SBs provide additional guidance. We disagree with incorporating the SBs by reference because multiple acceptable methods exist for performing the actions required by the AD. We did not change the proposed AD.

Request To Clarify Why the AD Mandates Fuel Tube Changes

Onur Air requested clarification as to why the proposed AD would mandate fuel tube changes when the GE SB only applies to engines with a certain bracket.

We disagree. The proposed AD supersedes AD 2000–04–14, Amendment 39–11597 (65 FR 10698, February 29, 2000). That AD requires replacement of certain fuel tube P/Ns. The proposed AD retains that requirement and also mandates replacement of certain supporting brackets and spray shields. We did not change the proposed AD.

Request To Provide Method To Identify Affected Configuration Without Disassembly

American Airlines requested that the proposed AD provide a method to identify the affected fuel tube configuration without disassembling the tubes, because P/N 1321M42G04 is located under a loop clamp, making it difficult to read the P/N.

We disagree. Detailed maintenance instructions can be found in the Instructions for Continued Airworthiness for the engine. We did not change the proposed AD.

Request To Issue a New AD Instead of Superseding a Prior AD

The National Transportation Safety Board requested that we issue a new AD, instead of proposing to supersede AD 2000–04–14, Amendment 39–11597 (65 FR 10698, February 29, 2000), for actions regarding the removal of the bracket. Operators might presume that if they have already complied with AD–2000–04–14 that they might also comply with the additional requirements (replacement of brackets and spray shield) of the proposed supersedure AD.

We disagree. The proposed supersedure AD addresses the same unsafe condition as the original AD, but expands its scope. The proposed supersedure AD will receive its own amendment number and AD number, and the original AD will be deleted. We did not change the proposed AD.

Request for Changes to the Costs of Compliance

American Airlines requested that we revise the cost estimate to more accurately capture the cost of the spray shield and also to include the cost of the idle leak check.

We agree. In the ''Cost of Compliance'' section of the proposed AD, we have changed the cost estimate for each spray shield from $180 to $370, and we have included an estimated cost of $1000 per engine for the idle leak check.

Request To Clarify Spray Shield Part Numbers

Delta Airlines requested that we change the conjunction ''and'' between the two P/Ns listed in paragraph (f)(4) to ''or'' since each engine only has one spray shield to be replaced, and that we add spray shield P/N 1606M57G03 to the list, resulting in three specified P/Ns. The added part number is an alternative spray shield to P/N 1775M61G01, and so is also affected by the AD.

We partially agree. We agree that P/N 1606M57G03 should be added to the list of P/Ns to be removed. We disagree that the conjunction ''and'' should be changed to ''or'' because all three spray shield P/Ns are subject to replacement. We changed the AD to require the replacement of P/N 1606M57G03.

Request To Add Historical Information to Preamble

GE requested that we add more historical information to the ''Action Since Existing AD was Issued'' paragraph in the AD preamble.

We disagree. The cited preamble paragraph will not appear in the final rule, and so additional historical information will not add value to that proposed rule. We did not change the proposed AD.

Request To Provide the P/Ns of Eligible Replacement Parts

UPS requested that we provide P/Ns of eligible replacement parts.

We disagree. The purpose of the AD is to identify and mandate removal of parts causing the unsafe condition. Operators are required to only use parts that are eligible for installation. We did not change the proposed AD.

Request To Nullify Need for Compliance if SBs Already Accomplished

Four air carriers requested that the AD state that no further action is required if the applicable GE SBs have already been accomplished.

We disagree. The ''Compliance'' and ''Replacement'' paragraphs sufficiently state that compliance actions do not have to be repeated if accomplished before the effective date of the AD. We did not change the proposed AD.

Request To Withdraw the Proposed AD

American Airlines requested that we withdraw the requirement to incorporate the spray shield on-wing any time the fuel tubes are disconnected because disconnecting them is an unnecessary hardship on air carriers.

We disagree. On-wing maintenance to the spray shield and affected tubes without removing and replacing them may lead to the unsafe condition. We did not change the proposed AD.

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 installation of a new simplified one-piece bracket to eliminate mis-assembly of supporting brackets on the fuel tube connecting the flowmeter to the IDG fuel-oil cooler.

Costs of Compliance

We estimate that this proposed AD would affect 926 GE CF6–80C2 engines

installed on airplanes of U.S. registry. We also estimate that one hour would be required per engine to accomplish the actions required by this AD. The average labor rate is $85 per hour. We also estimate that the required parts will cost about $370 per engine. We estimate that the cost of the idle leak check is $1,000 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators is $3,275,231.

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, 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):

2012–XX–XX General Electric Company: Docket No. FAA–2012–0817; Directorate Identifier 99–NE–24–AD.

(a) Comments Due Date

We must receive comments by March 1, 2013.

(b) Affected ADs

This AD supersedes AD 2000–04–14, Amendment 39–11597 (65 FR 10698, February 29, 2000).

(c) Applicability

This AD applies to all General Electric Company (GE) CF6–80C2 A1/A2/A3/A5/A8/A5F/B1/B2/B4/B5F/B6/B1F/B2F/B4F/B6F/B7F/D1F turbofan engines with fuel tubes, part number (P/N) 1321M42G01, 1334M88G01, 1374M30G01, 1383M12G01, 1606M57G03, 1606M57G01, or 1775M61G01, or supporting bracket, P/N 1321M88P001A, installed.

(d) Unsafe Condition

This AD was prompted by several reports of fuel leaks, and two reports of engine fire, due to mis-assembled supporting brackets on the fuel tube connecting the flowmeter to the Integrated Drive Generator (IDG) fuel-oil cooler. We are proposing this AD to prevent high-pressure fuel leaks caused by improper seating of fuel tube flanges, which could result in an engine fire and damage to the airplane.

(e) Compliance

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

(f) Replacement

After the effective date of this AD, if the fuel tubes are disconnected for any reason, or at the next engine shop visit, whichever occurs first, replace the fuel tubes and brackets with improved tubes and brackets eligible for installation. For on-wing maintenance, replace only tubes and brackets that have been disconnected. Do the following:

(1) Replace the fuel flowmeter to IDG fuel-oil cooler fuel tube, P/N 1321M42G01, with a part eligible for installation.

(2) For engines with Power Management Controls, replace the Main Engine Control to fuel flowmeter fuel tube, P/N 1334M88G01, with a part eligible for installation.

(3) For engines with Full Authority Digital Electronic Controls, replace the Hydromechanical Unit to fuel flowmeter fuel tubes, P/Ns 1383M12G01 and 1374M30G01, with a part eligible for installation.

(4) Replace supporting bracket, P/N 1321M88P001A, and spray shields, P/Ns 1606M57G01, 1606M57G03, and 1775M61G01 with one-piece supporting bracket, P/N 2021M83G01.

(5) Perform an idle leak check after accomplishing paragraphs (f)(1), (f)(2), (f)(3), or (f)(4), or any combination thereof.

(g) Prohibition

After the effective date of this AD, do not install any of the following parts into any GE CF6–80C2 series turbofan engines: P/Ns 1321M42G01, 1321M88P001A, 1334M88G01, 1374M30G01, 1383M12G01, 1606M57G01, 1606M57G03, and 1775M61G01.

(h) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(i) Related Information

(1) For more information about this AD, contact Kasra Sharifi, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7773; fax: 781–238–7199; email: *kasra.sharifi@faa.gov.*

(2) For guidance on the replacements, refer to GE Alert Service Bulletins CF6–80C2 SB 73–A0224, CF6–80C2 SB 73–A0231, CF6–80C2 SB 73–A0401, and CF6–80C2 SB 73–0242.

(3) For service information identified in this AD, contact General Electric Company, GE-Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215, phone: (513) 552–3272; email: *geae.aoc@ge.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts on December 20, 2012.

Robert J. Ganley,

Acting Manager, Engine & Propeller Directorate, Aircraft Certification Service.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 152

[EPA–HQ–OPP–2010–0305; FRL–9339–1]

RIN 2070–AJ79

Pesticides; Revisions to Minimum Risk Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to more clearly describe the active and inert ingredients permitted in products eligible for the exemption from regulation for minimum risk pesticides. EPA is proposing to reorganize these lists with a focus on clarity and transparency by adding specific chemical identifiers. The identifiers would make it clearer to manufacturers; the public; and Federal, state, and tribal inspectors which ingredients are permitted in minimum risk pesticide products. EPA is also proposing to modify the label requirements in the exemption to require the use of specific common chemical names in lists of ingredients on minimum risk pesticide product labels, and to require producer contact information on the label. Once final, these proposed changes would maintain the availability of minimum risk pesticide products while providing more consistent information for consumers, clearer regulations for producers, and easier identification by states, tribes and EPA as to whether a product is in compliance with the exemption.

DATES: Comments must be received on or before April 1, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number 12P–0200 EPA–HQ–OPP–2010–0305, 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. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Ryne Yarger, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 605–1193; fax number: (703) 305–5884; email address: *yarger.ryne@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, distribute, sell, or use minimum risk pesticide products. Minimum risk pesticide products are exempt from Federal regulation, and are described in 40 CFR 152.25(f). 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:

- Manufacturers of these products, which includes pesticide and other agricultural chemical manufacturers (NAICS codes 325320 and 325311), as well as other manufacturers in similar industries such as animal feed (NAICS code 311119), cosmetics (NAICS code 325620), and soap and detergents (NAICS code 325611).
- Manufacturers who may also be distributors of these products, which includes farm supplies merchant wholesalers (NAICS code 424910), drug and druggists' merchant wholesalers (NAICS code 424210), and motor vehicle supplies and new parts merchant wholesalers (NAICS code 423120).
- Retailers of minimum risk pesticide products (some of which may also be manufacturers), which includes nursery, garden center, and farm supply stores (NAICS code 44220); outdoor power equipment stores (NAICS code 444210); and supermarkets (NAICS code 445110).
- Users of minimum risk pesticides, including the public in general, as well as exterminating and pest control services (NAICS code 561710), landscaping services (NAICS code 561730), sports and recreation institutions (NAICS code 611620), and child day care services (NAICS code 624410). Many of these companies also manufacture minimum risk pesticide products.

B. What is the agency's authority for taking this action?

This action is issued under the authority of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., sections 3 and 25.

C. What action is the agency taking?

EPA is proposing to more clearly describe the active and inert ingredients permitted in products eligible for the exemption from regulation for minimum risk pesticides (40 CFR 152.25(f)). EPA is proposing to reorganize these lists by adding specific chemical identifiers. The identifiers would make it clearer to manufacturers; the public; and Federal, state, and tribal inspectors the specific ingredients that are permitted in minimum risk pesticide products. EPA is also proposing to modify the label requirements in the exemption to require the use of specific common chemical names in lists of ingredients on minimum risk pesticide product labels, and to require producer contact information on the label.

D. Why is EPA taking this action?

The primary goal of this proposal is to clarify the conditions of exemption for minimum risk pesticides by making clearer the specific ingredients that are permitted in minimum risk pesticide products. EPA has exempted from the requirement of registration certain pesticide products if they are composed of specified ingredients and labeled according to EPA's regulations in 40 CFR 152.25(f). EPA created the exemption for minimum risk pesticides to eliminate the need to expend significant resources to regulate products that were deemed to be of minimum risk to human health and the environment. In addition, exempting such products freed Agency resources to focus on evaluating formulations whose toxicity was less well characterized or of higher toxicity. The existing regulatory structure, however, leads to confusion as to which ingredients are exempt under 40 CFR 152.25(f), and how they should be labeled on products.

The proposed revisions to the exemption would clarify the specific ingredients that are permitted, specify how they should be presented on a label, and provide consumers with contact information for the manufacturer of the products. EPA's intention is to restructure the exemption with a focus on clarity and transparency for the ingredient lists. Once final, these proposed changes would provide more consistent information for consumers, clearer regulations for producers, and easier identification by states, tribes and EPA as to whether a product is in compliance with the exemption.

II. Background

A. The Minimum Risk Pesticide Exemption

Under FIFRA section 25(b)(2), EPA may exempt from the requirements of FIFRA any pesticide that is ''of a character unnecessary to be subject to [FIFRA].'' Pursuant to this authority, in March 1996, EPA promulgated 40 CFR 152.25(g), which exempted from FIFRA any pesticide product consisting solely of specified ingredients that EPA judged to pose minimum risk to humans and the environment (61 FR 8876, March 6, 1996) (FRL–4984–8). This provision was later redesignated as 40 CFR 152.25(f) (66 FR 64759, December 14, 2001) (FRL–6752–1).

Unlike registered pesticides, sale and distribution of products exempted under 40 CFR 152.25(f) do not require that the products be registered with EPA, payment of registration fees, or reporting of production to EPA. To meet the criteria for the minimum risk exemption, a pesticide must:

- Contain only specified active and inert ingredients.
- List active ingredients on the label by name and percent weight in the formula.
- List inert ingredients on the label by name.
- Not bear claims either to control or mitigate microorganisms that pose a threat to human health, including but not limited to disease transmitting bacteria or viruses, or claims to control insects or rodents carrying specific diseases, including, but not limited to ticks that carry Lyme disease.
- Not include false or misleading labeling statements, specified in 40 CFR 156.10(a)(5)(i) through (viii). These include false or misleading statements about product composition, effectiveness, comparison to other products, endorsement by the Federal Government, or label disclaimers.

Restrictions on which ingredients may be used in minimum risk pesticide products are key aspects of the exemption, since the properties of these specific ingredients are the reason EPA exempted minimum risk pesticide products from FIFRA regulatory requirements. As stated in the notice of proposed rulemaking for the minimum risk exemption, ''EPA believes regulation of these substances is not necessary to prevent unreasonable adverse effects on man or the environment, and these substances are not of a character necessary to be subject to FIFRA in order to carry out its purposes'' (Ref. 1).

1. *Active ingredients.* Active ingredients for minimum risk pesticide products are listed in 40 CFR 152.25(f)(1); no new active ingredients have been added since 1996.

2. *Inert ingredients.* Inert ingredients for minimum risk pesticide products were originally listed in List 4A, referenced at 40 CFR 152.25(f)(2). The 4A Inert Ingredient List was created on November 22, 1989 (54 FR 48314) (FRL–3667–6). List 4A ingredients were described as minimal risk, or ''substances for which there is no information to indicate that there is a basis for concern'' (Ref. 2). On September 28, 1994, EPA added new chemicals to List 4A by publishing an updated list in the **Federal Register** (Ref. 3). The exemption for minimum risk pesticides referred to this list, as it appeared in the **Federal Register** in September 1994.

Since 1994, EPA has updated the list of inert ingredients permitted in minimum risk pesticide products. In 2002, EPA proposed (in January) and finalized (in May) a consolidated set of tolerance exemptions for minimum risk chemicals under section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a. These changes primarily allowed a set of commonly consumed foods to be included in minimum risk pesticides with food uses (Ref. 4). Some commonly consumed foods (such as peanuts, tree nuts, milk, soybeans, eggs, fish, crustacean, and wheat) were excluded due to their known allergenic properties. EPA proposed and finalized these changes as part of the tolerance reassessment requirements of the Food Quality Protection Act of 1996, which amended FFDCA. In the 2002 proposal, EPA explained that commonly consumed foods could be considered minimum risk, since ''it is unlikely that a commonly consumed food commodity could be used to control a pest via a toxic mode of action'' and that foods are generally recognized as safe (Ref. 2). The 2002 final rule explained that, with some exceptions, all commonly consumed food items and all animal feed items would be considered minimum risk pesticide chemicals and would be located in the newly established 40 CFR 180.950. The 2002 final rule did not amend the FIFRA minimum risk exemption in 40 CFR 152.25(f). In 2004, EPA updated List 4A to specifically list the substances in the 2002 rulemaking (Ref. 5).

In 2006, EPA classified additional substances as minimum risk for purposes of tolerance exemptions under 40 CFR 180.950(e). The proposed rule also clarified that EPA was shifting existing tolerance exemptions for the inert ingredients that appear on List 4A from that list to 40 CFR 180.950(e) (Ref. 6).

Since 2006, EPA has been responding to stakeholder input and revising the Web page that lists inert ingredients eligible for use in minimum risk pesticide products. Among these updates, this Web page was revised on March 3, 2009, to include a common chemical name for many of the chemicals and to clearly delineate the food and non-food use status of the chemical substances.

The list was most recently re-formatted on December 20, 2010, to provide a more easily understood format for the chemicals listed. The list is available on the Agency's Web site at *http://www.epa.gov/opprd001/inerts/section25b_inerts.pdf* (Ref. 7).

3. *Labeling requirements.* Labeling requirements are also a key component of the exemption. While EPA does not review these products, and therefore a label review is not conducted, in order to maintain exempt status, an exempt product's label must meet certain criteria. The methods for displaying active and inert ingredient information are detailed in the exemption: Labels must include percentage (by weight) of active ingredients and list all inert ingredients.

The regulations for displaying ingredients on minimum risk pesticide product labels differ from the regulations for registered products. Since exempt products are not registered with EPA and manufacturers submit no information to the Agency, listing product ingredients provides important information to the public, and to enforcement officials who must determine whether or not a product complies with the exemption.

B. EPA's Initial Expectations for the Exemption

EPA had several expectations regarding this exemption:

- Reduction of burden on the Agency and manufacturers of minimum risk pesticides.
- Facilitate the development of more low-risk methods of pest control.
- No significant environmental use of these substances as pesticides.
- Uncomplicated enforcement.

Though some of these expectations were met, the lack of clarity regarding ingredients has produced significant enforcement difficulties. For example, the way active ingredients are currently listed in the exemption is vague, and inspectors are confronted with the need to determine whether certain product ingredients as they are listed on product labels, such as cedar leaf oil or cedar wood oil, are exempt under the more

general terminology used in 40 CFR 152.25(f), which lists only ''cedar oil.'' EPA has attempted to provide clarity by updating its Web site explaining minimum risk pesticide products; however, feedback from stakeholders indicated this was not sufficient to address the problems described in the next unit.

C. Reactions From and Challenges for States

1. *State registration practices.* Though minimum risk pesticide products are exempt from Federal regulation, most states regulate these products in some manner. In 2010, approximately 37 states and the District of Columbia required products that are exempt from Federal regulation under 40 CFR 152.25(f) to have a state-registration. In some ways, this is similar to many states' registration processes for federally registered pesticides, which also must be approved in each state in which they are sold or used.

However, a state's registration of a federally registered pesticide usually relies heavily on the previous Federal review of the product's toxicity, use patterns, and label. In contrast, given that minimum risk pesticides are largely exempt from Federal regulation under FIFRA, the numerous states that do regulate these products review and examine the products using criteria that vary from state to state. In some states, manufacturers of minimum risk pesticide products are only required to pay a registration fee; in others, there is a label review, which can include a review of the ingredients used in the product; and a few require Material Safety Data Sheets and data on product efficacy.

Though some states have more detailed registration processes for minimum risk pesticide products, and some states do not register these products at all, the exemption created significant enforcement concerns for all states since it created a category of legal but federally unregistered products. Instead of being able to rely on a Federal determination of whether a pesticide product was complying with relevant regulations, each state's enforcement authority had to make those decisions. To do this, each state had to become familiar with all active and inert ingredients permitted under the Federal exemption in order to determine whether a pesticide product lacking an EPA registration number was lawfully exempt from Federal regulation.

Inspectors have found it difficult to determine whether seemingly exempt products were complying with the exemption. One of the most common minimum risk pesticide product issues encountered by inspectors and enforcement case developers are products that claim the 40 CFR 152.25(f) exemption, but contain active or inert ingredients whose status as an ingredient that may be used in minimum risk pesticide products is not readily apparent from the name of the ingredient as listed on the label. Since ingredients may be listed on the label with one of numerous chemical, common, or Latin names, determining whether an ingredient on a pesticide product label is the same substance referred to by the active or inert ingredient lists is a time consuming task.

The lack of clarity in which ingredients are permitted in minimum risk pesticide products makes it difficult for companies to determine whether a specific formulation is within the exemption. The lack of consistency in how those ingredients are displayed on the product labels by the various manufacturers has led to inefficiencies in enforcement of the exemption. As discussed in Unit IV., by creating a situation in which enforcement officials cannot swiftly examine an unregistered pesticide product label and then determine if the ingredients listed on the label are eligible for use in minimum risk pesticide products creates slowdowns in developing enforcement cases.

2. *Early negative response.* States' frustration with the exemption developed quickly. In 1998, less than 2 years after the exemption took effect, the Association of American Pesticide Control Officials (AAPCO) surveyed its members regarding 40 CFR 152.25(f) (Ref. 8). Overall, respondents indicated that the 1996 exemption has had a negative effect on their agencies or their states, and that ingredient or labeling issues are a major concern. Responses to selected questions from the survey are shown in Table 1.

TABLE 1—RESPONSES TO SELECTED QUESTIONS IN THE 1998 AAPCO SURVEY

Response	Total Number of states	Percent of all states + territories in AAPCO (53) (percent)	No. of states exempt products in 1998	Percent of states at that time registering exempt products (36) (percent)
Have problems with companies submitting labels for 25(b) products that contain active ingredients not on the list	11	21	9	25
Have a system for determining changes in List 4A (inert ingredients)	7	13	5	14
Have seen exempt products that fail to list inert ingredients on the label as required	21	40	18	50

3. *Continuing enforcement challenges.* States' experience with 40 CFR 152.25(f) indicate that the exemption from regulation is not working as intended and, instead, has resulted in numerous inefficiencies. Under the exemption as it is currently written, inspectors have difficulty determining on-site whether a product is legally exempt from regulation or if it is an illegal product. If the pesticide's exemption status is not clear, the inspector collects evidence documenting sale/distribution (photos, sales records, etc.) and follows-up with EPA. This creates a noticeable resource burden for the states and EPA.

In 2006, in response to a petition from the Consumer Specialty Products Association, several states submitted comments that described their difficulties enforcing the terms of the exemption for minimum risk pesticide products. For example, the comment from Colorado stated:

In Colorado this results in numerous cases of enforcement actions requiring Colorado retailers to remove unregistered products from their shelves. We issue about 90 Cease and Desist Orders per year to retailers selling unregistered pesticides that claim to be 25(b) exempt. (Ref. 9)

A similar comment was received from California:

Although well intended, rather than relieving the States of ever increasing regulatory workload, the proliferation of minimum risk pesticides now available in

the marketplace has resulted in the opposite effect. In California, recent data indicates that approximately 20% of the routine marketplace inspections include some type of additional follow up having to be performed to determine compliance status for 25(b) minimum risk pesticides. (Ref. 10)

Many of these burdens and inefficiencies resulted from confusion created by ambiguities in the list of ingredients permitted for use in pesticide products exempt from Federal regulation. Several lists must be consulted to determine if a product's ingredients are permitted, and, often, ingredients on product labels may—legitimately—use chemical names different from those that appear on the ingredient lists. Chemicals often have multiple names. However, inspectors and consumers may be unfamiliar with alternative chemical names, resulting in confusion over whether the product complies with the exemption. For example, as Colorado stated in its comment on the 2006 petition:

There is also continuing confusion among applicants, extension educators, state regulators and even regional EPA staff on which ingredients are or are not allowed, and what statements can or cannot be on labels for 25(B) products. Even after 10 years, we frequently see applications for products with ingredients that are not allowed. (Ref. 9).

As currently written, it is difficult and time-consuming for state regulators and producers to determine which ingredients are allowed in products claiming the exemption. As a result, marketplace inspections are hobbled, and discovery of non-compliant products is delayed. As California stated in its comment on the 2006 petition:

The increased workload generated by unregulated 25(b) pesticides impacts other vital regulatory duties, such as worker protection inspections, and product registration (Ref. 10).

This encourages a proliferation of illegal products, or products that do not meet the Federal exemption criteria for ingredients, labeling, or other conditions.

The burden on the states is clear: Identifying which minimum risk pesticide products are compliant with the exemption requires significant state resources for inspection, yet when products are found to be violating the Federal exemption, states in many cases cannot precisely identify the problem or take action without significant guidance and assistance from EPA, which must interpret the ingredient lists and other criteria in the exemption to determine whether a product is compliant.

III. Need for This Rulemaking

More than a decade of experience with 40 CFR 152.25(f) on the Federal and state levels has indicated that there is confusion over permitted ingredients. This lack of clarity has created a significant burden for enforcement of the exemption. Confusion over permitted ingredients may also result in public hazards due to the proliferation of unregistered pesticide products that do not comply with the ingredient restrictions in the exemption. As part of a survey of compliance with the exemption, EPA conducted an analysis of labels of products sold as minimum risk personal insect repellents (also referred to as skin-applied repellents), relying in part on information provided by the Nielsen Company. Personal insect repellent products are estimated to make up approximately 14% of products registered by states that make their registration databases publicly available. EPA found that nearly half (47%) of the minimum risk personal insect repellent products contained ingredients not permitted under 152.25(f) (Ref. 11). This finding is based on:

- Identification of 135 personal insect repellent products claiming to be exempt, or that were not registered with EPA. These products were identified through state registration lists, nationwide sales data compiled by the Nielsen Company, and Internet searches.
- Examination of publicly available labels of these personal insect repellent products. Labels were not available for 26 products (or 19% of all identified).
- Comparison of any stated ingredients with those on the active and inert ingredient lists specified in or referenced by the exemption. Forty-five products, or 33% of all identified, seemed to list only permitted ingredients; 64 products, or 47%, listed ingredients not permitted under the exemption.

The data are likely an underestimate of the non-compliance rate with the ingredient criteria of the exemption. These underestimations result from a lack of information available on these products, and the sources used to identify these products are not comprehensive of the entire universe of minimum risk personal insect repellents, which are not registered in all states and which may not be sold in the major retailers tracked by the Nielsen Company nor sold online. Furthermore, the compliance rate for skin-applied insect repellents may not be representative of all minimum risk pesticide products. EPA has not examined the other products with respect to compliance, since labels from other minimum risk pesticide products representative of the national marketplace could not be located.

Lack of compliance with the requirements of the exemption may result from producers' uncertainty about which ingredients are permitted, or inspectors' inability to develop enforcement cases to remove non-compliant products from the marketplace in a timely manner. Currently, it may not be clear to companies which specific ingredients are permitted for minimum risk pesticides exempt from regulation, since the terminology describing the ingredients is difficult to understand. Additionally, product labels often use unfamiliar terms for permitted ingredients, which creates confusion for state and Federal inspectors who are not familiar with all possible names for these chemicals. For example, some products use Latin names for some ingredients, such as a product that listed some of its inert ingredients as Glycine Soja Oil, Cymbopogon Nardus Oil, and Pimenta Acris Leaf Oil, which most inspectors and members of the public would not recognize as soybean oil, citronella oil, and bay leaf oil, respectively. Inspectors have reported the difficulty of determining the legality of some minimum risk pesticide products during field inspections.

The actions proposed today will provide greater specificity and clarity concerning the inert and active ingredients that can be used in exempted products, and specify the exact chemical terms that must be displayed on product labels. This will aid in resolving many of the issues surrounding non-compliance, as well as providing clearer information to consumers of these products without adversely affecting the availability of minimum risk pesticide products. Providing accurate and clear information to the public will assist users in making good choices regarding their use of pesticides. EPA believes that these beneficial label changes cannot be achieved through non-regulatory means.

IV. What EPA Considered

EPA considered the following options for addressing the issues described previously related to the minimum risk exemption:

Item 1: Revising the exemption to redesign the format of the active ingredient list.

Item 2: Revising the exemption to codify the inert ingredient list into the CFR.

Item 3: Revising the exemption to require the use of a common chemical name on the label.

Item 4: Revising the exemption to require a label statement that signals exempt status.

Item 5: Publishing guidance on how an exempt label should look.

Items 1 and 2 would provide clarity regarding the ingredients and, to some extent, promote states' abilities to enforce the exemption while continuing the availability of minimum risk pesticide products.

Item 3 would not only significantly increase the clarity of the ingredients in a product claiming to be a minimum risk pesticide, but also augment visibility of that product's compliance with the exemption. Though companies would need to modify product labels to comply with the changes, the costs expended would be minimal and this would not impede the continued availability of minimum risk pesticides.

When considering Item 4, EPA believes that Item 4 is unlikely to provide any significant benefit to consumers from having a statement, a disclaimer, which signals exempt status on the product label. EPA's analysis of information from open literature and survey results indicates that in general most people do not read, understand, or believe a disclaimer. This means that a label disclaimer is unlikely to change consumer behavior or influence a purchasing decision. For a label statement to be effective, the purchaser must first read the label and notice the disclaimer, and then read the disclaimer, understand the disclaimer, believe the disclaimer, and choose to act on the disclaimer (Ref. 12). Potentially, there could be a slight benefit from such a statement for enforcement, as state inspectors could use this statement as part of their determination of a product's status under the exemption. However, as other pieces of label information may provide more useful information to consumers and enforcement, EPA chose to focus on making those modifications to the exemption.

Item 5 would assist manufacturers with complying with the minimum risk exemption. EPA plans to update its Web site on minimum risk pesticides (Ref. 13) to provide this guidance, including label formats, directions for use, and ways to display ingredient lists. Any clarifications communicated through this kind of guidance, however, would not be considered requirements for compliance with the exemption, and would not aid in efficient enforcement of the exemption. For this reason, merely providing guidance to manufacturers is not sufficient to address the exemption's issues related to enforcement difficulties and current lack of clarity. EPA intends to provide guidance by updating the sections of its Web site explaining the minimum risk exemption, but this would be independent of rulemaking.

Additional issues regarding the minimum risk exemption have been raised by states, with states expressing interest in:

Item 6: Revising the exemption to require directions for use on minimum risk pesticide products.

Item 7: Revising the exemption to require company name and contact information.

Item 6 would provide consumers with directions for safe use of the product. Though many products already include directions on how to apply the product, some do not, and even for minimum risk pesticides there is a theoretical potential for injury or environmental hazard from improper use of the products. However, assessing the risk of certain uses of minimum risk pesticides already determined to be minimum risk is outside the scope of this rulemaking, which only proposes to clarify the terms of the original exemption. Additionally, EPA was not able to create a requirement for directions for use that would be both broad enough to apply to all potential categories of products, yet specific enough to be enforced fairly and effectively. For these reasons, EPA chose to focus on other aspects of minimum risk pesticide product labeling and on the ingredient lists. EPA will continue to seek ways to provide guidance on improving directions for use on minimum risk pesticide products.

Item 7 would provide a significant benefit to consumers, who may be unable to determine which company manufactured or distributed a minimum risk pesticide product. Although the labels of many products already provide this information, it does not appear on all minimum risk pesticide products. These changes would provide useful information without burdening manufacturers beyond the cost of changing their labels. Unlike directions for use, the requirements for company name and contact information (such as address and phone number) can be specified clearly in the proposed amendments to the exemption. Though this does not deal with ingredient clarity, EPA feels that in the interest of efficiency it is appropriate to propose this change at the same time, since it would provide a strong benefit to consumers with little added cost.

EPA determined that a combination of revisions and guidance would provide the best approach to the issues discussed previously. This combination is:

Item 1: Redesign the format of the active ingredient list.

Item 2: Codify the list of permitted inert ingredients.

Item 3: Require that common chemical names be used to describe active and inert ingredients on product labels.

Item 5: Provide guidance on how an exempt label should look.

Item 6: Require company name and address on product labels.

Items 1, 2, 3, and 6 are proposed in this rulemaking and are discussed in greater detail in Unit VII. Item 5 includes Web site changes that are in addition to the rulemaking proposed here, and is also outlined later in this document.

By clarifying the way ingredients are defined in the exemption and the way they should be displayed on product labels, EPA will be able to protect public health while relieving product manufacturers of the burdens associated with regulation. Similarly, requiring contact information on product labels would provide important consumer information and greater producer accountability with minimal cost.

V. Proposal To Modify the Minimum Risk Exemption To Improve Clarity

A. Clarify the List of Active Ingredients

EPA proposes to replace the text in 40 CFR 152.25(f) specifying the active ingredients and their variations with a table that would show, for each permitted active ingredient:

- Label Display Name. This is the common chemical name that would be required to be used on labels of products that contain these ingredients.
- Chemical Name, as determined by Chemical Abstract Services (CAS).
- Specifications. Though this column would generally be empty, some substances listed in the exemption had specifications associated with them in the text of the exemption as published in 1996.
- CAS Registry Number (CAS No.). The Agency listed the CAS No. for each of the chemical substances listed in 40 CFR 152.25(f) where a CAS No., was available. A CAS No. is a unique numerical identifier that provides one of the most distinct, readily available, and universally accepted means of identifying chemical substances. Identifying chemicals permitted in minimum risk pesticides by CAS No. would assure manufacturers that they

are purchasing and using the chemicals that can be used in minimum risk pesticide products. Only substances identified by the CAS No. listed would be permitted for use as active ingredients in minimum risk pesticide products. EPA is only providing additional clarity concerning the ingredients that are currently used in exempted products: No ingredients are being added or removed from the list.

An example of this table is provided here, as Table 2.

TABLE 2—EXAMPLE OF NEW FORMAT FOR ACTIVE INGREDIENTS

Label display name	Chemical name	Specifications	CAS No.
Citric Acid	2-Hydroxypropane-1,2,3-tricarboxylic acid	USP	77–92–9
Citronella Oil	Citronella Oil		8000–29–1

In this document, EPA is not proposing to remove or add any active ingredients to the list. The current list is being clarified by using more precise chemical identifiers and nomenclature. For approximately 20 of the active ingredients in the proposed table, EPA is proposing to include the specification of USP (United States Pharmacopeia) standard in the Specifications column. USP standards are set for quality, purity, and identity, and usually provide information on chemical formula, chemical weight, CAS numbers, function, definition, packaging, storage, and labeling requirements. Information on the USP standards is included in the docket for this proposal.

State and Federal inspectors and interested members of the public would be able to easily match the name of the active ingredient on the label to the column in the table in 40 CFR 152.25(f)(1) that contains label display names. Linking the CAS No., the label display name, and the chemical name maintains the chemical identity specificity needed for enforcement, would provide the public and inspectors with understandable information, and would provide guidance for product manufacturers who may be unsure of the specific ingredients that their products can and cannot contain in order to comply with the minimum risk exemption.

B. Codify the Existing List of Inert Ingredients

As previously discussed, in Unit III.A.2., the minimum risk exemption in 40 CFR 152.25(f)(2) references a list of chemicals permitted to be used as inert ingredients that has been updated and currently is maintained on EPA's public Web site. To clarify which inert ingredients may be used in these products, EPA proposes to codify in the CFR a reference to sections detailing which chemicals may be used in addition to a reformatted version of the table that currently appears online.

The proposed changes to the section of the exemption dealing with inert ingredients would include references to 40 CFR 180.950(a), (b), and (c), which describe chemical substances exempt from the requirements of a tolerance and that may also be used as inert ingredients in minimum risk pesticides. The regulatory reference will provide the clarity needed for understanding which commonly consumed food commodities, animal feed items, and edible fats and oils can be used in exempted products. Additionally, EPA proposes to add a table that would contain the chemicals currently listed in 40 CFR 180.950(e) as well as those that appeared originally on List 4A. A version of this table currently appears online. Any duplicate listings would be removed.

EPA believes that adding these references and reformatting the table and placing it into the CFR will provide needed clarity, in as much as State inspectors, members of the public, or manufacturers of minimum risk pesticide products would be able to more quickly determine whether a given ingredient is a permitted inert ingredient for minimum risk pesticide products.

The columns of the table that would be codified would be:

- Label Display Name.
- Chemical Name, as determined by CAS.
- CAS No. (described previously).

An example of this table is listed, as Table 3.

TABLE 3—EXAMPLE OF NEW FORMAT FOR PERMITTED INERT INGREDIENTS

Label display name	Chemical name	CAS No.
Aluminum potassium sodium silicate	Silicic acid, aluminum potassium sodium salt	12736–96–8
Aluminum silicate	Silicic acid, aluminum salt	1335–30–4
Aluminum sodium silicate	Silicic acid, aluminum sodium salt	1344–00–9

Unlike the proposed table listing the active ingredients, the proposed table for the inert ingredients does not include a column outlining specifications, since none were outlined in the exemption. However, some of the substances have no tolerances or tolerance exemptions under FFDCA section 408 and thus have not been permitted for use in pesticides that may come in contact with foods, which are also known as food-use pesticides. For this reason, EPA is proposing that in addition to the proposed table listing inert ingredients, the text of the exemption be amended to indicate the address of an EPA Web site at which information can be found on which chemicals listed could be used in food-use pesticide products.

The FFDCA requires all active and inert ingredients that come into contact with food have an applicable tolerance or exemption from the tolerance requirement. EPA currently indicates on the minimum risk inert ingredient table that appears online (at *http://www.epa.gov/opprd001/inerts/section25b_inerts.pdf*) those chemicals that are exempt from the requirement of a tolerance, and thus could be used in pesticides that come in contact with food. EPA proposes to maintain as guidance the online list that includes a column indicating which chemicals may be allowed as active or inert ingredients in pesticides that come in contact with food; there would also be a note indicating where the exemptions from the requirements of a tolerance are detailed in the CFR. This table could thus continue to serve as a quick guide

to manufacturers, enforcement officials, and members of the public.

There are benefits to having all information about the minimum risk exemption consolidated in one location, and the CFR is a useful reference for many people interested in the exemption. Therefore, EPA proposes to add a reference to the address of the Web site that would contain the reformatted active and inert ingredient tables that include a ''food use'' and ''non-food use'' column. EPA would make clear that the information on the Web site is advisory and serves as guidance, and that the specific regulations should be consulted when seeking to learn about a chemical's exemption from the requirements of a tolerance. However, EPA believes that highlighting in the CFR where this guidance is available online would be helpful in explaining some of the more complicated aspects of the minimum risk exemption.

C. Require That Ingredient Lists Use a Label Display Name

Currently, the chemical names on exempted labels are derived from a variety of sources, which include CAS nomenclature, informal or lay terminology, and Latin plant name derivatives. This causes confusion for inspectors and the public, who may not be aware of the multiple names a single chemical may have. All stakeholders would benefit from the use of a common chemical name for ingredients listed on the product label. EPA proposes to revise 40 CFR 152.25(f)(3) to include the requirement that labels of exempt products use the ''label display name'' in the ingredient listing, when a label display name is specified in the exemption.

D. Require Company Name and Contact Information

An additional revision to the exemption would require that producers of minimum risk pesticide products include their company's name and contact information (address and telephone number) on the product label. In separate guidance, to be posted on EPA's Web site on minimum risk pesticides, companies would be encouraged to also provide a phone number, mailing address, Web site, or email address on their minimum risk pesticide product labels.

Requiring a company name and contact information would provide valuable information to consumers with minimal cost. It would also provide state and Federal inspectors with important information that currently can be difficult to find. To provide additional clarity, if a company name appears on the label and that company is not the producer, EPA proposes that the text indicate that the product was ''packed for'' ''distributed by'' or ''sold by'' to show that the company selling the product is not the producer.

E. Estimated Costs Associated With These Proposed Changes

The potential costs incurred by manufacturers of minimum risk pesticide products to comply with these proposed changes are estimated to be minimal. The analysis summarized in this unit estimates the cost of label changes required by the proposed rule, as separate and distinct from (i.e., incremental to) routine label changes that producers already undertake. For greater detail, including the assumptions used for the cost analysis, see the ''Cost and Small Business Analysis of Proposed Revisions to Minimum Risk Exemption'' (Ref. 14).

For Items 1 and 2 (Revising the exemption to redesign the format of the active ingredient list and revising the exemption to codify the inert ingredient list into the CFR), there are no costs to producers of exempt products. Since no ingredients are being added or removed from the list, manufacturers of currently exempted products should not need to change their product formulations.

For Items 3 and 7 (Revising the exemption to require the use of a common chemical name, and company name and contact information on the label), the cost is the cost of changing the label. To comply with the proposed changes for labeling requirements for minimum risk pesticide products, EPA expects that all products may need to be re-labeled in order to list ingredients by common chemical name. Some companies may also need to add their company name and contact information to product labels. The estimated costs associated with changing a label are summarized here.

Currently, EPA is aware of 216 companies producing 757 minimum risk pesticide products. EPA derived this information from publicly available lists of state registrations for minimum risk pesticides (Ref. 15), and AC Nielsen retail store scanner data (Ref. 16). As explained in the cost analysis, 192 parent companies were identified. Together, the 192 parent companies account for 541 minimum risk pesticide products, or about 79% percent of those identified by EPA.

Table 4 shows the distribution of firms by NAICS code. Most firms in the minimum risk pesticide industry belong to *Chemical Manufacturing* (NAICS code 325) and *Merchant Wholesalers, Nondurable Goods* (NAICS code 424). Forty-two firms are divided among 31 NAICS codes.

TABLE 4—PRODUCERS OF MINIMUM RISK PESTICIDES

3-Digit NAICS code	NAICS code description	Number of parent firms
325	Chemical Manufacturing	72
339	Miscellaneous Manufacturing	8
423	Merchant Wholesalers, Durable Goods	11
424	Merchant Wholesalers, Nondurable Goods	32
444	Building Material and Garden Equipment and Supplies Dealers	7
541	Professional, Scientific, and Technical Services	7
561	Administrative and Support Services	13
Others		42
Total with classification.		192

The estimated cost of the proposed rule consists of a one-time change in the design of the label to comply with the proposed requirements. The estimated incremental cost of the proposed rule depends on the extent to which the

change is separate and distinct from the routine label changes firms undertake on a regular basis. Firms routinely change their labels to update or ''refresh'' their product labels. This is an important factor that determines the magnitude of the cost of the rule since the expected cost of the label change will depend on the duration of the implementation period. A longer implementation period means that the new requirements could be incorporated into a routine or planned re-label.

Many products have more than one size or type of package. Each is referred to as a stock keeping unit (SKU). Each SKU would have to be relabeled to comply with the new requirements. Using an estimate of 1.53 SKUs per product, there are 1,158 products to be relabeled.

In its analysis, EPA has assumed that firms will routinely re-label every 3 years, although some firms may re-label more or less frequently. EPA also assumed that if the changes occurred during a routine label update, then one-third of the label's artwork cost would be due to the new requirements. If the firm's routine relabeling cycle falls outside the rule compliance period (that is, if the rule requirements cannot be incorporated into the firm's routine labeling change), then the full cost of label change is due to the change in regulations.

The estimated costs of the rule under different rule compliance periods are shown in Table 5.

TABLE 5—RELABELING COST PER SKU (STOCK KEEPING UNIT) FOR THREE IMPLEMENTATION PERIODS

Implementation period	Average cost estimate
Immediate relabeling	$6,306
2-year implementation	2,550
3-year implementation	672

Using the average cost estimates from Table 5, EPA estimates the total potential industry cost in Table 6.

TABLE 6—INDUSTRY COST FOR THREE RULE IMPLEMENTATION PERIODS

Industry costs	Immediate	2 Years	3 Years
Total number of SKUs	1,158	1,158	1,158
Average cost per SKU label change (from Table 5)	$6,306	$2,550	$672
Total cost to industry	$7,300,282	$2,952,097	$778,005

Under an implementation period of 2 years, the estimated industry cost is about $3 million.

VI. Request for Comments

The Agency invites the public to provide its views and suggestions for changes on all the various proposals in this document. Specifically included within the Agency's request for comments are the following:

- The format of the ingredient lists (active and inert ingredients).
- The information in the new format of the ingredient lists (active and inert ingredients).
- The proposed reference to a Web site that contains a table formatted to include more information on exemptions from the requirement of a tolerance (which would indicate whether or not a substance can be in a pesticide used on or near food). Would this Web site provide the clarity some stakeholders seek?
- EPA's methodology for estimating the costs associated with the proposed label changes.
- The proposed timeframe (2 years from the effective date of the final rule) for complying with label changes.
- How will these changes impact state and local agencies?
- What are effective methods and venues for communicating these proposed changes to affected entities, and receiving their feedback?
- Because EPA's analysis was conducted with a subset of products, EPA was unable to determine if most minimum risk pesticide products for sale today comply with the requirements of the exemption, and it is unclear how specifying active and inert ingredients would affect the composition of products on the market. EPA expects that the only costs to industry will be re-labeling; however, the Agency is especially interested in learning of any products that would need to be reformulated as a result of these proposed changes.

Commenters are encouraged to present any data or information that should be considered by EPA during the development of the final rule. Please describe any assumptions and provide any technical information used in preparing your comments. You should explain estimates in sufficient detail to allow for them to be reproduced for validation. EPA's underlying principle in developing the proposed revisions has been to strike an appropriate balance among:

- Clarifying the ingredients permitted for use in minimum risk pesticide products.
- Having revised labels with better information on the labels quickly.
- Minimizing the impacts on the affected industry.

VII. Reference List

The following is a listing of the documents that are specifically referenced in this proposed rule. The docket for this rulemaking, identified by docket ID number EPA–HQ-OPP–2010–0305, includes these documents and other information considered by EPA in developing this proposed rule. In some cases this may include documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. U.S. Environmental Protection Agency (EPA). Pesticides; Exemption of Certain Substances from Federal Insecticide, Fungicide, and Rodenticide Act Requirements; Proposed Rule. **Federal Register** (59 FR 47289, September 15, 1994) (FRL–4872–4). *https://federalregister.gov/a/94-22855*.

2. EPA. Pesticides; Tolerance Exemptions for Minimal Risk Active and Inert Ingredients; Proposed Rule. **Federal Register** (67 FR 1925, January 15, 2002) (FRL–6807–8). *https://federalregister.gov/a/02-699*.

3. EPA. Inert Ingredients in Pesticide Products; List of Minimal Risk Inerts; Notice. **Federal Register** (September 28, 1994; FRL–4872–5). *http://www.gpo.gov/fdsys/pkg/FR-1994-06-23/html/94-15013.htm*.

4. EPA. Pesticides; Tolerance Exemptions for Minimal Risk Active and Inert Ingredients; Final Rule. **Federal Register** (67 FR 36534, May 24, 2002) (FRL–6834–8); *http://federalregister.gov/a/02-12973*.

5. EPA. Office of Pesticide Programs (OPP). List 4A—Minimal Risk Inert Ingredients—By CAS Number. (August

2004). *http://www.epa.gov/opprd001/inerts/inerts_list4Acas.pdf*.

6. EPA. Pesticides: Minimal Risk Tolerance Exemptions; Proposed Rule. **Federal Register** (71 FR 4087, January 25, 2006) (FR–7754–8). *http://federalregister.gov/a/06-574*.

7. EPA. OPP. Inert Ingredients Eligible for FIFRA 25(b) Pesticide Products. (December 20, 2010). *http://www.epa.gov/opprd001/inerts/section25b_inerts.pdf*.

8. AAPCO. 25(b) Exempt Pesticides Survey. (1998). Accessible at: *http://aapco.ceris.purdue.edu/doc/surveys/25b_1srvy.html*. Survey results accessible at: *http://aapco.ceris.purdue.edu/doc/surveys/25b_1.html*.

9. Comment attachment by L. Quakenbush, Colorado Department of Agriculture. Docket ID No.: EPA–HQ–OPP–2006–0687. Document ID No.: EPA–HQ–OPP–2006 0687–0026.

10. Comment submitted by G. Farnsworth, Department of Pesticides Regulation (DPR). Docket ID No.: EPA–HQ–OPP–2006–0687. Document ID No.: EPA–HQ–OPP– 2006–0687–0064.

11. EPA. OPP. EPA Analysis of Labeled Ingredients on Minimum Risk Insect Repellent Products. (2009). Docket ID No.: EPA–HQ–OPP–2010–0305. Document ID No.: EPA–HQ–OPP–2010–0305–0010.

12. EPA. OPP. Review of Literature on Consumer Use of Label Statements and Findings Relevant to Planned Action on Minimum Risk Insect Repellents. (2009). Docket ID No.: EPA–HQ–OPP–2010–0305. Document ID No.: EPA–HQ–OPP–2010– 0305–0011.

13. EPA. OPP. Minimum Risk Pesticides. *http://www.epa.gov/oppbppd1/biopesticides/regtools/25b_list.htm*.

14. EPA. OPP. Cost and Small Business Analysis of Proposed Revisions to Minimum Risk Exemption. (2012). Docket ID No.: EPA–HQ–OPP–2010–0305. Document ID No.: EPA–HQ–OPP–2010–0305–0012.

15. EPA. OPP. Minimum Risk Products Registered with States with Publicly Searchable Databases (AL, AK, AZ, CO, IA, LA, MS, NH, NC, OK, RI, SC, SD, and WA). (2010). Docket ID No.: EPA–HQ–OPP–2010–0305. Document ID No.: EPA–HQ–OPP–2010–0305–0013.

16. EPA. OPP. Products Located Through EPA Query of Nielson Company Scanner Data + Walmart Customer Panel Surveys. (2008). Docket ID No.: EPA–HQ–OPP–2010–0305. Document ID No.: EPA–HQ–OPP–2010–0305–0014.

17. EPA. OPP. Supporting Statement for an Information Collection Request (ICR): Labeling Change for Certain Minimum Risk Pesticides under FIFRA Section 25(b). (2012). Docket ID No.: EPA–HQ–OPP–2010–0305. Document ID No.: EPA–HQ–OPP–2010–0305–0015.

18. Small Entity Representative (SER) comments from 2009 SBREFA Panel, for minimum risk insect repellents proposed rule. Docket ID No.: EPA–HQ–OPP–2010–0305. Document ID No.: EPA–HQ–OPP–2010–0305–0016.

VIII. FIFRA Review Requirements

Under FIFRA section 25(a), EPA submitted a draft of the proposed rule to the Secretary of the Department of Agriculture (USDA) and the appropriate Congressional Committees. Additionally, under FIFRA section 21(b), EPA submitted a draft of the proposed rule to the Secretary of the Department of Health and Human Services (HHS). No comments were received regarding this proposed rule. USDA waived its review of the draft proposed rule on December 19, 2011, and HHS waived its review of the draft proposed rule on February 2, 2012. Both USDA and HHS have retained the right to review a draft of the final rule.

Under FIFRA section 25(d), EPA submitted a draft of the proposed rule to the Scientific Advisory Panel (SAP). The SAP waived its scientific review of the proposed rule on January 4, 2012, because the proposed rule does not contain scientific issues that warrant review by the Panel.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'') under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and was not therefore submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

The information collection requirements in this proposed rule have been submitted for approval to OMB under the PRA, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR No. 2475.01; and OMB Control No. 2070–tbd, entitled ''Labeling Change for Certain Minimum Risk Pesticides under FIFRA Section 25(b)''.

The information collection requirements in this proposed rule consist of proposed changes to existing requirements that would involve the relabeling of products currently exempt under 40 CFR 152.25(f) in order to list chemical names in the format EPA proposes to require. The proposed change would be a one-time burden increase for existing products. The estimated annual respondent burden for this rule-related collection is estimated to be 5.5 hours per response, for a total one-time burden of 6,369 hours. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA asks that you use the public docket established for this rule, i.e., Docket ID No. EPA–HQ–OPP–2010–0305. Submit any comments related to the ICR to EPA and OMB. For EPA, follow the instructions in the **ADDRESSES** section at the beginning of this document. For OMB, send comments to the following address: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 31, 2012, a comment to OMB is best assured of having its full effect if OMB receives it by January 30, 2013. EPA will consider comments on the ICR as it develops the final rule, and will respond in the final rule to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 601 *et seq.,* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act, 5 U.S.C. 551–553, or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as:

1. A small business as defined by the Small Business Administration's (SBA)

regulations at 13 CFR 121.201. As indicated in the Cost Analysis prepared for this proposed rule (Ref. 14), which is summarized in Unit V.E., most firms in the minimum risk pesticide industry are identified under NAICS code 325. A small business that manufactures pesticides and other agricultural chemicals as defined by NAICS code 325 has 500 or fewer employees based on the SBA standards.

2. A small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000. This proposed rule is not expected to impact any governmental jurisdictions.

3. A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. This proposed rule is not expected to impact any not-for-profit entities.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The factual basis for the Agency's determination is presented in the small entity impact analysis prepared as part of the Cost Analysis for this proposed rule (Ref. 14) that is summarized in Unit V.E., and a copy of which is available in the docket at *http://www.regulations.gov*. The following is a brief summary of the factual basis for this certification.

EPA has determined that this rulemaking does not impact any small governmental jurisdictions or any small not-for-profit enterprise because these entities are rarely producers of pesticide products. As such, EPA assessed the impacts on small businesses.

EPA determined that for the minimum risk pesticide industry, there are 97 small firms (out of the total 192), accounting for approximately 51% of the industry. EPA estimated the impacts on small firms in two ways. The first analysis estimated the impacts of the proposed rule on small firms by measuring the cost of the rule as a percent of the average small business annual revenue. These average small business impacts are presented in Table 6.

TABLE 6—SMALL BUSINESS IMPACTS BASED ON AVERAGE REVENUES

Rule implementation period	Average cost per SKU	Average cost per firm	Impact (% of gross revenue)
Immediate	$6,306	$36,189	1.3
With 2 years to change labels	2,550	14,634	0.5
With 3 years to change labels	672	3,857	0.1

However, this average revenues analysis may not account for the realities of very small firms. To account for the impacts on very small firms, i.e., those with sales of less than $500K, EPA performed a refined analysis that divided each individual firm's relabeling cost by that firm's sales revenue. Additionally, a lower labeling cost was assumed for very small firms. These impacts are presented in Table 7.

TABLE 7—SMALL BUSINESS IMPACTS—REFINED ANALYSIS

Rule implementation period	Impact (% of annual gross revenue)	
	≥ 1%	≥ 3%
Immediate	64 (62)	21 (21)
With 2 years to change labels	27 (26)	9 (9)
With 3 years to change labels	7 (7)	0 (0)

With a 2-year compliance period, 26 small firms (or 27% of all small firms) are likely to experience an economic impact of 1% or more of gross sales, and nine small firms (9% of all small firms) may incur impacts greater than or equal to 3% of gross sales. The selection of the 2-year compliance period was also based on information obtained in 2009, from a group of small manufacturers of minimum risk insect repellents. These small manufacturers, in comments submitted to EPA, indicated that they would need 2 years to re-label their products to avoid significant costs (Ref. 18). By providing a 2-year transition period (2 years from the effective date of the final rule), most companies would be able to incorporate the changes proposed in this document into their regularly planned label updates, and sell any products with older labels, thus reducing the cost and burden of the proposed changes to the exemption.

EPA is particularly interested in receiving comment from small businesses as to the benefits, costs and impacts of this proposed rule. Any comments should be submitted to the Agency in the manner specified under **ADDRESSES**.

D. Unfunded Mandates Reform Act (UMRA)

Title II of UMRA, 2 U.S.C. 1531–1538, establishes requirements for Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local and tribal governments, in the aggregate, or for the private sector in any 1 year. This proposed rule is unlikely to affect state, local, and tribal governments at all, because no minimum risk pesticide products have been found to be produced by any state, local, or tribal governments. As summarized previously, under an implementation period of 2 years, the estimated industry total costs for the one-time relabeling proposed in this rule is about $3 million.

Thus, this proposed rule is not subject to the requirements of UMRA sections 202 or 205. This rule is also not subject to the requirements of UMRA section 203, because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This rule does not have federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). As indicated previously, there are no known instances where a state or local government is currently the producer of a minimum risk pesticide currently exempt from regulation. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communication between EPA, and state and local governments, EPA did consult with representatives of state and local governments in developing

this action. These consultations were conducted during the September 2010 meeting of the State-FIFRA Issues Research and Evaluation Group (SFIREG), two meetings of the Pesticide Regulatory Education Program (PREP) (July 2010 and April 2011) and a separate telephone conference with state pesticide regulators held on February 16, 2010.

Although these proposed changes would not have substantial direct effects on the states, they may indirectly affect states in two ways. First, the states that register minimum risk pesticide products may determine that they need to re-evaluate those registrations, since companies selling products claiming to be exempt from EPA registration would have to adopt the new label requirements, and demonstrate that compliance to any states in which they register. However, since most states that register minimum risk products require a new registration every year, little or no extra burden on state pesticide registration services is anticipated as a result of the changes at the Federal level. Second, there may be an improvement in the efficiency of state pesticide inspections, since the proposed changes would make it easier and faster for inspectors to identify which unregistered pesticide products contain ingredients that comply with the minimum risk exemption. This would positively affect all states, including those that do not register minimum risk pesticide products.

EPA specifically solicits comment on this proposed rule from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have tribal implications because it will not have substantial direct effects on Indian Tribes, will not significantly or uniquely affect the communities of Indian Tribal governments, and does not involve or impose any requirements that affect Indian Tribes, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). As indicated previously, there are no known instances where a tribal government is currently the producer of a minimum risk pesticide currently exempt from regulation. Thus, Executive Order 13175 does not apply to this proposed rule. EPA specifically solicits comment on this proposed rule from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997), as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045, because it is not an ''economically significant regulatory action'' as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This proposed rule does not involve an environmental standard that is intended to have a negatively disproportionate effect on children. To the contrary, this proposed rule is intended to provide added protection to children by requiring clearer and more transparent information on the labels of exempted pesticide products.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of NTTAA, 15 U.S.C. 272 note, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve any technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards. EPA invites comment on its conclusion regarding the applicability of voluntary consensus standards to this rulemaking.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes the Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations, because it is expected to increase the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This proposed rule only impacts minimum risk pesticide products, and, once final, may have positive impacts for all communities, since the rule provides increased information for consumers considering the use of pesticides. This proposed action, which would improve clarity on product labels, will enable all users, regardless of economic status, to become more informed about the substances they may be interested in using as pesticides.

List of Subjects in 40 CFR Part 152

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

Dated: December 13, 2012.

Lisa Jackson,

Administrator.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 152—[AMENDED]

1. The authority citation for part 152 continues to read as follows:

Authority: 7 U.S.C. 136–136y; subpart U is also issued under 31 U.S.C. 9701.

2. Section 152.25 is amended by revising paragraph (f) to read as follows:

§ 152.25 Exemptions for pesticides of a character not requiring FIFRA regulation.

* * * * *

(f) *Minimum risk pesticides.* (1) Products containing the following active ingredients are exempt from the requirements of FIFRA, alone or in combination with other substances listed in this paragraph, provided that all of the criteria of this section are met. All listed active ingredients may be used in non-food use products. Under section 408 of the Federal Food, Drug, and Cosmetic Act and EPA implementing regulations at part 180 of this chapter, products intended for use on food or animal feed can only include active ingredients with applicable tolerances or tolerance exemptions in part 180 of this chapter. Such tolerances or exemptions may be found, for example, in §§ 180.950, 180.1071, 180.1233, and 180.1251 of this chapter.

Label display name	Chemical name	Specifications	CAS Reg. No.
Castor oil	Castor oil	United States Pharmacopeia (USP) standard.	8001–79–4
Cedar oil	Cedar oil		8000–27–9
Cedar oil	Cedar oil		68990–83–0
Cedar oil	Cedar oil		85085–29–6
Cinnamon	Food: N/A		Food: N/A
Cinnamon oil	Cinnamon oil	USP	8015–91–6
Citric acid	2-Hydroxypropane-1,2,3-tricarboxylic acid.	USP	77–92–9
Citronella	N/A		N/A
Citronella oil	Citronella oil		8000–29–1
Cloves	Food: N/A		Food: N/A
Clove oil	Clove oil	USP	8000–34–8
Corn gluten meal	Corn gluten		66071–96–3
Corn oil	Corn oil	USP	8001–30–7
Cottonseed oil	Cottonseed oil	USP	8001–29–4
Dried blood	N/A		68991–49–9
Eugenol	4-Allyl-2-methoxyphenol	USP	97–53–0
Garlic	Food: N/A		Food: N/A
Garlic oil	Garlic oil	USP	8000–78–0
Geraniol	(2E)-3,7-Dimethylocta-2,6-dien-1-Ol	USP	106–24–1
Geranium oil	Geranium oil	USP	8000–46–2
Lauryl sulfate	Lauryl sulfate		151–41–7
Lemongrass oil	Lemongrass oil	USP	8007–02–1
Linseed oil	Linseed oil		8001–26–1
Malic acid	2-Hydroxybutanedioic acid	USP	6915–15–7
Mint	Food: N/A		Food: N/A
Mint oil	Mint oil	USP	68917–18–0
Peppermint	Food: N/A		Food: N/A
Peppermint oil	Peppermint oil	USP	8006–90–4
2-Phenylethyl propionate	2-Phenylethyl propionate		122–70–3
Potassium sorbate	Potassium (2E,4E)-hexa-2,4-Dienoate	USP	24634–61–5
Putrescent whole egg solids	Putrescent whole egg solids		51609–52–0
Rosemary	Food: N/A		Food: N/A
Rosemary oil	Rosemary oil	USP	8000–25–7
Sesame	Food: N/A		Food: N/A
Sesame oil	Sesame oil		8008–74–0
Sodium lauryl sulfate	Sulfuric acid monododecyl ester, sodium salt.	USP	151–21–3
Soybean oil	Soybean oil	USP	8001–22–7
Thyme	Food: N/A		Food: N/A
Thyme oil	Thyme oil	USP	8007–46–3
White pepper	Food: N/A		Food: N/A
Zinc	Zinc	Zinc metal strips (consisting solely of zinc metal and impurities).	7440–66–6

(2) *Permitted inert ingredients.* A pesticide product exempt under paragraph (f)(1) of this section may only include the inert ingredients listed in paragraphs (f)(2)(i) through (iv) of this section.

(i) *Commonly consumed food commodities* as described in § 180.950(a) of this chapter.

(ii) *Animal feed items* as described in § 180.950(b) of this chapter.

(iii) *Edible fats and oils* as described in § 180.950(c) of this chapter.

(iv) *Specific chemical substances,* as listed in the following table.

Label display name	Chemical name	CAS Reg. No.
Acetyl tributyl citrate	Citric acid, 2-(acetyloxy)-, tributyl ester	77–90–7
Agar	Agar	9002–18–0
Almond hulls	Almond hulls	N/A
Almond shells	Almond shells	N/A
alpha-Cyclodextrin	alpha-Cyclodextrin	10016–20–3
Aluminatesilicate	Aluminatesilicate	1327–36–2
Aluminum magnesium silicate	Silicic acid, aluminum magnesium salt	1327–43–1

Label display name	Chemical name	CAS Reg. No.
Aluminum potassium sodium silicate	Silicic acid, aluminum potassium sodium salt	12736–96–8
Aluminum silicate	Aluminum silicate	1335–30–4
Aluminum sodium silicate	Silicic acid, aluminum sodium salt	1344–00–9
Aluminum sodium silicate (1:1:1)	Silicic acid (H4 SiO4), aluminum sodium salt (1:1:1)	12003–51–9
Ammonium benzoate	Benzoic acid, ammonium salt	1863–63–4
Ammonium stearate	Octadecanoic acid, ammonium salt	1002–89–7
Amylopectin, acid-hydrolyzed, 1-octenylbutanedioate	Amylopectin, acid-hydrolyzed, 1-octenylbutanedioate	113894–85–2
Amylopectin, hydrogen 1-octadecenylbutanedioate	Amylopectin, hydrogen 1-octadecenylbutanedioate	125109–81–1
Animal glue	Animal glue	N/A
Ascorbyl palmitate	Ascorbyl palmitate	137–66–6
Attapulgite-type clay	Attapulgite-type clay	12174–11–7
Beeswax	Beeswax	8012–89–3
Bentonite	Bentonite	1302–78–9
Bentonite, sodian	Bentonite, sodian	85049–30–5
beta-Cyclodextrin	beta-Cyclodextrin	7585–39–9
Bone meal	Bone meal	68409–75–6
Bran	Bran	N/A
Bread crumbs	Bread crumbs	N/A
(+)-Butyl lactate	Lactic acid, n-butyl ester, (S)	34451–19–9
Butyl lactate	Lactic acid, n-butyl ester	138–22–7
Butyl stearate	Octadecanoic acid, butyl ester	123–95–5
Calcareous shale	Calcareous shale	N/A
Calcite (Ca(CO3))	Calcite (Ca(CO3))	13397–26–7
Calcium acetate	Calcium acetate	62–54–4
Calcium acetate monohydrate	Acetic acid, calcium salt, monohydrate	5743–26–0
Calcium benzoate	Benzoic acid, calcium salt	2090–05–3
Calcium carbonate	Calcium carbonate	471–34–1
Calcium citrate	Citric acid, calcium salt	7693–13–2
Calcium octanoate	Calcium octanoate	6107–56–8
Calcium oxide silicate	Calcium oxide silicate (Ca3 O(SiO4))	12168–85–3
Calcium silicate	Silicic acid, calcium salt	1344–95–2
Calcium stearate	Octadecanoic acid, calcium salt	1592–23–0
Calcium sulfate	Calcium sulfate	7778–18–9
Calcium sulfate dihydrate	Calcium sulfate dihydrate	10101–41–4
Calcium sulfate hemihydrate	Calcium sulfate hemihydrate	10034–76–1
Canary seed	Canary seed	N/A
Carbon	Carbon	7440–44–0
Carbon dioxide	Carbon dioxide	124–38–9
Carboxymethyl cellulose	Cellulose, carboxymethyl ether	9000–11–7
Cardboard	Cardboard	N/A
Carnauba wax	Carnauba wax	8015–86–9
Carob gum	Locust bean gum	9000–40–2
Carrageenan	Carrageenan	9000–07–1
Caseins	Caseins	9000–71–9
Castor oil	Castor oil	8001–79–4
Castor oil, hydrogenated	Castor oil, hydrogenated	8001–78–3
Cat food	Cat food	N/A
Cellulose	Cellulose	9004–34–6
Cellulose acetate	Cellulose acetate	9004–35–7
Cellulose, mixture with cellulose carboxymethyl ether, sodium salt.	Cellulose, mixture with cellulose carboxymethyl ether, sodium salt.	51395–75–6
Cellulose, pulp	Cellulose, pulp	65996–61–4
Cellulose, regenerated	Cellulose, regenerated	68442–85–3
Cheese	Cheese	N/A
Chlorophyll a	Chlorophyll a	479–61–8
Chlorophyll b	Chlorophyll b	519–62–0
Citric acid	Citric acid	77–92–9
Citric acid, monohydrate	Citric acid, monohydrate	5949–29–1
Citrus meal	Citrus meal	N/A
Citrus pectin	Citrus pectin	9000–69–5
Citrus pulp	Citrus pulp	68514–76–1
Clam shells	Clam shells	N/A
Cocoa	Cocoa	8002–31–1
Cocoa shell flour	Cocoa shell flour	N/A
Cocoa shells	Cocoa shells	N/A
Cod-liver oil	Cod-liver oil	8001–69–2
Coffee grounds	Coffee grounds	68916–18–7
Cookies	Cookies	N/A
Cork	Cork	61789–98–8
Corn cobs	Corn cobs	N/A
Cotton	Cotton	N/A
Cottonseed meal	Cottonseed meal	68424–10–2
Cracked wheat	Cracked wheat	N/A
Decanoic acid, monoester with 1,2,3- propanetriol	Decanoic acid, monoester with 1,2,3- propanetriol	26402–22–2

Label display name	Chemical name	CAS Reg. No.
Dextrins	Dextrins	9004–53–9
Diglyceryl monooleate	9-Octadecenoic acid, ester with 1,2,3- propanetriol	49553–76–6
Diglyceryl monostearate	9-Octadecanoic acid, monoester with oxybis(propanediol)	12694–22–3
Dilaurin	Dodecanoic acid, diester with 1,2,3- propanetriol	27638–00–2
Dipalmitin	Hexadecanoic acid, diester with 1,2,3- propanetriol	26657–95–4
Dipotassium citrate	Citric acid, dipotassium salt	3609–96–9
Disodium citrate	Citric acid, disodium salt	144–33–2
Disodium sulfate	Disodium sulfate decahydrate	7727–73–3
Diatomaceous earth	Kieselguhr; Diatomite	61790–53–2
Dodecanoic acid, monoester with 1,2,3- propanetriol	Dodecanoic acid, monoester with 1,2,3- propanetriol	27215–38–9
Dolomite	Dolomite	16389–88–1
Douglas fir bark	Douglas fir bark	N/A
Egg shells	Egg shells	N/A
Eggs	Eggs	N/A
(+)-Ethyl lactate	Lactic acid, ethyl ester, (S)	687–47–8
Ethyl lactate	Lactic acid, ethyl ester	97–64–3
Feldspar	Feldspar	68476–25–5
Fish meal	Fish meal	N/A
Fish oil	Fish oil	8016–13–5
Fuller's earth	Fuller's earth	8031–18–3
Fumaric acid	Fumaric acid	110–17–8
gamma-Cyclodextrin	gamma-Cyclodextrin	17465–86–0
Gelatins	Gelatins	9000–70–8
Gellan gum	Gellan gum	71010–52–1
Glue (as depolymd. animal collagen)	Glue (as depolymd. animal collagen)	68476–37–9
Glycerin	1,2,3-Propanetriol	56–81–5
Glycerol monooleate	9-Octadecenoic acid (Z)-, 2,3-dihydroxypropyl ester	111–03–5
Glyceryl dicaprylate	Octanoic acid, diester with 1,2,3-propanetriol	36354–80–0
Glyceryl dimyristate	Tetradecanoic acid, diester with 1,2,3-propanetriol	53563–63–6
Glyceryl dioleate	9-Octadecenoic acid (9Z)-, diester with 1,2,3-propanetriol	25637–84–7
Glyceryl distearate	Glyceryl distearate	1323–83–7
Glyceryl monomyristate	Tetradecanoic acid, monoester with 1,2,3-propanetriol	27214–38–6
Glyceryl monooctanoate	Octanoic acid, monoester with 1,2,3-propanetriol	26402–26–6
Glyceryl monooleate	9-Octadecenoic acid (9Z)-, monoester with 1,2,3-propanetriol	25496–72–4
Glyceryl monostearate	Octadecanoic acid, monoester with 1,2,3-propanetriol	31566–31–1
Glyceryl stearate	Octadecanoic acid, ester with 1,2,3-propanetriol	11099–07–3
Granite	Granite	N/A
Graphite	Graphite	7782–42–5
Guar gum	Guar gum	9000–30–0
Gum Arabic	Gum arabic	9000–01–5
Gum tragacanth	Gum tragacanth	9000–65–1
Gypsum	Gypsum	13397–24–5
Hematite (Fe2O3)	Hematite (Fe2O3)	1317–60–8
Humic acid	Humic acid	1415–93–6
Hydrogenated cottonseed oil	Hydrogenated cottonseed oil	68334–00–9
Hydrogenated rapeseed oil	Hydrogenated rapeseed oil	84681–71–0
Hydrogenated soybean oil	Hydrogenated soybean oil	8016–70–4
Hydroxyethyl cellulose	Cellulose, 2-hydroxyethyl ether	9004–62–0
Hydroxypropyl cellulose	Cellulose, 2-hydroxypropyl ether	9004–64–2
Hydroxypropyl methyl cellulose	Cellulose, 2-hydroxypropyl methyl ether	9004–65–3
Iron magnesium oxide	Iron magnesium oxide (Fe2 MgO4)	12068–86–9
Ferric oxide	Iron oxide (Fe2 O3)	1309–37–1
Iron oxide (Fe2 O3), hydrate	Iron oxide (Fe2 O3), hydrate	12259–21–1
Iron oxide (Fe3 O4)	Iron oxide (Fe3 O4)	1317–61–9
Ferric oxide	Iron oxide (FeO)	1345–25–1
Isopropyl alcohol	2-Propanol	67–63–0
Isopropyl myristate	Isopropyl myristate	110–27–0
Kaolin	Kaolin	1332–58–7
Lactose	Lactose	63–42–3
Lactose monohydrate	Lactose monohydrate	64044–51–5
Lanolin	Lanolin	8006–54–0
Latex rubber	Latex rubber	N/A
Lauric acid	Lauric acid	143–07–7
Lecithins	Lecithins	8002–43–5
Licorice extract	Licorice extract	68916–91–6
Lime (chemical) dolomitic	Lime (chemical) dolomitic	12001–27–3
Limestone	Limestone	1317–65–3
Linseed oil	Linseed oil	8001–26–1
Magnesium carbonate	Carbonic acid, magnesium salt (1:1)	546–93–0
Magnesium benzoate	Magnesium benzoate	553–70–8
Magnesium oxide	Magnesium oxide	1309–48–4
Magnesium oxide silicate	Magnesium oxide silicate (Mg3 O(Si2 O5)2), monohydrate	12207–97–5
Magnesium silicate	Magnesium silicate	1343–88–0
Magnesium silicate hydrate	Magnesium silicate hydrate	1343–90–4

Label display name	Chemical name	CAS Reg. No.
Magnesium silicon oxide	Magnesium silicon oxide (Mg2 Si3 O8)	14987–04–3
Magnesium stearate	Octadecanoic acid, magnesium salt	557–04–0
Magnesium sulfate	Magnesium sulfate	7487–88–9
Magnesium sulfate heptahydrate	Magnesium sulfate heptahydrate	10034–99–8
Malic acid	Malic acid	6915–15–7
Malt extract	Malt extract	8002–48–0
Malt flavor	Malt flavor	N/A
Maltodextrin	Maltodextrin	9050–36–6
Methylcellulose	Cellulose, methyl ether	9004–67–5
Mica	Mica	12003–38–2
Mica-group minerals	Mica-group minerals	12001–26–2
Milk	Milk	8049–98–7
Millet seed	Millet seed	N/A
Mineral oil (U.S.P.)	Mineral oil (U.S.P.)	8012–95–1
1-Monolaurin	Dodecanoic acid, 2,3-dihydroxypropyl ester	142–18–7
1-Monomyristin	Tetradecanoic acid, 2,3-dihydroxypropyl ester	589–68–4
Monomyristin	Decanoic acid, diester with 1,2,3-propanetriol	53998–07–1
Monopalmitin	Hexadecanoic acid, monoester with 1,2,3-propanetriol	26657–96–5
Monopotassium citrate	Citric acid, monopotassium salt	866–83–1
Monosodium citrate	Citric acid, monosodium salt	18996–35–5
Montmorillonite	Montmorillonite	1318–93–0
Myristic acid	Myristic acid	544–63–8
Nepheline syenite	Nepheline syenite	37244–96–5
Nitrogen	Nitrogen	7727–37–9
Nutria meat	Nutria meat	N/A
Nylon	Nylon	N/A
Octanoic acid, potassium salt	Octanoic acid, potassium salt	764–71–6
Octanoic acid, sodium salt	Octanoic acid, sodium salt	1984–06–1
Oils, almond	Oils, almond	8007–69–0
Oils, wheat	Oils, wheat	68917–73–7
Oleic acid	Oleic acid	112–80–1
Oyster shells	Oyster shells	N/A
Palm oil	Palm oil	8002–75–3
Palm oil, hydrogenated	Palm oil, hydrogenated	68514–74–9
Palmitic acid	Hexadecanoic acid	57–10–3
Paper	Paper	N/A
Paraffin wax	Paraffin wax	8002–74–2
Peanut butter	Peanut butter	N/A
Peanut shells	Peanut shells	N/A
Peanuts	Peanuts	N/A
Peat moss	Peat moss	N/A
Pectin	Pectin	9000–69–5
Perlite	Perlite	130885–09–5
Perlite, expanded	Perlite, expanded	93763–70–3
Plaster of paris	Plaster of paris	26499–65–0
Polyethylene	Polyethylene	9002–88–4
Polyglyceryl oleate	Polyglyceryl oleate	9007–48–1
Polyglyceryl stearate	Polyglyceryl stearate	9009–32–9
Potassium acetate	Acetic acid, potassium salt	127–08–2
Potassium aluminum silicate, anhydrous	Potassium aluminum silicate, anhydrous	1327–44–2
Potassium benzoate	Benzoic acid, potassium salt	582–25–2
Potassium bicarbonate	Carbonic acid, monopotassium salt	298–14–6
Potassium chloride	Potassium chloride	7447–40–7
Potassium citrate	Citric acid, potassium salt	7778–49–6
Potassium humate	Humic acids, potassium salts	68514–28–3
Potassium myristate	Tetradecanoic acid, potassium salt	13429–27–1
Potassium oleate	9-Octadecenoic acid (9Z)-, potassium salt	143–18–0
Potassium ricinoleate	9-Octadecenoic acid, 12-hydroxy-, monopotassium salt, (9Z, 12R)-.	7492–30–0
Potassium sorbate	Sorbic acid, potassium salt	24634–61–5
Potassium stearate	Octadecanoic acid, potassium salt	593–29–3
Potassium sulfate	Potassium sulfate	7778–80–5
Potassium sulfate	Sulfuric acid, monopotassium salt	7646–93–7
1,2-Propylene carbonate	1,3-Dioxolan-2-one, 4-methyl-	108–32–7
Pumice	Pumice	1332–09–8
Red cabbage color	Red cabbage color (expressed from edible red cabbage heads via a pressing process using only acidified water).	N/A
Red cedar chips	Red cedar chips	N/A
Red dog flour	Red dog flour	N/A
Rubber	Rubber	9006–04–6
Sawdust	Sawdust	N/A
Shale	Shale	N/A
Silica, amorphous, fumed (crystalline free)	Silica, amorphous, fumed (crystalline free)	112945–52–5
Silica, amorphous, precipitate and gel	Silica, amorphous, precipitate and gel	7699–41–4

Label display name	Chemical name	CAS Reg. No.
Silica (crystalline free)	Silica (crystalline free)	7631–86–9
Silica gel	Silica gel	63231–67–4
Silica gel, precipitated, crystalline-free	Silica gel, precipitated, crystalline-free	112926–00–8
Silica, hydrate	Silica, hydrate	10279–57–9
Silica, vitreous	Silica, vitreous	60676–86–0
Silicic acid (H2 SiO3), magnesium salt (1:1)	Silicic acid (H2 SiO3), magnesium salt (1:1)	13776–74–4
Soap	Soap (The water soluble sodium or potassium salts of fatty acids produced by either the saponification of fats and oils, or the neutralization of fatty acid).	N/A
Soapbark	Quillaja saponin	1393–03–9
Soapstone	Soapstone	308076–02–0
Sodium acetate	Acetic acid, sodium salt	127–09–3
Sodium alginate	Sodium alginate	9005–38–3
Sodium benzoate	Benzoic acid, sodium salt	532–32–1
Sodium bicarbonate	Sodium bicarbonate	144–55–8
Sodium carboxymethyl cellulose	Cellulose, carboxymethyl ether, sodium salt	9004–32–4
Sodium chloride	Sodium chloride	7647–14–5
Sodium citrate	Sodium citrate	994–36–5
Sodium humate	Humic acids, sodium salts	68131–04–4
Sodium oleate	Sodium oleate	143–19–1
Sodium ricinoleate	9-Octadecenoic acid, 12-hydroxy-, monosodium salt, (9Z,12R)-.	5323–95–5
Sodium stearate	Octadecanoic acid, sodium salt	822–16–2
Sodium sulfate	Sodium sulfate	7757–82–6
Sorbitol	D-glucitol	50–70–4
Soy protein	Soy protein	N/A
Soya lecithins	Lecithins, soya	8030–76–0
Soybean hulls	Soybean hulls	N/A
Soybean meal	Soybean meal	68308–36–1
Soybean, flour	Soybean, flour	68513–95–1
Stearic acid	Octadecanoic acid	57–11–4
Sulfur	Sulfur	7704–34–9
Syrups, hydrolyzed starch, hydrogenated	Syrups, hydrolyzed starch, hydrogenated	68425–17–2
Tetragylceryl monooleate	9-Octadecenoic acid (9Z)-, monoester with tetraglycerol	71012–10–7
Tricalcium citrate	Citric acid, calcium salt (2:3)	813–94–5
Triethyl citrate	Citric acid, triethyl ester	77–93–0
Tripotassium citrate	Citric acid, tripotassium salt	866–84–2
Tripotassium citrate monohydrate	Citric acid, tripotassium salt, monohydrate	6100–05–6
Trisodium citrate	Citric acid, trisodium salt	68–04–2
Trisodium citrate dehydrate	Citric acid, trisodium salt, dehydrate	6132–04–3
Trisodium citrate pentahydrate	Citric acid, trisodium salt, pentahydrate	6858–44–2
Ultramarine blue	C.I. Pigment Blue 29	57455–37–5
Urea	Urea	57–13–6
Vanillin	Benzaldehyde, 4-hydroxy-3-methoxy-	121–33–5
Vermiculite	Vermiculite	1318–00–9
Vinegar (maximum 8% acetic acid in solution)	Vinegar (maximum 8% acetic acid in solution)	8028–52–2
Vitamin C	L-Ascorbic acid	50–81–7
Vitamin E	Vitamin E	1406–18–4
Walnut flour	Walnut flour	N/A
Walnut shells	Walnut shells	N/A
Wheat	Wheat	N/A
Wheat flour	Wheat flour	N/A
Wheat germ oil	Wheat germ oil	8006–95–9
Whey	Whey	92129–90–3
White mineral oil (petroleum)	White mineral oil (petroleum)	8042–47–5
Wintergreen oil	Wintergreen oil	68917–75–9
Wollastonite	Wollastonite (Ca(SiO3))	13983–17–0
Wool	Wool	N/A
Xanthan gum	Xanthan gum	11138–66–2
Yeast	Yeast	68876–77–7
Zeolites	Zeolites (excluding erionite (CAS Reg. No. 66733–21–9))	1318–02–1
Zeolites, NaA	Zeolites, NaA	68989–22–0
Zinc iron oxide	Zinc iron oxide	12063–19–3
Zinc oxide	Zinc oxide (ZnO)	1314–13–2
Zinc stearate	Octadecanoic acid, zinc salt	557–05–1

(3) *Other conditions of exemption.* All of the following conditions must be met for products to be exempted under this section:

(i) Each product containing the substance must bear a label identifying the label display name and percentage (by weight) of each active ingredient. It must also list all inert ingredients by the label display name listed in the table in paragraph (f)(2)(iv) of this section.

(ii) The product must not bear claims either to control or mitigate microorganisms that pose a threat to

human health, including but not limited to disease transmitting bacteria or viruses, or claims to control insects or rodents carrying specific diseases, including, but not limited to ticks that carry Lyme disease.

(iii) Company name and contact information.

(A) The name of the producer or the company for whom the product was produced must appear on the product label. If the company whose name appears on the label in accordance with this paragraph is not the producer, the company name must be qualified by appropriate wording such as ''Packed for * * *,'' ''Distributed by * * *,'' or ''Sold by * * *'' to show that the name is not that of the producer.

(B) Contact information for the company specified in accordance with paragraph (f)(3)(iii)(A) of this section must appear on the product label including the street address plus ZIP code and the telephone phone number of the location at which the company may be reached.

(C) The company name and contact information must be displayed prominently on the product label.

(iv) The product must not include any false and misleading labeling statements, including those listed in § 156.10(a)(5)(i) through (viii).

(v) Guidance on minimum risk pesticides is available at *http://www.epa.gov/oppbppd1/biopesticides/regtools/25b_list.htm* (or successor web pages at *http://www.epa.gov*). This advisory information includes guidance on label formats, explanation of when exemptions from the requirements of a tolerance should be consulted, and tables in alternative formats that may be suitable for some users.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[EPA–HQ–OPPT–2010–0173; FRL–9373–7]

RIN 2070–AJ56

Lead; Renovation, Repair, and Painting Program for Public and Commercial Buildings; Request for Information and Advance Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for information and advance notice of public meeting.

SUMMARY: In 2010, EPA issued an advance notice of proposed rulemaking (2010 ANPRM) concerning renovation, repair, and painting activities on and in public and commercial buildings. EPA is in the process of determining whether these activities create lead-based paint hazards, and, for those that do, developing certification, training, and work practice requirements as directed by the Toxic Substances Control Act (TSCA). This document opens a comment period to allow for additional data and other information to be submitted by the public and interested stakeholders. This document also provides advance notice of EPA's plan to hold a public meeting on June 26, 2013.

DATES: Comments must be received on or before April 1, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2010–0173, 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:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Hans Scheifele, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–3122; email address: *scheifele.hans@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This document is directed to the public in general. However, you may be potentially affected by this action if you perform renovations, repairs, or painting activities on the exterior or interior of public buildings or commercial buildings. 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. Other types of entities not listed may also be affected. Potentially affected entities may include:

- Building construction (NAICS code 236), *e.g.,* commercial building construction, industrial building construction, commercial and institutional building construction, building finishing contractors, drywall and insulation contractors, painting and wall covering contractors, finish carpentry contractors, other building finishing contractors.
- Specialty trade contractors (NAICS code 238), *e.g.,* plumbing, heating, and air-conditioning contractors; painting and wall covering contractors; electrical contractors; finish carpentry contractors; drywall and insulation contractors; siding contractors; tile and terrazzo contractors; glass and glazing contractors.
- Real estate (NAICS code 531), *e.g.,* lessors of non-residential buildings and dwellings, non-residential property managers.
- Other general government support (NAICS code 921), *e.g.,* general services departments, government, public property management services, government.

If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify this document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. Follow the detailed instructions as provided under **ADDRESSES**. Respond to specific questions posed by the Agency.

iii. Explain why you agree or disagree; suggest alternatives.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced by the Agency and others.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified in this document.

II. Background

Title IV of TSCA, 15 U.S.C. 2681 *et seq.,* was enacted to assist the Federal Government in reducing lead exposures, particularly those resulting from lead-based paint. Section 402(c)(3) of TSCA specifically requires EPA to revise its Lead-based Paint Activities Regulations (Ref. 1), promulgated under TSCA section 402(a), to apply to those renovation and remodeling activities in target housing, public buildings constructed before 1978, or commercial buildings that create lead-based paint hazards. In April 2008, EPA issued the final Lead Renovation, Repair, and Painting (RRP) Rule under TSCA section 402(c)(3) (Ref. 2). The RRP Rule covers renovation, repair, and painting activities in target housing, which is most pre-1978 housing, and child-occupied facilities, defined in the rule as a subset of public and commercial buildings in which young children spend a significant amount of time.

Shortly after the RRP Rule was published, several lawsuits were filed challenging the rule, asserting, among other things, that EPA violated TSCA section 402(c)(3) by failing to address renovation activities in public and commercial buildings. These lawsuits (brought by environmental and children's health advocacy groups as well as a homebuilders association) were consolidated in the Circuit Court of Appeals for the District of Columbia Circuit. EPA engaged in collective settlement negotiations with all the parties and on August 24, 2009, EPA entered into an agreement with environmental and children's health advocacy groups in settlement of their lawsuits (Ref. 3). Shortly thereafter, the homebuilders association voluntarily dismissed its challenge to the rule. As part of this settlement agreement, EPA agreed to commence rulemaking to address renovations in public and commercial buildings, other than child-occupied facilities, to the extent such renovations create lead-based paint hazards. As an initial step, EPA issued an ANPRM in the **Federal Register** on renovations in public and commercial buildings on May 6, 2010 (Ref. 4).

The settlement agreement has been amended and modified several times primarily to extend deadlines, with the most recent amendment having been entered into by the parties on September 7, 2012. Under the terms of the amended settlement agreement, the date by which EPA has agreed to either sign a proposed rule covering renovation, repair, and painting activities in public and commercial buildings, or determine that these activities do not create lead-based paint hazards, is July 1, 2015. If EPA publishes a proposed rule in the **Federal Register**, EPA agrees to take final action on or before the date 18 months after the proposed rule has published.

In addition, EPA agreed to hold a public meeting on or before July 31, 2013, and offer an opportunity for stakeholders and other interested members of the public to provide data and other information that EPA may use in making its regulatory determinations. With this document, EPA is providing advance notice that it plans to hold the public meeting on June 26, 2013, and will provide more information about the public meeting in a subsequent document it intends to publish in the **Federal Register** in the spring of 2013.

EPA also agreed to offer an opportunity for stakeholders and other interested members of the public to provide data and other information that EPA may use in making its regulatory determinations. This document, therefore, opens a comment period to allow the public to submit additional information and data pertaining to renovation, repair, and painting activities in and on public or commercial buildings. EPA plans to issue a discussion guide no later than 2 weeks before the public meeting. EPA expects the discussion guide to describe the information received during this comment period. Of particular interest to EPA for developing a proposed rule is information concerning:

1. The manufacture, sale, and uses of lead-based paint after 1978.

2. The use of lead-based paint in and on public and commercial buildings.

3. The frequency and extent of renovations on public and commercial buildings.

4. Work practices used in renovation of public and commercial buildings.

5. Dust generation and transportation from exterior and interior renovations of public and commercial buildings.

These topical descriptions offer only a short characterization of the information that EPA is interested in. The 2010 ANPRM contains a comprehensive history of this rulemaking and the lead program in general, a review of some of the relevant information EPA has already gathered and reviewed, and more detail on the information sought for the public meeting (Ref. 4).

EPA is seeking information from all sources and regarding all types of potentially affected businesses and other stakeholders, including small businesses. Information regarding work practices typically used by small businesses, as well as information on costs and other potential regulatory impacts on small businesses, particularly those that would uniquely affect small businesses, would be useful to EPA in developing any proposed rule for renovation, repair, and painting activities in and on public or commercial buildings.

III. References

As indicated under **ADDRESSES**, a docket has been established for this document under docket ID number EPA–HQ–OPPT–2010–0173. The following is a list of the documents that are specifically referenced in this document. The docket includes these documents and other information.

1. EPA. Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Final Rule. **Federal Register** (61 FR 45778, August 29, 1996) (FRL–5389–9).
2. EPA. Lead; Renovation, Repair, and Painting Program; Final Rule. **Federal Register** (73 FR 21692, April 22, 2008) (FRL–8355–7).
3. EPA. Sierra Club, etc. Settlement, as amended and modified (2009, 2011, and 2012).
4. EPA. Lead; Renovation, Repair, and Painting Program for Public and Commercial Buildings; Advanced Notice of Proposed Rulemaking. **Federal Register** (75 FR 24848, May 6, 2010) (FRL–8823–6).

List of Subjects in 40 CFR Part 745

Environmental protection, Buildings and facilities, Business and industry,

Lead- based paint, Hazardous substances, Public and commercial buildings, Occupational safety and health, Renovations, Repair, and Painting Program (RRP), Safety.

Dated: December 20, 2012.

James Jones,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2012–31532 Filed 12–28–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002: Internal Agency Docket No. FEMA–B–1184]

Proposed Flood Elevation Determinations for Nobles County, MN, and Incorporated Areas

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) is withdrawing its proposed rule concerning proposed flood elevation determinations for Nobles County, Minnesota, and Incorporated Areas.

DATES: This withdrawal is effective on December 31, 2012.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1184, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: On April 27, 2011, FEMA published a proposed rulemaking at 76 FR 23528, proposing flood elevation determinations along one or more flooding sources in Nobles County, Minnesota and Incorporated Areas. Because FEMA has or will be issuing a Revised Preliminary Flood Insurance Rate Map, and if necessary a Flood Insurance Study report, featuring updated flood hazard information, the proposed rulemaking is being withdrawn. A Notice of Proposed Flood Hazard Determinations will be published in the **Federal Register** and in the affected community's local newspaper.

Authority: 42 U.S.C. 4104; 44 CFR 67.4.

James A. Walke,

Acting Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–31340 Filed 12–28–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1089]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On May 25, 2010, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 75 FR 29219. The table provided here represents the flooding sources, location of referenced elevations, effective and modified elevations, and communities affected for Butler County, Kentucky, and Incorporated Areas. Specifically, it addresses the following flooding sources: Barren River (backwater effects from Green River), Big Bull Creek (backwater effects from Green River), Big Reedy Creek (backwater effects from Green River), Deerlick Creek (backwater effects from Green River), Deerlick Creek Tributary 6 (backwater effects from Green River), East Prong Indian Camp Creek (backwater effects from Green River), Gary Creek (backwater effects from Green River), Grassy Lick Creek (backwater effects from Green River), Green River, Hickory Camp Creek (backwater effects from Green River), Hickory Camp Creek Tributary 1 (backwater effects from Green River), Indian Camp Creek (backwater effects from Green River), Lindsey Creek (backwater effects from Green River), Little Bull Creek (backwater effects from Green River), Little Reedy Creek (backwater effects from Green River), Meffords Branch (backwater effects from Green River), Meffords Branch Tributary 4 (backwater effects from Green River), Mud River (backwater effects from Green River), Mud River Tributary 17 (backwater effects from Green River), Mud River Tributary 17.2 (backwater effects from Green River), Muddy Creek (backwater effects from Green River), Muddy Creek Tributary 18 (backwater effects from Green River), Muddy Creek Tributary 27 (backwater effects from Green River), Muddy Creek Tributary 39.1 (backwater effects from Green River), Panther Creek (backwater effects from Green River), Pipe Spring Hollow (backwater effects from Green River), Pitman Creek (backwater effects from Green River), Pitman Creek Tributary 3 (backwater effects from Green River), Renfrow Creek (backwater effects from Green River), Renfrow Creek Tributary 6 (backwater effects from Green River), Renfrow Creek Tributary 7 (backwater effects from Green River), Renfrow Creek Tributary 8 (backwater effects from Green River), Renfrow Creek Tributary 9 (backwater effects from Green River), Rosy Creek (backwater effects from Green River), Sandy Creek (backwater effects from Green River), Sandy Creek Tributary 5 (backwater effects from Green River), Tallow Branch (backwater effects from Green River), Welch Creek (backwater effects from Green River), West Prong Indian Camp Creek (backwater effects from Green River), and Wolfpen Hollow (backwater effects from Green River).

DATES: Comments are to be submitted on or before April 1, 2013.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1089, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email) *luis.rodriguez3@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email) *luis.rodriguez3@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the

Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are minimum requirements. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Corrections

In the proposed rule published at 75 FR 29219, in the May 25, 2010, issue of the **Federal Register,** FEMA published a table under the authority of 44 CFR 67.4. The table, entitled ''Butler County, Kentucky, and Incorporated Areas'' addressed the following flooding sources: Barren River (backwater effects from Green River), Big Bull Creek (backwater effects from Green River), Big Reedy Creek (backwater effects from Green River), Deerlick Creek (backwater effects from Green River), Deerlick Creek Tributary 6 (backwater effects from Green River), East Prong Indian Camp Creek (backwater effects from Green River), Gary Creek (backwater effects from Green River), Grassy Lick Creek (backwater effects from Green River), Green River, Hickory Camp Creek (backwater effects from Green River), Hickory Camp Creek Tributary 1 (backwater effects from Green River), Indian Camp Creek (backwater effects from Green River), Lindsey Creek (backwater effects from Green River), Little Bull Creek (backwater effects from Green River), Little Reedy Creek (backwater effects from Green River), Meffords Branch (backwater effects from Green River), Meffords Branch Tributary 4 (backwater effects from Green River), Mud River (backwater effects from Green River), Mud River Tributary 17 (backwater effects from Green River), Mud River Tributary 17.2 (backwater effects from Green River), Muddy Creek (backwater effects from Green River), Muddy Creek Tributary 18 (backwater effects from Green River), Muddy Creek Tributary 27 (backwater effects from Green River), Muddy Creek Tributary 39.1 (backwater effects from Green River), Panther Creek (backwater effects from Green River), Pipe Spring Hollow (backwater effects from Green River), Pitman Creek (backwater effects from Green River), Pitman Creek Tributary 3 (backwater effects from Green River), Renfrow Creek (backwater effects from Green River), Renfrow Creek Tributary 6 (backwater effects from Green River), Renfrow Creek Tributary 7 (backwater effects from Green River), Renfrow Creek Tributary 8 (backwater effects from Green River), Renfrow Creek Tributary 9 (backwater effects from Green River), Rosy Creek (backwater effects from Green River), Sandy Creek (backwater effects from Green River), Sandy Creek Tributary 5 (backwater effects from Green River), Tallow Branch (backwater effects from Green River), Welch Creek (backwater effects from Green River), West Prong Indian Camp Creek (backwater effects from Green River), and Wolfpen Hollow (backwater effects from Green River). That table contained inaccurate information as to the communities affected for the flooding source Green River. In this notice, FEMA is publishing a table containing the accurate information to address these prior errors. The information provided below should be used in lieu of that previously published.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Butler County, Kentucky, and Incorporated Areas				
Barren River (backwater effects from Green River).	From the confluence with the Green River to approximately 0.6 mile upstream of the confluence with Little Muddy Creek.	+423	+424	Unincorporated Areas of Butler County.
Big Bull Creek (backwater effects from Green River).	From the confluence with the Green River to approximately 0.5 mile upstream of Johnson Cemetery Road.	None	+428	Unincorporated Areas of Butler County.
Big Reedy Creek (backwater effects from Green River).	From the confluence with the Green River to approximately 1,202 feet downstream of the confluence with Big Reedy Creek Tributary 4.	None	+433	Unincorporated Areas of Butler County.
Deerlick Creek (backwater effects from Green River).	From the confluence with the Mud River to approximately 935 feet upstream of Penrod Road.	None	+404	Unincorporated Areas of Butler County.
Deerlick Creek Tributary 6 (backwater effects from Green River).	From the confluence with Deerlick Creek to approximately 765 feet upstream of the confluence with Deerlick Creek.	None	+404	Unincorporated Areas of Butler County.
East Prong Indian Camp Creek (backwater effects from Green River).	From the confluence with Indian Camp Creek to approximately 1,179 feet downstream of the confluence with East Prong Indian Camp Creek.	None	+415	Unincorporated Areas of Butler County.
Gary Creek (backwater effects from Green River).	From the confluence with Little Reedy Creek to approximately 0.9 mile upstream of the confluence with Little Reedy Creek.	None	+429	Unincorporated Areas of Butler County.
Grassy Lick Creek (backwater effects from Green River).	From the confluence with Muddy Creek to approximately 1.1 mile downstream of Sandy Creek Road.	None	+407	Unincorporated Areas of Butler County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Green River	At the confluence with the Mud River	+403	+404	City of Morgantown, City of Rochester, City of Woodbury, Unincorporated Areas of Butler County.
	At approximately 1.7 mile upstream of Reedyville Road.	+437	+438	
Hickory Camp Creek (backwater effects from Green River).	From the confluence with Panther Creek to approximately 478 feet upstream of the confluence with Hickory Camp Creek Tributary 1.	+403	+405	Unincorporated Areas of Butler County.
Hickory Camp Creek Tributary 1 (backwater effects from Green River).	From the confluence with Hickory Camp Creek to approximately 676 feet upstream of the confluence with Hickory Camp Creek.	None	+405	Unincorporated Areas of Butler County.
Indian Camp Creek (backwater effects from Green River).	From the confluence with the Green River to approximately 1.1 mile downstream of Dexterville-Gilstrap Road.	None	+415	Unincorporated Areas of Butler County.
Lindsey Creek (backwater effects from Green River).	From the confluence with East Prong Indian Camp Creek to approximately 0.4 mile downstream of Brownsville Road.	None	+415	Unincorporated Areas of Butler County.
Little Bull Creek (backwater effects from Green River).	From the confluence with the Green River to approximately 0.6 mile upstream of the confluence with Tallow Branch.	None	+425	Unincorporated Areas of Butler County.
Little Reedy Creek (backwater effects from Green River).	From the confluence with the Green River to approximately 0.9 mile upstream of the confluence with Rosy Creek.	None	+429	Unincorporated Areas of Butler County.
Meffords Branch (backwater effects from Green River).	From the confluence with the Mud River to approximately 1,425 feet upstream of Perry Harper Road.	None	+404	Unincorporated Areas of Butler County.
Meffords Branch Tributary 4 (backwater effects from Green River).	From the confluence with Meffords Branch to approximately 0.6 mile upstream of the confluence with Meffords Branch.	None	+404	Unincorporated Areas of Butler County.
Mud River (backwater effects from Green River).	From the confluence with the Green River to approximately 2.2 miles upstream of the confluence with Deerlick Creek.	+403	+404	Unincorporated Areas of Butler County, City of Rochester.
Mud River Tributary 17 (backwater effects from Green River).	From the confluence with the Green River to approximately 314 feet upstream of Rochester Road.	+403	+404	Unincorporated Areas of Butler County, City of Rochester.
Mud River Tributary 17.2 (backwater effects from Green River).	From the confluence with Mud River Tributary 17 to approximately 312 feet upstream of Rochester Road.	None	+404	Unincorporated Areas of Butler County.
Muddy Creek (backwater effects from Green River).	From the confluence with the Green River to approximately 877 feet upstream of the confluence with Muddy Creek Tributary 18.	None	+407	Unincorporated Areas of Butler County.
Muddy Creek Tributary 18 (backwater effects from Green River).	From the confluence with Muddy Creek to approximately 1,306 feet upstream of the confluence with Muddy Creek.	None	+407	Unincorporated Areas of Butler County.
Muddy Creek Tributary 27 (backwater effects from Green River).	From the confluence with Muddy Creek to approximately 1,421 feet downstream of Muddy Creek Tributary 27.2.	None	+407	Unincorporated Areas of Butler County.
Muddy Creek Tributary 39.1 (backwater effects from Green River).	From the confluence with Muddy Creek to approximately 669 feet downstream of Muddy Creek Tributary 39.1.	None	+407	Unincorporated Areas of Butler County.
Panther Creek (backwater effects from Green River).	From the confluence with the Green River to approximately 1,550 feet downstream of G. Southerland Road.	+403	+405	Unincorporated Areas of Butler County.
Pipe Spring Hollow (backwater effects from Green River).	From the confluence with the Green River to just downstream of William H. Natcher Parkway.	+409	+408	Unincorporated Areas of Butler County.
Pitman Creek (backwater effects from Green River).	From the confluence with Welch Creek to approximately 554 feet upstream of the confluence with Pitman Creek Tributary 3.	None	+419	Unincorporated Areas of Butler County.
Pitman Creek Tributary 3 (backwater effects from Green River).	From the confluence with Pitman Creek to approximately 280 feet upstream of the confluence with Pitman Creek.	None	+419	Unincorporated Areas of Butler County.
Renfrow Creek (backwater effects from Green River).	From the confluence with the Green River to approximately 177 feet downstream of Bowling Green Road.	None	+419	Unincorporated Areas of Butler County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Renfrow Creek Tributary 6 (backwater effects from Green River).	From the confluence with Renfrow Creek to approximately 1,236 feet downstream of Embry Way.	None	+419	Unincorporated Areas of Butler County.
Renfrow Creek Tributary 7 (backwater effects from Green River).	From the confluence with Renfrow Creek to just downstream of South Main Street.	None	+419	Unincorporated Areas of Butler County.
Renfrow Creek Tributary 8 (backwater effects from Green River).	From the confluence with Renfrow Creek to approximately 0.5 mile upstream of the confluence with Renfrow Creek.	None	+419	Unincorporated Areas of Butler County.
Renfrow Creek Tributary 9 (backwater effects from Green River).	From the confluence with Renfrow Creek to just upstream of East Whalen Road.	None	+419	Unincorporated Areas of Butler County.
Rosy Creek (backwater effects from Green River).	From the confluence with Little Reedy Creek to approximately 0.7 mile upstream of the confluence with Little Reedy Creek.	None	+429	Unincorporated Areas of Butler County.
Sandy Creek (backwater effects from Green River).	From the confluence with Muddy Creek to approximately 494 feet downstream of Martin Road.	None	+407	Unincorporated Areas of Butler County.
Sandy Creek Tributary 5 (backwater effects from Green River).	From the confluence with Sandy Creek to just upstream of Dunbar-Leetown Road.	None	+407	Unincorporated Areas of Butler County.
Tallow Branch (backwater effects from Green River).	From the confluence with Little Bull Creek to approximately 0.5 mile upstream of the confluence with Little Bull Creek.	None	+426	Unincorporated Areas of Butler County.
Welch Creek (backwater effects from Green River).	From the confluence with the Green River to just downstream of Brownsville Road.	None	+419	Unincorporated Areas of Butler County.
West Prong Indian Camp Creek (backwater effects from Green River).	From the confluence with Indian Camp Creek to approximately 3.7 miles upstream of the confluence with Indian Camp Creek.	None	+414	Unincorporated Areas of Butler County.
Wolfpen Hollow (backwater effects from Green River).	From the confluence with East Prong Indian Camp Creek to approximately 1,205 feet downstream of McKendree Chapel Road.	None	+415	Unincorporated Areas of Butler County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

Addresses

City of Woodbury
Maps are available for inspection at 1 Lock 4 Road, Woodbury, KY 42288.

City of Morgantown
Maps are available for inspection at City Hall, 117 North Main Street, Morgantown, KY 42261.

City of Rochester
Maps are available for inspection at City Hall, 672 Russellville Street, Rochester, KY 42273.

Unincorporated Areas of Butler County
Maps are available for inspection at the County Courthouse, 110 North Main Street, Morgantown, KY 42261.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

James A. Walke,

Acting Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–31409 Filed 12–28–12; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB/SD IB Docket No. 12–267; DA 12–2046]

Comprehensive Review of Licensing and Operating Rules for Satellite Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment and reply comment period.

SUMMARY: In this document, the International Bureau granted a request for an extension of time to file comments in response to a Notice of Proposed Rulemaking that initiated a comprehensive review of the Commission's rules governing space stations and earth stations. The original deadline for filing comments was

December 24, 2012; the original deadline for filing reply comments was January 22, 2013. The International Bureau extended the deadlines for filing both comments and reply comments by three weeks.

DATES: Comments must be received on or before January 14, 2013. Reply comments must be received on or before February 13, 2013.

ADDRESSES: You may submit comments and reply comments, identified by IB Docket No. 12–267, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs*. Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: William Bell (202) 418–0741, Satellite Division, International Bureau, Federal Communications Commission, Washington, DC 20554. For additional information concerning the information collection(s) contained in this document, contact Judith B. Herman at 202–418–0214, or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION: The original Notice of Proposed Rulemaking was published in the **Federal Register** at 77 FR 67172, November 8, 2012. This is a summary of the Order in IB Docket No. 12–267, Comprehensive Review of Licensing and Operating Rules for Satellite Services, adopted and released on December 19, 2012. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or via email *FCC@BCPIWEB.com*.

Federal Communications Commission.

Gardner H. Foster,

Assistant Bureau Chief.

[FR Doc. 2012–31391 Filed 12–28–12; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 77, No. 250

Monday, December 31, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0083]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Animal Disease Traceability Information Systems, Agreements, and Reports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection that will help the Animal and Plant Health Inspection Service to strengthen its animal disease prevention and response capabilities.

DATES: We will consider all comments that we receive on or before March 1, 2013.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0083-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0083, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0083* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the animal disease traceability data systems, contact Mr. Neil Hammerschmidt, Program Manager, Animal Disease Traceability, VS, APHIS, 4700 River Road Unit 200, Riverdale, MD 20737; (301) 851–3539. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Animal Disease Traceability Information Systems, Agreements, and Reports.

OMB Number: 0579–0259.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (AHPA, 7 U.S.C. 8301 *et seq.*), the Secretary of Agriculture has the authority to issue orders and promulgate regulations to prevent the introduction into the United States and the dissemination within the United States of any pest or disease of livestock. The Animal and Plant Health Inspection Service's (APHIS') regulations in 9 CFR subchapter B govern cooperative programs to control and eradicate communicable diseases of livestock. The regulations in 9 CFR subchapter C establish requirements for the interstate movement of livestock to prevent the dissemination of diseases of livestock within the United States. Knowing where diseased and at-risk animals are, where they have been, and when, is indispensable in emergency response and in ongoing disease control and eradication programs. To provide a system that could provide for animal traceability, APHIS developed the Animal Disease Traceability (ADT) framework and ADT information systems. The basic data APHIS acquires through the ADT information systems will help APHIS obtain timely information on animal movement tracebacks and trace forwards when responding to an animal disease of concern.

The framework for ADT provides the basic tenets of an improved animal disease traceability capability in the United States and will only apply to animals moved in interstate commerce, be administered by the States and Tribal Nations to provide more flexibility, encourage the use of lower-cost technology, and be implemented transparently through Federal regulations. APHIS is adopting these tenets for animal disease traceability while using investments previously made on information systems, such as official animal identification devices and other areas where States and Tribes had achieved progress through cooperative agreements.

The ADT information systems involve a number of previously approved collection and recordkeeping activities, including animal identification; premises registration; nonproducer participant registration; updates submitted by animal identification number manufacturers and managers; cooperative agreements; cooperative agreement applications; cooperator (State/Tribe) quarterly accomplishment reports; and an identification number management system. These information collection activities were approved by the Office of Management and Budget (OMB) under control number 0579–0259. The ADT information systems require updates to information provided. In addition, producers and operators of feedlots, markets, buying stations, and slaughter plants will have to maintain records associated with their animal movement activities for 2 to 5 years, although these records are already routinely maintained by these entities.

Other activities are being discontinued. APHIS has discontinued the evaluation and listing of animal tracking databases since the activity is now managed by the States and Tribes. APHIS no longer requires reporting of animal movements to premises, so we no longer track individual and group/lot movement records, resulting in a 450,000-hour decrease in the overall burden. APHIS has removed the animal tracking database and movement record entries from the forms of burden. APHIS will no longer require producers to file quarterly progress reports. Finally, APHIS has consolidated its tracking methods for issuance of the various forms of identification. The overall result of discontinuing many of the previously approved activities has led to an overall decrease in estimated annual

burden on respondents from 2,832,437 hours to 47,051 hours. In addition, the estimated annual number of respondents has decreased from 500,472 to 106,890.

We are asking OMB to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.44 hours per response.

Respondents: State and Tribal animal health authorities; animal producers; operators of markets, buying stations, and feedlots; laboratory staff; device manufacturers; and slaughter plant personnel.

Estimated annual number of respondents: 60,315.

Estimated annual number of responses per respondent: 1.77.

Estimated annual number of responses: 106,890.

Estimated total annual burden on respondents: 47,051 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 20th day of December, 2012 .

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–31346 Filed 12–28–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0058]

Data Standards for Electronic Interstate Certificates of Veterinary Inspection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the availability of new data standards required to generate an official interstate certificate of veterinary inspection (ICVI). The data standards would define the minimum data elements required to generate an ICVI using an electronic data system, outline the methods by which data can be shared between participating systems, and provide methods of approving data systems for data quality control. We are making these standards available for public review and comment.

DATES: We will consider all comments that we receive on or before January 30, 2013.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS–2012–0058–0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0058, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

The data standards and any comments we receive may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS–2012–0058* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Vantiem, Information Technology Coordinator, National Animal Health Policy and Programs, VS, APHIS, 4700 River Road Unit 35, Riverdale, MD 20737–1231; (301) 851–3579.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) has established a set of minimum data standards for any electronic system to be used to generate an official interstate certificate of veterinary inspection (ICVI). The standards were developed with the National Assembly of State Animal Health Officials.

ICVIs protect animal health in several important ways. States use ICVIs to monitor animal movements, address specific animal health concerns, and enforce regulations. Specifically, ICVI are used to document the health status of animals moving interstate and track the animals' movement. ICVIs are also used to record observations and test results that show freedom from specific diseases.

ICVIs have traditionally been paper documents; however, a paper-based system can result in lag time between animal movement and the distribution of documents as well as inefficiencies in document archiving and retrieval.

APHIS has attempted to address these deficiencies by developing an electronic module that lets States enter ICVI data into the Veterinary Services Process Streamlining (VSPS) system. Several States and private entities are also attempting to improve the usefulness of ICVIs by developing electronic versions for use by State animal health officials and accredited veterinarians.

Since ICVIs contain important data fields for both animal disease traceability and disease surveillance, the data elements used in ICVIs must be compatible with one another and with the current database standards being implemented in the Surveillance Collaborative Services (SCS) application. SCS is an animal health and surveillance system that is used to maintain test and vaccination data and other program information such as disease or certification status for flocks/herds subject to APHIS' animal disease or pest surveillance and control programs.

We have prepared a document entitled ''Data Standards for Interstate Certificates of Veterinary Inspection'' (July 2012) that establishes a common set of data for ICVIs so the data can be collected by a variety of methods and be shared seamlessly between all participating entities. We are making this document available to the public for review and comment before posting it on the APHIS Web site [1] for use by interested States and private entities.

The data standards document may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the

[1] The final standards document will be available at *http://www.aphis.usda.gov/animal_health/index.shtml.*

location and hours of the reading room). You may also request paper copies of the data standards by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 20th day of December, 2012. .

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–31401 Filed 12–28–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–SM–2012–N248;FXFR133 50700640–134–FF07J00000]

Subsistence Management Program for Public Lands in Alaska; Rural Determination Process

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: Federal subsistence regulations require that the rural or nonrural status of communities or areas be reviewed every 10 years. In 2009, the Secretary of the Interior initiated a review of the Federal Subsistence Management Program. An ensuing directive was for the Federal Subsistence Board (Board) to review its process for determining the rural and nonrural status of communities. As a result, the Board has initiated a review of the rural determination process and is requesting comments from the public. These comments will be used by the Board, coordinating with the Secretaries of the Interior and Agriculture, to assist in making decisions regarding the scope and nature of possible changes to improve the rural determination process.

DATES: *Comments:* Comments on this notice must be received or postmarked by November 1, 2013.

Public meetings: The Federal Subsistence Regional Advisory Councils will hold public meetings to receive comments and make recommendations to the Federal Subsistence Board on this notice on several dates between August 19 and October 30, 2013. See Public Meetings under **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings.

ADDRESSES: *Comments:* Comments on this notice must be received or postmarked by November 1, 2013. You may submit comments by one of the following methods:

- *Electronically:* Comments addressing this notice may be sent to *subsistence@fws.gov.*
- *By hard copy:* U.S. mail or hand-delivery to: USFWS, Office of Subsistence Management, 1011 East Tudor Road, MS 121, Attn: Theo Matuskowitz, Anchorage, AK 99503–6199, or hand delivery to the Designated Federal Official attending any of the Federal Subsistence Regional Advisory Council public meetings.

Comments received will be available for public review during public meetings held by the Board on this issue. This generally means that any personal information you provide us will be available during public review.

Public meetings: See **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings. If the Board decides additional meetings are required, public announcements will be made that provide meeting dates and locations.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Peter J. Probasco, Office of Subsistence Management; (907) 786–3888; or *subsistence@fws.gov.* For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 743–9461; or *skessler@fs.fed.us.*

SUPPLEMENTARY INFORMATION:

Background

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program. This Program provides a priority for taking of fish and wildlife resources for subsistence uses on Federal public lands and waters in Alaska. The Secretaries published temporary regulations to implement this Program in the **Federal Register** on June 29, 1990 (55 FR 27114), and final regulations in the **Federal Register** on May 29, 1992 (57 FR 22940). The Secretaries have amended these regulations a number of times. Because this Program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, ''Parks, Forests, and Public Property,'' and Title 50, ''Wildlife and Fisheries,'' at 36 CFR 242.1–28 and 50 CFR 100.1–28, respectively. The regulations contain the following subparts: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife.

Federal Subsistence Board

Consistent with subpart B of these regulations, the Secretaries established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board comprises:

- A Chair, appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- The Alaska Regional Director, U.S. Fish and Wildlife Service;
- The Alaska Regional Director, U.S. National Park Service;
- The Alaska State Director, U.S. Bureau of Land Management;
- The Alaska Regional Director, U.S. Bureau of Indian Affairs;
- The Alaska Regional Forester, U.S. Forest Service; and
- Two public members appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture.

Through the Board, these agencies and public members participate in the development of regulations for subparts C and D, which, among other things, set forth program eligibility and specific harvest seasons and limits.

In administering the program, the Secretaries divided Alaska into 10 subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council. The Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Council members represent varied geographical, cultural, and user interests within each region.

Public Meetings

The Federal Subsistence Regional Advisory Councils have a substantial role in reviewing subsistence issues and making recommendations to the Board. The Federal Subsistence Board, through the Councils, will hold public meetings to accept comments on this notice during the fall meeting cycle. You may present comments on this notice during those meetings at the following locations in Alaska, on the following dates:

Region 1—Southeast Regional Council	Petersburg	September 24, 2013.
Region 2—Southcentral Regional Council	Copper Center	October 2, 2013.
Region 3—Kodiak/Aleutians Regional Council	Cold Bay	September 24, 2013.
Region 4—Bristol Bay Regional Council	Dillingham	October 29, 2013.
Region 5—Yukon–Kuskokwim Delta Regional Council	St. Marys	September 25, 2013.
Region 6—Western Interior Regional Council	Fairbanks	October 8, 2013.
Region 7—Seward Peninsula Regional Council	Nome	October 8, 2013.
Region 8—Northwest Arctic Regional Council	Kiana	August 21, 2013.
Region 9—Eastern Interior Regional Council	Fairbanks	October 16, 2013.
Region 10—North Slope Regional Council	Barrow	August 19, 2013.

A notice will be published of specific dates, times, and meeting locations in local and statewide newspapers, and on the Web at *http://alaska.fws.gov/asm/index.cfml,* prior to these meetings. Locations and dates may change based on weather or local circumstances.

Tribal Consultation and Comment

As expressed in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' the Federal officials that have been delegated authority by the Secretaries are committed to honoring the unique government-to-government relationship that exists between the Federal Government and Federally Recognized Indian Tribes (Tribes) as listed in 75 FR 60810 (October 1, 2010). Consultation with Alaska Native corporations is based on Public Law 108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: ''The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175.''

The Alaska National Interest Lands Conservation Act, Title VIII (16 U.S.C. 3111–3126), does not provide specific rights to Tribes for the subsistence taking of wildlife, fish, and shellfish. However, because tribal members and Alaska Native corporations are affected by subsistence regulations, the Secretaries, through the Board, will provide Federally recognized Tribes and Alaska Native corporations an opportunity to consult. The Board provides a variety of opportunities for consultation: engaging in dialogue at the Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, or by mail, email, or phone at any time during the comment period.

The Board will engage in outreach efforts for this notice, including a notification letter, to ensure that Tribes and Alaska Native corporations are advised of the mechanisms by which they can participate. The Board will commit to efficiently and adequately providing an opportunity to Tribes and Alaska Native corporations to prior to the adoption of any changes in policy or regulation concerning the rural determination process.

The Board will consider Tribes' and Alaska Native corporations' information, input, and recommendations, and endeavor to address their concerns.

Purpose of This Notice

In accordance with § __.10(d)(4)(ii), one of the responsibilities given to the Federal Subsistence Board is to determine which communities or areas of the State are rural or nonrural. Only residents of areas identified as rural are eligible to participate in the Federal Subsistence Management Program on Federal public lands in Alaska.

The Board determines if a community or area is rural in accordance with established guidelines set forth in § __.15(a). The Board reviews rural determinations on a 10-year cycle and may review determinations out-of-cycle in special circumstances. The Board conducts rulemaking to determine if the list at § __.23(a), which defines the rural/nonrural status of communities and/or areas, needs revision. Residents would have five years to comply with a rural to nonrural change. A change from nonrural to rural would be effective 30 days after publication of the rule.

On May 7, 2007, the Board published a final rule, ''Subsistence Management Regulations for Public Lands in Alaska, Subpart C; Nonrural Determinations'' (72 FR 25688). This rule revised the list of nonrural areas identified by the Board. The Board changed Adak's status to rural, added Prudhoe Bay to the list of nonrural areas, and adjusted the boundaries of the following nonrural areas: the Kenai Area; the Wasilla/Palmer Area, including Point McKenzie; the Homer Area, including Fritz Creek East (except Voznesenka) and the North Fork Road area; and the Ketchikan Area, including Saxman and portions of Gravina Island. The effective date was June 6, 2007, with a 5-year compliance date of May 7, 2012.

On October 23, 2009, Secretary of the Interior Salazar announced the initiation of a Departmental review of the Federal Subsistence Management Program in Alaska; Secretary of Agriculture Vilsack later concurred with this course of action. The review focused on how the Program is meeting the purposes and subsistence provisions of Title VIII of ANILCA, and how the Program is serving rural subsistence users as envisioned when it began in the early 1990s.

On August 31, 2010, the Secretaries announced the findings of the review, which included several proposed administrative and regulatory reviews and/or revisions to strengthen the Program and make it more responsive to those who rely on it for their subsistence uses. One proposal called for a review, with Council input, of the rural and nonrural determination process and, if needed, recommendations for regulatory changes.

On January 20, 2012, the Board met to consider the Secretarial directive, consider the Council's recommendations, and review all public, Tribal, and Native Corporation comments on the initial review of the rural determinations process. After discussion and careful review, the Board voted unanimously to initiate a review of the rural determination process and the 2010 decennial review. Consequently, based on that action, the Board found that it was in the public's best interest to extend the compliance date of its 2007 final rule (72 FR 25688; May 7, 2007) on rural and nonrural determinations until after the review of the rural determination process and decennial review are complete or in 5 years, whichever comes first. The Board has already published a final rule (77 FR 12477; March 1, 2012) extending the compliance date.

Request for Input

To comply with the Secretarial directives and the Federal subsistence regulations, the Federal Subsistence Board is proceeding with a review of the rural determination process. As part of the Secretaries' commitment to open

government and in accordance with Executive Order 13563, the Board requests input from the public on the rural determination process and regulations, and ways to improve them for the benefit of rural Alaskans.

The Board has identified the following components in the process for review: Population thresholds, rural characteristics, aggregation of communities, timelines, and information sources. We describe these components below and include questions for public consideration and comment.

Population thresholds. The Federal Subsistence Board currently uses several guidelines to determine whether a specific area of Alaska is rural. One guideline sets population thresholds. A community or area with a population below 2,500 will be considered rural. A community or area with a population between 2,500 and 7,000 will be considered rural or nonrural, based on community characteristics and criteria used to group communities together. Communities with populations more than 7,000 will be considered nonrural, unless such communities possess significant characteristics of a rural nature. In 2008, the Board recommended to the Secretaries that the upper population threshold be changed to 11,000. The Secretaries have taken no action on this recommendation.

(1) Are these population threshold guidelines useful for determining whether a specific area of Alaska is rural?

(2) If they are not, please provide population size(s) to distinguish between rural and nonrural areas, and the reasons for the population size you believe more accurately reflects rural and nonrural areas in Alaska.

Rural characteristics. The Board recognizes that population alone is not the only indicator of rural or nonrural status. Other characteristics the Board considers include, but are not limited to, the following: Use of fish and wildlife; development and diversity of the economy; community infrastructure; transportation; and educational institutions.

(3) Are these characteristics useful for determining whether a specific area of Alaska is rural?

(4) If they are not, please provide a list of characteristics that better define or enhance rural and nonrural status.

Aggregation of communities. The Board recognizes that communities and areas of Alaska are connected in diverse ways. Communities that are economically, socially, and communally integrated are considered in the aggregate in determining rural and nonrural status. The aggregation criteria are as follows: Do 30 percent or more of the working people commute from one community to another; do they share a common high school attendance area; and are the communities in proximity and road-accessible to one another?

(5) Are these aggregation criteria useful in determining rural and nonrural status?

(6) If they are not, please provide a list of criteria that better specify how communities may be integrated economically, socially, and communally for the purposes of determining rural and nonrural status.

Timelines. The Board reviews rural determinations on a 10-year cycle, and out of cycle in special circumstances.

(7) Should the Board review rural determinations on a 10-year cycle? If so, why; if not, why not?

Information sources. Current regulations state that population data from the most recent census conducted by the U.S. Census Bureau, as updated by the Alaska Department of Labor, shall be utilized in the rural determination process. The information collected and the reports generated during the decennial census vary between each census; as such, data used during the Board's rural determination may vary.

(8) These information sources as stated in regulations will continue to be the foundation of data used for rural determinations. Do you have any additional sources you think would be beneficial to use?

(9) In addition to the preceding questions, do you have any additional comments on how to make the rural determination process more effective?

This notice announces to the public, including rural Alaska residents, Federally recognized Tribes of Alaska, and Alaska Native corporations, the request for comments on the Federal Subsistence Program's rural determination process. These comments will be used by the Board to assist in making decisions regarding the scope and nature of possible changes to improve the rural determination process, which may include, where the Board has authority, proposed regulatory action(s) or in areas where the Secretaries maintain purview, recommended courses of action.

Dated: December 5, 2012.

Peter J. Probasco,

Assistant Regional Director, U.S. Fish and Wildlife Service, Acting Chair, Federal Subsistence Board.

Dated: December 6, 2012.

Steve Kessler,

Subsistence Program Leader, USDA–Forest Service.

[FR Doc. 2012–31359 Filed 12–28–12; 8:45 am]

BILLING CODE 3410–11–P ; 4310–55–P

DEPARTMENT OF AGRICULTURE

Forest Service

Transfer of Land to the Department of Interior

AGENCY: Forest Service, USDA.

ACTION: Notice of Land Transfer.

SUMMARY: Approximately 353.63 acres of National Forest System lands are transferred to the jurisdiction of the Secretary of Interior pursuant to the Hoopa-Yurok Settlement Act (Pub. L. 100–580; 102 Stat. 2924 (1988)). Transfer of Jurisdiction of Certain National Forest System Lands in California to the Department of the Interior for the benefit of the Yurok Tribe.

DATES: This notice becomes effective December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Louisa Herrera, National Title Program Manager, (202) 205–1255, Lands and Realty Management.

SUPPLEMENTARY INFORMATION: The Hoopa-Yurok Settlement Act (Pub. L. 100–580;102; Stat. 2924 (1988)), hereafter ''Act'', provides at section 2(c) that, subject to valid existing rights, certain enumerated National Forest System lands shall be ''held in trust by the United States for the benefit of the Yurok Tribe and shall be part of the Yurok Reservation'' (102 Stat. 2926). A condition precedent to such lands being held in trust is adoption of a resolution of the Interim Council of the Yurok Tribe as provided in section 2(c)(4) of the Act (102 Stat. 2926).

On March 21, 2007, the Yurok Tribal Council enacted Resolution No. 07–037, waiving certain claims and consenting to uses of tribal funds pursuant to the Act. The Department of the Interior has determined that the resolution meets the requirements of section 2(c)(4) of the Act, and that determination has been accepted by the Department of Agriculture.

Therefore, the conditions of transfer having been met, subject to valid existing rights, administrative jurisdiction over the following Federally

owned lands, including improvements, is hereby vested in the Secretary of the Interior, to be held in trust for the Yurok Tribe. The lands are described as follows:

Six Rivers National Forest, Northern Redwood Purchase Unit, California

Humboldt Meridian, Del Norte County, California

T.13 N., R. 1 E.

Sec. 3, Lot 3 excepting parcel 3C, Lot 4 excepting parcel 4D, SW1/4NW1/4 excepting parcel E, SE1/4NW1/4 excepting parcel F, NE1/4SW1/4 excepting parcel J, NW1/4SE1/4 excepting parcel J, SW1/4SE1/4 excepting parcel K, all as shown on the Bureau of Land Management plat of the resurvey of T.13 N., R.1 E., H.M., approved June 24, 1971;

Sec. 10, Lot 1 excepting parcel 1C, Lot 6 excepting parcel 6D, NW1/4NE1/4 excepting parcel B, SE1/4NE1/4 excepting parcel E, NE1/4SE1/4 excepting parcel F, all as shown on the Bureau of Land Management plat of the resurvey of T.13 N., R.1 E., H.M., approved June 24, 1971, and (1) excepting from lands in Sec. 10, a piece or parcel of land conveyed to the State of California by Willis C. Ward, *et al.,* by deed dated June 18, 1934, and recorded August 21, 1935, on pages 92 to 95 of Book 54 of Deeds, Records of Del Norte County, California, said piece or parcel of land being fully described in said deed, and (2) also excepting those lands in Sec. 10 conveyed to the County of Del Norte by the United States of America by deed dated November 3, 1970, and recorded January 3, 1971, on pages 7 to 10 of Book 154 of Official Records of Del Norte County, California, said lands being fully described in said deed, and (3) also together with that parcel in Lot 6 of Sec. 10 conveyed to the United States of America by the County of Del Norte, by deed dated August 10, 1970, and recorded August 25, 1970, on pages 374 to 375 of Book 151 of Official Records of Del Norte County, California, said parcel being fully described in said deed;

Sec. 15, Portion of Lot 2 lying southerly of the northern boundary and the easterly prolongation of the northern boundary of parcels 2A and B, excepting parcel 2A, Lot 3 excepting parcel 3C, and Lot 6 excepting parcel 6G, all as shown on the Bureau of Land Management plat of the resurvey of T.13 N., R.1 E., H.M., approved June 24, 1971.

T.13 N., R.2 E.

Sec. 19, Lot 1 and Lot 5;

Sec. 20, W1/2SW1/4NW1/4

T. 14 N., R. 1 E.

That portion of Lot 6, Sec. 28, as per map titles Record of Survey for Six Rivers National Forest, recorded in Book 10 of Maps at Pages 154 to 157 in the office of Del Norte County Recorder, State of California, described as follows: Beginning at a monument marked AP–1 distant N 89° 14′42″W 350.00 feet from the Center ¼ corner of said Sec. 28,

North 117.17 feet to a monument marked AP–2,

N 40°00′00″ W 507.49 feet to a monument marked AP–3,

N 47°04′17″ W 263.59 feet to a monument marked AP–4,

N 04°15′38″ E 367.17 feet to a monument marked AP–5,

N 89°14′42″ W 456.56 feet to a monument marked AP–6,

S 04°15′43″ W 426.05 feet along the N–S Centerline of the

NW¼, Sec. 28, to a monument marked AP–7,

Thence along a non-tangent curve concave southwesterly with a radius of 2040 feet through a central angle of 04°32′48″ a distance of 161.89 feet (chord length) to a monument marked M29R,

S 22°44′12E 516.87 feet along the easterly right of way line for Highway 101 to a monument marked AP–9,

S 89 14′42″E 711.98 feet along the south line of the NW1/4,Sec. 28, to the point of beginning,

EXCEPT that parcel lying east of the N–S Centerline of the NW ¼, Sec. 28, between AP–6 and AP–7, conveyed to Freda D. Davidson by the United States of America by deed dated April 18, 1991, and recorded May 1, 1991, on pages 512 to 514 of Book 373 of Official Records of Del Norte County, California, said land being further described on the Record of Survey filed in Book 10 of Maps at Page 199 in the office of Del Norte County Recorder, State of California.

And including: correction deed recorded June 5, 1991, on pages 811 and 812 of Book 374 of the Official Records of Del Norte County, California. The correction deed changed the location of the conveyance parcel from being in a portion of the NW1/4 NW1/4 Section 28, T14N R1E HM to a portion of Lot 6 in the same section, township and range.

Dated: December 19, 2012.

Calvin N. Joyner,

Associate Deputy Chief, National Forest Service.

[FR Doc. 2012–31342 Filed 12–28–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Solicitation of Veterinary Shortage Situation Nominations for the Veterinary Medicine Loan Repayment Program (VMLRP)

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice and solicitation for nominations.

SUMMARY: The National Institute of Food and Agriculture (NIFA) is soliciting nominations of veterinary service shortage situations for the Veterinary Medicine Loan Repayment Program (VMLRP) for fiscal year (FY) 2013, as authorized under the National Veterinary Medical Services Act (NVMSA), 7 U.S.C. 3151a. This notice initiates a 60-day nomination period and prescribes the procedures and criteria to be used by State, Insular Area, DC and Federal Lands to nominate veterinary shortage situations. Each year all eligible nominating entities may submit nominations, up to the maximum indicated for each entity in this notice. NIFA is conducting this solicitation of veterinary shortage situation nominations under a previously approved information collection (OMB Control Number 0524–0046).

DATES: Shortage situation nominations, both new and carry over, must be submitted on or before March 1, 2013.

ADDRESSES: Submissions must be made by email at *vmlrp@nifa.usda.gov* to the Veterinary Medicine Loan Repayment Program; National Institute of Food and Agriculture; U.S. Department of Agriculture.

FOR FURTHER INFORMATION CONTACT: Gary Sherman; National Program Leader, Veterinary Science; National Institute of Food and Agriculture; U.S. Department of Agriculture; STOP 2220; 1400 Independence Avenue, SW.; Washington, DC 20250–2220; Voice: 202–401–4952; Fax: 202–401–6156; Email: *vmlrp@nifa.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background and Purpose

A landmark series of three peer-reviewed studies published in 2007 in

the Journal of the American Veterinary Medical Association (JAVMA), and sponsored by the Food Supply Veterinary Medicine Coalition (*www.avma.org/fsvm/recognition.asp*), gave considerable attention to the growing shortage of food supply veterinarians, the causes of shortages in this sector, and the consequences to the US food safety infrastructure and to the general public if this trend continues to worsen. Food supply veterinary medicine embraces a broad array of veterinary professional activities, specialties and responsibilities, and is defined as the full range of veterinary medical practices contributing to the production of a safe and wholesome food supply and to animal, human, and environmental health. However, the privately practicing food animal veterinary practitioner population within the US is, numerically, the largest, and arguably the most important single component of the food supply veterinary medical sector. Food animal veterinarians, working closely with livestock producers and State and Federal officials, constitute the first line of defense against spread of endemic and zoonotic diseases, introduction of high consequence foreign animal diseases, and other threats to the health and wellbeing of both animals and humans who consume animal products.

Among the most alarming findings of the Coalition-sponsored studies was objective confirmation that insufficient numbers of veterinary students are selecting food supply veterinary medical careers. This development has led both to current shortages and to projections for worsening shortages over the next 10 years. Burdensome educational debt was the leading concern students listed for opting not to choose a career in food animal practice or other food supply veterinary sectors. According to a survey of veterinary medical graduates conducted by the American Veterinary Medical Association (AVMA) in the spring of 2012, the average educational debt for students graduating from veterinary school is approximately $151,000. Such debt loads incentivize students to select other veterinary careers, such as companion animal medicine, which tend to be more financially lucrative and, therefore, enable students to more quickly repay their outstanding educational loans. Furthermore, when this issue was studied in the Coalition report from the perspective of identifying solutions to this workforce imbalance, panelists were asked to rate 18 different strategies for addressing shortages. Responses from the panelists overwhelmingly showed that student debt repayment and scholarship programs were the most important strategies in addressing future shortages (JAVMA 229:57–69).

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements imposed by the implementation of these guidelines have been approved by OMB Control Number 0524–0046.

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Guidelines for Veterinary Shortage Situation Nominations

I. Preface and Authority

In January 2003, the National Veterinary Medical Service Act (NVMSA) was passed into law adding section 1415A to the National Agricultural Research, Extension, and Teaching Policy Act of 1997 (NARETPA). This law established a new Veterinary Medicine Loan Repayment Program (7 U.S.C. 3151a) authorizing the Secretary of Agriculture to carry out a program of entering into agreements with veterinarians under which they agree to provide veterinary services in veterinarian shortage situations.

In FY 2010, NIFA announced the first funding opportunity for the VMLRP and received 260 applications from which NIFA issued 53 awards totaling $5,186,000 to fill veterinary shortage areas in 31 states. In FY 2011, NIFA received 159 applications from which NIFA issued 75 awards totaling $7,251,000 to fill veterinary shortage areas in 35 states. There was a cumulative total of up to $4,500,000 available for awards heading into the FY 2012 funding opportunity. Funding for FY 2013 and future years will be based on annual appropriations and balances, if any, carried forward from prior years, and may vary from year to year.

Section 7105 of the Food, Conservation, and Energy Act of 2008, Public Law 110–246, (FCEA) amended section 1415A to revise the determination of veterinarian shortage situations to consider (1) geographical areas that the Secretary determines have a shortage of veterinarians; and (2) areas of veterinary practice that the Secretary determines have a shortage of veterinarians, such as food animal medicine, public health, epidemiology, and food safety. This section also added that priority should be given to agreements with veterinarians for the practice of food animal medicine in veterinarian shortage situations.

NARETPA section 1415A requires the Secretary, when determining the amount of repayment for a year of service by a veterinarian to consider the ability of USDA to maximize the number of agreements from the amounts appropriated and to provide an incentive to serve in veterinary service shortage areas with the greatest need.

The Secretary delegated the authority to carry out this program to NIFA pursuant to 7 CFR § 2.66(a)(141).

Pursuant to the requirements enacted in the NVMSA of 2004 (as revised), and the implementing regulation for this Act, Part 3431 Subpart A of the VMLRP Final Rule [75 FR 20239–20248], NIFA hereby implements guidelines for authorized State Animal Health Officials (SAHO) to nominate veterinary shortage situations for the FY 2013 program cycle:

II. Nomination of Veterinary Shortage Situations

A. General

1. Eligible Shortage Situations

Section 1415A of NARETPA, as amended and revised by Section 7105 of FCEA directs determination of veterinarian shortage situations to consider (1) geographical areas that the Secretary determines have a shortage of veterinarians; and (2) areas of veterinary practice that the Secretary determines have a shortage of veterinarians, such as food animal medicine, public health,

epidemiology, and food safety. This section also added that priority should be given to agreements with veterinarians for the practice of food animal medicine in veterinarian shortage situations.

While the NVMSA (as amended) specifies priority be given to food animal medicine shortage situations, and that consideration also be given to specialty areas such as public health, epidemiology and food safety, the Act does not identify any areas of veterinary practice as ineligible. Accordingly, all nominated veterinary shortage situations will be considered eligible for submission. However, the competitiveness of submitted nominations, upon evaluation by the external review panel convened by NIFA, will reflect the intent of Congress that priority be given to certain types of veterinary service shortage situations. NIFA therefore anticipates that the most competitive nominations will be those directly addressing food supply veterinary medicine shortage situations.

NIFA has adopted definitions of the practice of veterinary medicine and the practice of food supply medicine that are broadly inclusive of the critical roles veterinarians serve in both public practice and private practice situations. Nominations describing either public or private practice veterinary shortage situations will therefore be eligible for submission. However, NIFA interprets that Congressional intent is to give priority to the private practice of food animal medicine. NIFA is grateful to the Association of American Veterinary Medical Colleges (AAVMC), the American Veterinary Medical Association (AVMA), and other stakeholders for their recommendations regarding the appropriate balance of program emphasis on public and private practice shortage situations. NIFA will seek to achieve a final distribution of approximately 90 percent of nominations (and eventual agreements) that are geographic, private practice, food animal veterinary medicine shortage situations, and approximately 10 percent of nominations that reflect public practice shortage situations.

2. State Respondents and Use of Consultation

Respondents on behalf of each State include the chief State Animal Health Official (SAHO), as duly authorized by the Governor or the Governor's designee in each State. The SAHOs are requested to submit nominations to *vmlrp@nifa.usda.gov* by way of the Veterinarian Shortage Situation Nomination Form (OMB Control Number 0524–0046), which is available in the State Animal Health Officials section on the VMLRP Web site at *www.nifa.usda.gov/vmlrp.* One form must be submitted for each nominated shortage situation. NIFA strongly encourages the SAHO to involve leading health animal experts in the State in the identification and prioritization of shortage situation nominations.

3. Rationale for Capping Nominations and State Allocation Method

In its consideration of fair, transparent and objective approaches to solicitation of shortage area nominations, NIFA evaluated three alternative strategies before deciding on the appropriate strategy. The first option considered was to impose no limits on the number of nominations submitted. The second was to allow each state the same number of nominations. The third (eventually selected) was to differentially cap the number of nominations per state based on defensible and intuitive criteria.

The first option, providing no limits to the number of nominations per state, is fair to the extent that each state and insular area has equal opportunity to nominate as many situations as desired. However, funding for the VMLRP is limited (relative to anticipated demand), so allowing potentially high and disproportionate submission rates of nominations could both unnecessarily burden the nominators and the reviewers with a potential avalanche of nominations and dilute highest need situations with lower need situations. Moreover, NIFA believes that the distribution of opportunity under this program (i.e., distribution of mapped shortage situations resulting from the nomination solicitation and review process) should roughly reflect the national distribution of food supply veterinary service demand. By not capping nominations based on some objective criteria, it is likely there would be no correlation between the mapped pattern and density of certified shortage situations and the actual pattern and density of need. This in turn could undermine confidence in the program with Congress, the public, and other stakeholders.

The second option, limiting all states and insular areas to the same number of nominations suffers from some of the same disadvantages as option one. It has the benefit of limiting administrative burden on both the SAHO and the nomination review process. However, like option one, there would be no correlation between the mapped pattern of certified shortage situations and the actual pattern of need. For example, Guam and Rhode Island would be allowed to submit the same number of nominations as Texas and Nebraska, despite the large difference in the sizes of their respective animal agriculture industries and rural land areas requiring veterinary service coverage.

The third option, to cap the number of nominations in relation to major parameters correlating with veterinary service demand, achieves the goals both of practical control over the administrative burden to the states and NIFA, and of achieving a mapped pattern of certified nominations that approximates the theoretical actual shortage distribution. In addition, this method limits dilution of highest need areas with lower need areas. The disadvantage of this strategy is that there is no validated, unbiased, direct measure of veterinary shortage, and so it is necessary to employ parameters that correlate with the hypothetical cumulative relative need for each state in comparison to other states.

In the absence of a validated unbiased direct measure of relative veterinary service need or risk for each state and insular area, the National Agricultural Statistics Service (NASS) provided NIFA with reliable and public data that correlate with demand for food supply veterinary service. NIFA consulted with NASS and determined that the NASS variables most strongly correlated with state-level food supply veterinary service need are ''Livestock and Livestock Products Total Sales ($)'' and ''Land Area'' (acres). The ''Livestock and Livestock Products Total Sales ($)'' variable broadly predicts veterinary service need in a State because this is a normalized (to cash value) estimate of the extent of (live) animal agriculture in the state. The State ''land area'' variable predicts veterinary service need because there is positive correlation between state land area, percent of state area classified as rural and the percent of land devoted to actual or potential livestock production. Importantly, land area is also directly correlated with the number of veterinarians needed to provide veterinary services in a state because of the practical limitations relating to the maximum radius of a standard veterinary service area. Due to fuel and other cost factors, the maximum radius a veterinarian operating a mobile veterinary service can cover is approximately 60 miles, which roughly corresponds to two or three contiguous counties of average size.

Although these two NASS variables are not perfect predictors of veterinary service demand, NIFA believes they account for a significant proportion of several of the most relevant factors influencing veterinary service need and

risk for the purpose of fairly and transparently estimating veterinary service demand. To further ensure fairness and equitability, NIFA is employing these variables in a straightforward and transparent manner that ensures every state and insular area is eligible for at least one nomination and that all States receive an apportionment of nominations, relative to their geographic size and size of agricultural animal industries.

Following this rationale, the Secretary is specifying the maximum number of nominations per state in order to (1) Assure distribution of designated shortage areas in a manner generally reflective of the differential overall demand for food supply veterinary services in different states, (2) assure the number of shortage situation nominations submitted fosters emphasis on selection by nominators and applicants of the highest priority need areas, and (3) provide practical and proportional limitations of the administrative burden borne by SAHOs preparing nominations, and by panelists serving on the NIFA nominations review panel.

Furthermore, instituting a limit on the number of nominations is consistent with language in the Final Rule stating, ''The solicitation may specify the maximum number of nominations that may be submitted by each State animal health official.''

4. State Allocation of Nominations

The number of designated shortage situations per state will be limited by NIFA, and this has an impact on the number of new nominations a state may submit each time NIFA solicits shortage nominations. In the 2013 cycle, NIFA is again accepting the number of nominations equivalent to the allowable number of designated shortage areas for each state. All eligible submitting entities will, for the 2013 cycle, have an opportunity to do the following: (1) Retain designated status for any shortage situation successfully designated in 2012 (if there is no change to any information, the nomination will be approved for 2013 without the need for re-review by the merit panel), (2) rescind any nomination officially designated in 2012, and (3) submit new nominations. The total of the number of new nominations plus designated nominations retained (carried over) may not exceed the maximum number of nominations each entity is permitted. Any amendment to an existing shortage nomination is presumed to constitute a significant change. Therefore, an amended nomination must be rescinded and resubmitted to NIFA as a new nomination and it will be evaluated by the 2013 review panel.

The maximum number of nominations (and potential designations) will remain the same in 2013 as they were for the previous three years. Thus, all states have the opportunity to re-establish the maximum number of designated shortage situations. Awards from previous years have no bearing on a state's maximum number of allowable shortage nomination submissions or number of designations for subsequent years. NIFA reserves the right in the future to proportionally adjust the maximum number of designated shortage situations per state to ensure a balance between available funds and the requirement to ensure priority is given to mitigating veterinary shortages corresponding to situations of greatest need. Nomination Allocation tables for FY 2013 are available under the State Animal Health Officials section of the VMLRP web site at www.nifa.usda.gov/vmlrp.

Table I lists ''Special Consideration Areas'' which include any State or Insular Area not reporting data, and/or reporting less than $1,000,000 in annual Livestock and Livestock Products Total Sales ($), and/or possessing less than 500,000 acres, as reported by NASS. One nomination is allocated to any State or Insular Area classified as a Special Consideration Area.

Table II shows how NIFA determined nomination allocation based on quartile ranks of States for two variables broadly correlated with demand for food supply veterinary services: ''Livestock and Livestock Products Total Sales ($)'' (LPTS) and ''Land Area (acres)'' (LA). The total number of NIFA- designated shortage situations per state in any given program year is based on the quartile ranking of each state in terms of LPTS and LA. States for which NASS has both LPTS and LA values, and which have at least $1,000,000 LPTS and at least 500,000 acres LA (typically all states plus Puerto Rico), were independently ranked from least to greatest value for each of these two composite variables. The two ranked lists were then divided into quartiles with quartile 1 containing the lowest variable values and quartile 4 containing the highest variable values. Each state then received the number of designated shortage situations corresponding to the number of the quartile in which the state falls. Thus a state that falls in the second quartile for LA and the third quartile for LPTS may submit a maximum of five shortage situation nominations (2 + 3). This transparent computation was made for each state thereby giving a range of 2 to 8 shortage situation nominations, contingent upon each state's quartile ranking for the two variables.

The maximum number of designated shortage situations for each State in 2013 is shown in Table III.

While Federal Lands are widely dispersed within States and Insular Areas across the country, they constitute a composite total land area over twice the size of Alaska. If the 200-mile limit U.S. coastal waters and associated fishery areas are included, Federal Land total acreage would exceed 1 billion. Both State and Federal Animal Health officials have responsibilities for matters relating to terrestrial and aquatic food animal health on Federal Lands. Interaction between wildlife and domestic livestock, such as sheep and cattle, is particularly common in the plains states where significant portions of Federal lands are leased for grazing. Therefore, both SAHOs and the Chief Federal Animal Health Officer (Deputy Administrator, Animal and Plant Health Inspection Service or designee) may submit nominations to address shortage situations on or related to Federal Lands.

NIFA emphasizes that shortage nomination allocation is set to broadly balance the number of designated shortage situations across states prior to the application and award phases of the VMLRP. Awards will be made based strictly on the peer review panels' assessment of the quality of the match between the knowledge, skills and abilities of the applicant and the attributes of the specific shortage situation applied for, thus no state will be given a preference for placement of awardees. Additionally, unless otherwise specified in the shortage nomination form, each designated shortage situation will be limited to one award.

5. FY 2013 Shortage Situation Nomination Process

As described in Section 4 above, all SAHOs will, for the FY 2013 cycle, have an opportunity to do the following: (1) Retain (carry over) designated status for any shortage situation successfully designated in 2012 and not revised, without need for reevaluation by merit review panel, (2) rescind any nomination officially designated in 2012, and (3) submit new nominations. The total number of new nominations and designated nominations retained (carried over) may not exceed the maximum number of shortages each state is allocated. An amendment to an existing shortage nomination constitutes a significant change and therefore must

be rescinded and resubmitted to NIFA as a new nomination, to be evaluated by the 2013 review panel. The maximum number of nominations (and potential designations) for each state is the same in 2013 as it was in previous years.

The following process is the mechanism by which a SAHO should retain or rescind a designated nomination: NIFA will initiate the process by sending an email to each SAHO with a PDF copy of the nomination form of each designated area that went unfilled in FY 2012. If the SAHO wishes to retain (carry over) one or more designated nomination(s), the SAHO shall copy and paste the prior year information (unrevised) into the current year's nomination form. The SAHO will then email the carry over nomination(s), along with any new nominations, to vmlrp@nifa.usda.gov by the published deadline.

Both new and retained nominations must be submitted on the Veterinary Shortage Situation Nomination form provided in the State Animal Health Officials section at www.nifa.usda.gov/vmlrp.

6. Submission and Due Date

Shortage situation nominations, both new and carry over, must be submitted on or before March 1, 2013, by email at vmlrp@nifa.usda.gov to the Veterinary Medicine Loan Repayment Program; National Institute of Food and Agriculture; U.S. Department of Agriculture.

7. Period Covered

Each designated shortage situation shall be certified and remain certified until it is filled with a VMLRP award or withdrawn by the SAHO. A SAHO may request that NIFA remove a previously certified and designated shortage situation by sending an email to vmlrp@nifa.usda.gov. The request should specifically identify the shortage situation the SAHO wishes to withdraw and the reason(s) for its withdrawal. The program manager will review the request, make a determination, and inform the requesting SAHO of the final action taken. When a request for withdrawal of a designated shortage situation leads to its removal from the list of NIFA-designated shortage situations, the withdrawn situation may not be replaced with a new shortage situation nomination until NIFA issues its next solicitation of shortage situation nominations for this program.

8. Definitions

For the purpose of implementing the solicitation for veterinary shortage situations, the definitions provided in 7 CFR part 3431 are applicable.

B. Nomination Form and Description of Fields

1. Access to Nomination Form

The veterinary shortage situation nomination form is available in the State Animal Health Officials section at www.nifa.usda.gov/vmlrp. The completed form must be emailed to *vmlrp@nifa.usda.gov*.

2. Physical Location of Shortage Area or Position

Following conclusion of the nomination and designation process, NIFA will prepare lists and/or maps that include all designated shortage situations for the current program year. This effort requires a physical location that represents the center of the service area for a geographic shortage or the location of the main office or work address for a public practice and/or specialty practice shortage. For example, if the state seeks to certify a tri-county area as a food animal veterinary service (i.e., Type I) shortage situation, a road intersection approximating the center of the tri-county area would constitute a satisfactory physical location for NIFA's listing and mapping purposes. By contrast, if the state is identifying ''veterinary diagnostician'', a Type III nomination, as a shortage situation, then the nominator would complete this field by filling in the address of the location where the diagnostician would work (e.g., State animal disease diagnostic laboratory).

3. Overall Priority of Shortage

Congressional intent is for this program to incentivize applicants to ''serve in veterinary service shortage areas with the greatest need.'' There is therefore the presumption that all areas nominated as shortage situations should be classified as at least ''moderate priority'' shortages. To assist nomination merit review panelists and award phase peer panelists in scoring shortage nominations and ranking applications from VMLRP applicants, SAHOs are asked to characterize each shortage situation nomination as ''Moderate Priority'', ''High Priority'', or ''Critical Priority'' shortages.

Moderate Priority: This shortage prioritization corresponds to an area lacking in some aspect of food supply veterinary services, commensurate with the service percent full-time-equivalency (FTE) specified. Absence of, or insufficient, trained ''eyes and ears'' of a veterinarian serving a food animal production area is sufficient to constitute moderate priority shortage status. This is because access to veterinary services is necessary for basic animal health, animal well-being, production profitability, and for food safety, and because high consequence disease outbreaks in agricultural animals or natural catastrophes can occur spontaneously anywhere. In such cases, early detection of disease and/or treatment of animals are essential. These activities are the authorized purview of a licensed veterinarian. In addition to the above examples, the SAHO is invited to make a unique case based on other situation-specific risk criteria, for classifying a nominated area as a Moderate Priority shortage.

High Priority: This shortage prioritization corresponds to an area lacking sufficient access to food supply veterinary services, commensurate with the service percent FTE specified. High Priority status is justified by meeting the criteria for Moderate Priority status plus any of a variety of additional concerns relating to food supply veterinary medicine and/or public health. For example, the area may exhibit an especially large census of food animals in comparison to available veterinary services. Special animal or public health threats unique to the area, such as a recent history of outbreaks of high consequence, reportable, endemic animal and zoonotic diseases (e.g., Brucellosis, TB, etc) could also constitute a high priority threat. In addition to the above examples, the SAHO is invited to make a unique case based on other situation-specific risk criteria, for classifying a nominated area as a High Priority shortage.

Critical Priority: This shortage prioritization corresponds to an area severely lacking in some aspect of food supply or public health-related veterinary services, commensurate with the service percent FTE specified. Critical priority status is justified by meeting the criteria for moderate and/or high priority status plus any of a variety of additional serious concerns relating to the roles food supply veterinarians play in protecting animal and public health. For example, an area may exhibit an especially high potential for natural disasters or for incursion of catastrophic foreign animal disease such as Highly Pathogenic Avian Influenza, Mad Cow Disease, or Foot and Mouth Disease. High risk areas could include high through-put international animal importation sites and areas where wild life and domestic food animals cross national borders carrying infectious disease agents (e.g., the US-Mexico border). In addition to the above

examples, the submitting SAHO is invited to make a unique case based on other situation-specific risk criteria for classifying a nominated area as a Critical Priority shortage.

4. Type I Shortage—80 Percent or Greater Private Practice Food Supply Veterinary Medicine

SAHOs identifying this shortage type must check one or more boxes indicating which specie(s) constitute the veterinary shortage situation. Indicate either ''Must Cover'' or ''May Cover'' to stipulate which species a future awardee must be prepared, willing, and committed to provide services for, versus which species an awardee could treat using a minor percentage of their time obligated under a VMLRP contract. The Type I shortage situation must entail at least an 80 percent time commitment to private practice food supply veterinary medicine. The nominator will specify the minimum percent time (between 80 and 100 percent of a standard 40 hour week) a veterinarian must commit in order to satisfactorily fill the specific nominated situation. The shortage situation may be located anywhere (rural or non-rural) so long as the veterinary service shortages to be mitigated are consistent with the definition of ''practice of food supply veterinary medicine.'' The minimum 80 percent time commitment is, in part, recognition of the fact that occasionally food animal veterinary practitioners are expected to meet the needs of other veterinary service sectors such as clientele owning companion and exotic animals. Type I nominations are intended to address those shortage situations where the nominator believes a veterinarian can operate profitably committing between 80 and 100 percent time to food animal medicine activities in the designated shortage area, given the client base and other socio-economic factors impacting viability of veterinary practices in the area. This generally corresponds to a shortage area where clients can reasonably be expected to pay for professional veterinary services and where food animal populations are sufficiently dense to support a (or another) veterinarian. The personal residence of the veterinarian (VMLRP awardee) and the address of veterinary practice employing the veterinarian may or may not fall within the geographic bounds of the designated shortage area.

5. Type II Shortage—30 Percent or Greater Private Practice Food Supply Veterinary Medicine in a Rural Area (as defined)

SAHOs identifying this shortage type must check one or more boxes indicating which specie(s) constitute the veterinary shortage situation. Indicate either ''Must Cover'' or ''May Cover'' to stipulate which species a future awardee must be prepared, willing, and committed to provide services for, versus which species an awardee could treat using a minor percentage of their time obligated under a VMLRP contract. The shortage situation must be in an area satisfying the definition of ''rural.'' The minimum 30 percent-time (12 hr/wk) commitment of an awardee to serve in a rural shortage situation is in recognition of the fact that there may be some remote or economically depressed rural areas in need of food animal veterinary services that are unable to support a practitioner predominately serving the food animal sector, yet the need for food animal veterinary services for an existing, relatively small, proportion of available food animal business is nevertheless great. The Type II nomination is therefore intended to address those rural shortage situations where the nominator believes there is a shortage of food supply veterinary services, and that a veterinarian can operate profitably committing 30 to 100 percent to food animal medicine in the designated rural shortage area. The nominator will specify the minimum percent time (between 30 and 100 percent) a veterinarian must commit in order to satisfactorily fill the specific nominated situation. Under the Type II nomination category, the expectation is that the veterinarian may provide veterinary services to other veterinary sectors (e.g., companion animal clientele) as a means of achieving financial viability. As with Type I nominations, the residence of the veterinarian (VMLRP awardee) and/or the address of veterinary practice employing the veterinarian may or may not fall within the geographic bounds of the designated shortage area. However, the awardee is required to verify the specified minimum percent time commitment (30 percent to 100 percent, based on a standard 40 hour work week) to service within the specified geographic shortage area.

6. Type III Shortage—Public Practice Shortage (49 Percent or Greater Public Practice)

SAHOs identifying this shortage type must, in the spaces provided, identify the ''Employer'' and the presumptive ''Position Title'', and check one or more of the appropriate boxes identifying the specialty/disciplinary area(s) being nominated as a shortage situation. This is a broad nomination category comprising many types of specialized veterinary training and employment areas relating to food supply veterinary workforce capacity and capability. These positions are typically located in city, county, State and Federal Government, and institutions of higher education. Examples of positions within the public practice sector include university faculty and staff, veterinary laboratory diagnostician, County Public Health Officer, State Veterinarian, State Public Health Veterinarian, State Epidemiologist, FSIS meat inspector, Animal and Plant Health Inspection Service (APHIS) Area Veterinarian in Charge (AVIC), and Federal Veterinary Medical Officer (VMO).

Veterinary shortage situations such as those listed above are eligible for consideration under Type III nomination. However, nominators should be aware that Congress has stipulated that the VMLRP must emphasize private food animal practice shortage situations. Accordingly, NIFA anticipates that loan repayments for the Public Practice sector will be limited to approximately 10 percent of total nominations and available funds.

The minimum time commitment serving under a Type III shortage nomination is 49 percent. The nominator will specify the minimum percent time (between 49 percent and 100 percent) a veterinarian must commit in order to satisfactorily fill the specific nominated situation. NIFA understands that some public practice employment opportunities that are shortage situations may be part-time positions. For example, a veterinarian pursuing an advanced degree (in a shortage discipline area) on a part-time basis may also be employed by the university for the balance of the veterinarian's time to provide part-time professional veterinary service(s) such as teaching, clinical service, or laboratory animal care that may or may not also qualify as veterinary shortage situations. The 49 percent minimum therefore provides flexibility to nominators wishing to certify public practice shortage situations that would be ineligible under more stringent minimum percent time requirements.

7. Written Response Sections

a. Importance and objectives of a veterinarian meeting this shortage situation

Within the allowed word limit the nominator should clearly state overarching objectives the State hopes to achieve by placing a veterinarian in the nominated situation. Include the minimum percent time commitment (within the range of the shortage type selected) the awardee is expected to devote to filling the specific food supply veterinary shortage situation.

b. Activities of a veterinarian meeting this shortage situation

Within the allowed word limit the nominator should clearly state the principal day-to-day professional activities that would have to be conducted in order to achieve the objectives described in a) above.

c. Past efforts to recruit and retain a veterinarian in the shortage situation

Within the allowed word limit the nominator should explain any prior efforts to mitigate this veterinary service shortage and prospects for recruiting veterinarian(s) in the future.

d. Risk of this veterinarian position not being secured or retained

Within the allowed word limit the nominator should explain the consequences of not addressing this veterinary shortage situation.

e. Specifying a different service time requirement (optional)

Minimum percent FTE service obligated under the VMLRP is specified for each of the three shortage types. However, the nominator may indicate, in the box provided on page 2 of the nomination form, a greater percent FTE than the specified minimum, according to the following guidelines. For a Type I shortage, the minimum FTE obligation is 80%, but the nominator may specify up to 100% (100% FTE corresponds to 40 hrs/week). The minimum FTE obligation is 30% for Type II shortage situation, but the nominator may specify up to 79%. Higher percentages should be submitted as Type I shortages. The minimum FTE obligation is 49% for Type III (public practice) shortage situations, but the nominator may specify up to 100%. An entry should be made in the box for specification of percent FTE if the percentage specified is other than the default minimum. Otherwise the box should be left blank. In assigning a percentage FTE, SAHOs should be cognizant of the impact this has on an eventual awardee. If the percentage is too high for an awardee to achieve, he or she could fall into breach status under the program and owe substantial financial penalties. NIFA requires formal quarterly certification that minimum service time was worked before each quarterly loan repayment is paid to the awardee's lender(s). Accordingly, NIFA advises that a nomination be submitted only if the SAHO is confident that an awardee can meet the default, or optionally specified, minimum FTE percentage each and every one of the 12 quarters (i.e, twelve 3-month periods) constituting the 3-year duration of service under the program.

f. Affirmation checkboxes

SAHOs submitting shortage nominations should check both ''affirmation'' boxes on the last page of the nomination form. These two affirmations provide assurance that submitting SAHOs understand the shortage nomination process and the importance of the SAHO having reasonable confidence that the nomination submitted describes a bona fide shortage area. The second assurance is particularly important to help avoid the placement of a VMLRP awardee where veterinary coverage already exists, and where undue competition could lead to insufficient clientele demand to support either the awardee or the veterinary practice originally serving the area.

C. NIFA Review of Shortage Situation Nominations

1. Review Panel Composition and Process

NIFA will convene a panel of food supply veterinary medicine experts from Federal and state agencies, as well as institutions receiving Animal Health and Disease Research Program funds under section 1433 of NARETPA, who will review the nominations and make recommendations to the NIFA Program Manager. NIFA explored the possibility of including experts from non-governmental professional organizations and sectors for this process, but under NARETPA section 1409A(e), panelists for the purposes of this process are limited to Federal and State agencies and cooperating state institutions (i.e., NARETPA section 1433 recipients).

NIFA will review the panel recommendations and designate the VMLRP shortage situations. The list of shortage situations will be made available on the VMLRP Web site at *www.nifa.usda.gov/vmlrp*.

2. Review Criteria

Criteria used by the shortage situation nomination review panel and NIFA for certifying a veterinary shortage situation will be consistent with the information requested in the shortage situations nomination form. NIFA understands that defining the risk landscape associated with shortages of veterinary services throughout a state is a process that may require consideration of many qualitative and quantitative factors. In addition, each shortage situation will be characterized by a different array of subjective and objective supportive information that must be developed into a cogent case identifying, characterizing, and justifying a given geographic or disciplinary area as one deficient in certain types of veterinary capacity or service. To accommodate the uniqueness of each shortage situation, the nomination form provides opportunities to present a case using both supportive metrics and narrative explanations to define and explain the proposed need. At the same time, the elements of the nomination form provide a common structure for the information collection process which will in turn facilitate fair comparison of the relative merits of each nomination by the evaluation panel.

While NIFA anticipates some arguments made in support of a given shortage situation will be qualitative, respondents are encouraged to present verifiable quantitative and qualitative evidentiary information where ever possible. Absence of quantitative data such as animal and veterinarian census data for the proposed shortage area(s) may lead the panel to recommend not approving the shortage nomination.

The maximum point value review panelists may award for each element is as follows:

20 points: Describe the objectives of a veterinarian meeting this shortage situation as well as being located in the community, area, state/insular area, or position requested above.

20 points: Describe the activities of a veterinarian meeting this shortage situation and being located in the community, area, state/insular area, or position requested above.

5 points: Describe any past efforts to recruit and retain a veterinarian in the shortage situation identified above.

35 points: Describe the risk of this veterinarian position not being secured or retained. Include the risk(s) to the production of a safe and wholesome food supply and/or to animal, human, and environmental health not only in the community but in the region, state/

insular area, nation, and/or international community.

An additional 20 points will be used to evaluate overall merit/quality of the case made for each nomination.

Prior to the panel being convened, shortage situation nominations will be evaluated and scored according to the established scoring system by a primary reviewer. When the panel convenes, the primary reviewer will present each nomination orally in summary form. After each presentation, panelists will have an opportunity, if necessary, to discuss the nomination, with the primary reviewer leading the discussion and recording comments. After the panel discussion is complete, any scoring revisions will be made by and at the discretion of the primary reviewer. The panel is then polled to recommend, or not recommend, the shortage situation for designation. Nominations scoring 70 or higher by the primary reviewer (on a scale of 0 to 100), and receiving a simple majority vote in support of designation as a shortage situation will be ''recommended for designation as a shortage situation.'' Nominations scoring below 70 by the primary reviewer, and failure to achieve a simple majority vote in support of designation will be ''not recommended for designation as a shortage situation.'' In the event of a discrepancy between the primary reviewer's scoring and the panel poll results, the VMLRP program manager will be authorized to make the final determination on the nomination's designation.

Done in Washington, DC, this 19th day of December, 2012.

Meryl Broussard,

Deputy Director, National Institute of Food and Agriculture.

[FR Doc. 2012–31407 Filed 12–28–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Office of Advocacy and Outreach

Advisory Committee on Beginning Farmers and Ranchers Request for Nominations

AGENCY: Office of Advocacy and Outreach, USDA.

ACTION: Extension of time for submitting nominations.

SUMMARY: We are giving notice that the Secretary of Agriculture will extend the time to submit nominations and applications to serve on the Advisory Committee on Beginning Farmers and Ranchers (the ''Committee'') for an additional term of 2 years through December 14, 2014. This will give interested persons additional time to prepare and submit nomination packages.

DATES: Consideration will be given to nominations received on or before January 15, 2013.

FOR FURTHER INFORMATION CONTACT: Mrs. R. J. Cabrera, Designated Federal Official, USDA OAO, 1400 Independence Avenue, Room 520–A, Washington, DC 20250–0170; Telephone (202) 720–6350; Fax (202) 720–7704; Email: *rj.cabrera@osec.usda.gov.*

ADDRESSES: Nomination packages may be sent by postal mail or commercial delivery to: Mrs. R. J. Cabrera, Designated Federal Official, USDA OAO, 1400 Independence Avenue, Room 520–A, Washington, DC 20250–0170. Nomination packages may also be faxed to (202) 720–7704.

SUPPLEMENTARY INFORMATION: On December 20, 2012 we published in the **Federal Register** (FR DOC# 2012–30471, Pages 75105–75106) a Notice of Intent To Renew and Request for Nominations. Applications were required to be received on or before December 31, 2012. We are extending the submission period to January 16, 2013.We will also consider all applications received between December 19, 2012 and January 1, 2013 (the day after the original submission period).

We are soliciting nominations from interested organizations and individuals from among ranching and farming producers (industry), related government, State, and Tribal agricultural agencies, academic institutions, commercial banking entities, trade associations, and related nonprofit enterprises. An organization may nominate individuals from within or outside its membership; alternatively, an individual may nominate herself or himself. Nomination packages should include a nomination form along with a cover letter or resume that documents the nominee's background and experience. Nomination forms are available on the Internet at *http://www.ocio.usda.gov/forms/doc/AD–755.pdf* or may be obtained from Mrs. R. J. Cabrera at the address or telephone number noted above.

The Secretary will select up to 20 members from among those organizations and individuals solicited, in order to obtain the broadest possible representation on the Committee. Equal opportunity practices, in line with the USDA policies, will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Signed in Washington, DC, this 20th day of December, 2012.

Dexter Pearson,

Associate Director, Office of Advocacy and Outreach.

[FR Doc. 2012–31343 Filed 12–28–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the emergency provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration (NTIA).

Title: State and Local Implementation Grant Program Application Requirements.

OMB Control Number: None.

Form Number(s): None.

Type of Request: Emergency submission (new information collection).

Number of Respondents: 56.

Average Hours per Response: Application, 10 hours; Quarterly report, 4 hours.

Burden Hours: 1,456.

Needs and Uses: The Middle Class Tax Relief and Job Creation Act of 2012 (Act, Pub. L. 112–96, 126 Stat. 156 (2012).) was signed by the President on February 22, 2012. The Act meets a long-standing priority of the Administration, as well as a critical national infrastructure need, to create a single, nationwide interoperable public safety broadband network (PSBN) that will, for the first time, allow police officers, fire fighters, emergency medical service professionals, and other public safety officials to effectively communicate with each other across agencies and jurisdictions. Public safety workers have long been hindered in their ability to respond in a crisis situation because of incompatible communications networks and often outdated communications equipment.

The Act establishes the First Responder Network Authority (FirstNet) as an independent authority within

National Telecommunications and Information Administration (NTIA) and authorizes it to take all actions necessary to ensure the design, construction, and operation of a nationwide PSBN, based on a single, national network architecture.

The Act also charges NTIA with establishing a grant program to assist state, regional, tribal, and local jurisdictions with identifying, planning, and implementing the most efficient and effective means to use and integrate the infrastructure, equipment, and other architecture associated with the nationwide PSBN to satisfy the wireless broadband and data services needs of their jurisdictions. NTIA will use the collection of information to ensure that States applying for SLIGP grants meet eligibility and programmatic requirements as well as to monitor and evaluate how SLIGP recipients are achieving the core purposes of the program established by the Act.

NTIA is seeking to emergency review of the SLIGP request to begin the application process in the first quarter of calendar year 2013 and award grants no later than June 1, 2013. In order to meet this deadline, NTIA must receive clearance for the application and reporting requirements by December 31, 2012 in order to: (1) Ensure applicants have reasonable notice of the federal funding opportunity; (2) provide applicants sufficient time to complete and submit their applications; and (3) allow NTIA adequate time to properly execute the application review process and make the awards.

Affected Public: Business or other for-profit organizations.

Frequency: Annually and quarterly.

Respondent's Obligation:

OMB Desk Officer: Nicholas Fraser, (202) 395–5887.

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 by January 7, 2013 to Nicholas Fraser, OMB Desk Officer, FAX number (202) 395–7285, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov.*

Dated: December 21, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–31226 Filed 12–28–12; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–69–2012]

Authorization of Production Activity: Foreign-Trade Zone 230: Sonoco Corrflex (Kitting–Gift Sets); Rural Hall and Winston-Salem, North Carolina

On August 20, 2012, the Piedmont Triad Partnership, grantee of FTZ 230, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Sonoco Corrflex, within FTZ 230—Sites 24–27, in Rural Hall and Winston-Salem, North Carolina.

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 56809, 9–14–2012). 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, and further subject to a restriction requiring that all foreign bags and cases of textile materials (classified within HTSUS 4202.22.40.20, 4202.22.40.30, 4202.22.40.40, 4202.22.45.00, 4202.22.60.00, 4202.22.80.30, 4202.22.80.50, 4202.22.80.80, 4202.32.40.00, 4202.32.80.00, 4202.32.95.30, 4202.32.95.50, 4202.32.95.60, 4202.92.08.05, 4202.92.08.07, 4202.92.08.09, 4202.92.15.00, 4202.92.20.00, 4202.92.30.16, 4202.92.30.20, 4202.92.30.31, 4202.92.30.91, 4202.92.60.91, 4202.92.90.26, and 4202.92.90.36) used in the production activity must be admitted to the zone in domestic (duty-paid) status (19 CFR 146.43).

Dated: December 20, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–31443 Filed 12–28–12; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–93–2012]

Foreign-Trade Zone 33 — Pittsburgh, Pennsylvania Notification of Proposed Export Production Activity Tsudis Chocolate Company (Chocolate Confectionery Bars) Pittsburgh, PA

Tsudis Chocolate Company (Tsudis), an operator of FTZ 33, submitted a notification of proposed export production activity for its facility in Pittsburgh, Pennsylvania. The notification conforming to the requirements of the regulations of the Foreign-Trade Zones Board (15 CFR 400.22) was received on December 4, 2012.

The Tsudis facility is located within Site 10 of FTZ 33. Activity at the facility would involve the production of chocolate confectionery bars for export (no shipments for U.S. consumption would occur). For shipments to Canada or Mexico, production under FTZ procedures could allow reduced duty treatment under NAFTA Duty Deferral requirements. For shipments to other export markets, FTZ procedures could exempt Tsudis from customs duty payments on the foreign status material used in its production. The sole foreign-origin material to be used in the export production is liquid chocolate (duty rate: 52.8¢/kg+4.3%). Customs duties also could possibly be deferred or reduced on foreign status production equipment or foreign liquid chocolate scrapped or destroyed under customs procedures.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 11, 2013.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov*, or (202) 482–1378.

Dated: December 19, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–31445 Filed 12–28–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–840]

Certain Orange Juice From Brazil: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 24, 2012, the United States Court of International Trade (CIT) sustained the Department of Commerce's (the Department's) results of redetermination pursuant to the CIT's remand order in *Fischer S.A. Comercio, Industria and Agricultura* v. *United States,* Court No. 10–00281, Slip Op. 12–59 (CIT 2012) (*Fischer*). The Department is notifying the public that the final CIT judgment in this case is not in harmony with the Department's final results and is amending the final results of the administrative review of the antidumping duty order on certain orange juice (OJ) from Brazil covering the period of review (POR) of March 1, 2008, through February 28, 2009.

DATES: *Effective Date:* November 5, 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

On August 18, 2010, the Department published its final results in the antidumping duty administrative review of OJ from Brazil covering the POR of March 1, 2008, through February 28, 2009. *See Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part,* 75 FR 50999 (Aug. 18, 2010) (*Final Results*). In the *Final Results,* the Department: 1) denied offsets to dumping based on constructed export prices that exceeded normal value (NV); and 2) included the amount of a net exchange variation shown on Fischer S.A. Comercio, Industria, and Agricultura's (Fischer's) financial statements in its financial expense ratio. Fischer challenged the Department's *Final Results.* On April 30, 2012, the CIT remanded to the Department its *Final Results,* directing the Department to: (1) Further explain its ''zeroing'' methodology (*i.e.,* why the Department's differing interpretation of section 771(35) of the Tariff Act of 1930, as amended (the Act), in antidumping duty investigations and administrative reviews is reasonable); and (2) exclude a ''net exchange variation'' amount shown in Fischer's financial statements from the calculation of the financial expense ratio.[1] On August 14, 2012, the Department issued its final results of redetermination. *See Final Results of Redetermination Pursuant to Court Remand,* dated August 14, 2012 (Remand Results) (available at *http://ia.ita.doc.gov/remands*). In the Remand Results, the Department provided the required explanation with respect to its ''zeroing'' methodology and recalculated Fischer's margin after revising its NV to remove the ''net exchange variation'' account from Fischer's financial expense ratio. On October 24, 2012, the CIT sustained the Remand Results.

Timken Notice

Consistent with the decision of the CAFC in *Timken Co. v. United States,* 893 F. 2d 337 (CAFC 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition v. United States,* 626 F. 3d 1374 (CAFC 2010), pursuant to section 516A(c) of the Act, the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''final and conclusive'' court decision. The CIT's October 24, 2012, judgment sustaining the Department's Remand Results with respect to Fischer constitutes such a decision. This notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

Based on the CIT's affirmation of the Remand Results, the Department amends its *Final Results,* and the weighted-average margin for Fischer for the period March 1, 2008, through February 28, 2009, is 1.18 percent.

The Department will instruct U.S. Customs and Border Protection to assess antidumping duties on entries of the subject merchandise exported during the POR from Fischer based on the revised assessment rates calculated by the Department.

This notice is issued and published in accordance with sections 516A(c)(1), 751(a)(1), and 777(i)(1) of the Act.

[1] *See also Order,* Ct. No. 10–00281 (CIT June 22, 2012).

Dated: December 20, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–31446 Filed 12–28–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received a request to revoke one antidumping duty order in part.

DATES: Effective December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order on Fresh Garlic from the People's Republic of China (''PRC'') for one exporter.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (''POR''), it must notify the Department within 60 days of publication of this notice in the **Federal Register**. All submissions must be filed

electronically at *http://iaaccess.trade.gov* in accordance with 19 CFR 351.303. *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011). Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (''Act''). Further, in accordance with 19 CFR 351.303(f)(3)(ii), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within seven days of publication of this initiation notice and to make our decision regarding respondent selection within 21 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the applicable review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after August 2011, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 60 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [1] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently

[1] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently complete segment of the proceeding in which they participated.

made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than November 30, 2013.

	Period to be Reviewed
Antidumping Duty Proceedings	
Brazil: Polyethylene Terephthalate (PET) Film, A–351–841	11/1/11–10/31/12
Terphane, Inc.	
Terphane, Ltda	
Germany: Lightweight Thermal Paper, A–428–840	11/1/11—10/31/12
Papierfabrik August Koehler AG	
Mexico: Certain Circular Welded Non-Alloy Steel Pipe, A–201–805	11/1/11—10/31/12
Conduit S.A. de C.V.	
Mueller Comercial de Mexico, S. de R.L. de C.V.	
Pytco, S.A. de C.V.	
Southland Pipe Nipples Co., Inc.	
Lamina y Placa Comercial, S.A. de C.V.	
Regiomontana de Perfiles y Tubos, S.A. de C.V.	
Ternium Mexico, S.A. de C.V.	
Tuberia Nacional, S.A. de C.V.	
Mexico: Seamless Refined Copper Pipe and Tube, A–201–838	11/1/11—10/31/12
IUSA, S.A. de C.V.	
GD Affiliates S. de R.L. de C.V.	
Luvata Juarez S. de R.L. de C.V.	
Luvata Monterrey S. de R.L. de C.V.	
Nacional de Cobre, S.A. de C.V.	
Republic of Korea: Certain Circular Welded Non-Alloy Steel Pipe, A–580–809	11/1/11—10/31/12
SeAH Steel Corporation	
Hyundai HYSCO	
Husteel Co., Ltd.	
Nexteel Co., Ltd.	
Dongbu Steel Co., Ltd.	
Kumkang Industrial Co., Ltd.	
A–JU Besteel Co., Ltd.	
Union Steel Co., Ltd.	
The People's Republic of China: Certain Cut-to-Length Carbon Steel Plate,[3] A–570–849	11/1/11—10/31/12
Bao/Baoshal Iron and Steel Corp./Baoshan International Trade Corp./Bao Steel Metals Trading Corp.	
Shanghai Pudong Iron and Steel Co.	
Hunan Valin Xiangtan Iron & Steel Co., Ltd	
The People's Republic of China: Certain Hot-Rolled Carbon Steel Flat Products,[4] A–570–865	11/1/11—10/31/12
Baosteel Group Corporation	
Baoshan Iron & Steel Co., Ltd.	
Shanghai Baosteel International Economic & Trading Co., Ltd.	
The People's republic of china: Diamond Sawblades and Parts Thereof,[5] A–570–900	11/1/11—10/31/12
Advanced Technology & Materials Co., Ltd.	
ATM International Trading Co., Ltd.	
Beijing Gang Yan Diamond Products Co.	
Bosun Tools Co., Ltd.	
Bosun Tools Group Co., Ltd.	
Bosun Tools Inc. USA	
Central Iron and Steel Research Institute Group	
China Iron and Steel Research Institute Group	
Chengdu Huifeng Diamond Tools Co., Ltd.	
Cliff International Ltd.	
Danyang Aurui Hardware Products Co., Ltd.	
Danyang City Ou Di Ma Tools Co., Ltd.	
Danyang Dida Diamond Tools Manufacturing Co., Ltd.	
Danyang Huachang Diamond Tools Manufacturing Co.,	

[2] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be Reviewed
Ltd.	
Danyang NYCL Tools Manufacturing Co., Ltd.	
Danyang Tsunda Diamond Tools Co., Ltd.	
Danyang Weiwang Tools Manufacturing Co., Ltd.	
Danyang Youhe Tool Manufacturer Co., Ltd.	
Electrolux Construction Products (Xiamen) Co., Ltd.	
Fujian Quanzhou Wanlong Stone Co., Ltd.	
Guilin Tebon Superhard Material Co., Ltd.	
Hangzhou Deer King Industrial and Trading Co., Ltd.	
Hebei Husqvarna-Jikai Diamond Tools Co., Ltd.	
Hebei Jikai Industrial Group Co., Ltd.	
Huachang Diamond Tools Manufacturing Co., Ltd.	
Hua Da Superabrasive Tools Technology Co., Ltd.	
Husqvarna (Hebei) Co., Ltd.	
Husqvarna Construction Products North America, Inc.	
Huzhou Gu's Import & Export Co., Ltd.	
Huzhou Gu's Imp. & Exp. Co., Ltd.	
Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd	
Jiangsu Fengyu Tools Co., Ltd.	
Jiangsu Inter-China Group Corporation	
Jiangyin Likn Industry Co., Ltd.	
Jiangsu Youhe Tool Manufacturer Co., Ltd.	
Protech Diamond Tools	
Pujiang Talent Diamond Tools Co., Ltd.	
Qingdao Shinhan Diamond Industrial Co., Ltd.	
Qingyuan Shangtai Diamond Tools Co., Ltd.	
Quanzhou Shuangyang Diamond Tools Co., Ltd.	
Quanzhou Zhongzhi Diamond Tool Co., Ltd.	
Quanzhou Zongzhi Diamond Tool Co., Ltd.	
Rizhao Hein Saw Co., Ltd.	
Saint-Gobain Abrasives, Inc.	
Saint-Gobain Abrasives (Shanghai) Co.	
Shanghai Deda Industry & Trading Co., Ltd.	
Shanghai Jingquan Ind. Trade Co., Ltd.	
Shanghai Robtol Tool Manufacturing Co., Ltd.	
Shijiazhuang Global New Century Tools Co., Ltd.	
Sichuan Huili Tools Co.	
Task Tools & Abrasives	
Wanli Tools Group	
Weihai Xiangguang Mechanical Industrial Co., Ltd.	
Wuhan Wanbang Laser Diamond Tools Co.	
Wuxi Lianhua Superhard Material Tools Co., Ltd.	
Xiamen ZL Diamond Tools Co., Ltd.	
Yichang HXF Circular Saw Industrial Co. Ltd.	
Zhejiang Tea Import & Export Co., Ltd.	
Zhejiang Wanda Import and Export Co.	
Zhejiang Wanda Tools Group Corp.	
Zhejiang Wanli Super-hard Materials Co., Ltd.	
Zhejiang Wanli Tools Group Co., Ltd.	
Zhenjiang Inter-China Import & Export Co., Ltd.	
The People's Republic of China: Fresh Garlic,[6] A–570–831	11/1/11—10/31/12
American Pioneer Shipping	
Anhui Dongqian Foods Ltd	
Anqiu Friend Food Co., Ltd.	
Anqiu Haoshun Trade Co., Ltd.	
APM Global Logistics (Shanghai) Co., Ltd.	
APS Qingdao	
Cangshan Qingshui Vegetable Foods Co., Ltd.	
Chengwu County Yuanxiang Industry & Commerce Co., Ltd.	
Chiping Shengkang Foodstuff Co., Ltd.	
CMEC Engineering Machinery Import & Export Co,. Ltd.	
Dongying Shunyifa Chemical Co., Ltd.	
Dynalink Systems Logistics (Qingdao) Inc.	
Eimskip Logistics Inc.	
Feicheng Acid Chemicals Co., Ltd.	
Foshan Fuyi Food Co, Ltd.	
Frog World Co., Ltd.	
Golden Bridge International, Inc.	
Guangxi Lin Si Fu Bang Trade Co., Ltd	
Hangzhou Guanyu Foods Co., Ltd.	
Hebei Golden Bird Trading Co., Ltd.	
Henan Weite Industrial Co., Ltd.	

	Period to be Reviewed
Heze Ever-Best International Trade Co., Ltd. (f/k/a Shandong Heze International Trade and Developing Company)	
Hongqiao International Logistics Co.	
Intecs Logistics Service Co., Ltd.	
IT Logistics Qingdao Branch	
Jinan Farmlady Trading Co., Ltd.	
Jinan Solar Summit International Co., Ltd.	
Jinan Yipin Corporation Ltd.	
Jining De-Rain Trading Co., Ltd.	
Jining Highton Trading Co., Ltd.	
Jining Jiulong International Trading Co., Ltd.	
Jining Tiankuang Trade Co., Ltd.	
Jining Trans-High Trading Co., Ltd.	
Jining Yifa Garlic Produce Co., Ltd.	
Jining Yongjia Trade Co., Ltd.	
Jinxiang Chengda Import & Export Co., Ltd.	
Jinxiang County Huaguang Food Import & Export Co., Ltd.	
Jinxiang Dacheng Food Co., Ltd.	
Jinxiang Dongyun Freezing Storage Co., Ltd. (a/k/a	
Jinxiang Eastward Shipping Import and Export Limited Company).	
Jinxiang Dongyun Import & Export Co., Ltd.	
Jinxiang Fengsheng Import & Export Co., Ltd.	
Jinxiang Grand Agricultural Co., Ltd.	
Jinxiang Hejia Co., Ltd.	
Jinxiang Infarm Fruits & Vegetables Co., Ltd.	
Jinxiang Jinma Fruits Vegetables Products Co., Ltd.	
Jinxiang Merry Vegetable Co., Ltd.	
Jinxiang Meihua Garlic Produce Co., Ltd.	
Jinxiang Shanyang Freezing Storage Co., Ltd.	
Jinxiang Shenglong Trade Co., Ltd.	
Jinxiang Tianheng Trade Co., Ltd.	
Jinxiang Tianma Freezing Storage Co., Ltd.	
Jinxiang Xian Baishite Trade Co., Ltd. (a/k/a Jinxiang Best Trade Co., Ltd.)	
Jinxiang Yuanxin Import & Export Co., Ltd.	
Juye Homestead Fruits and Vegetables Co., Ltd.	
Kingwin Industrial Co., Ltd.	
Laiwu Fukai Foodstuff Co., Ltd.	
Laizhou Xubin Fruits and Vegetables	
Linshu Dading Private Agricultural Products Co., Ltd.	
Linyi City Hedong District Jiuli Foodstuff Co.	
Linyi City Kangfa Foodstuff Drinkable Co., Ltd.	
Linyi Katayama Foodstuffs Co., Ltd.	
Linyi Tianqin Foodstuff Co., Ltd.	
Ningjin Ruifeng Foodstuff Co., Ltd.	
Qingdao Apex Shipping Co., Ltd.	
Qingdao BNP Co., Ltd.	
Qingdao Cherry Leather Garment Co., Ltd.	
Qingdao Chongzhi International Transportation Co., Ltd.	
Qingdao Everfresh Trading Co., Ltd.	
Qingdao Liang He International Trade Co., Ltd	
Qingdao Lianghe International Trade Co., Ltd.	
Qingdao Maycarrier Import & Export Co., Ltd.	
Qingdao Saturn International Trade Co., Ltd.	
Qingdao Sea-Line International Trading Co., Ltd.	
Qingdao Sino-World International Trading Co., Ltd.	
Qingdao Tiantaixing Foods Co., Ltd.	
Qingdao Winner Foods Co., Ltd.	
Qingdao Xintianfeng Foods Co., Ltd.	
Qingdao Xin Tian Feng Food Co., Ltd.	
Qingdao Yuankang International	
Qufu Dongbao Import & Export Trade Co., Ltd.	
Rizhao Huasai Foodstuff Co., Ltd.	
Samyoung America (Shanghai) Inc.	
Shandong Chengshun Farm Produce Trading Co., Ltd.	
Shandong Chenhe Intl Trading Co., Ltd.	
Shandong China Bridge Imports	
Shandong Dongsheng Eastsun Foods Co., Ltd.	
Shandong Garlic Company	
Shandong Jinxiang Zhengyang Import & Export Co., Ltd.	
Shandong Longtai Fruits and Vegetables Co., Ltd.	
Shandong Sanxing Food Co., Ltd.	
Shandong Wonderland Organic Food Co., Ltd.	
Shandong Xingda Foodstuffs Group Co., Ltd.	
Shandong Yipin Agro (Group) Co., Ltd.	

	Period to be Reviewed
Shanghai Ever Rich Trade Company	
Shanghai Goldenbridge International Co., Ltd.	
Shanghai Great Harvest International Co., Ltd.	
Shanghai LJ International Trading Co., Ltd.	
Shanghai Medicines & Health Products Import/Export Co., Ltd.	
Shanghai Yijia International Transportation Co., Ltd.	
Shenzhen Bainong Co., Ltd.	
Shenzhen Fanhui Import & Export Co., Ltd.	
Shenzhen Greening Trading Co., Ltd.	
Shenzhen Xinboda Industrial Co., Ltd.	
Shenzhen Xunong Trade Co., Ltd.	
Shijiazhuang Goodman Trading Co., Ltd.	
Sunny Import & Export Limited	
T&S International, LLC.	
Taian Eastsun Foods Co., Ltd.	
Taian Fook Huat Tong Kee Pte. Ltd.	
Taian Solar Summit Food Co., Ltd.	
Taiyan Ziyang Food Co., Ltd.	
Tianjin Spiceshi Co., Ltd.	
U.S. United Logistics (Ningbo) Inc.	
V.T. Impex (Shandong) Limited	
Weifang Chenglong Import & Export Co., Ltd.	
Weifang He Lu Food Import & Export Co., Ltd.	
Weifang Hong Qiao International Logistics Co., Ltd.	
Weifang Hongqiao International Logistics Co., Ltd.	
Weifang Jinbao Agricultural Equipment Co., Ltd.	
Weifang Naike Foodstuffs Co., Ltd.	
Weifang Shennong Foodstuff Co., Ltd.	
Weihai Textile Group Import & Export Co., Ltd.	
WSSF Corporation (Weifang)	
Xiamen Huamin Import Export Company	
Xiamen Keep Top Imp. and Exp. Co., Ltd.	
Xinjiang Top Agricultural Products Co., Ltd.	
XuZhou Heiners Agricultural Co., Ltd.	
XuZhou Simple Garlic Industry Co., Ltd.	
Yantai Jinyan Trading Inc.	
Yishui Hengshun Food Co., Ltd.	
You Shi Li International Trading Co., Ltd.	
Zhangzhou Xiangcheng Rainbow Greenland Food Co., Ltd.	
Zhengzhou Dadi Garlic Industry Co., Ltd.	
Zhengzhou Harmoni Spice Co., Ltd.	
Zhengzhou Huachao Industrial Co., Ltd.	
Zhengzhou Xiwannian Food Co., Ltd.	
Zhengzhou Xuri Import & Export Co., Ltd.	
Zhengzhou Yuanli Trading Co., Ltd.	
Zhong Lian Farming Product (Qingdao) Co., Ltd.	
The People's Republic of China: Lightweight Thermal Paper,[7] A–570–920	11/1/11—10/31/12
Guangdong Guanhao High-Tech Co., Ltd	
Hanhong International Limited	
Henan Province Jianghe Paper Co., Ltd	
Jianghe Paper Co., Ltd	
JHT Paper	
New Pride Co., Ltd	
Shanghai Hanhong Paper Co., Ltd.	
Shenzhen Taizhou Industrial Development Co., Ltd	
The People's Republic of China: Polyethylene Terephthalate (PET) Film,[8] A–570–924	11/1/11—10/31/12
DuPont Hongji Films Foshan Co., Ltd.	
DuPont Teijin Films China Ltd.	
Dupont Teijin Hongji Films Ningbo Co., Ltd.	
Fuwei Films (Shandong) Co., Ltd.	
Shaoxing Xiangyu Green Packing Co., Ltd.	
Tianjin Wanhua Co., Ltd.	
Sichuan Dongfang Insulating Material Co., Ltd.	
The People's Republic of China: Seamless Carbon and Alloy Steel Standard, Line,[9] A–570–956 and Pressure Pipe	11/1/11—10/31/12
3a Venture Ltd.	
Angang Group New Steel Co.,Ltd.	
Adler Steel Ltd.	
Ael-berkman Forwarding (Shanghai) Ltd.	
Agility Logistics (Shanghai) Ltd.	
Angang Steel Co., Ltd (ANGGY)	
Anhui Tianda Oil Pipe (Anhui Tianda Oil Pipe Co. Limited)	
Baolai Steel Pipe	
Baoshan Iron & Steel—Steel Tube Subcompany	

	Period to be Reviewed
Baosteel America Inc.	
Baosteel Group Shanghai Steel Tube	
Baotou Iron and Steel (Group) Co. Ltd.	
Beihai Steel Pipe Corporation	
Beijing Kaisheng Ao Import and Export	
Beijing Sai Lin Ke Hardware Co., Ltd.	
Benxi Fulldoer Tubes	
Benxi Northern Steel Pipe	
Calvert Group	
Cangzhou Qiancheng Steel Pipe Co., Ltd.	
Chang Zhou Yuanyang Steel Tube Co., Ltd.	
Changgang Group	
Changshu Lijia Import and Export Co., Ltd.	
Changshu Seamless Steel Tube (CSSST)	
Changzhou Bao-Steel Tube	
Changzhou Darun Steel Tube	
Changzhou Tongchuang Tube Industry	
Changzhou Tongxing Steel Tube	
Changzhou Yuanyang Steel Tube	
China-East Resources Import & Export Company	
Chongqing Iron & Steel (Group) Co., Ltd.	
Chongqing Rato Power Co., Ltd.	
Chu Kong Steel Pipe Group Co.	
Cloudstone Metal International Ltd.	
CNOOC Kingland Pipe Industry Co., Ltd.	
Corpac Steel Products Corp.	
Daewoo International Corporation	
Dexin Steel Tube (China) Co., Ltd.	
Dezhou Hualude Hardware Products Co.	
Dragon Max Management Ltd.	
Etco (China) International Trading	
Excel International Corp.	
Fastco (Shanghai) Trading Co., Ltd.	
Fengshi Forge Co., Ltd.	
Forest Oilfield Services Co., Ltd.	
Ge Steel Resource Ltd.	
Great Richwell Industry & Trading (Shanghai) Co., Ltd.	
Gs-Hydro Piping Systems Shanghai	
Handan Precise Seamless Steel Pipes	
Hangzhou Cogeneration Imp. & Exp. Co.	
Hangzhou Evt Import and Export Co.	
Hangzhou Prostar Enterprises Ltd.	
Hangzhou Zhedong Steel Tube Products	
Hebei Litonglian Seamless Steel Pipe	
Hebei Machinery Import and Export Co., Ltd.	
Hebei Xintai Pipeline Manufacturing	
Hebei Zhonghai Steel Pipe Manufacture	
Hengyang Hongda Special Steel Tube Co., Ltd.	
Hengyang Steel Tube Group Int'l Trading Inc. (Subsidiaries: Hengyang Valin Steel Tube Co., Ltd., Hengyang Valin MPM Tube Co., Ltd., Xigang Seamless Steel Tube Co., Ltd., Wuxi Seamless Special Pipe Co., Ltd., Jiangsu Xigang Group Co., Ltd., Wuxi Resources Steel Making Co., Ltd., Wuxi Sifang Steel Tube Co., Ltd., Hunan Valin Iron & Steel Group Co., Ltd., Hunan Valin Steel Co., Ltd., and Hunan Valin Xiangtan Iron & Steel Co., Ltd.)	
Heyi Steel Tube	
HK Myind Ltd.	
Hsea Steel Trading Co., Ltd.	
Huawei Steel	
Hubei Xinyegang Steel Co., Ltd. (Hubei Xin Yegang Special Tube Co., Ltd.)	
Huizhou Dingjia Trade Co., Ltd.	
Huludao Steel Pipe Industrial	
Huzhou Shine Ports Imp & Emp Ltd.	
Jcof Shanghai International Trading	
Jiangsu Benqiu Pipe Products	
Jiangsu Changbao Steel Tube	
Jiangsu Chengde Steel Tube Share Company	
Jiangsu Didu Pipeline Co., Ltd.	
Jiangsu Henyuan Garden Supplies Co.	
Jiangsu Huacheng Industry Group	
Jiangsu Huashun Steel Pipe	
Jiangsu Valin-Xigang Special Steel	
Jiangsu Yinhuan Precision Steel Tube	
Jiangsu Yulong Steel Pipe Co., Ltd.	
Jiangsu ZhenDa Steel Tube Group Co., Ltd.	
Jiangyin City Changjiang Steel (Jiangyin City Changjiang Steel Pipe)	

	Period to be Reviewed
Jiangyin City Seamless Steel Tube Factory	
Jiangyin Long-Bright Drill Pipe Manufacture Co., Ltd.	
Jiaxing Suns International Trade Co., Ltd.	
Jiling Jiyuan Steel Pipe	
Jinan Jiujing Import & Export Co., Ltd.	
Jinan Meide Casting Co., Ltd.	
Karl Gross Logistics (Shanghai) Co., Ltd. (as agent of Perficon Steel Gmbh)	
Kingland Pipeline Co.	
Kingruman (Beijing) Int. Investment	
Kotech Industry & Co., Ltd.	
LDR Industries, Inc.	
Liuzhou Iron & Steel Co.	
Madison Shanghai Trading Co., Ltd.	
Makalu Corporation Limited	
Manchuar Steel NV	
Maxvalue Industries Co., Ltd.	
Mengcun Hui Autonomous County Hexin Pipes	
Mercadex B.V.	
Nantong Hengte Tube Co., Ltd	
Ningbo Nd Import Export Co., Ltd.	
Northern Steel Pipe	
Okaya (Shanghai) Co., Ltd.	
Pangang Group Chengdu Steel & Vanadium Co. Ltd.	
Pangang Group Chengdu Iron & Steel (PGG CSST)	
Panzhihua Iron & Steel (Group) Co.	
Power Success (Hong Kong) Limited	
Qingdao Iron & Steel Group Co.	
Qiqihaer Haoying Iron and Steel Co., Ltd., of Northeast Special Steel Group	
Samkyung Trading Corp.	
Shandong HuaBao Steel Pipe (Shandong HuaBao Steel Pipe Co., Ltd.)	
Shandong Jinding Industrial Stock Co., Ltd	
Shandong Luxing Steel Pipe (Shandong Luxing Steel Pipe Co., Ltd.)	
Shandong Molong Petroleum Machinery	
Shandong Zhongli Steel Pipe Co., Ltd	
Shanghai Baosteel Group Corp.	
Shanghai Eutin International Trading	
Shanghai Metal Corporation	
Shanghai Ni Fang Trade Inc.	
Shanghai Shengwei Trade Co., Ltd.	
Shanghai Shenhua Steel Tube	
Shanghai Tianyang Steel Tube (Shanghai Tianyang Imp. & Exp. Co.)	
Shanghai Xin Li International Trading	
Shanghai Yueyuechao Manufacture Tube	
Shanghai Yueyuechao International Trading Co.	
Shanghai Zhongyou Tipo Steel Pipe Co., Ltd.	
Shanxi Changzhi Iron & Steel (Group) Co., Ltd.	
Shanxi Yuci Guolian Steel Pipe	
Sheng Ding Yuan Pipe-Making	
Shenjian Steel Pipe	
Shenyang Debang Stainless Steel Industrial (DBSS)	
Shen Yang On Line Pipe Fittings Co.	
Shijiazhuang Beihai Pipe Co., Ltd.	
Siano (Beijing) Steel Co., Ltd.	
Sino East Steel Enterprise Co., Ltd.	
Spat Steel International (H.K.) Ltd.	
Steel Pipe Co., Ltd., of Laiwu	
Steelforce Far East Ltd.	
Stiletto (H.K.) Ltd.	
Sun Steel Int'l Trading Ltd.	
Suzhou Hesheng Special Material Co.	
Suzhou Seamless Steel Tube Works	
Suzhou Sino Import & Export Co., Ltd.	
Tianjin Dexpo Import and Export Co.	
Tianjin Gangji Shipping Agency Co.	
Tianjin Keyuanxing Import & Export Tr.	
Tianjin Meicai Metal Trading Co., Ltd.	
Tianjin Tiangang Special Petroleum Pipe Manufacture Co., Ltd.	
Tianjin Pipe (Group) Corporation (TPCO or TPCO International) (Subsidiaries: Tianjin Pipe International Economic & Trade Co., Tianjin Pipe Iron Manufacturing Co., Ltd., TPCO Charging Development Co., Ltd. and Tianguan Yuantong Pipe Product Co.)	
Tianjin Weiming Industrial & Trading	
Tianjin Zhongshun Industry Trade Co., Ltd.	
Tonggang Group (Hong Kong) Co., Ltd.	

	Period to be Reviewed
Tonghua Iron & Steel Group Co., Ltd.	
TLD International	
Transgroup Worldwide Logistics Co., Ltd.	
Uno-steel Group Limited	
Valin Hongkong International Trade	
Vietnman Haiphong Hongyuan Machinery Manufactory Co., Ltd	
Wah Chit Enterprises Co., Ltd.	
Wenzhou Juxing Special Steel Co. Ltd.	
Widesea Industrial Corporation Ltd.	
Wisco & Crm Wuhan Materials & Trade	
WSP Pipe Co., Ltd.	
Wuhan Iron & Steel (Group) Corp.	
Wuxi City DeRui Seamless Steel Pipe	
Wuxi City Dong Qun Steel Tube	
Wuxi City Qianzhou Seamless Tube Factory	
Wuxi Dexin Steel Pipe Co., Ltd.	
Wuxi Dingyuan Precision Cold-Drawn Steel Pipe	
Wuxi Dongwu Pipe Industry	
Wuxi Erquan Special Steel Tube	
Wuxi Fastube Dingyuan Precision Steel Pipe Co., Ltd.	
Wuxi Huayou Special Steel Co., Ltd.	
Wuxi Nanfang Steel Tube	
Wuxi Seamless Oil Pipe	
Wusi Special Steel Tube Manufacturing Co.	
Wuxi Sunrising Steel Co., Ltd.	
Wuxitengdong Speical Steel Material	
Wuxi Xingya Seamless Steel Tube	
Wuxi Zhen Dong Steel Pipe Works	
Wuxi Zhenda Bearing Steel Tube Manufacturing	
Wuxi Zhenda Special Steel Tube Manufacturing	
Xiamen Cenice International Trade Corp., Ltd.	
Xigang Seamless Steel Tube	
Xuahou G&H Investment Consultation	
Xuahou Global Pipe and Fitting Manufacturing Co., Ltd.	
Yancheng Steel Tube Works	
Yangcheng Oriental Import & Export Co., Ltd.	
Yangzhou Chengde Steel Tube (Yangzhou Chengde Steel Co., Yangzhou Chengde Steel Pipe Co.)	
Yangzhou Lontrin Steel Tube (Yangzhou Lontrin Steel Tube Co. Ltd.)	
Yantai Lubao Steel Tube	
Yantai Steel Pipe Co., Ltd. of Laiwu	
Yantai Steel Pipe Plant, Yantai, Shandong	
Yicheng Logistics (Shanghai) Co., Ltd.	
Yieh Corporation Ltd.	
Yuhuan Yinma Copper's Industry Co.	
Zhangjiagang Huacheng Import and Export Co.,Ltd.	
Zhangjiagang Huayou Tubular Co.	
Zhangjiagang Zhongyuan Pipe-Making	
Zheijiang Gross Seamless Steel Tube Co., Ltd.	
Zheijiang Materials Industry International	
Zhengzhou Huitong Pipe Fittings Co. Ltd.	
Zhejiang Jianli Enterprise	
Zhongjian Jinpei Steel Pipe Co., Ltd.	
Zhongyuan Pipeline Manufacturing Co.	
The People's Republic of China: Seamless Refined Copper Pipe and Tube,[10] A–570–964	11/1/11—10/31/12
China Hailiang Metal Trading	
Foshan Hua Hong Copper Tube Co., Ltd.	
Golden Dragon Holding (Hong Kong) International Co., Ltd.	
Golden Dragon Precise Copper Tube Group, Inc.	
Guilin Lijia Metals Co., Ltd.	
Hong Kong GD Trading Co., Ltd.	
Hong Kong Hailiang Metal	
Hong Kong Hailiang Metal Trading Limited	
Luvata Alltop (Zhongshan) Ltd.	
Luvata Tube (Zhongshan) Ltd.	
Ningbo Jintian Copper Tube Co., Ltd.	
Shanghai Hailiang Copper Co., Ltd.	
Shanghai Hailiang Metal Trading Limited	
Sinochem Ningbo Import & Export Co., Ltd.	
Sinochem Ningbo Ltd.	
Taicang City Jinxin Copper Tube Co., Ltd.	
Zhejiang Hailiang Co., Ltd.	
Zhejiang Jiahe Pipes Inc.	
Zhejiang Naile Copper Co., Ltd.	

	Period to be Reviewed
United Arab Emirates: Polyethylene Terephthalate (PET) Film, A–520–803	11/1/11—10/31/12
Flex Middle East FZE	
JBF RAK LLC	
Countervailing Duty Proceedings	
The People's Republic of China: Lightweight Thermal Paper, C–570–921	1/1/11—12/31/11
Guangdong Guanhao High-Tech Co., Ltd.	
Henan Province Jianghe Paper Co., Ltd.	
Jianghe Paper Co., Ltd.	
JHT Paper	
New Pride Co., Ltd.	
Shenzhen Taizhou Industrial Development Co., Ltd.	
The People's Republic of China: Seamless Carbon and Alloy Steel Standard, Line, C–570–957 and Pressure Pipe	1/1/11—12/31/11
3a Venture Ltd.	
Angang Group New Steel Co., Ltd.	
Adler Steel Ltd.	
Ael-berkman Forwarding (Shanghai) Ltd.	
Agility Logistics (Shanghai) Ltd.	
Angang Steel Co., Ltd (ANGGY)	
Anhui Tianda Oil Pipe (Anhui Tianda Oil Pipe Co. Limited)	
Baolai Steel Pipe	
Baoshan Iron & Steel—Steel Tube Subcompany	
Baosteel America Inc.	
Baosteel Group Shanghai Steel Tube	
Baotou Iron and Steel (Group) Co. Ltd.	
Beihai Steel Pipe Corporation	
Beijing Kaisheng Ao Import and Export	
Beijing Sai Lin Ke Hardware Co., Ltd.	
Benxi Fulldoer Tubes	
Benxi Northern Steel Pipe	
Calvert Group	
Cangzhou Qiancheng Steel Pipe Co., Ltd.	
Chang Zhou Yuanyang Steel Tube Co., Ltd.	
Changgang Group	
Changshu Lijia Import and Export Co., Ltd.	
Changshu Seamless Steel Tube (CSSST)	
Changzhou Bao-Steel Tube	
Changzhou Darun Steel Tube	
Changzhou Tongchuang Tube Industry	
Changzhou Tongxing Steel Tube	
Changzhou Yuanyang Steel Tube	
China-East Resources Import & Export Company	
Chongqing Iron & Steel (Group) Co., Ltd.	
Chongqing Rato Power Co., Ltd.	
Chu Kong Steel Pipe Group Co.	
Cloudstone Metal International Ltd.	
CNOOC Kingland Pipe Industry Co., Ltd.	
Corpac Steel Products Corp.	
Daewoo International Corporation	
Dexin Steel Tube (China) Co., Ltd.	
Dezhou Hualude Hardware Products Co.	
Dragon Max Management Ltd.	
Etco (China) International Trading	
Excel International Corp.	
Fastco (Shanghai) Trading Co., Ltd.	
Fengshi Forge Co., Ltd.	
Forest Oilfield Services Co., Ltd.	
Ge Steel Resource Ltd.	
Great Richwell Industry & Trading (Shanghai) Co., Ltd.	
Gs-Hydro Piping Systems Shanghai	
Handan Precise Seamless Steel Pipes	
Hangzhou Cogeneration Imp. & Exp. Co.	
Hangzhou Evt Import and Export Co.	
Hangzhou Prostar Enterprises Ltd.	
Hangzhou Zhedong Steel Tube Products	
Hebei Litonglian Seamless Steel Pipe	
Hebei Machinery Import and Export Co., Ltd.	
Hebei Xintai Pipeline Manufacturing	
Hebei Zhonghai Steel Pipe Manufacture	
Hengyang Hongda Special Steel Tube Co., Ltd.	
Hengyang Steel Tube Group Int'l Trading Inc. (Subsidiaries: Hengyang Valin Steel Tube Co., Ltd., Hengyang Valin MPM Tube Co., Ltd., Xigang Seamless Steel Tube Co., Ltd., Wuxi Seamless Special Pipe Co., Ltd., Jiangsu Xigang Group Co., Ltd., Wuxi Resources Steel Making Co., Ltd., Wuxi Sifang Steel Tube Co., Ltd., Hunan Valin Iron & Steel Group Co., Ltd., Hunan Valin Steel Co., Ltd., and Hunan Valin Xiangtan Iron & Steel Co., Ltd.)	

	Period to be Reviewed
Heyi Steel Tube	
HK Myind Ltd.	
Hsea Steel Trading Co., Ltd.	
Huawei Steel	
Hubei Xinyegang Steel Co., Ltd.	
(Hubei Xin Yegang Special Tube Co., Ltd.)	
Huizhou Dingjia Trade Co., Ltd.	
Huludao Steel Pipe Industrial	
Huzhou Shine Ports Imp & Emp Ltd.	
Jcof Shanghai International Trading	
Jiangsu Benqiu Pipe Products	
Jiangsu Changbao Steel Tube	
Jiangsu Chengde Steel Tube Share Company	
Jiangsu Didu Pipeline Co., Ltd.	
Jiangsu Henyuan Garden Supplies Co.	
Jiangsu Huacheng Industry Group	
Jiangsu Huashun Steel Pipe	
Jiangsu Valin-Xigang Special Steel	
Jiangsu Yinhuan Precision Steel Tube	
Jiangsu Yulong Steel Pipe Co., Ltd.	
Jiangsu ZhenDa Steel Tube Group Co., Ltd.	
Jiangyin City Changjiang Steel	
Jiangyin City Changjiang Steel Pipe	
Jiangyin City Seamless Steel Tube Factory	
Jiangyin Long-Bright Drill Pipe Manufacture Co., Ltd.	
Jiaxing Suns International Trade Co., Ltd.	
Jiling Jiyuan Steel Pipe	
Jinan Jiujing Import & Export Co., Ltd.	
Jinan Meide Casting Co., Ltd.	
Karl Gross Logistics (Shanghai) Co., Ltd. (as agent of Perficon Steel Gmbh)	
Kingland Pipeline Co.	
Kingruman (Beijing) Int. Investment	
Kotech Industry & Co., Ltd.	
LDR Industries, Inc.	
Liuzhou Iron & Steel Co.	
Madison Shanghai Trading Co., Ltd.	
Makalu Corporation Limited	
Manchuar Steel NV	
Maxvalue Industries Co., Ltd.	
Mengcun Hui Autonomous County Hexin Pipes	
Mercadex B.V.	
Nantong Hengte Tube Co., Ltd	
Ningbo Nd Import Export Co., Ltd.	
Northern Steel Pipe	
Okaya (Shanghai) Co., Ltd.	
Pangang Group Chengdu Steel & Vanadium Co. Ltd.	
Pangang Group Chengdu Iron & Steel (PGG CSST)	
Panzhihua Iron & Steel (Group) Co.	
Power Success (Hong Kong) Limited	
Qingdao Iron & Steel Group Co.	
Qiqihaer Haoying Iron and Steel Co., Ltd., of Northeast Special Steel Group	
Samkyung Trading Corp.	
Shandong HuaBao Steel Pipe (Shandong HuaBao Steel Pipe Co., Ltd.)	
Shandong Jinding Industrial Stock Co., Ltd	
Shandong Luxing Steel Pipe (Shandong Luxing Steel Pipe Co., Ltd.)	
Shandong Molong Petroleum Machinery	
Shandong Zhongli Steel Pipe Co., Ltd	
Shanghai Baosteel Group Corp.	
Shanghai Eutin International Trading	
Shanghai Metal Corporation	
Shanghai Ni Fang Trade Inc.	
Shanghai Shengwei Trade Co., Ltd.	
Shanghai Shenhua Steel Tube	
Shanghai Tianyang Steel Tube (Shanghai Tianyang Imp. & Exp. Co.)	
Shanghai Xin Li International Trading	
Shanghai Yueyuechao Manufacture Tube	
Shanghai Yueyuechao International Trading Co.	
Shanghai Zhongyou Tipo Steel Pipe Co., Ltd.	
Shanxi Changzhi Iron & Steel (Group) Co., Ltd.	
Shanxi Yuci Guolian Steel Pipe	
Sheng Ding Yuan Pipe-Making	
Shenjian Steel Pipe	
Shenyang Debang Stainless Steel Industrial (DBSS)	

	Period to be Reviewed
Shen Yang On Line Pipe Fittings Co.	
Shijiazhuang Beihai Pipe Co., Ltd.	
Siano (Beijing) Steel Co., Ltd.	
Sino East Steel Enterprise Co., Ltd.	
Spat Steel International (H.K.) Ltd.	
Steel Pipe Co., Ltd., of Laiwu	
Steelforce Far East Ltd.	
Stiletto (H.K.) Ltd.	
Sun Steel Int'l Trading Ltd.	
Suzhou Hesheng Special Material Co.	
Suzhou Seamless Steel Tube Works	
Suzhou Sino Import & Export Co., Ltd.	
Tianjin Dexpo Import and Export Co.	
Tianjin Gangji Shipping Agency Co.	
Tianjin Keyuanxing Import & Export Tr.	
Tianjin Meicai Metal Trading Co., Ltd.	
Tianjin Tiangang Special Petroleum Pipe Manufacture Co., Ltd.	
Tianjin Pipe (Group) Corporation (TPCO or TPCO International) (Subsidiaries: Tianjin Pipe International Economic & Trade Co., Tianjin Pipe Iron Manufacturing Co., Ltd., TPCO Charging Development Co., Ltd. and Tianguan Yuantong Pipe Product Co.)	
Tianjin Weiming Industrial & Trading	
Tianjin Zhongshun Industry Trade Co., Ltd.	
Tonggang Group (Hong Kong) Co., Ltd.	
Tonghua Iron & Steel Group Co., Ltd.	
TLD International	
Transgroup Worldwide Logistics Co., Ltd.	
Uno-steel Group Limited	
Valin Hongkong International Trade	
Vietnman Haiphong Hongyuan Machinery Manufactory Co., Ltd	
Wah Chit Enterprises Co., Ltd.	
Wenzhou Juxing Special Steel Co. Ltd.	
Widesea Industrial Corporation Ltd.	
Wisco & Crm Wuhan Materials & Trade	
WSP Pipe Co., Ltd.	
Wuhan Iron & Steel (Group) Corp.	
Wuxi City DeRui Seamless Steel Pipe	
Wuxi City Dong Qun Steel Tube	
Wuxi City Qianzhou Seamless Tube Factory	
Wuxi Dexin Steel Pipe Co., Ltd.	
Wuxi Dingyuan Precision Cold-Drawn Steel Pipe	
Wuxi Dongwu Pipe Industry	
Wuxi Erquan Special Steel Tube	
Wuxi Fastube Dingyuan Precision Steel Pipe Co., Ltd.	
Wuxi Huayou Special Steel Co., Ltd.	
Wuxi Nanfang Steel Tube	
Wuxi Seamless Oil Pipe	
Wusi Special Steel Tube Manufacturing Co.	
Wuxi Sunrising Steel Co., Ltd.	
Wuxitengdong Speical Steel Material	
Wuxi Xingya Seamless Steel Tube	
Wuxi Zhen Dong Steel Pipe Works	
Wuxi Zhenda Bearing Steel Tube Manufacturing	
Wuxi Zhenda Special Steel Tube Manufacturing	
Xiamen Cenice International Trade Corp., Ltd.	
Xigang Seamless Steel Tube	
Xuahou G&H Investment Consultation	
Xuahou Global Pipe and Fitting Manufacturing Co., Ltd.	
Yancheng Steel Tube Works	
Yangcheng Oriental Import & Export Co., Ltd.	
Yangzhou Chengde Steel Tube (Yangzhou Chengde Steel Co., Yangzhou Chengde Steel Pipe Co.)	
Yangzhou Lontrin Steel Tube (Yangzhou Lontrin Steel Tube Co. Ltd.)	
Yantai Lubao Steel Tube	
Yantai Steel Pipe Co., Ltd. of Laiwu	
Yantai Steel Pipe Plant, Yantai, Shandong	
Yicheng Logistics (Shanghai) Co., Ltd.	
Yieh Corporation Ltd.	
Yuhuan Yinma Copper's Industry Co.	
Zhangjiagang Huacheng Import and Export Co.,Ltd.	
Zhangjiagang Huayou Tubular Co.	
Zhangjiagang Zhongyuan Pipe-Making	
Zheijiang Gross Seamless Steel Tube Co., Ltd.	
Zheijiang Materials Industry International	
Zhengzhou Huitong Pipe Fittings Co. Ltd.	

	Period to be Reviewed
Zhejiang Jianli Enterprise Zhongjian Jinpei Steel Pipe Co., Ltd. Zhongyuan Pipeline Manufacturing Co.	
Suspension Agreements	
Ukraine: Certain Cut-to-Length Carbon Steel Plate, A–823–808 Metinvest Holding LLC	11/1/11—10/31/12

[3] If one of the above named companies does not qualify for a separate rate, all other exporters of Certain Cut-to-Length Carbon Steel Plate from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[4] If one of the above named companies does not qualify for a separate rate, all other exporters of Certain Hot-Rolled Carbon Steel Flat Products from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[5] If one of the above named companies does not quality for a separate rate, all other exporters of Diamond Sawblades and Parts Thereof from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[6] If one of the above named companies does not qualify for a separate rate, all other exporters of Fresh Garlic from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[7] If one of the above named companies does not qualify for a separate rate, all other exporters of Lightweight Thermal Paper from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[8] If one of the above named companies does not qualify for a separate rate, all other exporters of Polyethylene Terephthalate (PET) Film from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[9] If one of the above named companies does not qualify for a separate rate, all other exporters of Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[10] If one of the above named companies does not qualify for a separate rate, all other exporters of Seamless Refined Copper Pipe and Tube from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the period of review.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any antidumping duty or countervailing duty proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (''*Interim Final Rule*''), amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011 if the submitting party does not comply with the revised certification requirements.

These initiations and this notice are in accordance with section 751(a) of the Act (19 USC 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: December 21, 2012

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–31448 Filed 12–28–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–812, C–357–813]

Honey from Argentina; Final Results of Antidumping and Countervailing Duty Changed Circumstances Reviews; Revocation of Antidumping and Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce

DATES: *Effective Date:* December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at (202) 482–8029 or (202) 482–3019, respectively.

SUMMARY: The Department of Commerce (the Department) is revoking the antidumping duty and countervailing duty orders on honey from Argentina because we have concluded that substantially all domestic producers lack interest in the relief provided by these orders.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2001, the Department published the antidumping and countervailing duty orders on honey from Argentina.[1] On July 24, 2012, the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners) requested that the Department revoke the *AD Order,* effective December 1, 2010, based on the domestic U.S. industry's lack of further interest.[2] On August 22, 2012, the petitioners requested that the Department revoke the *CVD Order,* effective December 1, 2011, again based on their lack of further interest in these proceedings.[3]

On October 2, 2012, the Department published a notice of initiation of changed circumstances reviews of the *Orders* on honey from Argentina.[4] In the *Initiation Notice,* we invited interested parties to comment on the Department's initiation. We did not receive comments from any interested party expressing opposition to the changed circumstances reviews nor to the possible revocation of the *Orders.* On November 14, 2012, the Department published a notice of preliminary results of changed circumstances reviews of the *Orders* on honey from Argentina, and the preliminary intent to revoke the *AD Order,* effective December 1, 2010, and the *CVD Order,* effective December 1, 2011.[5] In the *Preliminary Revocation,* we again invited interested parties to comment on the Department's results by submitting case and rebuttal briefs. We received no comments or briefs from interested parties.

Accordingly, we are notifying the public of the revocation of the antidumping duty order, in whole, with respect to products entered, or withdrawn from warehouse, for consumption on or after December 1, 2010, and the countervailing duty order, in whole, with respect to products entered, or withdrawn from warehouse, for consumption on or after December 1, 2011, because domestic parties have expressed no interest in the continuation of the *Orders* after these dates.

Scope of the Orders

The merchandise covered by the orders is honey from Argentina. The products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form. The merchandise is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under the orders is dispositive.

Final Results of Changed Circumstances Review and Revocation, in Whole, of the Orders

Pursuant to section 751(d)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.222(g), the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Act (*i.e.,* a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 782(h)(2) of the Act gives the Department the authority to revoke an order if producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the continuation of the order. Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances review under 19 CFR 351.216, and may revoke an order (in whole or in part), if it concludes that (i) producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or (ii) if other changed circumstances sufficient to warrant revocation exist. Both the Act and the Department's regulations require that ''substantially all'' domestic producers express a lack of interest in the order(s) for the Department to revoke.[6] The Department has interpreted ''substantially all'' to represent producers accounting for at least 85 percent of U.S. production of the domestic like product.[7]

As noted in the *Initiation Notice,* and again in the *Preliminary Revocation,* the petitioners requested the revocation of these orders because they are no longer interested in maintaining the *Orders* or in the imposition of duties on the subject merchandise as of December 1, 2010, for the *AD Order* and December 1, 2011, for the *CVD Order.* Because the Department did not receive any comments during the period in which parties were permitted to submit briefs or other comments opposing the preliminary revocation of the *Orders* on honey from Argentina, we conclude that producers accounting for substantially all of the production of the domestic like product, to which these orders pertain, lack interest in the relief provided by the *Orders.*

Therefore, in accordance with sections 751(b), 751(d), and 782(h) of the Act, and 19 CFR 351.222(g), the Department concludes that there is a reasonable basis to believe that changed circumstances exist sufficient to warrant revocation of the *Orders.* Thus, the Department is revoking the *Orders* on honey from Argentina, in whole, with regard to the products described above under the ''Scope of the Orders'' section.

The Department will instruct U.S. Customs and Border Protection (CBP) to terminate suspension of liquidation effective December 1, 2010, for the *AD Order,* and December 1, 2011, for the *CVD Order.* The Department will instruct CBP to liquidate without regard to antidumping duties and countervailing duties, all unliquidated

[1] *See Notice of Antidumping Duty Order: Honey from Argentina,* 66 FR 63672 (December 10, 2001) (*AD Order*) and *Notice of Countervailing Duty Order: Honey from Argentina,* 66 FR 63673 (December 10, 2001) (*CVD Order*), (collectively, *Orders*).

[2] *See* Letter from Petitioners, entitled ''Request for 'No Interest' Changed Circumstances Review of the Antidumping and Countervailing Duty Orders on Honey from Argentina,'' dated July 24, 2012 (CCR Request).

[3] *See* Letter from Petitioners, entitled ''Supplement to Petitioners' Request for a 'No-Interest' Changed Circumstances Review of the Antidumping and Countervailing Duty Orders on Honey from Argentina,'' dated August 22, 2012 (Supplemental CCR Request).

[4] *See Initiation Notice.*

[5] *See Honey from Argentina; Antidumping and Countervailing Duty Changed Circumstances Reviews; Preliminary Intent to Revoke Antidumping and Countervailing Duty Orders,* 77 FR 67790 (November 14, 2012) (*Preliminary Revocation*).

[6] *See* section 782(h) of the Act and 19 CFR 351.222(g).

[7] *See Certain Orange Juice from Brazil: Preliminary Results of Antidumping Duty Changed Circumstances Review and Intent Not to Revoke, In Part,* 73 FR 60241, 60242 (October 10, 2008), unchanged in *Certain Orange Juice From Brazil: Final Results of Antidumping Duty Changed Circumstances Review,* 74 FR 4733 (January 27, 2009); *see also* 19 CFR 351.208(c).

entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after December 1, 2010, for the *AD Order* and January 1, 2012, for the *CVD Order*.[8] In accordance with section 778 of the Act, we will also instruct CBP to pay interest on and refund any AD deposits with respect to the subject merchandise entered, or withdrawn from warehouse, for consumption on or after December 1, 2010, the first day of the tenth administrative review period, the review of which is now terminated by virtue of the effective date of the revocation of the *AD Order.* We will also instruct CBP to pay interest on and refund any CVD deposits with respect to the subject merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 2012, the earliest date on which entries remain suspended under the *CVD Order.*

This notice is published in accordance with section 751(b)(1) of the Act and 19 CFR 351.216, 351.221(c)(3), and 351.222.

Dated: December 20, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–31436 Filed 12–28–12; 8:45 am]

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[8] There is no administrative review of the *CVD Order* for the period January 1, 2011, through December 31, 2011; therefore, there are no unliquidated entries during this period.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–812]

Honey From Argentina; Rescission of Antidumping Duty Administrative Review; 2010–2011

AGENCY: Import Administration, International Trade Administration, Department ofCommerce.

SUMMARY: The Department of Commerce (the Department) is rescinding the 2010–2011 antidumping duty administrative review on honey from Argentina because all parties have withdrawn their requests for review and the antidumping duty order on imports of honey from Argentina is being revoked, effective December 1, 2010.

DATES: Effective December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, at (202) 482–8029 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2001, the Department published the antidumping duty order on honey from Argentina.[1] On December 1, 2011, the Department published in the **Federal Register** the notice of opportunity to request an administrative review of the antidumping duty order on honey from Argentina for the period December 1, 2010, through November 30, 2011.[2] Between December 29, 2011, and January 3, 2012, the Department received several requests from interested parties that the Department conduct an administrative review of certain producers/exporters of honey from Argentina.[3] On January 31, 2012, the Department published in the **Federal Register** the notice of initiation of the 2010–2011 administrative review of honey from Argentina.[4]

On February 23, 2012, the Department released the results of a data query to U.S. Customs and Border Protection (CBP) regarding imports into the United States of honey from Argentina during the period of review (POR).[5] We did not receive any comments from parties regarding the CBP entry data. On March 19, 2012, the Department selected mandatory respondents for this administrative review based on import volume figures (*i.e.,* HoneyMax S.A. (Honeymax) and Nexco).[6] On March 22, 2012, the Department issued the antidumping duty questionnaire to Honeymax and Nexco. On April 24, 2012, the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners) withdrew their request for review for ten of the original twenty-two companies for which they had made a review request, including Honeymax, a mandatory respondent.[7] We received Nexco's response to section A of the antidumping duty questionnaire on April 26, 2012.[8] On April 27, 2012, petitioners additionally withdrew their request for TransHoney S.A. and we concurrently received a notice of withdrawal from TransHoney S.A. itself.[9]

Because petitioners timely withdrew their request for review regarding HoneyMax, and because HoneyMax did not self-request a review, we issued a supplemental respondent selection memorandum, selecting CIPSA as the alternate mandatory respondents.[10] We issued the antidumping duty questionnaire to CIPSA on May 16, 2012. We received Nexco's responses to sections B and C of the Department's questionnaire on May 22, 2012.[11] We received CIPSA's section A questionnaire response, and its section B and C questionnaire responses on June 18, 2012, and June 29, 2012, respectively.[12]

On July 24, 2012, petitioners filed a submission withdrawing their review requests for the remaining companies for which they had requested a review and further indicated that they were simultaneously filing a request for the initiation of a ''no interest'' changed circumstances review, under which petitioners would be seeking the revocation of the *Order* on honey from Argentina.[13] We received similar withdrawals of request for review from Nexco and CIPSA also on July 24, 2012.

[1] *See Notice of Antidumping Duty Order: Honey from Argentina,* 66 FR 63672 (December 10, 2001) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 74773 (December 1, 2011).

[3] *See* Letter from Nexco S.A. (Nexco), titled ''Request for Administrative Review and Revocation of Antidumping Duty Order,'' dated December 29, 2011; Letter from Algodonera Avellaneda, S.A. (Algodonera), titled ''Request for Administrative Review,'' dated December 30, 2011; Letter from Apícola Danangie, Compañía Inversora Platense S.A. (CIPSA), Mielar S.A./Compañía Apícola Argentina S.A., Patagonik S.A., TransHoney S.A., and Villamora S.A., titled ''Administrative Review Request,'' dated December 31, 2011; and Letter from the American Honey Producers Association and the Sioux Honey Association (petitioners), titled ''Request for Review,'' dated January 3, 2011.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 77 FR 4759 (January 31, 2012) (*Initiation Notice*).

[5] *See* Memorandum to the File, from Patrick Edwards, Analyst, regarding ''United States Customs and Border Protection Entry Data for Selection of Respondents for Individual Review,'' dated February 23, 2012.

[6] *See* Memorandum to the File, from Patrick Edwards, titled ''Respondent Selection Memorandum,'' dated March 19, 2012.

[7] *See* Letter from petitioners, titled ''Partial Withdrawal of 10th Annual Administrative Review,'' dated April 24, 2012.

[8] *See* Nexco's section A Questionnaire Response, dated April 26, 2012.

[9] *See* Letter from petitioners, titled ''Partial Withdrawal of 10th Annual Administrative Review,'' dated April 27, 2012; *see also* Letter from TransHoney S.A., titled ''Withdrawal of Antidumping Administrative Review Request of TransHoney S.A.,'' dated April 27, 2012.

[10] *See* Memorandum to the File, from Patrick Edwards, Analyst, titled ''Respondent Selection Memorandum,'' dated May 8, 2012.

[11] *See* Nexco's section B and C Questionnaire Responses, dated May 22, 2012.

[12] *See* CIPSA's section A Questionnaire Response, dated June 18, 2012; *see also* CIPSA's section B and C Questionnaire Response, dated June 29, 2012.

[13] *See* Letter from petitioners, titled ''Petitioners' Withdrawal of Request for Administrative Review,'' dated July 24, 2012.

On July 30, 2012, all remaining parties that had requested an administrative review during the instant POR withdrew their requests for review given petitioners' filing of a request for a ''no interest'' changed circumstances review, seeking revocation of the *Order.*

Period of Review

The POR is December 1, 2010, through November 30, 2011.

Scope of the Order

The merchandise covered by the order is honey from Argentina. The products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form. The merchandise is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under the order is dispositive.

Rescission of Antidumping Duty Administrative Review

As the *Order* on honey from Argentina is being revoked, effective as of the first day of this administrative review period (*i.e.,* December 1, 2010),[14] the Department is rescinding this administrative review consistent with 19 CFR 351.213(d)(4) and 351.222(g)(4).

Assessment Instructions

Given the revocation of the *Order,* the Department will instruct CBP to terminate suspension of liquidation effective December 1, 2010. The Department will instruct CBP to liquidate without regard to antidumping duties, all unliquidated entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after December 1, 2010. In accordance with section 778 of the Act, we will also instruct CBP to pay interest on and refund any AD deposits with respect to the subject merchandise entered, or withdrawn from warehouse, for consumption on or after December 1, 2010, the first day of this administrative review period, which is now terminated by virtue of the effective date of the revocation. The Department intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice of rescission of administrative review.

Notification Regarding Administrative Protective Orders

This notice serves as a 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 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 Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: December 20, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–31450 Filed 12–28–12; 8:45 am]

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[14] *See* notice of final results of changed circumstances review of honey from Argentina signed concurrently with this notice.

DEPARTMENT OF COMMERCE

International Trade Administration

Healthcare Trade Mission to Russia, June 3–7, 2013

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

The U.S. Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service (CS), is organizing a Healthcare Trade Mission to Moscow and St. Petersburg, Russia from June 3–7, 2013 which will be led by a senior Commerce official.

Russia, with 140 million consumers and rapidly growing demand for healthcare products and services, presents lucrative opportunities for U.S. companies. Equipment, technologies, and investments are needed in the healthcare sector, specifically in the medical equipment, dental equipment and biotechnology sub-sectors. This healthcare mission will directly contribute to the National Export Initiative (NEI) by assisting U.S. businesses in entering the Russian healthcare market and increasing U.S. exports. It will also be a deliverable for the U.S.-Russia Bilateral Presidential Commission Business Development and Economic Relations Working Group.

The mission will help participants gain market insights, make industry contacts, solidify business strategies, and advance specific projects with the goal of increasing U.S. exports to Russia. The mission will include one-on-one business appointments with pre-screened potential partners, market briefings, and networking events. Joining this official U.S. delegation will provide participating companies an opportunity to assess the Russian healthcare market.

Commercial Setting

Russia is one of the world's fastest growing economies and its healthcare system is evolving rapidly with a promising outlook for U.S. healthcare exports, particularly in the medical equipment, dental equipment and biotechnology subsectors. Russia's National Health Project aims at improving access and funding for healthcare and improving Russia's healthcare sector, and has created opportunities for increased U.S. exports in the healthcare sector.

Approximately 20% of overall health care spending is covered out-of- pocket by patients. Voluntary healthcare insurance programs currently account for approximately one-third of total private healthcare expenditures. According to future reform plans, mandatory insurance funds will serve as the main source of healthcare funding and will provide transparency and monetary control within the system.

The National Health Project was signed by President Putin in 2005 and was designed to significantly improve Russian healthcare. From 2011–2013, $15.4 billion was allocated from both the federal budget and the Mandatory Healthcare Insurance Fund [to the National Health Project?]. The Program of Modernization in Healthcare 2011–2012, aimed at renovating and upgrading healthcare facilities, was financed at $11 billion. The significant funding reflects the current need for new modern technologies for diagnostics and treatment. Russian patients are becoming more aware of modern medical technologies around the world and expect the same types of treatment in Russia.

In addition to these programs that are currently being implemented, the Ministry of Health has recently developed a draft government program called ''Development of Healthcare in the Russian Federation.'' This document is currently under review for approval. It contains the principles of preventive

medicine, quality of provided healthcare services, education of medical personnel, and overall changes in the healthcare infrastructure.

The Ministry of Industry and Trade is also currently developing a strategy for the development of the medical industry through 2020. With continued growth in this sector, World Trade Organization (WTO) accession, and government plans to modernize and invest in Russian healthcare through 2020, American companies should be poised to make significant contributions to the Russian healthcare market.

Medical Equipment

The medical equipment sector is one of the fastest-growing sectors of the economy. There is a relatively stable macroeconomic situation in Russia with much unsatisfied deferred demand for medical equipment across the country. In addition, the Russian government is focused on this sector and has increased government financing for the purchase of medical equipment. For example, the Program of High-Tech Medical Assistance 2011–2013 was financed at $4 billion.

In 2011, the market for medical equipment was estimated at $4.9 billion. During the next nine years, experts expect yearly market growth to be 13.5%. The most promising market segments include diagnostics and visualization, cardiovascular, ophthalmology, orthopedics, laboratory diagnostics and urology equipment and technology. For example, the average annual increase from 2006–2011 in market share for diagnostics and visualization equipment was 18% and in medical IT 10%.

Since commercialization of medical equipment manufactured in Russia remains low, the market for medical equipment is heavily dependent on imports. The average annual increase in the import market for medical equipment from 2006 to 2011 was approximately 23%. Medical equipment imports in 2006 were $14.2 billion, with steady growth to $41 billion in 2011.

Membership in the WTO will also benefit foreign exports to Russia. After full implementation of the WTO accession and Permanent Normal Trade Relations, tariffs for medical equipment are estimated to range from 0% to 7%. Currently, tariffs range as high as 15% to 20%.

Dental Equipment

The Russian dental market is also a sector that is expanding and showing good growth potential. In 2011, total world imports into Russia for dental equipment were approximately $500 million, reflecting the need for dental equipment for use in the large market for dental services in Russia, which was approximately $6 billion in 2011.

The number of clinics, practicing dentists, technicians and patient visits are all on the rise. There are over 9,500 dental units operating in Moscow, with 3,000 state clinics and over 6,500 private clinics. There are 670 municipal dental clinics and 2900 dental departments within those clinics. The highest level of dental industry privatization is in the Moscow region.

The number of practicing dentists in Russia is 68,000, of which 35,000 are members of the Russian Dental Association. The number of patient visits is approximately 150 million a year. However, the ratio of dentists to patients in Russia is still only 45/100,000 people, which is below levels in the United States and most European countries. In the United States, the ratio of patients to dentists is 60/100,000.

The dental market is one of the most organized markets in Russia. The largest associations are the Russian Dental Association, which has 69 regional divisions and the Dental Industry (DI ROSI) which has 45 member companies. These associations play an important role in the introduction of new technologies and practices, actively participate in trade events, and regularly publish in professional journals. As a result, they have a large impact on the industry. The two major dental universities are Moscow State Medical and Dental University and the Sechenov Medical Academy in Moscow.

Domestic production of dental equipment is insufficient for the Russian market and very few new products are produced domestically. Local manufacturers such as Averon, VladMiVa, Raduga Rossii, Geosoft, Stomadent Omega, and Tselit produce a wide range of dental equipment. Since Russia's domestic dental production level meets only 20% of total demand, imports play a significant role in the market. The majority of dental equipment is supplied from the United States, Germany, France, Switzerland, Japan, and other countries.

Many large U.S. and international companies have offices in Russia, including Densply, 3M, Nobel Biocare, Mileston, Midmarek, 3i, Sirona, Kavo, Colgate, Kodak-Eastman, Philips-Sonicare, Discuss Dental (now owned by Philips), Oral B, and Wrigley Adeck.

There are about 500 distributors of dental equipment in Russia. The major distributors are located in Moscow and work in other regions through smaller local distributors or through regional representatives. Import customs clearances are executed more easily in larger cities like Moscow and St. Petersburg. There are strict product registration and certification procedures necessary for the release of dental equipment into the market. The registration and certification process can be complicated, time-consuming, and expensive. It may require a regular market presence by the manufacturer or an authorized representative with competent Russian language skills and knowledge of the local market to be able to complete the process.

Biotechnology

In the last several years, Russia has been developing an innovative modern economy by focusing on information technologies and nanotechnologies. The biotechnologies area has large potential and is underdeveloped, but is evolving because of the need to extend life expectancies within the country. LargeU.S. multinational companies like Celgene, Amgen, and Genzyme are established in the market and are already working in the biotechnology field. Despite the fact that major companies from Europe and the U.S. have already entered the market, there is still room for small innovative companies in the biotechnology area. Good examples include two small U.S. biotechnology companies, Bind and Selecta, which have recently opened offices in Russia to start research and development, which is a priority of the Russian government.

The Government Commission on High Technologies and Innovations signed a decision in April, 2011 to create a State Coordination Program for the Development of Biotechnology in the Russian Federation through 2020. The Ministry of Economic Development is responsible for this State Coordination Program, which focuses on several areas including biopharmaceuticals and biomedicine.

1. Biopharmaceuticals (essential medicines, including biogenerics, hormones, cytokines, therapeutic monoclonal antibodies, peptides, phytomedicines, new generation vaccines, antibiotics and bacteriophages)

2. Biomedicine (molecular diagnostics, personalized medicine, engineered cell and tissue for therapeutic purposes, biocompatible materials)

The Russian market for biopharmaceuticals in 2010 was estimated at $2.2 billion, of which $1.3 billion was dedicated to cytokines, genetically engineered hormones (including insulin), coagulants and therapeutic enzymes, monoclonal

antibodies ($350 million), and vaccines ($350 million). For example, the sales of antibodies and vaccines are expected to rise to $480 million and $370 million respectively by the year 2015.

The Russian biotechnology market is focused on the development and manufacturing of products for the diagnosis and treatment of human diseases and for the prevention of harmful effects of the environment on humans. The world market for biotechnology (used for molecular genetics diagnostic technologies) was $13.5 billion in 2010, and is expected to be $33.3 billion by 2015. The access to credible data for the Russian market is low because the segment has not been fully developed, but it is expected to mature in the near future.

Biotechnology is a large part of the overall pharmaceutical sector. According to industry experts, Russia is currently one of the ten largest pharmaceutical markets in the world. In 2011, the pharmaceutical market volume amounted to $26 billion in end user prices, which is 12% higher than in 2010.

An important recent trend was the planning and formation of ''pharmaceutical clusters''. This was due in part to the completion of the ''Strategy of Development of the Pharmaceutical Industry- 2020'', developed by the Ministry of Industry and Trade which outlines some government priorities.

The Russian pharmaceutical market is import driven with 76% of drugs taken in Russia produced abroad. The only domestic manufacturer in the top 20 leading players in the Russian pharmaceutical market is Pharmstandart.

Mission Goals

The goal of the Healthcare Trade Mission to Russia is to promote the export of U.S. goods and services by: (1) Introducing U.S. companies to industry representatives and potential clients and partners; and (2) introducing U.S. companies to industry experts to learn about policy initiatives that will impact the Russian healthcare industry in general as well as the medical equipment, dental equipment and biotechnology sectors.

Mission Scenario

In Moscow, trade mission members will participate in an Embassy briefing from industry experts and take part in one-on-one business appointments with private-sector organizations. In addition, they will enjoy a networking event with industry leaders and potential partners. In St. Petersburg, all of the delegates will have customized one-on-one business appointments and attend another networking reception.

Matchmaking efforts will involve partners such as the Association of International Pharmaceutical Manufacturers (AIPM), Innovative Pharma, Association of International Manufacturers of Medical Devices (IMEDA), the American Chamber of Commerce in Russia, and the Russian Dental Association. U.S. participants will be counseled before, during, and after the mission by CS Russia staff actively involved in the healthcare trade mission.

PROPOSED TIME TABLE

Monday, June 3, *Day 1*	Moscow. Briefing by the U.S. Embassy and industry experts. Site Visits in afternoon.
Tuesday, June 4, *Day 2*	Moscow. One-on-one business appointments. Networking reception.
Wednesday, June 5, *Day 3*	Depart for St. Petersburg. Travel day and free evening in St. Petersburg.
Thursday, June 6, *Day 4*	St. Petersburg. One-on-one business appointments. Networking reception.
Friday, June 7, *Day 5*	St. Petersburg. Additional meetings and follow-up appointments. Departure for the United States (Friday evening or Saturday, June 8).

Participation Requirements

All parties interested in participating in the trade mission must be active in the healthcare sector and complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 10 and maximum of 13 companies will be selected to participate in the mission from the applicant pool. Applicants that are U.S. companies already doing business in Russia as well as those seeking to enter the Russian market for the first time may apply.

Fees and Expenses

After a company has been selected to participate in the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee will be $5950 for large firms and $5350 for a small or medium-sized enterprise (SME) trade association, which will cover one representative.* [1] The fee for an additional representative (SME/trade association or large company) is $750, which will cover one representative. The fee for an additional representative (SME or large company) is $750.

[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contractingopportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see *http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

Expenses for travel, lodging, meals, and incidentals will be the responsibility of each mission participant. Delegation members will be able to take advantage of U.S. Embassy rates for hotel rooms beginning Sunday, June 2 in Moscow and through Saturday, June 8 in St. Petersburg. Please note that the trade mission begins in Moscow and ends in St. Petersburg. Early arrival nights in Moscow, return transportation to Moscow from St. Petersburg, or the extension of stay in St. Petersburg will be the responsibility of the participants.

Conditions for Participation

An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary

market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.

Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service. In the case of a trade association, the applicant must certify that for each company to be represented by the association, the products and/or services the represented company seeks to export are either produced in the United States or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content.

Criteria for Participation

Selection will be based on the following criteria:

- Suitability of the company's (or in the case of a trade association, member companies') products or services to the market.
- Applicant's (or in the case of a trade association, member companies') potential for business in Russia and in the region, including likelihood of exports resulting from the mission.
- Consistency of the applicant's (or in the case of a trade association, member companies') goals and objectives with the stated scope of the mission.

Diversity of company size, sector or subsector, and location may also be considered during the review process.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*) and other Internet web sites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. The U.S. Department of Commerce will begin reviewing applications and making selection decisions on a rolling basis beginning on December 28, 2012 until the maximum of 20 participants is selected. Applications received after March 15, 2013 will be considered only if space and scheduling constraints permit.

Contacts

Jessica Arnold, U.S. Commercial Service, Washington, DC, Tel: (202) 482–2026, *Jessica.Arnold@trade.gov.*

Timothy Cannon, U.S. Commercial Service, U.S. Embassy, Moscow, Tel: +7 495 528 55 32, *Timothy.Cannon@trade.gov.*

Yuliya Vinogradova, U.S. Commercial Service, U.S. Embassy, Moscow, Tel: +7 495 728 55 86, *Yuliya.Vinogradova@trade.gov.*

Elnora Moye,

Trade Program Assistant.

[FR Doc. 2012–31425 Filed 12–28–12; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Infrastructure Trade Mission to Colombia and Panama; Bogota, Columbia and Panama City, Panama, May 13–16, 2012; Correction

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice; Correction.

SUMMARY: The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service published a document in the **Federal Register** of December 4, 2012 regarding the *U.S. Infrastructure Trade Mission to Colombia and Panama May 13–16, 2013. The subject heading of the document incorrectly indicated the year 2012 instead of 2013.* All other information in the December 4, 2012 Notice, including the February 15, 2013 application deadline, is correct.

FOR FURTHER INFORMATION CONTACT: Arica N Young, Commercial Service Trade Missions Program, Tel: 202–482–6219, Fax: 202–482–9000, Email: *arica.young@trade.gov;* or Carlos Suarez, U.S. Commercial Service Colombia, Tel: 57–1–2752519, Email: *carlos.suarez@trade.gov;* or Enrique Tellez, U.S. Commercial Service Panama, Tel: 507–317–5080, Email: *enrique.tellez@trade.gov.*

Correction

In the **Federal Register** of December 4, 2012, in FR Doc. 2012–29306 on page 71778, first column, correct the subject heading of the notice to read: U.S. Infrastructure Trade Mission to Colombia and Panama; Bogota, Columbia and Panama City, Panama, May 13–16, 2013.

Dated: December 13, 2012

Elnora Moye,

Trade Program Assistant.

[FR Doc. 2012–31426 Filed 12–28–12; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; Malcolm Baldrige National Quality Award and Examiner Applications

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 1, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dawn Bailey, Baldrige Performance Excellence Program, 100 Bureau Drive, Stop 1020, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1020; telephone (301) 975–3074, fax (301) 948–3716, email *dawn.bailey@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Department of Commerce is responsible for the Baldrige Performance Excellence Program (BPEP) and the Malcolm Baldrige National Quality (BNQP) Award. Directly associated with this Award is the Board of Examiners, an integral volunteer workforce for BPEP (managed by NIST). An applicant for the MBNQA is

required to perform two steps: (1) The applicant organization self-certifies that it meets eligibility requirements with an eligibility form; and (2) the applicant organization prepares and completes an application package. BPEP will assist with or offer advice on any questions or issues that the applicant may have concerning the eligibility or application process. With the help of the Board of Examiners, BEP will use the eligibility forms and application package to assess and provide feedback on the applicant's performance excellence practices. These practices could lead to a MBNQA awarded by the President of the United States or his delegate.

The application to be a member of the Board of Examiners is a one-step, online process. Each year, BPEP recruits highly skilled experts in the fields of manufacturing, service, small business, health care, education, and nonprofit, the six Award eligibility categories, to evaluate the applications that BPEP receives. Examiners serve for a one-year term; participation on the board is entirely voluntary.

II. Method of Collection

Award applicants must comply in writing according to the Eligibility Certification Form and Baldrige Award Application Form available at *http://www.nist.gov/baldrige/enter/how_to_apply.cfm.* The application for the Board of Examiners can be found at *http://www.nist.gov/balrige/examiners/index.cfm* and submitted electronically.

III. Data

OMB Control Number: 0693–0006.

Form Number: None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations, health care, education, or other non-profit institutions; or individuals or households.

Estimated Number of Respondents: 850 (50 Applicants for the MBNQA; 800 Applicants for the Board of Examiners).

Estimated Time per Response: 74 hours for applications for the MBNQA, and 1 hour for applications for the Board of Examiners.

Estimated Total Annual Burden Hours: 8,200.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 21, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–31227 Filed 12–28–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC419

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Scientific and Statistical Committee (SSC) of the Mid-Atlantic Fishery Management Council (Council) will hold a meeting.

DATES: The meeting will be held on Wednesday, January 23, 2013 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Hilton Baltimore BWI Airport, 1739 West Nursery Road, Linthicum Heights, MD 21090; telephone: (410) 694–0808.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of the SSC meeting is to address the Council's request that the SSC reconsider its acceptable biological catch (ABC) recommendations for black sea bass for 2013–14.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action 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 Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: December 26, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–31356 Filed 12–28–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC421

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) announces its intent to hold a workshop. The purpose of the workshop is to consider options for improving the management of the longfin and Illex squid fisheries, with a focus on responsive harvest strategies that account for changing stock conditions over the course of the year. The Council intends for managers, scientists, and fishermen to collaboratively consider if responsive harvest strategies are feasible and appropriate for optimizing yield in these fisheries. Discussions at the workshop will culminate in a workshop report and a series of follow-up port meetings that will inform consideration of future management actions.

DATES: The workshop will be held from 1 p.m. Tuesday, January 15, 2013 until 1 p.m. Thursday, January 17, 2013.

ADDRESSES: The workshop will be held at: Hyatt Place Long Island/East End; 451 East Main Street; Riverhead, NY 11901; telephone: (631) 208–0002.

FOR FURTHER INFORMATION CONTACT: Chris Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, (302) 526–5255, or Jason Didden, Mackerel-Squid-Butterfish Plan Coordinator, (302) 526–5254.

SUPPLEMENTARY INFORMATION: Additional information (agenda, briefing materials, meeting summary, etc) will be posted to: *http://www.mafmc.org/fmp/msb.htm.*

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action 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 Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Chris Moore, Ph.D. (see **FOR FURTHER INFORMATION CONTACT**) at least 5 days prior to the meeting date.

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

Dated: December 26, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–31358 Filed 12–28–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC420

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Meeting of the South Atlantic Fishery Management Council's (Council) Golden Crab Advisory Panel (AP).

SUMMARY: The South Atlantic Fishery Management Council (SAFMC) will hold a meeting of Golden Crab Advisory Panel (AP) in Fort Lauderdale, FL.

DATES: The meeting will be held on Thursday, January 31, 2013, from 1 p.m. until 5 p.m.

ADDRESSES: The meeting will be held at the Harbor Beach Marriott, 3030 Holiday Drive, Fort Lauderdale, FL 33316; telephone: (954) 525–4000; fax: (954) 766–6185.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; telephone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The items of discussion in the AP's agenda are as follows:

Agenda for Thursday, January 31, 2013

1. Discuss management measures other than a catch share program that could potentially improve the current management of the fishery.

2. Receive an overview of Council actions regarding golden crab management since the last AP meeting, including the status of draft Amendment 6 to the Golden Crab Fishery Management Plan (FMP) for the South Atlantic Region.

3. Suggest and discuss management alternatives as recommendations for Council consideration.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified 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 Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: December 26, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–31357 Filed 12–28–12; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 1/31/2013.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Additions

On 10/12/2012 (77 FR 62219–62220), 10/19/2012 (77 FR 64326–64327) and 11/9/2012 (77 FR 67343–67344), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the

products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

NSN: 7920–00–NIB–0542—Scrub Brush, Polypropylene Bristles, Extension Pole-Compatible, 2'' x 8''
NSN: 7920–00–NIB–0545—Scrub Brush, Wire, Knuckle Guard, Long Handle, Ergonomic, 6'' x 1 1/8'', w/built-in scraper
NSN: 7920–00–NIB–0547—Scrub Brush, Wire, Stainless, Ergonomic, 5''
NSN: 7920–00–NIB–0558—Scrub Brush, Wire, Black Tempered, Ergonomic, 5''
NSN: 7920–00–NIB–0563—Wire Brush, Wire, Knuckle Guard, Long Handle, Ergonomic, 6'' x 1 1/8''
NPA: Industries for the Blind, Inc., West Allis, WI.
Contracting Activity: General Services Administration, Fort Worth, TX
Coverage: B-List for the Broad Government Requirement as aggregated by the General Services Administration.

Services

Service Type/Location: Custodial Services, Transportation Security Administration (TSA), 6100 E.M. Dirksen Parkway, Peoria International Airport, Peoria, IL.
NPA: Community Workshop and Training Center, Inc., Peoria, IL.
Contracting Activity: General Services Administration, Public Buildings Service, Property Management Service Center, Springfield, IL.

Service Type/Location: Administrative Services, Dept. of Housing and Urban Development (HUD), Multi-locations—Nationwide, 77 West Jackson Blvd. Rm. 2517, Mail Code: NFNC, Chicago, IL.
NPA: Nobis Enterprises, Inc., Marietta, GA.
Contracting Activity: Department of Housing and Urban Development, Chicago, IL.

Service Type/Location: Custodial and Grounds Maintenance Services, Rocky Mountain Metropolitan Airport (RMMA), Air Traffic Control Tower (ATCT) & Base Building, 11001 Control Tower Drive, Westminster, CO.
NPA: AspenPointe Employment, Colorado Springs, CO.
Contracting Activity: Dept of Transportation, Federal Aviation Administration, Renton, WA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2012–31380 Filed 12–28–12; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to the Procurement List.

SUMMARY: The Committee is proposing to add products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments Must Be Received On or Before:* 1/31/2013.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products and service are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

NSN: MR 10618—Stickers, Easter Themed, Assorted, 200ct
NPA: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: Military Resale-Defense Commissary Agency (DeCA), Fort Lee, VA
Coverage: C-List for the requirements of military commissaries and exchanges as aggregated by the Defense Commissary Agency.
NSN: 5120–00–902–0092—Hammer—2 lb, Cross-Peen, 16'' Fiberglass Handle, Cushioned Grip
NSN: 5120–00–902–0093—Hammer—4 lb, Cross-Peen, 16'' Fiberglass Handle, Cushioned Grip
NSN: 5120–00–900–6095—Hammer—6 lb, Sledge, Double-Faced, 32'' Fiberglass Handle, Cushioned Grip
NSN: 5120–00–900–6096—Hammer—8 lb, Sledge, Double-Faced, 32'' Fiberglass Handle, Cushioned Grip
NSN: 5120–00–900–6097—Hammer—10 lb, Sledge, Double-Faced, 34'' Fiberglass Handle, Cushioned Grip
NSN: 5120–00–900–6098—Hammer—12 lb, Sledge, Double-Faced, 34'' Fiberglass Handle, Cushioned Grip
NPA: Keystone Vocational Services, Inc., Sharon, PA
Contracting Activity: General Services Administration, Tools Acquisition Division I, Kansas City, MO
Coverage: B-List for the Broad Government Requirement as aggregated by the General Services Administration.

Service

Service Type/Location: Hospital Housekeeping, Weed Army Community Hospital (WACH), 2nd Street, Building 166, Fort Irwin, CA.
NPA: Job Options, Inc., San Diego, CA
Contracting Activity: Dept of the Army, W40M USA MEDCOM HCAA, Fort Sam Houston, TX

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2012–31379 Filed 12–28–12; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent to Renew Collection, Futures Volume, Open Interest, Price, Deliveries and Exchange of Futures for Physicals

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on futures volume, open interest, price,

deliveries, and exchange of futures for physicals.

DATES: Comments must be submitted on or before March 1, 2013.

ADDRESSES: Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses below. Please refer to OMB Control No. 3038–0012 in any correspondence.

Comments may be mailed to Gary J. Martinaitis, Division of Economic Analysis, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, and Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* Desk Officer for CFTC, 725 17th Street Washington, DC 20503.

Comments may also be submitted by any of the following methods:

The agency's Web site, at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.

Mail: Sauntia Warfield, Assistant Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

Hand Delivery/Courier: Same as mail above.

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Please submit your comments using only one method and identity that it is for the renewal of 3038–0012.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

FOR FURTHER INFORMATION CONTACT: Gary J. Martinaitis, (202) 418–5209; FAX: (202) 418–5527; email: *gmartinaitis@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 USC 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

Futures Volume, Open Interest, Price, Deliveries and Exchange of Futures for Physicals, OMB control number 3038–0012—Extension

Commission Regulation 16.01 requires the U.S. futures exchanges to publish daily information on the items listed in the title of the collection. The information required by this rule is in the public interest and is necessary for market surveillance. This rule is promulgated pursuant to the Commission's rulemaking authority contained in Sections 5 and 5a of the Commodity Exchange Act, 7 U.S.C. 7 and 7a (2000).

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR Section	Annual Number of Respondents	Frequency of Response	Total Annual Responses	Hours per Response	Total Hours
16.01	15	On occasion	3750	0.5	1875

Dated: December 21, 2012.

Sauntia Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–31252 Filed 12–28–12; 8:45 am]

BILLING CODE 6351–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, CNCS is soliciting comments concerning clearance of the Social Innovation Fund Continuation Application Guidance. Social Innovation Fund grantees seeking continuation funding will complete the application. Continuation funding is

[1] *See* 17 CFR 145.9.

dependent upon submission of the information requested in this collection.

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section March 1, 2013.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service, Social Innovation Fund, Kirsten Breckinridge, Program Officer, 9613 A; 1201 New York Avenue NW., Washington, DC, 20525.

(2) By hand delivery or by courier to the CNCS mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) *By fax to:* (202) 606–3477, Attention: Kirsten Breckinridge, Program Officer.

(4) Electronically through www.regulations.gov. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Kirsten Breckinridge, (202)606–7570, or by email at *kbreckinridge@cns.gov.*

SUPPLEMENTARY INFORMATION: CNCS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

Existing Social Innovation Fund grantees submit this information in order to receive continuation funding for their approved grant program. This information provides program staff a full accounting of program progress and informs staff of any anticipated changes to the approved grant program. This information is submitted electronically via the eGrants system and via an excel sheet addendum.

Current Action

This is a new information collection request.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: Social Innovation Fund Continuation Funding Application.

OMB Number: None.

Agency Number: None.

Affected Public: Existing Social Innovation Fund grantees.

Total Respondents: Approximately 20.

Frequency: Annual.

Average Time Per Response: 8 hours.

Estimated Total Burden Hours: 160.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 7, 2012.

Lois Nembhard,

Deputy Director, Social Innovation Fund.

[FR Doc. 2012–31404 Filed 12–28–12; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 12–66]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 12–66 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: December 26, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 10 2012

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 12-66, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Oman for defense articles and services estimated to cost $117 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

For William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 12–66

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* The Sultanate of Oman

(ii) *Total Estimated Value:*

Major Defense Equipment*	$82 million
Other	$35 million
TOTAL	$117 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 27 AIM–120C–7 Advanced Medium Range Air-to-Air Missiles (AMRAAM), 162 GBU–12 PAVEWAY II 500-lb Laser Guided Bombs, 162 FMU–152 bomb fuzes, 150 BLU–111B/B 500-lb Conical Fin General Purpose Bombs (Freefall Tail), 60 BLU–111B/B 500-lb Retarded Fin General Purpose Bombs (Ballute Tail), and 32 CBU–105 Wind Corrected Munitions Dispensers (WCMD). Also included are 20mm projectiles, Aerial Gunnery Target System (AGTS–36), training munitions, flares, chaff, containers, impulse cartridges, weapon support

* As defined in Section 47(6) of the Arms Export Control Act.

equipment and components, repair and return, spare and repair parts, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor representative logistics and technical support services, site survey, and other related elements of logistics support.

(iv) *Military Department:* Air Force (YAK)

(v) *Prior Related Cases, if any:*

FMS case SAB-$1,418.9M–2Dec11
FMS case SDC-$693.2M–5Jun02
FMS case YEI-$50.6M–5Jun02
FMS case QAI-$16.4M–27Feb09
FMS case YEK-$377.9M-Awaiting Acceptance

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex.

(viii) *Date Report Delivered to Congress:* 10 December 2012.

Policy Justification

Oman—F–16 A/C Weapon Systems

The Sultanate of Oman has requested a possible sale of 27 AIM–120C–7 Advanced Medium Range Air-to-Air Missiles (AMRAAM), 162 GBU–12 PAVEWAY II 500-lb Laser Guided Bombs, 162 FMU–152 bomb fuzes, 150 BLU–111B/B 500-lb Conical Fin General Purpose Bombs (Freefall Tail), 60 BLU–111B/B 500-lb Retarded Fin General Purpose Bombs (Ballute Tail), and 32 CBU–105 Wind Corrected Munitions Dispensers (WCMD). Also included are 20mm projectiles, Aerial Gunnery Target System (AGTS–36), training munitions, flares, chaff, containers, impulse cartridges, weapon support equipment and components, repair and return, spare and repair parts, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor representative logistics and technical support services, site survey, and other related elements of logistics support. The estimated cost is $117 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The proposed purchase of munitions will improve Oman's capability to meet current and future regional threats and will provide a significant increase in the Royal Air Force of Oman's (RAFO) capability to support both its own air defense needs as well as those of coalition operations. This potential sale is in support of RAFO's current twelve F–16s as well as its ongoing acquisition of twelve additional F–16s. Oman should have no difficulty absorbing this additional capability into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be Raytheon Company in Waltham, Massachusetts; Textron Defense Systems in Wilmington, Massachusetts; General Dynamics in Falls Church, Virginia; and McAlester Army Ammunition Plant in McAlester, Oklahoma. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require multiple trips to Oman involving many U.S. Government or contractor representatives over a period of up to or over 15 years for program and technical support and training.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 12–66

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AIM–120C–7 Advanced Medium Range Air-to-Air Missile (AMRAAM) is a supersonic, air launched, aerial intercept, guided missile featuring digital technology and micro-miniature solid-state electronics. The missile employs active radar target tracking, proportional navigation guidance, and active Radio Frequency target detection. It can be launched day or night, in any weather and increases pilot survivability by allowing the pilot to disengage after missile launch and to engage other targets. AMRAAM capabilities include lookdown/shootdown, multiple launches against multiple targets, resistance to electronic countermeasures, and interception of high- and low-flying and maneuvering targets. AMRAAM All-Up-Round (AUR) is classified Confidential; major components and subsystems range from Unclassified to Confidential; and technical data and other documentation are classified up to Secret.

2. The GBU–12 (Paveway II) is a 500-lb laser guided bomb. It consists of a MAU–169L/B Computer Control Group and MXU–650C/B Airfoil Group that converts an existing unguided BLU–111B/B free-fall bomb into precision-guided ''smart'' bomb. The control and airfoil groups enable the dumb bomb to acquire and guide to a point designated by an on or off board laser. Precision-guided munitions offer improved accuracy over free-fall bombs, thus providing the potential for reduced collateral damage. Information revealing target designation tactics and associated aircraft maneuvers, the probability of destroying specific/peculiar targets, vulnerabilities regarding countermeasures and the electromagnetic environment is classified Secret.

3. The FMU–152 is an electrical fuze used with a variety of precision guided weapons. It enables the bombs with which it is paired to function with a number of cockpit-selectable parameters. Hardware and technical data is Unclassified.

4. The BLU–111B/B is a 500-pound, unguided, general purpose bomb that can be fitted with an array of fuzes (proximity, mechanical, electrical) and nose/tail kits (conical, retarded, and precision guided). Hardware, technical data, and other documentation may range from Unclassified to Secret depending upon the configuration of the bomb (as unguided or precision guided).

5. The CBU–105D/B Sensor Fused Weapon (SFW) is an advanced, 1,000-pound cluster bomb munition containing sensor fused sub-munitions that are designed to attack and defeat a wide range of moving or stationary land and maritime threats with minimal collateral damage. The SFW is the currently the only combat-proven, weapon that meets U.S. legal and policy requirements for cluster munition safety standards. Major components include the SUU–66 Tactical Munitions Dispenser (TMD), ten (10) BLU–108 sub-munitions, each with four (4) ''hockey puck'' shaped skeet infrared sensing projectiles for a total of forty (40) warheads. The munition, in its All-Up-Round (AUR) configuration, is Unclassified, while submunitions and technical data are classified up to Secret. Anti-tamper security measures are incorporated into the munition to prevent exploitation.

6. Common Munitions Bit/Reprogramming Equipment (CMBRE)—CMBRE is a piece of support equipment used to interface with weapon systems to initiate Built-in-Test (BIT), report BIT results, and upload/download flight software. CMBRE supports multiple munitions platforms with a range of applications that perform preflight checks, periodic maintenance checks, loading of Operational Flight Program

(OFP) data, loading of munitions mission planning data, loading of Global Positioning System (GPS) cryptographic keys, and declassification of munitions memory. CMBRE is a system that manages data and information classified up to Secret.

7. Software, hardware, and other data/information, which is classified or sensitive, is reviewed prior to release to protect system vulnerabilities, design data, and performance parameters. Some end-item hardware, software, and other data identified above are classified at the Confidential and Secret level. Potential compromise of these systems is controlled through management of the hardware and software weapon systems on a case-by-case basis.

8. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software source code in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of systems with similar or advance capabilities.

[FR Doc. 2012–31420 Filed 12–28–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 12–69]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 12–69 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: December 26, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 1 4 2012

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding a revised Transmittal No. 12-69, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Israel for defense articles and services. On December 10, 2012 we notified this sale with an estimated value of $647 million. Subsequently, we discovered an error in Transmittal 12-69. The enclosed revised transmittal supersedes the transmittal dated December 10, 2012, which contained incorrect information regarding the contractors listed in the Policy Justification. We regret the error.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 12–69

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Israel

(ii) *Total Estimated Value:*

Major Defense Equipment* ..	$466 million
Other	$181 million
Total	$647 million

* as defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 6,900 Joint Direct Attack Munitions (JDAM) tail kits (which include 3,450 JDAM Anti-Jam KMU–556 (GBU–31) for MK–84 warheads; 1,725 KMU–557 (GBU–31) for BLU–109 warheads and 1,725 KMU–572 (GBU–38) for MK–82 warheads); 3,450 MK–84 2000 lb General Purpose Bombs; 1,725 MK–82 500 lb General Purpose Bombs; 1,725 BLU–109 Bombs; 3,450 GBU–39 Small Diameter Bombs; 11,500 FMU–139 Fuses; 11,500 FMU–143 Fuses; and 11,500 FMU–152 Fuses. Also included are spare and repair parts, support equipment, personnel training and training equipment, publications and technical

documentation, U.S. Government and contractor engineering and technical support, and other related elements of program support.

(iv) *Military Department:* Air Force (YAP)

(v) *Prior Related Cases, if any:*
FMS case YEQ-$34 million-9Feb00
FMS case YET-$22 million-9Sep02
FMS case YEV-$18.5 million-16Jul04
FMS case YEX-$18.5 million-14Jul04
FMS case AMD-$3.1 million-6Jul06
FMS case AMF-$4.4 million-18Jul06
FMS case AMG-$44.4 million-18Jul06
FMS case AMH-$3 million-25Jul06
FMS case AMI-$12 million-23Jul06
FMS case AMJ-$17.8 million-25Jul06
FMS case AMK-$5.5 million-25Jul06
FMS case AML-$4.6 million-5Oct06
FMS case AMM-$6 million-8Jul06
FMS case AMN-$59.6 million-5Oct06
FMS case AMP-$10.3 million-31Aug06
FMS case AMQ-$26.2 million-5Oct06
FMS case AMR-$0.5 million-15Sep06
FMS case AMS-$13.7 million-5Mar07
FMS case AMV-$25.4 million-20Jun07
FMS case QDQ-$0.8 million-21Jul06

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex.

(viii) *Date Report Delivered to Congress:* 14 Dec 2012

POLICY JUSTIFICATION

Israel—Munitions

The Government of Israel has requested a possible sale of 6,900 Joint Direct Attack Munitions (JDAM) tail kits (which include 3,450 JDAM Anti-Jam KMU–556 (GBU–31) for MK–84 warheads; 1,725 KMU–557 (GBU–31) for BLU–109 warheads and 1,725 KMU–572 (GBU–38) for MK–82 warheads); 3,450 MK–84 2000 lb General Purpose Bombs; 1,725 MK–82 500 lb General Purpose Bombs; 1,725 BLU–109 Bombs; 3,450 GBU–39 Small Diameter Bombs; 11,500 FMU–139 Fuses; 11,500 FMU–143 Fuses; and 11,500 FMU–152 Fuses. Also included are spare and repair parts, support equipment, personnel training and training equipment, publications and technical documentation, U.S. Government and contractor engineering and technical support, and other related elements of program support.

The estimated cost is $647 million.

The United States is committed to the security of Israel, and it is vital to U.S. national interests to assist Israel to develop and maintain a strong and ready self-defense capability. This proposed sale is consistent with those objectives.

The proposed sale of munitions will enable Israel to maintain operational capability of its existing systems. Israel, which already has these munitions in its inventory, will have no difficulty absorbing these additional munitions into its armed forces.

The proposed sale of munitions will not alter the basic military balance in the region.

The principal contractors will be The Boeing Company in St. Charles, Missouri; KDI Precision Products in Cincinnati, Ohio; ATK (Alliant Tech Systems, Inc.) in Edina, Minnesota; Kaman Dayron in Orlando, Florida; General Dynamics in Garland, Texas; and Elwood National Forge Co. in Irvine, Pennsylvania. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 12–69

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

Annex

Item No. vii

(vii) *Sensitivity of Technology*

1. The Joint Direct Attack Munition is a weapon guidance kit that converts existing unguided free-fall bombs into precision-guided ''smart'' munitions. By adding a new tail section containing Inertial Navigation System (INS) guidance/Global Positioning System (GPS) guidance to unguided bombs, the cost effective JDAM provides precise weapon delivery in any weather, given an accurate set of coordinates The INS, using updates from the GPS, helps guide the bomb to the target via the use of movable tail fins. Weapon accuracy is dependent on the quality of target coordinates and present position as entered into the guidance control unit. After weapon release, movable tail fins guide the weapon to the target coordinates. In addition to the tail kit, other elements in the overall system that are essential for successful employment include:

Access to accurate target coordinates
INS/GPS capability
Operational Test and Evaluation Plan

2. The Guided Bomb Unit-39 (GBU–39) Small Diameter Bomb (SDB) is a 250-lb precision guided munition that is intended to provide aircraft with the potential to simultaneously strike an increased number of targets per sortie. Aircraft are able to carry four SDBs in place of one 2,000-lb bomb. The GBU–39 is a conventional munition that is currently integrated in the F–15 air-to-ground platform. The SDB is equipped with a GPS-aided inertial navigation system to attack fixed/stationary targets such as fuel depots and bunkers.

3. If a technologically advanced adversary were to obtain knowledge of specific hardware, the information could be used to develop countermeasures which might reduce weapons system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2012–31429 Filed 12–28–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Establishment of Federal Advisory Committee.

SUMMARY: Under the provisions of 10 U.S.C. 2166(e), the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50(a), the Department of Defense gives notice that it is establishing the charter for the Vietnam War Commemoration Advisory Committee (hereafter referred to as ''the Committee'').

The Committee shall provide the Secretary of Defense and the Deputy Secretary of Defense, through the Director of Administration and Management (DA&M), independent advice and recommendations on the Department of Defense's (DoD) program to commemorate the 50th Anniversary of the Vietnam War.

The Committee shall report to the Secretary and Deputy Secretary of Defense, through the DA&M. The DA&M may act upon the Committee's advice and recommendations. The Committee shall be composed of no more than 20 members, who are appointed by the Secretary of Defense. These members shall represent Vietnam Veterans, their families, and the American public. Candidates for the Committee shall be selected from the Military Services (both retired veterans and active members who served during the Vietnam era), the Department of Defense, the Department of State, the Department of Veterans Affairs, and the Intelligence Community. In addition, candidates

from nongovernmental organizations that support veterans or that contribute to the public's understanding of the Vietnam War shall be selected. The Secretary of Defense may approve the appointment of Committee members for a three-year term of service; however, no member, unless authorized by the Secretary of Defense, may serve more than two consecutive terms of service. This same term of service limitation also applies to any DoD-authorized subcommittees.

The Secretary of Defense, through the DA&M, may appoint additional experts and consultants to provide advice to the Committee as subject matter experts. These subject matter experts may be regular government officers/employees or individuals appointed under the authority of 5 U.S.C. 3109; however, subject matter experts shall not participate in the Committee's deliberations and shall not have Committee voting rights. Each Committee member is appointed to provide advice on behalf of the government on the basis of his or her best judgment without representing any particular point of view and in a manner that is free from conflict of interest. The Department, when necessary and consistent with the Committee's mission and DoD policies and procedures, may establish Subcommittees, task groups, or working groups to support the Committee. Establishment of Subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the Committee's sponsor.

These Subcommittees shall not work independently of the chartered Committee, and shall report all of their recommendations and advice solely to the Committee for full deliberation and discussion. Subcommittees have no authority to make decisions and recommendations, verbally or in writing, on behalf of the chartered Committee; nor can any Subcommittee or its members update or report directly to the DoD or any Federal officers or employees. All Subcommittee members shall be appointed in the same manner as the Committee members; that is, the Secretary of Defense shall appoint Subcommittee members even if the member in question is already a Committee member. Subcommittee members, with the approval of the Secretary of Defense, may serve a term of service on the Subcommittee of three years; however, no member shall serve more than two consecutive terms of service on the Subcommittee, unless authorized by the Secretary of Defense.

Subcommittee members, if not full-time or part-time government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and shall serve as special government employees, whose appointments must be renewed by the Secretary of Defense on an annual basis. With the exception of travel and per diem for official Committee-related travel, Subcommittee members shall serve without compensation. Each Subcommittee member is appointed to provide advice on behalf of the government on the basis of his or her best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

All subcommittees operate under the provisions of FACA, the Government in the Sunshine Act, governing Federal statutes and regulations, and governing DoD policies/procedures.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Committee shall meet at the call of the Designated Federal Officer (DFO), in consultation with the Committee's Chairperson. The estimated number of Committee meetings is two per year.

The Committee's DFO is required to be in attendance at all Committee and Subcommittee meetings for the entire duration of each and every meeting. However, in the absence of the Committee's DFO, a properly approved Alternate DFO, duly appointed to the Committee according to DoD policies/procedures, shall attend the entire duration of the Committee or Subcommittee meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Committee membership about the Committee's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Committee.

All written statements shall be submitted to the DFO, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Committee's DFO can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The DFO, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Committee. The DFO, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: December 21, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–31222 Filed 12–28–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Board; Notice of Federal Advisory Committee Meeting

AGENCY: DoD.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR § 102–3.150, the Department of Defense announces the following Federal advisory committee meeting of the Defense Business Board (DBB).

DATES: The public meeting of the Defense Business Board (hereafter referred to as ''the Board'') will be held on Thursday, January 24, 2013. The meeting will begin at 9:15 a.m. and end at 11:30 a.m. (Escort required; see guidance in **SUPPLEMENTARY INFORMATION**, ''Public's Accessibility to the Meeting.'').

ADDRESSES: Room 3E863 in the Pentagon, Washington, DC (Escort required; See guidance in **SUPPLEMENTARY INFORMATION**, ''Public's Accessibility to the Meeting.'').

FOR FURTHER INFORMATION CONTACT: The Board's Designated Federal Officer (DFO) is Phyllis Ferguson, Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155, Phyllis.Ferguson@osd.mil, 703–695–7563. For meeting information please contact Ms. Debora Duffy, Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155, Debora.Duffy@osd.mil, (703) 697–2168.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* At this meeting, the Board will deliberate the findings and draft recommendations from ''Taking Advantage of Opportunities for Commercial Satellite Communications Services,'' ''Applying Best Business Practices for Corporate Performance Management to DoD,'' and ''Employing Our Veterans Part II: Review of Pilot Transition Goal Plans Success Program'' Task Group Studies. The mission of the Board is to examine and advise the

Secretary of Defense on overall DoD management and governance. The Board provides independent advice which reflects an outside private sector perspective on proven and effective best business practices that can be applied to DoD.

Availability of Materials for the Meeting: A copy of the agenda and the terms of reference for the Task Group study may be obtained from the Board's Web site at http://dbb.defense.gov/meetings.shtml. Copies will also be available at the meeting.

Meeting Agenda

9:15 a.m.—11:30 a.m. Task Group Outbrief and Board Deliberations on

''Taking Advantage of Opportunities for Commercial Satellite Communications Services,''

''Applying Best Business Practices for Corporate Performance Management to DoD,''

''Employing Our Veterans Part II: Review of Pilot Transition Goal Plans Success Program''.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis. All members of the public who wish to attend the public meeting must contact Ms. Debora Duffy at the number listed in this notice no later than noon on Wednesday, January 16 to register and make arrangements for a Pentagon escort, if necessary. Public attendees requiring escort should arrive at the Pentagon Metro Entrance with sufficient time to complete security screening no later than 8:45 a.m. on January 24. To complete security screening, please come prepared to present two forms of identification and one must be a pictured identification card.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Ms. Duffy at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Committee's Designated Federal Officer: The Board's DFO is Phyllis Ferguson, Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155, Phyllis.Ferguson@osd.mil, 703–695–7563. For meeting information please contact Ms. Debora Duffy, Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155, Debora.Duffy@osd.mil, (703) 697–2168.

Procedures for Providing Public Comments

Pursuant to 41 CFR §§ 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Board about its mission and topics pertaining to this public meeting.

Written comments should be received by the DFO at least five (5) business days prior to the meeting date so that the comments may be made available to the Board for their consideration prior to the meeting. Written comments should be submitted via email to the address for the DFO given in this notice in either Adobe Acrobat or Microsoft Word format. Please note that since the Board operates under the provisions of the Federal Advisory Committee Act, as amended, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Board's web site.

Dated: December 26, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–31378 Filed 12–28–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2012–OS–0164]

Privacy Act of 1974; System of Records

AGENCY: Defense Contract Audit Agency, DoD.

ACTION: Notice to delete a Systems of Records.

SUMMARY: The Defense Contract Audit Agency (DCAA) is deleting a system of records in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed actions will be effective on January 31, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before January 30, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Defense Contract Audit Agency Privacy Management Analyst, Information and Records Management Branch, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219 or at (703) 767–1022.

SUPPLEMENTARY INFORMATION: The Defense Contract Audit Agency (DCAA) systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: December 13, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

RDCAA 367.5

SYSTEM NAME

Employee Assistance Program (EAP) Counseling Records (November 20, 1997, 62 FR 62003).

REASON

The Defense Contract Audit Agency contracts our Employee Assistance Program (EAP) with the United States Department of Health & Human Services (HHS). HHS has a Systems of Records Notice 09–90–0010 that covers EAP records. Because EAP records are no longer maintained by the Agency, system notice RDCAA 367.5 is not needed and should be deleted.

[FR Doc. 2012–31354 Filed 12–28–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2012–OS–0163]

Privacy Act of 1974; System of Records

AGENCY: Defense Contract Audit Agency, DoD.

ACTION: Notice to amend a System of Records.

SUMMARY: The Defense Contract Audit Agency is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on January 31, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before January 30, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal Rulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Mastromichalis, DCAA FOIA/Privacy Act Management Analyst, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219, Telephone number: (703) 767–1022.

SUPPLEMENTARY INFORMATION: The Defense Contract Audit Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed changes to the record system being amended are set forth below. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: December 13, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

RDCAA 358.3

SYSTEM NAME:

Grievance and Appeal Files (November 20, 1997, 62 FR 62003).

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete and replace with ''5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 7121, Grievance Procedures; and DoD Directive 5105.36, Defense Contract Audit Agency.''

* * * * *

CONTESTING RECORD PROCEDURES:

Delete and replace with ''DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Instruction 5410.10; 32 CFR part 317; or may be obtained from the system manager.''

* * * * *

[FR Doc. 2012–31355 Filed 12–28–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2012–0034]

Proposed Collection; Comment Request

AGENCY: Department of Defense/Department of the Air Force/Headquarters, Air Force Reserve Officer Training Corps (AFROTC).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Department of the Air Force announces reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 1, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above addresses AFROTC/HQ 551 E. Maxwell Blvd. Maxwell AFB, AL 36112 or call 334–953–0266.

Title; Associated Form; and OMB Number: Application for AFROTC Membership, OMB Number 0701–0105.

Needs and Uses: Air Force ROTC uses the AFROTC Form 20 to collect data from applicants to the Air Force ROTC program. This collected data is used to determine whether or not an applicant is eligible to join the Air Force ROTC program and, if accepted, the enrollment status of the applicant within the program. Upon acceptance into the program, the collected information is used to establish personal records for Air Force ROTC cadets. Eligibility for membership cannot be determined if this information is not collected.

Affected Public: College students who apply to join Air Force ROTC.

Annual Burden Hours: 4,000.

Number of Respondents: 12,000.

Responses per Respondent: 1.

Average Burden Per Response: 20 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are college students desiring to join the Air Force ROTC program. AFROTC Form 20 provides vital information needed by detachment

personnel to determine their eligibility to participate in that program.

Dated: December 18, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–31351 Filed 12–28–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2012–0035]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to delete a System of Records.

SUMMARY: The Department of the Air Force is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on January 31, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before January 30, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Shedrick, Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information officer, ATTN: SAF/XCPPI, 1800 Air Force Pentagon, Washington DC 20330–1800 or at 202–404–6575.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The Department of the Air Force proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: December 14, 2012.

Aaron Siegel,

Alternate OSD **Federal Register** *Liaison Officer, Department of Defense.*

DELETION:

F038 AF AFCQMI A

Ideas, Inventions, Scientific Achievements (May 7, 1999, 64 FR 24605).

REASON

The Innovative Development through Employee Awareness (IDEA) Program Data System (IPDS) has been modified to retrieve records based on an assigned Idea number or key word search; data is no longer retrieved by an individual's name, number, personal or unique identifier. IPDS is used as a management tool for statistical and analysis tracking, reporting, and evaluation of program effectiveness. Modules (electronic records) previously used to process IDEA awards by individual have been eliminated from the system. Paper records are maintained in individual military or civilian personnel records covered under System of Records Notices F036 AF PC C and OPM/GOVT–1. Therefore F038 AFCQMI A, Ideas, Inventions, Scientific Achievements (May 7, 1999, 64 FR 24605) can be deleted.

[FR Doc. 2012–31352 Filed 12–28–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2012–0033]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Department of the Air Force proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on January 31, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before January 30, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal Rulemaking Portal: http://www.regulations.gov.

Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Shedrick, Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information Officer, ATTN: SAF/CIO A6, 1800 Air Force Pentagon, Washington, DC 20330–1800, or by phone at (202) 404–6575.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on December 12, 2012 to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records about Individuals,'' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: December 13, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AF PC E

SYSTEM NAME:

United States Air Force (USAF) Airman Retraining Program (June 11, 1997, 62 FR 31793)

CHANGES:

* * * * *

SYSTEM ID:

Delete entry and replace with ''F036 AFPC Y.''

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Headquarters, United States Air Force, Air Force Personnel Center (AFPC), 550 C Street West, Randolph Air Force Base, TX 78150–4703, major command headquarters, and consolidated base personnel offices. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, grade, rank, Social Security Number (SSN) and/or DoD ID Number, recommendation memorandums, test scores, medical qualification for individual requesting to be retrained into another career field.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. Chapter 901, Training Generally; implemented by Air Force Instruction 36–2626, Airman Retraining Program; and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''Used by military personnel officials at base, major commands, and Headquarters Air Force Personnel Command to evaluate decisions on retraining applications.''

* * * * *

STORAGE:

Delete entry and replace with ''Electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''Name, SSN and/or DoD ID Number.''

SAFEGUARDS:

Delete entry and replace with ''Encrypted electronic records are accessed by the Retraining program manager and by persons cleared for need-to-know. They are stored in buildings that are locked and have controlled access entry requirements, and are only accessed by authorized personnel with Secure Common Access Card (CAC) and need-to-know.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Electronic records are retained in office until superseded, no longer needed, separation or reassignment of individual on Permanent Change of Assignment (PCA) or Permanent Change of Duty Station (PCS).''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Assistant Deputy Chief of Staff, Air Force Personnel Center, 550 C Street West, Randolph Air Force Base, TX 78150–4703.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Assistant Deputy Chief of Staff, Air Force Personnel Center, 550 C Street West, Randolph Air Force Base, TX 78150–4703.

For verification purposes, individuals should provide their full name, SSN and/or DoD ID Number, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

IF EXECUTED OUTSIDE THE UNITED STATES:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

IF EXECUTED WITHIN THE UNITED STATES, ITS TERRITORIES, POSSESSIONS, OR COMMONWEALTHS:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Assistant Deputy Chief of Staff, Air Force Personnel Center, 550 C Street West, Randolph Air Force Base, TX 78150–4703.

For verification purposes, individuals should provide their full name, SSN and/or DoD ID Number, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

IF EXECUTED OUTSIDE THE UNITED STATES:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

IF EXECUTED WITHIN THE UNITED STATES, ITS TERRITORIES, POSSESSIONS, OR COMMONWEALTHS:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

* * * * *

[FR Doc. 2012–31353 Filed 12–28–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2012–ICCD–0074]

Agency Information Collection Activities; Part 601 Preferred Lender Arrangements

AGENCY: Office of Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection of a previously approved collection.

DATES: Interested persons are invited to submit comments on or before February 28, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2012–ICCD–0074 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E105, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Part 601 Preferred Lender Arrangements.

OMB Control Number: 1845–0101.

Type of Review: an extension of an existing information collection of a previously approved information collection.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 13,674,883.

Total Estimated Number of Annual Burden Hours: 3,197,761.

Abstract: Part 601—Institution and Lender Requirements Relating to Education Loans is a new section of the regulations governing private education loans offered at covered institutions by lenders also participating in the FFEL program. These regulations assure the Secretary that the integrity of the program is protected from fraud and misuse of program funds and places requirements on institutions and lenders to insure that borrowers receive additional disclosures about Title IV, HEA program assistance prior to obtaining a private education loan. These regulations require covered institutions to provide a variety of new loan disclosures, disclosures on private loans, for institutions to prepare and submit an annual report on the use of private loans, and to establish and adopt a code of conduct for institutions participation in a preferred lender arrangement. The Department, in conjunction with outside entities is submitting the Private Education Loan Applicant Self-Certification form for OMB's approval. While information about the applicant's cost of attendance and estimated financial assistance must be provided to the student, if available, the student will provide the data to the private loan lender who must collect and maintain the self-certification form prior to disbursement of a Private Education Loan. The Department will not receive the Private Education Loan Applicant Self-Certification form and therefore will not be collecting and maintaining the form or its data.

Dated: December 26, 2012.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–31459 Filed 12–28–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; National Institute on Disability and Rehabilitation Research (NIDRR)—Small Business Innovation Research (SBIR) Program—Phase I

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education.

ACTION: Notice.

Overview Information

National Institute on Disability and Rehabilitation Research (NIDRR)—Small Business Innovation Research Program (SBIR)—Phase I

Notice inviting applications for new awards for fiscal year (FY) 2013.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133S–1.

DATES:

Applications Available: December 31, 2012.

Deadline for Transmittal of Applications: March 1, 2013.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the SBIR program is four-fold:

- Stimulate technological innovation in the private sector.
- Encourage participation in innovation and entrepreneurship by socially and economically disadvantaged persons.
- Strengthen the role of small business in meeting Federal research and development (R&D) needs.
- Increase private-sector commercialization of innovations derived from U.S. Department of Education (Department) R&D funding.

Background

The Small Business Innovation Development Act of 1982 (Act), Public Law 97–219, established the SBIR program. The Act requires certain agencies, including the Department, to reserve a statutory percentage of their extramural R&D budgets for the three-phase SBIR program.

Phase I awards are to determine, insofar as possible, the scientific or technical merit, feasibility, and commercial potential of R&D projects submitted under the SBIR program. Phase I awards are for amounts up to $75,000 for a period of up to six months. Phase II projects continue the development of Phase I projects. Funding is based on the results achieved in Phase I and the scientific and technical merit and commercial potential of the proposed Phase II project. Only Phase I grantees are eligible to apply for Phase II funding. Phase II awards are for amounts up to $500,000 over a period of two years.

In Phase III, the small business grantee pursues commercial applications of the Phase I and II R&D. The SBIR program does not fund Phase III.

All SBIR projects funded by NIDRR must address the needs of individuals with disabilities. (See 29 U.S.C. 760.) Project activities may include:

- Conducting manufacturing-related R&D that encompasses improvements in existing methods or processes, or wholly new processes, machines, or systems, that benefit individuals with disabilities;
- Exploring the uses of technology to ensure equal access to education, employment, community environments, and information for individuals with disabilities; and
- Improving the quality and utility of disability and rehabilitation research.

Executive Order 13329 states that continued technological innovation is critical to a strong manufacturing sector in the United States economy and seeks to ensure that Federal agencies assist the private sector in its manufacturing innovation efforts. The Department's

SBIR program encourages innovative R&D projects that are manufacturing-related, as defined by Executive Order 13329.

Manufacturing-related R&D encompasses improvements in existing methods and processes, as well as wholly new processes, machines, and systems. The Department's SBIR program supports a range of manufacturing-related R&D projects, including projects relating to the manufacture of such items as artificial intelligence and information technology devices, software, and systems. For more information on Executive Order 13329, please visit the following Web site: www.sba.gov/content/executive-order-13329-encouraging-innovation-manufacturing-0 or contact Vanessa Tesoriero at: *vanessa.tesoriero@ed.gov.*

Note: This program is in concert with NIDRR's currently approved long-range plan (the Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research. The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to—(1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training methods to facilitate the advancement of knowledge and understanding of the unique needs of individuals with disabilities from traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for individuals with disabilities from underserved populations; (4) identify research gaps; (5) identify mechanisms for integrating research and practice; and (6) disseminate findings.

Priorities: Under this competition we are particularly interested in applications that address one or more of the following priorities.

Invitational 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 invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets one of these invitational priorities a competitive or absolute preference over other applications.

Each of the following invitational priorities relates to innovative research utilizing new technologies to address the needs of individuals with disabilities. These priorities are:

(1) Increased independence of individuals with disabilities in the workplace, recreational settings, or educational settings through the development of technology to support access and promote integration of individuals with disabilities.

(2) Enhanced sensory or motor function of individuals with disabilities through the development of technology to support improved functional capacity.

(3) Enhanced workforce participation through the development of technology to increase access to employment, promote sustained employment, and support employment advancement for individuals with disabilities.

(4) Enhanced community living and participation for individuals with disabilities through the development of accessible information technology including cloud computing, software, systems, and devices that promote access to information in educational, employment, and community settings, and voting technology that improves access for individuals with disabilities.

(5) Improved health-care interventions and increased use of related resources through the development of technology to support independent access to community health-care services for individuals with disabilities.

Applicants should describe the approaches they expect to use to collect empirical evidence demonstrating the effectiveness of the technology they are proposing. This empirical evidence should facilitate the assessment of the efficacy and usefulness of the technology.

Note: In responding to all invitational priorities, NIDRR encourages applicants to adhere to universal design principles and guidelines. The term ''universal design'' is defined as ''the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design'' (The Center for Universal Design, 1997). Universal design of consumer products minimizes or alleviates barriers that reduce the ability of individuals with disabilities to effectively or safely use standard consumer products. (For more information see: *www.trace.wisc.edu/docs/consumer_product_guidelines/consumer.pcs/disabil.htm*).

Program Authority: The Small Business Act, Public Law 85–536, as amended (15 U.S.C. 631 and 638), and title II of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760 et seq.).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 81, 82, 84, 85, and 97. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $106,817,000 for NIDRR for FY 2013, of which we intend to use an estimated $1,125,000 for the SBIR Phase I competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Note: The estimated amount of funds available for new Phase I awards is based upon the estimated SBIR allocation for OSERS, minus prior commitments for Phase II continuation awards.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2013 from the list of approved but unfunded applicants from this competition.

Estimated Range of Awards: $70,000–$75,000.

Estimated Average Size of Awards: $75,000.

Maximum Award: We will reject any application that proposes a budget exceeding $75,000 for a single budget period of up to six months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum award amount includes direct and indirect costs and fees.

Estimated Number of Awards: 15.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 6 months. We will reject any application that proposes a project period that exceeds a single budget period of up to six months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum project period through a notice published in the **Federal Register**.

III. Eligibility Information

1. *Eligible Applicants:* Entities that are, at the time of award, small business concerns as defined by the Small Business Administration (SBA). This definition is included in the application package.

If it appears that an applicant organization does not meet the eligibility requirements, we will request an evaluation by the SBA. Under

circumstances in which eligibility is unclear, we will not make an SBIR award until the SBA makes a determination that the applicant is eligible under its definition of small business concern.

Technology, science, and engineering firms with strong research capabilities in any of the priority areas listed in this notice are encouraged to participate. Consultative or other arrangements between these firms and universities or other nonprofit organizations are permitted, but the small business concern must serve as the grantee. For Phase I projects, at least two-thirds of the research or analytic activities must be performed by the small business concern grantee.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other:* The total of all consultant fees, facility leases or usage fees, and other subcontracts or purchase agreements may not exceed one-third of the total funding award.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. Fax: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: www.EDPubs.gov or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.133S–1.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the team listed under *Accessible Format* in section VIII of this notice.

2. a. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative 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 50 pages, using the following standards:

- A ''page'' is 8.5'' × 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. You are not required to double space titles, headings, footnotes, references, captions, or text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; the one-page abstract, the resumes, the bibliography, or the letters of support; related applications or awards; or the documentation of previous Phase II awards (required only if the small business concern has received more than 15 Phase II awards in the prior five fiscal years). However, the page limit does apply to all of the application narrative section.

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 SBIR program, your application may include business information that you consider proprietary. The Department's regulations define ''business information'' in 34 CFR 5.11.

Because we plan to publicly highlight success stories on our Web site, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you feel is exempt from disclosure under Exemption 4 of the Freedom of Information Act. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Submission Dates and Times:*

Applications Available: December 31, 2012.

Deadline for Transmittal of Applications: March 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 person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR)—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 SBIR Program, CFDA number 84.133S–1, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the SBIR 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 84.326, not 84.326A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue SW., room 5140, PCP, Washington, DC 20202–2700.

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 84.133S–1), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133S–1), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays. *Note for Mail or Hand Delivery of Paper Applications:* If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance

report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines a portion of its SBIR grantees to determine the percentage of NIDRR-funded grant applications that receive an average peer review score of 85 or higher.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *www.ed.gov/about/offices/list/opepd/sas/index.html.*

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

For Further Information Contact: Lynn Medley or Marlene Spencer as follows:

Lynn Medley, U.S. Department of Education, 400 Maryland Avenue SW., room 5140, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7338 or by email: lynn.medley@ed.gov.

Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov.*

If you use a TDD or TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: December 26, 2012.

Michael Yudin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2012–31437 Filed 12–28–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Magnet Schools Assistance Program

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

Overview Information

Magnet Schools Assistance Program (MSAP)

Notice inviting applications for new awards for fiscal year (FY) 2013.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.165A.

DATES:

Applications Available: December 31, 2012.

Deadline for Notice of Intent to Apply: January 30, 2013.

Date of Pre-Application Webinar: January 17, 2013.

Deadline for Transmittal of Applications: March 1, 2013.

Deadline for Intergovernmental Review: April 30, 2013.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The MSAP provides grants to eligible local educational agencies (LEAs) and consortia of LEAs to support magnet schools under an approved desegregation plan-—either a required plan or voluntary plan—that is adequate under Title VI of the Civil Rights Act, which prohibits discrimination on the basis of race, color, or national origin. By supporting the development and implementation of magnet schools that reduce, eliminate, or prevent minority group isolation, these program resources can be used in pursuit of the objectives of the Elementary and Secondary Education Act of 1965, as amended (ESEA), which supports State and local efforts to enable all elementary and secondary school students to achieve high standards and which holds schools, LEAs, and States accountable for ensuring that their students do so. In particular, the MSAP provides an opportunity for eligible entities to expand their capacity to provide public school choice to students who attend low-performing schools.

Priorities: This competition includes four competitive preference priorities that are described in the following paragraphs.

Competitive Preference Priorities: In accordance with 34 CFR 75.105(b)(2)(ii), Competitive Preference Priorities 1, 2, and 3 are from the regulations for this program (34 CFR 280.32). Competitive Preference Priority 4 is from the Notice of Final Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

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 280.30(f) we will award up to 30 additional points to an application, depending on how well the applicant addresses Competitive Preference Priorities 1, 2, and 3. Under 34 CFR 75.105(c)(2)(i) we will award up to an additional 10 points to an application, depending on how well the application addresses Competitive Preference Priority 4. Together, depending on how

well the application meets these priorities, a total of 40 points will be awarded. Applicants may apply under any or all competitive preference priorities. The maximum possible points for each competitive preference priority are indicated in parentheses following the name of the priority. These points are in addition to any points the application earns under the selection criteria in this notice.

These priorities are:

Priority 1—Need for assistance (up to 10 additional points). The Secretary evaluates the applicant's needs for assistance by considering—

(a) The costs of fully implementing the magnet schools project as proposed;

(b) The resources available to the applicant to carry out the project if funds under the program were not provided;

(c) The extent to which the costs of the project exceed the applicant's resources; and

(d) The difficulty of effectively carrying out the approved plan and the project for which assistance is sought, including consideration of how the design of the magnet schools project—e.g., the type of program proposed, the location of the magnet school within the LEA—impacts on the applicant's ability to successfully carry out the approved plan.

Priority 2—New or revised magnet schools projects (up to 10 additional points). The Secretary determines the extent to which the applicant proposes to carry out new magnet schools projects or significantly revise existing magnet schools projects.

Priority 3—Selection of students (up to 10 additional points). The Secretary determines the extent to which the applicant proposes to select students to attend magnet schools by methods such as lottery, rather than through academic examination.

Priority 4—Promoting Science, Technology, Engineering, and Mathematics (STEM) Education (up to 10 additional points). Projects that are designed to address one or more of the following priority areas:

(a) Providing students with increased access to rigorous and engaging coursework in STEM.

(b) Increasing the opportunities for high-quality preparation of, or professional development for, teachers or other educators of STEM subjects.

Note: Additional background information pertaining to this priority can be found in the Notice of Final Supplemental Priorities and Definitions for Discretionary Grant Programs published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Program Authority: 20 U.S.C. 7231–7231j.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 97, 98, and 99. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 280. (d) The Notice of Final Supplemental Priorities and Definitions for Discretionary Programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds

The Administration has requested $99,611,000 for the MSAP for FY 2013, of which we intend to use an estimated $96,622,670 for awards under this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process before the end of the current fiscal year, if Congress appropriates funds for this program.

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: $350,000–$4,000,000 per year.

Estimated Average Size of Awards: $2,500,000 per year.

Maximum Award: Under section 5309(c) of the ESEA, no MSAP grantee may receive more than $4,000,000 in program funds for any single fiscal year. We will not fund any application at an annual amount exceeding this maximum amount. We may choose not to further review an application with a budget request for any 12-month budget period that exceeds this maximum amount, if we conclude during our initial review of the application that the proposed goals and objectives cannot be attained without exceeding the maximum amount.

Estimated Number of Awards: 40.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* LEAs or consortia of LEAs implementing a desegregation plan as specified in section III.3.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

3. *Other:* Applicants must submit with their applications one of the following types of desegregation plans to establish eligibility to receive MSAP assistance: (a) A desegregation plan required by a court order; (b) a desegregation plan required by a State agency or an official of competent jurisdiction; (c) a desegregation plan required by the Office for Civil Rights (OCR), United States Department of Education (Department), under Title VI of the Civil Rights Act of 1964 (Title VI); or (d) a voluntary desegregation plan adopted by the applicant and submitted to the Department for approval as part of the application. Under the MSAP regulations, applicants are required to provide all of the information required in 34 CFR 280.20(a) through (g) in order to satisfy the civil rights eligibility requirements found in 34 CFR 280.2(a)(2) and (b).

In addition to the particular data and other items for required and voluntary desegregation plans described in the application package, an application must include—

- Projected enrollment by race and ethnicity for magnet and feeder schools);
- Signed civil rights assurances (included in the application package); and
- An assurance that the desegregation plan is being implemented or will be implemented if the application is funded.

Required Desegregation Plans

1. Desegregation plans required by a court order. An applicant that submits a desegregation plan required by a court order must submit complete and signed copies of all court documents demonstrating that the magnet schools are a part of the approved desegregation plan. Examples of the types of documents that would meet this requirement include a Federal or State court order that establishes specific magnet schools, amends a previous order or orders by establishing additional or different specific magnet schools, requires or approves the establishment of one or more unspecified magnet schools, or that authorizes the inclusion of magnet schools at the discretion of the applicant.

2. Desegregation plans required by a State agency or official of competent jurisdiction. An applicant submitting a desegregation plan ordered by a State agency or official of competent jurisdiction must provide documentation that shows that the desegregation plan was ordered based upon a determination that State law was

violated. In the absence of this documentation, the applicant should consider its desegregation plan to be a voluntary plan and submit the data and information necessary for voluntary plans.

3. Desegregation plans required by Title VI. An applicant that submits a desegregation plan required by OCR under Title VI must submit a complete copy of the desegregation plan demonstrating that magnet schools are part of the approved plan.

4. Modifications to required desegregation plans. A previously approved desegregation plan that does not include the magnet school or program for which the applicant is now seeking assistance must be modified to include the magnet school component. The modification to the desegregation plan must be approved by the court, agency, or official that originally approved the plan. An applicant that wishes to modify a previously approved OCR Title VI desegregation plan to include different or additional magnet schools must submit the proposed modification for review and approval to the OCR regional office that approved its original plan.

An applicant should indicate in its application if it is seeking to modify its previously approved desegregation plan. However, all applicants must submit proof of approval of all modifications to their plans to the Department by April 1, 2013. Proof of plan modifications should be mailed to the person and address identified under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Voluntary Desegregation Plans

A voluntary desegregation plan must be approved by the Department each time an application is submitted for funding. Even if the Department has approved a voluntary desegregation plan in an LEA in the past, the desegregation plan must be resubmitted for approval as part of the application.

An applicant's voluntary desegregation plan must demonstrate how the LEA will reduce, eliminate, or prevent minority group isolation, and demonstrate that the proposed voluntary desegregation plan is adequate under Title VI. For additional guidance on how an LEA can voluntarily reduce minority group isolation and promote diversity in an LEA in light of the Supreme Court's decision in *Parents Involved in Community Schools* v. *Seattle School District No 1 et al.,* 551 U.S. 701 (2007), see the December 2, 2011, ''Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools'' (Guidance) available on the Department's Web site at *www.ed.gov/ocr/docs/guidance-ese-201111.pdf.*

Complete and accurate enrollment forms and other information as required by the regulations in 34 CFR 280.20(f) and (g) for applicants with voluntary desegregation plans are critical to the Department's determination of an applicant's eligibility under a voluntary desegregation plan (specific requirements are detailed in the application package).

Voluntary desegregation plan applicants must submit evidence of school board approval or evidence of other official adoption of the plan as required by the regulations in 34 CFR 280.20(f)(2).

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet, from the Education Publications Center (ED Pubs), or from the program office.

To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/.*

To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EdPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program as follows: CFDA number 84.165A.

To obtain a copy from the program office, contact: Rosie Kelley, U.S. Department of Education, 400 Maryland Avenue SW., room 4W227, Washington, DC 20202–5970. Telephone: (202)453–5601 or by email: msap.team@ed.gov. If you use a TDD or 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. *Content and Form of Application Submission:*

a. Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent to Apply: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department of the applicant's intent to submit an application for funding by completing a Web-based form. When completing this form, applicants will provide (1) the applicant organization's name and address, (2) information on the competitive priority or priorities under which the applicant intends to apply, (3) schools that will be served through the MSAP grant with NCES numbers and grades, and (4) MSAP grant writer. Applicants may access this form online at *http://www2.ed.gov/programs/magnet/index.html.* Applicants that do not complete this form may still apply for funding.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria and the competitive preference that reviewers use to evaluate your application. You are strongly encouraged to limit the application narrative [Part III] to no more than 100 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 of one of the following fonts is strongly encouraged: Times New Roman, Courier, Courier New, or Arial.
- Include page numbers at the bottom of each page in your narrative.

The suggested page limit does not apply to the Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances, certifications, the desegregation plan and related information, and the forms used to respond to Competitive Preference Priority 2—New or revised magnet schools projects and Competitive Preference Priority 3—Selection of students; or the one-page abstract, the resumes, or letters of support. However, the suggested page limit does apply to all of the application narrative in Part III.

b. *Submission of Proprietary Information:*

Given the types of projects that may be proposed in applications for the MSAP 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 we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you feel is exempt from disclosure under Exemption 4 of the Freedom of Information Act. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Submission Dates and Times:*

Applications Available: December 31, 2012.

Deadline for Notice of Intent to Apply: January 30, 2013.

Date of Pre-Application Webinar: January 17, 2013.

The Department will hold a pre-application Webinar for prospective applicants on Tuesday, January 17, 2013, from 1:00 to 4:30 p.m., Washington, DC time. The Webinar will discuss the purpose of the MSAP competitive preference priorities, selection criteria, application content, submission requirements, and reporting requirements. Interested parties may obtain information about this Webinar from the program Web site at http://www2.ed.gov/programs/magnet/index.html. A recording of this Webinar will be available on the Web site following the session.

Deadline for Transmittal of Applications: March 1, 2013.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: April 30, 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 specify unallowable costs in 34 CFR 280.41. We reference additional 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 the Magnet Schools Assistance 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 Magnet Schools Assistance Program, CFDA number 84.165A, 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 Magnet Schools Assistance Program at www.Grants.gov. You must search for the downloadable application package for this program Magnet Schools Assistance Program (MSAP 84.165) by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.165, not 84.165A).

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 the Magnet Schools Assistance 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 prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Rosie E. Kelley, U.S. Department of Education, 400 Maryland Avenue SW. room 4W227, Washington, DC 20202–5970. FAX: (202) 205–5630.

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 84.165A), 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 84.165A), 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

Selection Criteria: The selection criteria for the MSAP are from 34 CFR 75.209, 34 CFR 280.30, 34 CFR 280.31 and sections 5305(b)(1)(A), 5305(b)(1)(B), 5305(b)(1)(D)(i), 5305(b)(2)(D) of the ESEA. All of the selection criteria are listed in this section and in the application package.

The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is included in parentheses. Each criterion also includes the factors that reviewers will consider in determining the extent to which an applicant meets the criterion.

Points awarded under these selection criteria are in addition to any points an applicant earns under the competitive preference priorities in this notice. The maximum score that an application may receive under the competitive preference priorities and the selection criteria is 140 points.

(a) *Plan of Operation.* (30 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary determines the extent to which the applicant demonstrates—

(i) (5 points) The effectiveness of its management plan to ensure proper and efficient administration of the project;

(ii) (5 points) The effectiveness of its plan to attain specific outcomes that—

(A) Will accomplish the purposes of the program;

(B) Are attainable within the project period;

(C) Are measurable and quantifiable; and

(D) For multi-year projects, can be used to determine the project's progress in meeting its intended outcomes;

(iii) (2 points) The effectiveness of its plan for utilizing its resources and personnel to achieve the objectives of the project, including how well it utilizes key personnel to complete tasks and achieve the objectives of the project;

(iv) (3 points) How it will ensure equal access and treatment for eligible project participants who have been traditionally underrepresented in courses or activities offered as part of the magnet school, e.g. women and girls in mathematics, science, or technology courses, and disabled students; and

(v) (15 points) The effectiveness of its plan to recruit students from different social, economic, ethnic, and racial backgrounds into the magnet schools.

(b) *Quality of Personnel.* (15 points)

(1) The Secretary reviews each application to determine the qualifications of the personnel the applicant plans to use on the project.

(2) The Secretary determines the extent to which—

(i) (5 points) The project director (if one is used) is qualified to manage the project;

(ii) (4 points) Other key personnel are qualified to manage the project;

(iii) (5 points) Teachers who will provide instruction in participating magnet schools are qualified to implement the special curriculum of the magnet schools; and

(iv) (1 point) The applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, religion, color, national origin, sex, age, or disability.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, including the key personnel's knowledge of and experience in curriculum development and desegregation strategies.

(c) *Quality of Project Design.* (30 points)

(1) The Secretary reviews each application to determine the quality of the project design based on sections 5305(b)(1)(A), 5305(b)(1)(B), 5305(b)(1)(D)(i), 5305(b)(2)(D) of the ESEA.

(2) The Secretary determines the extent to which each magnet school for which funding is sought will—

(i) (10 points) Promote desegregation, including how each proposed magnet school program will increase interaction among students of different social, economic, ethnic, and racial backgrounds;

(ii) (10 points) Improve student academic achievement for all students attending each magnet school program, including the manner and extent to which each magnet school program will increase student academic achievement in the instructional area or areas offered by the school; and

(iii) (10 points) Encourage greater parental decision-making and involvement.

(d) *Budget and Resources.* (5 points)

The Secretary reviews each application to determine the adequacy of the resources and the cost-effectiveness of the budget for the project, including—

(1) (1 points) The adequacy of the facilities that the applicant plans to use;

(2) (2 points) The adequacy of the equipment and supplies that the applicant plans to use; and

(3) (2 points) The adequacy and reasonableness of the budget for the project in relation to the objectives of the project.

(e) *Evaluation Plan.* (10 points)

The Secretary determines the extent to which the evaluation plan for the project—

(1) (2 points) Includes methods that are appropriate to the project;

(2) (6 points) Will determine how successful the project is in meeting its intended outcomes, including its goals for desegregating its students and increasing student achievement; and

(3) (2 points) Includes methods that are objective and that will produce data that are quantifiable.

(f) *Commitment and Capacity.* (10 points)

(1) The Secretary reviews each application to determine whether the applicant is likely to continue the magnet school activities after assistance under the program is no longer available.

(2) The Secretary determines the extent to which the applicant—

(i) (5 points) Is committed to the magnet schools project; and

(ii) (5 points) Has identified other resources to continue support for the magnet school activities when assistance under this program is no longer available.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110.

(b) 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:* We have established the following six performance measures for the MSAP:

(a) The percentage of magnet schools receiving assistance whose student enrollment reduces, eliminates, or prevents minority group isolation.

(b) The percentage of students from major racial and ethnic groups in magnet schools receiving assistance who score proficient or above on State assessments in reading/language arts.

(c) The percentage of students from major racial and ethnic groups in magnet schools receiving assistance who score proficient or above on State assessments in mathematics.

(d) The cost per student in a magnet school receiving assistance.

(e) The percentage of magnet schools that received assistance that are still operating magnet school programs three years after Federal funding ends.

(f) The percentage of magnet schools that received assistance that meet the State's annual measurable objectives and, for high schools, graduation rate targets at least three years after Federal funding ends.

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 Contact

FOR FURTHER INFORMATION CONTACT: Rosie Kelley, U.S. Department of Education, 400 Maryland Avenue SW., room 4W227, Washington, DC 20202–5970. Telephone: (202) 453–5601 or by email: *msap.team@ed.gov*. If you use a TDD or TTY, call the FRS, 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 person 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: December 26, 2012.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2012–31434 Filed 12–28–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

List of Correspondence From April 1, 2012, Through June 30, 2012

AGENCY: Office of Special Education and Rehabilitative Services; Department of Education.

ACTION: Notice.

SUMMARY: The Secretary is publishing the following list of correspondence from the U.S. Department of Education (Department) to individuals during the previous quarter. The correspondence describes the Department's interpretations of the Individuals with Disabilities Education Act (IDEA) or the regulations that implement the IDEA. This list and the letters or other documents described in this list, with personally identifiable information redacted, as appropriate, can be found at: *www2.ed.gov/policy/speced/guid/idea/index.html*.

FOR FURTHER INFORMATION CONTACT: Jessica Spataro or Mary Louise Dirrigl. Telephone: (202) 245–7468.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), you can call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of this list and the letters or other documents described in this list in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting Jessica Spataro or Mary Louise Dirrigl at (202) 245–7468.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued from April 1, 2012, through June 30, 2012. Under section 607(f) of the IDEA, the Secretary is required to publish this list quarterly in the **Federal Register**. The list includes those letters that contain interpretations of the requirements of the IDEA and its implementing regulations, and it may also include letters and other documents that the Department believes will assist the public in understanding the requirements of the law. The list identifies the date and topic of each letter, and it provides summary information, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been redacted, as appropriate.

Part B—Assistance for Education of All Children With Disabilities

Section 602—Definitions

Topic Addressed: Special Education and Related Services

○ Letter dated May 9, 2012, to Special Education Advocate Ellen M. Chambers, regarding whether instruction or services provided in a school district's regular education program can be considered ''specially-designed instruction'' or ''related services.''

Section 612—State Eligibility

Topic Addressed: Least Restrictive Environment

○ Letter dated June 22, 2012, to Disability Rights Wisconsin Managing Attorney Jeffrey Spitzer-Resnick, regarding how the least restrictive environment requirements apply to work placements that are part of a student's transition plan.

Topic Addressed: Children In Private Schools

○ Letter dated June 13, 2012, to East End Special Education Parents, Inc., President Kathleen Chamberlain, regarding children with disabilities enrolled by their parents in private schools when free appropriate public education (FAPE) is at issue and clarification of child find requirements for parentally placed private school children.

Section 613—Local Educational Agency Eligibility

Topic Addressed: Maintenance of Effort

○ Letter dated April 4, 2012, to Center for Law and Education co-director Kathleen Boundy, regarding the local educational agency (LEA) maintenance of

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Revocation Of Consent

○ Letter dated June 6, 2012, to West Virginia attorney James Gerl, regarding whether an LEA may offer mediation when parents revoke consent to the continued provision of special education and related services to their child.

Topic Addressed: Evaluations, Parental Consent, and Reevaluations

○ Letter dated April 9, 2012, to individual (personally identifiable information redacted), regarding various requirements of Part B of the IDEA, including functional behavioral assessments, out-of-State transfer students, State complaint procedures, and education records.

○ Letter dated April 11, 2012, to Cumberland County Schools Exceptional Children's Programs Executive Director Ruben A. Reyes, regarding timeframes for initial evaluations.

Topic Addressed: Individualized Education Programs for Transfer Students

○ Letter dated April 10, 2012, to Little Cypress-Mauriceville Special Programs Director Robert H. Finch, regarding comparable services for transfer students.

Section 615—Procedural Safeguards

Topic Addressed: Prior Written Notice

○ Letter dated April 26, 2012, to Family Soup Executive Director Cindy E. Chandler, regarding when an LEA must provide prior written notice to parents.

Topic Addressed: Resolution Process

○ Letter dated April 23, 2012, to Maryland attorney Michael J. Eig, regarding parent participation in resolution meetings.

Topic Addressed: Discipline Procedures

○ Letter dated June 21, 2012, to New York attorney Edward Sarzynski, regarding how discipline procedures apply to bus suspensions (when school districts temporarily prohibit a student from riding the bus).

○ Letter dated June 22, 2012, to Virginia Department of Education Assistant Superintendent H. Douglas Cox, regarding timelines for expedited due process hearings when school is not in session.

Section 616—Monitoring, Technical Assistance, and Enforcement

Topic Addressed: Federal and State Monitoring

○ Letter dated June 26, 2012, to U.S. Congresswoman Lynn C. Woolsey, regarding the Office of Special Education Programs' monitoring of States' compliance with requirements of the IDEA.

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: December 26, 2012.

Michael Yudin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2012–31435 Filed 12–28–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. DW–009]

Notice of Petition for Waiver of BSH Corporation From the Department of Energy Residential Dishwasher Test Procedure, and Grant of Interim Waiver

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver, notice of grant of interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes the BSH Corporation (BSH) petition for waiver from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of dishwashers. Today's notice also grants an interim waiver of the dishwasher test procedure. Through this notice, DOE also solicits comments with respect to the BSH petition.

DATES: DOE will accept comments, data, and information with respect to the BSH petition until January 30, 2013.

ADDRESSES: You may submit comments, identified by case number DW–009, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AS_Waiver_Requests@ee.doe.gov.* Include ''Case No. DW–009'' in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Petition for Waiver Case No. DW–009, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., Washington, DC, 20024; (202) 586–2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE waivers and rulemakings regarding similar dishwasher products. Please call Ms. Brenda Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes dishwashers.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for dishwashers is contained in 10 CFR part 430, subpart B, appendix C.

The regulations set forth in 10 CFR 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered consumer products. A waiver will be granted by the Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(l). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR 430.27(a)(2) An interim waiver must be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. (10 CFR 430.27(g)) An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever is sooner. DOE may extend an interim waiver for an additional 180 days. 10 CFR 430.27(h)

II. Application for Interim Waiver and Petition for Waiver

On November 30, 2012, BSH submitted the petition for waiver and interim waiver from the test procedure applicable to dishwashers set forth in 10 CFR part 430, subpart B, appendix C. In every respect except the introduction of new model numbers, the petition is identical to petitions submitted by BSH

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

on February 4, 2011, December 7, 2011 and March 27, 2012. DOE granted the February 4th petition on June 29, 2011 (76 FR 38144), and the December 7th and March 27th petitions on October 1, 2012 (77 FR 59916 and 77 FR 59918, respectively).

BSH states that ''hard'' water can reduce customer satisfaction with dishwasher performance resulting in increased pre-rinsing and/or hand washing as well as increased detergent and rinse agent usage. According to BSH, a dishwasher equipped with a water softener will minimize pre-rinsing and rewashing, and consumers will have less reason to periodically run their dishwasher through a clean-up cycle. BSH also states that the amount of water consumed by the regeneration operation of a water softener in a dishwasher is very small, but that it varies significantly depending on the adjustment of the softener. The regeneration operation takes place infrequently, and the frequency is related to the level of water hardness.

In its petition, BSH requests that constant values of 47.6 gallons per year for water consumption and 8.0 kWh per year for energy consumption be used to estimate the water and energy consumption resulting from water softener regeneration. BSH included calculations showing this water and energy use, which was derived using the same method as that used by Whirlpool in its petition for waiver, which was granted by DOE. (75 FR 62127, Oct. 7, 2010).

DOE has determined that BSH's application for interim waiver does not provide sufficient market, equipment price, shipments, and other manufacturer impact information to permit DOE to evaluate the economic hardship BSH might experience absent a favorable determination on its application for interim waiver. DOE has also determined, however, that it is likely BSH's petition will be granted, and that it is desirable for public policy reasons to grant BSH relief pending a determination on the petition. Based on the information provided by BSH and Whirlpool, use of the DOE test procedure may provide materially inaccurate comparative data. In addition, the constant values submitted by BSH provide a reasonable estimate of the energy and water used during water softener regeneration for the basic model set forth in this petition and BSH's previous petition.

Based on these considerations, and the waivers granted to BSH and Whirlpool for similar models, it appears likely that the petition for waiver will be granted. DOE also believes that the energy efficiency of similar products should be tested and rated in the same manner. As a result, DOE grants BSH's application for interim waiver for the basic models of dishwashers specified in its petition for waiver, pursuant to 10 CFR 430.27(g). Therefore, *it is ordered that:*

The application for interim waiver filed by BSH is hereby granted for the specified BSH dishwasher basic models, subject to the specifications and conditions below.

BSH shall be required to test and rate the specified dishwasher products according to the alternate test procedure as set forth in section III, ''Alternate Test Procedure.''

The interim waiver applies to the following basic model groups:

Bosch Brand

- Basic Model—SHX7PT####
- Basic Model—SHP7PT####
- Basic Model—SHE7PT####
- Basic Model—SHV7PT####
- Basic Model—SHX8PT####
- Basic Model—SHE8PT####
- Basic Model—SHE9PT####
- Basic Model—SHX9PT####
- Basic Model—SHV9PT####
- Basic Model—SGV63E####

Gaggenau Brand

- Basic Model—DF2417####

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may be manufactured by the petitioner. BSH may submit a subsequent petition for waiver and request for grant of interim waiver, as appropriate, for additional models of clothes washers for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that grant of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

III. Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures to make representations about the energy consumption and energy consumption costs of products covered by the statute. (42 U.S.C. 6293(c)) Consistent representations are important for manufacturers to use in making representations about the energy efficiency of their products and to demonstrate compliance with applicable DOE energy conservation standards. Pursuant to its regulations applicable to waivers and interim waivers from the relevant test procedures, set forth at 10 CFR 430.27, DOE will consider setting an alternate test procedure for BSH in a subsequent Decision and Order.

During the period of the interim waiver granted in this notice, BSH shall test its dishwasher basic models according to the existing DOE test procedure at 10 CFR 430, subpart B, appendix C with the modification set forth below.

Under appendix C, the water energy consumption, W or Wg, is calculated based on the water consumption as set forth in Sect. 4.3:

§ 4.3 *Water consumption.* Measure the water consumption, V, expressed as the number of gallons of water delivered to the machine during the entire test cycle, using a water meter as specified in section 3.3 of this Appendix.

Where the regeneration of the water softener depends on demand and water hardness, and does not take place on every cycle, BSH shall measure the water consumption of dishwashers having water softeners without including the water consumed by the dishwasher during softener regeneration. If a regeneration operation takes place within the test, the water consumed by the regeneration operation shall be disregarded when declaring water and energy consumption. Constant values of 47.6 gallons/year of water and 8 kWh/year of energy shall be added to the values measured by appendix C.

Please note that on October 31, 2012, DOE published a test procedure final rule (77 FR 65941) to include measures of energy and water consumption due to periodic water softener regeneration. The rule is effective on December 17, 2012 and requires compliance on or after May 13, 2013. Products tested on or after May 13, 2013, must be tested with the new DOE test procedure.

IV. Summary and Request for Comments

Through today's notice, DOE announces receipt of BSH's petition for waiver from certain parts of the test procedure that apply to dishwashers and grants an interim waiver. DOE is publishing BSH's petition for waiver in its entirety. The petition contains no confidential information. The petition includes a suggested alternate test procedure, in which the reported energy and water consumption would include an estimate of the energy and water consumption of dishwashers with water softeners during softener regeneration.

DOE solicits comments from interested parties on all aspects of the petition. Any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is

Mike Edwards, Senior Engineer, Performance and Consumption, BSH Home Appliances Corporation (FNbG), 100 Bosch Blvd., Building 102, New Bern, NC 28562–6924. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Issued in Washington, DC, on December 21, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

November 30, 2012

Dr. David T. Danielson
Assistant Secretary, Energy Efficiency & Renewable Energy
U.S. Department of Energy
Mail Station EE–1
1000 Independence Avenue SW
Washington, DC 20585
David.Danielson@ee.doe.gov

Via email (*David.Danielson@ee.doe.gov*) and overnight mail

Re: Petition for Waiver and Application for Interim Waiver concerning the measurement of water and energy used in the water softening regeneration process of Dishwasher having an Integrated Water Softener

Dear Assistant Secretary Danielson:

BSH Home Appliance Corporation (''BSH'') hereby submits this Petition for Waiver and Application for Interim Waiver pursuant to 10 CFR 430.27, concerning the test procedure for measuring energy consumption of Dishwashers.

BSH is the manufacturer of household appliances bearing the brand names of Bosch, Thermador, and Gaggenau. Its appliances include dishwashers, washing machines, clothes dryers, refrigerator-freezers, ovens, and microwave ovens, and are sold worldwide, including in the United States. BSH's United States operations are headquartered in Irvine, California.

10 CFR 430.27(a)(1) provides that any interested person may submit a petition to waive for a particular basic model any requirement of Section 430.23, or of any appendix to this subpart, upon grounds that the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics, or water consumption characteristics as to provide materially inaccurate comparative data. Additionally, 10 CFR 430.27 (b)(2) allows any applicant of a Petition of Waiver to also request an Interim Waiver if it can be demonstrated the likely success of the Petition for Waiver, while addressing the economic hardship and/or competitive disadvantage that is likely to result absent a favorable determination on the Application for Interim Waiver.

This request for Waiver is directed to Dishwashers containing a built-in or integrated water softener, specifically addressing the energy and water used in the regeneration process of the integrated water softener. This request is similar to several previously approved waivers (such as Waiver Case Number DW–005). Further, the water softening technology used in these models is identical to the models that were previously approved.

Based on the reasoning indicated herein, BSH submits that the testing of Dishwashers equipped with a water softener under the current DOE test procedure may lead to information that could be considered misleading to consumers.

1. Identification of Basic Models.

The Dishwasher models manufactured by BSH which contain an integrated water softener and were not included in previous Waiver applications is as follows:

Bosch brand:

- Basic Model—SHX7PT####
- Basic Model—SHP7PT####
- Basic Model—SHE7PT####
- Basic Model—SHV7PT####
- Basic Model—SHX8PT####
- Basic Model—SHE8PT####
- Basic Model—SHE9PT####
- Basic Model—SHX9PT####
- Basic Model—SHV9PT####
- Basic Model—SGV63E####

Gaggenau brand:

- Basic Model—DF2417####

2. Background

The design characteristic that is unique among the above listed models is an integrated water softener. The primary function of a water softener is to reduce the high mineral content of ''hard'' water. Hard water reduces the effectiveness of detergents leading to additional detergent usage. Hard water also causes increased water spots on dishware, resulting in the need to use more rinse aid to counterbalance this effect. ''Hard'' water can reduce customer satisfaction with Dishwasher performance resulting in increased pre-rinsing and/or hand washing as well as increased detergent and rinse agent usage.

The water softening process requires water usage for both the regeneration process and to flush the system. For purposes of this Waiver request, the term ''regeneration'' will include the water and energy used in both the flushing and regeneration process of the water softener. The water used in the regeneration process is in addition to the water used in the dish washing process. The water used in the regeneration process does not occur with each use of the Dishwasher. The frequency of the regeneration process is dependent upon an adjustable water softener setting that is controlled by the end user, and based on the home water hardness. Regeneration frequency will vary greatly depending upon the customer setting of the water softener. Data from the U.S. Geological Survey shows considerable variation in the water hardness within the U.S. and for many locations the use of a water softener is not necessary. Water hardness varies throughout the U.S. with the mean hardness of 217 mg/liter or 12.6 grains/gallon (based on information provided by the U.S. Geological Survey located at *http://water.usgs.gov/owq/hardness-alkalinity.html*).

Calculations

Water Use

- Based on the DOE Energy Test for Dishwashers, the BSH Dishwashers listed in this waiver with an internal water softener use an average of approximately 9 liters of water per dish cleaning cycle.
- Based on an average U.S. water hardness of 12.6 grains/gallon, the internal BSH Dishwasher water softener system would be set on ''3''.
- Based on a BSH Dishwasher internal water softening system setting of ''3'' and the dishwasher using 9 liters of water per run, the water regeneration process would occur every 6th cycle.
- When using the Dishwasher 215 times per year (per DOE test procedure), the regeneration process would occur 35.8 times (36).
- The internal BSH water softening system uses approximately 5.0 per regeneration cycle.

- Water usage calculation based on above data.
  - 36 × 5 = 180 liters per year (47.6 gallons) or .84 liters (.22 gallons) each time the dishwasher is used.

Energy Used in kWh

- Formula W = V × T × K
  - V = Weighted Average Water Usage per DOE
  - T = Nominal water heater temperature rise of 39° C
  - K = Specific heat of water 0.00115
- Calculated Energy use—180 × 39 × .00115 = 8.0 kWh/yr

Summary

- A Dishwasher built by BSH with an integrated water softener in a home with a 12.6 grain per gallon water hardness would be cycled through the water softening regeneration process approximately every 6 dish cleaning cycles. When the water used in the water softener regeneration process is apportioned evenly over all dishwasher runs, the amount of energy and water usage per cycle is very low. Based on the assumptions provided, BSH estimates the typical water used in the internal Dishwasher water softener regeneration process at .84 liters (.22 gallons) per use; furthermore, using about 8.0 kWh per year to heat this water in the home hot water heater.

3. Requirements sought to be waived

Dishwashers are subjected to test methods outlined in 10 CFR Part 430, Subpart B, App. C, Section 4.3, which specifies the method for the water energy calculation.

- BSH is requesting approval to estimate the water and energy used in the water softening process based on the design of the BSH Dishwasher and the calculations and assumptions outlined above.

4. Grounds for Waiver and Interim Waiver

10 CFR 430.27 (a)(1) provides that a Petition to waive a requirement of 430.23 may be submitted upon grounds that the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.

If a water softener regeneration process was to occur while running an energy test, the water usage would be overstated. In this case, the water energy usage would be unrepresentative of the product providing inaccurate data resulting in a competitive disadvantage to BSH.

Granting of an Interim Waiver in this case is justified since the prescribed test procedures would potentially evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. In addition, a similar Interim Waiver and Waiver have previously been granted to BSH.

5. Manufacturers of Similar Products and Affected Manufacturers

Web based research shows that at least two other manufacturers are currently selling dishwashers with an integrated water softener, Miele Inc. and Whirlpool Corporation (Waiver Granted).

Manufacturers selling dishwashers in the United States include AGA Marvel, Arcelik A.S., ASKO Appliances, Inc., Electrolux North America, Inc., Fagor America, Inc., Fisher & Paykel Appliances, GE Appliances and Lighting, Haier America, Indesit Company Sa, Teka USA, Inc., LG Electronics USA, Miele, Inc., Samsung Electronics Co., Viking Range Corporation and Whirlpool Corporation.

BSH will notify all companies listed above (as well as AHAM), as required by the Department's rules, providing them with a copy of this Petition for Waiver and Interim Waiver.

6. Conclusion

BSH Home Appliances Corporation hereby requests approval of the Waiver petition and Interim Waiver. By granting said Waivers the Department of Energy will further ensure that water energy is measured in the same way by all Dishwasher Manufacturer's that have a integrated water softener. Further, BSH would request that these Waivers be in good standing until such time that the test procedure can be formally modified to account for integrated water softeners.

BSH Home Appliances certifies that all manufacturers of domestic Dishwashers as listed above have been notified by letter.

With Best Regards,

Mike Edwards

Senior Engineer, Performance and Consumption
BSH Home Appliances Corporation (FNbG)
100 Bosch Blvd., Building 102
New Bern, NC 28562–6924
mike.edwards@bshg.com
Phone (252) 672–9161
Fax (949) 809–6177

[FR Doc. 2012–31395 Filed 12–28–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC13–8–000]

Commission Information Collection Activities (FERC Form No. 556); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 USC 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, OMB No. 1902–0075, FERC Form No. 556, ''Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility'' (Form No. 556).

DATES: Comments on the collection of information are due March 1, 2013.

ADDRESSES: You may submit comments (identified by Docket No. IC13–8–000) by either of the following methods:

- *eFiling at Commission's Web Site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC Form No. 556, Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility.

OMB Control No.: 1902–0075.

Type of Request: Three-year extension of the Form No. 556 information collection requirements with no changes to the current reporting requirements.

Abstract: The Commission requires the Form No. 556 to implement the statutory provisions in Sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA).[1] FERC is authorized to encourage cogeneration and small power production and to prescribe such rules as necessary in order to carry out the statutory directives.

A primary statutory objective is the conservation of energy through efficient use of energy resources and facilities by electric utilities. One means of achieving this goal is to encourage production of electric power by cogeneration facilities which make use of reject heat associated with commercial or industrial processes, and by small power production facilities which use other wastes and renewable resources. PURPA, encourages the development of small power production facilities and cogeneration facilities which meet certain technical and corporate criteria through establishment of various regulatory benefits. Facilities that meet these criteria are called Qualifying Facilities or QFs.

FERC's regulations[2] specify:

- The certification procedures which must be followed by owners or operators of small power production and cogeneration facilities;
- The criteria which must be met;
- The information which must be submitted to FERC in order to obtain qualifying status;
- The PURPA benefits which are available to QFs to encourage small power production and cogeneration; and
- The requirements pertaining to PURPA implementation plans regarding the transaction obligations that electric utilities have with respect to QFs.

Among PURPA provisions in Part 292 are requirements for electric utilities to:

- Purchase energy and capacity from QFs favorably priced on the basis of the avoided cost of the power that is displaced by the QF power (i.e. the incremental cost to the purchasing utility if it had generated the displaced power or purchased it from another source);
- Sell backup, maintenance and other power services to QFs at rates based on the cost of rendering the services;
- Provide certain interconnection and transmission services priced on a nondiscriminatory basis;
- Operate in ''parallel'' with other interconnected QFs so that they may be electrically synchronized with electric utility grids; and
- Make available to the public avoided cost information and system capacity needs.

18 CFR Part 292 exempts QFs from certain corporate, accounting, reporting and rate regulation requirements, certain state laws and in certain instances, regulation under the Federal Power Act[3] and the Public Utility Holding Company Act of 2005.[4]

Type of Respondents: Respondents to the Form No. 556 are cogeneration facilities and small power producers with a generating capacity greater than 1Megawatt (MW) who are self-certifying their status as a cogenerator facility or small power producer facility or who are submitting an application for FERC certification of their status as a cogenerator facility.

Estimate of Annual Burden[5]*:* The Commission estimates the total Public Reporting Burden for this information collection as:

FORM NO. 556 (IC13–8–000): CERTIFICATION OF QUALIFYING FACILITY (QF) STATUS FOR A SMALL POWER PRODUCTION OR COGENERATION FACILITY

Facility type	Filing type	No. of Respondents (A)	Total No. of responses (B)	Average burden hours per response (C)	Estimated total annual burden hours (A)X(B)X(C)
cogeneration facility > 1MW	self-certification	53	2	8	848
cogeneration facility > 1 MW	application for FERC certification	2	2	50	200
small power production facility > 1 MW.	self-certification	690	2	3	4140
small power production facility > 1 MW.	application for FERC certification	0	0	6	0
cogeneration and small power production facility ≤ 1MW (not required to file).	self-certification	192	2	3	1152
Totals		937			6,340

The total estimated annual cost burden to respondents is $374,757.40 [6,340 * $59.11].[6]

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost 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 collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

[1] PublicLaw 95–617, November 9, 1978, 92 Stat. 3117. Codified at 16 U.S.C. 46,2601–45.

[2] 18 CFR part 292.

[3] 16 U.S.C. 791, *et seq.*

[4] 42 U.S.C. 16, 451–63.

[5] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[6] The cost figures are derived by multiplying the total hours to prepare a response (hours) by an hourly wage estimate of $59.11 (a composite estimate that includes legal, engineering and support staff wages and benefits obtained from the Bureau of Labor Statistic data at *http://bls.gov/oes/current/naics3_221000.htm* and *http://www.bls.gov/news.release/ecec.nr0.htm rates.*

Dated: December 20, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–31264 Filed 12–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC13–9–000]

Commission Information Collection Activities (FERC–730); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–730, Report of Transmission Investment Activity.

DATES: Comments on the collection of information are due March 1, 2013.

ADDRESSES: You may submit comments (identified by Docket No. IC13–9–000) by either of the following methods:

- *eFiling at Commission's Web Site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: Report of Transmission Investment Activity.

OMB Control No.: 1902–0239.

Type of Request: Three-year extension of the FERC–730 information collection requirements with no changes to the current reporting requirements.

Abstract: Pursuant to Section 219 [1] of the Federal Power Act, the Commission issued FERC Order No. 679,[2] Promoting Transmission Investment Through Pricing Reform. Order No. 679 FERC amended its regulations in 18 CFR 35.35 to establish incentive-based (including performance-based) rate treatments for the transmission of electric energy in interstate commerce by public utilities. The Commission intended the order to benefit consumers by ensuring reliability and to reduce the cost of delivered power by reducing transmission congestion. Order No. 679 also adopted an annual reporting requirement (FERC–730) for utilities that receive incentive rate treatment for specific transmission projects. The FERC–730 provides annual data on transmission capital expenditures as well as project status detail. The Commission requires that filers specify which projects are currently receiving incentives in the project detail table and that they group together those facilities receiving the same incentive. Specifically, in accordance with the statute, public utilities with incentive rates must file:

- Actual transmission investment for the most recent calendar year, and projected, incremental investments for the next five calendar years (in dollar terms); and
- A project by project listing that specifies for each project the most up to date, expected completion date, percentage completion as of the date of filing, and reasons for delays for all current and projected investments over the next five calendar years. Projects with projected costs less than $20 million are excluded from this listing.

To ensure that Commission rules are successfully meeting the objectives of Section 219, the Commission collects industry data, projections and related information that detail the level of investment. FERC–730 information regarding projected investments as well as information about completed projects allows the Commission to monitor the success of the transmission pricing reforms and to determine the status of critical projects and reasons for delay.

Type of Respondents: Public utilities that have been granted incentive based rate treatment for specific transmission projects under the provisions of 18 CFR 35.35(h) must file the FERC–730.

Estimate of Annual Burden [3]*:* The Commission estimates the total Public Reporting Burden for this information collection as:

FERC–730: REPORT OF TRANSMISSION INVESTMENT ACTIVITY

	No. of respondents (A)	No. of responses per respondent (B)	Total No. of responses (A)×(B)=(C)	Average burden hours per response (D)	Estimated total annual burden (C)×(D)
Public utilities granted incentive based rate treatment for specific transmission projects under the provisions of 18 CFR 35.35 (h).	*63*	*1*	*63*	*30*	*1,890*

The total estimated annual cost burden to respondents is $130,428.17 [1,890 hours ÷ 2080 [4] hours per year * $143,540/year [5] = $130,428.17].

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection

[1] Energy Policy Act of 2005, Public Law 109–58, 119 Stat. 594, 315 and 1283 (2005).

[2] RM06–4–000 (issued 7/20/2006), published: 71 FR 43294.

[3] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[4] 2080 hours/year = 40 hours/week * 52 weeks/year

[5] Average annual salary per employee in 2012

of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: December 20, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–31265 Filed 12–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2727–086]

Black Bear Hydro Partners, LLC;

Notice of Intent To File License Application, Filing of Pre-Application Document (PAD), Commencement of Pre-Filing Process and Scoping; Request For Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Pre-filing Process.

b. *Project No.:* 2727–086.

c. *Dated Filed:* October 24, 2012.

d. *Submitted By:* Black Bear Hydro Partners, LLC (Black Bear Hydro).

e. *Name of Project:* Ellsworth Hydroelectric Project.

f. *Location:* On the Union River in the City of Ellsworth and the towns of Waltham and Mariaville in Hancock County, Maine. The project would not occupy federal lands.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Applicant Contact:* Scott Hall, Davenport Street, P.O. Box 276, Milford, ME 04461. 207–827–5364.

i. *FERC Contact:* Nicholas Palso, Ph.D. at (202) 502–8854 or email at *nicholas.palso@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o. below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. *With this notice, we are initiating informal consultation with:* (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402 and (b) the State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Black Bear Hydro as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act, section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act, and section 106 of the National Historic Preservation Act.

m. Black Bear Hydro filed with the Commission a Pre-Application Document (PAD; including a proposed process plan and schedule), pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Commission staff's Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application must be filed with the Commission. Documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

All filings with the Commission must include on the first page, the project name (Ellsworth Hydroelectric Project) and number (P–2727–086), and bear the appropriate heading: ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by February 21, 2013.

p. We intend to prepare an environmental assessment (EA) for this project. The scoping meetings identified below satisfy the NEPA scoping requirements.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date: Wednesday, January 16, 2013.

Time: 9:00 a.m.

Location: Black Bear Hydro Partners, LLC, Davenport Street, Milford, ME 04461.

Phone: (207) 827–5364.

Evening Scoping Meeting

Date: Tuesday, January 15, 2013.

Time: 7:00 p.m.

Location: Ellsworth City Hall, One City Hall Plaza, Ellsworth, Maine 04605.

Phone: (207) 667–2563.

Scoping Document 1 (SD1), which outlines the subject areas to be

addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n. of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will be placed in the public records of the project.

Dated: December 20, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–31262 Filed 12–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP13–403–000.

Applicants: Northern Border Pipeline Company.

Description: Settlement Compliance to RP12–1093 to be effective 1/1/2013.

Filed Date: 12/19/12.

Accession Number: 20121219–5103.

Comments Due: 5 p.m. ET 12/31/12.

Docket Numbers: RP13–404–000.

Applicants: Transwestern Pipeline Company, LLC.

Description: 2012 TW Stipulation & Agreement—Alert Day, etc. to be effective 12/31/9998 reply comments due by 1/7/2013.

Filed Date: 12/19/12.

Accession Number: 20121219–5206.

Comments Due: 5 p.m. ET 12/31/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP13–373–001.

Applicants: Cimarron River Pipeline, LLC.

Description: NAESB Version 2.0 Extension Filing 2 to be effective 1/1/2013.

Filed Date: 12/19/12.

Accession Number: 20121219–5062.

Comments Due: 5 p.m. ET 12/31/12.

Docket Numbers: RP13–374–001.

Applicants: Dauphin Island Gathering Partners.

Description: NAESB Version 2.0 Extension Filing 2 to be effective 1/1/2013.

Filed Date: 12/19/12.

Accession Number: 20121219–5061.

Comments Due: 5 p.m. ET 12/31/12.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 20, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–31369 Filed 12–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP13–405–000.

Applicants: Questar Pipeline Company.

Description: Pt. 1 Sec. 6.17, Request to Acquire Released Capacity, Version 1.0.0 to be effective 1/20/2013.

Filed Date: 12/20/12.

Accession Number: 20121220–5038.

Comments Due: 5 p.m. ET 1/2/13.

Docket Numbers: RP13–406–000.

Applicants: Questar Overthrust Pipeline Company.

Description: Section 31.2, Limits of Segmentation Version 1.0.0 to be effective 1/20/2013.

Filed Date: 12/20/12.

Accession Number: 20121220–5054.

Comments Due: 5 p.m. ET 1/2/13

Docket Numbers: RP13–407–000.

Applicants: Dominion Transmission, Inc.

Description: DTI—December 20, 2012 Negotiated Rate Agreements and Nonconforming SA to be effective 1/1/2013.

Filed Date: 12/20/12.

Accession Number: 20121220–5152.

Comments Due: 5 p.m. ET 1/2/13.

Docket Numbers: RP13–408–000.

Applicants: Energy West Development, Inc.

Description: NAESB Compliance Order No. 587–V CORRECTION to be effective 12/21/2012.

Filed Date: 12/20/12.

Accession Number: 20121220–5243.

Comments Due: 5 p.m. ET 1/2/13.

Docket Numbers: RP13–409–000.

Applicants: First ECA Midstream LLC.

Description: Compliance Filing to be effective 11/29/2012.

Filed Date: 12/20/12.

Accession Number: 20121220–5245.

Comments Due: 5 p.m. ET 1/2/13.

Docket Numbers: RP13–410–000.

Applicants: Alliance Pipeline L.P.

Description: Alliance Pipeline L.P. submits tariff filing per 154.204: Jan 1—

31, 2013 Auction to be effective 1/1/2013.

Filed Date: 12/21/12.

Accession Number: 20121221–5089.

Comments Due: 5 p.m. ET 1/2/13.

Docket Numbers: RP13–411–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Iroquois Gas Transmission System, L.P. submits tariff filing per 154.204: 12/21/12 Negotiated Rates—Emera Energy Services Incorporated to be effective 12/21/2012.

Filed Date: 12/21/12.

Accession Number: 20121221–5090.

Comments Due: 5 p.m. ET 1/2/13.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP13–147–001.

Applicants: WestGas InterState, Inc.

Description: Compliance Filing to be effective 12/1/2012.

Filed Date: 12/20/12.

Accession Number: 20121220–5205.

Comments Due: 5 p.m. ET 1/2/13.

Docket Numbers: RP13–373–002.

Applicants: Cimarron River Pipeline, LLC.

Description: NAESB Version 2.0 Correction to be effective 1/1/2013.

Filed Date: 12/20/12.

Accession Number: 20121220–5082.

Comments Due: 5 p.m. ET 1/2/13.

Docket Numbers: RP13–374–002.

Applicants: Dauphin Island Gathering Partners.

Description: NAESB Version 2.0 Correction to be effective 1/1/2013.

Filed Date: 12/20/12.

Accession Number: 20121220–5083.

Comments Due: 5 p.m. ET 1/2/13.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 21, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–31381 Filed 12–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC13–52–000.

Applicants: JPM Capital Corporation.

Description: Section 203 Application of JPM Capital Corporation Requesting Expedited Order and Confidential Treatment.

Filed Date: 12/19/12.

Accession Number: 20121219–5265.

Comments Due: 5 p.m. ET 1/9/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1790–009; ER12–1400–002; ER10–2595–002.

Applicants: BP Energy Company, Flat Ridge 2 Wind Energy LLC, Flat Ridge Wind Energy, LLC.

Description: Updated Market Power Analysis for Southwest Power Pool Region of BP Energy Company, et. al.

Filed Date: 12/19/12.

Accession Number: 20121219–5266.

Comments Due: 5 p.m. ET 1/9/13.

Docket Numbers: ER12–2669–002.

Applicants: California Independent System Operator Corporation.

Description: 2012–12–19 Replacement Requirement for RA Maintenance Outages Compliance to be effective 11/20/2012.

Filed Date: 12/20/12.

Accession Number: 20121220–5100.

Comments Due: 5 p.m. ET 1/10/13.

Docket Numbers: ER13–81–002.

Applicants: Frontier Utilities New York LLC.

Description: Revised transmittal Letter to be effective 10/12/2012.

Filed Date: 12/20/12.

Accession Number: 20121220–5055.

Comments Due: 5 p.m. ET 1/10/13.

Docket Numbers: ER13–586–000.

Applicants: California Independent System Operator Corporation.

Description: 2012–12–19 Second Amendment to Valley Electric Transition Agreement to be effective 2/19/2013.

Filed Date: 12/19/12.

Accession Number: 20121219–5135.

Comments Due: 5 p.m. ET 1/9/13.

Docket Numbers: ER13–587–000.

Applicants: Carson Cogeneration Company LP.

Description: Application for Order Accepting Initial Market-Based Rate Tariff to be effective 2/1/2013.

Filed Date: 12/19/12.

Accession Number: 20121219–5161.

Comments Due: 5 p.m. ET 1/9/13.

Docket Numbers: ER13–588–000.

Applicants: New York Independent System Operator, Inc.

Description: NYISO Proposed Tariff Revisions Regarding Interconnection Process Improvements to be effective 2/18/2013.

Filed Date: 12/19/12.

Accession Number: 20121219–5171.

Comments Due: 5 p.m. ET 1/9/13.

Docket Numbers: ER13–589–000.

Applicants: Commonwealth Edison Company, PJM Interconnection, L.L.C.

Description: ComEd and Ameren submit PJM Service Agreement No. 3421 to be effective 12/20/2012.

Filed Date: 12/19/12.

Accession Number: 20121219–5181.

Comments Due: 5 p.m. ET 1/9/13.

Docket Numbers: ER13–590–000.

Applicants: Southern California Edison Company.

Description: LGIA with Sky River and Amended LGIA with North Sky River Energy to be effective 12/12/2012.

Filed Date: 12/20/12.

Accession Number: 20121220–5000.

Comments Due: 5 p.m. ET 1/10/13.

Docket Numbers: ER13–591–000.

Applicants: Louisville Gas and Electric Company.

Description: OATT ATT M LGIA Rev Sec 5 17 2 to be effective 12/21/2012.

Filed Date: 12/20/12.

Accession Number: 20121220–5056.

Comments Due: 5 p.m. ET 1/10/13.

Docket Numbers: ER13–592–000.

Applicants: Wisconsin Public Service Corporation.

Description: WPSC Distribution Interconnection Agreement with WEPCO to be effective 1/1/2013.

Filed Date: 12/20/12.

Accession Number: 20121220–5098.

Comments Due: 5 p.m. ET 1/10/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: http://www.ferc.gov/docs-filing/efiling/filing-req.pdf. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 20, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–31368 Filed 12–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ13–4–000]

City of Banning, California; Notice of Filing

Take notice that on November 12, 2012, City of Banning, California submitted its tariff filing per 35.28(e): Filing 2013 TRBAA and ETC Update to be effective 1/1/2013.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive 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 26, 2012.

Dated: December 20, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–31266 Filed 12–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–587–000]

Carson Cogeneration Company; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Carson Cogeneration Company's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is January 10, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 21, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–31367 Filed 12–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1888–030]

York Haven Power Company, LLC; Notice of Meeting

On Wednesday, January 9, 2013, Commission staff will meet with York Haven Power Company, LLC (applicant) in Washington, DC. The purpose of the meeting is to discuss the required supporting design report, as well as potential studies, dam safety issues, and requirements related to the applicant's proposed nature-like fishway for the York Haven Hydroelectric Project No. 1888. The meeting will begin at 10 a.m. at the Federal Energy Regulatory Commission headquarters building located at 888 First Street NE., Washington, DC. For further information please contact Emily Carter at 202–502–6512.

Dated: December 20, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–31263 Filed 12–28–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0497; FRL–9525–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Fossil Fuel Fired Steam Generating Units (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before January 30, 2013.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2012–0497, to: (1) EPA online, using *www.regulations.gov* (our preferred method), or by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 9, 2012 (77 *FR* 47631), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to both EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2012–0497, which is available for public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution 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 Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidentiality of Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: NSPS for Fossil Fuel Fired Steam Generating Units(Renewal).

ICR Numbers: EPA ICR Number 1052.10, OMB Control Number 2060–0026.

ICR Status: This ICR is scheduled to expire on January 31, 2013. Under OMB regulations, the Agency may continue to either conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the Provisions specified at 40 CFR part 60, subpart D. Owners or operators of the affected facilities must make an initial notification report, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are also required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 54 hours per response. ''Burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of fossil fuel fired steam generating units.

Estimated Number of Respondents: 660.

Frequency of Response: Initially, occasionally and semiannually.

Estimated Total Annual Hour Burden: 70,777.

Estimated Total Annual Cost: $16,753,220, which includes $6,853,220 in labor costs, no capital/startup costs, and $9,900,000 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is an increase in respondent burden from the most recently approved ICR due to an adjustment of respondent labor hours. The previous ICR assumed that labor hours accounted for all technical, managerial, and clerical hours. To be consistent with the estimation methodology used in other ICRs, this ICR assumes that labor hours account for technical hours only. Clerical and managerial hours require additional time, and equal 10 and 5 percent of technical hours, respectively. This ICR updates these labor hours and their associated labor rates, resulting in an increase of total labor costs.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–31405 Filed 12–28–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0499; FRL–9525–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Industrial/Commercial/Institutional Steam Generating Units (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved

collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before January 30, 2013.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2012–0499, to (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 9, 2012 (77 FR 47631), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to both EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2012–0499, which is available for public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution 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 Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: NSPS for Industrial/Commercial/Institutional Steam Generating Units (Renewal).

ICR Numbers: EPA ICR Number 1088.13, OMB Control Number 2060–0072.

ICR Status: This ICR is scheduled to expire on January 31, 2013. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the Provisions specified at 40 CFR part 60, subpart Db.

Owners or operators of the affected facilities must make an initial notification report, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are also required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 388 hours per response. ''Burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of industrial/commercial/institutional steam generating units with a heat input capacity from fuels combusted in the unit of greater than 29 MW (100 million Btu/hour).

Estimated Number of Respondents: 1,727.

Frequency of Response: Initially, occasionally, quarterly and semiannually.

Estimated Total Annual Hour Burden: 1,607,368.

Estimated Total Annual Cost: $190,544,313, which includes $155,639,313 in labor costs, $9,000,000 in capital/startup costs, and $25,905,000 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is an adjustment increase in the total estimated burden as currently identified in the OMB Inventory of Approved Burdens. This increase is not due to any program changes. The estimated number of respondents has been adjusted to account for industry growth that has occurred since the most recent ICR was approved and to correct an inconsistency in the previous ICR estimate. Specifically, this ICR corrects the estimated number of respondents to be consistent with the supporting rationale. Both adjustments resulted in an increased number of existing sources and associated respondent and Agency labor hours. Also, this ICR makes adjustments to respondent and Agency labor hours in order to make the estimation methodology consistent with that of other ICRs. The previous ICR assumed that the per-respondent labor hours for each burden activity accounted for all technical, managerial, and clerical hours. This ICR assumes that labor hours account for technical hours only, and that clerical and managerial hours require an additional 10 and 5 percent of technical hours, respectively. Additionally, this ICR calculates burden costs using the most recent labor rates.

There is an increase in respondent Operations and Maintenance costs compared to the costs in the previous ICR. This increase is also due to industry growth and reflects O&M costs that will be incurred by both existing facilities and new facilities since the most recent ICR.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–31406 Filed 12–28–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9006–8]

Notice of Intent: Designation of an Expanded Ocean Dredged Material Disposal Site (ODMDS) off Charleston, South Carolina

AGENCY: U.S. Environmental Protection Agency (EPA) Region 4.

ACTION: Notice of Intent to prepare an Environmental Assessment (EA) for the designation of an expanded ODMDS off Charleston, South Carolina.

Purpose: EPA has the authority to designate ODMDSs under Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1401 *et seq.*). It is EPA's policy to prepare a National Environmental Policy Document for all ODMDS designations (63 FR 58045, October 1998).

FOR FURTHER INFORMATION, TO SUBMIT COMMENTS, AND TO BE PLACED ON THE PROJECT MAILING LIST CONTACT: Mr. Gary W. Collins, EPA Region 4, 61 Forsyth Street, Atlanta, Georgia 30303, phone 404–562–9393, email: *collins.garyw@epa.gov.*

SUMMARY: EPA in cooperation with the U.S. Army Corps of Engineers Charleston District (USACE) intends to prepare an EA to evaluate the proposed designation of an expanded ODMDS offshore Charleston, South Carolina. An EA will provide the environmental information necessary to evaluate the potential environmental impacts associated with expanding the ODMDS.

Need for Action: The USACE has requested that EPA evaluate and designate an expanded ODMDS. The study area includes an area approximately 7.18 square miles in size, for the disposal of dredged material from the proposed harbor deepening dredging at Charleston Harbor (4.04 square miles are within the current ODMDS and 3.14 square miles are outside the current ODMDS). The size of an expanded ODMDS will based on capacity computer modeling results, and will be refined throughout the study phase.

Alternatives: The following proposed alternatives have been tentatively defined.

1. No action.
2. Expansion of the existing Charleston ODMDS. Expand the existing disposal zone and ODMDS to the north, south and east.

Scoping: EPA is requesting written comments from federal, state, and local governments, industry, non-governmental organizations, and the general public on the range of alternatives considered, specific environmental issues to be evaluated, and the potential impacts of the alternatives. Scoping comments will be accepted for 60 days, beginning with the date of this Notice.

Estimated Date of Draft EA Release: May 2014.

Responsible Official: Gwendolyn Keyes Fleming, Regional Administrator, Region 4.

Dated: December 21, 2012.

Susan E. Bromm,

Director, Office of Federal Activities.

[FR Doc. 2012–31460 Filed 12–28–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9006–7]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/*

Weekly receipt of Environmental Impact Statements

Filed 12/17/2012 Through 12/21/2012

Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

SUPPLEMENTARY INFORMATION: As of October 1, 2012, EPA will not accept paper copies or CDs of EISs for filing purposes; all submissions on or after October 1, 2012 must be made through e-NEPA. While this system eliminates the need to submit paper or CD copies to EPA to meet filing requirements, electronic submission does not change requirements for distribution of EISs for public review and comment. To begin using e-NEPA, you must first register with EPA's electronic reporting site—*https://cdx.epa.gov/epa_home.asp*

EIS No. 20120394, Draft EIS, USFS, OR, Tollgate Fuels Reduction Project, Umatilla National Forest, Walla Walla Ranger District, Umatilla and Union Counties, OR, *Comment Period Ends:* 02/13/2013, *Contact:* Kimpton Cooper 509–522–6009.

EIS No. 20120395, Draft EIS, USFS, CA, AP Loblolly Pine Removal and Restoration Project, Andrew Pickens Ranger District, Sumter National Forest, Oconee County, CA, *Comment Period Ends:* 02/13/2013, *Contact:* Victor Wyant 864–638–9568.

EIS No. 20120396, Final Supplement, USACE, CA, Folsom Dam Modification Project Approach Channel, Providing New or Additional Information on the Design and Means to Construct the Auxiliary Spillway Approach Channel, Placer and El Dorado Counties, CA, *Review Period Ends:* 01/29/2013, *Contact:* Tyler Stalker 916–557–5107.

EIS No. 20120397, Final EIS, BLM, AK, National Petroleum Reserve—Alaska (NPR–A) Integrated Activity Plan, North Slope Borough, AK, *Review Period Ends:* 01/29/2013, *Contact:* Serena Sweet 907–271–4543.

EIS No. 20120398, Final EIS, NPS, WI, Ice Age Complex at Cross Plains General Management Plan, Implementation, Ice Age National Scenic Trail, Dane County, WI, *Review Period Ends:* 02/26/2013, *Contact:* John Madden 608–441–5610.

EIS No. 20120399, Draft EIS, USACE, CA, Feather River West Levee Project, To Reduce Flood Risk in the Sutter Basin, Sutter and Butte Counties, CA, *Comment Period Ends:* 02/13/2013, *Contact:* Jeff Koschak 916–557–6994.

EIS No. 20120400, Draft EIS, USACE, CA, Encinitas-Solana Beach Coastal Storm Damage Reduction Project, San Diego County, CA, *Comment Period Ends:* 02/26/2013, *Contact:* Lawrence Smith 213–452–3846.

EIS No. 20120401, Final EIS, DOE, MA, RI ADOPTION—Cape Wind Energy Project, Construction, Operation and Maintenance, and Decommissioning of a Electric Generation Facility, Barnstable, Nantucket and Duke Counties, MA and Washington County, RI, *Review Period Ends:* 01/29/2013, *Contact:* Matthew McMillen 202–586–7248.

The U.S. Department of Energy (DOE) has adopted the U.S. Department of the Interior's Mineral Management Service final EIS filed 1/09/2009. The DOE was not a cooperating agency for the above final EIS. Recirculation of the document is necessary under Section 1506.3(b) of the Council on Environmental Quality Regulations.

Dated: December 26, 2012.

Dawn Roberts,

Management Analyst, Office of Federal Activities.

[FR Doc. 2012–31461 Filed 12–28–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0390; FRL–9375–5]

Pesticide Product Registration; Receipt of Applications for New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before January 30, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the EPA Registration Number or EPA File Symbol of interest as shown in the body of this document, 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.*

FOR FURTHER INFORMATION CONTACT: A contact person is listed at the end of each registration application summary and may be contacted by telephone, email, or mail. Mail correspondence to the Registration Division (RD) (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division and mail code is listed above in this paragraph.

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. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications. For actions being evaluated under the Agency's public participation process for registration actions, there will be an additional opportunity for a 30–day public comment period on the proposed decision. Please see the Agency's public participation Web site for additional information on this process (*http://www.epa.gov/pesticides/regulating/registration-public-involvement.html*). EPA received the following applications to register new uses for pesticide products containing currently registered active ingredients:

1. *EPA Registration Number and EPA File Symbol:* 264–1049 and 72155–RNO. *Docket ID Number:* EPA–HQ–OPP–2012–0946. *Applicant:* Bayer CropScience, 2 T. W. Alexander Drive, P. O. Box 12014, Research Triangle Park, NC 27709. *Active Ingredient:* Spirotetramat. *Product Type:* Insecticide. *Proposed Uses:* Residential use—outdoor. Contact: Rita Kumar, (703) 308–8291, email address: *kumar.rita@epa.gov.*

2. *EPA Registration Number:* 524–591. *Docket ID Number:* EPA–HQ–OPP–2012–0829. *Applicant:* Monsanto Company, 1300 I Street NW., Suite 450 East, Washington DC 20005, (a member of the Acetochlor Registration Partnership, (ARP)). *Active Ingredient:* Acetochlor. *Product Type:* Herbicide. *Proposed Uses:* Sugar beet and peanut. Contact: Hope Johnson, (703) 305–5410, email address: *johnson.hope@epa.gov.*

3. *EPA File Symbol:* 39039–EN. *Docket ID Number:* EPA–HQ–OPP–2012–0981. *Applicant:* Y-Tex Corporation, P.O. Box 1450, 1825 Big Horn Ave., Cody, WY 82414–1450. *Active Ingredients:* zeta-cypermethrin and Piperonyl butoxide. *Product Type:* Insecticide. *Proposed Use:* To control darkling beetles in poultry house litter. *Contact:* Linda DeLuise, (703) 305–5428, email address: *deluise.linda@epa.gov.*

4. *EPA Registration Number:* 56228–10. *Docket ID Number:* EPA–HQ–OPP–2012–0910. *Applicant:* U. S. Department

of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 149, Riverdale, MD 20737. *Active Ingredient:* Starlicide. *Product Type:* Avicide. *Proposed Use:* Eurasian collared dove. Contact: Jennifer Gaines, (703) 305–5967, email address: *gaines.jennifer@epa.gov.*

List of Subjects

Environmental protection, Pesticides and pest.

Dated: December 21, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2012–31375 Filed 12–28–12; 8:45 am]

BILLING CODE 6560–50–P

EXPORT–IMPORT BANK

Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application for a $448 million loan guarantee to support the export of approximately $542 million in U.S. semiconductor manufacturing equipment and services to a (non-DRAM) semiconductor manufacturing facility in Singapore. The U.S. exports will enable the foreign buyer to manufacture about 80,000 wafers of 300mm NAND Flash memory semiconductors per month. Available information indicates that this new foreign production will be consumed globally. Interested parties may submit comments on this transaction by email to *economic.impact@exim.gov* or by mail to 811 Vermont Avenue NW., Room 442, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register**.

Angela Mariana Freyre,

Senior Vice President and General Counsel.

[FR Doc. 2012–31376 Filed 12–28–12; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 26, 2013.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. *FNBY Bancorp, Inc. and Modern Capital Holdings LLC,* both of New York, New York, to acquire up to 24.89 percent of the total equity of The Upstate National Bank, Rochester, New York, pursuant to section 3(a)(3) of the Bank Holding Company Act and Section 225.15 of Regulation Y.

Board of Governors of the Federal Reserve System, December 26, 2012.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2012–31421 Filed 12–28–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 22, 2013.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02210–2204:

1. *1854 Bancorp,* Cambridge, Massachusetts to become a mutual holding company through the acquisition of East Cambridge Savings Bank, Cambridge, Massachusetts, pursuant to section 3(a)(1) of the BHC Act.

Board of Governors of the Federal Reserve System, December 21, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–31213 Filed 12–28–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Safety and Health Research Advisory Committee: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Mine Safety and Health Research Advisory Committee, Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period through November 30, 2014.

For information, contact Jeffrey Kohler, Ph.D., Designated Federal Officer, Mine Safety and Health Research Advisory Committee, Centers for Disease Control and Prevention, Department of Health and Human Services, 626 Cochrans Mill Road, Mailstop P05, Pittsburgh, Pennsylvania

15236, Telephone (412) 386–5301 or fax (412) 386–5300.

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: December 19, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention .

[FR Doc. 2012–31366 Filed 12–28–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Interagency Committee on Smoking and Health (ICSH)

In accordance with section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Meeting of the aforementioned committee:

DATES: *Time and Date:* 9:00 a.m.–4:30 p.m., January 29, 2013.

PLACE: Capital Hilton, Federal AB Rooms, 1001 16th Street NW., Washington, DC 20036–5701, Telephone: (202) 393–1000.

Status

Open to the public, limited only by the space available. Those who wish to attend are encouraged to register with the contact person listed below. If you will require a sign language interpreter, or have other special needs, please notify the contact person by 4:30 p.m., EST on January 22, 2013.

Purpose

The ICSH advises the Secretary, Department of Health and Human Services, and the Assistant Secretary for Health in the (a) coordination of all research and education programs and other activities within the Department and with other federal, state, local and private agencies and (b) establishment and maintenance of liaison with appropriate private entities, federal agencies, and state and local public health agencies with respect to smoking and health activities.

Matters To Be Discussed

The topic of the meeting is ''The Global Tobacco Control Experience''. The meeting will provide a review of global tobacco control efforts and best practices by the U.S. and global partners to inform U.S. domestic efforts as well as the U.S. efforts as a global partner.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Ms. Monica L. Swann, Management and Program Analyst, Office on Smoking and Health, CDC, 395 E Street SW., Washington, DC 20024, Telephone: (202) 245–0552.

SUPPLEMENTARY INFORMATION: Substantive program information as well as summaries of the meeting and roster of committee members may be obtained from the internet at *www.cdc.gov/tobacco* in mid-March. 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: December 19, 2012.

Elaine L. Baker,

Director, Management Analysis and Service Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–31371 Filed 12–28–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1984.

HRSA especially requests comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collection Request Title: Medicare Rural Hospital Flexibility Grant Program Performance Measure Determination (OMB No. 0915-xxxx) – New

Abstract: The purpose of the Medicare Rural Hospital Flexibility Program (Flex), authorized by Section 4201 of the Balanced Budget Act of 1997 (BBA), Public Law 105–33, and reauthorized by Section 121 of the Medicare Improvements for Patients and Providers Act of 2008, Public Law 110 – 275, is to support improvements in the quality of health care provided in communities served by Critical Access Hospitals (CAHs); to support efforts to improve the financial and operational performance of the CAHs; and to support communities in developing collaborative regional and local delivery systems. Additionally the Flex program assists in the conversion of qualified small rural hospitals to CAH status. The provision and delivery of quality health care to rural America is a priority of the Department of Health and Human Services (HHS). The Flex program provides funding for states to support technical assistance activities in hospitals related to: improving health care quality, patient safety, hospital financial and operational efficiency, and care coordination; and ensuring adequate training and support within rural Emergency Medical Services systems. Measures and goals identified in the Flex program take into consideration existing measures and priorities HHS has set for hospitals to avoid both conflict and duplication of efforts.

For this program, performance measures were drafted to provide data useful to the Flex program and to enable HRSA to provide aggregate program data required by Congress under the Government Performance and Results Act (GPRA) of 1993 (Public Law 103–62). These measures cover principal topic areas of interest to the Office of Rural Health Policy, including: (a) Quality reporting; (b) quality improvement interventions; (c) financial and operational improvement initiatives; and (d) multi-hospital

patient safety initiatives. Several measures will be used for this program and will inform the office's progress toward meeting the goals set in GPRA.

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 Information Collection Request are summarized in the table below.

The annual estimate of burden is as follows:

Form Name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Medicare Rural Hospital Flexibility Grant Program	45	1	45	6	270
Total	45	1	45	6	270

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Deadline: Comments on this Information Collection Request must be received within 60 days of this notice.

Dated: December 20, 2012.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2012–31399 Filed 12–28–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

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 meetings.

The meetings 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; Biophysics and Biochemistry of Membranes.

Date: January 23, 2013.

Time: 1:00 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Nitsa Rosenzweig, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7760, Bethesda, MD 20892, (301) 435–1747, *rosenzweign@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function A Study Section.

Date: January 25, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: David R. Jollie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7806, Bethesda, MD 20892, (301) 435–1722, *jollieda@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Sciences.

Date: January 25, 2013.

Time: 12:00 p.m. to 3:00 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: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4136, Bethesda, MD 20892, 301–435–0904, *sara.ahlgren@nih.gov.*

(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: December 21, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–31210 Filed 12–28–12; 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; Program Project: Conus Peptides.

Date: January 10–11, 2013.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

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: December 21, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–31212 Filed 12–28–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2012–0003; Internal Agency Docket No. FEMA–B–1285]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Alabama:						
Coffee	City of Enterprise (12–04–4332P).	The Honorable Kenneth Boswell, Mayor, City of Enterprise, 501 South Main Street, Enterprise, AL 36331.	City Hall, 501 South Main Street, Enterprise, AL 36331.	*http://www.bakeraecom.com/index.php/alabama/coffee/.*	February 7, 2013	010045
Arizona:						
Pinal	City of Eloy (12–09–1641P).	The Honorable Joseph Nagy, Mayor, City of Eloy, City Hall, 628 North Main Street, Eloy, AZ 85131.	City Hall, 628 North Main Street, Eloy, AZ 85131.	*http://www.r9map.org/Docs/12–09–1641P–040083–102IAC.pdf.*	February 25, 2013.	040083
Pinal	Unincorporated areas of Pinal County (12–09–1641P).	The Honorable David Snider, Chairman, Pinal County Board of Supervisors, P.O. Box 827, Florence, AZ 85132.	Pinal County Engineering Department, 31 North Pinal Street, Building F, Florence, AZ 85232.	*http://www.r9map.org/Docs/12–09–1641P–040077–102DA.pdf.*	February 25, 2013.	040077

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Yavapai	Unincorporated areas of Yavapai County (12–09–2033P).	The Honorable Thomas Thurman, Chairman, Yavapai County Board of Supervisors, 1015 Fair Street, Prescott, AZ 86305.	Yavapai County Flood Control District, 500 South Marina Street, Prescott, AZ 86303.	*http://www.r9map.org/Docs/12–09–2033P–040093–102IAC.pdf.*	February 11, 2013.	040093
California:						
Los Angeles	City of Los Angeles (12–09–2655P).	The Honorable Antonio R. Villaraigosa, Mayor, City of Los Angeles, 200 North Spring Street, Los Angeles, CA 90012.	Bureau of Engineering, 1149 South Broadway, Los Angeles, CA 90015.	*http://www.r9map.org/Docs/12–09–2655P–060137–102DA.pdf.*	February 25, 2013.	060137
Orange	City of Dana Point (12–09–1603P).	The Honorable Lara Anderson, Mayor, City of Dana Point, 33282 Golden Lantern, Dana Point, CA 92629.	City Hall, 33282 Golden Lantern, Dana Point, CA 92629.	*http://www.r9map.org/Docs/12–09–1603P–060736–102DA.pdf.*	February 11, 2013.	060736
Orange	City of San Juan Capistrano (12–09–1603P).	The Honorable Larry Kramer, Mayor, City of San Juan Capistrano, 32400 Paseo Adelanto, San Juan Capistrano, CA 92675.	City Hall, 32400 Paseo Adelanto, San Juan Capistrano, CA 92675.	*http://www.r9map.org/Docs/12–09–1603P–060231–102DA.pdf.*	February 11, 2013.	060231
Santa Clara	City of Santa Clara (12–09–2856P).	The Honorable Jamie L. Matthews, Mayor, City of Santa Clara, 1500 Warburton Avenue, Santa Clara, CA 95050.	Planning and Inspection Department, 1500 Warburton Avenue, Santa Clara, CA 95050.	*http://www.r9map.org/Docs/12–09–2856P–060350–102DA.pdf.*	February 14, 2013.	060350
Colorado: Douglas	Unincorporated areas of Douglas County (12–08–0727P).	The Honorable Jack Hilbert, Chair, Douglas County Board of Commissioners, 100 3rd Street, Castle Rock, CO 80104.	Douglas County Department of Public Works, Engineering Division, 100 3rd Street, Castle Rock, CO 80104.	*http://www.bakeraecom.com/index.php/colorado/douglas-2/.*	January 11, 2013	080049
North Carolina:						
Cabarrus	City of Kannapolis (11–04–6249P).	The Honorable Robert S. Misenheimer, Mayor, City of Kannapolis, 246 Oak Avenue, Kannapolis, NC 28081.	City Hall, 246 Oak Avenue, Kannapolis, NC 28081.	*http://www.ncfloodmaps.com/fhd.htm.*	January 31, 2013	370469
Rowan	Town of East Spencer (11–04–3050P).	The Honorable Barbara Mallett, Mayor, Town of East Spencer, 105 South Long Street, East Spencer, NC 28039.	Town Hall, 105 South Long Street, East Spencer, NC 28039.	*http://www.ncfloodmaps.com/fhd.htm.*	January 2, 2013	370211
Rowan	Unincorporated areas of Rowan County (11–04–3050P).	The Honorable Gary L. Page, Rowan County Manager, 130 West Innes Street, Salisbury, NC 28144.	Rowan County Planning Department, 402 North Main Street, Salisbury, NC 28144.	*http://www.ncfloodmaps.com/fhd.htm.*	January 2, 2013	370351
South Carolina: Richland.	City of Columbia (12–04–1814P).	The Honorable Steve Benjamin, Mayor, City of Columbia, P.O. Box 147, Columbia, SC 29201.	Department of Utilities and Engineering, 1136 Washington Street, Columbia, SC 29217.	*http://www.bakeraecom.com/index.php/southcarolina/richland/.*	February 11, 2013.	450172
South Dakota: Pennington.	City of Box Elder (12–08–0544P).	The Honorable William F. Griffths, Sr., Mayor, City of Box Elder, 420 Villa Drive, Box Elder, SD 57719.	City Hall, 420 Villa Drive, Box Elder, SD 57719.	*http://www.bakeraecom.com/index.php/south-dakota/pennington/.*	February 14, 2013.	460089

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

James A. Walke,

Acting Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–31345 Filed 12–28–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2012–0003]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: New or modified Base (1% annual-chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or the regulatory floodway (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed

communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard determinations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

These new or modified flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Alabama:					
Escambia (FEMA Docket No.: B–1257)	City of Atmore (12–04–2355P)	The Honorable Howard Shell, Mayor, City of Atmore, City Hall, 201 East Louisville Avenue, Atmore, AL 36502.	City Hall, 201 East Louisville Avenue, Atmore, AL 36502.	July 12, 2012	010071
Escambia (FEMA Docket No.: B–1257)	Unincorporated areas of Escambia County, (12–04–2355P).	The Honorable David M. Stokes, Chairman, Escambia County Board of Commissioners, P.O. Box 848, Brewton, AL 36427.	County Commission, 314 Belleville Avenue, Brewton, AL 36426.	July 12, 2012	010251
Houston (FEMA Docket No.: B–1257)	City of Dothan (12–04–2178P).	The Honorable Mike Schmitz, Mayor, City of Dothan, P.O. Box 2128, Dothan, AL 36302.	Public Works Department, Engineering Services Division, 126 North St. Andrews Street, Room 309, Dothan, AL 36303.	July 23, 2012	010104
Arizona:					
Maricopa (FEMA Docket No.: B–1257)	City of Phoenix, (12–09–0112P).	The Honorable Greg Stanton, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, AZ 85003.	Street Transportation Department, 200 West Washington Street, 5th Floor, Phoenix, AZ 85003.	July 13, 2012	040051
Maricopa (FEMA Docket No.: B–1257)	Unincorporated areas of Maricopa County, (12–09–0273P).	The Honorable Max W. Wilson, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Maricopa County Flood Control District, 2801 West Durango Street, Phoenix, AZ 85009.	July 13, 2012	040037
Maricopa (FEMA Docket No.: B–1257)	Unincorporated areas of Maricopa County, (12–09–0405P).	The Honorable Max W. Wilson, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Maricopa County Flood Control District, 2801 West Durango Street, Phoenix, AZ 85009.	July 13, 2012	040037
Mojave (FEMA Docket No.: B–1257)	City of Lake Havasu City, (12–09–0013P).	The Honorable Mark Nexsen, Mayor, City of Lake Havasu City, 2330 McCulloch Boulevard North, Lake Havasu City, AZ 86403.	2330 McCulloch Boulevard North, Lake Havasu City, AZ 86403.	July 16, 2012	040116
California:					
Los Angeles (FEMA Docket No.: B–1257)	Unincorporated areas of Los Angeles County. (12–09–0692P)	The Honorable Zev Yaroslavsky, Chairman, Los Angeles County Board of Supervisors, 500 West Temple Street, Room 856, Los Angeles, CA 90012.	Department of Public Works, 900 South Fremont Avenue, Alhambra, CA 91803.	July 23, 2012	065043

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Orange (FEMA Docket No.: B–1257)	City of Brea (12–09–0415P)	The Honorable Don Schweitzer, Mayor, City of Brea, 1 Civic Center Circle, Brea, CA 92821.	Civic and Cultural Center, 1 Civic Center Circle, Brea, CA 92821.	July 16, 2012	060214
San Diego (FEMA Docket No.: B–1257)	City of San Diego (12–09–0330P)	The Honorable Jerry Sanders, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, CA 92101.	Executive Complex, 1010 2nd Avenue, Suite 1100, San Diego, CA 92101.	July 20, 2012	060295
San Mateo (FEMA Docket No.: B–1257)	City of Redwood City (12–09–0320P)	The Honorable Alicia Aguirre, Mayor, City of Redwood City, P.O. Box 391, Redwood City, CA 94064.	City Hall, 1017 Middlefield Road, Redwood City, CA 94064.	July 16, 2012	060325
Ventura (FEMA Docket No.: B–1257)	City of Oxnard (12–09–1132P)	The Honorable Thomas E. Holden, OD, Mayor, City of Oxnard, 305 West 3rd Street, Oxnard, CA 93030.	Planning Department, 214 South C Street, Oxnard, CA 93030.	August 6, 2012	060417
Colorado:					
Douglas (FEMA Docket No.: B–1257)	Town of Parker (12–08–0154P)	The Honorable David Casiano, Mayor, Town of Parker, 20120 East Main Street, Parker, CO 80138.	Public Works Department, 20120 East Main Street, Parker, CO 80138.	July 13, 2012	080310
Jefferson (FEMA Docket No.: B–1257)	Unincorporated areas of Jefferson County. (12–08–0141P)	The Honorable Donald Rosier, Chairman, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, CO 80419.	Department of Planning and Zoning, 100 Jefferson County Parkway, Suite 3, Golden, CO 80419.	July 13, 2012	080087
Florida:					
Broward (FEMA Docket No.: B–1257)	City of Hollywood (12–04–0393P)	The Honorable Peter J. M. Bober, Mayor, City of Hollywood, 2600 Hollywood Boulevard, Hollywood, FL 33022.	City Hall, 2600 Hollywood Boulevard, Hollywood, FL 33022.	July 9, 2012	125113
Broward (FEMA Docket No.: B–1257)	Town of Lauderdale-by-the-Sea. (12–04–0897P)	The Honorable Roseann Minnet, Mayor, Town of Lauderdale-by-the-Sea, 4501 Ocean Drive, Lauderdale-by-the-Sea, FL 33308.	City Hall 4501 Ocean Drive, Lauderdale-by-the-Sea, FL 33308.	July 13, 2012	125123
Kentucky:					
Fayette (FEMA Docket No.: B–1257)	Lexington-Fayette Urban County Government KY. (12–04–2199P)	The Honorable Jim Gray, Mayor, Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, KY 40507.	Division of Planning, Current Planning Section, 101 East Vine Street, Lexington, KY 40507.	August 6, 2012	210067
New York:					
Orange (FEMA Docket No.: B–1257)	Village of Goshen (11–02–1056P)	The Honorable Kyle P. Roddey, Mayor, Village of Goshen, Village Hall, 276 Main Street, Goshen, NY 10924.	Village Hall, 276 Main Street, Goshen, NY 10924.	September 13, 2012	361571
New York: Westchester. (FEMA Docket No.: B–1257)	City of Yonkers (10–02–2170P)	The Honorable Philip A. Amicone, Mayor, City of Yonkers, 40 South Broadway, Yonkers, NY 10701.	40 South Broadway, Yonkers, NY 10701	June 29, 2012	360936
South Carolina:					
Jasper (FEMA Docket No.: B–1257)	Town of Hardeeville (11–04–8141P)	The Honorable Bronco Bostick, Mayor, Town of Hardeeville, 205 East Main Street, Hardeeville, SC 29927.	City Hall, 205 East Main Street, Hardeeville, SC 29927.	July 26, 2012	450113
Jasper (FEMA Docket No.: B–1257)	Unincorporated areas of Jasper County. (11–04–8141P)	The Honorable Reverend Samuel Gregory, Chairman, Jasper County Council, P.O. Box 1149, Ridgeland, SC 29936.	Planning & Zoning Department, 358 3rd Avenue, Ridgeland, SC 29936.	July 26, 2012	450112
Richland (FEMA Docket No.: B–1257)	Unincorporated areas of Richland County. (11–04–6309P)	The Honorable Kelvin E. Washington, Sr., Chairman, Richland County Council, 2020 Hampton Street, Columbia, SC 29202.	Richland County Courthouse, 1701 Main Street, Columbia, SC 29202.	July 2, 2012	450170
Tennessee:					
Williamson (FEMA Docket No.: B–1257)	Unincorporated areas of Williamson County. (11–04–4928P)	The Honorable Rogers Anderson, Mayor, Williamson County, 1320 West Main Street, Suite 125, Franklin, TN 37064.	Planning Department, 1320 West Main Street, Suite 400, Franklin, TN 37064.	July 9, 2012	470204

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

James A. Walke,

Acting Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–31387 Filed 12–28–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2012–0003]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: New or modified Base (1% annual-chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or the regulatory floodway (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard determinations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

These new or modified flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Alabama:					
Jefferson (FEMA Docket No.: B–1252).	City of Birmingham (11–04–6111P).	The Honorable William Bell, Mayor, City of Birmingham, 710 North 20th Street, Birmingham, AL 35203.	Planning and Engineering Office, 710 North 20th Street, 5th floor, Birmingham, AL 35203.	June 25, 2012	010116
Mobile (FEMA Docket No.: B–1252).	Unincorporated areas of Mobile County (11–04–5872P).	The Honorable Connie Hudson, President, Mobile County Commission, P.O. Box 1443, Mobile, AL 36633.	Mobile County Government Plaza, 205 Government Street, 3rd Floor, South Tower, Mobile, AL 36644.	July 9, 2012	015008
Mobile (FEMA Docket No.: B–1252).	Unincorporated areas of Mobile County (11–04–6441P).	The Honorable Connie Hudson, President, Mobile County Commission, P.O. Box 1443, Mobile, AL 36633.	Mobile County Government Plaza, 205 Government Street, 3rd Floor, South Tower, Mobile, AL 36644.	July 9, 2012	015008
Arizona:					
Coconino (FEMA Docket No.: B–1252).	City of Flagstaff (11–09–3784P).	The Honorable Sara Presler, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, AZ 86001.	City Hall, Stormwater Management Section, 211 West Aspen Avenue, Flagstaff, AZ 86001.	June 4, 2012	040020
Coconino (FEMA Docket No.: B–1252).	City of Flagstaff (11–09–3786P).	The Honorable Sara Presler, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, AZ 86001.	City Hall, Stormwater Management Section, 211 West Aspen Avenue, Flagstaff, AZ 86001.	June 29, 2012	040020
Pinal (FEMA Docket No.: B–1252).	City of Eloy (11–09–3507P).	The Honorable Byron K. Jackson, Mayor, City of Eloy, 628 North Main Street, Eloy, AZ 85131.	628 North Main Street, Eloy, AZ 85131.	June 15, 2012	040083

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Santa Cruz (FEMA Docket No.: B–1252).	Unincorporated areas of Santa Cruz County (11–09–3703P).	The Honorable Rudy Molera, Chairman, Santa Cruz County Board of Supervisors, 2150 North Congress Drive, Nogales, AZ 85621.	2150 North Congress Drive, Room 117, Nogales, AZ 85621.	June 18, 2012	040090
California:					
Los Angeles (FEMA Docket No.: B–1252).	City of Burbank (11–09–3187P).	The Honorable Jess Talamantes, Mayor, City of Burbank, 275 East Olive Avenue, Burbank, CA 91502.	Public Works Department, 150 North 3rd Street, Burbank, CA 91502.	June 28, 2012	065018
Los Angeles (FEMA Docket No.: B–1252).	City of Burbank (12–09–0407P).	The Honorable Jess Talamantes, Mayor, City of Burbank, 275 East Olive Avenue, Burbank, CA 91502.	Public Works Department, 150 North 3rd Street, Burbank, CA 91502.	June 25, 2012	065018
Los Angeles (FEMA Docket No.: B–1252).	City of Los Angeles (12–09–0407P).	The Honorable Antonio R. Villaraigosa, Mayor, City of Los Angeles, City Hall, 200 North Spring Street, Los Angeles, CA 90012.	6500 South Spring Street, Suite 1200, Los Angeles, CA 90014.	June 25, 2012	060137
Los Angeles (FEMA Docket No.: B–1252).	City of Santa Clarita (12–09–0632P).	The Honorable Laurie Ender, Mayor, City of Santa Clarita, 23920 West Valencia Boulevard, Santa Clarita, CA 91355.	23920 West Valencia Boulevard, Suite 300, Santa Clarita, CA 91355.	June 15, 2012	060729
Los Angeles (FEMA Docket No.: B–1252).	Unincorporated areas of Los Angeles County (11–09–4035P).	The Honorable Zev Yaroslavsky, Chairman, Los Angeles County Board of Supervisors, 500 West Temple Street, Room 821, Los Angeles, CA 90012.	Department of Public Works, 900 South Fremont Avenue, Alhambra, CA 91803.	June 25, 2012	065043
Colorado:					
Adams (FEMA Docket No.: B–1252).	City of Commerce City (11–08–0367P).	The Honorable Sean Ford, Sr., Mayor, City of Commerce City, 7887 East 60th Avenue, Commerce City, CO 80022.	5291 East 60th Avenue, Commerce City, CO 80022.	April 11, 2012	080006
Adams (FEMA Docket No.: B–1252).	City of Commerce City (11–08–0747P).	The Honorable Sean Ford, Sr., Mayor, City of Commerce City, 7887 East 60th Avenue, Commerce City, CO 80022.	5291 East 60th Avenue, Commerce City, CO 80022.	June 13, 2012	080006
Adams (FEMA Docket No.: B–1252).	Unincorporated areas of Adams County (11–08–0747P).	The Honorable W.R. ''Skip'' Fischer, Chairman, Adams County Board of Commissioners, 4430 South Adams County Parkway, 5th Floor, Suite C5000A, Brighton, CO 80601.	4430 South Adams County Parkway, 5th Floor, Suite C5000A, Brighton, CO 80601.	June 13, 2012	080001
Larimer (FEMA Docket No.: B–1252).	Town of Timnath (11–08–1110P).	The Honorable Jill Grossman-Belisle, Mayor, Town of Timnath, 4800 Goodman Street, Timnath, CO 80547.	4100 Main Street, Timnath, CO 80547.	June 18, 2012	080005
Larimer (FEMA Docket No.: B–1252).	Unincorporated areas of Larimer County (11–08–1110P).	The Honorable Lew Gaiter III, Chairman, Larimer County Board of Commissioners, P.O. Box 1190, Fort Collins, CO 80522.	200 West Oak Street, Fort Collins, CO 80521.	June 18, 2012	080101
Park (FEMA Docket No.: B–1252).	Unincorporated areas of Park County (11–08–1151P).	The Honorable Dick Hodges, Chairman, Park County Board of Commissioners, P.O. Box 1373, Fairplay, CO 80440.	501 Main Street, Fairplay, CO 80440.	June 18, 2012	080139
Connecticut: Hartford, (FEMA Docket No.: B–1252).	Town of Avon (12–01–0826X).	The Honorable Mark Zacchio, Chairman, Avon Town Council, 60 West Main Street, Avon, CT 06001.	Town Hall, 60 West Main Street, Avon, CT 06001.	June 18, 2012	090021
Florida:					
Charlotte (FEMA Docket No.: B–1252).	City of Punta Gorda (12–04–1783P).	The Honorable Bill Albers, Mayor, City of Punta Gorda, 326 West Marion Avenue, Punta Gorda, FL 33950.	326 West Marion, Punta Gorda, FL 33950.	June 18, 2012	120062
Monroe (FEMA Docket No.: B–1252).	Unincorporated areas of Monroe County (12–04–0296P).	The Honorable Kim Wigington, Mayor Pro Tem, Monroe County, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Department of Planning and Environmental Resources, 2798 Overseas Highway, Marathon, FL 33050.	June 11, 2012	125129
Santa Rosa (FEMA Docket No.: B–1252).	Unincorporated areas of Santa Rosa County (11–04–7398P).	The Honorable Jim Williamson, Chairman, Santa Rosa County Commissioners, 6495 Caroline Street, Suite M, Milton, FL 32570.	Building Inspections, 6051 Old Bagdad Highway, Suite 202, Milton, FL 32583.	June 28, 2012	120274
Santa Rosa (FEMA Docket No.: B–1252).	Unincorporated areas of Santa Rosa County (11–04–7400P).	The Honorable Jim Williamson, Chairman, Santa Rosa County Commissioners, 6495 Caroline Street, Suite M, Milton, FL 32570.	Building Inspections, 6051 Old Bagdad Highway, Suite 202, Milton, FL 32583.	June 28, 2012	120274

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Kentucky: Fayette (FEMA Docket No.: B–1252).	Lexington-Fayette Urban County Government (12–04–1259P).	The Honorable Jim Gray, Mayor, Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, KY 40507.	Division of Planning, Current Planning Section, 101 East Vine Street, Lexington, KY 40507.	June 18, 2012	210067
South Dakota: Lincoln (FEMA Docket No.: B–1252).	Town of Tea (11–08–0969P).	The Honorable John Lawler, Mayor, Town of Tea, P.O. Box 128, Tea, SD 57064.	City Hall, 600 East 1st Street, Tea, SD 57064.	June 18, 2012	460143

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

James A. Walke,

Acting Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–31344 Filed 12–28–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2012–0003; Internal Agency Docket No. FEMA–B–1278]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of Letter of Map Revision	Effective date of modification	Community No.
Ohio:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of Letter of Map Revision	Effective date of modification	Community No.
Fulton	Unincorporated areas of Fulton County, (11–05–8659P).	The Honorable Dean Genter, President, Fulton County Board of Commissioners, 152 South Fulton Street, Suite 270, Wauseon, OH 43567.	152 South Fulton Street, Wauseon, OH 43567.	*http://www.starr-team.com/starr/LOMR/Pages/RegionV.aspx.*	September 12, 2012.	390182
Fulton	Village of Delta, (11–05–8659P).	The Honorable Dan D. Miller, Mayor, Village of Delta, 401 Main Street, Delta, OH 34515.	401 Main Street, Delta, OH 43515.	*http://www.starr-team.com/starr/LOMR/Pages/RegionV.aspx.*	September 12, 2012.	390183
Oklahoma:						
Tulsa	City of Broken Arrow, (11–06–0831P).	The Honorable Craig Thurmond, Mayor, City of Broken Arrow, 220 South 1st Street, Broken Arrow, OK 74012.	Department of Public Works, 485 North Poplar Avenue, Broken Arrow, OK 74102.	*http://www.rampp-team.com/lomrs.htm.*	December 31, 2012.	400236
Tulsa	City of Tulsa (11–06–0831P)	The Honorable Dewey F. Bartlett, Jr., Mayor, City of Tulsa, 175 East 2nd Street, Tulsa, OK 74103.	Development Services, 175 East 2nd Street, Suite 450, Tulsa, OK 74103.	*http://www.rampp-team.com/lomrs.htm.*	December 31, 2012.	405381
Pennsylvania:						
Cumberland	Township of Lower Allen (12–03–1797P).	The Honorable H. Edward Black, President, Township of Lower Allen Board of Commissioners, 2233 Gettysburg Road, Camp Hill, PA 17011.	Township of Lower Allen Municipal Services Center, 2233 Gettysburg Road, Camp Hill, PA 17011.	*http://www.rampp-team.com/lomrs.htm.*	January 7, 2013	421016
Lancaster	Borough of Manheim. (11–03–1822P)	The Honorable Eric Phillips, Mayor, Borough of Manheim, 15 East High Street, Manheim, PA 17545.	Borough Office, 15 East High Street, Manheim, PA 17545.	*http://www.rampp-team.com/lomrs.htm.*	January 14, 2013	420555
Lancaster	Township of Penn. (11–03–1822P)	The Honorable David A. Sarley, Chairman, Township of Penn Board of Supervisors, 97 North Penryn Road, Manheim, PA 17545.	Penn Township Office, 97 North Penryn Road, Manheim, PA 17545.	*http://www.rampp-team.com/lomrs.htm.*	January 14, 2013	421778
Texas:						
Bexar	City of San Antonio. (12–06–1378P)	The Honorable Julian Castro, Mayor, City of San Antonio, 100 Military Plaza, San Antonio, TX 78205.	Municipal Plaza, 114 West Commerce Street, 7th Floor, San Antonio, TX 78205.	*http://www.rampp-team.com/lomrs.htm.*	January 10, 2013	480045
Bexar	City of Shavano Park. (12–06–1046P)	The Honorable A. David Marne, Mayor, City of Shavano Park, 900 Saddletree Court, Shavano Park, TX 78231.	City Hall, 900 Saddletree Court, Shavano Park, TX 78231.	*https://www.rampp-team.com/lomrs.htm.*	August 30, 2012	480047
Bexar	Unincorporated areas of Bexar County. (12–06–0857P)	The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Public Works Department, 233 North Pecos- La Trinidad Street, Suite 420, San Antonio, TX 78207.	*http://www.rampp-team.com/lomrs.htm.*	January 10, 2013	480035
Bexar	Unincorporated areas of Bexar County. (12–06–2935P)	The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Public Works Department, 233 North Pecos- La Trinidad Street, Suite 420, San Antonio, TX 78207.	*http://www.rampp-team.com/lomrs.htm.*	January 10, 2013	480035
Dallas	City of Dallas, (12–06–0869P).	The Honorable Mike Rawlings, Mayor, City of Dallas, 1500 Marilla Street, Room 5EN, Dallas, TX 75201.	Department of Public Works, 320 East Jefferson Boulevard, Room 321, Dallas, TX 75203.	*http://www.rampp-team.com/lomrs.htm.*	January 7, 2013	480171
Dallas	City of Garland (12–06–0869P)	The Honorable Ronald E. Jones, Mayor, City of Garland, 200 North 5th Street, Garland, TX 75040.	City Hall, 800 Main Street, Garland, TX 75040.	*http://www.rampp-team.com/lomrs.htm.*	January 7, 2013	485471
Dallas	City of Rowlett (12–06–0869P)	The Honorable Todd W. Gottel, Mayor, City of Rowlett, 4000 Main Street, Rowlett, TX 75088.	City Hall, 4000 Main Street, Rowlett, TX 75088.	*http://www.rampp-team.com/lomrs.htm.*	January 7, 2013	480185

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of Letter of Map Revision	Effective date of modification	Community No.
Denton	City of The Colony. (12–06–0484P)	The Honorable Joe McCourry, Mayor, City of The Colony, 6800 Main Street, The Colony, TX 75056.	6800 Main Street, The Colony, TX 75056.	*https://www.rampp-team.com/lomrs.htm.*	September 6, 2012.	481581
Harris	Unincorporated areas of Harris County. (12–06–1235P)	The Honorable Ed Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	10555 Northwest Freeway, Suite 120, Houston, TX 77092.	*https://www.rampp-team.com/lomrs.htm.*	September 5, 2012.	480287
Harris	Unincorporated areas of Harris County. (12–06–1269P)	The Honorable Ed Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	10555 Northwest Freeway, Suite 120, Houston, TX 77092.	*https://www.rampp-team.com/lomrs.htm.*	September 28, 2012.	480287
Harris	Unincorporated areas of Harris County. (12–06–0881P)	The Honorable Ed Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	10555 Northwest Freeway, Suite 120, Houston, TX 77092.	*http://www.rampp-team.com/lomrs.htm.*	December 31, 2012.	480287
Lubbock	Unincorporated areas of Lubbock County. (12–06–0396P)	The Honorable Tom Head, Lubbock County Judge, 904 Broadway Street, Suite 101, Lubbock, TX 79401.	Lubbock County Courthouse. 904 Broadway Street, Lubbock, TX 79401.	*http://www.rampp-team.com/lomrs.htm.*	January 10, 2013	480915
Montgomery	Unincorporated areas of Montgomery County, (12–06–0710P).	The Honorable Alan B. Sadler, Montgomery County Judge, 501 North Thompson Street, Suite 401, Conroe, TX 77301.	Montgomery County Permitting Department, 501 North Thompson Street, Suite 100, Conroe, TX 77301.	*https://www.rampp-team.com/lomrs.htm.*	September 7, 2012.	480483
Tarrant	City of North Richland Hills. (12–06–0693P)	The Honorable T. Oscar Trevino, Jr., P.E., Mayor, City of North Richland Hills, 7301 Northeast Loop 820, North Richland Hills, TX 76180.	7301 Northeast Loop 820, North Richland Hills, TX 76180.	*https://www.rampp-team.com/lomrs.htm.*	September 7, 2012.	480607
Webb	City of Laredo (11–06–3586P)	The Honorable Raul G. Salinas, Mayor, City of Laredo, 1110 Houston Street, Laredo, TX 78040.	1120 San Bernardo Avenue, Laredo, TX 78042.	*https://www.rampp-team.com/lomrs.htm.*	September 12, 2012.	480651
Wichita	City of Wichita Falls. (12–06–0348P)	The Honorable Glenn Barham, Mayor, City of Wichita Falls, P.O. Box 1431, Wichita Falls, TX 76307.	City Hall, 1300 7th Street, Wichita Falls, TX 76301.	*http://www.rampp-team.com/lomrs.htm.*	January 7, 2013	480662

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

James A. Walke,

Acting Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–31374 Filed 12–28–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLID9570000.LL14200000.BJ0000]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9:00 a.m., on the dates specified.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management to meet their administrative needs. The lands surveyed are:

The supplemental plat was prepared to correct the incorrectly labeled acreage tables, as depicted on the plat accepted October 13, 2004, T. 13 N., R. 28 E., Boise Meridian, Idaho, Group Number 1128, accepted October 19, 2012.

The plat representing the dependent resurvey of portions of the south boundary, east boundary, and subdivisional lines, and the subdivision of sections 24, 27, and 35, Township 8 North, Range 3 East, Boise Meridian, Idaho, Group Number 1320, was accepted November 28, 2012.

The plat representing the dependent resurvey of portions of the south boundary and subdivisional lines, and the subdivision of sections 27, 28, and 34, Township 2 North, Range 36 East, Boise Meridian, Idaho, Group Number 1358, was accepted December 12, 2012.

Dated: December 21, 2012.

Stanley G. French,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 2012–31402 Filed 12–28–12; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNML00000 L12200000.DF0000]

Notice of Public Meeting, Las Cruces District Resource Advisory Council Meeting, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the Bureau of Land Management's (BLM) Las Cruces District Resource Advisory Council (RAC) will meet as indicated below.

DATES: The RAC will meet on January 23, 2013, at the New Mexico Farm & Ranch Heritage Museum, 4100 Dripping Springs Road, Las Cruces, NM, 88005 from 9 a.m.-4 p.m. The public may send written comments to the RAC at the BLM Las Cruces District Office, 1800 Marquess Street, Las Cruces, NM 88005.

FOR FURTHER INFORMATION CONTACT: Rena Gutierrez, BLM Las Cruces District, 1800 Marquess Street, Las Cruces, NM, 88005, 575–525–4338. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8229 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 10-member Las Cruces District RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in New Mexico. Planned agenda items include opening remarks from the BLM Las Cruces District Manager, updates on ongoing issues and planning efforts, and Restore New Mexico. The Restore New Mexico portion of the meeting is in junction with BLM New Mexico's 2-Million Acre Restore New Mexico celebration at the New Mexico Farm & Ranch Heritage Museum, 4100 Dripping Springs Road, Las Cruces, NM, which begins at 11:30 a.m.

A half-hour public comment period during which the public may address the RAC will begin at 3:00 p.m. All RAC meetings are open to the public. Depending on the number of individuals wishing to comment and time available, the time for individual oral comments may be limited.

Bill Childress,

District Manager, Las Cruces.

[FR Doc. 2012–31370 Filed 12–28–12; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDB00100 LF1000000.HT0000 LXSS024D0000 4500046733]

Resource Advisory Council to the Boise District; Notice of Public Meeting

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Boise District Resource Advisory Council (RAC), will hold a meeting as indicated below.

DATES: The meeting will be held February 7, 2013, at the Boise District Office, located at 3948 S. Development Avenue, Boise, Idaho, beginning at 9:00 a.m. and adjourning at 2:30 p.m. Members of the public are invited to attend. A public comment period will be held.

FOR FURTHER INFORMATION CONTACT: Marsha Buchanan, Supervisory Administrative Specialist and RAC Coordinator, BLM Boise District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384–3364.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in southwestern Idaho. Items on the agenda include an update on the State of Idaho Governor's Sage Grouse Committee. A report on the wildland fires within Boise District and the region will be provided. An update on the Paradigm Project will be provided by Council members. Each BLM field manager will discuss progress being made on priority actions in their offices. Agenda items and location may change due to changing circumstances. The public may present written or oral comments to members of the Council. At each full RAC meeting, time is provided in the agenda for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance should contact the BLM Coordinator as provided above. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

Dated: December 14, 2012.

James M. Fincher,

District Manager.

[FR Doc. 2012–31416 Filed 12–28–12; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–SER–BICY–11799; PPSEBICY00, PPMPSPD1Z.YM0000]

2013 Meetings of the Big Cypress National Preserve Off-Road Vehicle (ORV) Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Notice of Meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, 10), notice is hereby given of the meetings of the Big Cypress National Preserve ORV Advisory Committee for 2013.

DATES: The Committee will meet on the following dates:

Wednesday, January 30, 2013, 3:30–8:00 p.m.

Wednesday, May 29, 2013, 3:30–8:00 p.m.

Wednesday, August 28, 2013, 3:30–8:00 p.m.

Tuesday, November 5, 2013, 3:30–8:00 p.m.

ADDRESSES: All meetings will be held at the Big Cypress Swamp Welcome Center, 33000 Tamiami Trail East, Ochopee, Florida. Written comments and requests for agenda items may be submitted electronically on the Web site *http://www.nps.gov/bicy/parkmgmt/orv-advisory-committee.htm.* Alternatively, comments and requests may be sent to: Superintendent, Big Cypress National Preserve, 33100 Tamiami Trail East, Ochopee, FL 34141–1000, Attn: ORV Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Pedro Ramos, Superintendent, Big Cypress National Preserve, 33100 Tamiami Trail East, Ochopee, Florida

34141–1000; telephone (239) 695–1103, or go to the Web site *http://www.nps.gov/bicy/parkmgmt/orv-advisory-committee.htm*.

SUPPLEMENTARY INFORMATION: The Committee was established (**Federal Register,** August 1, 2007, pp. 42108–42109) pursuant to the Preserve's 2000 *Recreational Off-Road Vehicle Management Plan* and the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix) to examine issues and make recommendations regarding the management of off-road vehicles (ORVs) in the Preserve. The agendas for these meetings will be published by press release and on the *http://www.nps.gov/bicy/parkmgmt/orv-advisory-committee.htm* Web site. The meetings will be open to the public, and time will be reserved for public comment. Oral comments will be summarized for the record. If you wish to have your comments recorded verbatim, you must submit them in writing. 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.

J. D. Lee,

Deputy Superintendent, Big Cypress National Preserve.

[FR Doc. 2012–31427 Filed 12–28–12; 8:45 am]

BILLING CODE 4310–JD–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–KAHO–11858; PPPWKAHO00, PPMPSPD1Z.YM0000]

Notice of February 22; May 17; August 23; and November 8, 2013, Meetings for Na Hoa Pili O Kaloko-Honokohau National Historical Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Meeting Notice.

SUMMARY: This notice sets forth the dates of the February 22; May 17; August 23; and November 8, 2013, meetings of the Na Hoa Pili O Kaloko-Honokohau National Historical Park Advisory Commission.

DATES: The public meetings of the Advisory Commission will be held on Fridays, February 22; May 17; August 23; and November 8, 2013, at 11:00 a.m. (HAWAII STANDARD TIME).

Location: The meetings will be held at the Kaloko-Honokohau National Historical Park Kaloko Picnic Area, north of Honokohau Harbor, Kailua Kona, HI 96740.

Agenda

The February 22; May 17; August 23; and November 8, 2013, Commission meetings will consist of the following:

1. Approval of Agenda.
2. Chairman's Report.
3. Superintendent's Report.
4. Subcommittee Reports.
5. Commission Recommendations.
6. Public Comments.

FOR FURTHER INFORMATION CONTACT: Further information concerning these meetings may be obtained from the Superintendent Kathleen Billings, Kaloko-Honkohau National Historical Park, 73–4786 Kanalani Street, #14, Kailua Kona, HI 96740, telephone (808) 329–6881.

SUPPLEMENTARY INFORMATION: The meetings are open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meetings. 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: December 14, 2012.

Kathleen J. Billings,

Superintendent, Kaloko-Honokohau National Historical Park.

[FR Doc. 2012–31430 Filed 12–28–12; 8:45 am]

BILLING CODE 4312–FF–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 Balloon Dissection Devices and Products Containing Same,* DN 2925; 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 Covidien LP on December 21, 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 balloon dissection devices and products containing same. The complaint names as respondents Pajunk Medizintechnik GmbH of Germany, Pajunk Medizintechnolgie GmbH of Germany and Pajunk Medical Systems L.P. of Norcross, GA.

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. 2925'') 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: December 21, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–31332 Filed 12–28–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–805]

Certain Devices for Improving Uniformity Used in a Backlight Module and Components Thereof and Products Containing Same; Commission Decision To Review a Final Initial Determination Finding No Violation of Section 337; Remand-in-Part of the Investigation to the Administrative Law Judge

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the presiding administrative law judge's (''ALJ'') final initial determination (''ID'') issued on October 22, 2012, finding no violation of section 337 of the Tariff Act of 1930, (as amended), 19 U.S.C. 1337 (''section 337''), in the above-captioned investigation. The Commission has also determined to remand-in-part the investigation to the ALJ.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 14, 2011, based on a complaint filed by Industrial Technology Research Institute of Hsinchu, Taiwan and ITRI International Inc. of San Jose, California (collectively ''ITRI''). 76 FR 56796–97 (Sept. 14, 2011). The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain devices for improving uniformity used in a backlight module and components thereof and products containing same by reason of infringement of certain claims of U.S. Patent No. 6,883,932 (''the '932 patent''). The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named as respondents LG Corporation of Seoul, Republic of South Korea; LG Electronics, Inc. of Seoul, Republic of South Korea; and LG Electronics, U.S.A., Inc. of Englewood Cliffs, New Jersey. The Office of Unfair Import Investigation was named as a participating party. The complaint was later amended to add respondents LG Display Co., Ltd. of Seoul, Republic of South Korea and LG Display America, Inc. of San Jose, California to the investigation. Notice (Feb. 2, 2012); Order No. 11 (Jan. 19, 2012). The Commission later terminated LG Corporation from the investigation. Notice (July 13, 2012); Order No. 18 (June 22, 2012).

On October 22, 2012, the ALJ issued his ID, finding no violation of section 337 as to the '932 patent. The ID included the ALJ's recommended determination (''RD'') on remedy and bonding. In particular, the ALJ found that claims 6, 9 and 10 of the '932 patent are not infringed literally or under the Doctrine of Equivalents by the accused products under his construction of the claim limitation ''structured arc sheet'' found in claim 6. The ALJ also found that ITRI's domestic industry product does not satisfy the technical prong of the domestic industry requirement. The ALJ did find, however, that ITRI has satisfied the economic prong of the domestic industry requirement under 19 U.S.C. 1337(a)(3)(A) and (B). Because he found no infringement and no domestic industry, the ALJ did not reach the issues of patent validity or

enforceability. In the event the Commission found a violation of section 337, the ALJ recommended that the appropriate remedy is a limited exclusion order barring entry of LG's infringing products. The ALJ also recommended issuance of cease and desist orders against LG Electronics USA and LG Display America. The ALJ further recommended that LG be required to post a bond of one percent of the entered value of each infringing product for the importation of products found to infringe during the period of Presidential review.

On November 5, 2012, ITRI filed a petition for review of certain aspects of the final ID. Also on November 5, 2012, participating respondents LG Electronics, Inc., LG Electronics U.S.A., Inc., LG Display Co., Ltd., and LG Display America, Inc. (collectively ''LG'') filed a contingent petition for review of certain aspects of the ID. On November 13, 2012, ITRI filed a response to LG's contingent petition for review. Also on November 13, 2012, LG filed a response to ITRI's petition for review. Further on November 13, 2012, the Commission investigative attorney filed a combined response to ITRI's and LG's petitions. No post-RD statements on the public interest pursuant to Commission Rule 210.50(a)(4) or in response to the post-RD Commission Notice issued on October 24, 2012, were filed. *See* 77 FR 65579 (Oct. 29, 2012).

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in its entirety. The Commission does not seek further briefing at this time. The Commission also remands the investigation to the ALJ to consider parties' invalidity and unenforceability arguments and make appropriate findings.[1] In light of the remand, the ALJ shall set a new target date consistent with the Remand Order.

Briefing, if any, on remanded and reviewed issues will await Commission consideration of the remand ID. The current target date for this investigation is February 28, 2013.

The authority for the Commission=s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 and 210.50 of the Commission=s Rules of Practice and Procedure (19 CFR 210.42–46 and 210.50).

By order of the Commission.
Issued: December 21, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–31330 Filed 12–28–12; 8:45 am]

BILLING CODE 7020–02–P

[1] The ALJ should have resolved these issues given the procedural posture of this investigation (*i.e.,* post-hearing), and the absence of an extraordinary fact situation that would weigh heavily against resolving these material issues presented in the record. *See Certain Video Game Systems and Wireless Controllers and Components Thereof,* Inv. 337–TA–770, Comm'n Op. at n.1 (Nov. 6, 2012).

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–799]

Certain Computer Forensic Devices and Products Containing Same; Commission Determination Not To Review the Final Initial Determination of the Administrative Law Judge; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the final initial determination (''final ID'' or ''ID'') of the presiding administrative law judge in the above-identified investigation.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 29, 2011, based on a complaint filed by MyKey Technology Inc. (''MyKey'') of Gaithersburg, Maryland. 76 FR 53695 (Aug. 29, 2011). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (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 computer forensic devices and products containing the same by reason of infringement of claims 1–8, 11–13, 16–38 and 40–45 of U.S. Patent No. 6,813,682 (the '' '682 patent''), claims 1–9, 13–18 and 20–21 of U.S. Patent No. 7,159,086 and claims 1 and 2 of U.S. Patent No. 7,228,379 (the '' '379 patent''). The notice of investigation named as respondents Data Protection Solutions by Arco of Hollywood, Florida; CRU Acquisitions Group LLC of Vancouver, Washington d/b/a CRU-DataPort LLC of Vancouver, Washington (''CRU''); Digital Intelligence, Inc. of New Berlin, Wisconsin (''Digital Intelligence''); Diskology, Inc. of Chatsworth, California; Guidance Software, Inc. of Pasadena, California and Guidance Tableau LLC of Pasadena, California (collectively, ''Guidance''); Ji2, Inc. of Cypress, California; MultiMedia Effects, Inc. of Markham, Ontario;Voom Technologies, Inc. of South Lakeland, Minnesota; and YEC Co. Ltd. of Tokyo, Japan.

Only respondents Guidance, CRU, and Digital Intelligence remain in the investigation. The complainant has also narrowed the claims asserted to claims 1–8, 11–13, 16–21, 24–36, and 40–45 of the '682 patent and claim 2 of the '379 patent.

An evidentiary hearing was held from August 6 to August 10, 2012.

On October 26, 2012, the ALJ issued the final ID, finding no violation of Section 337. The ALJ found that MyKey had failed to satisfy the economic prong of the domestic industry requirement. No petitions for review of the ID were filed.

The Commission would ordinarily remand this investigation to the ALJ to address in the final ID all material issues presented because a hearing has concluded and all issues have been fully briefed before the ALJ. 19 CFR 210.42(d); *see also Certain Video Game Systems and Wireless Controllers and Components Thereof,* Inv. 337–TA–770, Comm'n Op. at n.1 (Nov. 6, 2012). However, the Commission has determined not to review the ID in this investigation based upon the extraordinary factual situation and the parties' failure to file petitions for review. This investigation is hereby terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.
Issued: December 21, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–31331 Filed 12–28–12; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE

Hearings of the Judicial Conference Advisory Committee on Rules of Evidence

Federal Register Citation of Previous Announcement: 77 FR 49828 (August 17, 2012).

AGENCY: Advisory Committee on Rules of Evidence, Judicial Conference of the United States.

ACTION: Notice of Cancellation of Open Hearing.

SUMMARY: The following public hearing on proposed amendments to the Federal Rules of Evidence has been canceled: Evidence Rules Hearing, January 22, 2013, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Benjamin J. Robinson, Deputy Rules Officer and Counsel, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 24, 2012.

Benjamin J. Robinson,

Rules Committee Deputy and Counsel.

[FR Doc. 2012–31449 Filed 12–28–12; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Apple, Inc., Hachette Book Group, Inc., HarperCollins Publishers L.L.C., Verlagsgruppe Georg Von Holtzbrinck Gmbh, Holtzbrinck Publishers, LLC D/B/A Macmillan, The Penguin Group, A Division of Pearson PLC, Penguin Group (USA), Inc., and Simon & Schuster, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Southern District of New York in *United States of America* v. *Apple, Inc. et al.,* Civil Action No. 12–CV–2826 (DLC). On April 11, 2012, the United States filed a Complaint alleging that the defendants agreed to raise the retail price of e-books, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. On September 6, 2012, a Final Judgment as to defendants Hachette Book Group, Inc., HarperCollins Publishers L.L.C., and Simon & Schuster, Inc. was entered by the United States District Court for the Southern District of New York. On December 18, 2012, the United States filed a proposed Final Judgment as to defendants The Penguin Group, a division of Pearson plc, and Penguin Group (USA), Inc.—to return pricing discretion to e-book retailers and comply with other obligations designed to end the anticompetitive effects of the conspiracy.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street NW., DC 20530 Suite 1010 (telephone: 202–514–2481), on the Department of Justice's Web site at http://www.justice.gov/atr, and at the Office of the Clerk of the United States District Court for the Southern District of New York. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments will be filed with the Court and will either be published in the **Federal Register** or, with the permission of the Court, will be posted electronically on the Department of Justice's Web site. Comments should be directed to John R. Read, Chief, Litigation III Section, Antitrust Division, Department of Justice, Washington, DC 20530 (telephone: 202–307–0468).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the Southern District of New York

United States of America, Plaintiff, v. Apple, Inc., Hachette Book Group, Inc., Harpercollins Publishers L.L.C., Verlagsgruppe Georg Von Holtzbrinck Gmbh, Holtzbrinck Publishers, Llc d/b/a Macmillan, The Penguin Group, A Division Of Pearson Plc, Penguin Group (Usa), Inc., And Simon & Schuster, Inc., Defendants.

Civil Action No. 1:12-cv-02826.
Judge: Cote, Denise.
Date Filed: 04/11/2012.
Description: Antitrust.

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action against Defendants Apple, Inc. (''Apple''); Hachette Book Group, Inc. (''Hachette''); HarperCollins Publishers L.L.C. (''HarperCollins''); Verlagsgruppe Georg von Holtzbrinck GmbH and Holtzbrinck Publishers, LLC d/b/a Macmillan (collectively, ''Macmillan''); The Penguin Group, a division of Pearson plc and Penguin Group (USA), Inc. (collectively, ''Penguin''); and Simon & Schuster, Inc. (''Simon & Schuster''; collectively with Hachette, HarperCollins, Macmillan, and Penguin, ''Publisher Defendants'') to obtain equitable relief to prevent and remedy violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. Plaintiff alleges:

I. Introduction

1. Technology has brought revolutionary change to the business of publishing and selling books, including the dramatic explosion in sales of ''e-books''—that is, books sold to consumers in electronic form and read on a variety of electronic devices, including dedicated e-readers (such as the Kindle or the Nook), multipurpose tablets, smartphones and personal computers. Consumers reap a variety of benefits from e-books, including 24-hour access to product with near-instant delivery, easier portability and storage, and adjustable font size. E-books also are considerably cheaper to produce and distribute than physical (or ''print'') books.

2. E-book sales have been increasing rapidly ever since Amazon released its first Kindle device in November of 2007. In developing and then mass marketing its Kindle e-reader and associated e-book content, Amazon substantially increased the retail market for e-books. One of Amazon's most successful marketing strategies was to lower substantially the price of newly released and bestselling e-books to $9.99.

3. Publishers saw the rise in e-books, and particularly Amazon's price discounting, as a substantial challenge to their traditional business model. The Publisher Defendants feared that lower retail prices for e-books might lead eventually to lower wholesale prices for e-books, lower prices for print books, or other consequences the publishers hoped to avoid. Each Publisher Defendant desired higher retail e-book prices across the industry before ''$9.99'' became an entrenched consumer expectation. By the end of 2009, however, the Publisher Defendants had concluded that unilateral efforts to move Amazon away from its practice of offering low retail prices would not work, and they

thereafter conspired to raise retail e-book prices and to otherwise limit competition in the sale of e-books. To effectuate their conspiracy, the Publisher Defendants teamed up with Defendant Apple, which shared the same goal of restraining retail price competition in the sale of e-books.

4. The Defendants' conspiracy to limit e-book price competition came together as the Publisher Defendants were jointly devising schemes to limit Amazon's ability to discount e-books and Defendant Apple was preparing to launch its electronic tablet, the iPad, and considering whether it should sell e-books that could be read on the new device. Apple had long believed it would be able to ''trounce Amazon by opening up [its] own ebook store,'' but the intense price competition that prevailed among e-book retailers in late 2009 had driven the retail price of popular e-books to $9.99 and had reduced retailer margins on e-books to levels that Apple found unattractive. As a result of discussions with the Publisher Defendants, Apple learned that the Publisher Defendants shared a common objective with Apple to limit e-book retail price competition, and that the Publisher Defendants also desired to have popular e-book retail prices stabilize at levels significantly higher than $9.99. Together, Apple and the Publisher Defendants reached an agreement whereby retail price competition would cease (which all the conspirators desired), retail e-book prices would increase significantly (which the Publisher Defendants desired), and Apple would be guaranteed a 30 percent ''commission'' on each e-book it sold (which Apple desired).

5. To accomplish the goal of raising e-book prices and otherwise limiting retail competition for e-books, Apple and the Publisher Defendants jointly agreed to alter the business model governing the relationship between publishers and retailers. Prior to the conspiracy, both print books and e-books were sold under the longstanding ''wholesale model.'' Under this model, publishers sold books to retailers, and retailers, as the owners of the books, had the freedom to establish retail prices. Defendants were determined to end the robust retail price competition in e-books that prevailed, to the benefit of consumers, under the wholesale model. They therefore agreed jointly to replace the wholesale model for selling e-books with an ''agency model.'' Under the agency model, publishers would take control of retail pricing by appointing retailers as ''agents'' who would have no power to alter the retail prices set by the publishers. As a result, the publishers could end price competition among retailers and raise the prices consumers pay for e-books through the adoption of identical pricing tiers. This change in business model would not have occurred without the conspiracy among the Defendants.

6. Apple facilitated the Publisher Defendants' collective effort to end retail price competition by coordinating their transition to an agency model across all retailers. Apple clearly understood that its participation in this scheme would result in higher prices to consumers. As Apple CEO Steve Jobs described his company's strategy for negotiating with the Publisher Defendants, ''We'll go to [an] agency model, where you set the price, and we get our 30%, and yes, the customer pays a little more, but that's what you want anyway.'' Apple was perfectly willing to help the Publisher Defendants obtain their objective of higher prices for consumers by ending Amazon's ''$9.99'' price program as long as Apple was guaranteed its 30 percent margin and could avoid retail price competition from Amazon.

7. The plan—what Apple proudly described as an ''aikido move''—worked. Over three days in January 2010, each Publisher Defendant entered into a functionally identical agency contract with Apple that would go into effect simultaneously in April 2010 and ''chang[e] the industry permanently.'' These ''Apple Agency Agreements'' conferred on the Publisher Defendants the power to set Apple's retail prices for e-books, while granting Apple the assurance that the Publisher Defendants would raise retail e-book prices at all other e-book outlets, too. Instead of $9.99, electronic versions of bestsellers and newly released titles would be priced according to a set of price tiers contained in each of the Apple Agency Agreements that determined de facto retail e-book prices as a function of the title's hardcover list price. All bestselling and newly released titles bearing a hardcover list price between $25.01 and $35.00, for example, would be priced at $12.99, $14.99, or $16.99, with the retail e-book price increasing in relation to the hardcover list price.

8. After executing the Apple Agency Agreements, the Publisher Defendants all then quickly acted to complete the scheme by imposing agency agreements on all their other retailers. As a direct result, those retailers lost their ability to compete on price, including their ability to sell the most popular e-books for $9.99 or for other low prices. Once in control of retail prices, the Publisher Defendants limited retail price competition among themselves. Millions of e-books that would have sold at retail for $9.99 or for other low prices instead sold for the prices indicated by the price schedules included in the Apple Agency Agreements—generally, $12.99 or $14.99. Other price and non-price competition among e-book publishers and among e-book retailers also was unlawfully eliminated to the detriment of U.S. consumers.

9. The purpose of this lawsuit is to enjoin the Publisher Defendants and Apple from further violations of the nation's antitrust laws and to restore the competition that has been lost due to the Publisher Defendants' and Apple's illegal acts.

10. Defendants' ongoing conspiracy and agreement have caused e-book consumers to pay tens of millions of dollars more for e-books than they otherwise would have paid.

11. The United States, through this suit, asks this Court to declare Defendants' conduct illegal and to enter injunctive relief to prevent further injury to consumers in the United States.

II. Defendants

12. Apple, Inc. has its principal place of business at 1 Infinite Loop, Cupertino, CA 95014. Among many other businesses, Apple, Inc. distributes e-books through its iBookstore.

13. Hachette Book Group, Inc. has its principal place of business at 237 Park Avenue, New York, NY 10017. It publishes e-books and print books through publishers such as Little, Brown, and Company and Grand Central Publishing.

14. HarperCollins Publishers L.L.C. has its principal place of business at 10 E. 53rd Street, New York, NY 10022. It publishes e-books and print books through publishers such as Harper and William Morrow.

15. Holtzbrinck Publishers, LLC d/b/a Macmillan has its principal place of business at 175 Fifth Avenue, New York, NY 10010. It publishes e-books and print books through publishers such as Farrar, Straus and Giroux and St. Martin's Press. Verlagsgruppe Georg von Holtzbrinck GmbH owns Holtzbrinck Publishers, LLC d/b/a Macmillan and has its principal place of business at Gänsheidestraße 26, Stuttgart 70184, Germany.

16. Penguin Group (USA), Inc. has its principal place of business at 375 Hudson Street, New York, NY 10014. It publishes e-books and print books through publishers such as The Viking Press and Gotham Books. Penguin Group (USA), Inc. is the United States

affiliate of The Penguin Group, a division of Pearson plc, which has its principal place of business at 80 Strand, London WC2R 0RL, United Kingdom.

17. Simon & Schuster, Inc. has its principal place of business at 1230 Avenue of the Americas, New York, NY 10020. It publishes e-books and print books through publishers such as Free Press and Touchstone.

III. Jurisdiction, Venue, and Interstate Commerce

18. Plaintiff United States of America brings this action pursuant to Section 4 of the Sherman Act, 15 U.S.C. § 4, to obtain equitable relief and other relief to prevent and restrain Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C 1.

19. This Court has subject matter jurisdiction over this action under Section 4 of the Sherman Act, 15 U.S.C. 4, and 28 U.S.C. 1331, 1337(a), and 1345.

20. This Court has personal jurisdiction over each Defendant and venue is proper in the Southern District of New York under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391, because each Defendant transacts business and is found within the Southern District of New York. The U.S. component of each Publisher Defendant is headquartered in the Southern District of New York, and acts in furtherance of the conspiracy occurred in this District. Many thousands of the Publisher Defendants' e-books are and have been sold in this District, including through Defendant Apple's iBookstore.

21. Defendants are engaged in, and their activities substantially affect, interstate trade and commerce. The Publisher Defendants sell e-books throughout the United States. Their e-books represent a substantial amount of interstate commerce. In 2010, United States consumers paid more than $300 million for the Publisher Defendants' e-books, including more than $40 million for e-books licensed through Defendant Apple's iBookstore.

IV. Co-Conspirators

22. Various persons, who are known and unknown to Plaintiff, and not named as defendants in this action, including senior executives of the Publisher Defendants and Apple, have participated as co-conspirators with Defendants in the offense alleged and have performed acts and made statements in furtherance of the conspiracy.

V. The Publishing Industry and Background of the Conspiracy

A. Print Books

23. Authors submit books to publishers in manuscript form. Publishers edit manuscripts, print and bind books, provide advertising and related marketing services, decide when a book should be released for sale, and distribute books to wholesalers and retailers. Publishers also determine the cover price or ''list price'' of a book, and typically that price appears on the book's cover.

24. Retailers purchase print books directly from publishers, or through wholesale distributors, and resell them to consumers. Retailers typically purchase print books under the ''wholesale model.'' Under that model, retailers pay publishers approximately one-half of the list price of books, take ownership of the books, then resell them to consumers at prices of the retailer's choice. Publishers have sold print books to retailers through the wholesale model for over 100 years and continue to do so today.

B. E-books

25. E-books are books published in electronic formats. E-book publishers avoid some of the expenses incurred in producing and distributing print books, including most manufacturing expenses, warehousing expenses, distribution expenses, and costs of dealing with unsold stock.

26. Consumers purchase e-books through Web sites of e-book retailers or through applications loaded onto their reading devices. Such electronic distribution allows e-book retailers to avoid certain expenses they incur when they sell print books, including most warehousing expenses and distribution expenses.

27. From its very small base in 2007 at the time of Amazon's Kindle launch, the e-book market has exploded, registering triple-digit sales growth each year. E-books now constitute at least ten percent of general interest fiction and non-fiction books (commonly known as ''trade'' books [1]) sold in the United States and are widely predicted to reach at least 25 percent of U.S. trade books sales within two to three years.

[1] Non-trade e-books include electronic versions of children's picture books and academic textbooks, reference materials, and other specialized texts that typically are published by separate imprints from trade books, often are sold through separate channels, and are not reasonably substitutable for trade e-books.

D. Publisher Defendants and ''The $9.99 Problem''

28. The Publisher Defendants compete against each other for sales of trade e-books to consumers. Publishers bid against one another for print- and electronic-publishing rights to content that they expect will be most successful in the market. They also compete against each other in bringing those books to market. For example, in addition to price-setting, they create cover art and other on-book sales inducements, and also engage in advertising campaigns for some titles.

29. The Publisher Defendants are five of the six largest publishers of trade books in the United States. They publish the vast majority of their newly released titles as both print books and e-books. Publisher Defendants compete against each other in the sales of both trade print books and trade e-books.

30. When Amazon launched its Kindle device, it offered newly released and bestselling e-books to consumers for $9.99. At that time, Publisher Defendants routinely wholesaled those e-books for about that same price, which typically was less than the wholesale price of the hardcover versions of the same titles, reflecting publisher cost savings associated with the electronic format. From the time of its launch, Amazon's e-book distribution business has been consistently profitable, even when substantially discounting some newly released and bestselling titles.

31. To compete with Amazon, other e-book retailers often matched or approached Amazon's $9.99-or-less prices for e-book versions of new releases and *New York Times* bestsellers. As a result of that competition, consumers benefited from Amazon's $9.99-or-less e-book prices even if they purchased e-books from competing e-book retailers.

32. The Publisher Defendants feared that $9.99 would become the standard price for newly released and bestselling e-books. For example, one Publisher Defendant's CEO bemoaned the ''wretched $9.99 price point'' and Penguin USA CEO David Shanks worried that e-book pricing ''can't be $9.99 for hardcovers.''

33. The Publisher Defendants believed the low prices for newly released and bestselling e-books were disrupting the industry. The Amazon-led $9.99 retail price point for the most popular e-books troubled the Publisher Defendants because, at $9.99, most of these e-book titles were priced substantially lower than hardcover versions of the same title. The Publisher Defendants were concerned these lower

e-book prices would lead to the ''deflation'' of hardcover book prices, with accompanying declining revenues for publishers. The Publisher Defendants also worried that if $9.99 solidified as the consumers' expected retail price for e-books, Amazon and other retailers would demand that publishers lower their wholesale prices, further compressing publisher profit margins.

34. The Publisher Defendants also feared that the $9.99 price point would make e-books so popular that digital publishers could achieve sufficient scale to challenge the major incumbent publishers' basic business model. The Publisher Defendants were especially concerned that Amazon was well positioned to enter the digital publishing business and thereby supplant publishers as intermediaries between authors and consumers. Amazon had, in fact, taken steps to do so, contracting directly with authors to publish their works as e-books—at a higher royalty rate than the Publisher Defendants offered. Amazon's move threatened the Publisher Defendants' traditional positions as the gate-keepers of the publishing world. The Publisher Defendants also feared that other competitive advantages they held as a result of years of investments in their print book businesses would erode and, eventually, become irrelevant, as e-book sales continued to grow.

E. Publisher Defendants Recognize They Cannot Solve ''The $9.99 Problem'' Alone

35. Each Publisher Defendant knew that, acting alone, it could not compel Amazon to raise e-book prices and that it was not in its economic self-interest to attempt unilaterally to raise retail e-book prices. Each Publisher Defendant relied on Amazon to market and distribute its e-books, and each Publisher Defendant believed Amazon would leverage its position as a large retailer to preserve its ability to compete and would resist any individual publisher's attempt to raise the prices at which Amazon sold that publisher's e-books. As one Publisher Defendant executive acknowledged Amazon's bargaining strength, ''we've always known that unless other publishers follow us, there's no chance of success in getting Amazon to change its pricing practices.'' In the same email, the executive wrote, ''without a critical mass behind us Amazon won't 'negotiate,' so we need to be more confident of how our fellow publishers will react. * * *''

36. Each Publisher Defendant also recognized that it would lose sales if retail prices increased for only its e-books while the other Publisher Defendants' e-books remained competitively priced. In addition, higher prices for just one publisher's e-books would not change consumer perceptions enough to slow the erosion of consumer-perceived value of books that all the Publisher Defendants feared would result from Amazon's $9.99 pricing policy.

VI. Defendants' Unlawful Activities

37. Beginning no later than September 2008, the Publisher Defendants' senior executives engaged in a series of meetings, telephone conversations and other communications in which they jointly acknowledged to each other the threat posed by Amazon's pricing strategy and the need to work collectively to end that strategy. By the end of the summer of 2009, the Publisher Defendants had agreed to act collectively to force up Amazon's retail prices and thereafter considered and implemented various means to accomplish that goal, including moving under the guise of a joint venture. Ultimately, in late 2009, Apple and the Publisher Defendants settled on the strategy that worked—replacing the wholesale model with an agency model that gave the Publisher Defendants the power to raise retail e-book prices themselves.

38. The evidence showing conspiracy is substantial and includes:

- *Practices facilitating a horizontal conspiracy.* The Publisher Defendants regularly communicated with each other in private conversations, both in person and on the telephone, and in emails to each other to exchange sensitive information and assurances of solidarity to advance the ends of the conspiracy.
- *Direct evidence of a conspiracy.* The Publisher Defendants directly discussed, agreed to, and encouraged each other to collective action to force Amazon to raise its retail e-book prices.
- *Recognition of illicit nature of communications.* Publisher Defendants took steps to conceal their communications with one another, including instructions to ''double delete'' email and taking other measures to avoid leaving a paper trail.
- *Acts contrary to economic interests.* It would have been contrary to the economic interests of any Publisher Defendant acting alone to attempt to impose agency on all of its retailers and then raise its retail e-book prices. For example, Penguin Group CEO John Makinson reported to his parent company board of directors that ''the industry needs to develop a common strategy'' to address the threat ''from digital companies whose objective may be to disintermediate traditional publishers altogether'' because it ''will not be possible for any individual publisher to mount an effective response,'' and Penguin later admitted that it would have been economically disadvantaged if it ''was the only publisher dealing with Apple under the new business model.''
- *Motive to enter the conspiracy, including knowledge or assurances that competitors also will enter.* The Publisher Defendants were motivated by a desire to maintain both the perceived value of their books and their own position in the industry. They received assurances from both each other and Apple that they all would move together to raise retail e-book prices. Apple was motivated to ensure that it would not face competition from Amazon's low-price retail strategy.
- *Abrupt, contemporaneous shift from past behavior.* Prior to January 23, 2010, all Publisher Defendants sold their e-books under the traditional wholesale model; by January 25, 2010, all Publisher Defendants had irrevocably committed to transition all of their retailers to the agency model (and Apple had committed to sell e-books on a model inconsistent with the way it sells the vast bulk of the digital media it offers in its iTunes store). On April 3, 2010, as soon as the Apple Agency Agreements simultaneously became effective, all Publisher Defendants immediately used their new retail pricing authority to raise the retail prices of their newly released and bestselling e-books to the common ostensible maximum prices contained in their Apple Agency Agreements.

A. The Publisher Defendants Recognize a Common Threat

39. Starting no later than September of 2008 and continuing for at least one year, the Publisher Defendants' CEOs (at times joined by one non-defendant publisher's CEO) met privately as a group approximately once per quarter. These meetings took place in private dining rooms of upscale Manhattan restaurants and were used to discuss confidential business and competitive matters, including Amazon's e-book retailing practices. No legal counsel was present at any of these meetings.

40. In September 2008, Penguin Group CEO John Makinson was joined by Macmillan CEO John Sargent and the CEOs of the other four large publishers at a dinner meeting in ''The Chef's Wine Cellar,'' a private room at Picholene. One of the CEOs reported that business matters were discussed.

41. In January 2009, the CEO of one Publisher Defendant, a United States subsidiary of a European corporation, promised his corporate superior, the CEO of the parent company, that he would raise the future of e-books and Amazon's potential role in that future at an upcoming meeting of publisher CEOs. Later that month, at a dinner meeting hosted by Penguin Group CEO John Makinson, again in ''The Chef's Wine Cellar'' at Picholene, the same group of publisher CEOs met once more.

42. On or about June 16, 2009, Mr. Makinson again met privately with other Publisher Defendant CEOs and discussed, *inter alia,* the growth of e-books and Amazon's role in that growth.

43. On or about September 10, 2009, Mr. Makinson once again met privately with other Publisher Defendant CEOs and the CEO of one non-defendant publisher in a private room of a different Manhattan restaurant, Alto. They discussed the growth of e-books and complained about Amazon's role in that growth.

44. In addition to the CEO dinner meetings, Publisher Defendants' CEOs and other executives met in-person, one-on-one to communicate about e-books multiple times over the course of 2009 and into 2010. Similar meetings took place in Europe, including meetings in the fall of 2009 between executives of Macmillan parent company Verlagsgruppe Georg von Holtzbrinck GmbH and executives of another Publisher Defendant's parent company. Macmillan CEO John Sargent joined at least one of these parent company meetings.

45. These private meetings provided the Publisher Defendants' CEOs the opportunity to discuss how they collectively could solve ''the $9.99 problem.''

B. Publisher Defendants Conspire To Raise Retail E-book Prices Under the Guise of Joint Venture Discussions

46. While each Publisher Defendant recognized that it could not solve ''the $9.99 problem'' by itself, collectively the Publisher Defendants accounted for nearly half of Amazon's e-book revenues, and by refusing to compete with one another for Amazon's business, the Publisher Defendants could force Amazon to accept the Publisher Defendants' new contract terms and to change its pricing practices.

47. The Publisher Defendants thus conspired to act collectively, initially in the guise of joint ventures. These ostensible joint ventures were not meant to enhance competition by bringing to market products or services that the publishers could not offer unilaterally, but rather were designed as anticompetitive measures to raise prices.

48. All five Publisher Defendants agreed in 2009 at the latest to act collectively to raise retail prices for the most popular e-books above $9.99. One CEO of a Publisher Defendant's parent company explained to his corporate superior in a July 29, 2009 email message that ''[i]n the USA and the UK, but also in Spain and France to a lesser degree, the 'top publishers' are in discussions to create an alternative platform to Amazon for e-books. The goal is less to compete with Amazon as to force it to accept a price level higher than 9.99. * *''* I am in NY this week to promote these ideas and the movement is positive with [the other four Publisher Defendants].'' (Translated from French).

49. Less than a week later, in an August 4, 2009 strategy memo for the board of directors of Penguin's ultimate parent company, Penguin Group CEO John Makinson conveyed the same message:

Competition for the attention of readers will be most intense from digital companies whose objective may be to disintermediate traditional publishers altogether. This is not a new threat but we do appear to be on a collision course with Amazon, and possibly Google as well. It will not be possible for any individual publisher to mount an effective response, because of both the resources necessary and the risk of retribution, so the industry needs to develop a common strategy. This is the context for the development of the Project Z initiatives [joint ventures] in London and New York.

C. Defendants Agree To Increase and Stabilize Retail E-book Prices by Collectively Adopting an Agency Model

50. To raise e-book prices, the Publisher Defendants also began to consider in late 2009 selling e-books under an ''agency model'' that would take away Amazon's ability to set low retail prices. As one CEO of a Publisher Defendant's parent company explained in a December 6, 2009 email message, ''[o]ur goal is to force Amazon to return to acceptable sales prices through the establishment of agency contracts in the USA . . . . To succeed our colleagues must know that we entered the fray and follow us.'' (Translated from French).

51. Apple's entry into the e-book business provided a perfect opportunity for collective action to implement the agency model and use it to raise retail e-book prices. Apple was in the process of developing a strategy to sell e-books on its new iPad device. Apple initially contemplated selling e-books through the existing wholesale model, which was similar to the manner in which Apple sold the vast majority of the digital media it offered in its iTunes store. On February 19, 2009, Apple Vice President of Internet Services Eddy Cue explained to Apple CEO Steve Jobs in an email, ''[a]t this point, it would be very easy for us to compete and I think trounce Amazon by opening up our own ebook store.'' In addition to considering competitive entry at that time, though, Apple also contemplated illegally dividing the digital content world with Amazon, allowing each to ''own the category'' of its choice—audio/video to Apple and e-books to Amazon.

52. Apple soon concluded, though, that competition from other retailers—especially Amazon—would prevent Apple from earning its desired 30 percent margins on e-book sales. Ultimately, Apple, together with the Publisher Defendants, set in motion a plan that would compel all non-Apple e-book retailers also to sign onto agency or else, as Apple's CEO put it, the Publisher Defendants all would say, ''we're not going to give you the books.''

53. The executive in charge of Apple's inchoate e-books business, Eddy Cue, telephoned each Publisher Defendant and Random House on or around December 8, 2009 to schedule exploratory meetings in New York City on December 15 and December 16. Hachette and HarperCollins took the lead in working with Apple to capitalize on this golden opportunity for the Publisher Defendants to achieve their goal of raising and stabilizing retail e-book prices above $9.99 by collectively imposing the agency model on the industry.

54. It appears that Hachette and HarperCollins communicated with each other about moving to an agency model during the brief window between Mr. Cue's first telephone calls to the Publisher Defendants and his visit to meet with their CEOs. On the morning of December 10, 2009, a HarperCollins executive added to his calendar an appointment to call a Hachette executive at 10:50 a.m. At 11:01 a.m., the Hachette executive returned the phone call, and the two spoke for six minutes. Then, less than a week later in New York, both Hachette and HarperCollins executives told Mr. Cue in their initial meetings with him that they wanted to sell e-books under an agency model, a dramatic departure from the way books had been sold for over a century.y

55. The other Publisher Defendants also made clear to Apple that they

''certainly'' did not want to continue ''the existing way that they were doing business,'' *i.e.,* with Amazon promoting their most popular e-books for $9.99 under a wholesale model.

56. Apple saw a way to turn the agency scheme into a highly profitable model for itself. Apple determined to give the Publisher Defendants what they wanted while shielding itself from retail price competition and realizing margins far in excess of what e-book retailers then averaged on each newly released or bestselling e-book sold. Apple realized that, as a result of the scheme, ''the customer'' would ''pay[] a little more.''

57. On December 16, 2009, the day after both companies' initial meetings with Apple, Penguin Group CEO John Makinson had a breakfast meeting at a London hotel with the CEO of another Publisher Defendant's parent company. Consistent with the Publisher Defendants' other efforts to conceal their activities, Mr. Makinson's breakfast companion wrote to his U.S. subordinate that he would recount portions of his discussion with Mr. Makinson only by telephone.

58. By the time Apple arrived for a second round of meetings during the week of December 21, 2009, the agency model had become the focus of its discussions with all of the Publisher Defendants. In these discussions, Apple proposed that the Publisher Defendants require *all* retailers of their e-books to accept the agency model. Apple thereby sought to ensure that it would not have to compete on retail prices. The proposal appealed to the Publisher Defendants because wresting pricing control from Amazon and other e-book retailers would advance their collusive plan to raise retail e-book prices.

59. The Publisher Defendants acknowledged to Apple their common objective to end Amazon's $9.99 pricing. As Mr. Cue reported in an email message to Apple's CEO Steve Jobs, the three publishers with whom he had met saw the ''plus'' of Apple's position as ''solv[ing the] Amazon problem.'' The ''negative'' was that Apple's proposed retail prices—topping out at $12.99 for newly released and bestselling e-books—were a ''little less than [the publishers] would like.'' Likewise, Mr. Jobs later informed an executive of one of the Publisher Defendant's corporate parents that ''[a]ll major publishers'' had told Apple that ''Amazon's $9.99 price for new releases is eroding the value perception of their products in customer's minds, and they do not want this practice to continue for new releases.''

60. As perhaps the only company that could facilitate their goal of raising retail e-book prices across the industry, Apple knew that it had significant leverage in negotiations with Publisher Defendants. Apple exercised this leverage to demand a thirty percent commission—a margin significantly above the prevailing competitive margins for e-book retailers. The Publisher Defendants worried that the combination of paying Apple a higher commission than they would have liked and pricing their e-books lower than they wanted might be too much to bear in exchange for Apple's facilitation of their agreement to raise retail e-book prices. Ultimately, though, they convinced Apple to allow them to raise prices high enough to make the deal palatable to them.

61. As it negotiated with the Publisher Defendants in December 2009 and January 2010, Apple kept each Publisher Defendant informed of the status of its negotiations with the other Publisher Defendants. Apple also assured the Publisher Defendants that its proposals were the same to each and that no deal Apple agreed to with one publisher would be materially different from any deal it agreed to with another publisher. Apple thus knowingly served as a critical conspiracy participant by allowing the Publisher Defendants to signal to one another both (a) which agency terms would comprise an acceptable means of achieving their ultimate goal of raising and stabilizing retail e-book prices, and (b) that they could lock themselves into this particular means of collectively achieving that goal by all signing their Apple Agency Agreement.

62. Apple's Mr. Cue emailed each Publisher Defendant between January 4, 2010, and January 6, 2010 an outline of what he tabbed ''the best approach for e-books.'' He reassured Penguin USA CEO David Shanks and other Publisher Defendant CEOs that Apple adopted the approach ''[a]fter talking to all the other publishers.'' Mr. Cue sent substantively identical email messages and proposals to each Publisher Defendant.

63. The outlined proposal that Apple circulated after consulting with each Publisher Defendant contained several key features. First, as Hachette and HarperCollins had initially suggested to Apple, the publisher would be the principal and Apple would be the agent for e-book sales. Consumer pricing authority would be transferred from retailers to publishers. Second, Apple's proposal mandated that every other retailer of each publisher's e-books—Apple's direct competitors—be forced to accept the agency model as well. As Mr. Cue wrote, ''all resellers of new titles need to be in agency model.'' Third, Apple would receive a 30 percent commission for each e-book sale. And fourth, each Publisher Defendant would have identical pricing tiers for e-books sold through Apple's iBookstore.

64. On January 11, 2010, Apple emailed its proposed e-book distribution agreement to all the Publisher Defendants. As with the outlined proposals Apple sent earlier in January, the proposed e-book distribution agreements were substantially the same. Also on January 11, 2010, Apple separately emailed to Penguin and two other Publisher Defendants charts showing how the Publisher Defendant's bestselling e-books would be priced at $12.99—the ostensibly maximum price under Apple's then-current price tier proposal—in the iBookstore.

65. The proposed e-book distribution agreement mainly incorporated the principles Apple set out in its email messages of January 4 through January 6, with two notable changes. First, Apple demanded that the Publisher Defendants provide Apple their complete e-book catalogs and that they not delay the electronic release of any title behind its print release. Second, and more important, Apple replaced the express requirement that each publisher adopt the agency model with each of its retailers with an unusual most favored nation (''MFN'') pricing provision. That provision was not structured like a standard MFN in favor of a retailer, ensuring Apple that it would receive the best available wholesale price. Nor did the MFN ensure Apple that the Publisher Defendants would not set a higher retail price on the iBookstore than they set on other Web sites where they controlled retail prices. Instead, the MFN here required each publisher to guarantee that it would lower the retail price of each e-book in Apple's iBookstore to match the lowest price offered by any other retailer, even if the Publisher Defendant did not control that other retailer's ultimate consumer price. That is, instead of an MFN designed to protect Apple's ability to compete, this MFN was designed to protect Apple from having to compete on price at all, while still maintaining Apple's 30 percent margin.

66. The purpose of these provisions was to work in concert to enforce the Defendants' agreement to raise and stabilize retail e-book prices. Apple and the Publisher Defendants recognized that coupling Apple's right to all of their e-books with its right to demand that those e-books not be priced higher on the iBookstore than on any other Web site effectively required that each Publisher Defendant take away retail pricing control from all other e-book

retailers, including stripping them of any ability to discount or otherwise price promote e-books out of the retailer's own margins. Otherwise, the retail price MFN would cause Apple's iBookstore prices to drop to match the best available retail price of each e-book, and the Publisher Defendants would receive only 70 percent of those reduced retail prices. Price competition by other retailers, if allowed to continue, thus likely would reduce e-book revenues to levels the Publisher Defendants could not control or predict.

67. In negotiating the retail price MFN with Apple, ''some of [the Publisher Defendants]'' asserted that Apple did not need the provision ''because they would be moving to an agency model with [the other e-book retailers,]'' regardless. Ultimately, though, all Defendants agreed to include the MFN commitment mechanism.

68. On January 16, 2010, Apple, via Mr. Cue, offered revised terms to the Publisher Defendants that again were identical in substance. Apple modified its earlier proposal in two significant ways. First, in response to publisher requests, it added new maximum pricing tiers that increased permissible e-book prices to $16.99 or $19.99, depending on the book's hardcover list price. Second, Apple's new proposal mitigated these price increases somewhat by adding special pricing tiers for e-book versions of books on the *New York Times* fiction and non-fiction bestseller lists. For e-book versions of bestsellers bearing list prices of $30 or less, Publisher Defendants could set a price up to $12.99; for bestsellers bearing list prices between $30 and $35, the e-book price cap would be $14.99. In conjunction with the revised proposal, Mr. Cue set up meetings for the next week to finalize agreements with the Publisher Defendants.

69. Each Publisher Defendant required assurances that it would not be the only publisher to sign an agreement with Apple that would compel it either to take pricing authority from Amazon or to pull its e-books from Amazon. The Publisher Defendants continued to fear that Amazon would act to protect its ability to price e-books at $9.99 or less if any one of them acted alone. Individual Publisher Defendants also feared punishment in the marketplace if only its e-books suddenly became more expensive at retail while other publishers continued to allow retailers to compete on price. As Mr. Cue noted, ''all of them were very concerned about being the only ones to sign a deal with us.'' Penguin explicitly communicated to Apple that it would sign an e-book distribution agreement with Apple only if at least three of the other ''major[]'' publishers did as well. Apple supplied the needed assurances.

70. While the Publisher Defendants were discussing e-book distribution terms with Apple during the week of January 18, 2010, Amazon met in New York City with a number of prominent authors and agents to unveil a new program under which copyright holders could take their e-books directly to Amazon—cutting out the publisher—and Amazon would pay royalties of up to 70 percent, far in excess of what publishers offered. This announcement further highlighted the direct competitive threat Amazon posed to the Publisher Defendants' business model. The Publisher Defendants reacted immediately. For example, Penguin USA CEO David Shanks reported being ''really angry'' after ''hav[ing] read [Amazon's] announcement.'' After thinking about it for a day, Mr. Shanks concluded, ''[o]n Apple I am now more convinced that we need a viable alternative to Amazon or this nonsense will continue and get much worse.'' Another decisionmaker stated he was ''p****d'' at Amazon for starting to compete directly against the publishers and expressed his desire ''to screw Amazon.''

71. To persuade one of the Publisher Defendants to stay with the others and sign an agreement, Apple CEO Steve Jobs wrote to an executive of the Publisher Defendant's corporate parent that the publisher had only two choices apart from signing the Apple Agency Agreement: (i) accept the status quo (''Keep going with Amazon at $9.99''); or (ii) continue with a losing policy of delaying the release of electronic versions of new titles (''Hold back your books from Amazon''). According to Jobs, the Apple deal offered the Publisher Defendants a superior alternative path to the higher retail e-book prices they sought: ''Throw in with Apple and see if we can all make a go of this to create a real mainstream e-books market at $12.99 and $14.99.''

72. In addition to passing information through Apple and during their private dinners and other in-person meetings, the Publisher Defendants frequently communicated by telephone to exchange assurances of common action in attempting to raise the retail price of e-books. These telephone communications increased significantly during the two-month period in which the Publisher Defendants considered and entered the Apple Agency Agreements. During December 2009 and January 2010, the Publisher Defendants' U.S. CEOs placed at least 56 phone calls to one another. Each CEO, including Penguin's Shanks and Macmillan's Sargent, placed at least seven such phone calls.

73. The timing, frequency, duration, and content of the Publisher Defendant CEOs' phone calls demonstrate that the Publisher Defendants used them to seek and exchange assurances of common strategies and business plans regarding the Apple Agency Agreements. For example, in addition to the telephone calls already described in this complaint:

- Near the time Apple first presented the agency model, one Publisher Defendant's CEO used a telephone call—ostensibly made to discuss a marketing joint venture—to tell Penguin USA CEO David Shanks that ''everyone is in the same place with Apple.''
- After receiving Apple's January 16, 2010 revised proposal, executives of several Publisher Defendants responded to the revised proposal and meetings by, again, seeking and exchanging confidential information. For example, on Sunday, January 17, one Publisher Defendant's CEO used his mobile phone to call another Publisher Defendant's CEO and talk for approximately ten minutes. And on the morning of January 19, Penguin USA CEO David Shanks had an extended telephone conversation with the CEO of another Publisher Defendant.
- On January 21, 2010, the CEO of one Publisher Defendant's parent company instructed his U.S. subordinate via email to find out Apple's progress in agency negotiations with other publishers. Four minutes after that email was sent, the U.S. executive called another Publisher Defendant's CEO, and the two spoke for over eleven minutes.
- On January 22, 2010, at 9:30 a.m., Apple's Cue met with one Publisher Defendant's CEO to make what Cue hoped would be a ''final go/no-go decision'' about whether the Publisher Defendant would sign an agreement with Apple. Less than an hour later, the Publisher Defendant's CEO made phone calls, two minutes apart, to two other Publisher Defendants' CEOs, including Macmillan's Sargent. The CEO who placed the calls admitted under oath to placing them specifically to learn if the other two Publisher Defendants would sign with Apple prior to Apple's iPad launch.
- On the evening of Saturday, January 23, 2010, Apple's Cue emailed his boss, Steve Jobs, and noted that Penguin USA CEO David Shanks ''want[ed] an assurance that he is 1 of 4 before signing.'' The following Monday morning, at 9:46 a.m., Mr. Shanks called another Publisher Defendant's CEO and

the two talked for approximately four minutes. Both Penguin and the other Publisher Defendant signed their Apple Agency Agreements later that day.

74. On January 24, 2010, Hachette signed an e-book distribution agreement with Apple. Over the next two days, Simon & Schuster, Macmillan, Penguin, and HarperCollins all followed suit and signed e-book distribution agreements with Apple. Within these three days, the Publisher Defendants agreed with Apple to abandon the longstanding wholesale model for selling e-books. The Apple Agency Agreements took effect simultaneously on April 3, 2010 with the release of Apple's new iPad.

75. The final version of the pricing tiers in the Apple Agency Agreements contained the $12.99 and $14.99 price points for bestsellers, discussed earlier, and also established prices for all other newly released titles based on the hardcover list price of the same title. Although couched as maximum retail prices, the price tiers in fact established the retail e-book prices to be charged by Publisher Defendants.

76. By entering the Apple Agency Agreements, each Publisher Defendant effectively agreed to require all of their e-book retailers to accept the agency model. Both Apple and the Publisher Defendants understood the Agreements would compel the Publisher Defendants to take pricing authority from all non-Apple e-book retailers. A February 10, 2010 presentation by one Publisher Defendant applauded this result (emphasis in original): ''The Apple agency model deal means that we will have to shift to an agency model with Amazon which [will] strengthen our control over pricing.''

77. Apple understood that the final Apple Agency Agreements ensured that the Publisher Defendants would raise their retail e-book prices to the ostensible limits set by the Apple price tiers not only in Apple's forthcoming iBookstore, but on Amazon.com and all other consumer sites as well. When asked by a *Wall Street Journal* reporter at the January 27, 2010 iPad unveiling event, ''Why should she buy a book for * * * $14.99 from your device when she could buy one for $9.99 from Amazon on the Kindle or from Barnes & Noble on the Nook?'' Apple CEO Steve Jobs responded, ''that won't be the case * * * the prices will be the same.''

78. Apple understood that the retail price MFN was the key commitment mechanism to keep the Publisher Defendants advancing their conspiracy in lockstep. Regarding the effect of the MFN, Apple executive Pete Alcorn remarked in the context of the European roll-out of the agency model in the spring of 2010:

I told [Apple executive Keith Moerer] that I think he and Eddy [Cue] made it at least halfway to changing the industry permanently, and we should keep the pads on and keep fighting for it. I might regret that later, but right now I feel like it's a giant win to keep pushing the MFN and forcing people off the [A]mazon model and onto ours. If anything, the place to give is the pricing—long run, the mfn is more important. The interesting insight in the meeting was Eddy's explanation that it doesn't have to be that broad—any decent MFN forces the model.

79. Within the four months following the signing of the Apple Agency Agreements, and over Amazon's objections, each Publisher Defendant had transformed its business relationship with all of the major e-book retailers from a wholesale model to an agency model and imposed flat prohibitions against e-book discounting or other price competition on all non-Apple e-book retailers.

80. For example, after it signed its Apple Agency Agreement, Macmillan presented Amazon a choice: adopt the agency model or lose the ability to sell e-book versions of new hardcover titles for the first seven months of their release. Amazon rejected Macmillan's ultimatum and sought to preserve its ability to sell e-book versions of newly released hardcover titles for $9.99. To resist Macmillan's efforts to force it to accept either the agency model or delayed electronic availability, Amazon effectively stopped selling Macmillan's print books and e-books.

81. When Amazon stopped selling Macmillan titles, other Publisher Defendants did not view the situation as an opportunity to gain market share from a weakened competitor. Instead, they rallied to support Macmillan. For example, the CEO of one Publisher Defendant's parent company instructed the Publisher Defendant's CEO that ''[Macmillan CEO] John Sargent needs our help!'' The parent company CEO explained, ''M[acm]illan have been brave, but they are small. We need to move the lines. And I am thrilled to know how A[mazon] will react against 3 or 4 of the big guys.''

82. The CEO of one Publisher Defendant's parent company assured Macmillan CEO John Sargent of his company's support in a January 31, 2010 email: ''I can ensure you that you are not going to find your company alone in the battle.'' The same parent company CEO also assured the head of Macmillan's corporate parent in a February 1 email that ''others will enter the battle field!'' Overall, Macmillan received ''hugely supportive'' correspondence from the publishing industry during Macmillan's effort to force Amazon to accept the agency model.

83. As its battle with Amazon continued, Macmillan knew that, because the other Publisher Defendants, via the Apple Agency Agreements, had locked themselves into forcing agency on Amazon to advance their conspiratorial goals, Amazon soon would face similar edicts from a united front of Publisher Defendants. And Amazon could not delist the books of all five Publisher Defendants because they together accounted for nearly half of Amazon's e-book business. Macmillan CEO John Sargent explained the company's reasoning: ''we believed whatever was happening, whatever Amazon was doing here, they were going to face—they're going to have more of the same in the future one way or another.'' Another Publisher Defendant similarly recognized that Macmillan was not acting unilaterally but rather was ''leading the charge on moving Amazon to the agency model.''

84. Amazon quickly came to fully appreciate that not just Macmillan but all five Publisher Defendants had irrevocably committed themselves to the agency model across all retailers, including taking control of retail pricing and thereby stripping away any opportunity for e-book retailers to compete on price. Just two days after it stopped selling Macmillan titles, Amazon capitulated and publicly announced that it had no choice but to accept the agency model, and it soon resumed selling Macmillan's e-book and print book titles.

D. Defendants Further the Conspiracy by Pressuring Another Publisher To Adopt the Agency Model

85. When a company takes a pro-competitive action by introducing a new product, lowering its prices, or even adopting a new business model that helps it sell more product at better prices, it typically does not want its competitors to copy its action, but prefers to maintain a first-mover or competitive advantage. In contrast, when companies jointly take collusive action, such as instituting a coordinated price increase, they typically want the rest of their competitors to join them in that action. Because collusive actions are not pro-competitive or consumer friendly, any competitor that does not go along with the conspirators can take more consumer friendly actions and see its market share rise at the expense of the conspirators. Here, the Defendants

acted consistently with a collusive arrangement, and inconsistently with a pro-competitive arrangement, as they sought to pressure another publisher (whose market share was growing at the Publisher Defendants' expense after the Apple Agency Contracts became effective) to join them.

86. Penguin appears to have taken the lead in these efforts. Its U.S. CEO, David Shanks, twice directly told the executives of the holdout major publisher about his displeasure with their decision to continue selling e-books on the wholesale model. Mr. Shanks tried to justify the actions of the conspiracy as an effort to save brick-and-mortar bookstores and criticized the other publisher for ''not helping'' the group. The executives of the other publisher responded to Mr. Shanks's complaints by explaining their objections to the agency model.

87. Mr. Shanks also encouraged a large print book and e-book retailer to punish the other publisher for not joining Defendants' conspiracy. In March 2010, Mr. Shanks sent an email message to an executive of the retailer complaining that the publisher ''has chosen to stay on their current model and will allow retailers to sell at whatever price they wish.'' Mr. Shanks argued that ''[s]ince Penguin is looking out for [your] welfare at what appears to be great costs to us, I would hope that [you] would be equally brutal to Publishers who have thrown in with your competition with obvious disdain for your welfare. . . . I hope you make [the publisher] hurt like Amazon is doing to [the Publisher Defendants].''

88. When the third-party retailer continued to promote the non-defendant publisher's books, Mr. Shanks applied more pressure. In a June 22, 2010 email to the retailer's CEO, Mr. Shanks claimed to be ''baffled'' as to why the retailer would promote that publisher's books instead of just those published by ''people who stood up for you.''

89. Throughout the summer of 2010, Apple also cajoled the holdout publisher to adopt agency terms in line with those of the Publisher Defendants, including on a phone call between Apple CEO Steve Jobs and the holdout publisher's CEO. Apple flatly refused to sell the holdout publisher's e-books unless and until it agreed to an agency relationship substantially similar to the arrangement between Apple and the Publisher Defendants defined by the Apple Agency Agreements.

E. Conspiracy Succeeds at Raising and Stabilizing Consumer E-book Prices

90. The ostensible maximum prices included in the Apple Agency Agreements' price schedule represent, in practice, actual e-book prices. Indeed, at the time the Publisher Defendants snatched retail pricing authority away from Amazon and other e-book retailers, not one of them had built an internal retail pricing apparatus sufficient to do anything other than set retail prices at the Apple Agency Agreements' ostensible caps. Once their agency agreements took effect, the Publisher Defendants raised e-book prices at all retail outlets to the maximum price level within each tier. Even today, two years after the Publisher Defendants began setting e-book retail prices according to the Apple price tiers, they still set the retail prices for the electronic versions of all or nearly all of their bestselling hardcover titles at the ostensible maximum price allowed by those price tiers.

91. The Publisher Defendants' collective adoption of the Apple Agency Agreements allowed them (facilitated by Apple) to raise, fix, and stabilize retail e-book prices in three steps: (a) they took away retail pricing authority from retailers; (b) they then set retail e-book prices according to the Apple price tiers; and (c) they then exported the agency model and higher retail prices to the rest of the industry, in part to comply with the retail price MFN included in each Apple Agency Agreement.

92. Defendants' conspiracy and agreement to raise and stabilize retail e-book prices by collectively adopting the agency model and Apple price tiers led to an increase in the retail prices of newly released and bestselling e-books. Prior to the Defendants' conspiracy, consumers benefited from price competition that led to $9.99 prices for newly released and bestselling e-books. Almost immediately after Apple launched its iBookstore in April 2010 and the Publisher Defendants imposed agency model pricing on all retailers, the Publisher Defendants' e-book prices for most newly released and bestselling e-books rose to either $12.99 or $14.99.

93. Defendants' conspiracy and agreement to raise and stabilize retail e-book prices by collectively adopting the agency model and Apple price tiers for their newly released and bestselling e-books also led to an increase in average retail prices of the balance of Publisher Defendants' e-book catalogs, their so-called ''backlists.'' Now that the Publisher Defendants control the retail prices of e-books—but Amazon maintains control of its print book retail prices—Publisher Defendants' e-book prices sometimes are higher than Amazon's prices for print versions of the same titles.

VII. Violation Alleged

94. Beginning no later than 2009, and continuing to date, Defendants and their co-conspirators have engaged in a conspiracy and agreement in unreasonable restraint of interstate trade and commerce, constituting a violation of Section 1 of the Sherman Act, 15 U.S.C. 1. This offense is likely to continue and recur unless the relief requested is granted.

95. The conspiracy and agreement consists of an understanding and concert of action among Defendants and their co-conspirators to raise, fix, and stabilize retail e-book prices, to end price competition among e-book retailers, and to limit retail price competition among the Publisher Defendants, ultimately effectuated by collectively adopting and adhering to functionally identical methods of selling e-books and price schedules.

96. For the purpose of forming and effectuating this agreement and conspiracy, some or all Defendants did the following things, among others:

a. Shared their business information, plans, and strategies in order to formulate ways to raise retail e-book prices;

b. Assured each other of support in attempting to raise retail e-book prices;

c. Employed ostensible joint venture meetings to disguise their attempts to raise retail e-book prices;

d. Fixed the method of and formulas for setting retail e-book prices;

e. Fixed tiers for retail e-book prices;

f. Eliminated the ability of e-book retailers to fund retail e-book price decreases out of their own margins; and

g. Raised the retail prices of their newly released and bestselling e-books to the agreed prices—the ostensible price caps—contained in the pricing schedule of their Apple Agency Agreements.

97. Defendants' conspiracy and agreement, in which the Publisher Defendants and Apple agreed to raise, fix, and stabilize retail e-book prices, to end price competition among e-book retailers, and to limit retail price competition among the Publisher Defendants by fixing retail e-book prices, constitutes a *per se* violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

98. Moreover, Defendants' conspiracy and agreement has resulted in obvious and demonstrable anticompetitive effects on consumers in the trade e-books market by depriving consumers of the benefits of competition among e-book retailers as to both retail prices and retail innovations (such as e-book clubs and subscription plans), such that it

constitutes an unreasonable restraint on trade in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

99. Where, as here, defendants have engaged in a *per se* violation of Section 1 of the Sherman Act, no allegations with respect to the relevant product market, geographic market, or market power are required. To the extent such allegations may otherwise be necessary, the relevant product market for the purposes of this action is trade e-books. The anticompetitive acts at issue in this case directly affect the sale of trade e-books to consumers. No reasonable substitute exists for e-books. There are no technological alternatives to e-books, thousands of which can be stored on a single small device. E-books can be stored and read on electronic devices, while print books cannot. E-books can be located, purchased, and downloaded anywhere a customer has an internet connection, while print books cannot. Industry firms also view e-books as a separate market segment from print books, and the Publisher Defendants were able to impose and sustain a significant retail price increase for their trade e-books.

100. The relevant geographic market is the United States. The rights to license e-books are granted on territorial bases, with the United States typically forming its own territory. E-book retailers typically present a unique storefront to U.S. consumers, often with e-books bearing different retail prices than the same titles would command on the same retailer's foreign Web sites.

101. The Publisher Defendants possess market power in the market for trade e-books. The Publisher Defendants successfully imposed and sustained a significant retail price increase for their trade e-books. Collectively, they create and distribute a wide variety of popular e-books, regularly comprising over half of the *New York Times* fiction and non-fiction bestseller lists. Collectively, they provide a critical input to any firm selling trade e-books to consumers. Any retailer selling trade e-books to consumers would not be able to forgo profitably the sale of the Publisher Defendants' e-books.

102. Defendants' agreement and conspiracy has had and will continue to have anticompetitive effects, including:

a. Increasing the retail prices of trade e-books;

b. Eliminating competition on price among e-book retailers;

c. Restraining competition on retail price among the Publisher Defendants;

d. Restraining competition among the Publisher Defendants for favorable relationships with e-book retailers;

e. Constraining innovation among e-book retailers;

f. Entrenching incumbent publishers' favorable position in the sale and distribution of print books by slowing the migration from print books to e-books;

g. Making more likely express or tacit collusion among publishers; and

h. Reducing competitive pressure on print book prices.

103. Defendants' agreement and conspiracy is not reasonably necessary to accomplish any procompetitive objective, or, alternatively, its scope is broader than necessary to accomplish any such objective.

VIII. Request for Relief

104. To remedy these illegal acts, the United States requests that the Court:

a. Adjudge and decree that Defendants entered into an unlawful contract, combination, or conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. 1;

b. Enjoin the Defendants, their officers, agents, servants, employees and attorneys and their successors and all other persons acting or claiming to act in active concert or participation with one or more of them, from continuing, maintaining, or renewing in any manner, directly or indirectly, the conduct alleged herein or from engaging in any other conduct, combination, conspiracy, agreement, understanding, plan, program, or other arrangement having the same effect as the alleged violation or that otherwise violates Section 1 of the Sherman Act, 15 U.S.C. 1, through fixing the method and manner in which they sell e-books, or otherwise agreeing to set the price or release date for e-books, or collective negotiation of e-book agreements, or otherwise collectively restraining retail price competition for e-books;

c. Prohibit the collusive setting of price tiers that can de facto fix prices;

d. Declare null and void the Apple Agency Agreements and any agreement between a Publisher Defendant and an e-book retailer that restricts, limits, or impedes the e-book retailer's ability to set, alter, or reduce the retail price of any e-book or to offer price or other promotions to encourage consumers to purchase any e-book, or contains a retail price MFN;

e. Reform the agreements between Apple and Publisher Defendants to strike the retail price MFN clauses as void and unenforceable; and

f. Award to Plaintiff its costs of this action and such other and further relief as may be appropriate and as the Court may deem just and proper.

Dated: April 11, 2012

For Plaintiff United States Of America:

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United States District Court for the Southern District of New York

United States of America, Plaintiff, v. *Apple, INC., et al., Defendants.* Civil Action No. 12–CV–2826 (DLC) ECF Case

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), Plaintiff United States of America (''United States'') files this Competitive Impact Statement relating to the proposed Final Judgment against Defendant Penguin Group (USA), Inc. and The Penguin Group, a division of Pearson PLC, (collectively these two entities are referred to herein as ''Penguin''), submitted on December 18, 2012, for entry in this antitrust proceeding.

I. Nature and Purpose of the Proceeding

On April 11, 2012, the United States filed a civil antitrust Complaint alleging that Apple, Inc. (''Apple'') and five of the six largest publishers in the United States (''Publisher Defendants'') restrained competition in the sale of electronic books (''e-books''), in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. Shortly after filing the Complaint, the United States filed a proposed final judgment (''Original Judgment'') with respect to Defendants

Hachette Book Group, Inc. (''Hachette''), HarperCollins Publishers L.L.C. (''HarperCollins''), and Simon & Schuster, Inc. (''Simon & Schuster''). That Original Judgment settled this suit as to those three defendants. Following a thorough Tunney Act review process, the Court granted the United States' Motion for Entry of the Original Judgment. (Docket No. 119).

Penguin has now agreed to settle on substantially the same terms as those contained in the Original Judgment. A proposed Final Judgment with respect to Penguin (''Penguin Final Judgment'' or ''PFJ'') that embodies that settlement was filed today. Of course, the case against the remaining Defendants—Apple, Inc., Verlagsgruppe Georg von Holtzbrinck GmbH, and Holtzbrinck Publishers, LLC d/b/a Macmillan—will continue.

The Penguin Final Judgment is described in more detail in Section III below. Because the language of the Penguin Final Judgment closely follows the language of the Original Judgment, this Competitive Impact Statement incorporates but does not repeat the extensive record relating to the Original Judgment.

The United States and Penguin have stipulated that the Penguin Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. Entry of the Penguin Final Judgment would terminate this action as to Penguin, except to the extent that Penguin has stipulated that it will cooperate in the United States' ongoing prosecution of the remaining Defendants, and that this Court would retain jurisdiction to construe, modify, and enforce the Penguin Final Judgment and to punish violations thereof.

II. Brief Summary of the Events Giving Rise To the Alleged Violation of the Antitrust Laws

As described in detail in the United States' Complaint (Docket No. 1), and the Competitive Impact Statement relating to the Original Judgment (''Original CIS,'' Docket No. 5), Publisher Defendants desired to raise retail prices for e-books. (Compl. ¶ 3.) They were primarily upset by Amazon.com, Inc.'s (''Amazon's'') pricing of newly released and bestselling e-books at $9.99 or less. (Compl. ¶¶ 32–34.) Publisher Defendants feared that Amazon would resist any unilateral attempt to force an increase in e-book prices and that, even if an individual Publisher Defendant succeeded in such an attempt, that Publisher Defendant would lose sales to any competitors that had not forced the price of their books to supracompetitive levels. (Compl. ¶¶ 35–36, 46.) They met privately to discuss ways to collectively solve ''the $9.99 problem.'' (Compl. ¶¶ 39–45.) Ultimately, Publisher Defendants agreed to act collectively to raise retail e-book prices. (Compl. ¶¶ 47–50.)

Apple's entry into the e-book business provided a perfect opportunity to coordinate the Publisher Defendants' collective action to raise e-book prices. (Compl. ¶ 51.) At the suggestion of two Publisher Defendants, Apple began to consider selling e-books under an ''agency model,'' whereby the publishers would set the prices consumers ultimately paid for e-books and Apple would take a 30 percent commission as the selling agent. (Compl. ¶¶ 52–54, 63.) Apple recognized that, under this scheme, ''the customer'' would ''pay[] a little more,'' but that Apple would realize margins far in excess of what other retailers then averaged on their sales of newly-released and bestselling e-books. (Compl. ¶ 56.) To achieve this goal, Apple first expressly proposed to each Publisher Defendant that it adopt an agency pricing model with every outlet that would compete with Apple for retail e-book sales, Compl. ¶ 58, and later replaced that express requirement with a unique most favored nation (''MFN'') pricing provision that effectively enforced the Publisher Defendants' commitment to impose the agency pricing model on all other retailers. (Compl. ¶¶ 65–66.) This MFN protected Apple from price competition from other retailers, guaranteeing that its 30 percent margin would not be disturbed. (Compl. ¶ 65.) Apple kept each Publisher Defendant informed about the status of its negotiations with other Publisher Defendants. (Compl. ¶ 61.) In January 2010, Apple sent to each Publisher Defendant substantively identical term sheets that Apple told them were devised after ''talking to all the other publishers.'' (Compl. ¶¶ 62–64.) Those term sheets formed the basis of the nearly identical agency agreements signed by each Publisher Defendant (''Apple Agency Agreements''). The purpose of these agreements was to raise and stabilize e-book prices. (Compl. ¶ 66.) Apple CEO Steve Jobs explained to one Publisher Defendant that the Apple Agency Agreements provided a path for the Publisher Defendants away from $9.99 and to higher retail e-book prices. (Compl. ¶ 71.) He urged the Publisher Defendants to ''[t]hrow in with Apple and see if we can all make a go of this to create a real mainstream e-books market at $12.99 and $14.99.'' *Id.* Apple and the Publisher Defendants adopted these price points in all of the Apple Agency Agreements, which all were signed within a three-day span in January 2010. (Compl. ¶¶ 74–75.) As a result of Defendants' illegal agreement, consumers have paid higher prices for e-books than they would have paid in a market free of collusion. (Compl. ¶¶ 90–93.)

III. Explanation of the Penguin Final Judgment

The language and relief contained in the Penguin Final Judgment is largely identical to the terms included in the Original Judgment. Below, we describe, in abbreviated form, the purpose of each provision of the Penguin Final Judgment. Penguin's decision to join the other settling Publisher Defendants in agreeing to the settlement terms will provide prompt, certain, and effective remedies that will continue the effort to restore competition to the marketplace. Settlement likely will lead to lower e-book prices for many Penguin titles; prices for titles offered by HarperCollins, Hachette, and Simon & Schuster fell soon after those publishers entered into new contracts as a result of the Original Judgment.[2] The requirements and prohibitions included in the Penguin Final Judgment will eliminate Penguin's illegal conduct, prevent recurrence of the same or similar conduct, and establish a robust antitrust compliance program.

A. Required Conduct (Section IV)[3]

The Penguin Final Judgment begins by addressing those agreements used

[2] *See, e.g.,* Scott Nichols, *HarperCollins Offering Discounted eBooks After Price Fixing Settlement,* TechRadar (Sept. 12, 2012), http://www.techradar.com/news/portable-devices/portable-media/harpercollins-offering-discounted-ebooks-after-price-fixing-settlement-1096467 (''Bestselling ebooks from the publisher such as 'The Fallen Angel' and 'Solo' can now be found for $9.99 on Amazon, Barnes and Noble, and other online retailers.''); Nate Hoffelder, *Hachette Has Dropped Agency Pricing on eBooks,* The Digital Reader (Dec. 4, 2012), http://www.the-digital-reader.com/2012/12/04/hachette-has-dropped-agency-pricing-on-ebooks/(''Amazon is discounting the ebooks by $1 to $4 from the list price, and both Barnes & Noble and Apple are making similar discounts''); Jeremy Greenfield, *Simon & Schuster Has a New Deal With Amazon, Other Retailers,* Digital Book World (Dec. 9, 2012), http://www.digitalbookworld.com/2012/looks-like-simon-schuster-has-a-new-deal-with-amazon-other-retailers/(''Ebook prices were lowered for Simon & Schuster titles over the weekend on sites like Amazon and Nook.com to levels several dollars below what they had been earlier in the week.'').

[3] Like the Original Judgment, Sections I–III of the Penguin Final Judgment contain a statement acknowledging the Court's jurisdiction; definitions; and a statement of the scope of the proposed Final Judgment's applicability. As with the settling defendants in the Original Judgment, the definition

collusively to raise and stabilize e-book prices across the industry, requiring that Penguin terminate its Apple Agency Agreement within seven days of this Court's entry. *See* PFJ § IV.A. Because this agreement included an MFN clause—ensuring that Penguin would remove retail pricing control from e-book retailers—Section IV.B requires that Penguin's contracts with retailers that restrict retailer pricing or include a Price MFN also be terminated. *See* PFJ § IV.B. Penguin must take the steps required under each contract to terminate beginning no later than ten days after the Court enters the Penguin Final Judgment. Section IV.B also allows any retailer with such a contract the option to terminate its contract with Penguin on 30 days notice. *See also* Original CIS § III.A.1.

Further, in order to reduce the risk that Penguin may use future joint ventures to eliminate competition among Publisher Defendants, Section IV.C requires that Penguin provide advance notice to the Department of Justice before forming or modifying a joint venture between it and another publisher related to e-books. *See also* Original CIS § III.A.2. Anticipating this requirement, the Penguin Final Judgment notes that Penguin already has provided appropriate notice to the United States of its intent to form a joint venture with Random House, Inc.

Finally, to ensure Penguin's compliance with the Penguin Final Judgment, Section IV.D requires that Penguin provide, on a quarterly basis, each e-book agreement it has reached with any e-book retailer on or after January 1, 2012.

B. Prohibited Conduct (Section V)

In order to ensure that e-book retailers can compete on the price of e-books sold to consumers in the future, the Penguin Final Judgment also prohibits terms that prevent retail price competition. Sections V.A, V.B, and V.C limit Penguin's ability to enter new agreements (and enforce old agreements) that contain two components of the Apple Agency Agreements: the ban on retailer discounting, and the retail price-matching MFNs that ensured agency terms were exported to all e-book retailers. Sections V.A. and V.B. prevent Penguin, for a two-year period, from forbidding retailers to offer price promotions or discounts on its e-books. Allowing e-book retailers to negotiate new contracts with Penguin, without permitting Penguin, for a set period, to prohibit retailers from discounting, will help ensure that new contracts will not be set under the collusive conditions that produced the Apple Agency Agreements. *See* PFJ §§ V.A–B. For a five-year period, Section V.C also stops Penguin from entering into an agreement with an e-book retailer that contains a Price MFN (defined as an MFN relating to price, revenue share or commission available to any retailer). This will eliminate Penguin's ability to use these MFNs to achieve, for a second time, the results of the collusive agreements. *See also* Original CIS § III.B.1.

Further, Penguin may not retaliate against or punish an e-book retailer based on the retailer's e-book prices or its discounting or promotional choices. PFJ § V.D. Nor may Penguin repeat its previous attempt to retaliate by proxy, as this provision bars Penguin from encouraging another company to retaliate against an e-book retailer on its behalf. However, the anti-retaliation provision does not prohibit Penguin from unilaterally entering into and enforcing agency agreements with e-book retailers after the two-year proscription, required in Sections V.A and V.B, has expired. *See also* Original CIS § III.B.2.

In addition to addressing terms used in the Apple Agency Agreements to implement the conspiracy, the Penguin Final Judgment also forbids a recurrence of the alleged conspiracy, and prohibits industry practices that facilitated it. Section V.E prohibits Penguin from agreeing with other Defendants or e-book publishers to raise or set e-book retail prices or coordinate terms relating to the licensing, distribution, or sale of e-books. Section V.F likewise prohibits Penguin from directly or indirectly conveying confidential or competitively sensitive information to any other e-book publisher. Banning such communications is critical here, where communications among publishing competitors were a common practice, and led directly to the collusive agreement alleged in the Complaint. *See also* Original CIS § III.B.3.

C. Permitted Conduct (Section VI)

The Penguin Final Judgment also specifically carves out some conduct—which normally is permitted under the antitrust laws—that Penguin may unilaterally pursue. Section VI.A of the Penguin Final Judgment allows Penguin to compensate e-book retailers for services that they provide to publishers or consumers and help promote or sell more e-books. Section VI.B permits Penguin to negotiate a commitment from an e-book retailer that a retailer's aggregate expenditure on discounts and promotions of Penguin's e-books will not exceed the retailer's aggregate commission under an agency agreement in which Penguin sets the e-book price and the retailer is compensated through a commission. These provisions allow Penguin to prevent a retailer selling its entire catalogue at a sustained loss, while still permitting retailers to offer discounts under Sections V.A and V.B. Absent the collusion here, the antitrust laws would normally permit a publisher unilaterally to negotiate for such protections. *See also* Original CIS § III.C.

D. Antitrust Compliance (Section VII)

As outlined in Section VII, Penguin also must designate an Antitrust Compliance Officer, who is required to distribute copies of the Penguin Final Judgment; ensure training related to the Penguin Final Judgment and the antitrust laws; certify compliance with the Penguin Final Judgment; and conduct an annual antitrust compliance audit. This compliance program is necessary considering the extensive communication among competitors' CEOs that facilitated Defendants' agreement. *See also* Original CIS § III.D.

IV. Alternatives To the Penguin Final Judgment

The United States considered, as an alternative to the Penguin Final Judgment, a full trial on the merits against Penguin. The United States believes that the relief contained in the Penguin Final Judgment will more quickly restore retail price competition to consumers.

V. Remedies Available To Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the Penguin Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the Penguin Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the Defendants.

of Penguin has been drafted to ensure that the Judgment does not bind subsidiaries of Penguin's parent corporation that are not in the book publishing business. Additionally, the definition has been modified to avoid any doubt that if Penguin and Random House, Inc. combine, as recently proposed, the future entity will be subject to the decree. *See* PFJ § II.K.

VI. Procedures Available for Modification of the Penguin Final Judgment

The United States and Penguin have stipulated that the Penguin Final Judgment may be entered by this Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this Court's determination that the Penguin Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the Penguin Final Judgment within which any person may submit to the United States written comments regarding the Penguin Final Judgment. Any person who wishes to comment should do so within sixty (60) days of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later.

All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the Penguin Final Judgment at any time prior to the Court's entry of judgment. The comments and the responses of the United States will be filed with the Court and published either in the **Federal Register** or, with the Court's permission, on the Department of Justice Web site.[4] Written comments should be submitted to: John Read, Chief, Litigation III Section, Antitrust Division, U.S. Department of Justice, 450 5th Street, NW., Suite 4000,y Washington, DC 20530.

The Penguin Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for modification, interpretation, or enforcement of the Final Judgment

VII. Standard of Review Under the APPA for the Penguin Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court is directed to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B); *see generally United States* v. *KeySpan Corp.,* 763 F. Supp. 2d 633, 637–38 (S.D.N.Y. 2011) (WHP) (discussing Tunney Act standards); *United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing standards for public interest determination).

In other words, under the Tunney Act, a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1458–62 (DC Cir. 1995). The court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *Id.* at 1461; *accord United States* v. *Alex. Brown & Sons, Inc.,* 963 F. Supp. 235, 238 (S.D.N.Y. 1997) (quoting *Microsoft,* 56 F.3d at 1460), *aff'd sub nom. United States* v. *Bleznak,* 153 F.3d 16 (2d Cir. 1998); *United States* v. *KeySpan,* 763 F. Supp. 2d at 637 (same). With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Alex. Brown & Sons,* 963 F. Supp. at 238. Instead, the court should grant due respect to the United States' ''prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case.'' *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003). After all, the court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.'' Bechtel,* 648 F.2d at 666 (emphasis added) (citations omitted); *accord Alex. Brown,* 963 F. Supp. at 238.[5]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the Penguin Final Judgment.

December 18, 2012

Respectfully submitted,

s/Mark W. Ryan.
Mark W. Ryan,
Lawrence E. Buterman,
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United States Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 4000, Washington, DC 20530. (202) 532–4753. Mark.W.Ryan@usdoj.gov.

Certificate of Service

I, Stephen T. Fairchild, hereby certify that on December 18, 2012, I caused a copy of the United States' Competitive Impact Statement to be served by the Electronic Case Filing System, which included the individuals listed below.

For Apple:
Daniel S. Floyd,
Crutcher LLP, 333 S. Grand Avenue, Suite 4600, Los Angeles, CA 90070, (213) 229–7148, dfloyd@gibsondunn.com.

For Macmillan and Verlagsgruppe Georg Von Holtzbrinck GMBH:

Joel M. Mitnick

Sidley Austin LLP, 787 Seventh Avenue, New York, NY 10019, (212) 839–5300, jmitnick@sidley.com.

For Penguin U.S.A. and the Penguin Group:

Daniel F. McInnis,

Akin Gump Strauss Hauer & Feld, LLP, 1333 New Hampshire Avenue NW., Washington, DC 20036, (202) 887–4000, dmcinnis@akingump.com.

[4] The United States posts or links to all public materials regarding *United States* v. *Apple, Inc.* at: http://www.justice.gov/atr/cases/applebooks.html.

[5] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [Tunney Act] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'').

For Hachette:

Walter B. Stuart, IV,

Freshfields Bruckhaus Deringer LLP, 601 Lexington Avenue, New York, NY 10022, (212) 277–4000, walter.stuart@freshfields.com.

For HarperCollins:

Paul Madison Eckles,

Skadden, Arps, Slate, Meagher & Flom, Four Times Square, 42nd Floor, New York, NY 10036, (212) 735–2578, pmeckles@skadden.com.

For Simon & Schuster:

Yehudah Lev Buchweitz,

Weil, Gotshal & Manges LLP (NYC), 767 Fifth Avenue, 25th Fl., New York, NY 10153, (212) 310–8000 x8256, yehudah.buchweitz@weil.com.

Additionally, courtesy copies of this Competitive Impact Statement have been provided to the following:

For the State of Connecticut:

W. Joseph Nielsen,

Assistant Attorney General, Antitrust Division, Office of the Attorney General, 55 Elm Street, Hartford, CT 06106, (860) 808–5040, Joseph.Nielsen@ct.gov.

For the Private Plaintiffs:

Jeff D. Friedman,

Hagens Berman, 715 Hearst Ave., Suite 202, Berkeley, CA 94710, (510) 725–3000, jefff@hbsslaw.com.

For the State of Texas:

Gabriel R. Gervey,

Assistant Attorney General, Antitrust Division, Office of the Attorney General of Texas, 300 W. 15th Street, Austin, Texas 78701, (512) 463–1262, gabriel.gervey@oag.state.tx.us.

Stephen T. Fairchild,

Attorney for the United States, United States Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 4000, Washington, DC 20530, (202) 532–4925, stephen.fairchild@usdoj.gov.

United States District Court

United *States Of America, Plaintiff,*
v.
Apple, Inc., et al., *Defendants.* Civil Action No. 1:12–CV–2826 (DLC) ECF Case

[Proposed] Final Judgment as to Defendants the Penguin Group, A Division of Pearson PLC, and Penguin Group (USA), Inc.

Whereas, Plaintiff, the United States of America filed its Complaint on April 11, 2012, alleging that Defendants conspired to raise retail prices of E-books in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. 1, and Plaintiff and Penguin, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law;

And Whereas, this Final Judgment does not constitute any admission by Penguin that the law has been violated or of any issue of fact or law, other than that the jurisdictional facts as alleged in the Complaint are true;

And Whereas, Penguin agrees to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, Plaintiff requires Penguin to agree to undertake certain actions and refrain from certain conduct for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, Penguin has represented to the United States that the actions and conduct restrictions can and will be undertaken and that it will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

Now Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of Penguin, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over Penguin. The Complaint states a claim upon which relief may be granted against Penguin under Section 1 of the Sherman Act, as amended, 15 U.S.C. ' 1.

II. Definitions

As used in this Final Judgment:

A. ''Agency Agreement'' means an agreement between an E-book Publisher and an E-book Retailer under which the E-book Publisher Sells E-books to consumers through the E-book Retailer, which under the agreement acts as an agent of the E-book Publisher and is paid a commission in connection with the Sale of one or more of the E-book Publisher's E-books.

B. ''Apple'' means Apple, Inc., a California corporation with its principal place of business in Cupertino, California, its successors and assigns, and its parents, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Department of Justice'' means the Antitrust Division of the United States Department of Justice.

D. ''E-book'' means an electronically formatted book designed to be read on a computer, a handheld device, or other electronic devices capable of visually displaying E-books. For purposes of this Final Judgment, the term E-book does not include (1) an audio book, even if delivered and stored digitally; (2) a standalone specialized software application or ''app'' sold through an ''app store'' rather than through an e-book store (*e.g.,* through Apple's ''App Store'' rather than through its ''iBookstore'' or ''iTunes'') and not designed to be executed or read by or through a dedicated E-book reading device; or (3) a media file containing an electronically formatted book for which most of the value to consumers is derived from audio or video content contained in the file that is not included in the print version of the book.

E. ''E-book Publisher'' means any Person that, by virtue of a contract or other relationship with an E-book's author or other rights holder, owns or controls the necessary copyright or other authority (or asserts such ownership or control) over any E-book sufficient to distribute the E-book within the United States to E-book Retailers and to permit such E-book Retailers to Sell the E-book to consumers in the United States. Publisher Defendants are E-book Publishers. For purposes of this Final Judgment, E-book Retailers are not E-book Publishers.

F. ''E-book Retailer'' means any Person that lawfully Sells (or seeks to lawfully Sell) E-books to consumers in the United States, or through which a Publisher Defendant, under an Agency Agreement, Sells E-books to consumers. For purposes of this Final Judgment, Publisher Defendants and all other Persons whose primary business is book publishing are not E-book Retailers.

G. ''Hachette'' means Hachette Book Group, Inc., a Delaware corporation with its principal place of business in New York, New York, its successors and assigns, and its subsidiaries, divisions, groups, and partnerships, and their directors, officers, managers, agents, and employees.

H. ''HarperCollins'' means HarperCollins Publishers L.L.C., a Delaware limited liability company with its principal place of business in New York, New York, its successors and assigns, and its subsidiaries, divisions, groups, and partnerships, and their directors, officers, managers, agents, and employees.

I. ''Including'' means including, but not limited to.

J. ''Macmillan'' means (1) Holtzbrinck Publishers, LLC d/b/a Macmillan, a New York limited liability company with its principal place of business in New York, New York; and (2) Verlagsgruppe

Georg von Holtzbrinck GmbH, a German corporation with its principal place of business in Stuttgart, Germany, their successors and assigns, and their parents, subsidiaries, divisions, groups, affiliates, and partnerships, and their directors, officers, managers, agents, and employees.

K. ''Penguin'' means (1) Penguin Group (USA), Inc., a Delaware corporation with its principal place of business in New York, New York; (2) The Penguin Group, a division of U.K. corporation Pearson plc with its principal place of business in London, England; (3) The Penguin Publishing Company Ltd, a company registered in England and Wales with its principal place of business in London, England; and (4) Dorling Kindersley Holdings Limited, a company registered in England and Wales with its principal place of business in London, England; and each of their respective successors and assigns (expressly including Penguin Random House and any similar joint venture between Penguin and Random House Inc.); each of their respective subsidiaries, divisions, groups, partnerships; and each of their respective directors, officers, managers, agents, and employees. Where Section IV.A, IV.B, IV.D, or VII imposes an obligation on Penguin to engage in certain conduct by either a date certain or by a specified day after entry of this Final Judgment, any successor or assign whose acquisition of or combination or other relationship with Penguin is consummated after entry of this Final Judgment shall meet each such obligation within thirty days after consummation. The prohibitions of Section V.A of this Final Judgment shall expire for any successor or assign of Penguin on the dates on which such prohibitions would have expired for Penguin had the acquisition, combination, or other relationship not occurred. Where the Final Judgment imposes an obligation on Penguin to engage in or refrain from engaging in certain conduct, that obligation shall apply to Penguin and to any joint venture or other business arrangement established by Penguin and one or more Publisher Defendants.

L. ''Penguin Random House'' means the joint venture entities, which will operate under the name ''Penguin Random House,'' that will be formed pursuant to the Contribution Agreement, dated October 29, 2012, by and between Pearson plc and Bertelsmann SE & Co. KGaA.

M. ''Person'' means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

N. ''Price MFN'' means a term in an agreement between an E-book Publisher and an E-book Retailer under which

1. the Retail Price at which an E-book Retailer or, under an Agency Agreement, an E-book Publisher Sells one or more E-books to consumers depends in any way on the Retail Price, or discounts from the Retail Price, at which any other E-book Retailer or the E-book Publisher, under an Agency Agreement, through any other E-book Retailer Sells the same E-book(s) to consumers;

2. the Wholesale Price at which the E-book Publisher Sells one or more E-books to that E-book Retailer for Sale to consumers depends in any way on the Wholesale Price at which the E-book Publisher Sells the same E-book(s) to any other E-book Retailer for Sale to consumers; or

3. the revenue share or commission that E-book Retailer receives from the E-book Publisher in connection with the Sale of one or more E-books to consumers depends in any way on the revenue share or commission that (a) any other E-book Retailer receives from the E-book Publisher in connection with the Sale of the same E-book(s) to consumers, or (b) that E-book Retailer receives from any other E-book Publisher in connection with the Sale of one or more of the other E-book Publisher's E-books.

For purposes of this Final Judgment, it will not constitute a Price MFN under subsection 3 of this definition if Penguin agrees, at the request of an E-book Retailer, to meet more favorable pricing, discounts, or allowances offered to the E-book Retailer by another E-book Publisher for the period during which the other E-book Publisher provides that additional compensation, so long as that agreement is not or does not result from a pre-existing agreement that requires Penguin to meet all requests by the E-book Retailer for more favorable pricing within the terms of the agreement.

O. ''Publisher Defendants'' means Hachette, HarperCollins, Macmillan, Penguin, and Simon & Schuster. Where this Final Judgment imposes an obligation on Publisher Defendants to engage in or refrain from engaging in certain conduct, that obligation shall apply to each Publisher Defendant individually and to any joint venture or other business arrangement established by any two or more Publisher Defendants.

P. ''Purchase'' means a consumer's acquisition of one or more E-books as a result of a Sale.

Q. ''Retail Price'' means the price at which an E-book Retailer or, under an Agency Agreement, an E-book Publisher Sells an E-book to a consumer.

R. ''Sale'' means delivery of access to a consumer to read one or more E-books (purchased alone, or in combination with other goods or services) in exchange for payment; ''Sell'' or ''Sold'' means to make or to have made a Sale of an E-book to a consumer.

S. ''Simon & Schuster'' means Simon & Schuster, Inc., a New York corporation with its principal place of business in New York, New York, its successors and assigns, and its subsidiaries, divisions, groups, and partnerships, and their directors, officers, managers, agents, and employees.

T. ''Wholesale Price'' means (1) the net amount, after any discounts or other adjustments (not including promotional allowances subject to Section 2(d) of the Robinson-Patman Act, 15 U.S.C. 13(d)), that an E-book Retailer pays to an E-book Publisher for an E-book that the E-book Retailer Sells to consumers; or (2) the Retail Price at which an E-book Publisher, under an Agency Agreement, Sells an E-book to consumers through an E-book Retailer minus the commission or other payment that E-book Publisher pays to the E-book Retailer in connection with or that is reasonably allocated to that Sale.

III. Applicability

This Final Judgment applies to Penguin and all other Persons in active concert or participation with Penguin who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Required Conduct

A. Within seven days after entry of this Final Judgment, Penguin shall terminate any agreement with Apple relating to the Sale of E-books that was executed prior to Penguin's stipulation to the entry of this Final Judgment.

B. For each agreement between Penguin and an E-book Retailer other than Apple that (1) restricts, limits, or impedes the E-book Retailer's ability to set, alter, or reduce the Retail Price of any E-book or to offer price discounts or any other form of promotions to encourage consumers to Purchase one or more E-books; or (2) contains a Price MFN, Penguin shall notify the E-book Retailer, by January 8, 2013, that the E-book Retailer may terminate the agreement with thirty-days notice and shall, thirty days after the E-book Retailer provides such notice, release the E-book Retailer from the agreement. For each such agreement that the E-book

Retailer has not terminated within ten days after entry of this Final Judgment, Penguin shall, as soon as permitted under the agreement, take each step required under the agreement to cause the agreement to be terminated and not renewed or extended.

C. Penguin shall notify the Department of Justice in writing at least sixty days in advance of the formation or material modification of any joint venture or other business arrangement relating to the Sale, development, or promotion of E-books in the United States in which Penguin and at least one other E-book Publisher (including another Publisher Defendant) are participants or partial or complete owners. Such notice shall describe the joint venture or other business arrangement, identify all E-book Publishers that are parties to it, and attach the most recent version or draft of the agreement, contract, or other document(s) formalizing the joint venture or other business arrangement. Within thirty days after Penguin provides notification of the joint venture or business arrangement, the Department of Justice may make a written request for additional information. If the Department of Justice makes such a request, Penguin shall not proceed with the planned formation or material modification of the joint venture or business arrangement until thirty days after substantially complying with such additional request(s) for information. The failure of the Department of Justice to request additional information or to bring an action under the antitrust laws to challenge the formation or material modification of the joint venture shall neither give rise to any inference of lawfulness nor limit in any way the right of the United States to investigate the formation, material modification, or any other aspects or activities of the joint venture or business arrangement and to bring actions to prevent or restrain violations of the antitrust laws.

The notification requirements of this Section IV.C shall not apply to ordinary course business arrangements between Penguin and another E-book Publisher (not a Publisher Defendant) that do not relate to the Sale of E-books to consumers, or to business arrangements the primary or predominant purpose or focus of which involves: (i) E-book Publishers co-publishing one or more specifically identified E-book titles or a particular author's E-books; (ii) Penguin licensing to or from another E-book Publisher the publishing rights to one or more specifically identified E-book titles or a particular author's E-books; (iii) Penguin providing technology services to or receiving technology services from another E-book Publisher (not a Publisher Defendant) or licensing rights in technology to or from another E-book Publisher; or (iv) Penguin distributing E-books published by another E-book Publisher (not a Publisher Defendant). The notification requirements of this Section IV.C shall also not apply to the formation of Penguin Random House, review of which is pending before the Department of Justice.

D. Penguin shall furnish to the Department of Justice (1) by January 8, 2013, one complete copy of each agreement, executed, renewed, or extended on or after January 1, 2012, between Penguin and any E-book Retailer relating to the Sale of E-books, and, (2) thereafter, on a quarterly basis, each such agreement executed, renewed, or extended since Penguin's previous submission of agreements to the Department of Justice.

V. Prohibited Conduct

A. For two years, Penguin shall not restrict, limit, or impede an E-book Retailer's ability to set, alter, or reduce the Retail Price of any E-book or to offer price discounts or any other form of promotions to encourage consumers to Purchase one or more E-books, such two-year period to run separately for each E-book Retailer, at Penguin's option, from either:

1. the termination of an agreement between Penguin and the E-book Retailer that restricts, limits, or impedes the E-book Retailer's ability to set, alter, or reduce the Retail Price of any E-book or to offer price discounts or any other form of promotions to encourage consumers to Purchase one or more E-books; or

2. the date on which Penguin notifies the E-book Retailer in writing that Penguin will not enforce any term(s) in its agreement with the E-book Retailer that restrict, limit, or impede the E-book Retailer from setting, altering, or reducing the Retail Price of one or more E-books, or from offering price discounts or any other form of promotions to encourage consumers to Purchase one or more E-books.

Penguin shall notify the Department of Justice of the option it selects for each E-book Retailer within seven days of making its selection.

B. For two years after Penguin's stipulation to the entry of this Final Judgment, Penguin shall not enter into any agreement with any E-book Retailer that restricts, limits, or impedes the E-book Retailer from setting, altering, or reducing the Retail Price of one or more E-books, or from offering price discounts or any other form of promotions to encourage consumers to Purchase one or more E-books.

C. Penguin shall not enter into any agreement with an E-book Retailer relating to the Sale of E-books that contains a Price MFN.

D. Penguin shall not retaliate against, or urge any other E-book Publisher or E-book Retailer to retaliate against, an E-book Retailer for engaging in any activity that Penguin is prohibited by Sections V.A, V.B, and VI.B.2 of this Final Judgment from restricting, limiting, or impeding in any agreement with an E-book Retailer. After the expiration of prohibitions in Sections V.A and V.B of this Final Judgment, this Section V.D shall not prohibit Penguin from unilaterally entering into or enforcing any agreement with an E-book Retailer that restricts, limits, or impedes the E-book Retailer from setting, altering, or reducing the Retail Price of any of Penguin's E-books or from offering price discounts or any other form of promotions to encourage consumers to Purchase any of Penguin's E-books.

E. Penguin shall not enter into or enforce any agreement, arrangement, understanding, plan, program, combination, or conspiracy with any E-book Publisher (including another Publisher Defendant) to raise, stabilize, fix, set, or coordinate the Retail Price or Wholesale Price of any E-book or fix, set, or coordinate any term or condition relating to the Sale of E-books.

This Section V.E shall not prohibit Penguin from entering into and enforcing agreements relating to the distribution of another E-book Publisher's E-books (not including the E-books of another Publisher Defendant) or to the co-publication with another E-book Publisher of specifically identified E-book titles or a particular author's E-books, or from participating in output-enhancing industry standard-setting activities relating to E-book security or technology.

F. Penguin (including each officer of each parent of Penguin who exercises direct control over Penguin's business decisions or strategies) shall not convey or otherwise communicate, directly or indirectly (including by communicating indirectly through an E-book Retailer with the intent that the E-book Retailer convey information from the communication to another E-book Publisher or knowledge that it is likely to do so), to any other E-book Publisher (including to an officer of a parent of a Publisher Defendant) any competitively sensitive information, including:

1. its business plans or strategies;

2. its past, present, or future wholesale or retail prices or pricing

strategies for books sold in any format (*e.g.,* print books, E-books, or audio books);

3. any terms in its agreement(s) with any retailer of books Sold in any format; or

4. any terms in its agreement(s) with any author.

This Section V.F shall not prohibit Penguin from communicating (a) in a manner and through media consistent with common and reasonable industry practice, the cover prices or wholesale or retail prices of books sold in any format to potential purchasers of those books; or (b) information Penguin needs to communicate in connection with (i) its enforcement or assignment of its intellectual property or contract rights, (ii) a contemplated merger, acquisition, or purchase or sale of assets, (iii) its distribution of another E-book Publisher's E-books, or (iv) a business arrangement under which E-book Publishers agree to co-publish, or an E-book Publisher agrees to license to another E-book Publisher the publishing rights to, one or more specifically identified E-book titles or a particular author's E-books.

VI. Permitted Conduct

A. Nothing in this Final Judgment shall prohibit Penguin unilaterally from compensating a retailer, including an E-book Retailer, for valuable marketing or other promotional services rendered.

B. Notwithstanding Sections V.A and V.B of this Final Judgment, Penguin may enter into Agency Agreements with E-book Retailers under which the aggregate dollar value of the price discounts or any other form of promotions to encourage consumers to Purchase one or more of Penguin's E-books (as opposed to advertising or promotions engaged in by the E-book Retailer not specifically tied or directed to Penguin's E-books) is restricted; *provided that* (1) such agreed restriction shall not interfere with the E-book Retailer's ability to reduce the final price paid by consumers to purchase Penguin's E-books by an aggregate amount equal to the total commissions Penguin pays to the E-book Retailer, over a period of at least one year, in connection with the Sale of Penguin's E-books to consumers; (2) Penguin shall not restrict, limit, or impede the E-book Retailer's use of the agreed funds to offer price discounts or any other form of promotions to encourage consumers to Purchase one or more E-books; and (3) the method of accounting for the E-book Retailer's promotional activity does not restrict, limit, or impede the E-book Retailer from engaging in any form of retail activity or promotion.

VII. Antitrust Compliance

Within thirty days after entry of this Final Judgment, Penguin shall designate its general counsel or chief legal officer, or an employee reporting directly to its general counsel or chief legal officer, as Antitrust Compliance Officer with responsibility for ensuring Penguin's compliance with this Final Judgment. The Antitrust Compliance Officer shall be responsible for the following:

A. Furnishing a copy of this Final Judgment, within thirty days of its entry, to each of Penguin's officers and directors, and to each of Penguin's employees engaged, in whole or in part, in the distribution or Sale of E-books;

B. furnishing a copy of this Final Judgment in a timely manner to each officer, director, or employee who succeeds to any position identified in Section VII.A of this Final Judgment;

C. ensuring that each person identified in Sections VII.A and VII.B of this Final Judgment receives at least four hours of training annually on the meaning and requirements of this Final Judgment and the antitrust laws, such training to be delivered by an attorney with relevant experience in the field of antitrust law;

D. obtaining, within sixty days after entry of this Final Judgment and on each anniversary of the entry of this Final Judgment, from each person identified in Sections VII.A and VII.B of this Final Judgment, and thereafter maintaining, a certification that each such person (a) has read, understands, and agrees to abide by the terms of this Final Judgment; and (b) is not aware of any violation of this Final Judgment or the antitrust laws or has reported any potential violation to the Antitrust Compliance Officer;

E. conducting an annual antitrust compliance audit covering each person identified in Sections VII.A and VII.B of this Final Judgment, and maintaining all records pertaining to such audits;

F. communicating annually to Penguin's employees that they may disclose to the Antitrust Compliance Officer, without reprisal, information concerning any potential violation of this Final Judgment or the antitrust laws;

G. taking appropriate action, within three business days of discovering or receiving credible information concerning an actual or potential violation of this Final Judgment, to terminate or modify Penguin's conduct to assure compliance with this Final Judgment; and, within seven days of taking such corrective actions, providing to the Department of Justice a description of the actual or potential violation of this Final Judgment and the corrective actions taken;

H. furnishing to the Department of Justice on a quarterly basis electronic copies of any non-privileged communications with any Person containing allegations of Penguin's noncompliance with any provisions of this Final Judgment;

I. maintaining, and furnishing to the Department of Justice on a quarterly basis, a log of all oral and written communications, excluding privileged or public communications, between or among (1) any of Penguin's officers, directors, or employees involved in the development of Penguin's plans or strategies relating to E-books, and (2) any person employed by or associated with another Publisher Defendant, relating, in whole or in part, to the distribution or sale in the United States of books sold in any format, including an identification (by name, employer, and job title) of the author and recipients of and all participants in the communication, the date, time, and duration of the communication, the medium of the communication, and a description of the subject matter of the communication (for a collection of communications solely concerning a single business arrangement that is specifically exempted from the reporting requirements of Section IV.C of this Final Judgment, Penguin may provide a summary of the communications rather than logging each communication individually); and

J. providing to the Department of Justice annually, on or before the anniversary of the entry of this Final Judgment, a written statement as to the fact and manner of Penguin's compliance with Sections IV, V, and VII of this Final Judgment.

VIII. Compliance Inspection

U. For purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the Department of Justice, including consultants and other persons retained by the Department of Justice, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Penguin, be permitted:

1. Access during Penguin's office hours to inspect and copy, or at the option of the United States, to require Penguin to provide to the United States hard copy or electronic copies of all books, ledgers, accounts, records, data,

and documents in the possession, custody, or control of Penguin, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, Penguin's officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Penguin.

V. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Penguin shall submit written reports or respond to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested. Written reports authorized under this paragraph may, in the sole discretion of the United States, require Penguin to conduct, at their cost, an independent audit or analysis relating to any of the matters contained in this Final Judgment.

W. No information or documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

X. If at the time information or documents are furnished by Penguin to the United States, Penguin represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Penguin marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give Penguin ten calendar days notice prior to divulging such material in any civil or administrative proceeding.

IX. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

X. No Limitation on Government Rights

Nothing in this Final Judgment shall limit the right of the United States to investigate and bring actions to prevent or restrain violations of the antitrust laws concerning any past, present, or future conduct, policy, or practice of Penguin.

XI. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire five years from the date of its entry.

XII. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. ' 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: ____

Court approval subject to procedures set forth in the Antitrust Procedures and Penalties Act, 15 U.S.C. 16

____

United States District Judge

[FR Doc. 2012–31339 Filed 12–28–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Reporting for the National Farmworker Jobs Program under Section 167 of Title I of the Workforce Investment Act

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) revision titled, ''Reporting for the National Farmworker Jobs Program under Section 167 of Title I of the Workforce Investment Act,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before January 30, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov Web site, http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR relates to the operation of employment and training programs for migrant and seasonal farmworkers under title I, section 167 of the Workforce Investment Act (WIA). It also contains the basis of the performance standards system for WIA section 167 grantees, which is used for program oversight, evaluation, and performance assessment.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0425. The current approval is scheduled to expire on December 31, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on September 7, 2012 (77 FR 55229).

Interested parties are encouraged to send comments to the OMB, Office of

Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0425. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Reporting for the National Farmworker Jobs Program under Section 167 of Title I of the Workforce Investment Act.

OMB Control Number: 1205–0425.

Affected Public: State, Local, and Tribal Governments; and Private Sector—not-for-profit institutions.

Total Estimated Number of Respondents: 69.

Total Estimated Number of Responses: 29,949.

Total Estimated Annual Burden Hours: 74,059.

Total Estimated Annual Other Costs Burden: $0.

Dated: December 20, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–31389 Filed 12–28–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Workforce Investment Act Management Information and Reporting System

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) revision titled, ''Workforce Investment Act Management Information and Reporting System,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before January 30, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: OIRA_submission@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at DOL_PRA_PUBLIC@dol.gov.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR is for a three-year extension to the OMB PRA approval for the Workforce Investment Act Management Information and Reporting System with modifications to make Workforce Investment Act (WIA) performance reporting completely compatible with workforce investment streamlined performance reporting. This WIA reporting structure includes quarterly (ETA 9090) and annual (ETA 9091) reports, as well as a standardized individual record file for program participants, called the Workforce Investment Act Standardized Record Data (WIASRD). States submit WIASRD to the ETA and include participant level information on customer demographics, type of services received, and statutorily defined measures of outcomes. This ICR also covers customer satisfaction surveys related to the program.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0420. The current approval is scheduled to expire on December 31, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on September 26, 2012 (77 FR 59224).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0420. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Workforce Investment Act Management Information and Reporting System.

OMB Control Number: 1205–0420.

Affected Public: Individuals or Households and State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 9,053.

Total Estimated Number of Responses: 1,410,290.

Total Estimated Annual Burden Hours: 508,589.

Total Estimated Annual Other Costs Burden: $0.

Dated: December 21, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–31390 Filed 12–28–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards codified in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before January 30, 2013.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202–693–9441.

3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: George F. Triebsch, Director, Office of Standards, Regulations and Variances. Persons delivering documents are required to check in at the receptionist's desk on the 21st floor. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

(1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

(2) That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket No: M–2012–163–C.

Petitioner: Tennco Energy, Inc., P.O. Box 517, Middlesboro, Kentucky 40965.

Mine: Hance Mine No. 1, MSHA I.D. No. 15–19408, located in Bell County, Kentucky.

Regulation Affected: 30 CFR 75.208 (Warning devices).

Modification Request: The petitioner requests a modification of the existing standard to permit a readily visible warning to be posted at the second row of permanent roof support outby unsupported roof or a physical barrier to be installed to impede travel beyond permanent support, except during the installation of roof supports. The petitioner states that:

(1) The Kentucky Office of Mine Safety and Licensing requires ''a warning device'' to be placed installed on the second row of permanent roof support outby unsupported roof.

(2) MSHA's approved Precautions for Remote Control Operation of Continuous Mining Machines states that ''while using remote controls, the continuous mining machine operator and all other persons will position themselves no closer than the second ''full row'' of installed roof bolts outby the face.

(3) This petition is necessary to improve safety and to attain commonality between State and Federal regulations.

(4) Safety increases when the distance an employee keeps from unsupported roof increases.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket No: M–2012–164–C.

Petitioner: Gateway Eagle Coal Company, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Campbells Creek No. 10 Mine, MSHA I.D. No. 46–08637, located in Boone County, West Virginia.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in or inby the last open crosscut.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air outby the last open crosscut.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–165–C.

Petitioner: Gateway Eagle Coal Company, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Campbells Creek No. 10 Mine, MSHA I.D. No. 46–08637, located in Boone County, West Virginia.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in return airways will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in return airways.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn out of the return airways.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air out of the return.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–166–C.

Petitioner: Gateway Eagle Coal Company, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Campbells Creek No. 10 Mine, MSHA I.D. No. 46–08637, located in Boone County, West Virginia.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings and longwall faces,

including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in future mines that may mine in close proximity to these same active mines, it is necessary to determine the exact location and extent of the mine workings.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings or longwall faces will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings and longwall faces.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket No: M–2012–167–C.

Petitioner: Gateway Eagle Coal Company, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Farley Eagle Mine, MSHA I.D. No. 46–01537, located in Boone County West Virginia.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

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(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper

operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air outby the last open crosscut.

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The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–168–C.

Petitioner: Gateway Eagle Coal Company, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Farley Eagle Mine, MSHA I.D. No. 46–01537, located in Boone County, West Virginia.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

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Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings and longwall faces, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

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The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Dated: December 21, 2012.

George F. Triebsch,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 2012–31233 Filed 12–28–12; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0314]

Proposed Revision 0 on Access Authorization—Operational Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard review plan-draft section revision: request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is soliciting public comment on NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants'' LWR Edition: Section 13.6.4, ''Access Authorization—Operational Program.'' The NRC seeks comments on the new Section 13.6.4 of the Standard Review Plan (SRP) concerning implementation of an access authorization program through revisions to the nuclear power reactor licensee Commission-approved Physical Security Plan under of Title 10 of the *Code of Federal Regulations* (10 CFR) 73.55, ''Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors against Radiological Sabotage,'' Section (b)(7), that integrates the performance requirements contained within 10 CFR 73.56, ''Personnel Access Authorization Requirements for Nuclear Power Plants,'' and the criminal history checks of 10 CFR 73.57, ''Requirements for Criminal History Checks of Individuals Granted Unescorted Access to a Nuclear Power Facility or Access to Safeguards Information by Power Reactor Licensees.'' The current SRP does not contain guidance on the review of an applicant's proposed access authorization program.

DATES: Comments must be filed no later than 30 days from the date of publication of this notice in the **Federal Register**. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and is publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0314. You may submit comments by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0314. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Amy E. Cubbage, Division of Advanced Reactors and Rulemaking, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–2875, email: *amy.cubbage@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0314 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–2012–0314.
- *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 the proposed revision of SRP 13.6.4 on ''Access Authorization—Operational Program,'' is available in ADAMS under Accession No. ML12125A098.

- *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–2012–0314 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as enters the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II Further Information

The NRC seeks public comment on a proposed a new section of the SRP Section 13.6.4, ''Access Authorization—Operational Program,'' (ADAMS Accession No. ML12125A098). This section has been developed to assist NRC staff with the review of applications for certain construction permits, early site permits, licenses, license amendments, and combined licenses and to inform new reactor applicants and other affected entities of proposed SRP guidance regarding an acceptable method by which to evaluate a proposed access authorization program for compliance with 10 CFR Part 26, 10 CFR 73.56 and 73.57. Following NRC staff evaluation of public comments, the NRC intends to incorporate the final approved guidance into the next revision of NUREG–0800. The SRP is guidance for the NRC staff. The SRP is not a substitute for the NRC regulations, and compliance with the SRP is not required. Accordingly, issuance of the SRP does not constitute ''backfitting'' as defined in 10 CFR 50.109(a)(1) of the Backfit Rule and is not otherwise inconsistent with the applicable issue finality provisions in 10 CFR Part 52.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 21st day of December 2012.

Amy E. Cubbage,

Chief, Policy Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactor.

[FR Doc. 2012–31419 Filed 12–28–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–04530; NRC–2012–0313]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for the United States Department of Agriculture, Beltsville, MD

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Mark C. Roberts, Senior Health Physicist, Decommissioning Branch, Division of Nuclear Materials Safety, Region I, U.S. Nuclear Regulatory Commission, King of Prussia, PA 19406; telephone: 610–337–5094; fax number: 610–337–5269; email: *Mark.Roberts@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to NRC License No. 19–00915–03, issued to the United States Department of Agriculture (USDA or the licensee), to authorize decommissioning of its Low-Level Radiation Burial Site at the Beltsville Agricultural Research Center (or the Site) in Beltsville, Maryland, so that the residual radioactivity at the site can be reduced to a level that meets the criteria for release for unrestricted use. The USDA license would not be terminated at the time of release for unrestricted use because the USDA would continue to conduct authorized activities under this license at other locations. The NRC has prepared an Environmental Assessment (EA) in support of this amendment in accordance with the requirements of Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' to Title 10 of the *Code of Federal Regulations* (10 CFR), which implements the NRC's environmental protection program under the National Environmental Policy Act of 1969, as amended (NEPA). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment approving the Decommissioning Plan would be issued following completion of a Safety Evaluation Report.

II. Environmental Assessment

Background

In 1949, the USDA initiated disposal of low-level radioactive waste from research laboratory operations at the USDA's Low-Level Radiation Burial Site at the Beltsville Agricultural Research Center in Beltsville, Maryland under agreement with the USDA and the U.S. Atomic Energy Commission (AEC) (predecessor of the NRC). The authorization for onsite disposal by burial in soil was subsequently established in AEC and NRC regulations (10 CFR 20.304, ''Disposal by Burial in Soil''). In January 1981, the NRC rescinded the regulations in 10 CFR 20.304 that authorized generic onsite disposals by burial in soil. However, the USDA continued authorized disposal of low-level radioactive wastes at the Site under the regulations in 10 CFR 20.302, ''Method for Obtaining Approval of Proposed Disposal Procedures,'' with specific prior approval of the NRC. In 1987, the USDA initiated use of a commercial service to have radioactive waste transported and disposed at a licensed disposal facility and terminated radioactive waste disposal at the Site.

The low-level radioactive wastes generated by the USDA research laboratories included gloves, paper, liquid scintillation vials, small glass and plastic laboratory containers, metal and fiberboard drums, and decomposed small animal carcasses. The radioactive isotopes used at the USDA facilities and disposed as radioactive waste at the Site were primarily tritium and carbon-14, with significantly lesser quantities of chlorine-36, nickel-63, strontium-90, cesium-137, lead-210, and radium-226. In addition to the radioactive materials disposed as waste, non-radiological chemicals were included in the waste buried at the Site. The burials consisted

of 46 separate disposal pits in an area of approximately 0.7 acres. The pits are approximately 10 feet wide by 12 feet long by 10 feet deep and are separated approximately five feet horizontally from one another. The pits are located in gently sloping agricultural land with no wetlands or surface water features. After each pit was filled with waste, it was backfilled to surface grade with at least 5 feet of clean soil. The USDA estimates that as much as 33,000 cubic feet of waste may have been buried at the Site. Activities at the Site since termination of disposals have included monitoring groundwater contamination and performing characterization studies in four of the disposal pits. Measurements of groundwater samples in the immediate vicinity of the Site have identified migration of tritium and carbon-14 into the groundwater, but the current concentrations do not exceed the National Primary Drinking Water regulations of the United States Environmental Protection Agency (USEPA) (derived concentrations from 40 CFR 141.66, ''Maximum Contaminant Levels for Radionuclides'').

In accordance with 10 CFR 30.36, ''Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas,'' the USDA is required to submit a Decommissioning Plan since principal licensed activities are no longer being performed at the Site. On August 20, 2009, the USDA requested that the NRC approve a Decommissioning Plan for the Site, which when completed, would allow the site to meet the radiological criteria for release for unrestricted use (Agencywide Document Access and Management System (ADAMS) Nos. ML092370149, ML092370159, and ML092370172). The NRC staff conducted reviews of the Decommissioning Plan and, in a September 14, 2010 letter (ADAMS No. ML102600244), requested additional information regarding the selection of input parameter values for the calculation of potential radiation dose from residual activity in the soil. The Revised Final Decommissioning Plan, Low Level Radioactive Burial Site, Beltsville Agricultural Research Center, Beltsville, Maryland (including the Final Status Survey Plan), dated January 2012 (ADAMS No. ML120600551), and the Addendum Memorandum to the Decommissioning Plan, dated February 2012 (ADAMS No. ML120600526), reflect resolution of NRC staff questions. On July 11, 2012 (77 FR 40917), the NRC issued a **Federal Register** Notice (FRN), announcing the USDA license amendment request and providing an opportunity for the public to provide comments, request a hearing and petition for leave to intervene. The NRC did not receive any comments, hearing requests or petitions for leave to intervene on the Decommissioning Plan.

Proposed Action

The proposed action is to amend NRC License No. 19–00915–03 to authorize the decommissioning of the Site so that the residual radioactivity at the Site can be reduced to a level that meets the criteria for release for unrestricted use found in 10 CFR 20.1402, ''Radiological Criteria for Unrestricted Use.'' Section 20.1402 allow unrestricted use of a site if the maximum Total Effective Dose Equivalent to an average member of the critical group is 25 millirem per year and the residual radioactivity has been reduced to levels that are as low as reasonably achievable (ALARA). Because the USDA conducts authorized activities under this license at numerous other locations, the USDA is not requesting license termination.

The USDA desires to remove the buried waste and thus eliminate the source of radioactive contamination. The planned remediation actions for the Site should also be effective in addressing the non-radiological contaminants. The USDA explains that regulatory authority regarding the acceptability of any residual quantities of the non-radiological contaminants in soil (and potentially groundwater) lies with the USEPA under the authority of their ongoing evaluation of the Site under the Comprehensive Environmental Response, Compensation, and Liability Act.

The USDA proposes to exhume the waste from the burial pits and transport the waste and contaminated soil to authorized treatment or disposal facilities. Following completion of the removal and transportation activities, the USDA will conduct a final status survey of the remediated area. The area to be released under this decommissioning effort will be surveyed in accordance with the guidance contained in the ''Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM),'' NUREG–1575, Rev. 1 (ADAMS No. ML082470583). The final approval that the Site meets the radiological criteria for release for unrestricted use would be contingent upon the NRC staff's approval of the licensee's final status survey report.

Need for the Proposed Action

The current USDA license does not authorize decommissioning activities to be conducted. The NRC regulations in 10 CFR 30.36 (g)(1), in part, require a Decommissioning Plan to be submitted if the procedures and activities necessary to carry out decommissioning have not been approved by the Commission and these procedures could increase potential health and safety impacts to workers or the public.

Environmental Impacts of the Proposed Action

The NRC staff has reviewed the Decommissioning Plan for the USDA's Low-Level Radiation Burial Site and examined the impacts of decommissioning. Based on its review, the staff has determined that the affected environment and the environmental impacts associated with this decommissioning action (including waste transportation impacts) are bounded by information contained in the ''Generic Environmental Impact Statement (GEIS) in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities,'' NUREG–1496, Vols. 1, 2 and 3 (ADAMS Nos. ML042310492, ML042320379, and ML042330385). The NRC staff determined that the contaminants, the potential dose scenarios or pathways, the physical size of the site, and the volumes of waste expected to be generated at USDA site are not sufficiently different from those in the GEIS reference facilities to change conclusions regarding environmental impacts. No additional non-radiological impacts were identified. A beneficial environmental impact of the proposed action is that there will no longer be migration of radioactive contamination to soil or groundwater because the source of the contamination will be removed.

In the Decommissioning Plan, the USDA indicates that they will implement controls and perform radiological sampling and analysis to limit the potential release of radioactive material. Contamination controls, such as the use of containment structures, covers for loaded containers, or water sprays for dust control, will be implemented during decommissioning activities to prevent airborne contamination from escaping the remediation work areas; therefore, no significant release of airborne contamination is anticipated. Air sampling and analysis will be conducted to ensure regulatory criteria are met for air effluents. No liquid effluents are expected to be generated during decommissioning. Controls, such as silt fences and water diversion berms will be put in place to control water inflow or runoff due to precipitation.

Radioactive waste will be placed in suitable transport containers that will be covered to prevent access and staged within the fenced property pending shipment to a licensed radioactive waste treatment or disposal facility.

The USDA intends to use an NRC-licensed decommissioning contractor to perform remediation activities at the Site. The contractor will perform these activities under the authority of its NRC license. The USDA will oversee the activities and will maintain primary responsibility for the decommissioning project. The USDA indicates that the contractor will have developed adequate radiation protection procedures and capabilities and will implement an acceptable program to keep exposure to workers and the public from radioactive materials to levels that are ALARA. As noted, the USDA has prepared a Decommissioning Plan describing the work to be performed, and, as explained by the licensee, work activities are not anticipated to result in a dose to workers or the public in excess of the limits in 10 CFR Part 20, ''Standards for Protection Against Radiation.'' The NRC's past experience with decommissioning activities at sites similar to the USDA site indicates that public and worker exposure will be far below the limits in 10 CFR Part 20. The NRC staff will perform inspections at the site to confirm compliance with applicable regulations.

The NRC staff has also extensively reviewed and requested revisions to the USDA's dose analysis from residual contamination that may remain following decommissioning. Based on its review, the NRC staff concludes that the proposed Derived Concentration Guideline Levels developed for this project meet the relevant NRC requirements in 10 CFR 20.1402, ''Radiological Criteria for Unrestricted Use.'' Using the guidance in NUREG–1757, Vol.1, Rev. 2, ''Consolidated Decommissioning Guidance, Decommissioning Process for Materials Licensees'' (ADAMS No. ML063000243), the staff documented their review of the health and safety and environmental aspects of the Decommissioning Plan, including the evaluation of the proposed Derived Concentration Guideline Levels, in a Safety Evaluation Report (ADAMS No. ML12314A076).

Alternatives to the Proposed Action

The alternative the NRC staff considered is the no-action alternative, under which the staff would deny the amendment request to initiate remediation activities at the Site. This approach is not acceptable because the burial pits contain residual radioactive material exceeding NRC's criteria for release for unrestricted use and the no action alternative is inconsistent with the requirements in 10 CFR 30.36,''Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas,'' for the decommissioning of sites where principal licensed activities are no longer being performed.

Agencies and Persons Contacted

In accordance with Section 106 of the National Historic Preservation Act, NRC staff provided a location map and a description of the decommissioning project to the Maryland Historical Trust requesting information on historic properties in the vicinity of the proposed decommissioning project. (The Trust serves as Maryland's State Historic Preservation Office pursuant to the National Historic Preservation Act). The Maryland Historical Trust provided a response identifying one nearby property and indicating there would be ''No Adverse Effect'' to this property as a result of the decommissioning project (ADAMS No. ML12237A250). Therefore, the NRC staff has determined that the proposed action would have no adverse effects on historic properties.

In accordance with Section 7 of the Endangered Species Act, the NRC staff contacted relevant wildlife agencies for information on rare, threatened or endangered species that could be present in the vicinity of the Site. The United States Department of the Interior, U.S. Fish & Wildlife Service and the Wildlife and Heritage Service of the Maryland Department of Natural Resources provided responses indicating that there is no State or Federal records for rare, threatened or endangered species within the delineated boundaries of the project site (ADAMS Nos. ML12237A229 and ML12275A103, respectively). Therefore, the NRC staff has determined that the proposed action would not affect listed species or critical habitat.

In accordance with the Memorandum of Understanding between the USEPA and the NRC on ''Consultation and Finality on Decommissioning and Decontamination of Contaminated Sites,'' on March 22, 2012, the NRC provided a consultation letter to the USEPA regarding the planned level of residual radioactive soil concentrations in the proposed plan (ADAMS No. ML120760350).

On October 23, 2012, the NRC staff provided a draft of the EA to the Maryland Department of the Environment (MDE) for comment. MDE requested information confirming that the area to be remediated was under ''Exclusive Federal Jurisdiction.'' The NRC forwarded information provided by the USDA (ADAMS Nos. ML12325A201 and ML12325A228) to the MDE that confirmed that the area to be remediated was under ''Exclusive Federal Jurisdiction.'' On November 8, 2012, an MDE representative responded that the MDE had no additional comments on the EA (ADAMS No. ML12325A256).

III. Finding of No Significant Impact

The NRC staff has prepared an EA in support of the proposed license amendment for decommissioning the USDA's Low-Level Radiation Burial Site at the Beltsville Agricultural Research Center in Beltsville, Maryland to reduce residual radioactivity to levels consistent with the release for unrestricted use. The staff has found that the radiological environmental impacts from the proposed amendment are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License termination of NRC-Licensed Facilities'' (NUREG–1496) and that the relevant NRC requirements in 10 CFR 20.1402, ''Radiological Criteria for Unrestricted Use,'' will be met. The staff has also found that the non-radiological impacts are not significant. On the basis of the EA, NRC has concluded that there are no significant environmental impacts from the proposed amendment and has determined not to prepare an environmental impact statement.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at King of Prussia, Pennsylvania this 19th day of December 2012.

For the Nuclear Regulatory Commission.

Marc S. Ferdas,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. 2012–31418 Filed 12–28–12; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Hispanic Council on Federal Employment

AGENCY: Office of Personnel Management.

ACTION: Renewal of advisory committee.

SUMMARY: The U.S. Office of Personnel Management announces the renewal of the Hispanic Council on Federal Employment (Council). The Commission shall advise the Director of the U.S. Office of Personnel Management (OPM) on the implementation of leading employment practices in an effort to remove any unnecessary barriers to the recruitment, hiring, retention and advancement of Hispanics in the Federal workplace. The Council is an advisory committee composed of Federal employees and Hispanic organizations.

FOR FURTHER INFORMATION CONTACT: Veronica E. Villalobos, Director, Office of Diversity and Inclusion, U.S. Office of Personnel Management, 1900 E St. NW., Suite 5H35, Washington, DC 20415. Phone (202) 606–0020 Fax (202) 606–6042 or email at *diversityandinclusion@opm.gov.*

SUPPLEMENTARY INFORMATION: The charter for the Hispanic Council on Federal Employment publishes as follows:

1. *Committee's Official Designation (Title).* The Hispanic Council on Federal Employment.

2. *Authority.* This charter establishes the Hispanic Council on Federal Employment in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. The Commission is in the public interest and supports the U.S. Office of Personnel Management (OPM) in performing its duties and responsibilities under 5 CFR part 950.

3. *Objectives and Scope of Activities.* The purpose of the Commission is to advise the Director of OPM on the implementation of leading employment practices in an effort to remove any unnecessary barriers to the recruitment, hiring, retention and advancement of Hispanics in the Federal workplace.

4. *Description of Duties.* The Council shall provide recommendations to the Director of OPM on the implementation of initiatives involving the recruitment, hiring, and advancement of Hispanics in the Federal workforce. Its activities shall include, to the extent permitted by the law:

a. Reviewing leading practices in strategic human resources management planning;

b. Providing advice on ways to increase outreach to Hispanic communities, with a focus on Veterans, students, and people with disabilities;

c. Recommending any further actions, as appropriate, to address the underrepresentation of Hispanics in the Federal workforce where it occurs;

d. Recommending any further actions, as appropriate, to promote successful retention and advancement efforts including training of department and agency personnel;

e. Implementing recommendations for innovative ways to improve the dissemination of information about Federal employment to the Hispanic communities; and

f. Recommending any further actions, as appropriate, to address the underrepresentation of Hispanics in the Federal workforce where it occurs.

5. *Agency Official to Whom the Commission Reports.* The Commission will report recommendations to the OPM Director.

6. *Support.* OPM is responsible for providing administrative services and support to the Commission.

7. *Estimated Annual Operating Costs and Staff Years.* The estimated annual operating expenses of the Council are $12,000.00 (.25 FTE). These expenses include funds to cover actual staff time (including benefits) devoted to preparation for meetings and technical discussions at meetings, expenses for preparing and printing discussion materials and administrative costs for filing the charter, preparing **Federal Register** notices, preparing minutes of the meetings, etc.

8. *Designated Federal Officer (DFO).* The Director of the Office of Diversity and Inclusion, at OPM shall be appointed as the DFO of the Council. The DFO will approve or call all Council and subcommittee meetings, prepare and approve all meeting agendas, attend all Council and subcommittee meetings, adjourn any meeting when they determine adjournment to be in the public interest, and chair meetings when directed to do so by the official to whom the Council reports.

9. *Estimated Number of Frequency of Meetings.* The frequency of meetings will be determined by the Co-Chair of the Council with the approval of the DFO, and the committee is expected to convene once every two months.

10. *Duration.* It is expected that the Commission will conclude its work in approximately one year.

11. *Termination.* December 31, 2013.

12. *Membership and Designation.* The Council will include a total of approximately 22 Federal workers and non-government individuals, including Regular Government Employees and Representative Members. The Council members will represent various perspectives from Hispanic that have experience in working on Federal employee, Hispanic student, Veterans, persons with disabilities and/or employment issues affecting Hispanic communities, while other Council members will provide technical expertise regarding strategic human resources management planning and the merit systems principles.

The Director of OPM may also designate other members of the Council. Such additional members may include, but are not limited to:

(1) The Chief Human Capital Officers of other Executive agencies; and

(2) Members who are designated on an *ex officio* basis and who may be invited to contribute to projects, as particular skills and expertise are needed.

13. *Subcommittees.* The Co-Chairs of the Council, with the Agency's approval, are responsible for directing the work of the Council, including the creation of subcommittees necessary to carry out the Council's mandate. All subcommittees will report to the Council and will not provide advice directly to the Agency.

14. *Recordkeeping.* The records of the Council, as well as any formally and informally established subcommittees, shall be maintained in accordance with General Records Schedule 26, Item 2 or other appropriate agency records disposition schedule. These records shall be available for public inspection and copying, subject to applicable exemptions of the Freedom of Information Act, 5 U.S.C. 552.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2012–31337 Filed 12–28–12; 8:45 am]

BILLING CODE 6325–46–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 20, 2012, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 49 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2013–25, CP2013–33.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–31335 Filed 12–28–12; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 20, 2012, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 50 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2013–26, CP2013–34.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–31338 Filed 12–28–12; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30316; 812–13489–01]

Pyxis Capital, L.P., *et al.;* Notice of Application

December 21, 2012.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) of the Act.

Applicants: Pyxis Capital, L.P. (''Pyxis''), Pyxis Funds II (the ''Trust''), and Nexbank Securities, Inc. (''Nexbank'').

Summary of Application: Applicants request an order that permits: (a) Actively-managed series of the Trust to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

DATES: *Filing Dates:* The application was filed on February 5, 2008, and amended on March 14, 2008, November 21, 2011, April 6, 2012, August 20, 2012, and December 20, 2012.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 15, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Applicants, c/o W. John McGuire, Esq. and Michael Berenson, Esq., Bingham McCutchen LLP, 2020 K Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Mark N. Zaruba, Senior Counsel, at (202) 551–6878 or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is registered as an open-end management investment company under the Act and is organized as a Delaware statutory trust. The Trust will initially offer one actively-managed series (the ''Initial Fund''), whose investment objective will be to provide a high level of current income, consistent with the preservation of capital.

2. Pyxis, a Delaware limited partnership, is, and any other Adviser (as defined below) will be, registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). An Adviser will be the investment adviser to each Fund (as defined below) and, subject to the oversight and authority of the board of trustees (the ''Board'') of the Trust, will implement each Fund's investment program and oversee the day-to-day portfolio activities of each Fund. A Fund may engage one or more subadvisers (''Subadvisers'') to manage specific strategies suited to their expertise. Any Subadviser will be registered under the Advisers Act. Nexbank, a Delaware corporation and an affiliate of Pyxis, is registered as a broker-dealer (''Broker) under the Securities Exchange Act of 1934 (the ''Exchange Act'') and will serve as the principal underwriter and distributor

for each of the Funds (the ''Distributor'').[1]

3. Applicants request that the order apply to the Initial Fund and to any future series of the Trust or to any other open-end investment company or series thereof that may be created in the future that, in each case, (a) is an actively managed exchange-traded fund (''ETF''), (b) is advised by Pyxis or any entity controlling, controlled by, or under common control with Pyxis (each such entity or any successor entity thereto, an ''Adviser'')[2] and (c) complies with the terms and conditions of the application (collectively, the ''Future Funds,'' and together with the Initial Fund, the ''Funds'').[3] The Funds may invest in equity securities (''Equity Funds'') or fixed income securities (''Fixed Income Funds'') traded in the U.S. or non-U.S. markets. Equity Funds that invest in equity securities traded in the U.S. market (''Domestic Equity Funds''), Fixed Income Funds that invest in fixed income securities traded in the U.S. market (''Domestic Fixed Income Funds'') and Funds that invest in equity and fixed income securities traded in the U.S. market (''Domestic Blend Funds'') together are ''Domestic Funds.'' Funds that invest in foreign and domestic equity securities are ''Global Equity Funds.'' Funds that invest in foreign and domestic fixed income securities are ''Global Fixed Income Funds.'' Funds that invest in equity securities and fixed income securities traded in the U.S. or non-U.S. markets are ''Global Blend Funds'' (and collectively with Global Equity Funds and Global Fixed Income Funds, ''Global Funds''). Funds that invest solely in foreign equity securities are ''Foreign Equity Funds,'' Funds that invest solely in foreign fixed income securities are ''Foreign Fixed Income Funds'' and Funds that invest solely in foreign equity and foreign fixed income securities are ''Foreign Blend Funds'' (and collectively with Foreign Equity Funds and Foreign Fixed Income Funds, ''Foreign Funds''). The Funds may also invest in ''Depositary Receipts.''[4] Each Fund will consist of a portfolio of securities (including equity and fixed income securities), currencies traded in the U.S. or in non-U.S. markets (''Portfolio Securities''), and other assets.[5]

4. Applicants also request that any exemption under section 12(d)(1)(J) of the Act from sections 12(d)(1)(A) and (B) apply to: (i) Any Fund; (ii) any Acquiring Fund (as defined below); and (iii) any Brokers selling Shares of a Fund to an Acquiring Fund or any principal underwriter of a Fund.[6] A management investment company or unit investment trust registered under the Act that is not part of the same ''group of investment companies'' as the Fund within the meaning of section 12(d)(1)(G)(ii) of the Act and that acquires Shares of a Fund in excess of the limits of Section 12(d)(1)(A) of the Act is referred to as an ''Acquiring Management Company'' or an ''Acquiring Trust,'' respectively, and the Acquiring Management Companies and Acquiring Trusts are referred to collectively as ''Acquiring Funds.'' Acquiring Funds do not include the Funds.[7]

5. Applicants anticipate that a Creation Unit will consist of at least 25,000 Shares and that the trading price of a Share will range from $20 to $200. All orders to purchase Creation Units must be placed with the Distributor by or through an ''Authorized Participant,'' which is either (a) a Broker or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC'', and such process the ''NSCC Process''), or (b) a participant in the Depository Trust Company (''DTC,'' such participant ''DTC Participant'' and such process the ''DTC Process''), which, in either case, has executed an agreement with the Distributor with respect to the purchase and redemption of Creation Units.

6. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[8] On any given Business Day[9] the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or a redemption, as the ''Creation Basket.'' In addition, the Creation Basket will correspond pro rata to the positions in a Fund's portfolio (including cash positions),[10] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;[11] or (c) TBA Transactions[12] and other positions that cannot be transferred in kind[13] will be

[1] For purposes of the requested order, the term ''Distributor'' shall include any other entity that acts as the distributor and principal underwriter of the Creation Units of Shares of the Funds in the future and complies with the terms and conditions of the application. Any future Distributor will be a Broker registered under the Exchange Act.

[2] For the purposes of the requested order, ''successor'' is limited to those one or more entities that would result from a reorganization into another jurisdiction or a change in the type of business organization.

[3] All entities that currently intend to rely on the order are named as applicants. Any entity that relies on the order in the future will comply with the terms and conditions of the application.

[4] Depositary Receipts are typically issued by a financial institution (a ''Depositary'') and evidence ownership in a security or pool of securities that have been deposited with the Depositary. A Fund will not invest in any Depositary Receipts that the Adviser or any Subadviser deems to be illiquid or for which pricing information is not readily available. No affiliated persons of applicants or any Subadviser will serve as the Depositary for any Depositary Receipts held by a Fund.

[5] If a Fund invests in derivatives, then (a) the Fund's Board will periodically review and approve the Fund's use of derivatives and how the Fund's investment adviser assesses and manages risk with respect to the Fund's use of derivatives and (b) the Fund's disclosure of its use of derivatives in its offering documents and periodic reports will be consistent with relevant Commission and staff guidance.

[6] Any future principal underwriter of a Fund will be a Broker registered under the Exchange Act and will comply with the terms and conditions of the application.

[7] An Acquiring Fund may rely on the order only to invest in a Fund and not in any other registered investment company.

[8] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

[9] Each Fund will sell and redeem Creation Units on any day that the Fund is open, including as required by section 22(e) of the Act (each, a ''Business Day'').

[10] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's net asset value (''NAV'') for that Business Day.

[11] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[12] A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree on general trade parameters such as agency, settlement date, par amount and price.

[13] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

excluded from the Creation Basket.[14] If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

7. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount, as described above; (b) if, on a given Business Day, a Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, a Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; (d) if, on a given Business Day, a Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) such instruments are not eligible for transfer through either the NSCC Process or DTC Process; or (ii) in the case of Global Funds and Foreign Funds, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if a Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Global Fund or Foreign Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[15]

8. Each Business Day, before the open of trading on a national securities exchange, as defined in section 2(a)(26) of the Act (an ''Exchange''), on which Shares are listed and traded, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. For each Fund, the relevant Exchange will disseminate every 15 seconds throughout the trading a calculation of the estimated NAV of a Share (which estimate is expected to be accurate to within a few basis points).

9. Each Fund will recoup the settlement costs charged by NSCC and DTC by imposing a fee (the ''Transaction Fee'') on investors purchasing or redeeming Creation Units.[16] All orders to purchase Creation Units must be placed with the Distributor by or through an Authorized Participant and the Distributor will transmit such orders to the Funds. The Distributor will be responsible for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

10. Purchasers of Shares in Creation Units may hold such Shares or may sell such Shares into the secondary market. Shares will be listed and traded at negotiated prices on an Exchange and it is expected that the relevant Exchange will designate one or more member firms to maintain a market for the Shares.[17] The price of Shares trading on an Exchange will be based on a current bid-offer in the secondary market. Purchases and sales of Shares in the secondary market will not involve a Fund and will be subject to customary brokerage commissions and charges.

11. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[18] Applicants believe that the structure and operation of the Funds will be designed to enable efficient arbitrage and, thereby, minimize the probability that Shares will trade at a material premium or discount to a Fund's NAV.

12. Shares will not be individually redeemable and owners of Shares may acquire those Shares from a Fund, or tender such shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed by or through an Authorized Participant. As discussed above, redemptions of Creation Units will generally be made on an in-kind basis, subject to certain specified exceptions under which redemptions may be made in whole or in part on a cash basis, and will be subject to a Transaction Fee.

13. Neither the Trust nor any Fund will be advertised or marketed or otherwise held out as a traditional open-end investment company or mutual fund. Instead, each Fund will be marketed as an ''exchange-traded fund.'' All marketing materials that describe the features or method of obtaining, buying, or selling Creation Units, or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may acquire those Shares from a Fund or tender those Shares for redemption to the Fund in Creation Units only.

14. The Trust's Web site (the ''Web site''), which will be publicly available prior to the offering of Shares, will include each Fund's prospectus (''Prospectus''), Statement of Additional Information (''SAI''), and summary prospectus, if used. The Web site will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or mid-point of the bid/ask spread at the time of calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or the Bid/Ask Price against such NAV. On each Business Day, prior to the commencement of trading in Shares on an Exchange, the

[14] Because these instruments will be excluded from the Creation Basket, their value will be reflected in the determination of the Cash Amount (defined below).

[15] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[16] Cash purchases and redemptions of Shares may involve a higher Transaction Fee to cover the costs of purchasing and selling the applicable Deposit and Redemption Instruments. In all cases, the Transaction Fee will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities.

[17] If Shares are listed on The NASDAQ Stock Market LLC (''Nasdaq'') or a similar electronic Exchange (including NYSE Arca, Inc.), one or more member firms of that Exchange will act as market maker (a ''Market Maker'') and maintain a market for Shares trading on that Exchange. On Nasdaq, no particular Market Maker would be contractually obligated to make a market in Shares. However, the listing requirements on Nasdaq stipulate that at least two Market Makers must be registered in Shares to maintain a listing. Registered Market Makers are required to make a continuous two-sided market or subject themselves to regulatory sanctions. No Market Maker will be an affiliated person, or an affiliated person of an affiliated person, of the Funds, except within the meaning of section 2(a)(3)(A) or (C) of the Act due solely to ownership of Shares.

[18] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

Adviser shall post on the Web site the identities and quantities of the Portfolio Securities and other assets held by each Fund that will form the basis for the calculation of the NAV at the end of that Business Day.[19]

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act; and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Trust and each Fund to redeem Shares in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and that Creation Units will always be redeemable in accordance with the provisions of the Act. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary substantially from their NAV.

Section 22(d) of the Act and Rule 22c–1 under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c-1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that, while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution of investment company shares by eliminating price competition from brokers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e) of the Act

7. Section 22(e) generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that the settlement of redemptions of Creation Units of the Foreign and Global Funds is contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles present in foreign markets for underlying foreign Portfolio Securities in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Portfolio Securities to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to fourteen (14) calendar days. Applicants therefore request relief from section 22(e) in order to provide payment or satisfaction of redemptions within a longer number of calendar days as required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Securities of each Foreign and Global Fund customarily clear and settle, but in all cases no later than fourteen (14) days following the tender of a Creation Unit.[20]

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent.

[19] Under accounting procedures followed by each Fund, trades made on the prior Business Dat (''T'') will be booked and reflected in NAV on the current Business Day (T+1). Accoprdingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

[20] Rule 15c6–1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade. Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6–1.

Applicants state that the Prospectus and/or SAI will identify those instances in a given year where, due to local holidays, more than seven calendar days, up to a maximum of fourteen calendar days, will be needed to deliver redemption proceeds and will list such holidays. Applicants are not seeking relief from section 22(e) for Foreign and Global Funds that do not effect redemptions of Creation Units in-kind.

Section 12(d)(1) of the Act

9. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request relief to permit Acquiring Funds to acquire Shares in excess of the limits in section 12(d)(1)(A) of the Act and to permit the Funds, their principal underwriters and any Broker to sell Shares to Acquiring Funds in excess of the limits in section 12(d)(l)(B) of the Act.

11. Applicants assert that the proposed transactions will not lead to any of the abuses that section 12(d)(1) was designed to prevent. Applicants submit that the proposed conditions to the requested relief address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

12. Applicants submit that their proposed conditions address any concerns regarding the potential for undue influence. To limit the control that an Acquiring Fund may have over a Fund, applicants propose a condition prohibiting the adviser of an Acquiring Management Company (''Acquiring Fund Adviser''), sponsor of an Acquiring Trust (''Sponsor''), any person controlling, controlled by, or under common control with the Acquiring Fund Adviser or Sponsor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Acquiring Fund Adviser, the Sponsor, or any person controlling, controlled by, or under common control with the Acquiring Fund Adviser or Sponsor (''Acquiring Fund's Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any subadviser to an Acquiring Fund (''Acquiring Fund Subadviser''), any person controlling, controlled by or under common control with the Acquiring Fund Subadviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Acquiring Fund Subadviser or any person controlling, controlled by or under common control with the Acquiring Fund Subadviser (''Acquiring Fund's Subadvisory Group'').

13. Applicants propose a condition to ensure that no Acquiring Fund or Acquiring Fund Affiliate [21] (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Acquiring Fund Adviser, Acquiring Fund Subadviser, employee or Sponsor of the Acquiring Fund, or a person of which any such officer, director, member of an advisory board, Acquiring Fund Adviser, Acquiring Fund Subadviser, employee or Sponsor is an affiliated person (except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

14. Applicants propose several conditions to address the potential for layering of fees. Applicants note that the board of directors or trustees of any Acquiring Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (for any board of directors or trustees, the ''Independent Directors''), will be required to find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Acquiring Management Company may invest. Applicants also state that any sales charges and/or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[22]

15. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

16. To ensure that an Acquiring Fund is aware of the terms and conditions of the requested order, the Acquiring Funds must enter into an agreement with the respective Funds (''Acquiring Fund Agreement''). The Acquiring Fund Agreement will include an acknowledgement from the Acquiring Fund that it may rely on the order only to invest in a Fund and not in any other investment company.

Section 17(a) of the Act

17. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person (''Second Tier Affiliates''), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's

[21] An ''Acquiring Fund Affiliate'' is any Acquiring Fund Adviser, Acquiring Fund Subadviser, Sponsor, promoter and principal underwriter of an Acquiring Fund, and any person controlling, controlled by or under common control with any of these entities. ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund or any person controlling, controlled by or under common control with any of these entities.

[22] Any reference to NASD Conduct Rule 2830 includes any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

voting securities. The Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Adviser or an entity controlling, controlled by or under common control with the Adviser (an ''Affiliated Fund'').

18. Applicants request an exemption under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act to permit in-kind purchases and redemptions of Creation Units from the Funds by persons that are affiliated persons or Second Tier Affiliates of the Funds solely by virtue of one or more of the following: (a) holding 5% or more, or more than 25%, of the Shares of the Trust of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds. Applicants also request an exemption in order to permit each Fund to sell Shares to and redeem Shares from, and engage in the transactions that would accompany such sales and redemptions with, any Acquiring Fund of which the Fund is an affiliated person or Second-Tier Affiliate.[23]

19. Applicants contend that no useful purpose would be served by prohibiting such affiliated persons or Second Tier Affiliates from acquiring or redeeming Creation Units through in-kind transactions. Both the deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions will be the same for all purchases and redemptions. Deposit Instruments and Redemptions Instruments will be valued in the same manner as the Portfolio Securities held by the relevant Fund. Applicants thus believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Fund.

20. Applicants also submit that the sale of Shares to and redemption of Shares from an Acquiring Fund satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Applicants note that any consideration paid for the purchase or redemption of Creation Units directly from a Fund will be based on the NAV of the Fund.[24] The Acquiring Fund Agreement will require any Acquiring Fund that purchases Creation Units directly from a Fund to represent that the purchase will be in compliance with its investment restrictions and consistent with the investment policies set forth in its registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. Actively Managed Exchange-Traded Fund Relief

1. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

2. The Web site, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or the Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

3. As long as a Fund operates in reliance on the requested order, its Shares will be listed on an Exchange.

4. On each Business Day, before commencement of trading in Shares on an Exchange, each Fund will disclose on its Web site the identities and quantities of the Portfolio Securities and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of that Business Day.

5. The Adviser or any Subadvisers, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for a Fund through a transaction in which the Fund could not engage directly.

6. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively-managed exchange-traded funds.

B. Section 12(d)(1) Relief

7. The members of an Acquiring Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of an Acquiring Fund's Subadvisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Acquiring Fund's Advisory Group or the Acquiring Fund's Subadvisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of that Fund's Shares. This condition does not apply to the Acquiring Fund's Subadvisory Group with respect to a Fund for which the Acquiring Fund Subadviser or a person controlling, controlled by, or under common control with the Acquiring Fund Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

8. No Acquiring Fund or Acquiring Fund Affiliate will cause any existing or potential investment by the Acquiring Fund in a Fund to influence the terms of any services or transactions between the Acquiring Fund or an Acquiring Fund Affiliate and the Fund or a Fund Affiliate.

9. The board of trustees or directors of an Acquiring Management Company, including a majority of the Independent Directors, will adopt procedures reasonably designed to ensure that the Acquiring Fund Adviser and any Acquiring Fund Subadviser are conducting the investment program of the Acquiring Management Company without taking into account any consideration received by the Acquiring Management Company or an Acquiring Fund Affiliate from a Fund or a Fund

[23] Applicants anticipate that most Acquiring Funds will purchase Shares in the secondary market and will not purchase or redeem Creation Units directly from a Fund. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between an Acquiring Fund and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to an Acquiring Fund and redemptions of those Shares in Creation Units. The requested relief is intended to cover transactions that would accompany such sales and redemptions. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person of an Acquiring Fund because the Adviser is also an investment adviser to that Acquiring Fund.

[24] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Acquiring Fund, or an affiliated person of such person, for the purchase by the Acquiring Fund of Shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Acquiring Fund, may be prohibited by section 17(e)(1) of the Act. The Acquiring Fund Agreement also will include this acknowledgment.

Affiliate in connection with any services or transactions.

10. Once an investment by an Acquiring Fund in the Shares of a Fund exceeds the limit in section l2(d)(1)(A)(i) of the Act, the Board, including a majority of the Independent Directors, will determine that any consideration paid by the Fund to the Acquiring Fund or an Acquiring Fund Affiliate in connection with any services or transactions: (i) is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

11. No Acquiring Fund or Acquiring Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause the Fund to purchase a security in any Affiliated Underwriting.

12. The Board, including a majority of the Independent Directors, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Acquiring Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Acquiring Fund in the Fund. The Board will consider, among other things: (i) whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

13. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings, once an investment by an Acquiring Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the Board were made.

14. Before investing in Shares of a Fund in excess of the limits in section 12(d)(1)(A), each Acquiring Fund and the Fund will execute an Acquiring Fund Agreement stating, without limitation, that their boards of directors or boards of trustees and their investment adviser(s), or their Sponsors or trustees (each a ''Trustee''), as applicable, understand the terms and conditions of the requested order, and agree to fulfill their responsibilities under the requested order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Acquiring Fund will notify the Fund of the investment. At such time, the Acquiring Fund will also transmit to the Fund a list of the names of each Acquiring Fund Affiliate and Underwriting Affiliate. The Acquiring Fund will notify the Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Acquiring Fund will maintain and preserve a copy of the requested order, the Acquiring Fund Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

15. The Acquiring Fund Adviser, Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Acquiring Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted under rule 12b-l under the Act) received from a Fund by the Acquiring Fund Adviser, Trustee or Sponsor, or an affiliated person of the Acquiring Fund Adviser, Trustee or Sponsor, other than any advisory fees paid to the Acquiring Fund Adviser, Trustee or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Acquiring Fund in the Fund. Any Acquiring Fund Subadviser will waive fees otherwise payable to the Acquiring Fund Subadviser, directly or indirectly, by the Acquiring Fund in an amount at least equal to any compensation received from a Fund by the Acquiring Fund Subadviser, or an affiliated person of the Acquiring Fund Subadviser, other than any advisory fees paid to the Acquiring Fund Subadviser or its affiliated person by the Fund, in connection with any investment by the Acquiring Management Company in the Fund made at the direction of the Acquiring Fund Subadviser. In the event that the Acquiring Fund Subadviser waives fees, the benefit of the waiver will be passed through to the Acquiring Management Company.

16. Any sales charges and/or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

17. No Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

18. Before approving any advisory contract under section 15 of the Act, the board of trustees or directors of each Acquiring Management Company, including a majority of the Independent Trustees, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Acquiring Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Acquiring Management Company.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68513; File No. SR-Phlx-2012–142]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change With Respect to the Amendment of the By-Laws of its Parent Corporation, The NASDAQ OMX Group, Inc.

December 21, 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 December 19, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, 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 Substance of the Proposed Rule Change

The Exchange proposes a rule change with respect to the amendment of the by-laws of its parent corporation, The NASDAQ OMX Group, Inc. (''NASDAQ OMX'' or the ''Corporation''). The text of the proposed rule change is available at *http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx,* at Phlx's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ OMX is proposing amendments to provisions of its By-Laws pertaining to the compositional requirements of the NASDAQ OMX Board. The changes are primarily focused on amending the definition of ''Industry Director'' (and ''Industry committee member'')[3] to make the definition less restrictive, but in a manner that Phlx believes will continue to serve the purpose of ensuring that members and member organizations of Self-Regulatory Subsidiaries[4]—the self-regulatory organizations owned by NASDAQ OMX—do not have disproportionate influence on its governance. In making the change, NASDAQ OMX is adapting concepts already approved by the Commission in its review of the Independence Policy of the NYSE Euronext Board of Directors (the ''Independence Policy'').[5] The proposed rule change also makes several other changes to provisions pertaining to the Board's compositional requirements and categorization of Directors.

Definitions

The By-Laws require Directors to be assigned to certain defined categories, based on their current and past affiliations.[6] Specifically, Directors may be categorized as ''Industry Directors,'' ''Non-Industry Directors,'' ''Public Directors,'' and/or ''Staff Directors.'' Currently, an Industry Director is defined as a Director who:

(1) Is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer;

(2) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity;

(3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer;

(4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership;

(5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; or

(6) has a consulting or employment relationship with or provides professional services to the Corporation or any affiliate[7] thereof (including any Self-Regulatory Subsidiary) or to the Financial Industry Regulatory Authority (''FINRA'') (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years.

Thus, the current definition focuses on a Director's affiliation with any broker-dealer, regardless of whether the broker-dealer is a member or member organization of a Self-Regulatory Subsidiary. The definition also features a three-year ''look-back'' period during which a Director formerly associated with a broker-dealer would continue to

[3] The term ''committee member'' in the By-Laws refers to membership in the committees authorized under Section 4.13 of the By-Laws, such as the Executive Committee and the Audit Committee. Under the By-Laws and the Delaware General Corporation Law, all members of committees with the power and authority to act on behalf of the Board in the management of the business and affairs of NASDAQ OMX must themselves be Directors. Accordingly, the definitions of ''Industry Director'' and ''Industry committee member'' are coterminous as applied to any member of these committees. The By-Laws do not presently contemplate any committees with non-Director members.

[4] The By-Laws define each of The NASDAQ Stock Market LLC (''NASDAQ''), NASDAQ OMX BX, Inc. (''BX''), Phlx, the Boston Stock Exchange Clearing Corporation (''BSECC''), and the Stock Clearing Corporation of Philadelphia (''SCCP'') as a ''Self-Regulatory Subsidiary''.

[5] Securities Exchange Act Release No. 51217 (February 16, 2005), 70 FR 9688 (February 28, 2005) (SR–NYSE–2004–54); Securities Exchange Act Release No. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR–NYSE–2006–120); Securities Exchange Act Release No. 67564 (August 1, 2012), 77 FR 47161) (SR–NYSE–2012–17; SR–NYSEArca-2012–59; SR–NYSEMKT–2012–07).

[6] As discussed above, the categories also govern the classification of members of committees of NASDAQ OMX, as provided for in the By-Laws.

[7] NASDAQ OMX is adding a definition of ''affiliate'' as follows: ''An 'affiliate' of, or a person 'affiliated' with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.'' The definition is identical to the definition of the term in SEC Rule 12b-2, 17 CFR 240.12b-2.

be deemed an Industry Director. In lieu of this definition, NASDAQ OMX is proposing to adopt a definition that focuses on whether a Director is affiliated with a member or a member organization of a Self-Regulatory Subsidiary. Under the revised definition, an Industry Director will be defined as a Director who:

(1) Is, or within the last year was, or has an immediate family member [8] who is, or within the last year was, a member of a Self-Regulatory Subsidiary; [9]

(2) is, or within the last year was, employed by a member or a member organization of a Self-Regulatory Subsidiary; [10]

(3) has an immediate family member who is, or within the last year was, an executive officer of a member or a member organization [11] of a Self-Regulatory Subsidiary;

(4) has within the last year received from any member or member organization of a Self-Regulatory Subsidiary more than $100,000 per year in direct compensation, or received from such members or member organizations in the aggregate an amount of direct compensation that in any one year is more than 10 percent of the Director's annual gross compensation for such year, excluding in each case director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service); or

(5) is affiliated, directly or indirectly, with a member or member organization of a Self-Regulatory Subsidiary.

NASDAQ OMX believes that the change is warranted to ensure that the definition of Industry Director is appropriately focused on the mitigation of potential conflicts of interest associated with Directors who are currently or were very recently employed by members or member organizations of Self-Regulatory Subsidiaries, or that otherwise have material affiliations with such members or member organizations. The current definition covers individuals who are employed by broker-dealers that are not members of Self-Regulatory Subsidiaries, or who retired from service at a broker-dealer more than one, but less than three years in the past. NASDAQ OMX and the Exchange believe that by deeming such potential Directors to be Industry Directors, the current By-Laws unnecessarily restrict highly qualified individuals with extensive knowledge of the financial services industry from serving on the Board.

In addition to this change, NASDAQ OMX is also proposing the following additional changes to the definitions applicable to categories of Directors:

(1) NASDAQ OMX proposes a new definition of ''Staff Director.'' Currently, the definition of ''Staff Director'' is included within the definition of ''Industry Director,'' and is defined as ''any two officers of the Corporation, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors.'' By virtue of being designated as Staff Directors, these Directors are not considered to be Industry Directors for purposes of the compositional requirements of the By-Laws. Instead, NASDAQ OMX proposes a separate definition of ''Staff Director'' as ''an officer of the Corporation that is serving as a Director.'' [12] As discussed below, however, Section 4.3 of the By-Laws is to be amended to provide that only one Staff Director may serve on the Board, unless the Board consists of ten or more Directors, in which case no more than two Staff Directors may serve. Thus, the change will further restrict the number of possible Staff Directors in instances where the Board is smaller than ten Directors, while retaining the current limit for a larger Board.

(2) NASDAQ OMX is adopting a new definition of ''Issuer Director'' and ''Issuer committee member''. The By-Laws currently provide that the number of ''Non-Industry Directors'' (*i.e.,* Directors who are not Industry Directors) must equal or exceed the number of Industry Directors, and shall include at least one ''issuer representative,'' unless the Board consists of ten or more Directors, in which case it must include at least two issuer representatives. NASDAQ OMX and the Exchange believe that requiring the representation of issuers on the Board is consistent with the goal of promoting a diversity of viewpoints and skills among Directors and the requirement of Section 6(b)(3) of the Act [13] to provide for representation of issuers among the directors of a national securities exchange. The term ''issuer representative'' is not directly defined in the By-Laws, but is implicitly defined in the definition of ''Non-Industry Director'' as ''an officer, director, or employee of an issuer of securities listed on a national securities exchange operated by any Self-Regulatory Subsidiary.'' The new proposed definition is ''a Director (excluding any Staff Director) or committee member who is an officer or employee of an issuer of securities listed on a national securities exchange operated by any Self-Regulatory Subsidiary, excluding any Director or committee member who is a director of such an issuer but is not also an officer or employee of such an issuer.'' The exclusion of Staff Directors from the definition is necessary because NASDAQ OMX is listed on NASDAQ, but the purposes of the By-Laws in requiring issuer representation to promote a diversity of viewpoints among Directors would not be well served by deeming Staff Directors also to be Issuer Directors. The definition is also being changed to exclude persons who are directors of issuers but not also officers or employees. This change is intended to make it clear that a Director is not barred from being considered a Public Director [14] merely because the Director serves as an independent director of another listed company.

(3) The definition of ''Public Director'' and ''Public committee member'' is being restated as follows: ''a Director or committee member who (1) is not an Industry Director or Industry committee member, (2) is not an Issuer Director or Issuer committee member, and (3) has no material business relationship with a member or member organization of a Self-Regulatory Subsidiary, the Corporation or its affiliates, or FINRA.'' The definition currently covers a person who ''has no material business relationship with a broker or dealer, the Corporation or its affiliates, or FINRA.'' Thus, the changes make it clear that any Industry Director or Issuer Director would not be considered a Public Director. As noted above, however, an

[8] NASDAQ OMX is adding a definition of ''immediate family member'' as follows: '' 'Immediate family member' means a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home.'' The definition is identical to the definition of ''family member'' contained in NASDAQ listing standards, as provided in NASDAQ Rule 5605.

[9] This provision would apply to an individual that was a member of Phlx, the only Self-Regulatory Subsidiary that allows natural persons to become members.

[10] A broker-dealer that is admitted to membership in Phlx is referred to as a ''member organization;'' broker-dealers admitted to membership in the other Self-Regulatory Subsidiaries are referred to as ''members.''

[11] An ''Executive Officer'' of a member or member organization means those officers covered in Rule 16a–1(f) under the Act, as if the member or member organization were an issuer within the meaning of such Rule. 17 CFR 240.16a–1(f).

[12] The definition of ''Industry Director'' will continue to exclude Staff Directors, who might otherwise be considered Industry Directors by virtue of affiliation with NASDAQ Exchange Services LLC and NASDAQ Options Services, LLC, registered broker-dealers that are members or NASDAQ and BX and member organizations of Phlx.

[13] 15 U.S.C. 78f(b)(3).

[14] The definition of Public Director is discussed below.

independent director of an issuer of securities listed on NASDAQ could be considered a Public Director. In addition, in keeping with the change to the definition of Industry Director discussed above, the final clause of the definition is being revised to focus on the existence of a material business relationship with a member or member organization of a Self-Regulatory Subsidiary, rather than any broker or dealer. Thus, for example, a Director that had a material business relationship with a non-U.S. broker or dealer that was not a member or a member organization of a Self-Regulatory Subsidiary might be eligible to be a Public Director.

(4) The definition of ''Non-Industry Director'' or ''Non-Industry committee member'' is proposed to be amended to cover any ''Director (excluding any Staff Director) or committee member who is (1) a Public Director or Public committee member; (2) an Issuer Director or Issuer committee member; or (3) any other individual who would not be an Industry Director or Industry committee member.'' The revised definition is generally consistent with the current definition, but reflects the adoption of a definition for ''Issuer Director or Issuer committee member''.

(5) NASDAQ OMX is making conforming changes to the letter designations of paragraphs in Article I of the By-Laws.

Qualifications of Directors

NASDAQ OMX is proposing to amend Section 4.3 of the By-Laws, which governs the qualifications and compositional requirements of the Board of Directors, to (i) increase the required number of Public Directors from one to two, (ii) replace the requirement to include at least one issuer representative (or at least two issuer representatives if the Board consists of ten or more Directors) with a requirement to include at least one, but no more than two, Issuer Directors, and (iii) provide that the number of Staff Directors may not exceed one, unless the Board consists of ten or more Directors, in which case the number may not exceed two. The section will continue to require that the number of Non-Industry Directors equals or exceeds the number of Industry Directors. Although these changes will not significantly modify the Board's compositional requirements, they will continue to ensure a diversity of representation among Industry, Staff, Issuer, and Public Directors, will place more stringent caps on the number of Issuer and Staff Directors, and will increase the requirement for Public Directors. NASDAQ OMX also proposes to make a conforming change to add the term ''Issuer Director'' to Section 4.8 and Section 4.13(h), which govern the filling of vacancies on the Board and the determination of Directors' qualifications by NASDAQ OMX's Secretary.

The changes to the compositional requirements imposed specifically by the By-Laws do not alter in any respect the compositional requirements imposed by NASDAQ listing standards on NASDAQ OMX as a public company. Specifically, NASDAQ Rule 5605 requires that the board of directors of a company listed on NASDAQ must have a majority of directors that are ''independent'' within the meaning of that rule. As provided in NASDAQ Rule 5605(a)(2) with respect to a company listed on NASDAQ (a ''Company''), '' 'Independent Director' means a person other than an Executive Officer [15] or employee of the Company or any other individual having a relationship which, in the opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.'' The rule goes on to provide that directors having certain defined relationships with a Company may not be considered independent. Thus, while Staff Directors are clearly not independent within the meaning of Rule 5605, other Directors may or may not be considered independent, depending on the specific facts of their relationship to NASDAQ OMX. The proposed rule change does not alter in any respect the obligations of the NASDAQ OMX Board under NASDAQ Rule 5605.

Composition of Executive Committee

NASDAQ OMX is proposing a minor amendment to the compositional requirements of its Executive Committee. Currently, Section 4.13(d) of the By-Laws provides that the percentage of Public Directors on the Executive Committee must be at least as great as the percentage of Public Directors on the whole Board. As noted above, however, the By-Laws currently require only one Public Director on the whole Board (a requirement that NASDAQ OMX is proposing to raise to two Public Directors). Thus, the By-Laws currently reflect a standard under which voluntary inclusion of additional Public Directors on the full Board translates into a requirement to include ever increasing numbers of Public Directors on the Executive Committee, even though the requirements for the full Board itself may be satisfied with only one Public Director. Accordingly, NASDAQ OMX is proposing to make the requirements consistent by requiring at least two Public Directors on the Executive Committee.

Composition of the Audit Committee

Earlier this year, the Commission approved changes to the provisions of NASDAQ OMX's By-Laws pertaining to the composition of the Management Compensation Committee of its Board of Directors. NASDAQ OMX is now proposing comparable changes to the compositional requirements of its Audit Committee. Specifically, NASDAQ OMX is proposing to amend Section 4.13(g) to replace a requirement that the Audit Committee be composed of a majority of Non-Industry Directors with a requirement that the number of Non-Industry Directors on the committee equal or exceed the number of Industry Directors. Thus, in the case of a committee composed of four Directors, the current By-Law provides that only one Director may be an Industry Director, while the amended By-Law would allow up to two Directors to be Industry Directors. The proposed compositional requirement for the committee with regard to the balance between Industry Directors and Non-Industry Directors would be the same as that already provided for in the By-Laws with respect to the Executive Committee, the Nominating and Governance Committee, the Management Compensation Committee, and the full Board of Directors.

NASDAQ OMX and the Exchange believe that the change will provide greater flexibility to NASDAQ OMX with regard to populating a committee that includes Directors with relevant expertise and that is not excessively large in relation to the size of the full Board of Directors, while continuing to ensure that Directors associated with members and member organizations of the Self-Regulatory Subsidiaries do not exert disproportionate influence of the governance of NASDAQ OMX. As required by Section 10A of the Act,[16] SEC Rule 10A–3 thereunder,[17] and NASDAQ Rule 5605(c), the committee would continue at all times to be composed solely of Directors who are independent within the meaning of those provisions.

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions

[15] NASDAQ Rule 5605(a)(1) provides that '' 'Executive Officer' means those officers covered in Rule 16a–1(f) under the Act.'' 17 CFR 240.16a–1(f).

[16] 15 U.S.C. 78j–1.

[17] 17 CFR 240.10A–3.

of Section 6 of the Act,[18] in general, and with Sections 6(b)(1) and (b)(5) of the Act,[19] in particular, in that the proposal enables Phlx to be so organized and to have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance by members and persons associated with members with provisions of the Act, the rules and regulations thereunder, and Phlx rules, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, Phlx believes that the change to the definition of Industry Director is warranted to ensure that it is appropriately focused on the mitigation of potential conflicts of interest associated with Directors who are currently or were very recently employed by members or member organizations of Self-Regulatory Subsidiaries, or that otherwise have material affiliations with such members or member organizations, without unnecessarily restricting highly qualified individuals with extensive knowledge of the financial services industry from serving on the Board. Phlx further believes that the other definitional changes and the changes to the compositional requirements of the NASDAQ OMX Board and the Executive Committee will enhance the clarity of these provisions and promote a diversity of backgrounds and viewpoints on the NASDAQ OMX Board. The Exchange believes that these changes will collectively promote the capacity of the NASDAQ OMX Board to fulfill its responsibilities.

With respect to the proposed changes to the Audit Committee's compositional requirements, Phlx believes that the change will provide greater flexibility to NASDAQ OMX with regard to populating a committee that includes Directors with relevant expertise and that is not excessively large in relation to the size of the full Board of Directors, while continuing to ensure that Directors associated with members and member organizations of Self-Regulatory Subsidiaries do not exert disproportionate influence of the governance of NASDAQ OMX. The change would not affect NASDAQ OMX's compliance with Section 10A of the Act,[20] SEC Rule 10A–3 thereunder,[21] and NASDAQ Rule 5605(c), as the committee would continue at all times to be composed solely of Directors who are independent within the meaning of those provisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes [sic] the Act. Specifically, the Exchange believes that the By-Laws of its holding company, NASDAQ OMX, do not directly affect competition between the Exchange and others that provide the same goods and services as the Exchange, since they do not affect the availability or pricing of such goods and services. To the extent that the proposed change to the By-Laws may be construed to have any bearing on competition, the Exchange believes that the change will promote competition between the Exchange and the subsidiaries of NYSE Euronext, since the change will allow NASDAQ OMX to have greater flexibility in the selection of its Directors in a manner similar to the flexibility available to NYSE Euronext under its Independence Policy.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2012–142 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–142. 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 the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2012–142, and should be submitted on or before January 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31238 Filed 12–28–12; 8:45 am]

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[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(1), (5).

[20] 15 U.S.C. 78j–1.

[21] 17 CFR 240.10A–3.

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68532; File No. SR–OCC–2012–25]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Schedule of Fees, Effective January 2, 2013, to Charge Non-Clearing Member Subscribers of Certain Non-Proprietary Data an Additional Monthly Fee to Accommodate Request for Such Data on a Real-Time Basis

DATES: December 21, 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 December 14, 2012, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which items have been prepared primarily by OCC. OCC filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2)[4] thereunder so that the proposal was effective upon filing with 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 Terms of Substance of the Proposed Rule Change

OCC is amending its Schedule of Fees, effective January 2, 2013, so that it may charge an additional monthly fee to non-clearing member subscribers (''Subscribers'') of certain non-proprietary data that elect to receive such data on a real-time basis.

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the rule change and discussed any comments it received on the rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[5]

A. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to amend OCC's Schedule of Fees so that OCC may charge non-clearing members a $250 per month fee if they elect to subscribe to a service that provides real-time series information data. OCC provides a variety of options-related data to Subscribers including data reflecting the symbol, expiration date, strike price, listed exchanges, and activation/inactivation date of a particular option (''Series Information Data''). Currently, OCC distributes Series Information data to Subscribers through a batch process at the end of each OCC business day.

Subscribers to Series Information data have requested that such data be provided on a real-time basis throughout each OCC business day in order to better meet the needs of their customers (*i.e.,* options traders).

OCC determined that it can readily implement systems and processes to accommodate real-time feeds of Series Information data to Subscribers; however, implementation of such systems and processes will result in initial and ongoing costs incurred by OCC. To offset these costs, OCC plans to charge a $250 per month fee to Subscribers receiving real-time Series Information data. OCC will continue to offer Series Information data through the existing end-of-day batch process for Subscribers not interested in subscribing to the real-time service at the rates of $1,750.00 per month for non-distribution and $3,000.00 per month for distribution, as currently set forth in the Schedule of Fees, and use such batch process as back-up to the real-time service should the real-time service become temporarily unavailable.

The rule change is consistent with Section 17A of the Act because it promotes prompt and accurate settlement of securities transactions by enhancing an existing service provided to non-clearing members. In addition, OCC believes the monthly fee increase is minimal and non-clearing members may elect not to receive the Series Information Data in real-time to avoid the fee increase. The proposed rule change is not inconsistent with any rules of OCC, including any other rules proposed to be amended.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe the rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[6] of the Act and Rule 19b–4(f)(2)[7] thereunder because it establishes or changes a due, fee, or other charge. OCC will delay the implementation of the rule change until it is deemed certified under CFTC Regulation § 40.6. At any time within 60 days of the filing of the 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.[8]

IV. *Solicitation of Comments*

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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 No. SR–OCC–2012–25 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–OCC–2012–25. 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

[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] The Commission has modified the text of the summaries prepared by OCC.

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 15 U.S.C. 78s(b)(3)(C).

amendments, all written statements with respect to the rule change that are filed with the Commission, and all written communications relating to the 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 OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_12_25.PDF.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2012–25 and should be submitted on or before January 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31259 Filed 12–28–12; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68517; File No. SR–Phlx–2012–136]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to the Distribution of Auction Messages

December 21, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that on December 11, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 1080(m) to provide for the distribution of auction messages for certain orders.

The Exchange proposes this amendment become operative on January 2, 2013.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 1080 titled ''Phlx XL and Phlx XL II,'' which describes the Exchange's fully automated options trading system.[3] Specifically, the Exchange seeks to amend an aspect of the order handling rules related to routing orders to away markets in Rule 1080(m).

Currently, when the Exchange's disseminated bid or offer (''PBBO'') is inferior to the away best bid or offer (''ABBO'') the Phlx XL II system will route FIND[4] and SRCH[5] Orders with no other contingencies as specified in Rule 1080(m) and will place contracts designated as not available for routing (''DNR'')[6] on the Phlx book.

With respect to routable FIND and SRCH orders, today the Phlx XL II system has a Route Timer which provides for a system pause for a period not to exceed one second.[7] When the Route Timer is initiated, Phlx XL II participants and other market participants are provided an opportunity to interact with the FIND or SRCH order. During the Route Timer, the FIND or SRCH order is included in the PBBO at a price one MPV away from the ABBO. If, during the Route Timer, any new interest arrives opposite the FIND or SRCH order that is equal to or better than the ABBO price, the FIND or SRCH order will trade against such new interest at the ABBO price.[8]

At this time, the Exchange is proposing to expose orders by broadcasting a notification to all Phlx XL II participants and other market participants who have elected to receive such notifications[9] at the time that a FIND or SRCH order is received by Phlx

[3] This proposal refers to ''PHLX XL®'' as the Exchange's automated options trading system. In May 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as ''Phlx XL II.'' *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). The Exchange intends to submit a separate technical proposed rule change that would change all references to the system from ''Phlx XL II'' to ''PHLX XL'' for branding purposes.

[4] A FIND order is an order that is routable upon receipt during open trading. Only a customer FIND order on the Phlx XL II book, whether it is received prior to the opening or it is a GTC FIND order from a prior day, may be routed as part of the Opening Process. Non-customer FIND orders are not eligible for routing during the Opening Process. Once the Opening Process is complete, any FIND order is either eligible to trade at the Phlx price or placed on the Phlx book either at its limit price or at a price that is one Minimum Price Variation (''MPV'') from the ABBO price if it would otherwise lock or cross the ABBO. Such FIND order will not be eligible for routing until the next time the option series is subject to a new Opening Process. *See* Rule 1080 (m)(iv)(B).

[5] A SRCH order is a customer order that is routable at any time. A SRCH order on the Phlx XL II book during the Opening Process (including a re-opening following a trading halt), whether it is received prior to the opening or it is a GTC SRCH order from a prior day, may be routed as part of the Opening Process. Once the Opening Process is complete, a SRCH order is eligible either to: (1) Trade at the Phlx price if that price is equal to or better than the ABBO or, if the ABBO is better than the Phlx price, orders have been routed to better priced markets for their full size; or (2) be routed to better priced markets if the ABBO price is the best price, and/or (3) be placed on the Phlx XL II book at its limit price if not participating in the Phlx opening at the opening price and not locking or crossing the ABBO. Once on the book, the SRCH order is eligible for routing if it is locked or crossed by an away market. *See* Rule 1080 (m)(C).

[6] A DNR order will never be routed outside of Phlx regardless of the prices displayed by away markets. *See* Rule 1080(m)(iv)(A). In addition, responses may not trade through the away market. *See* Rule 1084.

[7] *See* Rule 1080(m)(iv)(B) and (C).

[8] *Id.*

[9] The Exchange will broadcast the notifications as specified below in the filing. Only subscribers to certain data feeds will receive the notifications. The notification will identify the size and the side of the market in addition to the exposed price.

XL II for a time period not to exceed the Route Timer.[10] In the instance that the ABBO changes during the Route Timer, the Exchange would broadcast an updated notification with the new price. Once the Route Timer commences, as is the case today, Phlx XL II market participants and other market participants would be able to submit new interest opposite the FIND or SRCH order that is equal to or better than the ABBO price, the FIND or SRCH order will trade against such new interest at the ABBO price. Today, if, at the end of the Route Timer, the ABBO is still the best price, the FIND or SRCH order, will route to the away market(s) whose disseminated price is better than the PBBO, up to a size equal to the lesser of either: (a) the away markets' size, or (b) the remaining size of the SRCH order, as is the case today.[11] This would not change with this proposal.

The Exchange's proposal to expose the order by way of a broadcasting a notification to Phlx XL II participants and other market participants is an amendment to the Exchange's current rules. The Exchange is not proposing to amend any other functionality in Rule 1080(m) related to FIND or SRCH orders. Today, the Exchange executes any responses at a price at or better than the ABBO on a first come, first served basis prior to routing the order to an away market in accordance with the rules currently in effect in Rule 1080(m). If a response trades against new interest, the Route Timer would terminate early if the order is fully executed. This amendment is similar to rules at other options exchanges.[12]

By way of an example, today assuming that Phlx's best offer is 1.22 for 200 contracts and the NBO is 1.19 for 10 contracts with one other market disseminating a 1.20 offer for 20 contracts. An order to buy 100 contracts at 1.22 is received. The order would be broadcast through a notification message at 1.19. A market participant submits a response to trade 10 contracts at 1.19. As a result 10 contracts trade against market participant A at 1.19 (leaving 90 contracts on the order). During the remaining time on the Route Timer market participant B submits a response to trade 20 contracts at 1.21. As soon as the Route Timer concludes (assuming away market prices have not changed), the Exchange will simultaneously: route an ISO to buy 10 contracts at 1.19 to the NBBO market, route an ISO to buy 20 contracts at 1.20 to the market displaying the 1.20 offer, execute 20 contracts at 1.21 market participant B, and execute the remaining 40 contracts against the Exchange's 1.22 offer.

With respect to non-routable DNR orders, today a DNR order may execute at a price equal to or better than, but not inferior to, the best away market price but, if that best away market remains, the DNR order will remain in the Phlx book and be displayed at a price one minimum price variation inferior to that away best bid/offer.[13] An incoming order interacting with such a resting DNR order receives the best away market price.[14] The Exchange is not proposing to change this functionality.

Similar to routable orders, the Exchange is proposing to expose the DNR order, upon receipt, to Phlx XL II participants and other market participants in a manner similar to FIND and SRCH orders. The Exchange proposes to expose the order by broadcasting a notification to Phlx XL II participants and other market participants. In the instance that the best away market changes to an inferior price, the DNR order automatically re-prices again. If, and only if, after repricing, the DNR order is still not displayed at its original limit price the Exchange will expose the order again to Phlx XL II participants and other market participants. The DNR order would remain on the book until executed or cancelled, and not route to an away market, pursuant to current Exchange rules. Any responses received to the exposed order would be executed in accordance with the current text of Rule 1080(m)(iv)(A).[15]

By way of an example, today assuming that the PBBO is 1.00 bid/2.00 offer and the NBBO is 1.00 bid/1.20 offer and a DNR order to buy 100 contracts for 1.50 is received. The order would be broadcast through a notification message at 1.20 and the PBBO would be updated to 1.19 bid/2.00 offer. If the NBBO moved to 1.00 bid/1.50 offer, and the DNR order was not completely filled, the Exchange would reprice the DNR order and update the PBBO to 1.49 bid/2.00 offer and broadcast another notification message at 1.50. The Exchange would expose the order in this instance because the re-priced DNR order locked the market. The Exchange would also expose the repriced DNR order in the instance that the order crossed the market. For example, assuming that the PBBO is 1.00 bid/2.00 offer and the NBBO is 1.00 bid/1.20 offer and a DNR order to buy 100 contracts for 1.50 is received. The order would be broadcast through a notification message at 1.20. If the NBBO moved to 1.00 bid/1.40 offer, and the order was not completely filled, the Exchange would reprice the DNR order and update the PBBO to 1.39 bid/2.00 offer and rebroadcast the message at 1.40. If the NBBO moved to 1.00 bid/1.53 offer, and the order was not completely filled, the Exchange would reprice the DNR order to its limit of 1.50 and update the PBBO to 1.50 bid/2.00 offer. The DNR order, since posted at its limit, will not be rebroadcast and will remain on the book until it is either executed or cancelled. As previously stated, the Exchange is not proposing to add any additional functionality to the Phlx XL II system.

This proposal only seeks to expose certain orders by broadcasting a notification message to all Phlx XL II participants and market participants that subscribe to certain data feeds. The Exchange would send the notification message which exposes the order through both the TOPO Plus Order feed[16] and the Phlx Depth Data feed.[17] In addition, Market Makers would also receive the notification through the specialized quote feed (''SQF'') which is an interface that allows Specialists,[18]

[10] Pursuant to Rule 1080(m)(iv), the Route Timer will not exceed one second.

[11] If the FIND or SRCH order still has remaining size after such routing, it may (1) trade at the next PBBO price (or prices) if the order price is locking or crossing that price (or prices) up to the ABBO price, and/or (2) be entered into the Phlx XL II book at its limit price if not locking or crossing the Phlx price or the ABBO. The Phlx XL II system will route and execute contracts contemporaneously at the end of the Route Timer. Once on the book, the SRCH order is eligible for routing if it is locked or crossed by an away market.

[12] Currently the Chicago Board Options Exchange, Incorporated (''CBOE'') and the International Securities Exchange LLC (''ISE'') expose orders during an auction period not to exceed one second.

[13] *See* Rule 1080(m)(iv)(A).

[14] Should the best away market change its price, or move to an inferior price level, the DNR order will automatically re-price from its one minimum price variation inferior to the original away best bid/offer price to one minimum trading increment away from the new away best bid/offer price or its original limit price. Also, once priced at its original limit price, it will remain at that price until executed or cancelled.

[15] *See also* Rule 1080(c)(ii).

[16] TOPO Plus Orders provides disseminated Exchange simple and complex PHLX order as well as top of file quotation information and PHLX last sale data. *See* Securities Exchange Act Release No. 60877 (October 26, 2009), 74 FR 56255 (October 30, 2009) (SR–Phlx–2009–92).

[17] PHLX Depth of Market is a data product that provides: (i) order and quotation information for individual quotes and orders on the PHLX book; (ii) last sale information for trades executed on PHLX; and (iii) an Imbalance Message. *See* Securities Exchange Act Release No. 66967 (May 11, 2012), 77 FR 29440 (May 17, 2012) (SR–Phlx–2012–60). Both of these feeds require subscribers to pay certain fees in order to obtain these feeds. The pricing associated with these data feeds are located in the Exchange's Pricing Schedule at Section IX, titled ''Proprietary Date Feed Fees.''

[18] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

Streaming Quote Traders [19] and Remote Streaming Quote Traders [20] to connect and send quotes into Phlx XL II.[21]

The Exchange also proposes to rename Rule 1080(m) from ''Order Routing'' to ''Away Markets and Order Routing'' to better reflect the various order types in that section.

The Exchange proposes this amendment become operative on January 2, 2013.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [22] in general, and furthers the objectives of Section 6(b)(5) of the Act [23] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that exposing certain orders has the potential to result in more efficient executions for customers as responses to exposed orders could result in quicker executions. The Exchange's proposal to expose the orders to all Phlx XL II market participants as well as other market participants is consistent with the protection of investors and the public interest. Broadcasting the message to all market participants should promote broader awareness of, and provide increased opportunities for greater participation in, these executions and consequentially, facilitate the ability of the Exchange to bring together participants and encourage more robust competition for these orders. In addition, the proposal would continue to guarantee that orders will receive an execution that is at a price at least as good as the price disseminated by the best away market at the time the order was received.

In addition, the Exchange believes that because all Phlx XL II participants and other market participants have the ability to subscribe to a data feed to provide them with the notifications exposing the orders, that all market participants may avail themselves of the same information. While Market Makers may receive the SQF data at no cost, Market Makers have burdensome quoting obligations [24] which do not apply to other market participants. In addition, Market Makers incur other costs at the Exchange which are specific to their market making obligations, as compared to other market participants.[25] The Exchange believes that because the notification message would be broadcast to all Phlx XL II and other market participants that subscribe to a data feed that it is a fair and equitable way to notify the marketplace of the opportunity to trade with these orders. Also, it is important to note that the exposure of the orders will not impact the manner in which the orders will be executed or routed today, rather the notification message is an addition to the current functionality that is in place today at the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, but rather this proposal should facilitate the ability of the Exchange to bring together participants and encourage more robust competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[26] and Rule 19b–4(f)(6) [27] thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 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.[28]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [29] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay period. The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest. Specifically, the Commission believes that the proposal would allow the Exchange to broadcast these orders to market participants who subscribe to the Exchange data feed, which may provide more opportunities for market participants to interact with such orders. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative as of January 2, 2013.[30]

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.[31]

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.

[19] An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an Registered Options Trader (''ROT'') who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

[20] A Remote Streaming Quote Trader (''RSQT'') is defined Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

[21] *See* Securities Exchange Act Release No. 63034 (October 4, 2010), 75 FR 62441 (October 8, 2010) (SR–Phlx–2010–124).

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

[24] *See* Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

[25] Market Makers incur costs related to assignments and costs related to subscribing to various data feeds. *See* Phlx's Pricing Schedule at Section VI, B and C.

[26] 15 U.S.C. 78s(b)(3)(A).

[27] 17 CFR 240.19b–4(f)(6).

[28] 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.

[29] 17 CFR 240.19b–4(f)(6)(iii).

[30] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[31] 15 U.S.C. 78s(b)(3)(C).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2012–136 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–136. 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–Phlx–2012–136 and should be submitted on or before January 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31246 Filed 12–28–12; 8:45 am]

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[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68514; File No. SR–BX–2012–075]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change with Respect to the Amendment of the By-Laws of its Parent Corporation, The NASDAQ OMX Group, Inc.

December 21, 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 December 19, 2012, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, 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 Substance of the Proposed Rule Change

The Exchange proposes a rule change with respect to the amendment of the by-laws of its parent corporation, The NASDAQ OMX Group, Inc. (''NASDAQ OMX'' or the ''Corporation''). The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com/*, at BX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ OMX is proposing amendments to provisions of its By-Laws pertaining to the compositional requirements of the NASDAQ OMX Board. The changes are primarily focused on amending the definition of ''Industry Director'' (and ''Industry committee member'')[3] to make the definition less restrictive, but in a manner that BX believes will continue to serve the purpose of ensuring that members and member organizations of Self-Regulatory Subsidiaries[4]—the self-regulatory organizations owned by NASDAQ OMX—do not have disproportionate influence on its governance. In making the change, NASDAQ OMX is adapting concepts already approved by the Commission in its review of the Independence Policy of the NYSE Euronext Board of Directors (the ''Independence Policy'').[5] The proposed rule change also makes several other changes to provisions pertaining to the Board's compositional requirements and categorization of Directors.

Definitions

The By-Laws require Directors to be assigned to certain defined categories, based on their current and past affiliations.[6] Specifically, Directors may be categorized as ''Industry Directors,'' ''Non-Industry Directors,'' ''Public Directors,'' and/or ''Staff Directors.'' Currently, an Industry Director is defined as a Director who:

(1) Is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer;

(2) Is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''committee member'' in the By-Laws refers to membership in the committees authorized under Section 4.13 of the By-Laws, such as the Executive Committee and the Audit Committee. Under the By-Laws and the Delaware General Corporation Law, all members of committees with the power and authority to act on behalf of the Board in the management of the business and affairs of NASDAQ OMX must themselves be Directors. Accordingly, the definitions of ''Industry Director'' and ''Industry committee member'' are coterminous as applied to any member of these committees. The By-Laws do not presently contemplate any committees with non-Director members.

[4] The By-Laws define each of The NASDAQ Stock Market LLC (''NASDAQ''), BX, NASDAQ OMX PHLX LLC (''Phlx''), the Boston Stock Exchange Clearing Corporation (''BSECC''), and the Stock Clearing Corporation of Philadelphia (''SCCP'') as a ''Self-Regulatory Subsidiary''.

[5] Securities Exchange Act Release No. 51217 (February 16, 2005), 70 FR 9688 (February 28, 2005) (SR–NYSE–2004–54); Securities Exchange Act Release No. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR–NYSE–2006–120); Securities Exchange Act Release No. 67564 (August 1, 2012), 77 FR 47161) (SR–NYSE–2012–17; SR–NYSEArca–2012–59; SR–NYSEMKT–2012–07).

[6] As discussed above, the categories also govern the classification of members of committees of NASDAQ OMX, as provided for in the By-Laws.

of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity;

(3) Owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer;

(4) Provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership;

(5) Provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; or

(6) Has a consulting or employment relationship with or provides professional services to the Corporation or any affiliate [7] thereof (including any Self-Regulatory Subsidiary) or to the Financial Industry Regulatory Authority (''FINRA'') (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years.

Thus, the current definition focuses on a Director's affiliation with any broker-dealer, regardless of whether the broker-dealer is a member or member organization of a Self-Regulatory Subsidiary. The definition also features a three-year ''look-back'' period during which a Director formerly associated with a broker-dealer would continue to be deemed an Industry Director. In lieu of this definition, NASDAQ OMX is proposing to adopt a definition that focuses on whether a Director is affiliated with a member or a member organization of a Self-Regulatory Subsidiary. Under the revised definition, an Industry Director will be defined as a Director who:

(1) Is, or within the last year was, or has an immediate family member [8] who is, or within the last year was, a member of a Self-Regulatory Subsidiary; [9]

(2) Is, or within the last year was, employed by a member or a member organization of a Self-Regulatory Subsidiary; [10]

(3) Has an immediate family member who is, or within the last year was, an executive officer of a member or a member organization [11] of a Self-Regulatory Subsidiary;

(4) Has within the last year received from any member or member organization of a Self-Regulatory Subsidiary more than $100,000 per year in direct compensation, or received from such members or member organizations in the aggregate an amount of direct compensation that in any one year is more than 10 percent of the Director's annual gross compensation for such year, excluding in each case director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service); or

(5) Is affiliated, directly or indirectly, with a member or member organization of a Self-Regulatory Subsidiary.

NASDAQ OMX believes that the change is warranted to ensure that the definition of Industry Director is appropriately focused on the mitigation of potential conflicts of interest associated with Directors who are currently or were very recently employed by members or member organizations of Self-Regulatory Subsidiaries, or that otherwise have material affiliations with such members or member organizations. The current definition covers individuals who are employed by broker-dealers that are not members of Self-Regulatory Subsidiaries, or who retired from service at a broker-dealer more than one, but less than three years in the past. NASDAQ OMX and the Exchange believe that by deeming such potential Directors to be Industry Directors, the current By-Laws unnecessarily restrict highly qualified individuals with extensive knowledge of the financial services industry from serving on the Board.

In addition to this change, NASDAQ OMX is also proposing the following additional changes to the definitions applicable to categories of Directors:

(1) NASDAQ OMX proposes a new definition of ''Staff Director.'' Currently, the definition of ''Staff Director'' is included within the definition of ''Industry Director,'' and is defined as ''any two officers of the Corporation, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors.'' By virtue of being designated as Staff Directors, these Directors are not considered to be Industry Directors for purposes of the compositional requirements of the By-Laws. Instead, NASDAQ OMX proposes a separate definition of ''Staff Director'' as ''an officer of the Corporation that is serving as a Director.'' [12] As discussed below, however, Section 4.3 of the By-Laws is to be amended to provide that only one Staff Director may serve on the Board, unless the Board consists of ten or more Directors, in which case no more than two Staff Directors may serve. Thus, the change will further restrict the number of possible Staff Directors in instances where the Board is smaller than ten Directors, while retaining the current limit for a larger Board.

(2) NASDAQ OMX is adopting a new definition of ''Issuer Director'' and ''Issuer committee member''. The By-Laws currently provide that the number of ''Non-Industry Directors'' (*i.e.,* Directors who are not Industry Directors) must equal or exceed the number of Industry Directors, and shall include at least one ''issuer representative,'' unless the Board consists of ten or more Directors, in which case it must include at least two issuer representatives. NASDAQ OMX and the Exchange believe that requiring the representation of issuers on the Board is consistent with the goal of promoting a diversity of viewpoints and skills among Directors and the requirement of Section 6(b)(3) of the Act [13] to provide for representation of issuers among the directors of a national securities exchange. The term ''issuer representative'' is not directly defined in the By-Laws, but is implicitly defined in the definition of ''Non-Industry Director'' as ''an officer, director, or

[7] NASDAQ OMX is adding a definition of ''affiliate'' as follows: ''An 'affiliate' of, or a person 'affiliated' with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.'' The definition is identical to the definition of the term in SEC Rule 12b–2, 17 CFR 240.12b–2.

[8] NASDAQ OMX is adding a definition of ''immediate family member'' as follows: ''Immediate family member' means a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home.'' The definition is identical to the definition of ''family member'' contained in NASDAQ listing standards, as provided in NASDAQ Rule 5605.

[9] This provision would apply to an individual that was a member of Phlx, the only Self-Regulatory Subsidiary that allows natural persons to become members.

[10] A broker-dealer that is admitted to membership in Phlx is referred to as a ''member organization;'' broker-dealers admitted to membership in the other Self-Regulatory Subsidiaries are referred to as ''members.''

[11] An ''Executive Officer'' of a member or member organization means those officers covered in Rule 16a–1(f) under the Act, as if the member or member organization were an issuer within the meaning of such Rule. 17 CFR 240.16a–1(f).

[12] The definition of ''Industry Director'' will continue to exclude Staff Directors, who might otherwise be considered Industry Directors by virtue of affiliation with NASDAQ Exchange Services LLC and NASDAQ Options Services, LLC, registered broker-dealers that are members or NASDAQ and BX and member organizations of Phlx.

[13] 15 U.S.C. 78f(b)(3).

employee of an issuer of securities listed on a national securities exchange operated by any Self-Regulatory Subsidiary.'' The new proposed definition is ''a Director (excluding any Staff Director) or committee member who is an officer or employee of an issuer of securities listed on a national securities exchange operated by any Self-Regulatory Subsidiary, excluding any Director or committee member who is a director of such an issuer but is not also an officer or employee of such an issuer.'' The exclusion of Staff Directors from the definition is necessary because NASDAQ OMX is listed on NASDAQ, but the purposes of the By-Laws in requiring issuer representation to promote a diversity of viewpoints among Directors would not be well served by deeming Staff Directors also to be Issuer Directors. The definition is also being changed to exclude persons who are directors of issuers but not also officers or employees. This change is intended to make it clear that a Director is not barred from being considered a Public Director [14] merely because the Director serves as an independent director of another listed company.

(3) The definition of ''Public Director'' and ''Public committee member'' is being restated as follows: ''a Director or committee member who (1) Is not an Industry Director or Industry committee member, (2) is not an Issuer Director or Issuer committee member, and (3) has no material business relationship with a member or member organization of a Self-Regulatory Subsidiary, the Corporation or its affiliates, or FINRA.'' The definition currently covers a person who ''has no material business relationship with a broker or dealer, the Corporation or its affiliates, or FINRA.'' Thus, the changes make it clear that any Industry Director or Issuer Director would not be considered a Public Director. As noted above, however, an independent director of an issuer of securities listed on NASDAQ could be considered a Public Director. In addition, in keeping with the change to the definition of Industry Director discussed above, the final clause of the definition is being revised to focus on the existence of a material business relationship with a member or member organization of a Self-Regulatory Subsidiary, rather than any broker or dealer. Thus, for example, a Director that had a material business relationship with a non-U.S. broker or dealer that was not a member or a member organization of a Self-Regulatory Subsidiary might be eligible to be a Public Director.

(4) The definition of ''Non-Industry Director'' or ''Non-Industry committee member'' is proposed to be amended to cover any ''Director (excluding any Staff Director) or committee member who is (1) A Public Director or Public committee member; (2) an Issuer Director or Issuer committee member; or (3) any other individual who would not be an Industry Director or Industry committee member.'' The revised definition is generally consistent with the current definition, but reflects the adoption of a definition for ''Issuer Director or Issuer committee member''.

(5) NASDAQ OMX is making conforming changes to the letter designations of paragraphs in Article I of the By-Laws.

Qualifications of Directors

NASDAQ OMX is proposing to amend Section 4.3 of the By-Laws, which governs the qualifications and compositional requirements of the Board of Directors, to (i) Increase the required number of Public Directors from one to two, (ii) replace the requirement to include at least one issuer representative (or at least two issuer representatives if the Board consists of ten or more Directors) with a requirement to include at least one, but no more than two, Issuer Directors, and (iii) provide that the number of Staff Directors may not exceed one, unless the Board consists of ten or more Directors, in which case the number may not exceed two. The section will continue to require that the number of Non-Industry Directors equals or exceeds the number of Industry Directors. Although these changes will not significantly modify the Board's compositional requirements, they will continue to ensure a diversity of representation among Industry, Staff, Issuer, and Public Directors, will place more stringent caps on the number of Issuer and Staff Directors, and will increase the requirement for Public Directors. NASDAQ OMX also proposes to make a conforming change to add the term ''Issuer Director'' to Section 4.8 and Section 4.13(h), which govern the filling of vacancies on the Board and the determination of Directors' qualifications by NASDAQ OMX's Secretary.

The changes to the compositional requirements imposed specifically by the By-Laws do not alter in any respect the compositional requirements imposed by NASDAQ listing standards on NASDAQ OMX as a public company. Specifically, NASDAQ Rule 5605 requires that the board of directors of a company listed on NASDAQ must have a majority of directors that are ''independent'' within the meaning of that rule. As provided in NASDAQ Rule 5605(a)(2) with respect to a company listed on NASDAQ (a ''Company''), '' 'Independent Director' means a person other than an Executive Officer [15] or employee of the Company or any other individual having a relationship which, in the opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.'' The rule goes on to provide that directors having certain defined relationships with a Company may not be considered independent. Thus, while Staff Directors are clearly not independent within the meaning of Rule 5605, other Directors may or may not be considered independent, depending on the specific facts of their relationship to NASDAQ OMX. The proposed rule change does not alter in any respect the obligations of the NASDAQ OMX Board under NASDAQ Rule 5605.

Composition of Executive Committee

NASDAQ OMX is proposing a minor amendment to the compositional requirements of its Executive Committee. Currently, Section 4.13(d) of the By-Laws provides that the percentage of Public Directors on the Executive Committee must be at least as great as the percentage of Public Directors on the whole Board. As noted above, however, the By-Laws currently require only one Public Director on the whole Board (a requirement that NASDAQ OMX is proposing to raise to two Public Directors). Thus, the By-Laws currently reflect a standard under which voluntary inclusion of additional Public Directors on the full Board translates into a requirement to include ever increasing numbers of Public Directors on the Executive Committee, even though the requirements for the full Board itself may be satisfied with only one Public Director. Accordingly, NASDAQ OMX is proposing to make the requirements consistent by requiring at least two Public Directors on the Executive Committee.

Composition of the Audit Committee

Earlier this year, the Commission approved changes to the provisions of NASDAQ OMX's By-Laws pertaining to the composition of the Management Compensation Committee of its Board of Directors. NASDAQ OMX is now proposing comparable changes to the

[14] The definition of Public Director is discussed below.

[15] NASDAQ Rule 5605(a)(1) provides that '' 'Executive Officer' means those officers covered in Rule 16a–1(f) under the Act.'' 17 CFR 240.16a–1(f).

compositional requirements of its Audit Committee. Specifically, NASDAQ OMX is proposing to amend Section 4.13(g) to replace a requirement that the Audit Committee be composed of a majority of Non-Industry Directors with a requirement that the number of Non-Industry Directors on the committee equal or exceed the number of Industry Directors. Thus, in the case of a committee composed of four Directors, the current By-Law provides that only one Director may be an Industry Director, while the amended By-Law would allow up to two Directors to be Industry Directors. The proposed compositional requirement for the committee with regard to the balance between Industry Directors and Non-Industry Directors would be the same as that already provided for in the By-Laws with respect to the Executive Committee, the Nominating and Governance Committee, the Management Compensation Committee, and the full Board of Directors.

NASDAQ OMX and the Exchange believe that the change will provide greater flexibility to NASDAQ OMX with regard to populating a committee that includes Directors with relevant expertise and that is not excessively large in relation to the size of the full Board of Directors, while continuing to ensure that Directors associated with members and member organizations of the Self-Regulatory Subsidiaries do not exert disproportionate influence of the governance of NASDAQ OMX. As required by Section 10A of the Act,[16] SEC Rule 10A–3 thereunder,[17] and NASDAQ Rule 5605(c), the committee would continue at all times to be composed solely of Directors who are independent within the meaning of those provisions.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[18] in general, and with Sections 6(b)(1) and (b)(5) of the Act,[19] in particular, in that the proposal enables BX to be so organized and to have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance by members and persons associated with members with provisions of the Act, the rules and regulations thereunder, and BX rules, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, BX believes that the change to the definition of Industry Director is warranted to ensure that it is appropriately focused on the mitigation of potential conflicts of interest associated with Directors who are currently or were very recently employed by members or member organizations of Self-Regulatory Subsidiaries, or that otherwise have material affiliations with such members or member organizations, without unnecessarily restricting highly qualified individuals with extensive knowledge of the financial services industry from serving on the Board. BX further believes that the other definitional changes and the changes to the compositional requirements of the NASDAQ OMX Board and the Executive Committee will enhance the clarity of these provisions and promote a diversity of backgrounds and viewpoints on the NASDAQ OMX Board. The Exchange believes that these changes will collectively promote the capacity of the NASDAQ OMX Board to fulfill its responsibilities.

With respect to the proposed changes to the Audit Committee's compositional requirements, BX believes that the change will provide greater flexibility to NASDAQ OMX with regard to populating a committee that includes Directors with relevant expertise and that is not excessively large in relation to the size of the full Board of Directors, while continuing to ensure that Directors associated with members and member organizations of Self-Regulatory Subsidiaries do not exert disproportionate influence of the governance of NASDAQ OMX. The change would not affect NASDAQ OMX's compliance with Section 10A of the Act,[20] SEC Rule 10A–3 thereunder,[21] and NASDAQ Rule 5605(c), as the committee would continue at all times to be composed solely of Directors who are independent within the meaning of those provisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes [sic] the Act. Specifically, the Exchange believes that the By-Laws of its holding company, NASDAQ OMX, do not directly affect competition between the Exchange and others that provide the same goods and services as the Exchange, since they do not affect the availability or pricing of such goods and services. To the extent that the proposed change to the By-Laws may be construed to have any bearing on competition, the Exchange believes that the change will promote competition between the Exchange and the subsidiaries of NYSE Euronext, since the change will allow NASDAQ OMX to have greater flexibility in the selection of its Directors in a manner similar to the flexibility available to NYSE Euronext under its Independence Policy.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2012–075 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission,

[16] 15 U.S.C. 78j–1.

[17] 17 CFR 240.10A–3.

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(1), (5).

[20] 15 U.S.C. 78j–1.

[21] 17 CFR 240.10A–3.

100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2012–075. 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 the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2012–075, and should be submitted on or before January 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31245 Filed 12–28–12; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68515; File No. SR–NASDAQ–2012–137]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto to Establish the Market Quality Program

December 21, 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 December 7, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. On December 20, 2012, the Exchange submitted Amendment No. 1 to the proposed rule change, which replaces and supersedes the proposed rule change in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1 thereto, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is filing with the Commission a proposal to add new Rule 5950 (Market Quality Program) to enable market makers that voluntarily commit to and do in fact enhance the market quality (quoted spread and liquidity) of certain securities listed on the Exchange to qualify for a fee credit pursuant to the Exchange's Market Quality Program and to exempt the Market Quality Program from Rule 2460 (Payment for Market Making). NASDAQ believes this voluntary program will benefit investors, issuers or companies, and market participants by significantly enhancing the quality of the market and trading in such listed securities.

The Market Quality Program set forth in Rule 5950 will be effective for a one year pilot period beginning from the date of implementation of the program. During the pilot, NASDAQ will periodically provide information to the Commission about market quality in respect of the Market Quality Program.

The text of the proposed rule change is available from NASDAQ's Web site at *http://nasdaq.cchwallstreet.com/Filings/,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This Amendment No.1 to SR–NASDAQ–2012–137 replaces and supercedes [sic] SR–NASDAQ–2012–137 in its entirety.[3]

The purpose of the filing is to propose new Rule 5950 to enable Market Makers[4] that enhance the market quality of certain securities listed on the Exchange (known as ''targeted securities'') and thereby qualify for a fee credit pursuant to the Market Quality Program (''MQP'' or ''Program'') and to exempt the Program from Rule 2460.

Proposed Rule 5950 will be effective for a one year pilot period. The pilot period will commence when the Market Quality Program is implemented by the Exchange and an MQP Company,[5] on behalf of an MQP security, and one or more related Market Makers are accepted into the MQP in respect of a security listed pursuant to the Program (''MQP Security'').[6] The pilot program will, unless extended, end one year after implementation.[7] During the pilot, the

[3] SR–NASDAQ–2012–137 replaced SR–NASDAQ–2012–043, which was withdrawn by the Exchange. *See* Securities Exchange Act Release Nos. 66765 (April 6, 2012), 77 FR 22042 (April 12, 2012)(SR–NASDAQ–2012–043)(notice of filing); and 68378 (December 6, 2012), 77 FR 74042 (December 12, 2012)(notice of withdrawal). Attached hereto is Exhibit 4 that reflects the changes made to Exhibit 5. The Commission notes that Exhibit 4 is attached to the filing, not to this Notice.

[4] The term ''Market Maker'' is defined in Rule 5005(a)(24) as a dealer that, with respect to a security, holds itself out (by entering quotations in the NASDAQ Market Center) as being willing to buy and sell such security for its own account on a regular and continuous basis and that is registered as such.

[5] The term ''MQP Company'' is defined in proposed Rule 5950(e)(5) as the trust or company housing the Exchange Traded Fund or, if the Exchange Traded Fund is not a series of a trust or company, then the Exchange Traded Fund itself. MQP Fees for MQP Securities will be paid by the Sponsors associated with the MQP Companies. The term Sponsor means the registered investment adviser that provides investment management services to an MQP Company or any of such adviser's parents or subsidiaries.

[6] The term ''MQP Security'' is defined in proposed Rule 5950(e)(1) as an Exchange Traded Fund (''ETF'') security issued by an MQP Company that meets all of the requirements to be listed on NASDAQ pursuant to Rule 5705. For the definition of ETF, *see* proposed Rule 5950(e)(2).

[7] The Exchange believes that, based on discussions with the Financial Industry Regulatory Authority (''FINRA''), FINRA intends to file an immediately effective rule change that would exempt from FINRA Rule 5250 exchange programs that are approved by the Commission. The Exchange notes that FINRA Rule 5250 does not preclude the Exchange from any action, but precludes FINRA members (not all Exchange

Continued

Exchange will periodically provide information to the Commission about market quality in respect of the MQP.[8]

Background

The proposed Market Quality Program is a voluntary program designed to promote market quality in MQP Securities.[9] An MQP Company may list an eligible MQP Security on NASDAQ and in addition to the standard (non-MQP) NASDAQ listing fee as set forth in the Rule 5000 Series (consisting of Rules 5000–5999),[10] a Sponsor may pay a fee (''MQP Fee'') in order for the MQP Company, on behalf of an MQP Security, to participate in the Program. The MQP Fee will be credited to NASDAQ's General Fund. NASDAQ will incentivize one or more Market Makers in the MQP Security (''MQP Market Maker'') to enhance the market quality of the MQP Security. Subject to the conditions set forth in this rule, out of its General Fund NASDAQ will credit (''MQP Credit'') one or more MQP Market Makers that make a quality market in the MQP Security pursuant to the Program.[11] The recipients and the size of their credits will be determined solely by NASDAQ pursuant to objective criteria; issuers will have no role in selecting the recipients or in determining the specific amount, if any, of their credits.

The Need for the MQP

The Exchange believes that the MQP will be beneficial to the financial markets, to market participants including traders and investors, and to the economy in general. First, the MQP will encourage narrow spreads and liquid markets in situations that generally have not been, or may not be, conducive to naturally having such markets. The securities that comprise these markets may include less actively traded or less well known ETF products that are made up of securities of less well known or start-up companies as components.[12] Second, in rewarding Market Makers that are willing to ''go the extra mile'' to develop liquid markets for MQP Securities,[13] the MQP would clearly benefit traders and investors by encouraging more quote competition, narrower spreads and greater liquidity. Third, the MQP will lower transaction costs and enhance liquidity in both ETFs and their components, making those securities more attractive to a broader range of investors. In so doing, the MQP will help companies access capital to invest and grow. And fourth, the MQP may attract smaller, less developed companies and investment opportunities to a regulated and transparent market and thereby serve the dual function of providing access to on-Exchange listing while expanding investment and trading opportunities to market participants and investors.

There is support for paid for market making (also known as ''PFMM'') at the highest governmental levels. Congressman Patrick McHenry, the Chairman of the House Committee on Governmental Reform and Oversight, for example, recently noted that agreements between issuers and market makers to pay for market making activity ''* * *would allow small companies to produce an orderly, liquid market for their stocks. Research has shown that these agreements, already permitted overseas, have led to a positive influence on liquidity for small public companies.'' [14]

In a similar vein, Robert Greifeld, Chief Executive Officer of The NASDAQ OMX Group, Inc. (''NASDAQ OMX''), has noted that unlike the United States, ''[t]he U.K., Canada and Sweden all have exchange markets that serve as ''incubators'' for smaller companies.[15]

members are FINRA members) from directly or indirectly accepting payment or consideration from an issuer of a security for acting as a market maker. *See* Securities Exchange Act Release Nos. 60534 (August 19, 2009), 74 FR 44410 (August 28, 2009)(SR–FINRA–2009–036)(order approving proposal to adopt NASD Rule 2460 without substantive change into the Consolidated FINRA Rulebook as Rule 5250); and 38812 (July 3, 1997), 62 FR 37105 (July 10, 1997)(SR–NASD–97–29)(order approving adoption of NASD Rule 2460; FINRA Rule 5250 and NASDAQ Rule 2460 are based on NASD Rule 2460)(the ''1997 order''). Being mindful of the concern in the 1997 order about investor confidence and market integrity, the Exchange designed the MQP Program to be highly transparent, with: clear public notification requirements; clear entry, continuation, and termination requirements; clear market maker accountability standards; and, perhaps most importantly, clear market quality (liquidity) enhancement standards that benefit investors and market participants.

The Exchange has a provision in its Rule 2460 that is, in respect of Exchange members, largely similar to FINRA Rule 5250. *See* Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006)(File No. 10–131) (order approving registration of The NASDAQ Stock Market LLC as a national securities exchange and adopting Rule 2460). As discussed in the body of the proposal, the Exchange proposes to modify Rule 2460 so that it is not applicable to the MQP.

[8] As the Exchange notes in the filing, the goal is to expand the MQP, if successful, to small cap stocks that may benefit from liquidity enhancement and in turn help to promote economic expansion. To expand the MQP in this fashion, the Exchange will need to file a new proposed rule change with the Commission.

[9] The Exchange notes that MQP Securities do not encompass derivatives on such securities.

[10] The Rule 5000 Series contains rules related to the qualification, listing and delisting of Companies on NASDAQ. The Rule 5100 Series discusses NASDAQ's general regulatory authority. The Rule 5200 Series sets forth the procedures and prerequisites for gaining a listing on NASDAQ, as well as the disclosure obligations of listed Companies. The Rule 5300, 5400, and 5500 Series contain the specific quantitative listing requirements for listing on the Global Select, Global Market, and Capital Market, respectively. The corporate governance requirements applicable to all Companies are contained in the Rule 5600 Series. Special listing requirements for securities other than common or preferred stock and warrants are contained in the Rule 5700 Series. The consequences of a failure to meet NASDAQ's listing standards are contained in the Rule 5800 Series. Finally, listing fees are described in the Rule 5900 Series.

[11] The enhanced market quality (*e.g.* liquidity) would, as discussed below, emanate from market quality standards for MQP Market Makers that include, for example, posting a market in an MQP Security that is no wider on the offer side and no wider on the bid side than 2% away from NBBO. Proposed Rule 5950(c)(1)(B).

Other markets have considered various ways to increase liquidity in low volume securities. NYSE Euronext, for example, has advocated that a market-wide pilot program with wider spread increments for less liquid securities could be a worthwhile experiment. NYSE Euronext has also recognized that the creation of a program in which small companies could enter into agreements directly with broker-dealers or through exchanges to provide direct payments to a broker-dealer who agrees to make a market in the issuer's security is an idea that may warrant further review by FINRA and the Commission. *See* Testimony of Joseph Mecane, Executive Vice President, NYSE Euronext, Before the House Committee on Government Reform and Oversight, November 15, 2011. *See also* Securities Exchange Act Release No. 66966 (May 11, 2012), 77 FR 29419 (May 17, 2012)(SR–NYSEArca–2012–37)(notice of filing regarding Lead Market Maker incentive program).

[12] These small companies and their securities (whether components of listed products like ETFs or direct listings) have been widely recognized as essential to job growth and creation and, by extension, to the health of the economy. Being included in a successful ETF can provide the stocks of these companies with enhanced liquidity and exposure, enabling them to attract investors and access capital markets to fund investment and growth.

[13] By imposing quality quoting requirements to enhance the quality of the market for MQP Securities, the MQP will directly impact one of the ways that Market Makers manage risk in lower tier or less liquid securities (*e.g.* the width of bid and offer pricing).

[14] *See* Payments to Market Makers May Improve Trading in Smaller Stocks, by Nina Mehta, Bloomberg, November 15, 2011.

The Exchange believes that by establishing specific market quality requirements in the MQP to expand quote competition and liquidity in targeted securities such as ETFs, the Program will be conducive to capital formation—not only in the targeted securities or ETFs (*e.g.* higher trading volume and/or creation of additional share units) but also in the individual components that make up the targeted securities (*e.g.* higher share trading volume). Securities that trade in active, liquid markets are less likely to suffer from mispricing (that is, a discount in pricing because of a lack of liquidity) that can diminish a company's ability to raise capital for further investment and growth.

[15] *See* Robert Greifeld, CEO, NASDAQ OMX, Sarbox and Immigration Reform for Jobs, Wall Street Journal, October 4, 2011. For a discussion of capital formation issues in the U.S., *see* letters between Mary Shapiro, Chairman of the Commission and Congressman Darrel E. Issa, Chairman of the House Committee on Oversight and

The Exchange believes that the MQP proposal will, by encouraging liquid markets, enable the Exchange to similarly serve as an ''incubator,'' and to continue being an innovator in expanding markets to benefit market participants, traders, and investors.[16] The MQP would reward market makers for committing capital to securities and meeting rigorous market quality benchmarks established by the Program.[17] This approach has worked very successfully in overseas markets, including the NASDAQ OMX Nordic First North market (known as ''First North'').

The practice of paid for market making to increase the liquidity of less liquid securities was examined by Johannes A. Skjeltorp and Bernt Arne Odegaard in a working paper from June 2011.[18] Skjeltorp and Odegaard examined paid for market making on the Oslo Stock Exchange, which uses a market making model that is similar to that of NASDAQ's First North market,[19] and noted that they ''* * * find a significant reduction in liquidity risk and cost of capital for firms that hire a market maker. Firms that prior to hiring a market maker * * * [have] a high loading on a liquidity risk factor, experience a significant reduction in liquidity risk to a level similar to that of the larger and more liquid stocks on the exchange.''

About six years prior to the Skjeltorp and Odegaard article, Amber Anand, Carsten Tanggaard, and Daniel G. Weaver studied liquidity provision through paid for market making on the Stockholm Stock Exchange (''SSE''), currently named NASDAQ OMX Stockholm AB.[20] The researchers examined the success of fifty previously illiquid firms that were listed on the SSE and enjoyed, along with investors, the benefits of paid for market making. The researchers examined the impact of the paid market maker program and found that firms experienced ''* * *a decreased cost of capital and significant improvements in market quality and price discovery.'' [21] The market makers were known as liquidity providers and the firms could set maximum spread widths for their stocks, as is currently done. Anand, Tanggaard, and Weaver found that following the beginning of paid for market making services, spreads narrowed by a statistically significant amount and depth increased at the inside and in the aggregate for four price levels away from the inside. The researchers found that accompanying the increase in depth was a significant increase in average trade size, suggesting that traders did not find it necessary to break up their orders to accommodate low market depth. They also found an increase in trading activity, suggesting that liquidity providers were actively trading with public customers.

More recently, Eric Noll, Executive Vice President, NASDAQ OMX, described the positive impact of paid for market making in the First North market, a European venue for smaller companies that has a program enabling companies to compensate market makers.[22] Mr. Noll stated that NASDAQ OMX has had ''great success'' in increasing liquidity in stocks on First North, and that in just five years, the First North market has grown to 141 listings with a total capitalization of 2.8 billion Euros. Twenty-two 22 First North companies have graduated to the main market since 2006.[23]

Paid for Market Making on the First North Market

The Exchange believes that commensurate with the previously-discussed studies regarding paid for market making,[24] it is instructive to examine the paid for market making experience on the First North market.

By way of background, the First North market is an alternative listing market to the NASDAQ OMX Nordic Main Market (''Main Market'').[25] Both First North and Main Market are subject to and regulated by European Union (''EU'') directives[26] and exchange rules, and are supervised and regulated by one or more Financial Services Authorities (''FSAs'').[27] While the Main Market is intended for listing companies that are well established, First North is intended for listing small, young or growth companies (not unlike the beneficiaries of the MQP) while providing an infrastructure and trading and settlement system that is similar to that of the Main Market. First North offers new or small public companies the benefits of listing on a public market and the potential for good markets through a paid for market making system, and is often the first step towards listing on the Main Market.[28]

The First North paid for market making system is based on a standard exchange-supplied contract between a listing firm and a designated market maker (''DMM'') that sets forth market obligations for the market maker. The Exchange sets forth obligations for the

Governmental Reform, dated March 22, 2011, April 6, 2011, and April 29, 2011.

[16] *See* Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010)(NASDAQ–2010–141)(notice of filing and immediate effectiveness establishing the Investor Support Program to attract retail order flow to the Exchange). *See also* Securities Exchange Act Release No. 64437 (May 6, 2011), 76 FR 27710 (May 12, 2011)(NASDAQ–2010–059)(approval order creating a listing market, The BX Venture Market, that will have strict qualitative listing requirements and quantitative standards that would attract smaller, growth companies).

[17] *See* Testimony of Edward S. Knight, General Counsel and Executive Vice President, NASDAQ OMX Group, Before the Senate Committee on Banking, Housing, and Urban Affairs, December 1, 2011.

[18] *See* Why do Firms Pay for Market Making in Their Own Stock? by Johannes A. Skjeltorp, Norges Bank, and Bernt Arne Odegaard, University of Stavanger and Norges Bank, June 2011. *See also* Why Designate Market Makers? Affirmative Obligations and Market Quality by Hendrik Bessembinder, Jia Hao, and Michael Lemmon, June 2011. This study suggests that future flash crashes can be avoided and social welfare enhanced by designating market makers and engaging paid for market making; and observing the positive attributes of direct payments from listed firms to designated market makers on the Stockholm Stock Exchange and Euronext Paris.

[19] The Exchange believes that the Skjeltorp and Odegaard article is therefore directly applicable to the First North paid for market making experience.

[20] *See* Paying for Market Quality, Working Paper F–2006–06 by Amber Anand, Carsten Tanggaard, and Daniel G. Weaver, November 2005, Aarhus School of Business.

[21] At the time of the study, SSE was owned by OMX AB. SSE merged into NASDAQ OMX in 2008 and retained its identity within the new corporate structure. The SSE paid for market making system matured into the current First North market.

[22] *See* Payments to Market Makers May Improve Trading in Smaller Stocks, by Nina Mehta, Bloomberg, November 15, 2011.

[23] *See* Testimony of Eric Noll, Executive Vice President, NASDAQ OMX Group, Before the House Committee on Government Reform and Oversight, November 15, 2011. Mr. Noll noted also that one of the unintended consequences of market fragmentation in the current U.S. securities markets has been a lack of liquidity and price discovery in listed securities outside of the top 100 traded names, and a disturbing absence of market attention paid to small growth companies by market participants. The Exchange believes that the MQP proposal offers a practical and positive solution.

[24] *See supra* notes 18, 19, and 20.

[25] NASDAQ OMX Nordic, which has securities exchanges and clearing operations in the Nordic countries of Sweden, Denmark, Iceland, and Finland and Baltic countries of Latvia and Estonia, operates First North and the Main Market. For additional information, *see http://www.nasdaqomxnordic.com/about_us?languageId=1.*

[26] For example, the Markets in Financial Instruments Directive (''MiFID''). It should be noted that certain parts of the EU legislation, for example the Transparency Directive, only apply to companies admitted to trading on the Main Market.

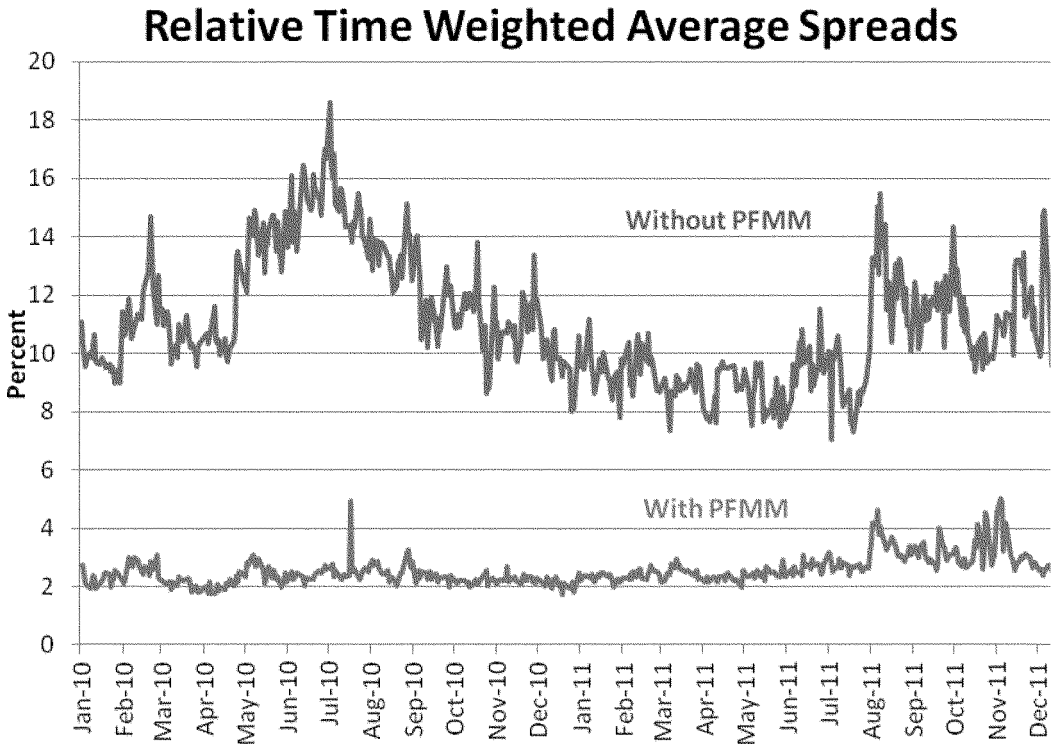
[27] A Financial Services Authority or ''FSA'' is the regulator of financial services and securities exchanges in an EU country (including the Nordics) and as such is similar to the Commission in respect of involvement in market regulation and oversight.

[28] The First North and Main Market have increasingly higher listing standards, similarly to the tiered NASDAQ listings markets. *See* Rule 5300, 5400, and 5500 Series regarding the Global Select, Global Market, and Capital Market, respectively. In a similarly tiered fashion, between First North and Main Market is an intermediary market known as First North Premiere (a segment of First North) that is designed to help companies seeking higher investor visibility and/or preparation for Main Market listing.

MQP Market Makers (as well as MQP Companies) in proposed Rule 5950 in the belief that this provides the greatest amount of transparency, and accountability, for all that wish to participate in the MQP.

The paid for market making model on NASDAQ's First North has operated since 2002 and has been demonstrably successful to the benefit of issuers and investors, without material regulatory issues. One of the definitive market quality attributes associated with expansion of liquidity through paid for market making is the significant narrowing of bid/ask spreads. This phenomenon is directly and immediately beneficial for all market participants including investors and listing companies (which may also benefit from accompanying volume increase). As depicted in the chart below, in 2010 and 2011 the Relative Time Weighted Average Spread (''RTWAS'') [29] at First North was significantly better for securities with PFMM than for those without the benefit of PFMM.

The substantial positive advantage that market participants receive from PFMM is clearly demonstrated in the chart below, showing that non-PFMM security spreads were: (a) Often more than four times wider than PFMM security spreads; and (b) a majority of the time more than three times wider than PFMM spreads. Moreover, the spreads for stocks with PFMM were more stable through time.



A comparison of Relative Time Weighted Average Spread on First North shows the significant, consistent impact of PFMM in narrowing spreads.[30] This directly benefits investors in PFMM securities by lowering their transaction costs.[31]

In terms of regulation, the First North PFMM experience has not raised concerns. Based on Exchange discussions with the Office of General Counsel at NASDAQ OMX Nordic in respect of the First North market, the Exchange is not aware of regulatory oversight issues (*e.g.* Swedish FSA or Danish FSA) in respect of paid for market making on First North.[32]

The Exchange believes that the MQP will, like paid for market making on First North, achieve positive results.[33]

The Proposal—Background

The Exchange believes that this proposal would help raise investor and issuer confidence in the fairness of their transactions and the markets in general by enhancing market maker quote competition in securities on the Exchange, narrowing spreads, increasing shares available at the inside, reducing transaction costs, supporting

[29] RTWAS is the bid/ask spread relative to the stock price calculated at every NBBO change, then averaged with weights for how long each NBBO condition lasted.

[30] The Exchange believes that the volatility reflected on the RTWAS chart after August 2011 is due in large part to economic events in the EU.

[31] The Exchange believes that just as First North's positive PFMM experience is successful in its own right, so it is equally positive within the wider European liquidity enhancement (paid for market making) experience. *See,* for example, How Do Designated Market Makers Create Value for Small-Caps? by Albert J. Menkveld and Ting Wang, August 1, 2011. This analysis of the 2001 Euronext system roll-out to the Amsterdam market, where small-caps had the opportunity to hire a DMM who guaranteed a minimum liquidity supply in their stock, found an improvement in liquidity level and a reduction in liquidity risk. *See also* Designated Sponsors and Bid-Ask Spreads on Xetra by Jördis Hengelbrock, October 31, 2008. This analysis of Deutsche Börse Group's Xetra program that began in the 1990s, where issuers of less liquid stocks could contract with a Designated Sponsor to provide liquidity in a stock for a fee, found that investor costs including spreads were lower for those stocks that had at least one such dedicated Designated Sponsor.

[32] Moreover, the Exchange notes that while spreads widened for stocks on all markets around the world during the height of the financial crisis in September and October 2008, First North stocks with PFMM experienced less spread widening than comparable stocks without PFMM.

[33] The Exchange believes that even though First North market lists equities while the proposed MQP market would emphasize listing ETF products, this does not detract from, and indeed enhances, the comparability of the First North PFMM experience to MQP. *See infra* note 36 (discussing the potential benefit of the unique trust structure of ETFs).

the quality of price discovery, and promoting market transparency.[34]

As noted, the proposal would enhance the market quality of targeted securities, particularly ETFs. The Exchange believes that ETFs offer great value to retail and institutional investment communities, as reflected in their popularity as investment vehicles both in the U.S. and abroad.[35] ETFs offer transparency, liquidity, diversification, cost efficiency and investment flexibility to gain broad market exposure or to express a directional view as a core or satellite component to one's investment portfolio; and do so while offering investment exposure to all asset classes—many of which would otherwise be inaccessible.[36] Moreover, ETFs, particularly those that are equity based, also benefit listed companies. By being included in a single, diversified security, companies gain access to a greater audience of investors who may not have bought the individual stock.[37] This means that the markets are deeper and more liquid, benefiting not only investors but the economy as a whole.[38] This proposal will allow ETFs that may not otherwise see much trading or volume[39] to be listed and traded on the Exchange in more liquid markets.[40] In that this proposal is designed to provide market quality support to smaller, less frequently traded segments of securities (ETFs), subsection (d) of proposed Rule 5950, which catalogues the reasons for termination of the MQP and is discussed at length below, indicates that an MQP Security will no longer be eligible to remain in the MQP if the security sustains an average daily trading volume (consolidated trades in all U.S. markets) (''ATV'') of one million shares or more for three consecutive months. While the Exchange originally proposed a two million shares threshold in the withdrawn MQP proposal at SR–NASDAQ–2012–043, it is scaling back the threshold to one million shares to better provide NASDAQ and the Commission with an opportunity to observe the impact, if any, on MQP Securities that exceed the threshold and ''graduate'' from the Program. The Exchange has compiled statistics indicating that ''graduation'' from the Program may occur more frequently at a one million threshold than a two million threshold:

Number of ETFs with average daily volume moving from below the threshold to above, by year

Year	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Graduates (ADV moves above 2M)	2	1	3	2	7	10	23	38	20	10	12	3
Graduates (ADV moves above 1M)	3	4	5	5	14	20	24	48	27	16	16	5

Notes:

- ADV for all ETFs was not available in all years.
- A single ETF may graduate more than once over the 12 years because they move above 1M ADV, then below for a year or more, then above again.

Moreover, while the MQP pilot is structured to initially apply only to ETFs, the goal is to expand the MQP, if successful, to small cap stocks and other similar products that may need liquidity enhancement. The Exchange believes that while this would benefit small cap MQP products and investors as well as overall market liquidity, perhaps even more importantly it would serve to help economic expansion and the economy as a whole.[41]

[34] The Commission has recognized the strong policy preference under the Act in favor of price transparency and displayed markets. *See* Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (Concept Release on Equity Market Structure).

To that end, the Exchange has recently put into place initiatives designed to expand the liquidity of certain targeted securities on transparent and displayed markets on the Exchange. *See,* for example, Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010)(SR–NASDAQ–2010–141)(notice of filing and immediate effectiveness of proposal to establish Investor Support Program in respect of retail or natural order flow).

[35] The Exchange notes that foreign (non-U.S.) ETFs, particularly those that are derivative-based, may have certain negative characteristics that are not present in U.S. ETFs. In some cases, under the Undertakings for Collective Investment in Transferable Securities (UCITS, Europe's equivalent of the Investment Company Act of 1940 (''1940 Act'')) structure, individual firms are permitted to fulfill multiple roles within the construct of the product's trading and or creation/redemption process (*e.g.* the Sponsor/Issuer of a European ETF could be the same entity as the market maker, distributor, intraday Net Asset Value (''NAV'') calculation agent, custodian bank and/or counterparty to any underlying asset). Under the 1940 Act, this is not permitted.

[36] It has been noted that since the prices of ETFs are generally linked back to the underlying securities, there is less opportunity for manipulation. *See* Payments to Market Makers May Improve Trading in Smaller Stocks, by Nina Mehta, Bloomberg, November 15, 2011. To that end, the Exchange notes that by definition an ETF will have an insulating wall between Market Maker and product, namely a trust structure—which is not present with other products such as equity securities—that establishes the daily NAV for an ETF. NAV reflects the per-share value of an ETF, which is based upon the performance of a fund's underlying components and methodology.

[37] *See* Testimony of Eric Noll, Executive Vice President, NASDAQ OMX, Before the Securities Subcommittee of the Senate Banking Committee October 19, 2011 (''I can tell you from personal experience that the companies that make up QQQ [(the NASDAQ–100 technology ETF)] consider it a real achievement, and certainly NASDAQ is proud of the excellence QQQ represents.'').

In addition, the Exchange believes that purchasers of ETFs that find success because of increased market quality (especially where such ETFs are smaller or niche funds with fewer components) may choose to invest directly in the fund components after a positive ETF market quality and execution experience.

[38] *See* Testimony of Eric Noll, Executive Vice President, NASDAQ OMX, Before the House Committee on Government Reform and Oversight, November 15, 2011.

[39] There are a record 377 funds (273 ETFs and 104 ETNs) on the August 2012 ''ETF Deathwatch'' list maintained by Ron Rowland, president of Capital Cities Asset Management. All the funds on this list have limped along for at least three months with less than $5 million in assets or fewer than $100,000 worth of shares changing hands daily. The list now includes about 17% of the industry's approximately 1,400 ETFs and exchange-traded notes, as measured by number of funds. Mr. Rowland states: ''The largest risk is not, however, that [the funds] may close in the future. No, the more notable risk is that they suffer from extremely poor liquidity *today*. Wide bid/ask spreads, little to no volume behind the quotes, and sleeping market makers can potentially inflict much more damage on unknowing investors than a fund closure.''

Perhaps the most astonishing statistic, which clearly shows the critical need for a rules-based liquidity-enhancement program such as the MQP, is that ETF Deathwatch list surged 131% in the past year.

[40] Subsection (a)(1)(C)(iv) of Proposed Rule 5950 indicates that the Exchange will post on its Web site a general description of the Program as implemented on a pilot basis and a fair and balanced summation of the potentially positive aspects of the Program (*e.g.* enhancement of liquidity and market quality in MQP Securities) as well as the potentially negative aspects and risks of the Program (*e.g.* possible lack of liquidity and negative price impact on MQP Securities that withdraw or are terminated from the Program), and indicates how interested parties can get additional information about products in the Program.

[41] This is clearly consistent with recent legislative action designed to create job opportunities and promote economic expansion, such as the Jumpstart Our Business Startups Act (JOBS Act).

The Proposal—Specifics

Proposed Rule 2460

Preliminarily, the Exchange is proposing to modify its Rule 2460, which prohibits direct or indirect payment by an issuer to a Market Maker, to indicate that Rule 2460 is not applicable to the MQP.[42] Specifically, the Exchange is proposing new IM–2460–1 (Market Quality Program)[43] to state that Rule 2460 is not applicable to a member that is accepted into the Market Quality Program pursuant to Rule 5950 or to a person that is associated with such member for their conduct in connection with that program. The Exchange believes that this proposed limited clarification is proper in that it allows the MQP to go forward on a pilot basis without denigrating the basic premise of Rule 2460, which was designed to forestall problematic relationships between exchange members (*e.g.* market makers) and issuers. The Exchange's proposal sets forth an extensive rule-based process with clear Program requirements for issuers (MQP Companies) and clear market quality requirements for members (MQP Market Makers) that can only be effected in a lit and highly regulated exchange environment.

In the order approving NASD Rule 2460 (the 1997 order), upon which NASDAQ Rule 2460 is based (as is FINRA Rule 5250), the Commission discussed that NASD Rule 2460 preserved investor confidence, preserved the integrity of the marketplace, and established a clear standard of practice for member firms.[44]

The Exchange designed the MQP to meet the goals of market integrity, investor confidence, and clear member standards as discussed in the 1997 order. In particular, the Exchange designed the MQP to have precise standards for all MQP Market Makers in the Program and to be highly transparent with clear public notification requirements; with clear entry, continuation, and termination requirements; with clear Market Maker accountability standards; and, perhaps most importantly, with clear market quality (liquidity) enhancement standards that benefit investors and market participants. Additionally, NASDAQ has ensured that issuers are unable to influence the selection or retention of MQP Market Makers, or the amount of incentive credits that any particular Market Maker receives from NASDAQ. The positive aspects of the MQP are objective, clear and unambiguous.[45]

First, the entire MQP is clearly and accurately set forth in proposed Rule 5950. This includes the application and withdrawal process, the listing fee and credit structure, the market quality standards that an MQP Market Maker must meet and maintain to secure an MQP Credit, and the Program termination process. Second, the Exchange will provide notification on its public Web site regarding the variable aspects of the Program. Specifically, this notification will include: the names of the MQP Companies and the MQP Market Makers that are accepted into the Program; how many MQP Securities an MQP Company may have in the Program; the specific names of the MQP Securities that are listed pursuant to the Program; the identity of the MQP Market Makers in each MQP Security; and the amount of the supplemental MQP Fee, if one is established by an MQP Company in addition to the basic MQP Fee, as discussed below. Third, MQP Securities will be traded on a highly regulated and transparent exchange, namely NASDAQ, pursuant to the current trading and reporting rules of the Exchange, and pursuant to the established market surveillance and oversight procedures of the Exchange. And fourth, the MQP would encourage narrower spreads and better market quality (more liquid markets) for securities that generally have not been, or may not be, conducive to naturally having such markets. The Exchange believes that these factors, which directly benefit all market participants and investors, are instrumental to developing strong investor confidence in the MQP and the integrity of the market.

Moreover, the Exchange believes that the MQP does not implicate conflicts of interest. That is, unlike the situation that the NASD was trying to address in its Rule 2460 or NASD Notice to Members 75–16, where issuers had the ability to directly pay a market maker to illegally pump up the price of an issuer's stock, the proposed MQP does not encourage MQP Market Makers to improperly pump up prices nor, for that matter, establish any direct financial connection between MQP Market Makers and MQP Companies. First, an MQP Company must go through an MQP application process, and the Exchange must accept the MQP Company into the Program, before an MQP Company can list a product pursuant to the Program.[46] Second, an MQP Market Maker must go through a separate MQP application process, and the Exchange must accept an MQP Market Maker into the Program, before an MQP Market Maker can make a market in a product listed pursuant to the Program.[47] NASDAQ will operate both of these application processes as an independent regulator, preventing either issuers or market makers from improperly influencing the ultimate outcome. Third, in terms of flow of funds, the Program is constructed so that the only way that an MQP Market Maker can earn an MQP Credit—the payment of which is administered solely by the Exchange—is to maintain

[42] *See* Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006)(File No. 10–131)(order approving registration of The NASDAQ Stock Market LLC as a national securities exchange and adopting Rule 2460). FINRA, with whom the Exchange has an agreement regarding provision of certain regulatory services, has a similar provision in FINRA Rule 5250. As discussed, the Exchange believes that FINRA intends to file an immediately effective rule change that would exempt from FINRA Rule 5250 Exchange programs that are approved by the Commission.

[43] IM reflects interpretive material to an Exchange rule.

[44] *See* Securities Exchange Act Release No. 38812 (July 3, 1997), 62 FR 37105 (July 10, 1997)(SR–NASD–97–29)(order approving adoption of NASD Rule 2460). In discussing the 1997 order, the Commission cited to NASD Notice to Members 75–16 (February 20, 1975); *see also* the letter from Kenneth S. Spirer, Attorney, Division of Market Regulation, SEC, to Mr. Jack Rubens, Monroe Securities, Inc. (May 4, 1973)(regarding acceptance of a fee or service charge from issuers in connection with making a market). *See also* Securities Exchange Act Release No. 39670 (February 25, 1998), File No. S7–3–98, 63 FR 9661)(notice for public comment of proposed amendments to Rule 15c2–11 under the Act in response to increasing incidents of fraud and manipulation in the OTC securities market involving thinly traded securities of thinly-capitalized issuers, known as microcap securities)(the ''15c2–11 proposal''). In the 15c2–11 proposal, the Commission cited NASD Rule 2460 when discussing that microcap fraud often involves ''pump and dump'' operations, in which unscrupulous brokers sell the securities of less-seasoned issuers to retail customers by using high pressure sales tactics and a supply of securities under the firm's control.

[45] In addition to the clear and unambiguous MQP market quality standards promoting tighter markets and increased liquidity to the benefit of market participants, it has been demonstrated that already-established paid for market making programs in Europe have resulted in a significant and sustained reduction in spreads. As an example, securities that enjoyed PFMM in NASDAQ's First North's market have spreads that are as much as four times narrower, and are more stable, than securities without PFMM. *See supra* notes 31, 32, and 33 and related text. Narrower spreads benefit investors by lowering their transaction costs.

[46] Moreover, an MQP Company approved to be in the Program must meet both the non-MQP initial and continued listing standards (*e.g.* Rules 5300, 5400, 5500) and the MQP initial and continued listing standards to list a security pursuant to the MQP.

[47] Moreover, an MQP Market Maker must be approved to be a member on NASDAQ to be eligible for the MQP, and thereafter must attain the general market making requirements (*e.g.* Rule 4613) and the specific MQP market quality standards to be able to attain an MQP Credit.

a quality market in terms of the spread and liquidity of an MQP Security.[48] The Program does not afford any other way for an MQP Market Maker to earn an MQP Credit. If an MQP Market Maker does not earn an MQP credit, the MQP Fee remains in NASDAQ's General Fund. Fourth, in contrast to the extensive benefits of the MQP, the participation of an MQP Company in the Program is substantially limited by design. In this regard, an MQP Company is limited to making only the following determinations regarding the Program: whether to participate in the Program; what MQP Security should be in the Program; when the MQP Security should exit the Program; and the level of Supplemental Fees, if any, that should be applied. The MQP Company can never choose an MQP Market Maker, nor influence how, when, or the specific amount that an MQP Market Maker receives as credit for making a market in an MQP Security; these functions are performed solely by the Exchange according to standards set forth in the Program.[49] The Exchange firmly believes that the clear, unambiguous, and transparent nature of the Program and its established market quality standards are counter- indicative of any inherent conflict of interest.[50]

Additionally, the Exchange notes that the MQP is proposed initially as a pilot program. This is significant for several reasons. First, NASDAQ is proposing the pilot as an attempt to repair a gap in market structure, namely the challenge of certain small or start-up securities lacking access to quality markets with adequate liquidity.[51] Second, the Exchange has agreed, as part of the MQP pilot, to submit periodic reports to the Commission about market quality in respect of the MQP. These reports will endeavor to compare, to the extent practicable, securities before and after they are in the MQP. The reports will provide information regarding, for example, volume metrics, number of MQP Market Makers in target securities, and spread size; and will help the Commission and NASDAQ to evaluate the efficacy of the Program. The Exchange will endeavor to provide similar data to the Commission about comparable ETFs that are listed on the Exchange that are not in the MQP. And third, if the Exchange desires to expand the pilot program or make the MQP permanent, the Exchange will need to file a new proposed rule change with the Commission.

The Exchange believes that the MQP proposal would help raise investor and issuer confidence in the fairness of their transactions and the markets in general by enhancing market maker quote competition in securities on the Exchange, narrowing spreads, increasing shares available at the inside, reducing transaction costs, supporting the quality of price discovery, and promoting market transparency.

Proposed Rule 5950—Securities Eligible for the MQP

The MQP is available to Companies[52] that choose to list certain MQP Securities on the Exchange. To be eligible for listing, MQP Securities must meet the requirements to be listed on NASDAQ as an ETF pursuant to Rule 5705.[53] In addition, the MQP Security must meet all NASDAQ requirements for continued listing during the period of time that the MQP Security is in the MQP.[54]

Proposed Rule 5950—Application and Withdrawal

The first step for an entity wishing to participate in the MQP by listing a security on the Exchange, and for a Market Maker wishing to participate in the MQP as an MQP Market Maker, is to submit an MQP application to the Exchange.[55] Once the Exchange determines that the MQP Company and the MQP Market Maker are eligible to be in the MQP according to the parameters of the proposed rule, the Exchange will indicate acceptance to the MQP Company and the MQP Market Maker. NASDAQ will provide notification on its Web site regarding acceptance of an MQP Company, on behalf of an MQP Security, and an MQP Market Maker into the Program.[56] NASDAQ may, on a Program-wide basis, limit the number of MQP Securities that any one MQP Company may have in the MQP; any limitation would be uniformly applied to all MQP Companies.[57] In determining to limit the number of MQP Securities per MQP Company in the MQP, NASDAQ may consider information that it believes will be of assistance to it, such as whether a restriction, if any, is in the best interest of NASDAQ, the MQP Company and the goals of the MQP, and investors.[58]

Moreover, to further enhance the transparency of the Program, proposed Rule 5950(a)(1)(C) indicates that NASDAQ will also provide notification on its Web site regarding the following: the total number of MQP Securities that any one MQP Company may have in the Program; and the names of MQP Securities that are listed on NASDAQ and the MQP Market Maker(s) in each listed MQP Security, and the dates that an MQP Company, on behalf of an MQP Security, commences participation in and withdraws or is terminated from the Program.[59]

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[48] One of the eligibility criteria for an MQP Market Maker to receive an MQP Credit, for example, is that the MQP Market Maker must maintain at least 2,500 shares of attributable, displayed posted liquidity on the NASDAQ Market Center that are priced no wider on the offer side and no wider on the bid side than 2% away from NBBO. Proposed Rule 5950(c)(1)(B).

Moreover, NASDAQ notes, regarding the flow of funds, that the Exchange stands between an MQP Company and an MQP Market Maker; an MQP Company cannot and does not, under any circumstances, directly pay any funds to an MQP Market Maker.

[49] Indeed, the Exchange will not pay an MQP Market Maker pursuant to the Program for making a market in an MQP Security; rather, the Exchange will pay an incentive out of its General Fund if—and only if—an MQP Market Maker achieves very specific, rules-based market quality objectives when otherwise making a market.

[50] The Exchange notes that the MQP as proposed (*e.g.* fully transparent and with clear market quality standards) would not be susceptible to the ''pump and dump'' fraud and manipulation schemes noted in the 15c2–11 proposal. *See also supra* note 36 discussing that ETFs afford less opportunity for manipulation and that the ETF trust structure acts as an insulating wall between market maker and product.

[51] These securities may include less actively traded or less well known ETF products that have less well known or start-up companies as components.

[52] The term Company is defined in Rule 5005(a)(6).

[53] *See* proposed Rule 5950(e)(1) and 5950(b)(1)(B).

[54] Proposed Rule 5950(b)(1)(C).

[55] *See* Proposed Rule 5950(a). Thus for an MQP Company, on behalf of an MQP Security, to participate in the Program, and for an MQP Market Maker to be eligible to receive an MQP Credit for his market making activities, the Exchange must have accepted the application of each of these parties in respect of an MQP Security, and the parties must each have fulfilled their obligations pursuant to the MQP. Proposed Rule 5950 (b)(1) and (c)(1).

[56] Proposed Rule 5950(a)(1)(C).

[57] NASDAQ may also, on a Program-wide basis, limit the number of MQP Market Makers permitted to register in an MQP Security. NASDAQ will provide notification on its Web site of any such limit. If a limit is established, NASDAQ will allocate available MQP Market Maker registrations in a first-come-first-served fashion based on successful completion of an MQP Market Maker application. Proposed Rule 5950(c)(3).

[58] Proposed Rule 5950 (a)(1)(A) and (B). Factors that may be considered by the Exchange are set forth in subsection (a)(1)(B)(i) and include, but are not limited to, the following: the current and expected liquidity characteristics of MQP Securities; the projected initial and continuing market quality needs of MQP Securities; and the trading characteristics of MQP Securities (*e.g.* quoting, trading, and volume).

[59] *See also* proposed Rule 5950(a)(1)(C)(iv), whereby the Exchange will include on its Web site a general statement about the MQP that sets forth the potentially positive and negative aspects of the Program.

And per proposed Rule 5950(b)(1)(D), during such time that an MQP Company lists an MQP Security, the MQP Company must, on a product-specific Web site for each product, indicate that the product is in the MQP and provide the link to the Exchange's MQP Web site.

An MQP Company, on behalf of an MQP Security, and an MQP Market Maker may choose to withdraw from the Program. After an MQP Company, on behalf of an MQP Security, is in the MQP for six consecutive months but less than one year, it may voluntarily withdraw from the MQP on a quarterly basis. The MQP Company must notify NASDAQ in writing not less than one month prior to withdrawing from the MQP. NASDAQ may determine, however, to allow an MQP Company to withdraw from the MQP earlier.[60] After an MQP Company, on behalf of an MQP Security, is in the MQP for one year or more, it may voluntarily withdraw from the MQP on a monthly basis. The MQP Company must notify NASDAQ in writing one month prior to withdrawing.[61] After an MQP Market Maker is in the MQP for not less than one quarter, he may withdraw from the MQP on a quarterly basis. The MQP Market Maker must, similarly to an MQP Company, notify NASDAQ in writing one month prior to withdrawing.[62]

After an MQP Company, on behalf of an MQP Security, is in the MQP for one year, the MQP and all obligations and requirements of the Program will automatically continue on an annual basis unless NAQSAQ terminates the Program by providing not less than one month prior notice of intent to terminate or the pilot Program is not extended or made permanent pursuant to a proposed rule change subject to filing with or approval by the Commission under Section 19(b) of the Exchange Act; the MQP Company withdraws from the Program pursuant to subsection (a)(2) of this rule; or the MQP Company is terminated from the Program pursuant to subsection (d) of Proposed Rule 5950.[63]

Proposed Rule 5950—MQP Fees

An MQP Company seeking to participate in the MQP shall incur an annual basic MQP Fee of $50,000 per MQP Security. The basic MQP Fee must be paid to NASDAQ prospectively on a quarterly basis.[64]

An MQP Company may also incur an annual supplemental MQP Fee per MQP Security. The basic MQP Fee and supplemental MQP Fee when combined may not exceed $100,000 per year. The supplemental MQP Fee is a fee selected by an MQP Company on an annual basis, if at all. The supplemental MQP Fee must be paid to NASDAQ prospectively on a quarterly basis. The amount of the supplemental MQP Fee, if any, will be determined by the MQP Company initially per MQP Security and will remain the same for the period of a year. NASDAQ will provide notification on its Web site regarding the amount, if any, of any supplemental MQP Fee determined by an MQP Company per MQP Security.[65]

The MQP Fee is in addition to the standard (non-MQP) NASDAQ listing fee applicable to the MQP Security and does not offset such standard listing fee.[66] NASDAQ will bill prospectively each MQP Company for the quarterly MQP Fee for each MQP Security. MQP Fees (basic and supplemental) will be credited to the NASDAQ General Fund.[67]

Proposed Rule 5950—MQP Credit to Market Makers

When making a market in an MQP Security, an MQP Market Maker must, in addition to fulfilling the market making obligations per Rule 4613,[68] meet or exceed several market quality requirements on a monthly basis to be eligible for an MQP Credit. First, for at least 25% of the time when quotes can be entered in the Regular Market Session[69] as averaged over the course of a month, an MQP Market Maker must maintain: a) at least 500 shares of attributable, displayed quotes[70] or orders at the NBBO or better *on the bid side* of an MQP Security; and b) at least 500 shares of attributable, displayed quotes or orders at the NBBO or better *on the offer side* of an MQP Security. And second, for at least 90% of the time when quotes can be entered in the Regular Market Session as averaged over the course of a month, a MQP Market Maker must maintain: (a) At least 2,500 shares of attributable, displayed posted liquidity on the NASDAQ Market Center that are priced no wider than 2% away from the NBBO *on the bid side* of an MQP Security; and (b) at least 2,500 shares of attributable, displayed posted liquidity on the NASDAQ Market Center that are priced no wider than 2% away from the NBBO *on the offer side* of an MQP Security.[71]

[60] In making this determination, NASDAQ may take into account the volume and price movements in the MQP Security; the liquidity, size quoted, and quality of the market in the MQP Security; and any other relevant factors. Proposed Rule 5950(a)(2)(A).

[61] Proposed Rule 5950(a)(2)(B).

[62] Proposed Rule 5950(a)(2)(C). In addition, per proposed Rule 5950(a)(2)(D), NASDAQ will provide notification on its Web site when it receives notification that an MQP Company, on behalf of an MQP Security, or MQP Market Maker intends to withdraw from the Program, and the date of actual withdrawal or termination from the Program.

[63] Proposed Rule 5950(a)(2) and (a)(3). Proposed Rule 5950 (d) states that the MQP will terminate in respect of an MQP Security under the following circumstances:

(A) An MQP Security sustains an average daily trading volume (consolidated trades in all U.S. markets) (''ATV'') of one million shares or more for three consecutive months;

(B) An MQP Company, on behalf of an MQP Security, withdraws from the MQP, is no longer eligible to be in the MQP pursuant to this rule, or its Sponsor ceases to make MQP Fee payments to Nasdaq;

(C) An MQP Security is delisted or is no longer eligible for the MQP;

(D) An MQP Security does not have at least one MQP Market Maker for more than one quarter; or

(E) An MQP Security does not, for two consecutive quarters, have at least one MQP Market Maker that is eligible for MQP Credit.

Moreover, subsection (d) states that MQP Credits remaining upon termination of the MQP in respect of an MQP Security will be distributed on a pro rata basis to the MQP Market Makers that made a market in such MQP Security and were eligible to receive MQP Credit pursuant to this rule; and that termination of an MQP Company, MQP Security, or MQP Market Maker does not preclude the Exchange from allowing re-entry into the Program where the Exchange deems proper.

[64] Proposed Rule 5950(b)(2)(A).

[65] Proposed Rule 5950(b)(2)(B).

[66] Proposed Rule 5950(b)(2)(C). The MQP Fee in respect of an ETF shall be paid by the Sponsor(s) of such ETF.

[67] Proposed Rule 5950(b)(2)(D) and (E).

[68] Rule 4613 states that market making obligations applicable to NASDAQ members that are registered as Market Makers include, among other things, quotation requirements and obligations as follows: For each security in which a member is registered as a Market Maker, the member shall be willing to buy and sell such security for its own account on a continuous basis during regular market hours and shall enter and maintain a two-sided trading interest (''Two-Sided Obligation'') that is identified to the Exchange as the interest meeting the obligation and is displayed in the Exchange's quotation montage at all times. Interest eligible to be considered as part of a Market Maker's Two-Sided Obligation shall have a displayed quotation size of at least one normal unit of trading (or a larger multiple thereof); provided, however, that a Market Maker may augment its Two-Sided Obligation size to display limit orders priced at the same price as the Two- Sided Obligation. Unless otherwise designated, a ''normal unit of trading'' shall be 100 shares. After an execution against its Two-Sided Obligation, a Market Maker must ensure that additional trading interest exists in the Exchange to satisfy its Two-Sided Obligation either by immediately entering new interest to comply with this obligation to maintain continuous two-sided quotations or by identifying existing interest on the Exchange book that will satisfy this obligation.

[69] The term ''Regular Market Session'' shall have the meaning given in Rule 4120(b)(4)(D). Proposed Rule 5950(e)(6).

[70] These are quotes that are attributable to members and not hidden quotes.

[71] Proposed Rule 5950(c)(1)(B).

For example, regarding the first market quality standard (25%)—in an MQP Security where the NBBO is $25.00 x $25.10, for a minimum of 25% of the time when quotes can be entered in the Regular Market Session as averaged over the course of a month, an MQP Market Maker must maintain bids at or better than $25.00 for at least 500 shares and must maintain offers at or better than $25.10 for at least 500 shares. Thus, if there were 20 trading days in a given month and the MQP Market Maker met this requirement 20% of the time when quotes can be entered in the Regular Market Session for 10 trading sessions and 40% of the time when quotes can be entered in the Regular Market Session for 10 trading sessions then the MQP Market Maker would have met the requirement 30% of the time in that month.

MQP Credits for each MQP Security will be calculated monthly and credited quarterly on a pro rata basis to one or more eligible MQP Market Makers [72] out of the Exchange's General Fund. Each MQP Credit will be allocated 50% to a Quote Share Payment that is based on Qualified Quotes, and 50% to a Trade Share Payment that is based on Qualified Trades.[73] Trade Share Payments will, as discussed, be based upon the total aggregate share amount of Qualified Trades in an MQP Security executed on the NASDAQ Market Center; [74] and Quote Share Payments will be based in equal proportions on: (a) Average quoted size at or better than NBBO, and (b) average time spent quoting at or better than NBBO.[75]

An MQP Credit will be credited quarterly to an MQP Market Maker on a pro rata basis for each month during such quarter that an MQP Market Maker is eligible to receive a credit pursuant to the proposed rule. However, the calculation to establish the eligibility of an MQP Market Maker will be done on a monthly basis. Thus, for example, if during a quarter an MQP Market Maker was eligible to receive a credit for two out of three months, he would receive a quarterly pro rata MQP Credit for those two months.[76]

NASDAQ may limit, on a Program-wide basis, how many MQP Market Makers are permitted to register in an MQP Security, and will provide notification on its Web site of any such limitation. As discussed above, if a limit is established, NASDAQ will allocate available MQP Market Maker registrations in a first-come-first-served fashion based on successful completion of an MPQ Market Maker application.[77]

Finally, to give the Exchange and the Commission an opportunity to evaluate the impact of the MQP on the quality of markets in MQP Securities, the Exchange is proposing that the MQP will be effective for a one year pilot period. During the pilot period, the Exchange will submit monthly reports to the Commission about market quality in respect of the MQP. The monthly reports will endeavor to compare, to the extent practicable, securities before and after they are in the MQP and will include information regarding the MQP such as: (1) Rule 605 metrics; [78] (2) volume metrics; (3) number of MQP Market Makers in target securities; (4) spread size; and (5) availability of shares at the NBBO. The Exchange will endeavor to provide similar data to the Commission about comparable ETFs that are listed on the Exchange that are not in the MQP; and any other MQP-related data requested by the Commission for the purpose of evaluating the efficacy of the MQP. The Exchange will post the monthly reports on its Web site.

The first report will be submitted within sixty days after the MQP becomes operative.

The Exchange will issue to its members an information bulletin about the MQP prior to operation of the Program.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of targeted securities (including ETFs) on the Exchange during all trading sessions, and to detect and deter violations of Exchange rules and applicable federal securities laws. Trading of the targeted MQP Securities through the Exchange will be subject to FINRA's surveillance procedures for derivative products including ETFs.[79] The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges that are members or affiliates of the ISG; [80] and from listed MQP Companies and public and non-public data sources such as, for example, Bloomberg.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[81] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[82] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers or Companies and other persons using any facility or system which NASDAQ operates or controls, and it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

The goal of the MQP—to incentivize members to make high-quality, liquid markets—supports the primary goal of the Act to promote the development of a resilient and efficient national market system. Congress instructed the Commission to pursue this goal by emphasizing multiple policies, including the promotion of price discovery, order interaction and competition among orders and markets. The MQP promotes all of these policies; it will enhance quote competition, improve NASDAQ liquidity, support the quality of price discovery, promote market transparency and increase competition for listings and trade executions while reducing spreads and transaction costs. Maintaining and increasing liquidity in exchange-listed securities executed on a registered exchange will help raise investors' confidence in the fairness of the market and their transactions. Improving liquidity in this manner is particularly important with respect to ETFs and low-volume securities, as noted by the Joint CFTC/SEC Advisory Commission on Emerging Regulatory Issues.[83]

Each aspect of the MQP adheres to and supports the Act. First, the Program promotes the equitable allocation of fees and dues among issuers. The MQP is completely voluntary in that it will provide an additional means by which issuers may relate to the Exchange without modifying the existing listing options. Issuers can supplement the standard listing fees (which have already been determined to be consistent with the Act) with those of

For example, regarding the second market quality standard (90%)—in an MQP Security where the NBBO is $25.00 x $25.10, for a minimum of 90% of the time when quotes can be entered in the Regular Market Session as averaged over the course of a month, an MQP Market Maker must post bids for an aggregate of 2,500 shares between $24.50 and $25.00, and post offers for an aggregate of 2,500 shares between $25.10 and $25.60. Thus, if there were 20 trading days in a given month and the MQP Market Maker met this requirement 88% of the time when quotes can be entered in the Regular Market Session for 10 trading sessions and 98% of the time when quotes can be entered in the Regular Market Session for 10 trading sessions then the MQP Market Maker would have met the requirement 93% of the time in that month.

[72] NASDAQ may accept multiple MQP Market Makers into the Program. Proposed Rule 5950(c)(1)(A).

[73] Proposed Rule 5950(c)(2)(A). This subsection indicates that a Qualified Quote represents attributable and displayed liquidity (either quotes or orders) in an MQP Security; that a quote or order entered by an MQP Market Maker in an MQP Security is only a Qualified Quote if it is posted within 2% of the NBBO; and that a Qualified Trade in an MQP Security represents a liquidity-providing execution of a Qualified Quote on the NASDAQ Market Center.

[74] Proposed Rule 5950(e)(4).

[75] Proposed Rule 5950(c)(2)(B).

[76] Proposed Rule 5950(c)(2)(C).

[77] Proposed Rule 5950(c)(3). *See also supra* note 57.

[78] 17 CFR 242.605.

[79] FINRA surveils trading on the Exchange pursuant to a Regulatory Services Agreement (''RSA''). The Exchange is responsible for FINRA's performance under this RSA.

[80] For a list of the current members and affiliate members of ISG, *see* www.isgportal.com.

[81] 15 U.S.C. 78f.

[82] 15 U.S.C. 78f(b)(4) and (5).

[83] *See* Recommendations Regarding Regulatory Responses To The Market Events Of May 6, 2010, February 18, 2011 (Recommendation that the SEC evaluate whether incentives or regulations can be developed to encourage persons who engage in market making strategies to regularly provide buy and sell quotations that are ''reasonably related to the market.''). Available at *http://www.sec.gov/spotlight/sec-cftcjointcommittee/021811-report.pdf.*

the MQP (which are consistent with the Act as well). While the MQP will result in higher fees for issuers that choose to participate, the issuers receive significant benefits for participating, including greater liquidity, and lower transaction costs for their investors. Additionally, issuers will have the ability to withdraw from the Program after an initial commitment in the event they determine that participation is not beneficial. In that case, the withdrawing issuers will automatically revert to the already-approved fee schedule applicable to the market tier in which their shares are listed.

The MQP also represents an equitable allocation of fees and dues among Market Makers. Again, the MQP is completely voluntary with respect to Market Maker participation in that it will provide an additional means by which members may qualify for a credit, without eliminating any of the existing means of qualifying for incentives on the Exchange. Currently, NASDAQ and other exchanges use multiple fee arrangements to incentivize Market Makers to maintain high quality markets or to improve the quality of executions, including various payment for order flow arrangements, liquidity provider credits, and NASDAQ's Investor Support Program (set forth in NASDAQ Rule 7014). Market Makers that choose to undertake increased burdens pursuant to the MQP will be rewarded with increased credits; those that do not undertake such burdens will receive no added benefit. As with issuers, Market Makers that choose to participate in the MQP will be permitted to withdraw from it after an initial commitment if they determine that the burdens imposed by the MQP outweigh the benefits provided.

Additionally, the MQP establishes an equitable allocation of MQP Credits among Market Makers that choose to participate and fulfill the obligations imposed by the rule. If one Market Maker fulfills those obligations, the MQP Credit will be distributed by NASDAQ to that Market Maker out of the General Fund; and if multiple Market Makers satisfy the standard, the MQP Credit will be distributed pro rata among them. In other words, all of the benefit of the MQP Credits will flow to high-performing Market Makers, provided that at least one Market Maker fulfills the obligations under the proposed rule.

The MQP is designed to avoid unfair discrimination among Market Makers and issuers. The proposed rule contains objective, measurable (universal) standards that NASDAQ will apply with care. These standards will be applied equally to ensure that similarly situated parties are treated similarly. This is equally true for inclusion of issuers and Market Makers, withdrawal of issuers and Market Makers, and termination of eligibility for the MQP. The standards are carefully constructed to protect the rights of all parties wishing to participate in the Program by providing notice of requirements and a description of the selection process. NASDAQ will apply these standards with the same care and experience with which it applies the many similar rules and standards in NASDAQ's rule manuals.

In contrast to the extensive benefits of the MQP, the participation of an MQP Company in the Program is substantially limited by design. In this regard, an MQP Company is limited to making only the following determinations regarding the Program: whether to participate in the Program; what MQP Security should be in the Program; when the MQP Security should exit the Program; and the level of Supplemental Fees, if any, that should be applied. The MQP Company can never choose an MQP Market Maker, nor influence how, when, or the specific amount that an MQP Market Maker receives as credit for making a market in an MQP Security; these functions are performed solely by the Exchange according to standards set forth in the Program.[84]

NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees and program offerings to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. NASDAQ believes that all aspects of the proposed rule change reflect this competitive environment because the MQP is designed to increase the credits provided to members that enhance NASDAQ's market quality.

Finally, NASDAQ notes that the proposed paid for market making system has been used successfully for years on NASDAQ OMX Nordic's First North market. The First North paid for market making system has been quite beneficial to market participants including investors and listing companies (issuers) that have experienced market quality and liquidity with narrowed spreads. The Exchange believes that the proposed MQP will similarly enjoy positive results to the benefit of investors in MQP Securities and Companies related to them and the financial markets as a whole.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, NASDAQ believes the MQP program is pro-competitive in that it will increase competition in both the listings market and in the transaction services market. The MQP will promote competition in the listings market by advancing NASDAQ's reputation as an exchange that works tirelessly to develop a better market for all issuers, and for partnering with issuers to improve the quality of trading on NASDAQ. In fact, the MQP is itself a response to the competition provided by other markets that are developing similar programs, including NYSE Arca and BATS. NASDAQ fully expects that other listing venues will respond to the MQP by further enhancing their listings market offerings.

The MQP promotes competition in the transaction services market by creating incentives for market makers to make better quality markets. As market makers strive to attain the quality standards established by the MQP, the quality of NASDAQ's quotes will improve. This, in turn, will attract more liquidity to NASDAQ and further improve the quality of trading of MQP stocks. Again, if the MQP is successful in its goals, NASDAQ fully expects that competing markets will respond by creating incentives of their own to improve the quality of their markets and to attract liquidity to their markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such

[84] Indeed, the Exchange will not pay an MQP Market Maker pursuant to the Program for making a market in an MQP Security; rather, the Exchange will pay an incentive out of its General Fund if—and only if—an MQP Market Maker achieves very specific, rules-based market quality objectives when otherwise making a market.

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. The Commission previously received comments on SR–NASDAQ–2012–043, which proposed rule change was withdrawn by the Exchange,[85] and all such comments are available on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml.*)

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–137 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–137. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090, on official business days between 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–137 and should be submitted on or before January 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[86]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31410 Filed 12–28–12; 8:45 am]

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[85] *See supra* note 3.

[86] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68511; SR–NYSEArca-2012–66]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the iShares Copper Trust Pursuant to NYSE Arca Equities Rule 8.201

December 21, 2012.

On June 19, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the iShares Copper Trust (''Trust'') pursuant to NYSE Arca Equities Rule 8.201. BlackRock Asset Management International Inc. is the sponsor of the Trust (''Sponsor''). The proposed rule change was published for comment in the **Federal Register** on June 27, 2012.[3]

The Commission initially received one comment letter, which opposed the proposed rule change.[4] On August 8, 2012, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[5] Subsequently, the Commission received additional comments on the proposed rule change.[6] On December 12, 2012, the Exchange filed Amendment No. 1 to the proposed rule change.

Section 19(b)(2) of the Act [7] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on June 27, 2012. The 180th day after

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 67237 (June 22, 2012), 77 FR 38351 (''Notice'').

[4] *See* letter from Robert B. Bernstein, Vandenberg & Feliu, LLP (''V&F''), to Elizabeth M. Murphy, Secretary, Commission, dated July 18, 2012 (''V&F July 18 Letter''). Comment letters are available at *http://www.sec.gov/comments/sr-nysearca-2012–66/nysearca201266.shtml.* The commenter identified itself as a U.S. law firm that represents RK Capital LLC, an international copper merchant, and four end-users of copper: Southwire Company, Encore Wire Corporation, Luvata, and AmRod Corp (collectively, the ''Copper Fabricators'').

[5] *See* Securities Exchange Act Release No. 67616, 77 FR 48181 (August 13, 2012) (''Order Instituting Proceedings'').

[6] *See* letters from Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated September 12, 2012; Ira P. Shapiro, Managing Director, and Deepa A. Damre, Director, Legal and Compliance, BlackRock, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated September 12, 2012; Janet McGinness, General Counsel, NYSE Markets, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated September 14, 2012; Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated September 27, 2012 (''V&F September 27 Letter''); Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated November 16, 2012; and Robert B. Bernstein, Partner, Eaton & Van Winkle LLP, to Elizabeth M. Murphy, Secretary, Commission, dated December 7, 2012. By letter dated November 29, 2012, Mr. Bernstein informed the Commission that he had left V&F and would continue to represent the Copper Fabricators and RK Capital LLC in this proceeding.

In the V&F September 27 Letter, the commenter incorporated by reference all of its prior comments in opposition to NYSE Arca's proposal to list and trade shares of the JPM XF Physical Copper Trust. *See* V&F September 27 Letter, *supra,* at 6. Responding to that proposed rule change, the commenter submitted the following: letters from V&F, received May 9, 2012; Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated July 13, 2012; Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated August 24, 2012; and Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated September 10, 2012. Additionally, the commenter stated that it agreed with the arguments against that proposal set forth in a letter from U.S. Senator Carl Levin, to Elizabeth M. Murphy, Secretary, Commission, dated July 16, 2012 (''Levin Letter''), and attached the Levin Letter to the V&F July 18 Letter. *See* V&F July 18 Letter, *supra,* at 5. These letters opposing the proposal to list and trade shares of the JPM XF Physical Copper Trust are available at *http://www.sec.gov/comments/sr-nysearca-2012–28/nysearca201228.shtml.*

[7] 15 U.S.C. 78s(b)(2).

publication of the notice of the filing of the proposed rule change in the **Federal Register** is December 24, 2012.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised in the comment letters that have been submitted in response to the proposed rule change. The Commission also finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the data that has been provided by the commenters to support their positions.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[8] designates February 22, 2013, as the date by which the Commission should either approve or disapprove the proposed rule change (SR–NYSEArca-2012–66).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31223 Filed 12–28–12; 8:45 am]

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[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68521; File No. SR–NYSEMKT–2012–58]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Deleting NYSE MKT Rules 95(c) and (d)—Equities and Related Supplementary Material

December 21, 2012.

On October 26, 2012, NYSE MKT LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to delete NYSE MKT Rules 95(c) and (d)—Equities and related Supplementary Material. The proposed rule change was published for comment in the **Federal Register** on November 15, 2012.[3] The Commission received no comment letters on the proposal.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is December 30, 2012. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change, which would delete NYSE MKT Rules 95(c) and (d)—Equities and related Supplementary Material, and the potential issues raised by this proposal.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates February 13, 2013 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEMKT–2012–58).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31239 Filed 12–28–12; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68186 (November 8, 2012), 77 FR 68191.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68518; File No. SR–BX–2012–076]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Extension of the Exchange's Penny Pilot Program

December 21, 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 December 20, 2012, NASDAQ OMX BX, Inc. (''Exchange'' or ''BX'') filed with the Securities and Exchange Commission (''SEC'' or ''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

BX is filing with the Commission a proposal to: extend through June 30, 2013, the Penny Pilot Program in options classes in certain issues (''Penny Pilot'' or ''Pilot'') and provide a procedure for replacement of any Penny Pilot issues that have been delisted.[3]

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b–4(f)(6)(iii)[4] to the extent needed for timely industry-wide implementation of the proposal.

Proposed new language is *italicized* and proposed deleted language is [bracketed].[5]

NASDAQ OMX BX Rules

Options Rules

* * * * *

Chapter VI Trading Systems

* * * * *

Sec. 5 Minimum Increments

(a) The Board may establish minimum quoting increments for options contracts traded on BX Options. Such minimum increments established by the Board will be designated as a stated policy, practice, or interpretation with respect to the administration of this Section within the meaning of Section 19 of the Exchange Act and will be filed with the SEC as a rule change for effectiveness upon filing. Until such time as the Board makes a change in the increments, the following principles shall apply:

(1) If the options series is trading at less than $3.00, five (5) cents;

(2) If the options series is trading at $3.00 or higher, ten (10) cents; and

[3] The Penny Pilot was established in June 2012 and extended in July 2012. *See* Securities Exchange Act Release Nos. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR–BX–2012–030) (order approving BX option rules and establishing Penny Pilot); and 67342 (July 3, 2012), 77 FR 40666 (July 10, 2012) (SR–BX–2012–046) (notice of filing and immediate effectiveness extending the Penny Pilot through December 31, 2012).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com/,* at BX's principal office, and at the Commission's Public Reference Room.

(3) For a pilot period scheduled to expire on [December 31, 2012]*June 30, 2013,* if the options series is trading pursuant to the Penny Pilot program one (1) cent if the options series is trading at less than $3.00, five (5) cents if the options series is trading at $3.00 or higher, unless for QQQQs, SPY and IWM where the minimum quoting increment will be one cent for all series regardless of price. A list of such options shall be communicated to membership via an Options Trader Alert (''OTA'') posted on the Exchange's web site.

The Exchange may replace any pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the pilot, based on trading activity for the six month period beginning June 1, 2012, and ending November 30, 2012. The replacement issues may be added to the pilot on the second trading day following January 1, 2013.

(b) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Chapter VI, Section 5 to: extend the Penny Pilot through June 30, 2013, and add a procedure for replacing any Penny Pilot issues that have been delisted.

Under the Penny Pilot, the minimum price variation for all participating options classes, except for the Nasdaq-100 Index Tracking Stock (''QQQQ''), the SPDR S&P 500 Exchange Traded Fund (''SPY'') and the iShares Russell 2000 Index Fund (''IWM''), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. QQQQ, SPY and IWM are quoted in $0.01 increments for all options series. The Penny Pilot is currently scheduled to expire on December 31, 2012.

The Exchange proposes to extend the time period of the Penny Pilot through June 30, 2013, and to provide a procedure for adding classes that have been delisted from the Penny Pilot. The Exchange proposes that any Penny Pilot Program issues that have been delisted may be replaced on the second trading day following January 1, 2013.[6] The replacement issues will be selected based on trading activity for the six month period beginning June 1, 2012, and ending November 30, 2012.[7]

All classes currently participating in the Penny Pilot will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the potential increase in quote traffic.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. In particular, the proposed rule change, which extends the Penny Pilot for an additional six months through June 30, 2013, and provides a procedure for adding classes that have been delisted from the Penny Pilot will enable public customers and other market participants to express their true prices to buy and sell options for the benefit of all market participants.

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. To the contrary, this proposal is pro-competitive because it allows Penny Pilot issues to be traded on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] 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[12] and Rule 19b–4(f)(6)(iii) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[14] However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot

[6] The Exchange is making a conforming change in Chapter VI, Section 5 to add language regarding delisted issues that was not inserted when the Penny Pilot was instituted on the Exchange earlier this year. As a result, the Exchange will have exactly the same language as used in the Penny Pilot Programs of NASDAQ Options Market (''NOM'') and NASDAQ OMX PHLX LLC (''Phlx''), *see* NOM Chapter VI, Section 5 and Phlx Rule 1034; and will have a penny pilot delisted issues replacement procedure that is available on all other options exchanges.

[7] The replacement issues will be announced to the Exchange's membership via an Options Trader Alert (OTA) posted on the Exchange's Web site.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and 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.

[15] 17 CFR 240.19b-4(f)(6)(iii).

Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.[16] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2012–076 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2012–076. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2012–076 and should be submitted on or before January 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31411 Filed 12–28–12; 8:45 am]

BILLING CODE 8011–01–P

[16] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44). *See also See* 15 U.S.C. 78c(f).

[17] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68520; File No. SR–NYSEMKT–2012–80]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rule 953NY—Trading Halts and Suspensions

December 21, 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 December 10, 2012, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 953NY—Trading Halts and Suspensions. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 953NY by adopting a provision governing the nullification of trades that occur while the options class is subject to a trading halt. This proposal is based on and substantially similar to Rule 1092(c)(iv)(A) of NASDAQ OMX PHLX, LLC (''PHLX'').[5]

Specifically, the Exchange proposes to adopt Commentary .04 to Rule 953NY, which provides that any trade that occurs during a trading halt on the Exchange in a given option shall be nullified.

Rule 953NY sets forth the circumstances when the Exchange may halt trading in an options contract or options series. Such trading halts are applicable to both electronic and open-outcry trading. Pursuant to Rule 953NY(a), NYSE Amex shall halt or suspend the trading of options whenever the Exchange deems such action appropriate in the interests of a fair and orderly market and to protect investors. Among the factors that may be considered are: (i) The trading in the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 57712 (April 24, 2008) 73 FR 24100 (May 1, 2008). Approval Order for SR–Phlx–2007–69, as amended.

underlying stock or Exchange Traded Funds (''ETF'') has been halted or suspended in the primary market; (ii) the opening of such underlying stock or ETF in the primary market has been delayed because of unusual circumstances; (iii) the Exchange has been advised that the issuer of the underlying stock or ETF is about to make an important announcement affecting such issuer; or (iv) other unusual conditions or circumstances are present. In addition, pursuant to Rule 953NY(b), the Exchange shall halt trading in any equity option (including options overlying ETFs), when the underlying security is paused.[6]

Notwithstanding a regulatory or non-regulatory trading halt in an options class, the Exchange recognizes that there could be occurrences where an aberrant trade might still occur after the Exchange has halted trading in a given options class. For example, this could happen because of a temporary systems outage, a communications issue between the electronic and floor-based markets, or other type of in-flight messaging scenario where the Exchange's automatic execution system executed an order, even though the options had been halted prior to the time of execution. Because the Exchange would have already halted trading of the option class, either because it was warranted in the interest of a fair and orderly market and the protection of investors pursuant to Rule 953NY(a), or required pursuant to Rule 953NY(b) because the underlying security was paused, the Exchange does not believe that any trade that takes place after an options class that has been halted on the Exchange should stand. Proposed Commentary .04 will require the Exchange to nullify these aberrant trades. The Exchange notes that executions occurring prior to a trading halt in an options class but not yet reported to the Exchange, will still be reported for dissemination to OPRA after the options have halted. Such trades would not be subject to nullification by the Exchange pursuant to proposed Commentary .04.

Under existing rules, the Exchange may only nullify a trade which occurred during a trading halt if, (i) pursuant to Rule 975NY the trade qualifies as an Obvious or Catastrophic Error, or (ii) pursuant to Rule 965NY Commentary .01, a Trading Official determines that the execution of such trade was done in violation of certain Exchange rules governing open outcry trading.[7] The addition of proposed Commentary .04 to Rule 953NY will expand the Exchange's authority to nullify trades that may occur during a trading halt, which the Exchange believes is in keeping with the maintenance of a fair and orderly market and the protection of investors.

The Exchange notes that the PHLX Rule 1092(c)(iv) also includes other provisions related to trading halts and the nullification of trades. Paragraphs (B)–(C) of the PHLX rule deal with the nullification of an options trade whenever the underlying security or a certain percentage of the components of an underlying index have halted, regardless of whether the options themselves have halted. Exchange rules do not require that an options class be halted whenever the underlying security halts, therefore it would be inconsistent to nullify a trade simply because the underlying security or index components halted, unless the Exchange had also halted the trading of options overlying such security or index.[8] The Exchange only proposes to nullify a trade in the event the *options* have been halted by the Exchange, and therefore is not proposing to adopt PHLX Rule 1092(c)(iv)(B)–(C). Additionally, paragraph (D) of the PHLX rule deals with Treasury securities. The Exchange does not trade options on Treasury securities; therefore this provision is not relevant to this filing.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[9] in general, and furthers the objectives of Section 6(b)(5),[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule changes are consistent with the Act because permitting the Exchange to nullify trades that occur during a trading halt helps to ensure that NYSE Amex may continue to meet its obligation to maintain a fair and orderly market and protect investors. In particular, the Exchange believes that the proposal promotes just and equitable principles of trade because it will ensure that when the Exchange is halted for trading, no trades that mistakenly were executed during the halt will be permitted to stand, thereby assuring consistent treatment of orders during a trading halt. Furthermore, the proposal removes impediments to and perfects the mechanism of a free and open market and a national market system by assuring that when trading is halted, no executions may occur and any aberrant trades are nullified.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule 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 if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

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

[6] A trading pause is in an underlying security is triggered when the price of the security falls or rises 10% or more in a rolling 5-minute window. Trading pauses are initiated by the primary market where the stock trades.

[7] A trade may also be nullified, without Exchange interaction, if all parties to the trade agree to the nullification.

[8] The Exchange notes that Rule 953NY(a) states that the Exchange may consider the halting of an underlying security as a factor to be taken into consideration when deciding whether to halt trading in the options overlying such security, and generally will do so and will halt an options class whenever an underlying security or index halts.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

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–NYSEMKT–2012–80 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–NYSEMKT–2012–80. 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–NYSEMKT–2012–80 and should be submitted on or before January 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31247 Filed 12–28–12; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68530; File No. SR–ICC–2012–25]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Schedule 502 of the ICC Rules for the December 20, 2012 Index Maturity

December 21, 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 December 14, 2012, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which items have been prepared primarily by ICC. ICC filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(4)(i)[4] thereunder so that the proposal was effective upon filing with 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 Terms of Substance of the Proposed Rule Change

The purpose of the rule change is to update Schedule 502 of the ICC Rules in order to be consistent with the index maturities, which occurred on December 20, 2012.

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[5]

A. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to update Schedule 502 of the ICC Rules in order to be consistent with the index maturities, which occurred on December 20, 2012. The North American credit default swap indices that matured (''Maturing Indices'') are: Investment Grade, Series 9, 5-year; Investment Grade, Series 13, 3-year; Investment Grade High Volatility, Series 9, 5-year; and High Yield, Series 9, 5-year. The Maturing Indices update does not require any changes to the body of the ICC Rules. Also, the Maturing Indices update does not require any changes to the ICC risk management framework. The only change being submitted is the updates to the Maturing Indices in Schedule 502 of the ICC Rules.

Section 17A(b)(3)(F) of the Act[6] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions. ICC believes that the update to the three Maturing Indices is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to ICC, in particular, with Section 17A(b)(3)(F),[7] because it will help ensure that Clearing Participants are informed of the index maturities occurring on December 20, 2012.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(4).

[5] The Commission has modified the text of the summaries prepared by OCC.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1(b)(3)(F).

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)(iii) [8] of the Act and Rule 19b–4(f)(4) [9] thereunder because it is concerned solely with the administration of the self-regulatory organization. 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.[10]

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 No. SR–ICC–2012–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC, 20549–1090.

All submissions should refer to File Number SR–ICC–2012–25. 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 ICE Clear Credit and on ICE Clear Credit's Web site at *https://www.theice.com/publicdocs/regulatory_filings/ICEClearCredit_121412.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2012–25 and should be submitted on or before January 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary .

[FR Doc. 2012–31257 Filed 12–28–12; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(4).

[10] 15 U.S.C. 78s(b)(3)(C).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68531; File No. SR–OCC–2012–26]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Interpretative Guidance Relating to the Adjustment of Stock Options and Single Stock Futures for Cash Dividends and Distributions on Underlying Securities

December 21, 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 December 19, 2012, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the rule change described in Items I, II and III below, which items have been prepared primarily by OCC. OCC filed the proposal pursuant to Section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b–4(f)(1) [4] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this Notice to solicit comments on the rule change from interested persons.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

OCC is amending interpretative guidance relating to the adjustment of stock options and single stock futures for cash dividends and distributions on underlying securities.

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the rule change and discussed any comments it received on the rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[5]

A. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Background

In 2008,[6] OCC adopted interpretative guidance (''Interpretative Guidance'') developed by the OCC's Securities Committee regarding the administration and application of an adjustment method for cash dividends and distributions (''Adjustment Methodology'').[7] The purpose of this rule change is to add certain clarifications to the Interpretative Guidance regarding how OCC applies the Adjustment Methodology and to incorporate the contents of OCC Information Memos 31714 and 31806, which OCC recently published and posted on its public Web site.[8]

2. Amendment to Interpretative Guidance

In addition to several technical revisions to the Interpretative Guidance, OCC is making two clarifications. First,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] The Commission has modified the text of the summaries prepared by OCC.

[6] Release No. 34–58059 (June 30, 2008), 73 FR 39367 (July 9, 2008).

[7] The Adjustment Methodology was approved by the Commission in Release No. 34–55258 (February 8, 2007), 72 FR 7701 (February 16, 2007). It was further amended by SR–OCC–2008–16 and approved by the Commission in Release No. 34–58586 (September 18, 2008), 73 FR 55582 (September 25, 2008). The Interpretative Guidance was amended to reflect amendments to the Adjustment Methodology by SR–OCC–2009–01 (Release No. 34–59442 (February 24, 2009), 74 FR 9654 (March 5, 2009)).

[8] *www.theocc.com.*

OCC is amending the Interpretative Guidance in response to requests for clarification from clearing members and market participants regarding whether a company's acceleration of its regular dividend would cause such dividend to be deemed ''non-ordinary'' and occasion an adjustment to the overlying option or security future. These questions have been prompted by the prospect of tax increases in the new year that have caused some issuers of underlying equity securities to accelerate the payment of regularly scheduled dividends into the current year. Pursuant to the exercise of its discretionary authority under Article VI, Sections 11 and 11A of OCC's By-Laws, OCC's Securities Committee has determined that cash dividends or distributions that are paid pursuant to a company's regular dividend payment program but that are subject to accelerated payment shall be deemed ''ordinary'' dividends. Under Article VI, Section 11A(c)(ii) of OCC's By-Laws, ordinary dividends generally do not occasion adjustment. Therefore, OCC is amending the Interpretative Guidance to incorporate a reference to the previously announced determination of the Securities Committee that such accelerated dividends are generally considered to be ''ordinary'' and do not occasion an adjustment.

Second, OCC is amending the Interpretative Guidance in response to requests for clarification from clearing members and market participants regarding the application of the $.125 per share adjustment threshold to capital gains and other distributions made by exchange-traded funds (''Fund Share Distributions''). These distributions, when considered individually, may be less than $.125 per share but greater than $.125 per share when considered in aggregate. Pursuant to Article VI, Sections 11 and 11A of the OCC By-Laws, OCC's Securities Committee has determined that the $.125 per share adjustment threshold will generally be applied to the aggregate of capital gains and other non-ordinary Fund Share Distributions that have the same ex-date. OCC is amending the Interpretative Guidance to incorporate a reference to these previously announced determinations that such non-ordinary distributions are aggregated for purposes of determining whether the $.125 per share adjustment threshold is met. Notwithstanding this Interpretive Guidance, all adjustment decisions are made on a case-by-case basis and are within the sole discretion of OCC's Securities Committee.

OCC believes the rule change is consistent with Section 17A of the Act because it fosters cooperation and coordination among persons engaged in the clearance and settlement of securities transactions and contributes to the protection of investors [9] by providing market participants with interpretative guidance on the application of the Adjustment Methodology. The rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe the rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) [10] of the Act and Rule 19b–4(f)(1) [11] thereunder because it establishes or changes a due, fee, or other charge applicable only to a member. At any time within 60 days of the filing of the 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.[12]

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 No. SR–OCC–2012–26 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–OCC–2012–26. 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 OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_12_26.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2012–26 and should be submitted on or before January 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31258 Filed 12–28–12; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(F).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(1).

[12] 15 U.S.C. 78s(b)(3)(C).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68523; File No. SR–ICEEU–2012–21]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes To Implement Requirements of Commodity Futures Trading Commission Rule 39.13(g)(8)(ii)

December 21, 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 December 19, 2012, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(4)(ii) [4] thereunder so that the proposal was effective upon filing with 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 Terms of Substance of the Proposed Rule Change

ICE Clear Europe proposes to implement Commodity Futures Trading Commission (''CFTC') Rule 39.13(g)(8)(ii), which requires that FCM Clearing Members collect customer initial margin for customer non-hedge positions at a level that is greater than 100% of ICE Clear Europe's initial margin requirements. As a result, ICE Clear Europe has established a minimum percentage of 110% in respect of non-hedge customers for energy futures. All capitalized terms not defined herein are defined in the ICE Clear Europe Rules.

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[5]

A. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the change is to implement the requirements of CFTC Rule 39.13(g)(8)(ii). ICE Clear Europe has informed FCM Clearing Members of the new requirements of CFTC Rule 39.13(g)(8)(ii). This rule requires that FCM Clearing Members collect customer initial margin for customer non-hedge positions at a level that is greater than 100% of ICE Clear Europe's initial margin requirements. Accordingly, ICE Clear Europe has established a minimum percentage of 110% in respect of non-hedge customers for energy futures. As a result, as of October 4, 2012, FCM Clearing Members must collect an amount of no less than 110% of ICE Clear Europe's initial margin requirement in respect of those customers.

Section 17A(b)(3)(F) of the Act [6] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions. ICE Clear Europe believes that the proposed change to margin requirements applicable to FCM Clearing Members is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICE Clear Europe, in particular, with Section 17A(b)(3)(F),[7] because improved margining facilitates the prompt and accurate clearance and settlement and improves the safety and soundness of the clearing house.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed change would have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed change have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

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)(iii) [8] of the Act and Rule 19b–4(f)(4)(ii) [9] thereunder because it primarily affects the futures clearing operations of the clearing agency with respect to futures that are not security futures, and does not significantly affect the securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service. 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.[10]

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 No. SR–ICEEU–2012–21 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–ICEEU–2012–21. 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(4)(ii).

[5] The Commission has modified the text of the summaries prepared by OCC.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(4)(ii).

[10] 15 U.S.C. 78s(b)(3)(C).

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 ICE Clear Europe and on ICE Clear Europe's Web site at *https://www.theice.com/publicdocs/regulatory_filings/ICEU_SEC_121912_2012-21.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2012–21 and should be submitted on or before January 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31253 Filed 12–28–12; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68522; File No. SR–NYSE–2012–57]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Deleting NYSE Rules 95(c) and (d) and Related Supplementary Material

December 21, 2012.

On October 26, 2012, New York Stock Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to delete NYSE Rules 95(c) and (d) and related Supplementary Material. The proposed rule change was published for comment in the **Federal Register** on November 15, 2012.[3] The Commission received no comment letters on the proposal.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is December 30, 2012. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change, which would delete NYSE Rules 95(c) and (d) and related Supplementary Material, and the potential issues raised by this proposal.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates February 13, 2013 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSE–2012–57).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31240 Filed 12–28–12; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68185 (November 8, 2012), 77 FR 68188.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68529; File No. SR–CME–2012–34]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing of Proposed Rule Change Related to the Liquidity Factor of CME's CDS Margin Methodology

December 21, 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 December 10, 2012, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by CME. 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

CME proposes to make an adjustment to one particular component of its current CDS margin model. The text of the proposed rule change is below. Italicized text indicates additions; bracketed text indicates deletions.

* * * * *

CME CDS Liquidity Margin Factor Calculation Methodology

The Liquidity Factor will be calculated as the sum of two components:

(1) A concentration charge for market exposure as a function of absolute Spread DV01 (a portfolio sensitivity to 1% par spread shock); and

(2) A concentration charge for portfolio basis exposure as a function of Residual Spread DV01 (which is the difference between the Gross Spread DV01 and the Net Spread DV01 of the portfolio).

CME will also establish a floor component to the Liquidity Factor using the current Gross Notional Function with the following modifications: (1) the concentration scalar will be removed; and (2) the maximum DST would be replaced by series-tenor specific DST values based on the series and tenor of the relevant HY and IG positions, as applicable.

* * * * *

The text of the proposed change is also available at CME's Web site at *http://www.cmegroup.com,* at the principal office of CME, 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, CME 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. CME has prepared summaries, set forth in sections A, B,

and C below, of the most significant aspects of such statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CME's currently approved credit default swap margin methodology utilizes a ''multi-factor'' portfolio model to determine margin requirements for credit default swap (''CDS'') instruments. The model incorporates risk-based factors that are designed to represent the different risks inherent to CDS products. The factors are aggregated to determine the total amount of margin required to protect a portfolio against exposures resulting from daily changes in CDS spreads. For both total and minimum margin calculations, CME evaluates each CDS contract held within a portfolio. These positions are distinguished by the single name of the underlying entity, the CDS tenor, the notional amount of the position, and the fixed spread or coupon rate. For consistency, margins for CDS indices in a portfolio are handled based on the required margin for each of the underlying components of the index.

CME proposes to make an adjustment to one particular component of its current CDS margin model, the liquidity risk factor. This CDS margin model component is designed to capture the risk that concentrated positions may be difficult or costly to unwind following the default of a CDS clearing member.

The Liquidity Risk Factor in CME's Current CDS Margin Model

The current liquidity/concentration factor (''Liquidity Factor'') of CME's margin methodology for a portfolio of CDS indices is the product of (1) the gross notional amount for each family (i.e., CDX IG or CDX HY) of CDS positions in a portfolio (2) the current bid/ask of the 5 year tenor of the ''on the run'' (OTR) contract (3) the Duration/Series/Tenor (''DST'') factor and (4) a concentration factor based upon the gross notional for each of the CDX IG and CDX HY contracts (''Gross Notional Function''). The associated margin for a CDS portfolio attributed to the Liquidity Factor is the sum of the Liquidity Factor calculations for each family of CDS positions in the portfolio.

The calculation of the Liquidity Factor is based on the premise that the 5-year OTR index is the most liquid CDS index product. As such, the methodology is designed to evaluate the liquidity exposure of each position in a CDS portfolio relative to the 5-year OTR index.

For each index family (i.e., CDX IG and CDX HY), a DST matrix is calculated based on the historical bid-ask averages of each cleared position relative to the OTR 5-year historical bid-ask averages. Then, the maximum DST values are used as the DST factors. Such maximum DST factors are then applied to the product of 5-year OTR bid-ask spread (adjusted for duration for CDX IG only) and the Gross Notional of all positions within each index family. The resulting products are further scaled by concentration factors in order to account for oversized (as measured by Gross Notional) portfolios. The concentration factors are based on exponential functions of the Gross Notional of each index family in a given portfolio.

Proposed Changes to the Liquidity Risk Factor

As liquidation costs are dependent on the risk in a portfolio, CME is proposing to use an index portfolio's market risk rather than its gross notional as the basis for determining the margins associated with the Liquidity Factor. The proposed changes would calculate the Liquidity Factor as the sum of two components:

(1) A concentration charge for market exposure as a function of absolute Spread DV01 (a portfolio sensitivity to 1% par spread shock); and

(2) A concentration charge for portfolio basis exposure as a function of Residual Spread DV01 (which is the difference between the Gross Spread DV01 and the Net Spread DV01 of the portfolio).

CME expects that these proposed changes would not generally impact smaller portfolios whose liquidation costs are driven by the market bid/ask spread rather than by the cost of hedging, and are therefore adequately captured by the existing Liquidity Factor methodology. To account for the risks associated with such smaller portfolios, CME also proposes to establish a floor component to the Liquidity Factor using the current Gross Notional Function described above with the following modifications: (1) the concentration scalar would be removed as concentration risk would already be accounted for by the concentration charge component outlined above; and (2) the maximum DST would be replaced by series-tenor specific DST values based on the series and tenor of the relevant HY and IG positions, as applicable. CME expects that large (by notional amount) portfolios will be impacted by the proposed changes more than smaller portfolios.

The proposed liquidity risk factor model adjustments do not require any changes to rule text in the CME rulebook and do not necessitate any changes to CME's CDS Manual of Operations. The change will be announced to CDS market participants in an advisory notice that will be issued prior to implementation.

CME believes the proposed rule changes are consistent with the requirements of the Exchange Act including Section 17A of the Exchange Act.[4] The enhancements to CME's current CDS margin methodology will facilitate the prompt and accurate settlement of security-based swaps and contribute to the safeguarding of securities and funds associated with security-based swap transactions. CME believes the proposed rule changes accomplish those objectives because the changes are designed to incorporate how the liquidity risk factor is affected by not only portfolio concentration based on gross notional, but also the composition of the portfolio based on an underlying strategy. CME believes the proposed rule changes would also better align CME's margin methodology with the liquidity profile of the actual instruments in the portfolio.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

[3] The Commission has modified the text of the summaries prepared by CME.

[4] 15 U.S.C. 78q-1.

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–CME–2012–34 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–CME–2012–34. 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 CME and on CME's Web site at *http://www.cmegroup.com/market-regulation/files/SEC_19B–4_12–34.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CME–2012–34 and should be submitted on or before January 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Kevin M. O'Neill,

Deputy Secretary .

[FR Doc. 2012–31241 Filed 12–28–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68526; File No. SR–FINRA–2012–010]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend FINRA Rule 6440 (Trading and Quotation Halt in OTC Equity Securities)

December 21, 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 December 20, 2012, 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 6440 (Trading and Quotation Halt in OTC Equity Securities to clarify that FINRA may (1) initiate a trading and quotation halt in an OTC Equity Security upon notice of a foreign regulatory halt for news pending, including notice from a reliable third-party source; (2) continue to halt trading and quoting in such OTC Equity Security until notice from the appropriate foreign regulatory authority is received that it has or intends to resume trading in the security, even if such halt is longer than 10 business days; and (3) extend a halt initiated under Rule 6440(a)(3) for an extraordinary event beyond 10 business days if it determines that the basis for the halt still exists.

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

FINRA Rule 6440 (Trading and Quotation Halt in OTC Equity Securities) provides FINRA with the authority to initiate a trading and quotation halt for OTC Equity Securities.[3] Generally, Rule 6440(a) provides that, in circumstances where it is necessary to protect investors and the public interest, FINRA may direct members to halt trading and quotations of an OTC Equity Security when: (1) A foreign securities exchange or market halts trading in its market, for regulatory reasons, in an OTC Equity Security or the security underlying an American Depository Receipt (''ADR'') that is an OTC Equity Security (''OTC ADR'') that is listed on or registered with such foreign securities exchange or market, except that FINRA will not impose halts if the foreign halt was imposed solely for material news, a regulatory filing deficiency or operational reasons (''Foreign Regulatory Halt''); (2) a national securities exchange or foreign securities exchange halts trading in a listed security of which the OTC Equity Security or the security underlying the OTC ADR is a derivative or component (''Derivative Halt''); or (3) FINRA determines an extraordinary event has occurred or is ongoing that has a material effect on the market for the OTC Equity Security, or has the potential to cause major disruption to the marketplace or significant uncertainty in the settlement and clearing process (''Extraordinary Event Halt''). Pursuant to Rule 6440(b)(3), FINRA has authority to halt trading and quotations in the OTC market pursuant

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''OTC Equity Security'' means any equity security that is not an ''NMS stock'' as that term is defined in Rule 600(b)(47) of SEC Regulation NMS; provided, however, that the term ''OTC Equity Security'' shall not include any Restricted Equity Security. *See* FINRA Rule 6420(f).

to an Extraordinary Event Halt for up to 10 business days.

FINRA is proposing to amend Rule 6440 to: (1) Eliminate the restriction in Rule 6440(a)(1) on FINRA's ability to initiate a Foreign Regulatory Halt when the foreign halt is imposed for material news; (2) modify the halt procedures outlined in paragraph (b) of the Rule to clarify that FINRA may initiate a trading and quotation halt in an OTC Equity Security as a result of a Foreign Regulatory Halt or Derivative Halt upon notice from a reliable third-party source; (3) modify the halt procedures outlined in paragraph (b) of the Rule to clarify that in instances where FINRA initiates a trading and quotation halt upon notice of a foreign halt pursuant to a Foreign Regulatory Halt or Derivative Halt, trading and quotation in the OTC Equity Security or the OTC ADR, FINRA may continue the halt until such time as FINRA receives notice that trading has been resumed in the security on the appropriate securities exchange on which it is listed or registered or by the other applicable regulatory authority, even if such halt is longer than 10 business days; and (4) amend Rule 6440 Supplementary Material .01 to clarify that FINRA may extend and continue in effect an Extraordinary Event Halt for subsequent periods of up to 10 business days each if, at the time of any such extension, FINRA finds that the basis for the halt still exists and determines that the continuation of the halt beyond the prior 10 business day period is necessary in the public interest and for the protection of investors.

Background

FINRA performs several critical functions with respect to the OTC market in furtherance of its obligations under Exchange Act Section 15A to have rules that are designed ''to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.'' [4] In particular, FINRA believes its authority to halt trading and quotations in OTC Equity Securities pursuant to Rule 6440 is a valuable tool for maintaining fair and orderly markets, as provided in Exchange Act Section 15A. However, FINRA does not operate a ''listed'' market and thus has no ability to compel issuers to disclose information. While FINRA may obtain halt information provided by issuers to national securities markets or foreign securities exchanges or markets on which their securities are listed or registered, such markets are under no obligation to provide halt information to FINRA. For this reason, FINRA's current authority to halt trading and quotations in an OTC Equity Security as a result of a Foreign Regulatory Halt provides that FINRA will not halt for material news, regulatory deficiencies or operational reasons. However, FINRA believes that with the globalization of securities markets, cross-border coordination of trading and quotation halts is important to ensure fairness in trading.

Proposal

FINRA is proposing several amendments to Rule 6440. The first amendment that FINRA is proposing would eliminate the restriction in Rule 6440(a)(1) on FINRA's ability to initiate a halt as a result of a Foreign Regulatory Halt when the foreign halt is imposed for material news. FINRA has historically not halted in these instances because, as noted above, FINRA lacks privity with OTC issuers and cannot compel such issuers to disclose information to FINRA. However, with the growth of foreign securities markets and the ease at which trading can occur across jurisdictions and markets (especially exchanges in Canada where many issuers of OTC Equity Securities are listed), FINRA believes increased coordination of trading halts across markets will protect investors by reducing instances of potentially material disparities in information regarding the security or even fraudulent or manipulative trading in the security and act to protect U.S. investors. Moreover, such coordination is consistent with how FINRA currently imposes news pending trading halts on OTC Equity Securities that are derivatives or components of securities listed on national or foreign securities exchanges pursuant to Rule 6440(a)(2).

As noted above, FINRA would be relying on the ability of the foreign market on which the security is listed or registered to oversee the issuer and evaluate news pending or other information regarding the issuer and the securities to determine if a trading halt is warranted. For example, a foreign exchange may halt trading and quoting in the security of an issuer on its market when the issuer is the subject of a significant corporate event, such as a change in ownership or corporate structuring as a result of a merger or acquisition, borrows a significant amount of funds or triggers events of default, enters into or terminates a significant contract, or is subject to major litigation.

The limitations in Rule 6440(a)(1) relating to FINRA's halt authority where the Foreign Regulatory Halt is imposed solely for a regulatory filing deficiency would remain because FINRA believes that the regulatory filing deficiency may be a listing jurisdiction requirement that is not consistent across market centers and may be of less concern to market participants outside that jurisdiction. For example, in some instances, a foreign regulatory jurisdiction may impose a regulatory filing deficiency halt for failure to file timely financials or information related to significant corporate events. The limitation with regard to the operational halt would also remain because these halts may reflect local market trading conditions only. Rules relating to regulatory filing deficiency halts and operational halts are not consistent across market centers.

It is important to note that with respect to ''domestic'' OTC Equity Securities *(e.g.,* securities that are not ADRs or are listed or registered with a foreign securities exchange or market), FINRA will have the authority to halt trading and quotation solely for news pending, only if such OTC Equity Security is a derivative or component of a security listed on or registered with a national securities exchange. Where the domestic OTC Equity Security is not a derivative or component of a security listed or registered with an exchange, FINRA will not have the authority to halt trading or quotation of the security in the OTC market. FINRA believes this distinction is consistent with the authority it is proposing with respect to foreign stocks given that in both cases, FINRA would be relying on the market on which the stock is listed or registered or the regulator with direct authority over the issuer, to compel timely notification of news pending events and determine whether trading should be halted.

The second amendment that FINRA is proposing would modify the halt procedures outlined in paragraph (b)(1) of the Rule to clarify that FINRA may initiate a trading and quotation halt in an OTC Equity Security as a result of a Foreign Regulatory Halt or Derivative Halt upon notice from another reliable third-party source where FINRA can validate the information provided. Rule 6440(b)(1) currently provides that, upon receipt of information from a securities exchange or market, or regulatory authority overseeing the issuer, exchange or market, FINRA will promptly evaluate the information and determine if a trading and quotation halt in the OTC Equity Security is

[4] *See* 15 U.S.C. 78*o*–3(b)(6).

appropriate. Proposed Rule 6440(b)(1) would clarify that upon notice, not simply receipt of information, of a Foreign Regulatory Halt or Derivative Halt from: (i) the national or foreign securities exchange or market on which the OTC Equity Security or the security underlying the OTC ADR is listed or registered; (ii) a regulatory authority overseeing such issuer, exchange or market; or (iii) another reliable third-party source where FINRA can validate the information provided, FINRA will promptly initiate a trading and quotation halt in the OTC Equity Security. FINRA generally receives notice of foreign trading and quotation halts from official sources, such as the relevant foreign exchange or regulator (*i.e.,* the Canadian Securities Commission, the Toronto Stock Exchange, the London Stock Exchange, etc.). However, in some cases, notice of a trading and quotation halt may be received from reliable third-party sources, such as The Depository Trust & Clearing Corporation, broker-dealers or financial news data vendors. FINRA verifies all third-party information relating to trading and quotation halts in foreign markets before it acts upon such information.

FINRA believes having the authority to halt trading and quotation in an OTC Equity Security upon notice from a reliable third-party source that can be validated provides a valuable tool that will allow FINRA to act more promptly to initiate trading and quotation halts in such securities.

The third amendment that FINRA is proposing would modify the halt procedures outlined in paragraph (b)(2) of the Rule to clarify the circumstances under which FINRA will resume trading after initiating a Foreign Regulatory Halt or Derivative Halt. Proposed Rule 6440(b)(2) clarifies that FINRA may continue the halt in trading and quoting in the OTC market for the OTC Equity Security until such time as FINRA receives notice that trading has resumed in the security on the national or foreign securities exchange on which it is listed or registered, even if such halt is longer than 10 business days. FINRA adopted the 10-business day halt standard largely to be consistent with trading suspensions ordered by the SEC pursuant to Exchange Act Section 12(k).[5] However, with respect to halts in OTC securities as a result of a Foreign Regulatory Halt or a Derivative Halt for a security listed on or registered with a national or foreign securities exchange, FINRA believes that such halt should run concurrently with, and for as long as, the halt imposed on the security in the market on which it is listed or registered. FINRA will disseminate an appropriate public notice that a trading and quotation halt under the Rule is no longer in effect.

The fourth amendment that FINRA is proposing would modify Rule 6440 Supplementary Material .01 to clarify that FINRA may extend and continue in effect a trading and quotation halt under the Extraordinary Event Halt authority for subsequent periods of up to 10 business days each, if at the time of any such extension, FINRA finds that the basis for the halt still exists and determines that the continuation of the halt beyond the prior 10 business day period is necessary in the public interest and for the protection of investors. FINRA believes the authority to halt beyond the initial 10 business day period is vital in the OTC marketplace where concerns regarding settlement and clearance, pricing, or other extraordinary events can take time to be resolved. FINRA is also proposing to add headings to Rule 6440 Supplementary Material .01 and .02 for clarity.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 30 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed amendments to Rule 6440 will act to increase coordination of trading halts across markets and help reduce the potential for investors' trading based on materially disparate levels of information, and even fraudulent or manipulative activities in an OTC security, while it is halted by another regulatory authority. In addition, FINRA believes the authority to extend Extraordinary Event Halts for the additional 10 business day periods is vital in the OTC marketplace where concerns regarding settlement and clearance, pricing, or other extraordinary events can take time to be resolved.

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 will exercise judgment in each trading halt situation to assure that the halt is necessary to protect investors and not unnecessarily burden competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2012–010 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–2012–010. This file number should be included on the subject line if email is used. To help the

[5] 15 U.S.C. 78l(k).

[6] 15 U.S.C. 78*o*–3(b)(6).

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 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–2012–010, and should be submitted on or before January 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

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BILLING CODE 8011–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68528; File No. SR–NASDAQ–2012–140]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Retire the Automated Quote Management Functionality Described Under Rules 4613(a)(2)(F) and (G), and Make Conforming Changes to Rule 4751(f)(15)

December 21, 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 December 17, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to retire the automated quote management functionality described under Rules 4613(a)(2)(F) and (G) on January 16, 2013, and make conforming changes to Rule 4751(f)(15). The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 2, 2012, the Commission approved the Exchange's new Market Maker Peg Order, which was designed to replace the automated quotation refresh functionality (''AQR'') provided to Exchange market makers under Rules 4613(a)(2)(F) and (G).[5] The Exchange committed to sunset AQR three months after fully implementing the Market Maker Peg Order.[6] On October 15, 2012, the Exchange completed the implementation of the Market Maker Peg Order and, accordingly, is proposing to delete the text under Rule 4613(a)(2)(F) and (G) from the NASDAQ rulebook, effective January 16, 2013, thereby retiring AQR.[7]

The Exchange is also proposing to amend Rule 4751(f)(15) to include language from Rule 4613(a)(2)(F), which is currently referenced only by citation in the rule. The proposed language taken from Rule 4613(a)(2)(F) merely provides the percentage move necessary to trigger a repricing of a Market Maker Peg Order, and in no way changes how the Market Maker Peg Order operates.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[8] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule meets these requirements in that it eliminates a duplicative function, AQR, which has been replaced with a new order type that allows member firms to better meet their minimum market maker quotation requirements and also comply with the regulatory requirements of the Market Access Rule and Regulation SHO. In seeking approval of the Market Maker Peg Order,[9] the Exchange committed to retiring AQR at the conclusion of a three-month transition period and this proposed change merely effectuates that change.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] Securities Exchange Act Release No. 67584 (August 2, 2012), 77 FR 47472 (August 8, 2012) (SR–NASDAQ–2012–066).

[6] *Id.* at 47473 n 4.

[7] On October 9, 2012, NASDAQ announced that the Market Maker Peg Order was available and that it would retire AQR by the end of 2012. *See* Equity Technical Update # 2012–31 (*http://www.nasdaqtrader.com/TraderNews.aspx?id=ETU2012-31*). Because the Market Maker Peg Order was not made available to QIX protocol users until October 15, 2012 and therefore not fully implemented, NASDAQ is retiring AQR effective January 16, 2013, three months from the full implementation of the Market Maker Peg Order.

[8] 15 U.S.C. 78f(b)(5).

[9] *See, supra* note 7.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) [11] thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–140 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–140. 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–NASDAQ–2012–140 and should be submitted on or before January 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31413 Filed 12–28–12; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 C.F.R. 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Bond Trading License and the Bond Liquidity Provider Pilot Program

December 21, 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 December 18, 2012, the New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 extend the bond trading license and the Bond Liquidity Provider pilot program, which is currently scheduled to expire on January 19, 2013, until the earlier of the approval of the Securities and Exchange Commission (''Commission'') to make such pilot permanent or January 19, 2014. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item 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, Proposed Rule Change

1. Purpose

The Exchange proposes to extend the bond trading license and the Bond Liquidity Provider (''BLP'') pilot program, which is currently scheduled to expire on January 19, 2013, until the earlier of the Commission's approval to make such pilot permanent or January 19, 2014.

On January 19, 2011, NYSE established a twelve-month pilot program to (1) adopt new Rule 87 to create a bond trading license for member organizations that desire to trade only debt securities on the NYSE, and (2) adopt new Rule 88 to establish BLPs, a new class of debt market participants.[3] The purpose of pilot

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63736 (Jan. 19, 2011), 76 FR 4959 (Jan. 27, 2011) (SR–NYSE–2010–74) (Order approving). *See also* Securities Exchange Act Release No. 63444 (Dec. 6, 2010), 75 FR 77024 (Dec. 10, 2011) (SR–NYSE–2010–74). The pilot program was extended and is currently schedule to expire on January 19, 2013. *See* Securities Exchange Act Release No. 65995

program is to encourage market participants to bring additional liquidity to the Exchange's bond marketplace by providing incentives for quoting and adding liquidity to the market and to offer investors an alternative to over-the-counter trading for debt securities. Under Rule 87, a member organization that chooses to trade only bonds, or a new member organization that desires to trade only bonds, may apply for a bond trading license, which is available to any approved NYSE member organization. Under Rule 88, the Exchange provides incentives for quoting and adding liquidity to the bond market in the form of rebates to BLPs that provide liquidity to the Exchange's bond market. The Exchange believes that the rebates encourage the additional utilization of, and interaction with, the NYSE; improve price discovery and liquidity; and encourage competitive quotes and price improvement opportunities. These incentives encourage BLPs to make more liquid and competitive markets. In return, BLPs must meet certain qualification and quoting obligations under the Rule.

Through this filing, the Exchange seeks to extend the current operation of the pilot program until January 19, 2014. The Exchange believes that the program has added meaningful liquidity to the marketplace and improved both NYSE and overall market quality. The Exchange will continue to monitor the efficacy of the program during the proposed extended pilot period.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[4] in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change is consistent with these principles in that it seeks to extend a pilot rule that expands the number of member organizations that can trade debt securities on the NYSE and creates incentives for BLPs to provide additional liquidity to the bond market, thereby promoting competition and a free and open market. The Exchange believes that investors benefit from increased transparency, competition, and liquidity in its bond marketplace.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to 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 significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not 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[6] and Rule 19b–4(f)(6) thereunder.[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.

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–NYSE–2012–74 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–NYSE–2012–74. 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–NYSE–2012–74 and should be submitted on or before January 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31260 Filed 12–28–12; 8:45 am]

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(December 16, 2011), 76 FR 79726 (December 22, 2011) (SR–NYSE–2011–63).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68512; File No. SR–NASDAQ–2012–142]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change with Respect to the Amendment of the By-Laws of its Parent Corporation, The NASDAQ OMX Group, Inc.

December 21, 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 December 19, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a rule change with respect to the amendment of the by-laws of its parent corporation, The NASDAQ OMX Group, Inc. (''NASDAQ OMX'' or the ''Corporation''). The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ OMX is proposing amendments to provisions of its By-Laws pertaining to the compositional requirements of the NASDAQ OMX Board. The changes are primarily focused on amending the definition of ''Industry Director'' (and ''Industry committee member'')[3] to make the definition less restrictive, but in a manner that NASDAQ believes will continue to serve the purpose of ensuring that members and member organizations of Self-Regulatory Subsidiaries[4]—the self-regulatory organizations owned by NASDAQ OMX—do not have disproportionate influence on its governance. In making the change, NASDAQ OMX is adapting concepts already approved by the Commission in its review of the Independence Policy of the NYSE Euronext Board of Directors (the ''Independence Policy'').[5] The proposed rule change also makes several other changes to provisions pertaining to the Board's compositional requirements and categorization of Directors.

Definitions

The By-Laws require Directors to be assigned to certain defined categories, based on their current and past affiliations.[6] Specifically, Directors may be categorized as ''Industry Directors,'' ''Non-Industry Directors,'' ''Public Directors,'' and/or ''Staff Directors.'' Currently, an Industry Director is defined as a Director who:

(1) Is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer;

(2) Is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity;

(3) Owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer;

(4) Provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership;

(5) Provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; or

(6) has a consulting or employment relationship with or provides professional services to the Corporation or any affiliate[7] thereof (including any Self-Regulatory Subsidiary) or to the Financial Industry Regulatory Authority (''FINRA'') (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years.

Thus, the current definition focuses on a Director's affiliation with any broker-dealer, regardless of whether the broker-dealer is a member or member organization of a Self-Regulatory Subsidiary. The definition also features a three-year ''look-back'' period during which a Director formerly associated with a broker-dealer would continue to be deemed an Industry Director. In lieu of this definition, NASDAQ OMX is proposing to adopt a definition that focuses on whether a Director is affiliated with a member or a member organization of a Self-Regulatory Subsidiary. Under the revised definition, an Industry Director will be defined as a Director who:

(1) Is, or within the last year was, or has an immediate family member[8] who

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''committee member'' in the By-Laws refers to membership in the committees authorized under Section 4.13 of the By-Laws, such as the Executive Committee and the Audit Committee. Under the By-Laws and the Delaware General Corporation Law, all members of committees with the power and authority to act on behalf of the Board in the management of the business and affairs of NASDAQ OMX must themselves be Directors. Accordingly, the definitions of ''Industry Director'' and ''Industry committee member'' are coterminous as applied to any member of these committees. The By-Laws do not presently contemplate any committees with non-Director members.

[4] The By-Laws define each of NASDAQ, NASDAQ OMX BX, Inc. (''BX''), NASDAQ OMX PHLX LLC (''Phlx''), the Boston Stock Exchange Clearing Corporation (''BSECC''), and the Stock Clearing Corporation of Philadelphia (''SCCP'') as a ''Self-Regulatory Subsidiary''.

[5] Securities Exchange Act Release No. 51217 (February 16, 2005), 70 FR 9688 (February 28, 2005) (SR–NYSE–2004–54); Securities Exchange Act Release No. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR–NYSE–2006–120); Securities Exchange Act Release No. 67564 (August 1, 2012), 77 FR 47161) (SR–NYSE–2012–17; SR–NYSEArca–2012–59; SR–NYSEMKT–2012–07).

[6] As discussed above, the categories also govern the classification of members of committees of NASDAQ OMX, as provided for in the By-Laws.

[7] NASDAQ OMX is adding a definition of ''affiliate'' as follows: ''An 'affiliate' of, or a person 'affiliated' with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.'' The definition is identical to the definition of the term in SEC Rule 12b–2, 17 CFR 240.12b–2.

[8] NASDAQ OMX is adding a definition of ''immediate family member'' as follows: ''Immediate family member' means a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home.'' The definition is identical to the definition of ''family member'' contained in

is, or within the last year was, a member of a Self-Regulatory Subsidiary; [9]

(2) Is, or within the last year was, employed by a member or a member organization of a Self-Regulatory Subsidiary; [10]

(3) Has an immediate family member who is, or within the last year was, an executive officer of a member or a member organization[11] of a Self-Regulatory Subsidiary;

(4) Has within the last year received from any member or member organization of a Self-Regulatory Subsidiary more than $100,000 per year in direct compensation, or received from such members or member organizations in the aggregate an amount of direct compensation that in any one year is more than 10 percent of the Director's annual gross compensation for such year, excluding in each case director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service); or

(5) Is affiliated, directly or indirectly, with a member or member organization of a Self-Regulatory Subsidiary.

NASDAQ OMX believes that the change is warranted to ensure that the definition of Industry Director is appropriately focused on the mitigation of potential conflicts of interest associated with Directors who are currently or were very recently employed by members or member organizations of Self-Regulatory Subsidiaries, or that otherwise have material affiliations with such members or member organizations. The current definition covers individuals who are employed by broker-dealers that are not members of Self-Regulatory Subsidiaries, or who retired from service at a broker-dealer more than one, but less than three years in the past. NASDAQ OMX and the Exchange believe that by deeming such potential Directors to be Industry Directors, the current By-Laws unnecessarily restrict highly qualified individuals with extensive knowledge of the financial services industry from serving on the Board.

In addition to this change, NASDAQ OMX is also proposing the following additional changes to the definitions applicable to categories of Directors:

(1) NASDAQ OMX proposes a new definition of ''Staff Director.'' Currently, the definition of ''Staff Director'' is included within the definition of ''Industry Director,'' and is defined as ''any two officers of the Corporation, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors.'' By virtue of being designated as Staff Directors, these Directors are not considered to be Industry Directors for purposes of the compositional requirements of the By-Laws. Instead, NASDAQ OMX proposes a separate definition of ''Staff Director'' as ''an officer of the Corporation that is serving as a Director.'' [12] As discussed below, however, Section 4.3 of the By-Laws is to be amended to provide that only one Staff Director may serve on the Board, unless the Board consists of ten or more Directors, in which case no more than two Staff Directors may serve. Thus, the change will further restrict the number of possible Staff Directors in instances where the Board is smaller than ten Directors, while retaining the current limit for a larger Board.

(2) NASDAQ OMX is adopting a new definition of ''Issuer Director'' and ''Issuer committee member''. The By-Laws currently provide that the number of ''Non-Industry Directors'' (*i.e.,* Directors who are not Industry Directors) must equal or exceed the number of Industry Directors, and shall include at least one ''issuer representative,'' unless the Board consists of ten or more Directors, in which case it must include at least two issuer representatives. NASDAQ OMX and the Exchange believe that requiring the representation of issuers on the Board is consistent with the goal of promoting a diversity of viewpoints and skills among Directors and the requirement of Section 6(b)(3) of the Act [13] to provide for representation of issuers among the directors of a national securities exchange. The term ''issuer representative'' is not directly defined in the By-Laws, but is implicitly defined in the definition of ''Non-Industry Director'' as ''an officer, director, or employee of an issuer of securities listed on a national securities exchange operated by any Self-Regulatory Subsidiary.'' The new proposed definition is ''a Director (excluding any Staff Director) or committee member who is an officer or employee of an issuer of securities listed on a national securities exchange operated by any Self-Regulatory Subsidiary, excluding any Director or committee member who is a director of such an issuer but is not also an officer or employee of such an issuer.'' The exclusion of Staff Directors from the definition is necessary because NASDAQ OMX is listed on NASDAQ, but the purposes of the By-Laws in requiring issuer representation to promote a diversity of viewpoints among Directors would not be well served by deeming Staff Directors also to be Issuer Directors. The definition is also being changed to exclude persons who are directors of issuers but not also officers or employees. This change is intended to make it clear that a Director is not barred from being considered a Public Director [14] merely because the Director serves as an independent director of another listed company.

(3) The definition of ''Public Director'' and ''Public committee member'' is being restated as follows: ''a Director or committee member who (1) Is not an Industry Director or Industry committee member, (2) is not an Issuer Director or Issuer committee member, and (3) has no material business relationship with a member or member organization of a Self-Regulatory Subsidiary, the Corporation or its affiliates, or FINRA.'' The definition currently covers a person who ''has no material business relationship with a broker or dealer, the Corporation or its affiliates, or FINRA.'' Thus, the changes make it clear that any Industry Director or Issuer Director would not be considered a Public Director. As noted above, however, an independent director of an issuer of securities listed on NASDAQ could be considered a Public Director. In addition, in keeping with the change to the definition of Industry Director discussed above, the final clause of the definition is being revised to focus on the existence of a material business relationship with a member or member organization of a Self-Regulatory Subsidiary, rather than any broker or dealer. Thus, for example, a Director that had a material business relationship with a non-U.S. broker or dealer that was not a member or a member organization of a Self-Regulatory

NASDAQ listing standards, as provided in NASDAQ Rule 5605.

[9] This provision would apply to an individual that was a member of Phlx, the only Self-Regulatory Subsidiary that allows natural persons to become members.

[10] A broker-dealer that is admitted to membership in Phlx is referred to as a ''member organization;'' broker-dealers admitted to membership in the other Self-Regulatory Subsidiaries are referred to as ''members.''

[11] An ''Executive Officer'' of a member or member organization means those officers covered in Rule 16a–1(f) under the Act, as if the member or member organization were an issuer within the meaning of such Rule. 17 CFR 240.16a–1(f).

[12] The definition of ''Industry Director'' will continue to exclude Staff Directors, who might otherwise be considered Industry Directors by virtue of affiliation with NASDAQ Exchange Services LLC and NASDAQ Options Services, LLC, registered broker-dealers that are members or NASDAQ and BX and member organizations of Phlx.

[13] 15 U.S.C. 78f(b)(3).

[14] The definition of Public Director is discussed below.

Subsidiary might be eligible to be a Public Director.

(4) The definition of ''Non-Industry Director'' or ''Non-Industry committee member'' is proposed to be amended to cover any ''Director (excluding any Staff Director) or committee member who is (1) A Public Director or Public committee member; (2) an Issuer Director or Issuer committee member; or (3) any other individual who would not be an Industry Director or Industry committee member.'' The revised definition is generally consistent with the current definition, but reflects the adoption of a definition for ''Issuer Director or Issuer committee member''.

(5) NASDAQ OMX is making conforming changes to the letter designations of paragraphs in Article I of the By-Laws.

Qualifications of Directors

NASDAQ OMX is proposing to amend Section 4.3 of the By-Laws, which governs the qualifications and compositional requirements of the Board of Directors, to (i) Increase the required number of Public Directors from one to two, (ii) replace the requirement to include at least one issuer representative (or at least two issuer representatives if the Board consists of ten or more Directors) with a requirement to include at least one, but no more than two, Issuer Directors, and (iii) provide that the number of Staff Directors may not exceed one, unless the Board consists of ten or more Directors, in which case the number may not exceed two. The section will continue to require that the number of Non-Industry Directors equals or exceeds the number of Industry Directors. Although these changes will not significantly modify the Board's compositional requirements, they will continue to ensure a diversity of representation among Industry, Staff, Issuer, and Public Directors, will place more stringent caps on the number of Issuer and Staff Directors, and will increase the requirement for Public Directors. NASDAQ OMX also proposes to make a conforming change to add the term ''Issuer Director'' to Section 4.8 and Section 4.13(h), which govern the filling of vacancies on the Board and the determination of Directors' qualifications by NASDAQ OMX's Secretary.

The changes to the compositional requirements imposed specifically by the By-Laws do not alter in any respect the compositional requirements imposed by NASDAQ listing standards on NASDAQ OMX as a public company. Specifically, NASDAQ Rule 5605 requires that the board of directors of a company listed on NASDAQ must have a majority of directors that are ''independent'' within the meaning of that rule. As provided in NASDAQ Rule 5605(a)(2) with respect to a company listed on NASDAQ (a ''Company''), '' 'Independent Director' means a person other than an Executive Officer [15] or employee of the Company or any other individual having a relationship which, in the opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.'' The rule goes on to provide that directors having certain defined relationships with a Company may not be considered independent. Thus, while Staff Directors are clearly not independent within the meaning of Rule 5605, other Directors may or may not be considered independent, depending on the specific facts of their relationship to NASDAQ OMX. The proposed rule change does not alter in any respect the obligations of the NASDAQ OMX Board under NASDAQ Rule 5605.

Composition of Executive Committee

NASDAQ OMX is proposing a minor amendment to the compositional requirements of its Executive Committee. Currently, Section 4.13(d) of the By-Laws provides that the percentage of Public Directors on the Executive Committee must be at least as great as the percentage of Public Directors on the whole Board. As noted above, however, the By-Laws currently require only one Public Director on the whole Board (a requirement that NASDAQ OMX is proposing to raise to two Public Directors). Thus, the By-Laws currently reflect a standard under which voluntary inclusion of additional Public Directors on the full Board translates into a requirement to include ever increasing numbers of Public Directors on the Executive Committee, even though the requirements for the full Board itself may be satisfied with only one Public Director. Accordingly, NASDAQ OMX is proposing to make the requirements consistent by requiring at least two Public Directors on the Executive Committee.

Composition of the Audit Committee

Earlier this year, the Commission approved changes to the provisions of NASDAQ OMX's By-Laws pertaining to the composition of the Management Compensation Committee of its Board of Directors. NASDAQ OMX is now proposing comparable changes to the compositional requirements of its Audit Committee. Specifically, NASDAQ OMX is proposing to amend Section 4.13(g) to replace a requirement that the Audit Committee be composed of a majority of Non-Industry Directors with a requirement that the number of Non-Industry Directors on the committee equal or exceed the number of Industry Directors. Thus, in the case of a committee composed of four Directors, the current By-Law provides that only one Director may be an Industry Director, while the amended By-Law would allow up to two Directors to be Industry Directors. The proposed compositional requirement for the committee with regard to the balance between Industry Directors and Non-Industry Directors would be the same as that already provided for in the By-Laws with respect to the Executive Committee, the Nominating and Governance Committee, the Management Compensation Committee, and the full Board of Directors.

NASDAQ OMX and the Exchange believe that the change will provide greater flexibility to NASDAQ OMX with regard to populating a committee that includes Directors with relevant expertise and that is not excessively large in relation to the size of the full Board of Directors, while continuing to ensure that Directors associated with members and member organizations of the Self-Regulatory Subsidiaries do not exert disproportionate influence of the governance of NASDAQ OMX. As required by Section 10A of the Act,[16] SEC Rule 10A–3 thereunder,[17] and NASDAQ Rule 5605(c), the committee would continue at all times to be composed solely of Directors who are independent within the meaning of those provisions.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[18] in general, and with Sections 6(b)(1) and (b)(5) of the Act,[19] in particular, in that the proposal enables NASDAQ to be so organized and to have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance by members and persons associated with members with provisions of the Act, the rules and regulations thereunder, and NASDAQ rules, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation

[15] NASDAQ Rule 5605(a)(1) provides that '' 'Executive Officer' means those officers covered in Rule 16a–1(f) under the Act.'' 17 CFR 240.16a–1(f).

[16] 15 U.S.C. 78j–1.

[17] 17 CFR 240.10A–3.

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(1), (5).

and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, NASDAQ believes that the change to the definition of Industry Director is warranted to ensure that it is appropriately focused on the mitigation of potential conflicts of interest associated with Directors who are currently or were very recently employed by members or member organizations of Self-Regulatory Subsidiaries, or that otherwise have material affiliations with such members or member organizations, without unnecessarily restricting highly qualified individuals with extensive knowledge of the financial services industry from serving on the Board. NASDAQ further believes that the other definitional changes and the changes to the compositional requirements of the NASDAQ OMX Board and the Executive Committee will enhance the clarity of these provisions and promote a diversity of backgrounds and viewpoints on the NASDAQ OMX Board. The Exchange believes that these changes will collectively promote the capacity of the NASDAQ OMX Board to fulfill its responsibilities.

With respect to the proposed changes to the Audit Committee's compositional requirements, NASDAQ believes that the change will provide greater flexibility to NASDAQ OMX with regard to populating a committee that includes Directors with relevant expertise and that is not excessively large in relation to the size of the full Board of Directors, while continuing to ensure that Directors associated with members and member organizations of Self-Regulatory Subsidiaries do not exert disproportionate influence of the governance of NASDAQ OMX. The change would not affect NASDAQ OMX's compliance with Section 10A of the Act,[20] SEC Rule 10A–3 thereunder,[21] and NASDAQ Rule 5605(c), as the committee would continue at all times to be composed solely of Directors who are independent within the meaning of those provisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes [sic] the Act. Specifically, the Exchange believes that the By-Laws of its holding company, NASDAQ OMX, do not directly affect competition between the Exchange and others that provide the same goods and services as the Exchange, since they do not affect the availability or pricing of such goods and services. To the extent that the proposed change to the By-Laws may be construed to have any bearing on competition, the Exchange believes that the change will promote competition between the Exchange and the subsidiaries of NYSE Euronext, since the change will allow NASDAQ OMX to have greater flexibility in the selection of its Directors in a manner similar to the flexibility available to NYSE Euronext under its Independence Policy.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–142 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–142. 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 the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–142, and should be submitted on or before January 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31236 Filed 12–28–12; 8:45 am]

BILLING CODE 8011–01–P

[20] 15 U.S.C. 78j–1.

[21] 17 CFR 240.10A–3.

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68527; File No. SR–NYSEMKT–2012–83]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE MKT LLC Price List To Specify Pricing that is Currently Applicable to Certain Executions on the Exchange But That Is Not Currently Included in the Price List

December 21, 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 December 14, 2012, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') 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 Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to specify pricing that is currently applicable to certain executions on the Exchange, but that is not currently included in the Price List. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Price List to specify pricing that is currently applicable to certain executions on the Exchange, but that is not currently included in the Price List. The Exchange proposes to make the changes immediately effective and operative.

Specifically, the Exchange proposes to amend the Price List, as necessary, to reflect pricing that is currently being assessed for the following intraday transactions:

- For a Floor broker discretionary e-Quote (''d-Quote'') that adds liquidity, a credit of $0.0016 per share for trades in a security priced $1 or above, as well as a credit of $0.0025 for NASDAQ Stock Market-listed securities (''Nasdaq securities'') trading on the Exchange pursuant to a grant of unlisted trading privileges (''UTP''); [3]
- For a d-Quote that adds liquidity, no charge (i.e., free) for a security priced below $1, as well as a credit of 0.10% of total dollar value of the transaction for a Nasdaq security trading pursuant to UTP;
- For a non-electronic agency transaction of a Floor broker that executes against the Book, no charge for a security priced $1 or above, a security priced below $1, or a Nasdaq security trading pursuant to UTP;
- No charge for a non-electronic agency transaction between Floor brokers in the crowd in a security priced below $1; [4] and
- No charge for an agency cross trade (i.e., a trade where a member organization has customer orders to buy and sell an equivalent amount of the same security) in a security priced below $1.[5]

d-Quotes

The Price List currently provides that d-Quotes are subject to a transaction fee.[6] The current rate in the Price List is $0.0005 per share for a security priced $1 or above or, for a security priced below $1, the lesser of (i) $0.0005 per share and (ii) 0.25% of the total dollar value of the transaction. For Nasdaq securities trading pursuant to UTP, the current rate in the Price List is $0.0005 per share for a security priced $1 or above or, for a security priced below $1, 0.20% of the total dollar value of the transaction.

Despite the descriptions in the Price List, the fee in the Price List is currently charged only for a d-Quote that removes liquidity from the Book. A d-Quote that provides liquidity to the Book for a security priced $1 or above currently receives a credit of $0.0016 per share, or, for Nasdaq securities trading pursuant to UTP, $0.0025 per share.[7] For a security priced below $1, a d-Quote that provides liquidity to the Book is not charged, or, for Nasdaq securities trading pursuant to UTP, a credit of 0.10% of the total dollar value of the transaction is provided.[8]

The Exchange proposes to amend the descriptions in the Price List related to d-Quotes to specify that the corresponding rates apply only to a d-Quote that removes liquidity from the Book. Providing a credit of $0.0016 per share for a d-Quote for a security priced $1 or above that provides liquidity to the Book would be in accordance with the $0.0016 per share rate for providing liquidity that is currently in the Price List, and therefore the Exchange is not proposing a new or separate line item therein for this type of transaction. This is also true with respect to Nasdaq securities trading pursuant to UTP and the related credit of $0.0025 that is currently in the Price List. Similarly, not charging for a d-Quote for a security priced below $1 that provides liquidity to the Book would be in accordance with the ''no charge'' rate for providing liquidity that is currently in the Price List, and therefore the Exchange is not proposing a new or separate line item therein for this type of transaction. Again, this is also true with respect to Nasdaq securities trading pursuant to UTP and the related credit of 0.10% of

[3] *See, e.g.,* Securities Exchange Act Release No. 62479 (July 9, 2010), 75 FR 41264 (July 15, 2010) (SR–NYSEAmex–2010–31).

[4] As discussed below, this is already specified in the Price List for securities priced $1 or above and for Nasdaq securities trading pursuant to UTP.

[5] As discussed below, this is already specified in the Price List for securities priced $1 or above and for Nasdaq securities trading pursuant to UTP.

[6] *See* Securities Exchange Act Release No. 59045 (December 3, 2008), 73 FR 75151 (December 10, 2008) (SR–NYSEALTR–2008–09); Securities Exchange Act Release No. 59883 (May 7, 2009), 74 FR 22785 (May 14, 2009) (SR–NYSEAmex–2009–16); and Securities Exchange Act Release No. 62488 (July 13, 2010), 75 FR 41912 (July 19, 2010) (SR–NYSEAmex–2010–69).

[7] The Exchange has provided a credit for d-Quotes for a security priced $1 or above that add liquidity since December 2008. For Nasdaq securities, the Exchange has provided a credit for d-Quotes for a security priced $1 or above that add liquidity since July 2010.

[8] The Exchange has not charged for d-Quotes for a security priced below $1 that add liquidity since December 2008. For Nasdaq securities, the Exchange has provided a credit for d-Quotes for a security priced below $1 that add liquidity since July 2010.

the total dollar value of the transaction that is currently in the Price List.

Non-Electronic Agency Transactions

The Price List currently provides that verbal agency interest by Floor brokers is charged $0.0005 per share for a security priced $1 or above and is charged the lesser of (i) $0.0005 per share and (ii) 0.25% of the total dollar value of the transaction for a security priced less than $1.[9] For Nasdaq securities priced $1 or above, the same $0.0005 rate applies, and, for sub-$1 Nasdaq securities, the rate in the Price List is 0.20% of the total dollar value of the transaction. The Exchange proposes to specify in the Price List that verbal agency interest, which the Exchange proposes to hereafter refer to as a non-electronic agency transaction, of a Floor broker that executes against the Book is not charged (i.e., it is free),[10] both for a security priced $1 or above and for a security priced below $1 as well as for Nasdaq securities trading pursuant to UTP.[11] This is the same rate (i.e., free) that is currently specified in the Price List for non-electronic agency transactions between Floor brokers in the crowd in securities priced $1 or above and for Nasdaq securities trading pursuant to UTP.[12] In this regard, the Exchange also proposes to specify in the Price List that there is no charge for a non-electronic agency transaction between Floor brokers in the crowd in a security priced below $1.[13]

Agency Cross Trades

The Price List currently specifies that an agency cross trade [14] is not charged for a security priced $1 or above or for Nasdaq securities trading pursuant to UTP.[15] Similarly, the Exchange proposes to specify in the Price List that there is no charge for an agency cross trade in a security priced below $1.[16]

The Exchange notes that the proposed change is not otherwise intended to address any other issues surrounding Floor broker charges and that the Exchange is not aware of any problems that Floor brokers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[17] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[18] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed rates for a d-Quote that adds liquidity are reasonable because they may encourage additional liquidity during the trading day and may incentivize Floor brokers to provide additional intra-quote price improved trading, which would contribute to the quality of the Exchange's market. The Exchange also believes that the proposed rates are equitable and not unfairly discriminatory because they may provide opportunities for Floor brokers to attract additional liquidity to the Floor and thereby increase the quality of order execution on the Exchange's market, which benefits all market participants.

Additionally, the Exchange believes that not charging for a non-electronic agency transaction of a Floor broker that executes against the Book, in both securities priced $1 or above as well as securities priced below $1, is reasonable because it would be set at a level that would align the rate with certain other non-electronic agency Floor broker interest that is similarly not charged. In this regard, and as noted above, the Exchange does not charge for executions of non-electronic agency transactions between Floor brokers in the crowd. Additionally, the Exchange believes that this is equitable and not unfairly discriminatory because a non-electronic agency transaction of a Floor broker would be used, for example, at a time of the trading day when a Floor broker is physically present at the point of sale and requires flexibility to represent customer interest, but which may also result in added opportunity cost and uncertainty for the Floor broker when compared to an electronic execution, which is unique to a Floor broker.

The Exchange also believes that it is reasonable to specify that a non-electronic agency transaction between Floor brokers in the crowd is not charged for securities priced below $1 because doing so will add greater specificity to the Price List by reflecting that it is the same as the rate charged for such transactions in securities priced $1 or above. This is also equitable and not unfairly discriminatory because it would provide greater certainty regarding the applicable rates for transactions in securities priced below $1. The Exchange believes that not charging for these transactions is further reasonable because it may incentivize additional liquidity in these low-priced securities, which typically are more thinly-traded and less liquid than securities priced $1 or above. Accordingly, it is also equitable and not unfairly discriminatory to not charge for these transactions because the increased liquidity that may result in these securities would increase the quality of order execution on the Exchange's market, which benefits all market participants. Finally, and as described above for a non-electronic agency transaction of a Floor broker that executes against the Book, the Exchange believes that this is equitable and not unfairly discriminatory because non-electronic agency transactions between Floor brokers in the crowd occur, for example, at a time of the trading day when a Floor broker is physically present at the point of sale and requires flexibility to represent customer interest, which is unique to a Floor broker, but which may also result in added opportunity cost and uncertainty for the Floor broker when compared to an electronic execution.

The Exchange also believes that it is reasonable to specify that an agency cross trade is not charged for securities priced below $1 because doing so will add greater specificity to the Price List by reflecting that it is the same as the rate charged for such transactions in securities priced $1 or above. This is also equitable and not unfairly discriminatory because it would provide greater certainty regarding the applicable rates for transactions in securities priced below $1. The Exchange believes that not charging for these transactions is further reasonable because of the nature of an agency cross trade, in that it is a trade where a

[9] *See* SR–NYSEAmex–2009–16, *supra* note 6.

[10] Because of the nature of non-electronic trading interest (i.e., verbal/manual interest), the concept of adding and removing liquidity is not applicable.

[11] The Exchange began charging for a non-electronic agency transaction of a Floor broker that executed against the Book in December 2008. Beginning in March 2009, the Exchange no longer charged for this type of transaction. For Nasdaq securities, the Exchange has not charged for these transactions since July 2010.

[12] This has been the case for Nasdaq securities trading pursuant to UTP since July 2010.

[13] The Exchange has not charged for a non-electronic agency transaction between Floor brokers in the crowd in a security priced below $1 since December 2008, if the transaction was for 10,000 shares or more, and since March 2009, if the transaction was for fewer than 10,000 shares.

[14] Because of the nature of an agency cross trade (i.e., the member organization already has customer orders to buy and sell an equivalent amount of the same security), the concept of adding and removing liquidity is not applicable.

[15] This has been the case for Nasdaq securities trading pursuant to UTP since July 2010.

[16] The Exchange has not charged for an agency cross trade in a security priced below $1 since December 2008, if the transaction was for 10,000 shares or more, and since March 2009, if the transaction was for fewer than 10,000 shares.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4) and (5).

member organization has customer orders to buy and sell an equivalent amount of the same security.[19]

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[20] of the Act and subparagraph (f)(2) of Rule 19b–4[21] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE MKT.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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–NYSEMKT–2012–83 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–NYSEMKT–2012–83. 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–NYSEMKT–2012–83 and should be submitted on or before January 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31412 Filed 12–28–12; 8:45 am]

BILLING CODE 8011–01–P

[19] *See supra* note 14.

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68534; File No. SR–Phlx–2012–143]

Self-Regulatory Organizations; NASDAQ OMX PHLX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Extension of the Exchange's Penny Pilot Program and Replacement of Penny Pilot Issues That Have Been Delisted

December 21, 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 December 20, 2012, NASDAQ OMX Phlx, LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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 is filing with the Commission a proposal to: extend through June 30, 2013, the Penny Pilot Program in options classes in certain issues (''Penny Pilot'' or ''Pilot''), and to change the date when delisted classes may be replaced in the Penny Pilot.[3]

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b–4(f)(6)(iii)[4] to the extent needed for timely industry-wide implementation of the proposal. [GPO FOLLOW LIT]

Proposed new language is *italicized* and proposed deleted language is [bracketed].

NASDAQ OMX PHLX Rules

Options Rules

* * * * *

Rule 1034. Minimum Increments

(a) Except as provided in sub-paragraphs (i)(B) and (iii) below, all options on stocks, index options, and Exchange Traded Fund Shares quoting in decimals at $3.00 or higher shall have a minimum increment of $.10, and all options on stocks and index options quoting in decimals under $3.00 shall have a minimum increment of $.05.

(i)(A) No Change.

(B) For a pilot period scheduled to expire [December 31, 2012]*June 30, 2013* (the ''pilot''), certain options shall be quoted and traded on the Exchange in minimum increments of $0.01 for all series in such options with a price of less than $3.00, and in minimum increments of $0.05 for all series in such options with a price of $3.00 or higher, except that options overlying the PowerShares QQQ Trust (''QQQQ'')®, SPDR S&P 500 Exchange Traded Funds

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Penny Pilot was established in January 2007 and was last extended in June 2012. *See* Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR–Phlx–2006–74) (notice of filing and approval order establishing Penny Pilot); and 67326 (June 29, 2012), 77 FR 40126 (July 6, 2012) (SR–Phlx–2012–86) (notice of filing and immediate effectiveness extending the Penny Pilot through December 31, 2012).

[4] 17 CFR 240.19b–4(f)(6)(iii).

(''SPY''), and iShares Russell 2000 Index Funds (''IWM'') shall be quoted and traded in minimum increments of $0.01 for all series regardless of the price. A list of such options shall be communicated to membership via an Options Trader Alert (''OTA'') posted on the Exchange's web site.

The Exchange may replace any pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the pilot, based on trading activity for the six month period beginning [December]*June* 1, [2011]*2012,* and ending [May 31]*November 30,* 2012. The replacement issues may be added to the pilot on the second trading day following [July]*January* 1, [2012]*2013.*

(C) No Change.

(ii)–(iv) No Change.

* * * * *[/FOLLOW LIT]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.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 aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Phlx Rule 1034 to: extend the Penny Pilot through June 30, 2013, and to change the date when delisted classes may be replaced in the Penny Pilot.

Under the Penny Pilot, the minimum price variation for all participating options classes, except for the Nasdaq-100 Index Tracking Stock (''QQQQ''), the SPDR S&P 500 Exchange Traded Fund (''SPY'') and the iShares Russell 2000 Index Fund (''IWM''), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. QQQQ, SPY and IWM are quoted in $0.01 increments for all options series. The Penny Pilot is currently scheduled to expire on December 31, 2012.

The Exchange proposes to extend the time period of the Penny Pilot through June 30, 2013, and to provide revised dates for adding replacement issues to the Penny Pilot. The Exchange proposes that any Penny Pilot Program issues that have been delisted may be replaced on the second trading day following January 1, 2013. The replacement issues will be selected based on trading activity for the six month period beginning June 1, 2012, and ending November 30, 2012.[5]

This filing does not propose any substantive changes to the Penny Pilot Program; all classes currently participating in the Penny Pilot will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the potential increase in quote traffic.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. In particular, the proposed rule change, which extends the Penny Pilot for an additional six months through June 30, 2013, will enable public customers and other market participants to express their true prices to buy and sell options for the benefit of all market participants. The Exchange is also changing the date for replacing Penny Pilot issues that were deleted.

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. To the contrary, this proposal is pro-competitive because it allows Penny Pilot issues to be traded on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] 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[10] and Rule 19b–4(f)(6)(iii) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[12] However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the

[5] The replacement issues will be announced to the Exchange's membership via an Options Trader Alert (OTA) posted on the Exchange's web site.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and 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.

[13] 17 CFR 240.19b–4(f)(6)(iii).

Exchange and the Commission additional time to analyze the impact of the Pilot Program.[14] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2012–143 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–143. 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–Phlx–2012–143 and should be submitted on or before January 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31415 Filed 12–28–12; 8:45 am]

BILLING CODE 8011–01–P

[14] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44). *See also supra* note 3.

[15] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68516; File No. SR–BATS–2012–048]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Penny Pilot Program

December 21, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b-4 thereunder,[3] notice is hereby given that on December 11, 2012, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') 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 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 filed a proposal for the BATS Options Market (''BATS Options'') to extend through June 30, 2013, the Penny Pilot Program (''Penny Pilot'') in options classes in certain issues (''Pilot Program'') previously approved by the Commission.[4]

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 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 Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the Penny Pilot, which was previously approved by the Commission, through June 30, 2013, and to provide a revised date for adding replacement issues to the Pilot Program. The Exchange proposes that any Pilot Program issues that have been delisted may be replaced on the second trading day following January 1, 2013. The replacement issues will be selected based on trading activity for the six month period beginning June 1, 2012, and ending November 30, 2012.

The Exchange represents that the Exchange has the necessary system capacity to continue to support operation of the Penny Pilot. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b-4.

[4] The rules of BATS Options, including rules applicable to BATS Options' participation in the Penny Pilot, were approved on January 26, 2010. *See* Securities Exchange Act Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031). BATS Options commenced operations on February 26, 2010. The Penny Pilot was extended for BATS Options through December 31, 2012. *See* Securities Exchange Act Release No. 67306 (June 28, 2012), 77 FR 40109 (July 6, 2012) (SR–BATS–2012–025).

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.[5] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[6] 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. The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options. Accordingly, the Exchange believes that the proposal is consistent with the Act because it will allow the Exchange to extend the Pilot Program prior to its expiration on December 31, 2012. The Exchange notes that this proposal does not propose any new policies or provisions that are unique or unproven, but instead relates to the continuation of an existing program that operates on a pilot basis.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] 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[9] and Rule 19b–4(f)(6)(iii) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[11] However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.[13] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[14]

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–2012–048 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–BATS–2012–048.* 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–BATS–2012–048 and should be submitted on or before January 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31254 Filed 12–28–12; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and 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.

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44). *See also supra* note 4.

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2012–0070]

Rate for Assessment on Direct Payment of Fees to Representatives in 2013

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

SUMMARY: We are announcing that the assessment percentage rate under sections 206(d) and 1631(d)(2)(C) of the Social Security Act (Act), 42 U.S.C. 406(d) and 1383(d)(2)(C), is 6.3 percent for 2013.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Blair, Associate General Counsel for Program Law, Office of the General Counsel, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401. Phone: (410) 965–3157, email *Jeff.Blair@ssa.gov.*

SUPPLEMENTARY INFORMATION: Individuals claiming Social Security benefits or Supplemental Security Income payments may choose to hire representatives to assist them with their claims. If the claim is successful and the individual was represented either by an attorney or by a non-attorney representative who has met certain prerequisites, the Act provides that we may withhold up to 25 percent of the past-due benefits on the claim and use that money to pay the representative's approved fee directly to the representative.

When we pay the representative's fee directly to the representative, we must collect from that fee payment an assessment to recover the costs we incur in determining and paying representatives' fees. The Act provides that the assessment we collect will be the lesser of two amounts: a specified dollar limit; or the amount determined by multiplying the fee we are paying by the assessment percentage rate. (Sections 206(d), 206(e), and 1631(d)(2) of the Act, 42 U.S.C. 406(d), 406(e), and 1383(d)(2).)

The Act initially set the dollar limit at $75 in 2004 and provides that the limit will be adjusted annually based on changes in the cost-of-living. (Sections 206(d)(2)(A) and 1631(d)(2)(C)(ii)(I) of the Act, 42 U.S.C. 406(d)(2)(A) and 1383(d)(2)(C)(ii)(I).) The maximum dollar limit for the assessment currently is $88, as we announced in the **Federal Register** on October 30, 2012 (77 FR 65754).

The Act requires us each year to set the assessment percentage rate at the lesser of 6.3 percent or the percentage rate necessary to achieve full recovery of the costs we incur to determine and pay representatives' fees. (Sections 206(d)(2)(B)(ii) and 1631(d)(2)(C)(ii)(II) of the Act, 42 U.S.C. 406(d)(2)(B)(ii) and 1383(d)(2)(C)(ii)(II).)

Based on the best available data, we have determined that the current rate of 6.3 percent will continue for 2013. We will continue to review our costs for these services on a yearly basis.

Dated: December 21, 2012.

Tina Waddell,

Assistant Deputy Commissioner, Budget, Finance and Management.

[FR Doc. 2012–31372 Filed 12–28–12; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 8136]

Culturally Significant Objects Imported for Exhibition Determinations: ''Pre-Raphaelites: Victorian Art and Design, 1848–1900''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Pre-Raphaelites: Victorian Art and Design, 1848–1900,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about February 17, 2013, until on or about May 19, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: December 21, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–31440 Filed 12–28–12; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

2013 Special 301 Review: Identification of Countries Under Section 182 of the Trade Act of 1974: Request for Public Comment and Announcement of Public Hearing

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public and announcement of public hearing.

SUMMARY: Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242) requires the United States Trade Representative (Trade Representative) to identify countries that deny adequate and effective protection of intellectual property rights (IPR) or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. (The provisions of Section 182 are commonly referred to as the ''Special 301'' provisions of the Trade Act.) The Trade Act requires the Trade Representative to determine which, if any, of these countries to identify as Priority Foreign Countries. Acts, policies, or practices that are the basis of a country's identification as a Priority Foreign Country can be subject to the procedures set out in sections 301–305 of the Trade Act.

In addition, the Office of the United States Trade Representative (USTR) has created a ''Priority Watch List'' and ''Watch List'' to assist the Administration in pursuing the goals of the Special 301 provisions. Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IPR protection, enforcement, or market access for persons that rely on intellectual property protection. Trading partners placed on the Priority Watch List are the focus of increased bilateral attention concerning the problem areas.

USTR chairs an interagency team that reviews information from many sources, and that consults with and makes recommendations to the Trade Representative on issues arising under Special 301. Written submissions from interested persons are a key source of information for the Special 301 review process. In 2013, USTR again will conduct a public hearing as part of the review process.

USTR is hereby requesting written submissions from the public concerning foreign countries' acts, policies, or practices that are relevant to deciding whether a particular trading partner should be identified as a priority foreign

country under Section 182 of the Trade Act or placed on the Priority Watch List or Watch List. Interested parties, including foreign governments, wishing to testify at the public hearing must follow the procedures set out below for filing a notice of intent to testify. The deadlines for these procedures are set out below.

DATES: The schedule for the 2013 Special 301 review is set forth below.

Friday, February 8, 2013—For interested parties, except for foreign governments: Submit written comments, requests to testify at the Special 301 Public Hearing, and hearing statements.

Friday, February 15, 2013—For foreign governments: Submit written comments, requests to testify at the Special 301 Public Hearing, and hearing statements.

Wednesday, February 20, 2013—Special 301 Committee Public Hearing for interested parties, including representatives of foreign governments, will be held at the offices of USTR, 1724 F Street, NW., Washington, DC 20508. Any change in the date or location of the hearing will be announced on *http://www.ustr.gov.*

On or about April 30, 2013—In accordance with statutory requirements, USTR will publish the 2013 Special 301 Report.

ADDRESSES: All written comments, requests to testify, and hearing statements should be sent electronically via *http://www.regulations.gov,* docket number USTR–2012–0022. Submissions should contain the term ''2013 Special 301 Review'' in the ''Type comment'' field on *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Paula Karol Pinha, Director for Intellectual Property and Innovation, Office of the United States Trade Representative, at (202) 395–5419. Further information about Special 301 can be found at *http://www.ustr.gov.*

SUPPLEMENTARY INFORMATION:

1. Background

USTR requests that interested persons identify those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. USTR further requests that submissions include specific references to laws, regulations, policy statements, executive, presidential or other orders, administrative, court or other determinations, and any other measures relevant to the issues raised in the written submission or hearing testimony. USTR also requests that, where relevant, submissions mention particular regions, provinces, states, or other subdivisions of a country in which an act, policy, or practice is believed to warrant special attention.

Section 182 contains a special rule regarding actions of Canada affecting U.S. cultural industries. Section 182 requires the Trade Representative to identify any act, policy or practice of Canada that affects cultural industries, is adopted or expanded after December 17, 1992, and is actionable under Article 2106 of the North American Free Trade Agreement (NAFTA). Section 182 requires the Trade Representative to identify any such acts, policies or practices within 30 days after publication of the National Trade Estimate (NTE) report, i.e., approximately April 30, 2013.

2. Public Comments

a. Written Comments

The Special 301 Committee invites written submissions from the public concerning foreign countries' acts, policies, or practices that are relevant to deciding whether a particular trading partner should be identified under Section 182 of the Trade Act. As noted above, interested parties, except for foreign governments, must submit any written comments by February 8, 2013. Interested foreign governments must submit any written comments by February 15, 2013.

b. Requirements for Comments

Written comments should include a description of the problems that the submitter has experienced and the effect of the acts, policies, and practices on U.S. industry. Comments should be as detailed as possible and provide all necessary information for identifying and assessing the effect of the acts, policies, and practices. Any comments that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses. Comments must be in English. All comments should be sent electronically via *http://www.regulations.gov,* docket number USTR–2012–0022.

To submit comments to *http://www.regulations.gov,* find the docket by entering the number USTR–2012–0022 in the ''Enter Keyword or ID'' window at the http://www.regulations.gov home page and click ''Search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Comment Now!.'' (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page).

The *http://www.regulations.gov* site provides the option of providing comments by filling in a ''Type comment'' field, or by attaching a document. It is USTR's preference that comments be provided in an attached document. If a document is attached, please type ''2013 Special 301 Review'' in the ''Type comment'' field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf) formats. If the submission is in an application format other than Microsoft Word or Adobe Acrobat (.pdf), please indicate the name of the relevant application in the ''Type comment'' field.

3. Public Hearing

a. Notice of Public Hearing

The Special 301 Committee will hold a public hearing at the offices of USTR, 1724 F Street NW., Washington, DC 20508 for interested parties, including representatives of foreign governments, on February 20, 2013. The hearing will be open to the public, and a transcript of the hearing will be made available on *http://www.ustr.gov.* Any change in the date or location of the hearing will be announced on *http://www.ustr.gov.*

b. Submission of Requests to Testify at the Public Hearing and Hearing Statements

Oral testimony before the Special 301 Committee must be in person and will be limited to one five-minute presentation in English. Questions from the Special 301 Committee may follow oral testimony.

All interested parties, except foreign governments, wishing to testify at the hearing must submit, by February 8, 2013, a ''Notice of Intent to Testify'' and ''Hearing Statement'' to http://www.regulations.gov (following the procedures set forth in ''Requirements for Comments'' above). The Notice of Intent to Testify must include the name of the witness, name of the organization (if applicable), address, telephone number, fax number, and email address. A short Hearing Statement must accompany the Notice of Intent to Testify.

All interested foreign governments that wish to testify at the hearing must submit, by February 15, 2013, a ''Notice of Intent to Testify'' to *http://www.regulations.gov* (following the procedures set forth in ''Requirements

for Comments'' above). The Notice of Intent to Testify must include the name of the witness, name of the organization (if applicable), address, telephone number, fax number, and email address. A short Hearing Statement may accompany the Notice of Intent to Testify.

4. Business Confidential Information

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such, the submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page, and the submission should indicate, via brackets, the specific information that is confidential. Additionally, ''Business Confidential'' should be included in the ''Type comment'' field. Anyone submitting a comment containing business confidential information must also submit, as a separate submission, a non-confidential version of the confidential submission, indicating where confidential information has been redacted. The non-confidential summary will be placed in the docket and open to public inspection.

5. Inspection of Comments

USTR will maintain a docket on the 2013 Special 301 Review, accessible to the public. The public file will include non-confidential comments, notices of intent to testify, and hearing statements received by USTR from the public, including foreign governments, with respect to the 2013 Special 301 Review. Comments will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Comments may be viewed on the *http://www.regulations.gov* Web site by entering docket number USTR–2012–0022 in the search field on the home page.

Stanford K. McCoy,

Assistant U.S. Trade Representative for Intellectual Property and Innovation.

[FR Doc. 2012–31336 Filed 12–28–12; 8:45 am]

BILLING CODE 3290–F3–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

[Docket No. DOT–OST–2013–0213]

Notice of Transportation Services' OMB Designation, timely return of excess transit benefits to the Treasury, and stakeholder notification of the minimum internal controls

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: On April 27, 2012, the Office of Management and Budget (OMB) designated the U.S. Department of Transportation's (DOT) Office of Transportation Services (TRANServe), located within the Office of the Assistant Secretary for Administration, as the lead Federal Agency by to facilitate the timely return of any excess transit benefits accumulating on vanpool companies' accounts to the Treasury and to prevent the future accumulation of excess transit benefits, among other things. As the lead Federal agency, TRANServe is directed to inform commercial vanpool companies of the Federal internal controls that now govern the Transit Benefit Program to prevent future accumulations, and assist in the timely return of the current excess transit benefits. Thus, the following notice sets forth the process for returning excess transit benefits, as well as the minimum internal controls that have been developed for operating a compliant transit benefit program as it relates to van pools.

FOR FURTHER INFORMATION CONTACT: Ms. Denise P. Wright, Business Office Manager, and for information regarding Funds Recovery contact Ms. Craig Bellet, Working Capital Fund—Office of Financial Management 1200 New Jersey Avenue SE., Washington DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

On April 21, 2000, Executive Order 13150 directed all federal agencies to develop a transportation fringe benefit program that offered qualified Federal employees the option to exclude from taxable wages and compensation employee commuting costs incurred through the use of mass transportation and vanpools. Since their development, these transit benefit programs have become an important tool in addressing urban roadway congestion. However, they were only designed to subsidize employees' costs for using public transportation to travel between their residence and place of employment. These benefits are calculated on a monthly basis as required under 26 CFR 1.132–9, and as such, employees are not permitted to accumulate benefits in excess of their actual monthly commuting costs or to use accumulated benefits to offset commuting costs in subsequent months. Furthermore, overestimating transit costs, giving or selling transit benefits to others, or purchasing transit benefits from unauthorized sources is prohibited. Employees who misuse transit benefits are subject to appropriate administrative action, including discipline and disqualification from the Federal Transit Benefit Program.

In 2011, the Office of Management and Budget (OMB) was advised that excess transit benefits may have been accumulating in programs that allow transit benefits to be used for vanpool services between employees' residences and their places of employments. On April 27, 2012, OMB directed that these excess funds be returned to the U.S. Department of the Treasury and that federal agencies strengthen internal controls to ensure compliance with the Federal Transit Benefit Program. To accomplish these directives, OMB designated the DOT, Office of Assistant Secretary for Administration, as the lead Federal agency to inform commercial vanpool companies of the Federal internal controls that govern the Transit Benefit Program and to assist in the timely return of the Federal funds. Pursuant to the OMB direction, TRANServe is responsible for the recovery of the excess transit benefit provided to van pool riders including both customers of TRANServe and those riders who received the transit benefit through other channels. TRANServe has also worked with senior leadership of the relevant Federal agencies to further define the necessary controls that should be in place to operate a compliant transit benefit program. The process for recovering the existing excess funds, as well as the controls that have been developed to prevent future excess accumulations, is described below.

II. Funds Recovery Process

This section presents the process for the timely return of the Federal funds. Pursuant to 26 CFR 1.132–9, qualified transportation fringe benefits are calculated on a monthly basis. Therefore, employees are not permitted to accumulate fare media in excess of their actual monthly commuting costs or to use accumulated fare media (acquired with tax-exempt subsidies) to offset commuting costs in the future. In this instance, accumulated fare media in excess of the actual monthly commuting

costs means Federal funds held on account over and above the certified eligible monthly amount, which have the potential to be used to offset commuting costs in the future. Van pool providers and/or operators that have retained funds in excess of the allotted monthly amount must return the excess funds by April 27, 2013 or 120 days from date of this notice, whichever is greater. All excess funds should be returned via the Web site *www.pay.gov.* To remit payment via *www.pay.gov,* in the ''Find Public Forms'' search box, type ''DOTWCF'' in the search field and select ''DOT OST Working Capital Fund Miscellaneous Payments'' from the query list. Complete all fields with the requested information. In the ''reason for payment'' field, select ''other'' and enter the following statement in the information box: ''Unused van pool funding by federal participants.'' At the same time the funds are returned via *www.pay.gov,* the following information should also be transmitted via email to *TRANServe@dot.gov,* to assist the responsible agency in auditing transaction activity: [1]

i. Name and location of vanpool operator

ii. Funds origin, to include agency and location

iii. Dollars segregated by agency

The email subject line should state ''Pay.gov Van Pool Funds Remittance.'' Also include a copy of the emailed receipt you receive from *www.pay.gov.* Van Pool providers and/or operators shall encrypt the data in order to protect it during transmission. Once received, DOT shall handle the data in accordance with the security controls identified in the DOT's System of Records Notice, DOT/ALL 8 Employee Transportation Facilitation, 65 FR 19482 (April 11, 2000).

III. Minimum Internal Controls

To ensure that funds are not accumulated in excess of the allotted monthly amount, we have also worked with other federal agencies to develop the following internal controls for the management of the Federal Transit Benefit Program. These controls will ensure effective and efficient operations, reliability of financial reporting, and compliance with applicable laws and regulations. The controls are provided as tools to help federal transit benefit program and financial managers achieve results and safeguard the integrity of their programs. Federal agency program administration should be built around these core principles and monitored accordingly. The internal controls listed are general controls and agency policy and procedure may be more prescriptive with the following internal controls serving as the minimum standard. For the purposes of this notice with respect to the minimum internal controls, the following definitions are applicable:

Federal Van Pool Driver—an individual owner or transportation servicer of a qualified IRS van pool and/or a Federal employee operating a vehicle. The Federal Van Pool Driver may be the primary member listed for qualified parking.

Federal Van Pool Operator—an individual having primary responsibility as identified through a contractual relationship with the Van Pool Provider. The Federal Van Pool operator may be the primary member listed for qualified parking.

Federal Van Pool Provider—an entity which contractually offers the use of a vehicle (van) to a Federal Van Pool Operator meeting the van pool qualifications set forth in 26 CFR § 1.132–9 26.

The minimum internal controls include the following:

1. The agency transit benefit program must provide the ability for all participants to adjust the monthly transit benefit amount.

2. With respect to van pools, the agency transit benefit program manager should verify that the van pool is registered or certified by the local transit authority, where applicable. While agency transit benefit program managers have no authority to require van pool registration or certification by local transit authorities, some State and local transit authorities require van pool registration and certification. This administrative process should be leveraged to ensure statutory and regulatory compliance as well as transit authority compliance.

3. The agency transit benefit program manager should maintain a list of van pool vendors utilized by agency participants, to include the name of the driver or operator, van pool business name, address, and phone number. The list of van pool vendors, with driver and operator identified, should be cross referenced and validated to ensure consistency and accuracy with the agency van pool participants receiving the transit benefit. Van pool operators or drivers are to provide this information directly to the agency transit benefit program manager.

4. Van pool drivers and operators who use qualified parking consistent with 26 CFR 1.132–9, or are named on a workplace parking permit, are not eligible to receive the transit benefit. However, the allowable cost for the driver and/or operator may be covered as part of the operating expenses attributed to the van pool.

5. The transit benefit cannot be used to hold a seat on the van pool in the event of participant absence. All participants must utilize the van pool for commuting to and from work at least 50% of eligible work days.

6. The van pool must seat a minimum of 6 passengers (not including the driver), and must have at least 50% of the adult seating capacity of the vehicle (not including the driver) used for the transportation of employees to and from work representing 80% of the usage of the van.

7. The agency transit benefit program manager must be provided a published price list by the Federal van pool driver or operator, which is applicable to all riders (federal and non-federal). As established by the Federal van pool driver or operator, the published costs should include all necessary fees. Updated price lists should be provided to the agency transit benefit program manager as prices are changed or modified.

8. In the event a transit program receives a rider subsidy from a transit authority, the appropriate participant offset must be applied to the individual monthly benefit amount.

9. A van pool invoice or receipt is required to document the actual commuting cost for individual van pool participants.

The internal controls described above should prevent individuals from accruing transit benefits in excess of the allotted monthly amount, as required by 26 CFR 1.132–9.

Issued in Washington, DC on December 27, 2012.

Marie Petrosino-Woolverton,

Director, Office of Financial Management & Transportation Services.

[FR Doc. 2012–31384 Filed 12–28–12; 8:45 am]

BILLING CODE 4910–9X–P

[1] Pursuant to 5 CFR 1320.3(h), this is not considered to be information as defined under the Paperwork Reduction Act, 44 U.S.C. chapter 35.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2012–0006–N–18]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking approval of the following proposed information collection activities. Before submitting this proposed information collection request (ICR) for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than March 1, 2013.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 25, Washington, DC 20590, or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130-New'' and should also include the title of the collection of information. Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via email to Mr. Brogan at *Robert.Brogan@dot.gov,* or to Ms. Toone at *Kimberly.Toone@dot.gov*. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)-(iv); 5 CFR 1320.8(d)(1)(I)-(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the proposed Information Collection Request (ICR) that FRA will submit for clearance by OMB as required under the PRA:

Title: Electronic Device Distraction (EDD) Survey

OMB Control Number: 2130-New

Abstract: Operating railroad equipment while being distracted by the use of electronic devices (*e.g.,* phones, game consoles, personal computers, etc.) is known to be a factor in some accidents and suspected of being the cause of many others in the railroad industry. It is also known that such use is dangerous, as evidenced by several high profile accidents in the railroad industry, and by research on distraction in other transportation modes. Consequently, the Department of Transportation (DOT) and the Federal Railroad Administration (FRA) have a keen interest in devising counter measures to reduce the incidence of electronic device distraction (EDD) in the railroad industry. In order to devise effective countermeasures, FRA believes a survey of select rail employees would be extremely beneficial. Therefore, FRA proposes to sample railroad employees spread across the jobs of conductors, engineers, signalmen, maintenance of way, car repair personnel, machinists, and supervisors. The agency's interest is shared by rail labor and management representatives, who are strongly supporting this survey and cooperating in its administration. All involved realize that effective counter measures to EDD must be based on a trustworthy understanding of the following: (1) Who is engaged in EDD, (2) under what circumstances they use these devices, (3) which devices are used, (4) reasons for use, and (5) frequency of use for each kind of device. Effective interventions cannot be designed, implemented, or evaluated without accurate information on these topics. The proposed survey is designed to provide this information, first as a baseline, and, in four subsequent years, as a way of tracking and evaluating change. For reasons of effectiveness and efficiency, the survey will be conducted primarily via the Web, augmented as needed with email communications.

Form Number(s): FRA F 680.158.

Affected Public: Railroad Employees.

Respondent Universe: 11,000 Railroad Employees.

Frequency of Submission: On occasion.

Reporting Burden:

	CFR section	Respondent universe	Total annual responses	Average Time per response
Form FRA F 6180.158	11,000 Railroad Employees.	11,000 forms/surveys.	20 minutes	3,667

Total Responses: 11,000.

Estimated Total Annual Burden: 3,667 hours.

Type of Request: Approval of a New Information Collection.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. §§ 3501–3520.

Issued in Washington, DC on December 21, 2012.

Rebecca Pennington,

Chief Financial Officer, Federal Railroad Administration.

[FR Doc. 2012–31382 Filed 12–28–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 73]

Railroad Safety Advisory Committee; Notice of Meeting Postponement

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Railroad Safety Advisory Committee (RSAC) Meeting Postponement.

SUMMARY: FRA recently announced the forty-eighth meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process (77 FR 73734). This meeting has been postponed until further notice and will be rescheduled at a future date.

DATES: The RSAC meeting scheduled to commence at 9:30 a.m. on Wednesday, January 9, 2013, is hereby postponed and will be rescheduled at a future date.

ADDRESSES: To be rescheduled at a future date and location.

FOR FURTHER INFORMATION CONTACT: Larry Woolverton, RSAC Administrative Officer/Coordinator, FRA, 1200 New Jersey Avenue SE., Mailstop 25, Washington, DC 20590, (202) 493–6212; or Robert Lauby, Deputy Associate Administrator for Regulatory and Legislative Operations, FRA, 1200 New Jersey Avenue SE., Mailstop 25, Washington, DC 20590, (202) 493–6474.

SUPPLEMENTARY INFORMATION: The RSAC was established to provide advice and recommendations to FRA on railroad safety matters. The RSAC is composed of 54 voting representatives from 32 member organizations, representing various rail industry perspectives. In addition, there are non-voting advisory representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico, the National Transportation Safety Board, and the Federal Transit Administration. The diversity of the Committee ensures the requisite range of views and expertise necessary to discharge its responsibilities. See the RSAC Web site for details on prior RSAC activities and pending tasks at: *http://rsac.fra.dot.gov/* . Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740), for additional information about the RSAC.

Issued in Washington, DC, on December 31, 2012.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–31383 Filed 12–28–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 33 (Sub-No. 309X); Docket No. AB 980 (Sub-No. 2X)]

Union Pacific Railroad Company—Abandonment of Freight Easement Exemption—in Alameda County, Cal. (San Jose Industrial Lead); Santa Clara Valley Transportation Authority—Abandonment of Residual Common Carrier Obligation Exemption—in Alameda County, Cal. (San Jose Industrial Lead)

On December 12, 2012, Union Pacific Railroad Company (UP) and Santa Clara Valley Transportation Authority (SCVTA) jointly filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 for UP to abandon its freight operating easement on, and for SCVTA, the owner of the line, to abandon its residual common carrier obligation for, a portion of the San Jose Industrial Lead between mileposts 5.38 and 7.35 near the Warm Springs freight rail station in the City of Fremont, a distance of 1.97 miles, in Alameda County, Cal. Petitioners state that the involved segment of rail line is contiguous to the segment between mileposts 7.35 and 16.30 in Alameda and Santa Clara Counties, Cal., for which the Board granted abandonment authority in July 2012.[1] The line traverses United States Postal Service Zip Codes 94538 and 94539.

In addition to an exemption from the provisions of 49 U.S.C. 10903, petitioners seek an exemption from 49 U.S.C. 10904 (offer of financial assistance (OFA) provisions) and 49 U.S.C. 10905 (public use provisions). In support, petitioners state that the line is to be abandoned for freight rail service, but will be retained and rebuilt for future inclusion in the Bay Area Rapid Transit System. Petitioners assert that the right-of-way is thus needed for a valid public purpose and that there is no overriding public need for continued freight rail service. These requests will be addressed in the final decision.

According to petitioners, the line does not contain Federally granted rights-of-way. Any documentation in petitioners' possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by April 1, 2013.

Any OFA under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,600 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than January 22, 2013. Each trail use request must be accompanied by a $250 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket Nos. AB 33 (Sub-No. 309X) and AB 980 (Sub-No. 2X) and must be sent to: (1) Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001; and (2) petitioners' representatives, Mack H. Shumate, Jr., 101 North Wacker Drive, Suite 1920, Chicago, IL 60606 (UP), and Allison I. Fultz, 1001 Connecticut Ave. NW., Suite 800, Washington, DC 20036 (SCVTA). Replies to the petition are due on or before January 22, 2013.

[1] *See Union Pac. R.R.—Aban. of Freight Easement—in Alameda and Santa Clara Cntys. Cal.,* AB 33 (Sub-No. 303X) and *Santa Clara Valley Transp. Auth.—Aban. of Common Carrier Service—in Alameda and Santa Clara Counties, Cal.,* AB 980 (Sub-No. 1X) (STB served July 23, 2012).

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available on our Web site at ''www.stb.dot.gov.''

Decided: December 21, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–31386 Filed 12–28–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MCF 21051] [1]

Hotard Coaches, Inc. and Calco Travel, Inc.—Corporate Family Transaction

HotardCoaches, Inc. (Hotard), a carrier, and Calco Travel, Inc. (Calco), a carrier, both wholly owned subsidiaries of All Aboard America! Holdings, Inc. (AHI), a noncarrier, have filed a verified notice of exemption under the Board's class exemption procedure at 49 CFR 1182.9.[2] The exempt transaction involves the merger of Calco with and into Hotard, with Hotard being the only surviving corporation. Calco and Hotard are jointly managed with existing operations in Louisiana and Mississippi.[3]

The transaction is intended to simplify the corporate structure of the corporate family by consolidating all of the assets and liabilities of Hotard and Calco into a single surviving entity. Hotard and Calco state that the elimination of Calco as a separate corporate entity will streamline the corporate structure and management, reduce administrative expenses, and improve the overall efficiency of Hotard.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1182.9. Hotard and Calco state that the transaction will not result in any change in service levels, significant operational changes, or any change in competitive balance with carriers outside the corporate family. Hotard and Calco also state that (1) they will consummate the proposed transaction through an Agreement and Plan of Merger approved by the Board of Directors of each party in accordance with Louisiana law, and (2) the transaction will not have an adverse impact on the employees of either party to the subject transaction.

The transaction is scheduled to be consummated on or after January 1, 2013.

If the verified notice contains false or misleading information, the Board shall summarily revoke the exemption and require divestiture. Petitions to revoke the exemption under 49 U.S.C. 13541(d) may be filed at any time. *See* 49 CFR 1182.9(c).

An original and 10 copies of all pleadings, referring to Docket No. MCF 21051, 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 Daniel A. Ranson, Gaudry, Ranson, Higgins & Gremillion, LLC, 401 Whitney Ave., Suite 500, Gretna, LA 70056.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

By the Board.

Decided: December 26, 2012.

Rachel D. Campbell,

Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–31414 Filed 12–28–12; 8:45 am]

BILLING CODE 4915–01–P

[1] Originally filed under Docket No. FD 35693, this notice has been redocketed as Docket No. MCF 21051.

[2] The Board exempted intra-corporate family transactions of motor carriers of passengers that do not result in significant operational changes, adverse changes in service levels, or a change in the competitive balance with carriers outside the corporate family in *Class Exemption for Motor Passenger Intra-Corporate Family Transactions,* FD 33285 (STB served Feb. 18, 2000).

[3] AHI, Celerity AHI Holdings SPV, LLC, and Celerity Partners IV, LLC received tentative authorization from the Board to acquire control of Calco, Hotard, and Industrial Bus Lines, Inc. in *Celerity Partners IV, LLC—Control—Calco Travel, Inc.,* MCF 21044 (STB served May 11, 2012).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 26, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before January 30, 2013 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

OMB Number: 1545–2007.

Type of Review: Extension without change of a currently approved collection.

Title: Employer's Annual Employment Tax Return.

Form: 944, 944 SP, 944–X, 944–X (SP), 944–X (PR).

Abstract: Form 944, Employer's Annual Federal Tax Return, is designed so the smallest employers (those whose annual liability for social security, Medicare, and withheld federal income taxes is $1,000 or less) will file and pay these taxes only once a year instead of every quarter. Employers who discover they under or over withheld income taxes from wages or social security or

Medicare tax in a prior year use Form 944–X to report those taxes and either make a payment, claim a refund, or request an abatement.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 15,702,300.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2012–31388 Filed 12–28–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Proposed Collection; Comment Request; Office of Small and Disadvantaged Business Utilization

AGENCY: Departmental Offices, Department of Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Departmental Offices, OSDBU within the Department of the Treasury is soliciting comments concerning the Electronic Capability Statement (ECS).

DATES: Written comments must be received on or before March 1, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to the Department of the Treasury, Departmental Offices, OSDBU, ATTN: Robin Byrd, 1500 Pennsylvania Avenue NW., Washington, DC 20220, MS: Metropolitan Square, Room 6N403, (202) 622–8213; *http://www.treas.gov/osdbu.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to the Department of the Treasury, Departmental Offices, OSDBU, ATTN: Robin Byrd, 1500 Pennsylvania Avenue NW., Washington, DC 20220, MS: Metropolitan Square, Room 6N403, (202) 622–8213; *http://www.treas.gov/osdbu.*

SUPPLEMENTARY INFORMATION:

Title: Electronic Capability Statement.

OMB Number: 1505–0220.

Abstract: The Electronic Capability Statement will be used by firms that wish to do business with the Department of the Treasury. The form will capture key information such as NAICS, contract and subcontract award information, and past performance. The information will be stored in a database. The database will be used by OSDBU, Treasury Acquisition staff and the Troubled Asset Relief Program to conduct research when searching for small businesses to perform on Treasury contracts.

Current Actions: The Electronic Capability Statement was developed by the Chief Information Officer. Small businesses that wish to do business with the Department of the Treasury are registering their firm and submitting their firm's capabilities statement. The Electronic Capabilities Statement will facilitate market research efforts by Treasury Bureaus, allowing them to search for small businesses and review their capabilities.

Type of Review: Extension.

Affected Public: Business or other for-profit; Federal Government.

Estimated Number of Annual Respondents: 420.

Estimated Hours per Response: 0.13.

Estimated Total Annual Burden Hours: 54.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 26, 2012.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2012–31385 Filed 12–28–12; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 21, 2012.

The Department of the Treasury is planning to submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13.

DATES: Comments should be received on or before March 1, 2013 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to James Gatz, Senior Program and Policy Advisor, Office of Consumer Policy, U.S. Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220. (202) 622–3946.

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

Office of Consumer Policy

OMB Number: 1505–xxxx.

Type of Review: New collection.

Title: Assessing the use and demand for technology-based financial capability tools and products and related services

Abstract: The Department of the Treasury is developing knowledge about consumers' demand, use and understanding of technology-based tools and products that provide information for financial decision-making, including tools available via smartphones and other mobile devices. Treasury will use the collected information to promote the Treasury's understanding of this category of tools and products and related services.

Affected Public: Individuals or households selected to participate in the information collection.

Estimated Total Annual Burden Hours: 1250.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. 2012–31237 Filed 12–28–12; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Rural Health Advisory Committee, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. Appt. 2, that the Veterans' Rural Health Advisory Committee will conduct a telephone conference call meeting from 2 p.m. to 3:30 p.m. on Tuesday, January

29, 2013, in Room GL20 of the Office of Rural Health (ORH), 1722 I Street, NW., Washington, DC. The toll-free number for the meeting is 1–800–767–1750, and the access code is 44970#. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on health care issues affecting enrolled Veterans residing in rural areas. The Committee examines programs and policies that impact the provision of VA health care to enrolled Veterans residing in rural areas and discusses ways to improve and enhance VA services for these Veterans.

The Committee will receive an update from the ORH Director; discuss VA's response to the 2011 Annual Report; and the agenda and planning for the Committee's upcoming May 2013 meeting in Washington, DC.

A 15-minute period will be reserved at 3:15 p.m. for public comments. Individuals who wish to address the Committee are invited to submit a 1–2 page summary of their comments for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Ms. Judy Bowie, Designated Federal Officer, ORH (10P1R), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, or email at rural.health.inquiry@va.gov. Any member of the public seeking additional information should contact Ms. Bowie at (202) 461–7100.

Dated: December 22, 2012.

By Direction of the Secretary.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2012–31333 Filed 12–28–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Advisory Committee on Disability Compensation will meet on January 28–29, 2013, at the Veterans Health Administration National Conference Center, 2011 Crystal Drive, Suite 150A, Arlington, Virginia. The sessions will begin at 8:30 a.m. each day and end at 4 p.m. on January 28 and at 2 p.m. on January 29. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising during service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

The Committee will receive briefings on issues related to compensation for Veterans with service-connected disabilities and other VA benefits programs. Time will be allocated for receiving public comments in the afternoon. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Nancy Copeland, Acting Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration, Compensation Service, Regulation Staff (211D), 810 Vermont Avenue NW, Washington, DC 20420 or email at nancy.copeland@va.gov. Any member of the public wishing to attend the meeting or seeking additional information should contact Mrs. Copeland at (202) 461–9685.

Dated: December 22, 2012.

By Direction of the Secretary.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2012–31334 Filed 12–28–12; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 77 Monday,

No. 250 December 31, 2012

Part II

Bureau of Consumer Financial Protection

12 CFR Part 1005

Electronic Fund Transfers (Regulation E); Proposed Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1005

[Docket No. CFPB–2012–0050]

RIN 3170–AA33

Electronic Fund Transfers (Regulation E)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is proposing to amend subpart B of Regulation E, which implements the Electronic Fund Transfer Act, and the official interpretation to the regulation. The proposal would refine a final rule issued by the Bureau earlier in 2012 that implements section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act regarding remittance transfers. The proposal addresses three narrow issues. First, the proposal would provide additional flexibility regarding the disclosure of foreign taxes, as well as fees imposed by a designated recipient's institution for receiving a remittance transfer in an account. Second, the proposal would limit a remittance transfer provider's obligation to disclose foreign taxes to those imposed by a country's central government. Third, the proposal would revise the error resolution provisions that apply when a remittance transfer is not delivered to a designated recipient because the sender provided incorrect or insufficient information, and, in particular, when a sender provides an incorrect account number and that incorrect account number results in the funds being deposited in the wrong account. The Bureau is also proposing to temporarily delay and extend the effective date of the rule.

DATES: Comments on the proposed temporary delay of the February 7, 2013 effective date of the rules published February 7, 2012 (77 FR 6194) and August 20, 2012 (77 FR 50244) must be received by January 15, 2013. Comments on the remainder of the proposal must be received by January 30, 2013.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2012–0050 or RIN 3170–AA33, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier in Lieu of Mail:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

Instructions: All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Eric Goldberg or Lauren Weldon, Counsel, or Dana Miller, Senior Counsel, Division of Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Overview

Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) [1] amended the Electronic Fund Transfer Act (EFTA) [2] to create a new comprehensive consumer protection regime for remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries. For covered transactions sent by remittance transfer providers, section 1073 creates a new EFTA section 919, and generally requires: (i) The provision of disclosures prior to and at the time of payment by the sender for the transfer; (ii) cancellation and refund rights; (iii) the investigation and remedy of errors by providers; and (iv) liability standards for providers for the acts of their agents.

On February 7, 2012, the Bureau of Consumer Financial Protection (Bureau) published a final rule to implement section 1073 of the Dodd-Frank Act. 77 FR 6194 (February Final Rule).[3] On August 20, 2012, the Bureau published a supplemental rule adopting a safe harbor for determining which companies are not remittance transfer providers subject to the February Final Rule because they do not provide remittance transfers in the normal course of business, and modifying several aspects of the February Final Rule regarding remittance transfers that are scheduled before the date of transfer (August Final Rule, and collectively with the February Final Rule, the Final Rule). 77 FR 50244. The Final Rule has an effective date of February 7, 2013.

The Final Rule governs certain electronic transfers of funds sent by consumers in the United States to designated recipients in other countries and, for covered transactions, imposes a number of requirements on remittance transfer providers. In particular, the Final Rule implements EFTA sections 919(a)(2)(A) and (B), which require a provider to disclose, among other things, the amount to be received by the designated recipient in the currency to be received. The Final Rule requires a provider to provide a written pre-payment disclosure to a sender containing detailed information about the transfer requested by the sender, specifically including the exchange rate, applicable fees and taxes, and the amount to be received by the designated recipient. In addition to the pre-payment disclosure, the provider also must provide a written receipt when payment is made for the transfer. The receipt must include the information provided on the pre-payment disclosure, as well as additional information such as the date of availability of the funds, the designated recipient's contact information, and information regarding the sender's error resolution and cancellation rights. Though the final rule permits providers to provide estimates in three narrow circumstances, the Final Rule generally requires that disclosures state the actual exchange rate that will apply to a remittance transfer and the actual amount that will be received by the designated recipient of a remittance transfer.

As noted above, the statute requires the disclosure of the amount to be received by the designated recipient. Because fees and taxes imposed on the remittance transfer by persons other than the provider can affect the amount received by the designated recipient, the Final Rule requires that remittance transfer providers take such fees and taxes into account when calculating the disclosure of the amount to be received under § 1005.31(b)(1)(vii), and that such fees and taxes be disclosed under

[1] Public Law 111–203, 124 Stat. 1376, section 1073 (2010).

[2] 15 U.S.C. 1693 *et seq.* EFTA section 919 is codified in 15 U.S.C. 1693o–1.

[3] A technical correction to the February Final Rule was published on July 10, 2012. 77 FR 40459. For simplicity, that technical correction is incorporated into the term ''February Final Rule.''

§ 1005.31(b)(1)(vi). Comment 31(b)(1)–ii explains that a provider must disclose any fees and taxes imposed on the remittance transfer by a person other than the provider that specifically relate to the remittance transfer, including fees charged by a recipient institution or agent. Foreign taxes that must be disclosed include regional, provincial, state, or other local taxes, as well as taxes imposed by a country's central government.

In the February Final Rule, the Bureau recognized the challenges for remittance transfer providers in determining fees and taxes imposed by third parties, but believed that the statute specifically required providers to disclose the amount to be received and authorized estimates only in narrow circumstances. The Bureau also noted the significant consumer benefits afforded by these disclosures. The Bureau further stated its belief that it was necessary and proper to exercise its authority under EFTA sections 904(a) and (c) to adopt § 1005.31(b)(1)(vi) to require the itemized disclosure of these fees and taxes in order to effectuate the purposes of the EFTA.

The Final Rule also implements EFTA sections 919(d) and (f), which direct the Bureau to promulgate error resolution standards and rules regarding appropriate cancellation and refund policies, as well as standards of liability for remittance transfer providers. The Final Rule thus defines in § 1005.33 what constitutes an error with respect to a remittance transfer, as well as the remedies when an error occurs. Of relevance to this proposal, the Final Rule provides that, subject to specified exceptions, an error includes the failure to make available to a designated recipient the amount of currency promised in the disclosure provided to the sender, as well as the failure to make funds available to a designated recipient by the date of availability stated in the disclosure. §§ 1005.33(a)(1)(iii) and (a)(1)(iv). Where the error is the result of the sender providing insufficient or incorrect information, § 1005.33(c)(2)(ii) specifies the two remedies available: The provider must either refund the funds provided by the sender in connection with the remittance transfer (or the amount appropriate to correct the error) or resend the transfer at no cost to the sender, except that the provider may collect third party fees imposed for resending the transfer. If the transfer is resent, comment 33(c)–2 explains that a request to resend is a request for a remittance transfer, and thus the provider must provide the disclosures required by § 1005.31. Under § 1005.33(c)(2), even if the provider cannot retrieve the funds once they are sent, the provider still must provide the stated remedies if an error occurred.

Consistent with the statute, the Final Rule applies to all remittance transfer providers, whether transfers are sent through closed network or open network systems, or some hybrid of the two. Generally, in closed networks, a principal provider offers a service through a network of agents or other partners that help collect funds in the United States and disburse the funds abroad. Through the provider's own contractual arrangements with those agents or other partners, or through the contractual relationships owned by the provider's business partner, the principal provider can exercise some control over the transfer from end-to-end. In general, closed networks can be used to send transfers that can be received in a variety of forms, but they are most frequently used to send transfers that are not received in accounts. In contrast, in an open network, no single provider has control over or relationships with all of the participants that may collect funds in the United States or disburse funds abroad. Under current practice, in open networks, there is generally no global practice of communications by intermediary and recipient institutions with originating entities regarding fees and exchange rates applied to transfers. Unlike closed networks, open networks are typically used to send funds to accounts. Though they are primarily used by depository institutions and credit unions, open networks also may be used by non-depository institutions.

In the February Final Rule, the Bureau stated that it would continue to monitor implementation of the new statutory and regulatory requirements. The Bureau has subsequently engaged in dialogue with both industry and consumer groups regarding implementation efforts and compliance concerns. Most frequently, and as discussed in more detail below in the Section-by-Section Analysis, industry has expressed concern about the costs and challenges to remittance transfer providers of: (1) The requirement to disclose certain fees imposed by recipient institutions on remittance transfers; (2) the requirement to disclose foreign taxes, including taxes charged by foreign regional, provincial, state, or other local governments; and (3) the inclusion as an error a failure to deliver a transfer where the error occurs because the sender provided an incorrect account number to the provider and funds are deposited into the wrong account.

With respect to both recipient institution fees and foreign taxes, industry has stated that, to determine the appropriate disclosure, remittance transfer providers may have to ask numerous questions of senders that senders may not understand, and to which both senders and providers may not reasonably be expected to know the answer. For example, industry has noted that certain recipient institution fees can vary based on the recipient's status with the institution (*i.e.,* a preferred customer status), the quantity of transfers received by the recipient, or other variables that neither the sender nor the provider are likely to know. Thus, industry has asserted that certain recipient institution fees and similar foreign taxes are impracticable to disclose under the Final Rule. Separately, industry has argued that it is exponentially more burdensome to research and disclose regional, provincial, state, and other local taxes (''subnational taxes'') than to research and disclose only those taxes imposed by a country's central government, and that there is little commensurate benefit to consumers gained by disclosure of subnational taxes.

Further, since the issuance of the February Final Rule, industry has expressed concerns about the remedies that apply with respect to errors that occur because the sender of a remittance transfer provided incorrect or insufficient information to the remittance transfer provider. Providers have stated that, while generally rare, in some cases when a sender provides an incorrect account number, the remittance transfer may be deposited into the wrong account and, despite reasonable efforts by the provider, cannot be recovered, thus requiring providers to bear the cost of the lost principal transfer amount. In addition, providers have expressed concern about the risks of fraudulent activity by senders attempting to take advantage of this part of the rule. With regard to cases in which there are errors, providers have also asked technical questions about how disclosures should be provided in certain circumstances where a sender designates a resend remedy when reporting an error, or never designates a remedy at all, particularly in situations where the provider is unable to make direct contact with the sender upon completing its investigation.

Concerns about recipient institution fees and remedies for account number errors stem in large part from the nature of the open networks used to transfer funds, as described above. However, while depository institutions and credit

unions that are remittance transfer providers are more likely to be affected by these concerns, other providers may also be impacted to the extent they offer the ability to transfer funds into a recipient's account abroad. For example, whereas providers that use closed networks to send remittance transfers typically are able to determine the fees imposed by paying agents that distribute funds in cash, originating providers (whether depository or non-depository) using open networks or other systems that deposit transfers into accounts generally cannot, under current practice, determine fees for receiving transfers imposed by institutions that provide accounts and assess fees pursuant to an agreement between the recipient institution and the recipient. In addition, the type of network used by the provider does not drive concerns about taxes, although the magnitude of the concern may be greater for providers that allow senders to send remittances to a broad range of geographic areas, which traditionally have included open network providers.

Upon further review and analysis, the Bureau believes it is appropriate to propose narrow adjustments to the Final Rule regarding these three issues. Due in part to the concerns expressed above, some remittance transfer providers and industry associations have indicated that some providers are considering exiting the market or reducing their offerings, such as by not sending transfers to corridors where tax or fee information is particularly difficult to obtain, or by limiting the size or type of transfers sent in order to reduce any risk associated with mis-deposited transfers. The Bureau is concerned that this would be detrimental to consumers, both in decreasing market competition and consumers' access to remittance transfer products. The Bureau believes that the proposed revisions may help to reduce or mitigate these risks. In each case, the Bureau believes that the proposed adjustments to the Final Rule would facilitate compliance, while maintaining the Final Rule's valuable new consumer protections and ensuring that these protections can be effectively delivered to consumers.

II. Summary of the Proposed Rule

The proposal would refine three narrow aspects of the Final Rule. First, the proposal would provide additional flexibility and guidance on how foreign taxes and recipient institution fees may be disclosed. If a remittance transfer provider does not have specific knowledge regarding variables that affect the amount of foreign taxes imposed on the transfer, the proposal would continue to permit a provider to rely on a sender's representations regarding these variables. However, the proposal would separately permit providers to estimate by disclosing the highest possible foreign tax that could be imposed with respect to any unknown variable. Similarly, if a provider does not have specific knowledge regarding variables that affect the amount of fees imposed by a recipient's institution for receiving a remittance transfer in an account, the proposal would permit a provider to rely on a sender's representations regarding these variables. Separately, the proposal would also permit the provider to estimate by disclosing the highest possible recipient institution fees that could be imposed on the remittance transfer with respect to any unknown variable, as determined based on either fee schedules made available by the recipient institution or information ascertained from prior transfers to the same recipient institution. If the provider cannot obtain such fee schedules or information from prior transfers, the proposal would allow a provider to rely on other reasonable sources of information.

Second, the Bureau proposes to exercise its exception authority under section 904(c) of the EFTA to eliminate the requirement to disclose foreign taxes at the regional, state, provincial or local level. Thus, under the proposal, a remittance transfer provider's disclosure obligation would be limited to foreign taxes imposed on the remittance transfer by a country's central government. Because the proposed changes regarding recipient institution fees and taxes, taken together, could mean that a provider could be making disclosures that are not exact, the proposal also solicits comment on whether the existing requirement in the Final Rule to state that a disclosure is ''Estimated'' when estimates are provided under § 1005.32 should be extended to scenarios where disclosures are not exact, to the extent permitted by the proposed revisions.

Third, the proposal also would revise the error resolution provisions that apply when a sender provides incorrect or insufficient information and, in particular, when a remittance transfer is not delivered to a designated recipient because the sender provided an incorrect account number to the remittance transfer provider and the incorrect account number results in the funds being deposited in the wrong account. Under the proposal, where the provider can demonstrate that the sender provided the incorrect account number and that the sender had notice that the sender could lose the transfer amount, the provider would be required to attempt to recover the funds but would not be liable for the funds if those efforts were unsuccessful. The Bureau also proposes to revise the existing remedy procedures in situations where a sender provides incorrect or insufficient information other than an incorrect account number to allow providers additional flexibility when resending funds at a new exchange rate. Under the proposed rule, providers would be able to provide oral, streamlined disclosures and need not treat the resend as an entirely new remittance transfer. The Bureau also proposes to make conforming revisions in light of the proposed revisions regarding recipient institution fees and foreign taxes.

Finally, the Bureau proposes to temporarily delay the effective date of the Final Rule. The Bureau further proposes to extend the Final Rule's effective date until 90 days after this proposal is finalized.

The Bureau solicits comment on all aspects of this proposal. In particular, the Bureau seeks for commenters to provide, in conjunction with any opinions expressed, specific detail and any available data regarding current and planned practices, as well as relevant knowledge and specific facts about any benefits, costs, or other impacts on both industry and consumers of either the Final Rule, this proposal, or alternatives suggested by the commenter. The Bureau emphasizes that the purpose of this rulemaking is to clarify and facilitate compliance with the Final Rule on these narrow issues, not to reconsider the general need for—or the extent of—the protections that the general rule affords consumers. The Bureau also believes the market would benefit from quicker resolution of these issues. Thus, commenters are encouraged to frame their submissions accordingly.

The proposed adjustments are intended to facilitate compliance in part due to concerns about the practicability of the Final Rule given market models and available information today. After any changes are finalized, and consistent with the Bureau's approach to the Final Rule, the Bureau will continue to monitor implementation efforts and market developments, including whether better information about recipient institution fees or foreign taxes becomes more available over time, whether communication mechanisms in open network systems improve, and whether there are developments in security and verification procedures and practices.

The Bureau expects to conduct a more comprehensive review of these issues and the status of the market over the next two years as it also evaluates whether to extend a temporary exception that permits insured institutions to estimate certain disclosures, as permitted by the Dodd-Frank Act.[4]

III. Legal Authority

Section 1073 of the Dodd-Frank Act created a new section 919 of the EFTA and requires remittance transfer providers to provide disclosures to senders of remittance transfers, pursuant to rules prescribed by the Bureau. In particular, providers must give a sender a written pre-payment disclosure containing specified information applicable to the sender's remittance transfer, including the amount to be received by the designated recipient. The provider must also provide a written receipt that includes the information provided on the pre-payment disclosure, as well as additional specified information. EFTA section 919(a).

In addition, EFTA section 919(d) provides for specific error resolution procedures and directs the Bureau to promulgate rules regarding appropriate cancellation and refund policies. Except as described below, the proposed rule is proposed under the authority provided to the Bureau in EFTA section 919, and as more specifically described in this **SUPPLEMENTARY INFORMATION**.

In addition to the Dodd-Frank Act's statutory mandates, EFTA section 904(a) authorizes the Bureau to prescribe regulations necessary to carry out the purposes of the title. The express purposes of the EFTA, as amended by the Dodd-Frank Act, are to establish ''the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems'' and to provide ''individual consumer rights.'' EFTA section 902(b). EFTA section 904(c) further provides that regulations prescribed by the Bureau may contain any classifications, differentiations, or other provisions, and may provide for such adjustments or exceptions for any class of electronic fund transfers or remittance transfers that the Bureau deems necessary or proper to effectuate the purposes of the title, to prevent circumvention or evasion, or to facilitate compliance. As described in more detail below, § 1005.31(b)(1)(vi), 1005.32(b)(3) and (b)(4) are proposed pursuant to the Bureau's authority in EFTA section 904(c).

IV. Section-by-Section Analysis

Section 1005.31 Disclosures

EFTA sections 919(a)(2)(A) and (B) require a remittance transfer provider to disclose, among other things, the amount to be received by the designated recipient in the currency to be received. Because fees and taxes imposed on the remittance transfer by foreign institutions and governments can affect the amount ultimately received by the designated recipient, the Final Rule requires that providers take fees and taxes imposed by persons other than the provider into account when calculating the disclosure of the amount to be received under § 1005.31(b)(1)(vii), and that such fees and taxes be separately disclosed under § 1005.31(b)(1)(vi).

Since the rule was finalized, industry has continued to express concern that, where a designated recipient's institution charges the recipient fees for receiving a transfer in an account, the remittance transfer provider would not reasonably know whether the recipient has agreed to pay such fees or how much the recipient has agreed to pay. Industry has also requested guidance on whether and how to disclose recipient institution fees that can vary based on the recipient's status with the institution, quantity of transfers received, or other variables that are not easily knowable by the sender or the provider.

Separately, industry has expressed concern about the disclosure of foreign taxes, in two respects. First, industry has argued that it is significantly more burdensome to research and disclose subnational taxes than foreign taxes imposed by a country's central government, with little commensurate benefit to consumers. Second, industry has suggested that the existing guidance on the disclosure of foreign taxes is insufficient where variables that influence the applicability of foreign taxes are not easily knowable by the sender or the provider.

With respect to both recipient institution fees and foreign taxes, industry has stated that, to determine the appropriate disclosure, remittance transfer providers may have to ask numerous questions of senders that senders may not understand; to which senders may not know the answer; and (with respect to fees) which may be unique to each recipient institution.

The Bureau has considered these concerns. Upon further review and analysis, the Bureau believes it is appropriate to provide additional flexibility and guidance on how fees and taxes imposed by a person other than the remittance transfer provider may be disclosed. The Bureau also believes it is appropriate to exercise its exception authority under section 904(c) of the EFTA to eliminate the requirement to disclose regional, provincial, state, and other local foreign taxes. Accordingly, the proposed rule would revise § 1005.31(b)(1)(vi) and the related commentary, and would add two new provisions to § 1005.32 (as discussed in more detail below). Given this additional flexibility, the proposed rule also would extend § 1005.31(d) to require providers to disclose to senders that amounts are estimated in these circumstances, and would make other conforming revisions to the Final Rule.

In each case, the Bureau believes that the proposed adjustments to the Final Rule would facilitate compliance, while maintaining the rule's valuable, new consumer protections and ensuring that they can be effectively delivered to consumers. Under the proposal, senders would continue to receive disclosures with important information about fees and taxes that may be imposed by the foreign country's central government. Although not quite as precise, this information is still useful to help consumers determine the minimum necessary to pay bills and to provide the intended funds to a recipient.

As noted above, the proposed adjustments to the required fee and tax disclosures are intended to facilitate compliance in part due to concerns about the practicability of the Final Rule. The Bureau solicits comment on whether additional guidance is necessary to address similar practical or operational questions as those described here. After any changes are finalized, and consistent with the Bureau's prior approach, the Bureau will continue to monitor implementation efforts and market developments, including whether better information about recipient institution fees or foreign taxes becomes more readily available over time.

31(b) Disclosure requirements

31(b)(1) Pre-Payment Disclosures

Comment 31(b)(1)–1 Fees and Taxes

Comment 31(b)(1)–1 provides guidance on the disclosure of all fees and taxes, both foreign and domestic. Comment 31(b)(1)–1.ii focuses more specifically on how to disclose fees and taxes imposed on the remittance transfer

[4] Pursuant to the statute, that temporary exception sunsets on July 21, 2015, but the Bureau may extend that date for no more than five years if the Bureau determines that termination of the exception would negatively affect the ability of depository institutions and credit unions to send remittances to locations in foreign countries.

by a person other than the remittance transfer provider. Specifically, the comment explains that fees and taxes imposed on the remittance transfer include only those fees and taxes that are charged to the sender or designated recipient and that are specifically related to the remittance transfer. Under this framework, a provider must disclose fees imposed on a remittance transfer by the receiving institution or agent at pick-up for receiving the remittance transfer, fees imposed on a remittance transfer by intermediary institutions in connection with an international wire transfer, and taxes imposed on a remittance transfer by a foreign country's central government. However, a provider need not disclose, for example, overdraft fees that are imposed by a recipient's bank or funds that are garnished from the proceeds of a remittance transfer to satisfy an unrelated debt, because these charges are not specifically related to the remittance transfer.

Since the issuance of the Final Rule, industry has requested guidance on whether and how to disclose various recipient institution fees, including those that can vary based on the recipient's status with the institution, the quantity of transfers received, or other variables that are unlikely to be known by the sender or the provider. As stated in existing comment 31(b)(1)–1.ii, fees that are specifically related to the remittance transfer must be disclosed, including fees that are imposed by a recipient's institution for receiving a wire transfer. For example, flat per-transfer incoming wire transfer fees must be disclosed, including flat fees that are tied to a particular transfer but charged at a later date (such as a ''November 4 wire'' fee that is not assessed until the end of the November billing cycle), as these fees are clearly linked to a particular remittance transfer.

While the proposal would generally provide further flexibility on how these fees may be determined, as discussed below with respect to proposed comment 31(b)(1)(vi)–4, the Bureau believes it would facilitate compliance to provide additional clarification in comment 31(b)(1)–1.ii on other types of recipient institution fees that are or are not specifically related to a remittance transfer. As the proposed guidance would significantly lengthen the existing comment, the proposal divides comment 31(b)(1)–1.ii into new subsections 31(b)(1)–1.ii through –1.v. The Bureau also proposes minor wording adjustments to ensure consistency with other comments in the Final Rule.

Proposed comment 31(b)(1)–1.iii first revises the reference to taxes imposed by a foreign government to taxes imposed by a foreign country's central government, to conform to the proposal to eliminate the requirement to disclose subnational taxes, discussed below. The proposed comment also builds on the guidance described above, and clarifies that account fees are not specifically related to a remittance transfer if such fees are merely assessed based on general account activity and not for receiving transfers. Thus, where an incoming remittance transfer results in a balance increase that triggers a monthly maintenance fee, that fee is not specifically related to a remittance transfer.

Proposed comment 31(b)(1)–1.iv then explains that a fee that specifically relates to a remittance transfer may be structured on a flat per-transaction basis, or may be conditioned on other factors (such as account status or the quantity of remittance transfers received) in addition to the remittance transfer itself. For example, where an institution charges an incoming wire fee on most customers' accounts, but not on preferred accounts, the Bureau believes such a fee is nonetheless specifically related to a remittance transfer. Similarly, if the institution assesses a fee for every transfer beyond the fifth received each month, the Bureau believes such a fee would be specifically related to the remittance transfer regardless of how many remittance transfers preceded it that month. In both situations, while additional variables may determine whether a fee is imposed or waived in a particular case, the fee itself is assessed specifically for receiving a particular transfer. In either case, the fee would be subject to disclosure under § 1005.31(b)(1)(vi), but as discussed below, § 1005.32(b)(4) would offer providers some flexibility in how to disclose the fee.

31(b)(1)(vi) Fees and Taxes Imposed by a Person Other Than the Provider

Section 1005.31(b)(1)(vi) contains the Final Rule's requirement to disclose any fees and taxes imposed on the remittance transfer by a person other than the remittance transfer provider, in the currency in which the funds will be received by the designated recipient. Specifically with respect to taxes, the Final Rule currently requires the disclosure of any applicable foreign taxes, including regional, provincial, state, or other local taxes as well as taxes imposed by a country's central government.

After further consideration, and for the reasons discussed below, the Bureau believes that it is appropriate to propose revising the Final Rule regarding foreign tax disclosures. The proposal would revise § 1005.31(b)(1)(vi) to state that only foreign taxes imposed by a country's central government on the remittance transfer need be disclosed. New proposed comment 31(b)(1)(vi)–3 would further clarify that regional, provincial, state, or other local foreign taxes need not be disclosed, although the provider could choose to disclose them.

Since the adoption of the Final Rule, the Bureau has continued to monitor the availability to remittance transfer providers of pertinent foreign tax information. The Bureau believes that, while significant efforts are likely to permit industry members in general to access reliable and current information on the relevant foreign taxes imposed by a country's central government, there does not appear to be a reasonable prospect that comparable resources will soon exist across the market to permit access to reliable and current information on foreign taxes imposed at the subnational level (including confirmation of the absence of such taxes in most jurisdictions). Industry has suggested that subnational taxes on remittance transfers are comparatively infrequent as compared with such taxes at the national level, and that when they do exist, the tax rates at the subnational level are typically lower. Moreover, the number of potential taxing jurisdictions is exponentially larger at the subnational level, and the Final Rule would imply compliance obligations to assess tax incidence and rates relating to all such subnational jurisdictions to which a provider sends remittance transfers.

The Bureau is concerned that if disclosure of foreign subnational taxes is required, a number of remittance transfer providers could exit the market or significantly reduce their offerings because of the current lack of ongoing reliable and complete information sources. The Bureau also believes that the loss of these market participants would be detrimental to consumers, in decreasing market competition and the convenient availability of remittance transfer services.

Accordingly, the Bureau believes the proposed elimination of the requirement to disclose subnational taxes is an exception that is necessary and proper under EFTA section 904(c) both to effectuate the purposes of the EFTA and to facilitate compliance. Under the proposed revision, remittance transfer providers would remain required to disclose only those foreign taxes imposed by a country's central

government. The Bureau believes the revision would mitigate the compliance cost imposed on providers, and potentially passed on to their customers, that may be associated with the required disclosure of subnational tax information. Particularly if there is a comparatively infrequent incidence and lesser amount of subnational taxes, the Bureau believes that elimination of the compliance costs associated with subnational tax disclosures and the reduced risk of market departures (or other limitations) owing to such compliance costs would effectuate the purposes of the statute and facilitate compliance.

While the revised § 1005.31(b)(1)(vi) would provide that only the amount of foreign taxes imposed by a country's central government on the remittance transfer needs to be disclosed, a remittance transfer provider would remain free to disclose an amount that includes subnational taxes of which it is aware.

The Bureau seeks comment on whether limiting the required disclosures of foreign taxes to taxes imposed by a country's central government strikes the appropriate balance between easing compliance burden and protecting consumers, or whether there are circumstances in which a provider should be required to disclose additional foreign tax information. In particular, the Bureau seeks comment on whether resources have developed or are developing (and if so, how quickly) for remittance transfer providers to obtain reliable foreign subnational tax rate information. The Bureau also seeks comment on the practical significance to consumers if remittance service providers are not required to disclose such information under the rule, including any information on the incidence and magnitude of foreign subnational taxes, particularly in countries that receive substantial flows of remittance transfers.

Comment 31(b)(1)(vi)–2

Comment 31(b)(1)(vi)–2 of the Final Rule provides guidance on how to determine taxes for purposes of the disclosure required by § 1005.31(b)(1)(vi). In particular, the existing comment states that if a remittance transfer provider does not have specific knowledge regarding variables that affect the amount of taxes imposed by a person other than the provider for purposes of determining these taxes, the provider may rely on a sender's representations regarding these variables. Further, the comment states that if a sender does not know the information relating to the variables that affect the amount of taxes imposed by a person other than the provider, the provider may disclose the highest possible tax that could be imposed for the remittance transfer with respect to any unknown variable. The Bureau adopted this comment in the Final Rule in response to industry comments that taxes can vary depending on a number of variables, such as the tax status of the sender or recipient, or the type of accounts or financial institutions involved in the transfer. In adopting comment 31(b)(1)(vi)–2, the Bureau stated its belief that it is necessary to provide a reasonable mechanism by which the provider may disclose the foreign tax where information may not be known by the sender or the provider.

As discussed in more detail below, the Bureau is proposing to provide additional flexibility regarding the determination of foreign taxes where applicability may be impacted by certain variables in a new § 1005.32(b)(3). Accordingly, the Bureau is proposing to delete portions of the guidance in existing comment 31(b)(1)(vi)–2 as being superseded by the new proposed provision and related guidance.

Comment 31(b)(1)(vi)–2 would continue to state that if a remittance transfer provider does not have specific knowledge regarding variables that affect the amount of taxes imposed by a person other than the provider for purposes of determining these taxes, the provider may rely on a sender's representations regarding these variables. The Bureau believes providers should continue to be permitted to rely on senders' representations regarding variables that affect foreign taxes, because providers should be permitted to take senders' representations as true, and because such representations could result in a more accurate approximation of the applicable taxes. Accordingly, as discussed below regarding the error resolution requirements in proposed § 1005.33(a)(2)(iv) and comment 33(a)(2)(iv)–9, to the extent a provider relies on a sender's representations in this manner, any resulting discrepancy between the amount disclosed and the amount actually received would not constitute an error. Thus, for example, it would not be an error if reliance on a sender's representations results in a disclosed foreign tax amount that is less than what is actually imposed on the transfer. As discussed below, the proposed revisions would provide the same result with regard to situations in which providers rely on a sender's representations regarding possible recipient institution fees in accordance with proposed comment 31(b)(1)(vi)–4.

Comment 31(b)(1)(vi)–3

New proposed comment 31(b)(1)(vi)–3 is described above in the discussion of the proposed revisions to § 1005.31(b)(1)(vi) concerning disclosure of foreign taxes imposed by a country's central government.

Comment 31(b)(1)(vi)–4

While the Final Rule provided guidance in comment 31(b)(1)(vi)–2 on how to determine foreign taxes where variables could affect the amount to be disclosed, the rule did not provide guidance with respect to variables that could affect the fees imposed on the designated recipient by the recipient's institution for receiving the transfer in an account. For the reasons discussed below, the Bureau is proposing to provide additional flexibility in a new proposed § 1005.32(b)(4) regarding the determination of such fees.

In addition, the Bureau believes it is appropriate to provide similar guidance regarding reliance on a sender's representations with respect to recipient institution fees, as exists addressing foreign taxes. New proposed comment 31(b)(1)(vi)–4 is structured similarly to proposed comment 31(b)(1)(vi)–2. The proposed comment explains that in some cases, where a remittance transfer is sent to a designated recipient at an account at a financial institution, the institution imposes a fee on the remittance transfer pursuant to an agreement with the recipient. The amount of the fee imposed by the institution may vary based on whether the designated recipient holds a preferred status account with a financial institution, the quantity of transfers received, or other variables. In this scenario, if a remittance transfer provider does not have specific knowledge regarding variables that affect the amount of fees imposed by the recipient's institution for receiving a transfer in an account, the proposed comment would allow the provider to rely on a sender's representations regarding these variables.

§ 1005.31(d) Estimates

Under the Final Rule, remittance transfer providers generally must disclose exact amounts, except under the limited circumstances permitted by § 1005.32. Therefore, under § 1005.31(d) of the Final Rule, where providers estimate disclosures under § 1005.32, the estimated disclosure must be described using the term ''Estimated'' or a substantially similar term, which appears in close proximity to the disclosure.

Due to the proposed revisions to § 1005.31(b)(1)(vi) and the related

commentary concerning subnational foreign taxes, as described above, remittance transfer providers would be permitted to disclose as the total amount of transfer pursuant to § 1005.31(b)(1)(vii) an amount that would not match the amount actually received by the designated recipient. Thus, the Bureau proposes amending § 1005.31(d) to require that a provider also use the term ''Estimated'' on disclosure forms if it is not disclosing regional, provincial, state, or local foreign taxes, as permitted by § 1005.31(b)(1)(vi). As § 1005.31(d) already references § 1005.32, the same requirement would apply to proposed §§ 1005.32(b)(3) and (b)(4), discussed below, which would provide further flexibility for determining foreign taxes and recipient institution fees. The proposal would make conforming revisions to comment 31(d)–1.

The proposed comment would further explain that, if the provider is relying on the sender's representations or has specific knowledge regarding variables that affect the amount of fees disclosed under § 1005.31(b)(1)(vi), and is not otherwise providing estimated disclosures, § 1005.31(d) does not apply and therefore no ''Estimated'' label is required. The Bureau believes that providers that rely on sender's representations regarding variables should be able to take the information provided as representations that lead to exact disclosures, even if the representations later turn out to be incorrect. For similar reasons, the proposed comment also explains that § 1005.31(d) does not apply to foreign tax disclosures if the provider discloses all applicable taxes (including applicable regional, provincial, state, or other local foreign taxes), if the provider is relying on the sender's representations or has specific knowledge regarding variables that affect the amount of foreign taxes imposed by a country's central government, and if the provider is not otherwise providing estimated disclosures.

The Bureau believes that the use of the term ''Estimated,'' either when subnational taxes are not disclosed or when foreign tax and recipient institution fee estimates are provided in accordance with proposed §§ 1005.32(b)(3) and (b)(4), would provide sufficient disclosure to the sender to warn that disclosed amounts may not be precise, without requiring substantial changes to the disclosure form that could delay implementation of the statutory scheme. Further, the Bureau anticipates that compared to other mechanisms for giving senders notice, this proposed mechanism for alerting senders that amounts received may not be exact will minimize the systems changes that could be required, because the Final Rule already sets forth circumstances in which the term ''Estimated'' (or a substantially similar term) must be used.

At the same time, the Bureau is concerned that, particularly where subnational taxes are not disclosed, senders may receive disclosures that use the term ''Estimated'' the vast majority of the time, which could impair their ability to compare disclosures among remittance transfer providers, and could have an adverse impact on the exercise of error resolution rights. An alternative approach would be to require that a more specific statement be added to the disclosure to note, for instance, that ''Additional taxes by regional or local governments may apply'' rather than to require use of the ''Estimated'' label for every case in which a provider has decided not to disclose any subnational taxes. However, it is unclear whether such a disclosure would substantially benefit consumers over the simpler label, whether it would be understandable to consumers, and how much additional time and expense would be required for providers to modify their forms in this way.

Thus, the Bureau solicits comment on whether remittance transfer providers should be required to indicate those circumstances in which subnational taxes are not disclosed or in which fees and taxes are estimated in accordance with proposed § 1005.32(b)(3) or (4) with an ''Estimated'' label, and in particular, whether such labeling should be required in circumstances where amounts disclosed would be exact, but for the non-disclosure of foreign subnational taxes. To the extent foreign subnational taxes apply less frequently than foreign taxes imposed by a central government, or if such taxes tend to be lower than taxes imposed by central governments in the same country, the Bureau seeks comment on whether disclosures may be clearer without much detriment to accuracy if providers do not use the term ''Estimated.'' The Bureau solicits comment on the extent to which either circumstance is true, and also solicits comment on alternative disclosures that could be provided, and on the time and expense to implement either the ''Estimated'' label or a more detailed disclosure.

Section 1005.32 Estimates

31(b) Permanent Exceptions

32(b)(3) Permanent Exception Where Variables Affect Taxes Imposed by a Person Other Than the Provider

For the reasons described above, comment 31(b)(1)(vi)–2 of the Final Rule provides guidance on how to determine taxes for purposes of the disclosure required by § 1005.31(b)(1)(vi). Industry has requested further guidance on how to disclose foreign taxes where variables that influence the applicability of taxes are not easily knowable by the sender or the remittance transfer provider. Industry has expressed concern that under the current guidance, to determine the appropriate disclosure, providers may have to ask numerous questions of senders that senders may not understand, and to which senders may not know the answer.

The Bureau agrees that there may be certain variables that a sender and a remittance transfer provider may not reasonably be expected to know, and that further guidance is appropriate. The Bureau believes that providing an additional mechanism for disclosing foreign taxes will facilitate compliance with the rule. Thus, the Bureau believes it is appropriate to exercise its exception authority under section 904(c) of the EFTA to propose a new permanent exception in § 1005.32(b)(3). Proposed § 1005.32(b)(3) states that, for purposes of determining the taxes to be disclosed under § 1005.31(b)(1)(vi), if a provider does not have specific knowledge regarding variables that affect the amount of taxes imposed by a person other than the provider, the provider may disclose the highest possible tax that could be imposed on the remittance transfer with respect to any unknown variable.

Proposed comment 32(b)(3)–1 clarifies the exception. The proposed comment explains that the amount of taxes imposed by a person other than the provider may depend on certain variables. Under proposed § 1005.32(b)(3), a provider may disclose the highest possible tax that could be imposed on the remittance transfer with respect to any unknown variable. For example, if a tax may vary based upon whether a recipient's institution is grandfathered under existing law, or whether the recipient has reached a transaction threshold above which taxes are assessed, the provider may simply assume that the tax applies without having to ask the sender first. In such a case, the proposed comment explains that the provider should disclose the

highest possible tax that could be imposed. If the provider expects that variations may result from differing interpretations of law or regulation by the paying agent or recipient institution, the provider may assume that the highest possible tax that could be imposed applies.

The Bureau believes that permitting remittance transfer providers to make assumptions about variables as a distinct alternative to asking senders for information (as discussed in comment 31(b)(1)(vi)–2) would provide additional flexibility and would resolve concerns about senders not understanding or knowing the answer to questions about the variables. Permitting providers to disclose the highest possible tax that could be imposed also would allow providers to make assumptions about variables that providers themselves do not know, such as those discussed in the proposed examples. As a result, the Bureau believes that proposed § 1005.32(b)(3) would provide a more practicable mechanism for disclosing foreign taxes than current comment 31(b)(1)(vi)–2, discussed above.

Even with these proposed changes, senders would continue to receive tax disclosures. The Bureau believes it is appropriate to continue to focus the guidance on providing the highest possible tax that could be imposed, so that the sender is not surprised by a deduction for taxes that is larger than the amount disclosed (except in cases in which taxes other than those imposed by central governments may apply).[5] As stated in the February Final Rule, the Bureau believes that tax information is useful to consumers who are trying to make sure that they send enough money, *e.g.,* to assist a family member or pay a bill. The Bureau believes that the proposed revisions would preserve the intent and valuable consumer benefits of the statute while balancing the need to provide a reasonable disclosure mechanism.

In addition to factual questions regarding variables, industry has also expressed concern about remittance transfer providers' ability to determine the applicable foreign tax given variations in the application of foreign tax requirements. For example, industry has suggested that foreign payout agents or recipient institutions may interpret and apply foreign tax requirements differently from one another, which may result in some uncertainty around whether a tax will be assessed, and if so, what precisely it will be. Thus, proposed comment 32(b)(3)–1 states that if the provider expects that variations may result from differing interpretations of law or regulation by the paying agent or recipient institution, the provider may assume that the highest possible tax that could be imposed applies. Under this proposed revision, providers would continue to be responsible for researching and identifying applicable foreign tax laws assessed by a country's central government. However, the proposed revision would provide flexibility by allowing providers to disclose the highest amount revealed by their research.

Under the Final Rule and this proposal, providers generally must provide accurate tax information. While the Bureau expects that changes in foreign tax law are generally announced in advance of their effective date, thus affording providers time to update their disclosures, the Bureau is concerned that this may not always be the case. The Bureau therefore requests comment on whether the Final Rule should be revised to incorporate a grace period for implementing changes in foreign tax law, and if so, how long.

32(b)(4) Permanent Exception Where Variables Affect Recipient Institution Fees

As noted above, the Final Rule did not provide guidance on how to determine fees imposed by the designated recipient's institution for receiving the transfer in an account. As with foreign taxes, industry has expressed concern that in some cases, a remittance transfer provider would not know whether the recipient has agreed to pay such fees or how much the recipient may have agreed to pay. Industry has also requested clarification on whether and how to disclose recipient institution fees that can vary based on the recipient's status with the institution, the quantity of transfers received, or other variables that are not easily knowable by the sender or the provider. Without further guidance and flexibility, industry has argued that the requirement to disclose recipient institution fees is impracticable, which could drive providers to exit the market or significantly reduce their offerings.

The Bureau acknowledges these concerns and agrees that, for recipient institution fees that are specifically related to a remittance transfer and therefore required to be disclosed, additional flexibility in determining how to disclose these fees would facilitate compliance with the rule without significantly undermining its benefits. Accordingly, the Bureau believes it is appropriate to exercise its exception authority under section 904(c) of the EFTA to propose a new § 1005.32(b)(4). Proposed § 1005.32(b)(4)(i) would state that, for purposes of determining the fees to be disclosed under § 1005.31(b)(1)(vi), if a remittance transfer provider does not have specific knowledge regarding variables that affect the amount of fees imposed by a designated recipient's institution for receiving a transfer in an account, the provider may disclose the highest possible recipient institution fees that could be imposed on the remittance transfer with respect to any unknown variable, as determined based on either fee schedules made available by the recipient institution or information ascertained from prior transfers to the same recipient institution. Proposed comment 32(b)(4)–1 explains proposed § 1005.32(b)(4)(i) and adds as an example that if a provider relies on an institution's fee schedules, and the institution offers three accounts with different incoming wire fees, the provider should take the highest fee and use that as the basis for disclosure.

Proposed § 1005.32(b)(4)(ii) states that, if the provider cannot obtain such fee schedules or does not have such information, a provider may rely on other reasonable sources of information, if the provider discloses the highest fees identified through the relied-upon source. Proposed comment 32(b)(4)–2 states that reasonable sources of information include: Fee schedules published by competitor institutions; surveys of financial institution fees; or information provided by the recipient institution's regulator or central bank.

Proposed § 1005.32(b)(4) would only address fees for receiving transfers in an account that are based on an agreement between the recipient institution and the recipient. Currently, determination of these fees by originating providers (whether depository or non-depository) is particularly difficult or impracticable due to the nature of open networks. In contrast, providers using closed networks can generally exercise some control over transfers from end-to-end and are often not making transfers into accounts, making determination of fees assessed by payout agents more practicable.

The proposed mechanism for determining these fees differs from the mechanism in proposed § 1005.32(b)(3) for determining foreign taxes in recognition of the fact that, while identifying applicable foreign taxes presents challenges, these taxes are based on laws or regulations that are generally publicly available in some form, even if information may be

[5] To the extent that subnational taxes are not applicable, then the disclosure of foreign taxes would be complete.

difficult to ascertain in some instances. In contrast, the Bureau understands that foreign institutions may be prohibited by law from sharing, or unwilling to share, specific accountholder fee information. Further, it may be impracticable to obtain a fee schedule for every recipient, or to contact institutions in real time. Thus, the Bureau believes that proposed § 1005.32(b)(4) will provide a more practicable mechanism for disclosing recipient institution fees.

The Bureau further believes that a recipient institution's fee schedule, and information ascertained from prior transfers to the same recipient institution, are likely the best resources for estimating the fees that would be applicable to a remittance transfer, and thus providers should rely upon those sources, if available. However, in some cases, foreign institutions may not be willing to share institution-level fee schedules, or such schedules may not be easily obtainable. Accordingly, the proposed rule provides for alternative reasonable sources of information upon which providers can rely.

The Bureau acknowledges that permitting providers to base disclosures on sources other than institution-specific sources may result in a provider disclosing fees that underestimate those charged by an individual recipient institution. Nonetheless, the Bureau believes that the sources of information set out in the proposed comment should result in a reasonable approximation of the amount of fees that could be assessed, and provide the sender sufficient information about the amount to be received. For example, competitor institutions likely charge fees within a similar range as the recipient institution, and thus their fee schedules may provide an indication as to market practice. Further, the Bureau believes that the flexibility provided by the proposed rule and related comment should encourage providers to remain in the market. The Bureau solicits comment on whether the sources of information set forth in proposed § 1005.32(b)(4) and proposed comment 32(b)(4)–1 should be included, and whether additional reasonable sources of information should be added. In any case, for similar reasons, as discussed above with respect to proposed § 1005.32(b)(3), the Bureau believes that it is appropriate to focus the guidance on providing the highest possible fees that could be imposed.

As proposed, the sources of information set forth in proposed § 1005.32(b)(4) and the related commentary are not time-limited. The Bureau believes that reliance on the most updated source would provide the sender with the best information. However, the Bureau is concerned that imposing a duty to update relied-upon sources on a frequent basis could become unduly burdensome, particularly as providers are working to implement the rule, and because resources collecting this information have not yet fully developed or become widely available to providers. The Bureau solicits comment on whether reasonable sources of information should be time-limited. For example, should the rule require relied-upon fee schedules to have been published or confirmed as valid within the last year?

Even if proposed § 1005.32(b)(4) is adopted, senders will continue to receive fee disclosures. Some remittance transfer providers have suggested that the Bureau exercise its exception authority under the EFTA to eliminate the requirement to disclose recipient institution fees mandated by the statute. As stated in the February Final Rule, the Bureau believes that this fee information provides valuable consumer benefits by ensuring that senders are aware of the impact of back-end fees, including knowing whether the amount received will be sufficient to pay important expenses. These disclosures also provide senders with greater transparency regarding the costs of remittance transfers, and assist senders in comparing costs among providers, for example, where such fees may impact a sender's decision whether to send funds for cash pick-up or to an account, or where a recipient may have accounts at different institutions and the sender is deciding to which account to send funds.

Further, eliminating the requirement to disclose recipient institution fees would create inconsistency between the disclosures provided for transfers where fees are imposed by a designated recipient's institution for receiving a transfer in an account, and those provided for other types of transfers, such as where fees are charged by paying agents, regarding which the Bureau does not think it is appropriate to adjust the requirement under the Final Rule. Notably, during the Federal Reserve Board's consumer testing on remittances, consumer participants cited unexpected third-party fees as a source of concern.[6] Therefore, the Bureau does not believe that it is appropriate to exercise its exception authority to eliminate the disclosure of recipient institution fees altogether. The Bureau believes that the proposed revisions would preserve the intent and consumer benefits of the statute while balancing the need to provide a reasonable mechanism for determining applicable fees.

Section 1005.33 Procedures for Resolving Errors

EFTA section 919(d) provides that remittance transfer providers shall investigate and resolve errors where a sender provides a notice of an error within 180 days of the promised date of delivery of a remittance transfer. The statute generally does not define what types of transfers and inquiries constitute errors, but rather gives the Bureau the authority to define ''error'' and to prescribe standards for the error resolution process. In the Final Rule, the Bureau adopted § 1005.33 to implement new error resolution requirements for remittance transfers.

Since the issuance of the Final Rule, industry has expressed concerns about the remedies available when a sender of a remittance transfer provides an incorrect account number to the remittance transfer provider. Providers have stated that in some cases, a remittance transfer may be deposited into the wrong account and, despite reasonable efforts, cannot be recovered. Under the Final Rule, a provider is obligated to resend or refund the total amount of the remittance transfer regardless of whether it can recover the funds. Industry has noted that this problem is of particular concern with respect to transfers of large sums, particularly for smaller institutions that might have more difficulty bearing the cost of the entire transfer amount. In addition, providers have expressed concern that the Final Rule creates a potential for fraud, despite an exception in the Final Rule for fraud. *See* § 1005.33(a)(1)(iv)(C). Due to these and other concerns, discussed in detail below, the Bureau is proposing to amend § 1005.33 and the accompanying commentary.

The Bureau is also proposing several other changes to the error resolution procedures in § 1005.33 to address questions about how remittance transfer providers should provide remedies to senders under the Final Rule's error resolution provisions, and to streamline providers' provision of remedies. In addition, the Bureau is proposing conforming changes to the error resolution procedures in light of proposed revisions regarding the disclosure of foreign taxes and recipient

[6] ICF Macro International, Inc., *Summary of Findings: Design and Testing of Remittance Disclosures,* at iv (Apr. 2011), available at *http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20110512_ICF_Report_Remittance_Disclosures_(FINAL).pdf.*

institution fees, and to make several technical, non-substantive changes.

33(a) Definition of Error

33(a)(1) Types of Transfers or Inquiries Covered

Section 1005.33(a)(1) lists the type of transfers or inquiries that constitute ''errors'' under the Final Rule. The types of errors relevant to this proposal are discussed in detail below.

33(a)(1)(iii) Incorrect Amount Received by the Designated Recipient

The Bureau proposes to revise comment 33(a)–4 to make technical corrections to the comment. Comment 33(a)–4, which addresses the extraordinary circumstances exception to the error defined in § 1005.33(a)(1)(iii), improperly cites to § 1005.33(a)(1)(iv) instead of § 1005.33(a)(1)(iii)(B). The proposed revisions to comment 33(a)–4 correct this error and a related error regarding the description of the exception.

33(a)(1)(iv) Failure To Make Funds Available by Date of Availability

Section 1005.33(a)(1)(iv) defines ''error'' to include a remittance transfer provider's failure to make funds available to the designated recipient by the date of availability stated on the receipt or combined disclosure, subject to three listed exceptions, including an exception for remittance transfers made with fraudulent intent by the sender or any person acting in concert with the sender. *See* § 1005.33(a)(1)(iv)(C). Comment 33(a)–5 explains the scope of the error in § 1005.33(a)(1)(iv) and notes that the error includes, among other things, the late delivery of funds, the total non-delivery of a remittance transfer, and the delivery of funds to the wrong account. *See* comments 33(a)–5.i and .ii.

Although several industry commenters had objected that remittance transfer providers should not have to bear the cost of mistakes caused by parties outside the provider's control, the Bureau noted in the February Final Rule that a number of other federal consumer financial protection regimes require financial service providers to investigate and correct errors for which they may not be at fault. The Bureau also noted that providers are generally in a better position than consumers to identify errors and to seek recovery from downstream institutions. Furthermore, the Bureau noted that placing responsibility on providers to resolve errors strengthens their incentives to develop policies, procedures, and controls to reduce and minimize errors in the first instance and similarly to work with downstream institutions and business partners to improve controls and to develop contractual solutions to address errors.

In particular, however, with regard to situations in which the sender provides incorrect or insufficient information, the Bureau acknowledged that there were unique equities. Specifically, the Bureau concluded that it was important that error resolution procedures apply to such cases, but also agreed with commenters that a sender's mistake should not obligate a remittance transfer provider to bear all of the costs for resending a transfer, including the principal transfer amount. Accordingly, the Final Rule sets forth special remedy provisions that allow providers to collect third-party fees a second time when resending a remittance transfer that had previously not been delivered due to incorrect or insufficient information provided by the sender.

The Final Rule does not differentiate, however, between those situations where the sender's mistake regarding the account number results in a deposit to the wrong account and those situations in which the remittance transfer simply does not go through. In the former situation, where the transfer results in a deposit into the wrong account, if a remittance transfer provider is unable to recover the money from the account after working with the recipient institution, the Final Rule requires that the provider, at its own expense, resend or refund the funds, depending on which remedy was selected by the sender. The Bureau noted that situations in which funds cannot be recovered after a deposit to the wrong account appear to be quite rare, and explained that it believed that the approach adopted with respect to errors by senders would encourage providers and other involved parties to develop security procedures to limit further the risk of funds being deposited in an account when the designated recipient named in the receipt does not match the name associated with the account number. In addition, the Bureau expected that the exception for transfers made with fraudulent intent by the sender or those working in concert with the sender in § 1005.33(a)(1)(iv)(C) of the Final Rule would address industry's concerns about the risk of fraud created by the error rules.

Nevertheless, upon further analysis, and for the reasons discussed below, the Bureau is proposing to revise the definition of error in § 1005.33(a)(1)(iv) by adding a fourth, conditional exception. Proposed § 1005.33(a)(1)(iv)(D) would exclude from the definition of error a failure to make funds available to the designated recipient by the disclosed date of availability, where such failure results from the sender having given the remittance transfer provider an incorrect account number, provided that the provider meets the conditions set forth in proposed § 1005.33(h). These conditions, discussed in detail below, would require providers to notify senders of the risk that their funds could be lost, to investigate reported errors, and to attempt to recover funds that are deposited in the wrong account. However, if the proposed exception applies, providers would not be required to bear the cost of refunding or resending transfers if funds ultimately could not be recovered.

Since the Bureau published the February Final Rule, it has monitored industry's efforts towards implementing the rule. Industry has elaborated on its concerns expressed during the initial comment period that the systems used to send remittance transfers to foreign accounts do not allow remittance transfer providers to verify designated recipients' account numbers before remittance transfers are sent. More generally, many providers have also reported that they have not yet developed security procedures that enable them to be able to confirm the accuracy of account numbers provided by senders before sending a transfer.

Remittance transfer providers have explained that they send remittance transfers to accounts through a number of different systems. In many of these systems, intermediary and receiving institutions are permitted to rely on the account number provided by the sender of the remittance transfer to route the transfer. In using these systems, providers, as well as intermediary and recipient institutions, often do not cross-check account numbers with the name of the accountholder or other identifier in the remittance transfer to confirm that they match before transmitting or crediting the transfer to an account. Furthermore, providers and intermediary institutions' systems are designed to allow straight-through processing, whereby they process incoming transfers using automated systems that rely on account numbers and not the name of the recipient. Even where straight-through processing is not used, it may be common for providers and intermediary and recipient institutions to rely, as a matter of practice, on account numbers because it may be challenging for a foreign institution to verify a name on a payment order from the United States due to spelling and language variances,

truncation of long names, and other systems limitations.

The Bureau, therefore, believes that the proposed changes will more closely match existing practice. To the extent remittance transfer providers' existing methods for sending transfers do not allow or facilitate verification of account numbers before sending the remittance transfer, the Bureau is aware that individual providers, particularly smaller providers, sending transfers through an open network have limited ability to influence these global systems in the short term. The Bureau continues to believe it is important for industry to develop improved security procedures and expects to engage in a dialogue with industry about how to encourage the growth of improved controls and communication mechanisms, but the Bureau understands that such changes are unlikely to be implemented in the near future. The Bureau believes an interim disruption would not be in consumers' best interests and will instead continue to evaluate the development of procedures as it monitors providers' implementation of the rule.

Where there is a deposit into the wrong account, the Bureau believes that many, if not most, remittance transfer providers already attempt to recover the principal amount of the transfer. However, because providers have reported that they often do not have direct relationships with receiving institutions and that in some instances those institutions may be unresponsive, providers may face difficulties in recovering funds from the wrong account. The Bureau believes that, in many instances, to reverse these transactions requires the accountholder to authorize a debit from the account and, thus, the lack of this authority may prohibit a recipient institution from debiting the account in the amount of the incorrect deposit absent an authorization. Relatedly, a provider in the United States may be able to do little to assist the foreign institution in its attempt to persuade its accountholder to provide debit authorization due to the lack of privity between the provider and the recipient institution or the accountholder.

In addition to these concerns, the Bureau also believes that the proposed changes will adhere more closely state law as it existed prior to EFTA § 919. In particular, Uniform Commercial Code (UCC) Article 4A covers the transfer of money between banks, including transfers by banks on behalf of customers, and into institutions have incorporated many of its provisions into existing policies and disclosures to customers.[7] UCC 4A–207 generally addresses those circumstances where a supplied account number refers to an incorrect account; that is, the account number identifies an account that differs from the named designated recipient's account. Under UCC 4A–207, when a sender provides an incorrect account number and funds are transmitted to an incorrect account and cannot be recovered, it is the sender—not the bank—that can lose the transfer amount if the bank has met certain conditions. While the UCC is a U.S. state law regime, industry has stated that many foreign countries' laws and/or banking agreements also contain analogous rules.

Remittance transfer providers have also stated that the Final Rule's fraud exception in § 1005.33(a)(1)(iv)(C) is difficult to apply in practice because, due to their limited ability to know what occurs at a recipient's institution, a provider may have difficulty determining whether the holder of an account into which a transfer was mis-deposited is attempting to commit a fraud, including by working in concert with the sender. Although providers do not believe such fraud is widespread today, they have expressed concerns that the Final Rule will enable fraudulent activity to flourish because providers may have to send the transfer amount again without first recovering it from the foreign institution, which is a departure from current practice.

To the extent remittance transfer providers believe they can neither verify account numbers nor prevent fraud, many have indicated that they may limit which of their customers can send remittance transfers and/or the value of those transfers or even withdraw from the market altogether. Absent such limitations (or even despite them), some providers have indicated to the Bureau that they may have difficulties managing the risk posed by this part of the Final Rule. Particularly for smaller institutions, the impact of even one large transaction where the provider would have to resend or refund funds it did not recover, could be substantial.

That said, the Bureau does harbor some doubts about the extent of the fraud risk posed by the Final Rule. To be successful, a sender with fraudulent intent would first need to supply funds for the initial transfer and then report an error. If the provider claimed that the sender acted with fraudulent intent, the fraudulent sender would need to pursue his or her claim in court, something the Bureau believes many criminals are unlikely to do.

Additionally, the Bureau believes that deposits into the wrong account resulting from a sender's error that cannot be recovered occur relatively infrequently today, largely due to three factors. First, remittance transfer providers typically take steps to ensure that senders carefully enter and review account numbers. Second, most incorrect account numbers do not correspond to an actual account at the recipient's institution. In those situations, the Bureau understands that the transactions are typically reversed and the funds returned. Third, the Bureau understands that some recipient institutions take further measures to limit transfers being deposited into the wrong account, such as by developing systems that allow for additional verification of account numbers or by working with senders to improve accuracy at the time transfers are requested.

Nevertheless, the Bureau understands that the uncertainty created by existing § 1005.33(a)(1)(iv), if left unchanged, could decrease consumers' access to remittance transfers if a number of remittance transfer providers exit the market rather than risk liability, or limit their service offerings in order to minimize their exposure. Overall, the Bureau intends for proposed revisions to create appropriate incentives for providers to prevent these errors from occurring and to assist senders as much as practicable if an incorrect deposit occurs, while relieving tension with other laws and existing practice and reducing risk to providers. The Bureau thus seeks comment on whether proposed § 1005.33(a)(1)(iv)(D) achieves these goals, or whether the existing rules or another alternative is preferable.

To clarify the application of this new exception, the Bureau is also proposing new comment 33(a)–7. Proposed comment 33(a)–7 provides that the exception in proposed § 1005.33(a)(1)(iv)(D) applies where a sender gives the remittance transfer provider an incorrect account number that results in the deposit of the remittance transfer into a customer's account at the recipient institution other than the designated recipient's account. The proposed comment further provides that this exception does not apply

[7] UCC Article 4A generally applies to wire transfers but not automated clearinghouse (ACH) transfers or transfers that are not to an account. UCC Article 4A–108 provides that UCC Article 4A does not apply "to a funds transfer, any part of which is governed by the Electronic Fund Transfer Act." When EFTA section 919, as implemented by this rule, becomes effective, wire transfers sent on a consumer's behalf that are remittance transfers will be governed in part by the EFTA. The February Final Rule (77 FR 6194, 6210–12 (Feb. 7, 2012)) contains a more detailed discussion regarding UCC Article 4A and remittance transfers.

where the failure to make funds available is the result of a mistake by a provider or a third party or due to incorrect or insufficient information other than an incorrect account number.

The Bureau is limiting the scope of proposed § 1005.33(a)(1)(iv)(D) because the Bureau believes that, compared to other types of sender mistakes, the provision of an incorrect account number poses unique problems for remittance transfer providers, in that such incorrect information may result in remittance transfers being deposited into the wrong account. In particular, the proposed exception does not include a sender's provision of an incorrect routing number designating the recipient institution. The Bureau believes that in many instances, providers either already verify routing numbers or are in a position to do so when sending transfers to accounts. However, the Bureau seeks comment on whether the concerns identified above regarding incorrect account numbers apply equally to incorrect routing numbers, and if so, whether the proposed exception should be expanded to include a sender's provision of an incorrect routing number.

Similarly, the Bureau believes that other types of sender mistakes in connection with transfers to accounts also do not pose the same risks as incorrect account numbers, because remittance transfers with other types of mistakes are unlikely to result in a deposit in the wrong account. Thus, it should be significantly easier for a remittance transfer provider to unwind the transfer under the existing error resolution procedures. For example, where a sender misidentifies the designated recipient or the designated recipient's institution but provides a correct account number, the Bureau believes that the remittance transfer is still likely to be deposited into the designated recipient's account, due to the practice of relying on account numbers rather than this other information, as described above. Accordingly, the Bureau does not believe such mistakes by a sender are likely to result in a deposit into the wrong account or other ''error'' as defined under the regulation. Nor does the Bureau think that mistakes by senders in connection with transfers that are not deposited into accounts pose these problems, because these transfers generally do not involve unverified information, such as account numbers. Nevertheless, the Bureau also seeks comment on whether other types of mistakes by senders pose a similar risk to providers as a mistake in providing an incorrect account number and whether modified remedies would be appropriate.

33(a)(2) Types of Inquiries and Transfers Not Covered

Section 1005.33(a)(2) and the accompanying commentary address circumstances that do not constitute errors in the Final Rule. Section 1005.33(a)(2)(iv) of the Final Rule provides that an error does not include a change in the amount or type of currency received by the designated recipient from the amount or type of currency stated in the disclosure provided to the sender under § 1005.31(b)(2) or (3), if the remittance transfer provider relied on information provided by the sender as permitted by the commentary accompanying § 1005.31 in making such disclosure. Comment 33(a)–8 of the Final Rule provides two illustrative examples, including that, where a provider relies on the sender's representations regarding variables that affect the amount of taxes imposed by a person other than the provider for purposes of determining these taxes, the change in the amount of currency the designated recipient actually receives due to the taxes actually imposed does not constitute an error.

Given the proposed revisions to § 1005.31(b)(1)(vi) and the accompanying commentary, the proposed rule would make consistent revisions to § 1005.33(a)(2)(iv) and comment 33(a)–8 (redesignated as comment 33(a)–9) and other non-substantive revisions for clarity.[8] As revised, § 1005.33(a)(2)(iv) would add that there is no error if there is a change in the amount or type of currency received by the designated recipient from the amount or type of currency stated in the disclosure provided to the sender under § 1005.31(b)(2) or (3) because the provider did not disclose foreign taxes other than those imposed by a country's central government.

Revised comment 33(a)–9 would explain that under § 1005.31(b)(1)(vi), providers need not disclose regional, provincial, state, or other local foreign taxes. Further, under the commentary accompanying § 1005.31, the remittance transfer provider may rely on the sender's representations in making certain disclosures. The revised comment would explain that any discrepancy between the amount disclosed and the actual amount received resulting from the provider's reliance upon these provisions does not constitute an error under § 1005.33(a)(2)(iv). The proposed comment would revise the illustrative example to explain that, if the provider relies on the sender's representations regarding variables that affect the amount of recipient institution fees or taxes imposed by a person other than the provider for purposes of determining fees or taxes required to be disclosed under § 1005.31(b)(1)(vi), or does not disclose regional, provincial, state, or other local foreign taxes, as permitted by § 1005.31(b)(1)(vi), the change in the amount of currency the designated recipient actually receives due to the recipient institution fees or foreign taxes actually imposed does not constitute an error. The proposed revision to the comment also makes conforming changes to internal cross-references and other minor, non-substantive edits for clarity.

33(c) Time Limits and Extent of Investigation

33(c)(2) Remedies

Section 1005.33(c)(2) implements EFTA section 919(d)(1)(B) and establishes procedures and remedies for correcting an error under the rule. In particular, where there has been an error under § 1005.31(a)(1)(iv) for failure to make funds available to a designated recipient by the disclosed date of availability, § 1005.33(c)(2)(ii) permits a sender to choose either: (1) to obtain a refund of the amount tendered in connection with the remittance transfer that was not properly transmitted, or an amount appropriate to resolve the error, or (2) to have the remittance transfer provider resend to the designated recipient the amount appropriate to resolve the error, at no additional cost to the sender or designated recipient. *See* §§ 1005.33(c)(2)(ii)(A). However, if the error resulted from the sender providing incorrect or insufficient information, § 1005.33(c)(2)(ii)(A)(*2*) permits third party fees to be imposed for resending the remittance transfer with the corrected information.

Comment 33(c)–2 in the Final Rule provides additional guidance regarding remedies in circumstances where a remittance transfer provider's failure to make funds available to a designated recipient by the disclosed date of availability occurred because the sender provided incorrect or insufficient information in connection with the transfer. The comment then gives, as one example of incorrect or insufficient information provided by a sender, a sender erroneously identifying the recipient's account number. In light of

[8] In light of new proposed comment 33(a)–7 (discussed above), existing comment 33(a)–7 and 33(a)–8 are proposed to be redesignated as comments 33(a)–8 and –9, respectively.

the proposal to revise the definition of ''error'' in § 1005.33(a)(1)(iv), proposed comment 33(c)–2 removes this example, and replaces it with examples of a sender erroneously identifying the designated recipient's address or by providing insufficient information to enable the entity distributing the funds to identify the correct designated recipient.[9] As with existing comment 33(c)–2, the Bureau does not intend proposed comment 33(c)–2 to contain an exhaustive list of incorrect or insufficient information that a sender could provide or fail to provide. The Bureau is also proposing language, in accordance with proposed § 1005.33(a)(1)(iv)(D), to clarify that a sender does not provide incorrect or insufficient information if the sender provides an incorrect account number that results in a mis-deposit and the provider has satisfied the requirements of § 1005.33(h).

In addition, existing comment 33(c)–2 also explains the procedure for resending funds when an error occurred due to incorrect or insufficient information provided by the sender. The procedure explained in comment 33(c)–2 is distinct from the procedure used for all other situations in which funds are to be resent to resolve an error. For most of these other errors, comment 33(c)–3 explains that the resend is to occur at no additional cost to the sender and that the provider is to apply the same exchange rate, fees and taxes stated in the disclosure provided under § 1005.31(b)(2) or (3). By contrast, existing comment 33(c)–2 explains that for errors under § 1005.33(a)(1)(iv), where the error occurred due to incorrect or insufficient information provided by the sender, a request to resend is a request for a remittance transfer, that the provider must provide the disclosures required by § 1005.31 for a resend, and that the provider must use the exchange rate it is using for such transfers on the date of the resend if funds were not already exchanged in the first unsuccessful remittance transfer attempt.

Since the Bureau issued the Final Rule, industry has requested more guidance as to the timing and content of the disclosures that must be provided for resends following errors that occurred because a sender provided incorrect or insufficient information. Specifically, industry has asked how to provide disclosures where a sender either designates a remedy at the time that the sender reports the error or never designates a remedy, particularly in situations where the provider does not make direct contact with the sender when providing a § 1005.33(c)(1) report.[10]

In addition, as originally adopted, comment 33(c)–2 has created uncertainty for remittance transfer providers, as it does not provide guidance on how or when to provide the § 1005.31 disclosures to senders, how providers can reasonably ensure the accuracy of the disclosures to the extent providers must disclose and guarantee an exchange rate for the resend, and how providers should administer senders' cancellation rights. Specifically, the Final Rule may not have adequately addressed potential operational tensions between the timing and accuracy provisions in §§ 1005.31(e) and (f), as referenced in comment 33(c)–2, and comments 33(c)–3 and 33(c)–4. Comment 33(c)–3 explains that a sender may designate a remedy when first reporting an error, while comment 33(c)–4 explains that a provider may implement a default remedy if a sender does not select one. To address these issues, the proposed rule proposes additional revisions to comment 33(c)–2, adds proposed § 1005.33(c)(3), which provides for streamlined disclosures, and adds new comment 33(c)–11 explaining the proposed provision.

First, the Bureau proposes to make additional revisions to comment 33(c)–2. As noted, the existing comment states that a request to resend is a request for a remittance transfer and, therefore, that a remittance transfer provider must provide the disclosures required by § 1005.31 for a resend of a remittance transfer. Further, the comment states that the provider must use the exchange rate it is using for such transfers on the date of the resend if funds were not already exchanged in the first unsuccessful remittance transfer attempt. The proposed revision deletes the bulk of these references, retaining only the language stating that a provider should use the exchange rate on the date of the resend when resending the funds and clarifies that this is only necessary to the extent currency must be exchanged when resending the funds. The Bureau also proposes to revise a corresponding reference in § 1005.33(c)(2)(ii)(A)(*2*).

Second, in lieu of the above-referenced language in comment 33(c)–2 that states that a request to resend is a request for a remittance transfer, the Bureau proposes to add new § 1005.33(c)(3). Proposed § 1005.33(c)(3) provides that if an error under § 1005.33(a)(1)(iv) occurred because the sender provided incorrect or insufficient information, and if the sender has not previously designated a refund remedy pursuant to § 1005.33(c)(2)(ii)(A)(*1*), then the provider must comply with § 1005.33(c)(3)(i) or (c)(3)(ii).

Proposed § 1005.33(c)(3)(i) provides that if the remittance transfer provider does not make direct contact with the sender when providing the report required by § 1005.33(c)(1), the provider shall provide, orally or in writing, as applicable, the following disclosures: (A) The disclosures required by §§ 1005.31(b)(2)(i) through (iii) for remittance transfers and the date the provider will complete the resend, using the term ''Transfer Date'' or a substantially similar term.[11] These disclosures must be accurate when the resend is made except that these disclosures may contain estimates to the extent permitted by § 1005.32(a) or (b) for remittance transfers; and (B) If this transfer is scheduled three or more business days before the date of transfer, a statement about the rights of the sender regarding cancellation reflecting the requirements of § 1005.36(c), the requirements of which shall apply to the resend. Proposed § 1005.33(c)(3)(ii) provides that if the provider makes direct contact with the sender at the same or after the provider provides the report required by § 1005.33(c)(1), the provider shall provide, orally or in writing, as applicable, the disclosures required by §§ 1005.31(b)(2)(i) through (iii) for remittance transfers. These disclosures must be accurate when the resend is made except that the disclosures may contain estimates to the extent permitted by § 1005.32(a), (b)(1), or proposed § 1005.32(b)(3) or (b)(4) for remittance transfers.

The Bureau expects that proposed § 1005.33(c)(3) and the proposed changes to the commentary would facilitate compliance in a number of ways. First, if remittance transfer providers are unable to directly contact the sender when providing the error report, the transfer date would generally be set in the future and the provider

[9] As noted below, while the Bureau does not believe that other mistakes by a sender are likely to result in a mis-deposit, other mistakes, such as an incorrect recipient address, still could prevent a transfer from being completed.

[10] Section 1005.33(c)(1) requires a remittance transfer provider to report the results to the sender of the provider's investigation into a reported error. This report, which may be provided orally, must include notice of any remedies available for correcting any error that the provider determines has occurred.

[11] Section 1005.31(b)(2)(i) requires all of the applicable disclosures contained in the prepayment disclosure (§ 1005.31(b)(1)), (b)(2)(ii) requires disclosure of the date in the foreign country on which funds will be available, and (b)(2)(iii) requires disclosure of the name, and if provided by the sender, address of the designated recipient.

would be permitted to disclose an estimated exchange rate pursuant to § 1005.32(b)(2). Second, once the disclosure was delivered, the provider need not provide anything additional to the sender. Third, the cancellation rules of § 1005.34(a), which otherwise would allow the sender thirty minutes to cancel the resend, would not apply (though, in certain cases, the alternate cancellation rule in § 1005.36(c) would apply).

At the same time, the proposed changes would ensure that senders receive notice and an ability to cancel in cases in which the exchange rate that would be applied to the resent remittance transfer is not the rate that was initially disclosed to the sender (even if the sender has already chosen to have the funds resent).[12] The Bureau believes this would be helpful to consumers and consistent with the intent of the original comment. For this reason, the Bureau is adapting, in proposed § 1005.33(c)(3)(i), the procedures used in § 1005.36 for remittance transfers scheduled before the date of transfer. The Bureau believes the proposed revisions will balance senders' interests in obtaining notice in situations where the exchange rate may change with their interest in swift error resolution. The proposal would, for example, permit providers to leave phone messages, or to mail, or email the required disclosures. Under the Final Rule, this may have been impracticable because of the need to provide an exact exchange rate and to determine when the sender's right to cancel begins and ends.

Proposed § 1005.33(c)(3)(i) will allow remittance transfer providers to set a future date of transfer, and to disclose estimates pursuant to § 1005.32(b)(2) if the provider does not make direct contact with the sender.[13] A sender would be able to cancel the remittance transfer once the sender received the § 1005.33(c)(1) and (3)(i) notices, up to three business days before the date of transfer. However, the revised disclosure regime would not indefinitely delay the resend beyond the date of transfer if the provider does not receive confirmation from the sender and either the default remedy was to resend, or the sender elected resend when reporting the error. Where the provider does make direct contact, proposed § 1005.33(c)(3)(ii) would require the provider to disclose the exchange rate used for remittance transfers on the date of the resend.

The Bureau is not proposing to require the disclosures in proposed § 1005.33(c)(3) every time a remittance transfer provider resends funds when remedying an error. Rather, the Bureau intends that disclosures pursuant to proposed § 1005.33(c)(3) are only required if the exchange rate used for the resent remittance transfer is not the exchange rate originally disclosed and currency must be exchanged to complete the resend. Moreover, a resend under this proposed provision can only occur when the error occurred due to incorrect or insufficient information provided by the sender.

The Bureau is also proposing a conforming change to § 1005.33(c)(2), to allow for situations in which proposed § 1005.33(c)(3)(i) permits resends to occur later than one business day after, or as soon as reasonably practicable, after receiving the sender's instructions or the provider determines an error had occurred. Separately, the Bureau notes that in the Final Rule, § 1005.33(c)(2)(ii)(A)(2) allows a provider to impose third party fees for resending the remittance transfer when an error occurred because the sender provided incorrect or insufficient information. The Bureau seeks comment on whether the provider should also be permitted to also impose taxes incurred when resending funds for the same reason.

Finally, proposed comment 33(c)–11 explains that the disclosures in proposed § 1005.33(c)(3) need not be provided either if the sender has elected a refund remedy or if the remittance transfer provider's default remedy is a refund and the sender has not selected a remedy prior to the time the provider is providing the § 1005.33(c)(1) report. Furthermore, to the extent that the resend is not properly transmitted, the initial error has not been resolved and the provider's duty to resolve it remains not fully satisfied. Proposed comment 33(c)–11.i further clarifies that, for purposes of determining the date of transfer for disclosures made in accordance with proposed § 1005.33(c)(3)(i), if the provider is unable to speak to or otherwise make direct contact with the sender, the provider may use the same date on which it would provide a default remedy (*i.e.* one business day after 10 days after the provider has sent the report provided under § 1005.33(c)(1)). *See* comment 33(c)–4. Proposed comment 33(c)–11.ii explains that if the provider makes direct contact with the sender at the same time or after providing the report required by § 1005.33(c)(1), and if the time to cancel a resend disclosed pursuant to § 1005.33(c)(3)(i)(B) has not passed, § 1005.33(c)(2) requires the provider to resend the funds the next business day or as soon as reasonably practicable thereafter if the sender elects a resend remedy. For such a resend, the provider must provide the disclosures required by proposed § 1005.33(c)(3)(ii) and use the exchange rate it is using for such transfers on the date of resend to the extent that currency must be exchanged when resending funds. When providing disclosures pursuant to proposed § 1005.33(c)(3)(ii), the provider need not allow the sender to cancel the resend.

To illustrate, assume that when an error is first reported, a sender elects to have the remittance transfer provider resend the funds should an error be found to have occurred. Upon completion of the investigation, the provider provides an oral or written report on February 1, in accordance with § 1005.33(c)(1), informing the sender that an error occurred and that it was a result of incorrect information provided by the sender, that currency must be exchanged on the resend, and thus the exchange rate may change. At the same time and if no direct contact is made, pursuant to proposed § 1005.33(c)(3)(i), the provider will also deliver notice that it will resend the remittance transfer on February 12 (assuming that is a business day) and that a sender's request to cancel must be received by three business days prior to the date of transfer. If necessary, the provider also would disclose the estimated exchange rate pursuant to § 1005.32(b)(2), among other required items. Any time before February 9 (the deadline to exercise cancellation rights), the sender may contact the provider and request that the remittance transfer be completed within one business day, if reasonably possible. If earlier resend occurs, the provider will then provide the disclosures required by proposed § 1005.33(c)(ii). If the sender does not contact the provider, the funds will be resent, as disclosed, on February 12.

The Bureau seeks comment on whether, in lieu of the proposed regime outlined above, the Bureau should adjust the procedure for resending funds

[12] As proposed, disclosures would be required by proposed § 1005.33(c)(3) even if the rate that would be disclosed in connection with the resend happens to be the same rate that was initially disclosed to the sender. Furthermore, in addition to providing estimates pursuant to § 1005.32(b)(2), proposed § 1005.33(c)(3)(i) permits providers to disclose estimates pursuant to § 1005.32(a), (b)(1), and proposed § 1005.32(b)(3) and (b)(4).

[13] Section 1005.32(b)(2) permits a remittance transfer provider to estimate certain information in the pre-payment disclosure and the receipt provided when payment is made for a remittance transfer. Pursuant to § 1005.32(d), an estimated exchange rate in this circumstance generally must be based on the exchange rate that the provider would have used or did use that day in providing disclosures to a sender requesting such a remittance transfer to be made on the same day.

to resolve an error described in § 1005.33(a)(1)(iv) that occurred because the sender provided incorrect or insufficient information (other than an incorrect account number). In adopting the Final Rule, the Bureau explained that when the sender providing incorrect or insufficient information causes the error, the Bureau believed that it is appropriate generally to put the provider and the sender in the same position as if the first unsuccessful remittance transfer had never occurred. Thus, the provider would use the exchange rate it is using for such transfers on the date of the resend. Nevertheless, the Bureau seeks comment on whether it would be preferable to adopt instead the resend procedure that exists for other errors, *see* § 1005.33(c)(2)(ii)(A)(*1*), or another alternative. Using the procedure for other errors would require a provider to resend funds at the original exchange rate, but it could further simplify the rule by eliminating the need to provide disclosures required by proposed § 1005.33(c)(3).

33(h) Incorrect Account Number Provided by the Sender

The Bureau proposes to add a new § 1005.33(h), which would contain the conditions a remittance transfer provider must satisfy before the new exception to the definition of error in proposed § 1005.33(a)(1)(iv)(D) could apply to situations in which a sender provides a wrong account number, which results in a mis-deposit. Proposed § 1005.33(h) provides that no error has occurred pursuant to § 1005.33(a)(1)(iv) for the failure to make funds available to a designated recipient by the date of availability stated in the disclosure provided pursuant to § 1005.31(b)(2) or (3) if the provider can satisfy each of the conditions in proposed §§ 1005.33(h)(1) through (4).

Proposed § 1005.33(h)(1) provides the first condition that must be met for no error to have occurred pursuant to proposed § 1005.33(a)(1)(iv)(D). Specifically, this condition could be satisfied if the remittance transfer provider can demonstrate that the sender provided an incorrect account number to the provider in connection with the remittance transfer. Under proposed § 1005.33(h)(1), if the provider did not know or could not demonstrate that the sender provided an improper account number, then the failure to deliver the transfer by the promised date of availability because of an incorrect account number would continue to be an error to which existing error procedures and remedies would apply. The Bureau does not believe that this is a substantial change from the existing rule, which already provides an incentive for providers to document whether the sender has provided inaccurate information in order to invoke the ability to charge certain related fees in connection with the resent transaction. *See* § 1005.33(c)(2)(ii)(A)(*2*). The Bureau does believe, however, that this proposed change further incentivizes providers to implement procedures to limit the possibility of a sender providing an incorrect account number.

Proposed § 1005.33(h)(2) contains the second condition, which is that the remittance transfer provider be able to demonstrate that the sender had notice that, in the event the sender provided an incorrect account number, that the sender could lose the transfer amount. The Bureau believes it is important for senders to be notified that they could potentially be required to bear the cost of providing an incorrect account number. The Bureau understands that many providers' current practices incorporate such a notice to senders in their disclosures in connection with their obligation under UCC Article 4A. In particular, under UCC 4A–207, a sender cannot bear the cost of a mistake if the provider did not notify the sender that the payment on the transfer order might be made even if the sender's account number specifies a person different from the named beneficiary. The UCC does not specify the form of the notice. *See* UCC 4A–207(c)(2). The Bureau similarly has not specified the form of the notice required by proposed § 1005.33(h)(2) but seeks comment on whether the Bureau should specify the form of the notice and how and when it should be delivered.

Proposed § 1005.33(h)(3) provides the third condition for the exception in proposed § 1005.33(a)(1)(iv)(D) to apply. It provides that the incorrect account number resulted in the deposit of the remittance transfer into a customer's account at the recipient institution other than the designated recipient's account. The Bureau believes that once a remittance transfer is deposited into the wrong account, a remittance transfer provider is much less likely to be able to recover the funds. The Bureau does not believe that similar concerns exist for transfers that are sent to accounts and are either rejected by the recipient institution or otherwise reversed before deposit. In such cases, the Bureau believes that the provider would be much more likely to be able to recover the funds and either refund or resend the transfer and the proposed exception in proposed § 1005.33(a)(1)(iv)(D) would be unnecessary.

Proposed § 1005.33(h)(4) provides the fourth condition for the exception in proposed § 1005.33(a)(1)(iv)(D) to apply. It states that a remittance transfer provider to promptly use reasonable efforts to recover the amount that was to be received by the designated recipient. Currently, the Bureau believes that as a customer service, many providers attempt to recover transfers even when they are not transfer deposited into the correct account. Thus, the Bureau does not believe proposed § 1005.33(h)(4) constitutes a significant departure from market practice in many cases today.

Proposed comment 33(h)–1 explains that proposed § 1005.33(h)(4) requires a remittance transfer provider to use reasonable efforts to recover the amount that was to be received by the designated recipient. Whether a provider has used reasonable efforts does not depend on whether the provider is ultimately successful in recovering the amount that was to be received by the designated recipient. The proposed comment accounts for the fact that the options available to a provider to recover funds may vary depending on the method used to send the remittance transfer, the destination of the remittance transfer, the provider's relationship with the receiving institution, and when and by whom the error was discovered. The proposed comment also provides examples of how a provider might use reasonable efforts: (i) The provider promptly calls or otherwise contacts the recipient's institution, either directly or indirectly through any correspondent(s) or other intermediaries or service providers used for the particular transfer, to request that the amount that was to be received by the designated recipient be returned, and if required by law or contract, by requesting that the recipient institution obtain a debit authorization from the incorrectly credited accountholder; (ii) the provider promptly uses a messaging service through a funds transfer system to contact the recipient's institution, either directly or indirectly through any correspondent(s) or other intermediaries or service providers used for the particular transfer, to request that the amount that was to be received by the designated recipient be returned, in accordance with the messaging service's rules and protocol, and if required by law or contract, by requesting that the recipient institution obtain a debit authorization from the holder of the incorrectly credited account; and (iii) in addition to the methods outlined above, to the extent that a correspondent institution, other service providers to

the recipient institution, or the recipient institution requests documentation or other supporting information, the provider promptly provides such documentation or other supporting information to the extent available.

The Bureau does not believe it is appropriate to propose specific methods that a remittance transfer provider must use to recover the funds due to the varying ways in which providers and other institutions communicate. For example, in many instances, financial institutions might use correspondent networks to send remittance transfers to designated recipients' accounts abroad. In these instances, the provider, its correspondent institution, other intermediary institutions, and possibly the recipient institution may communicate through a shared messaging system. It is through this system that a provider might attempt to recover a mis-deposited remittance transfer. In this circumstance, mandating other efforts—such as directly contacting the recipient's institution—might not be as feasible or productive, although in some instances, a provider might determine it to be reasonable to contact the foreign institution directly. The Bureau solicits comment on the proposed examples and whether there are additional examples of how a provider might use reasonable efforts to recover funds.

Finally, proposed comment 33(h)–2 explains that § 1005.33(c)(1) requires a remittance transfer provider to act promptly in using reasonable efforts to recover the amount that was to be received by the designated recipient. While promptness may depend on the circumstances, generally a provider acts promptly when it does not delay in seeking recovery of the mis-deposited funds. For example, if the sender informs the provider of the error before the date of availability disclosed pursuant to § 1005.31(b)(2)(ii), the provider should act to contact the recipient's institution before the date of delivery, if possible, as doing so may prevent the funds from being mis-deposited. In other circumstances as well, prompt reasonable efforts will increase the chances that the funds remain in the incorrect account. Generally, the Bureau believes that providers will be more successful in securing the return of mis-deposited funds if providers act quickly.

Miscellaneous Conforming Edits

Given the proposed revisions to § 1005.31(b)(1)(vi) and new proposed §§ 1005.32(b)(3) and (4), conforming revisions are proposed in the following provisions of the Final Rule as necessary: § 1005.36(b)(3); comment 32–1; comment 32(d)–1; comment 33(a)–3.ii; and comment 36(b)–3.

Effective Date

The Final Rule is scheduled to be effective on February 7, 2013, which is one year after publication of the February Final Rule in the **Federal Register**. However, in light of this proposal, the Bureau is proposing to extend the effective date in two steps.

First, the Bureau is proposing to temporarily delay the effective date of the Final Rule until the Bureau finalizes this proposal. The Bureau realizes that regardless of how or whether the Final Rule is changed, remittance transfer providers' preparations for its implementation may be affected until the Bureau finalizes the rule. The Bureau seeks comment on the proposal to temporarily delay the effective date of the Final Rule, by issuing a temporary extension before February 7, 2013. The Bureau requests comment on this aspect of the proposed rule only by January 15, 2013.

Second, the Bureau is also proposing that the Final Rule, and any revisions thereto resulting from this proposal, would become effective 90 days after the Bureau finalizes this proposal. Given the limited scope of the proposed revisions, the Bureau believes that this 90-day period will be sufficient for providers to implement any necessary changes to their systems. The Bureau also believes that providers should be working toward implementing those portions of the Final Rule unaffected by this proposal during the interim period, for instance by continuing to research foreign central governments' taxes. Thus, the Bureau believes that, apart from the temporary delay, this proposed 90-day extension period would balance the need for consumers to receive the protections afforded by the rule as quickly as possible with industry's need to make adjustments to comply with the provisions of the rule. The Bureau seeks comment on whether the rule should be effective 90 days after the Bureau finalizes this proposal.[14]

V. Section 1022(b)(2) Analysis

A. Overview

In developing the proposed rule, the Bureau has considered potential benefits, costs, and impacts[15] and has consulted or offered to consult with the prudential regulators and the Federal Trade Commission, including regarding the consistency of the proposed rule with prudential, market, or systemic objectives administered by such agencies.[16]

The analysis below considers the benefits, costs, and impacts of the key provisions of the proposal against the baseline provided by the Final Rule. Those provisions regard: Recipient institution fees and foreign taxes, incorrect or insufficient information regarding transfers, and the effective date. With respect to these provisions, the analysis considers the benefits and costs to senders (consumers) and remittance transfer providers (covered persons).[17] The Bureau has discretion in future rulemakings to choose the most appropriate baseline for that particular rulemaking.

The Bureau notes at the outset that quantification of the potential benefits, costs, and impacts of the proposal is not possible due to the lack of available data. As discussed in the February Final Rule, there is a limited amount of data about remittance transfers and remittance transfer providers that are publicly available and representative of the full market. Similarly, there are limited data on consumer behavior, which would be essential for quantifying the benefits or costs to consumers. Furthermore, the Final Rule is not yet effective and providers are still in the process of implementing its requirements. Therefore, the analysis generally provides a qualitative discussion of the benefits, costs, and impacts of the proposed rule. As discussed in more detail below, the Bureau expects that the proposed provisions will generally benefit providers by facilitating compliance, while maintaining the Final Rule's valuable new consumer protections and ensuring that these protections can be effectively delivered to consumers.

[14] Comments on this second aspect of the proposal may be submitted within the comment period applicable to the remainder of the proposal.

[15] Section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

[16] The Bureau also solicited feedback from other agencies regarding the proposed rule.

[17] Benefits and costs incurred by remittance transfer providers may, in practice, be shared among providers' business partners, such as agents, correspondent banks, or foreign exchange providers. To the extent that any of these business partners are covered persons, the proposal could have benefits or costs for these covered persons as well.

B. Potential Benefits and Costs to Consumers and Covered Persons

1. Recipient Institution Fees and Foreign Taxes

a. Benefits and Costs to Covered Persons

Compared to the Final Rule, the proposal would benefit remittance transfer providers by giving them options that could reduce the cost of providing required disclosures. Allowing providers to rely on senders' representations regarding certain recipient institution fees, or to estimate such fees and foreign taxes based on certain assumptions or sources of information would reduce the cost of preparing required disclosures. The proposal would further reduce the cost of gathering information by limiting providers' obligation to disclose foreign taxes to those imposed by a country's central government.

The proposed changes regarding fee and tax disclosures might additionally benefit remittance transfer providers by facilitating their continued participation in the market. Industry has suggested that due in part to the Final Rule's third party fee and foreign tax disclosure requirements, some providers might eliminate or reduce their remittance transfer offerings, such as by not sending transfers to countries where tax or fee information is particularly difficult to obtain, due to the lack of ongoing reliable and complete information sources. By reducing the amount of information needed to provide disclosures, the proposal could encourage more providers to retain their current services (and thus any associated profit, revenue and customers).

To take advantage of the new flexibility that would be provided by the proposed rule, some remittance transfer providers might choose to bear some modest cost to modify their systems to calculate disclosures using the new methods permitted by the proposal, or to describe certain disclosures using the term ''Estimated'' or a substantially similar term. However, the Bureau believes that any such cost would generally be small. Any modification would be to existing forms and systems changes would be particularly minimal for many providers, because the Final Rule already sets forth certain circumstances in which the term ''Estimated'' or a substantially similar term must be used. Furthermore, the Bureau expects that some providers may not have finished any systems modifications necessary to comply with the Final Rule, and thus may be able to incorporate any changes into previously planned work.

Any alternative disclosures could also impose costs on any providers that chose to take advantage of the flexibility permitted by the proposal. The relative magnitude would depend on the type of disclosure required. But in any case, these costs would be optional; providers could disclose fees and taxes as required by the Final Rule.

The Bureau expects that the proposed provisions regarding fee and tax disclosures would mostly affect depository institutions, credit unions, and broker-dealers that are remittance transfer providers. These types of providers tend to send most or all of their remittances transfers to foreign accounts, for which recipient institution fees may be charged. Furthermore, due to the mechanisms they use to send money, they generally have the ability to send transfers to virtually any destination country (for which tax research might be required). By contrast, money transmitters that are providers are more likely to send remittance transfers to be received in cash, for which recipient institution fees would not be relevant. Furthermore, most money transmitters, and particularly small ones, generally send transfers to a limited number of countries and institutions.

b. Benefits and Costs to Consumers

The proposed changes regarding recipient institution fees and foreign taxes would benefit senders to the extent that remittance transfer providers pass along any cost savings in the form of lower prices. Also, if the proposal facilitates providers' continued participation in the market, it would facilitate senders' access to remittance transfers, by giving them a wider set of options for sending transfers, preserving competition, and thus possibly avoiding increased prices.

The proposal might impose costs on senders to the extent that it makes disclosures less accurate, or if different remittance transfer providers were to use substantially different approaches to identifying the recipient institution fees or foreign taxes that would apply. Different approaches might make comparison shopping more difficult. Less accurate information could make it more difficult for a sender to know whether a designated recipient is going to receive an intended sum of money, or how much the sender must spend to deliver a specific amount of foreign currency to a recipient.

However, the Bureau expects that costs associated with reduced accuracy could be mitigated. First, the Bureau expects that competition might give providers incentives to disclose exact recipient institution fees and foreign taxes (at least those assessed by central governments) when reasonably possible, as in some cases this would allow providers to disclose lower fees and taxes than they would if they relied on the proposal's provisions. Second, in circumstances where providers did take advantage of the flexibility permitted by the proposal, senders might still be able to engage in comparison shopping. To the extent that different providers used similar information and assumptions to estimate foreign taxes and recipient institution fees, the disclosures that senders received would generally remain useful for determining which provider is cheapest or for making decisions that trade off cost for other considerations. Finally, if foreign subnational taxes are imposed less frequently and in smaller amounts than foreign taxes assessed by central governments, then the Bureau believes that even with the proposed changes to the Final Rule, senders generally would have the most important information about the prices of remittance transfers. Even though the proposal would allow providers to rely on fee information that may not be specific to a recipient institution, the proposal's focus on informing senders of the highest possible amount of foreign taxes or recipient institution fees that could be imposed would limit the circumstances in which senders might be surprised by deductions that are larger than what is disclosed. Senders would still generally receive a reasonable approximation of the foreign taxes and recipient institution fees that might be charged, and sufficient information to help them know whether they are sending enough money to cover recipients' needs.

The use of the term ''Estimated'' (or a substantially similar term) in cases in which subnational taxes were not disclosed or the new estimate provisions are used could aid senders, by indicating that disclosed amounts may differ from the amount received. But the use of the term ''Estimated'' in the vast majority of cases could impair senders' ability to compare disclosures and have an adverse impact on the exercise of error resolution rights because it is difficult to know the reasons why two disclosures with estimates differ. In instances in which subnational taxes were not disclosed, alternative methods of alerting senders that figures are not exact (or not requiring any such notice) might impose fewer costs on senders.

2. Incorrect or Insufficient Information

a. Benefits and Costs to Covered Persons

The proposal includes two sets of proposed changes related to errors caused by the provision of incorrect or insufficient information. It would create a new exception to the definition of error. It would also adjust the requirements for resending remittance transfers in certain situations in which funds may be resent to correct errors.

The exception to the definition of error would benefit remittance transfer providers in instances in which senders' account number mistakes, which would have resulted in errors under the Final Rule, would not constitute errors, provided that providers could satisfy the conditions enumerated in proposed § 1005.33(h). To the extent that the new exception applied, providers would no longer bear the costs of funds that they could not recover. The magnitude of the benefit would depend on the frequency of senders' account number mistakes that result in funds being deposited in the wrong account with the provider unable to recover funds, and the sizes of those lost transfers.[18] The magnitude would also depend on the extent to which providers maintain procedures necessary to satisfy the conditions enumerated in proposed § 1005.33(h).

Remittance transfer providers might further benefit if the proposal reduced the potential for fraudulent account number mistakes made by unscrupulous senders, which providers have cited as a risk under the Final Rule. By reducing the remedies available in such cases, the proposal would reduce the direct costs of fraud and the indirect costs of fraud prevention and facilitate providers' continued participation in the remittance transfer market, without (or with fewer) new limitations on service. Industry has indicated that, at least in part, due to the risk of such fraud under the Final Rule, providers might exit the market or limit the size or type of transfers sent. The magnitude of these benefits would depend on the magnitude of the actual and perceived risk of account number-related fraud under the Final Rule.[19]

The new exception to the definition of error would not impose any new requirements on remittance transfer providers and therefore would not directly impose costs on providers. But, to ensure that they can satisfy the conditions enumerated in proposed § 1005.33(h) and thus trigger the new exception, providers may choose to bear some costs. For instance, providers might change their customer contracts or other communications to provide to senders the notice contemplated by proposed § 1005.33(h)(2). However, the Bureau expects that the cost of doing so would be modest, particularly because the proposed rule does not mandate any particular notice wording, form, or format, and the Bureau expects that many providers would integrate any such notice into existing communications.

The Bureau expects that providers would generally not experience any other costs if they chose to satisfy the remainder of the conditions in proposed § 1005.33(h), because their existing practices generally would already satisfy those conditions. In particular, based on outreach, the Bureau believes that keeping records or other documents that could demonstrate the conditions described in § 1005.33(h) would generally match providers' usual and customary practices to serve their customers, to manage their risk, and to satisfy the requirements under the Final Rule to retain records of the findings of investigations of alleged errors. *See* § 1005.33(g)(2).

The extent to which remittance transfer providers would choose to bear any costs related to proposed § 1005.33(h) and the magnitude of such costs would depend on providers' individual business practices, their expectations about the frequency and size of transfers that are deposited into the wrong accounts and not recovered because of account number mistakes by senders, their expectations about the risk of fraud, as well as the extent to which providers have already begun adapting their practices to the Final Rule. The Bureau expects that providers would only develop their practices to comply with § 1005.33(h) if doing so would benefit the providers by more than the costs of implementing these practices. The Bureau believes that this could be the case for most providers that make transfers to accounts, particularly because the practices described in § 1005.33(h) closely match existing practice, as well as, for the most part, the practices that providers would develop to comply with the Final Rule.

The proposed changes regarding requests to resend for certain errors would also benefit remittance transfer providers. In instances in which they are applicable, as discussed above, the proposed changes would, in many cases, allow a provider to resend a transfer with less uncertainty about when and how to resend it and possibly to do so using an estimated exchange rate. The proposed changes also could mean that in the narrow circumstances in which they would apply, providers would not need to provide as many written disclosures as under the Final Rule. Providers could also benefit from the alternative on which the Bureau is seeking comment, to adjust the Final Rule's remedy provisions so that anytime a remittance transfer is resent to resolve an error, the exchange rate would remain the rate stated in the original disclosure. This alternative would eliminate any cost of additional disclosures related to the covered resends. Unlike the Final Rule, however, the alternative would not permit a provider to charge the sender again for third party fees incurred when the transfer was sent the first time. Furthermore, the alternative could expose providers to additional exchange rate risk. When funds are resent, a provider might either gain or lose money related to the change in market exchange rates between the time of the original transfer and the time of the resend.

Either the proposed changes regarding resend remedies, or the alternative on which the Bureau seeks comment, could impose a cost on remittance transfer providers to revise their procedures. Providers might also change their systems to generate the proposed streamlined disclosures, which could include the date of transfer, an element that is currently required on disclosures only for some remittance transfers. *See* §§ 1005.30(b)(2)(vii) and 1005.36(d). However, the Bureau expects these costs to be modest, because the modifications could be made based on an existing disclosure form. The Bureau also expects that many providers would incorporate such modifications into others they would carry out to comply with the Final Rule.

b. Benefits and Costs to Consumers

The new exception to the definition of error would benefit senders to the extent that remittance transfer providers pass along any cost savings in the form of lower prices. The new exception would also benefit senders, to the extent it would enable more providers to stay in the market or preserve the breadth of their current offerings, thus preserving competition.

Under certain conditions, a sender who provided an incorrect account number resulting in funds being delivered to the wrong account would

[18] Prior to the February Final Rule, the Credit Union National Association reported a rate of less than 1% for international wire ''exceptions.''

[19] A similar analysis regarding benefits would likely apply if the Bureau expanded the proposed exception to apply in instances in which a failure to make funds available to the designated recipient by the disclosed date of availability resulted from a mistake by a sender other than providing an incorrect account number. Any optional costs might depend on the nature of any such extension.

bear the costs of those mis-deposited funds. However, as discussed above, the Bureau expects that the incidence of such losses would be rare; furthermore, any such cost may be mitigated, because senders would have stronger incentives to ensure the accuracy of account number information to the extent possible.[20]

The Bureau expects that the proposed changes regarding remittance transfers that are resent would have very small impacts on senders. As described above, the Bureau expects that the circumstances in which the proposed changes would apply will arise infrequently. In instances in which the proposed changes would apply, the Bureau believes that senders, like remittance transfer providers, would benefit from the reduced uncertainty. However, the proposed changes would impose a modest cost on senders because they would reduce the disclosure requirements for the covered resends, including by allowing providers to give senders estimated rather than actual exchange rates under certain circumstances. Senders might experience some additional modest benefits or costs under the alternative on which comment is sought, to resend transfers at the original exchange rate. Unlike the Final Rule, the alternative would not permit a provider to charge the sender again for any third party fees that were incurred when the transfer was sent originally. But this alternative would eliminate the requirement for additional disclosures related to the resend of the transaction.[21] However, the Bureau expects that under either scenario, and particularly the latter, the cost would be modest, as senders would have received pertinent information with the original remittance transfer.

3. Effective Date

The proposed temporary delay and extension of the Final Rule's effective date would generally benefit remittance transfer providers by delaying the start of any ongoing compliance costs. The additional time might also enable providers (and their vendors) to build solutions that cost less than those that might otherwise have been possible. Senders would benefit to the extent that the changes eliminated any disruptions in the provision of remittance transfer services. But the proposed changes would impose costs on senders by delaying the time when they would receive the benefits of the Final Rule.

C. Access to Consumer Financial Products and Services

As discussed above, the Bureau expects that the proposal would not decrease and could increase consumers' (senders') access to consumer financial products and services. By reducing the costs that remittance transfer providers must bear to provide disclosures and resolve errors, the proposal could lead providers to reduce their prices, compared to what they might have charged under the Final Rule. By facilitating providers' participation in the market, the proposal could give senders a wider set of options for sending transfers, as well as preserve competition.

D. Impact on Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets

Given the lack of data on the characteristics of remittance transfers, the ability of the Bureau to distinguish the impact of the proposal on depository institutions and credit unions with $10 billion or less in total assets (as described in section 1026 of the Dodd-Frank Act) from the impact on depository institutions and credit unions in general is quite limited. Overall, the impact of the proposal on depository institutions and credit unions would depend on a number of factors, including whether they are remittance transfer providers, the importance of remittance transfers for the institutions, how many institutions or countries they send to, the cost of complying with the Final Rule, and the progress made toward compliance with the Final Rule.

However, information that the Bureau obtained prior to finalizing the August Final Rule suggests that among depository institutions and credit unions that provide any remittance transfers, an institution's asset size and the number of remittance transfers sent by the institution are positively, though imperfectly, related. There are several inferences that can be drawn from this relationship. First, the Bureau expects that among depository institutions and credit unions with $10 billion or less in total assets that provide any remittance transfers, compared to larger such institutions, a greater share will qualify for the safe harbor related to the definition of ''remittance transfer provider'' and therefore would be entirely unaffected by this proposal because they are not subject to the requirements of the Final Rule. *See* § 1005.30(f)(2). Second, the Bureau believes that depository institutions and credit unions with $10 billion or less in total assets that are covered by the Final Rule would experience, on a per-institution basis, less of the variable benefits and costs described above because they generally perform fewer remittance transfers than larger institutions. However, to the extent that the proposal would reduce any fixed costs of compliance, such as the costs of gathering information on taxes and fees if these institutions were to attempt to do that themselves, these institutions may experience more of the benefits described above, on a per-transfer basis.

Additionally, the Bureau believes that the magnitude of the proposal's impact on smaller depository institutions and credit unions would be affected by these institutions' likely tendency to rely on correspondents or other service providers to obtain third party fee and foreign tax information, as well as provide standard disclosure forms. In some cases, this reliance would mitigate the impact on these providers of the proposal's provisions regarding such information.

E. Impact of the Proposal on Consumers in Rural Areas

Senders in rural areas may experience different impacts from the proposal than other senders. The Bureau does not have data with which to analyze these impacts in detail. However, to the extent that the proposal leads to more remittance transfer providers to continue to provide remittance transfers, the proposal may disproportionately benefit senders living in rural areas. Senders in rural areas may have fewer options for sending remittance transfers, and therefore may benefit more than other senders from a change that keeps more providers in the market.

F. Request for Information

The Bureau will further consider the benefits, costs and impacts of the proposal before finalizing the proposal. The Bureau asks interested parties to provide comment or data on various aspects of the proposed rule, as detailed in the section-by-section analysis. This includes comment or data regarding the number and characteristics of affected entities and consumers; providers' current practices, their plans to implement the Final Rule; how this proposal might change their current practices or their planned practices

[20] A similar analysis would likely apply if the Bureau expanded the proposed exception to apply in instances in which a failure to make funds available to the designated recipient by the disclosed date of availability resulted from a mistake by a sender other than an incorrect account number.

[21] Under this alternative, for any individual remittance transfer that is resent, a sender (like a remittance transfer provider) might either gain or lose money related to the change in market exchange rates between the time of the original transfer and the time of the resend.

under the Final Rule; and any other portions of this analysis.

The Bureau requests commenters to submit data and to provide suggestions for additional data to assess the issues discussed above and other potential benefits, costs, and impacts of the proposed rule. Further, the Bureau seeks information or data on the proposed rule's potential impact on consumers in rural areas as compared to consumers in urban areas. The Bureau also seeks information or data on the potential impact of the proposed rule on depository institutions and credit unions with total assets of $10 billion or less as described in Dodd-Frank Act section 1026 as compared to depository institutions and credit unions with assets that exceed this threshold and their affiliates.

VI. Regulatory Flexibility Act

A. Overview

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required. 5 U.S.C. 609.

An IRFA is not required for this proposal because the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

B. Affected Small Entities

The analysis below evaluates the potential economic impact of the proposed rule on small entities as defined by the RFA.[22] The proposal would apply to entities that satisfy the definition of ''remittance transfer provider'': 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. *See* § 1005.30(f).[23] Potentially affected small entities include insured depository institutions and credit unions that have $175 million or less in assets and that provide remittance transfers in the normal course of their business, as well as non-depository institutions that have average annual receipts that do not exceed $7 million and that provide remittance transfers in the normal course of their business.[24] These affected small non-depository entities may include state-licensed money transmitters, broker-dealers, and other money transmission companies.[25]

This analysis examines the benefits, costs, and impacts of the key provisions of the proposal relative to the baseline provided by the Final Rule. The Bureau has discretion in future rulemakings to choose the most appropriate baseline for that particular rulemaking.

C. Recipient Institution Fees and Foreign Taxes

The proposal would provide remittance transfer providers additional flexibility regarding the disclosure of certain recipient institution fees and foreign taxes. It would allow providers to rely on senders' representations regarding such fees, and to estimate such fees and foreign taxes based on certain assumptions and information. The proposal would also limit a provider's obligation to disclose foreign taxes to those imposed by a country's central government. Under the proposal, if providers chose not to disclose subnational taxes, or to take advantage of the new estimation provisions, they would be required to describe the relevant disclosures using the term ''Estimated'' or a substantially similar term.

The proposed provisions would not require small entities to make any changes in practice. Remittance transfer providers would still be in compliance if they disclosed foreign taxes and recipient institution fees in accordance with the Final Rule. If small providers decided to take advantage of the proposed provisions, they might bear some cost to modify their systems to calculate disclosures using the new methods permitted by the proposal, or to describe certain disclosures using the term ''Estimated'' or a substantially similar term. However, the Bureau believes that any cost would generally be small. Any modification would be to existing forms and systems changes would be particularly minimal because the Final Rule already sets forth certain circumstances in which the term ''Estimated'' (or a substantially similar term) must be used. Also, the Bureau expects that many small depository institutions and credit unions will rely on correspondent institutions or other service providers to provide recipient institution fees and foreign tax information, as well as standard disclosure forms; as a result, related costs would often be spread across multiple institutions. Furthermore, the Bureau expects that some providers may not have finished any systems modifications necessary to comply with the Final Rule, and thus may be able to incorporate any changes into previously planned work.

Any alternative disclosures could also impose cost on any providers that chose to take advantage of the flexibility permitted by the proposal. The relative magnitude would depend on the type of disclosure required. If no disclosure were required in instances in which foreign subnational taxes were not disclosed, the cost could be less for some entities. If some alternative form of disclosure were required for providers that chose to take advantage of the new flexibility that the proposal would permit, the cost might be higher.

In either case, the proposed changes regarding the disclosure of recipient institution fees and foreign taxes may provide meaningful benefits to remittance transfer providers that decide to take advantage of them. The Bureau expects that small entities generally would choose to incur the costs associated with the proposed provisions only if they concluded that the benefits of doing so were greater than the costs. The potential benefits include a reduced cost to prepare required disclosures. Furthermore, industry has suggested that due in part

[22] For purposes of assessing the impacts of the proposed rule on small entities, ''small entities'' is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A ''small business'' is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (''NAICS'') classifications and size standards. 5 U.S.C. 601(3). A ''small organization'' is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). A ''small governmental jurisdiction'' is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5).

[23] The definition of ''remittance transfer provider'' includes a safe harbor that means that if a person provided 100 or fewer remittance transfers in the previous calendar year and provides 100 or fewer such transfers in the current calendar year, it is deemed not to be provided remittance transfers for a consumer in the normal course of its business, and is thus not a remittance transfer provider. *See* § 1005.30(f)(2).

[24] Small Bus. Admin., *Table of Small Business Size Standards Matched to North American Industry Classification System Codes, http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.* Effective March 26, 2012.

[25] Many state-licensed money transmitters act through agents. However, the Final Rule applies to remittance transfer providers and explains, in official commentary, that a person is not deemed to be acting as a provider when it performs activities as an agent on behalf of a provider. Comment 30(f)–1. Furthermore, for the purpose of this analysis, the Bureau assumes that providers, and not their agents, will assume any costs associated with implementing the proposed modifications.

to the Final Rule's third party fee and foreign tax disclosure requirements, some providers might eliminate or reduce their remittance transfer offerings, such as by not sending to countries where tax or fee information is particularly difficult to obtain, due to the lack of ongoing reliable and complete information sources. By reducing the amount of information needed to provide disclosures, the proposal could encourage more providers (including small entities) to retain their current services (and thus any associated profit, revenue and customers).

The Bureau expects that the proposed provisions would mostly affect depository institutions, credit unions, and broker-dealers that are remittance transfer providers. These types of providers tend to send most or all of their remittances transfers to foreign accounts, for which recipient institution fees may be charged. Furthermore, due to the mechanisms they use to send money, they generally have the ability to send transfers to virtually any destination country (for which tax research might be required). By contrast, money transmitters that are providers are more likely to send remittance transfers to be received in cash, for which recipient institution fees would not be relevant. Furthermore, most money transmitters, and particularly small ones, generally send transfers to a limited number of countries and institutions.

D. Incorrect or Insufficient Information

The proposal includes two sets of proposed changes related to errors caused by the provision of incorrect or insufficient information. It would create a new exception to the definition of the error. It would also streamline the requirements for resending remittance transfers in certain situations in which funds may be resent to correct errors.

The Bureau expects that a number of small remittance transfer providers would be unaffected by the proposed changes regarding the definition of error; they would only apply to remittance transfers that are received in accounts. Though some money transmitters send money to be deposited into bank accounts, the Bureau's outreach suggests that, unlike most small depository institutions, credit unions, and broker-dealers, many small money transmitters only send money to be received in cash.

With regard to small remittance transfer providers that do send money to accounts, the proposed new exception to the definition of error would not impose any mandatory costs. Under the proposal, certain account number mistakes would no longer generate ''errors'' if the provider satisfied certain conditions enumerated in proposed § 1005.33(h). Instead of satisfying these conditions, providers could continue under the Final Rule's definition of error.

If remittance transfer providers did choose to satisfy the conditions enumerated in proposed § 1005.33(h), they might incur some costs, such as changing the terms of their consumer contracts or other communications to provide senders the notice contemplated by proposed § 1005.33(h)(2). However, the Bureau expects that the cost of doing so would be modest, particularly because the proposed rule does not mandate any particular notice wording, form, or format, and the Bureau expects that many providers would integrate any such notice into existing communications.

The Bureau believes that satisfying the remainder of the conditions in proposed § 1005.33(h) would not impose new costs on providers because their existing practices generally would already satisfy those conditions. In particular, based on outreach, the Bureau believes that that keeping records or other documents that could demonstrate the conditions described in § 1005.33(h) would generally match providers' usual and customary practices to serve their customers, to manage their risk, and to satisfy the requirements under the Final Rule to retain records of the findings of investigations of alleged errors. *See* § 1005.33(g)(2).

In any case, the Bureau expects that remittance transfer providers would only develop their practices to comply with § 1005.33(h), and thus take advantage of the proposed new exception to the definition of error, if doing so would reduce the costs of losses due to account number mistakes by senders or account number fraud by more than the costs of implementing these practices. The Bureau believes that for most providers, including small ones, the proposed changes to the definition of error likely would provide benefits that outweigh implementation costs. If the new exception applied, providers would no longer bear the cost of funds that they could not recover. Providers would further benefit if the proposal reduced the potential for fraudulent account number mistakes made by unscrupulous senders, which providers have cited as a risk under the Final Rule. By reducing the remedies available in such cases, the proposal would reduce the direct costs of fraud and the indirect costs of fraud prevention and facilitate providers' continued participation in the remittance transfer market, without (or with fewer) new limitations on service. Industry has indicated that, at least in part, due to the risk of such fraud under the Final Rule, providers might exit the market or limit the size or type of transfers sent.[26]

The proposed change regarding requests to resend for certain errors would also benefit small remittance transfer providers, though the Bureau expects that the benefits would be small because the circumstances covered by the proposed change will arise very infrequently.[27] In instances in which it is applicable, the proposed changes would allow a provider to resend a transfer with less uncertainty about when and how to resend a transfer and possibly to do so using an estimated exchange rate. The proposed changes also could mean that in the narrow circumstances that they apply, providers would not need to provide as many written disclosures as under the Final Rule. Providers, including small entities, could also benefit from the alternative on which the Bureau is seeking comment, to adjust the Final Rule's remedy provisions so that anytime a remittance transfer is resent to resolve an error, the exchange rate would remain the rate stated in the original disclosures. This alternative would eliminate any cost of additional disclosures related to the resend. Unlike the Final Rule, however, the alternative would not permit a provider to charge the sender again for third party fees incurred when the transfer was sent the first time. Furthermore, the alternative could expose providers to additional exchange rate risk. When funds are resent, a provider might either gain or lose money related to the change in market exchange rates between the time of the original transfer and the time of the resend. The Bureau expects that the

[26] A similar analysis regarding benefits would likely apply if the Bureau expanded the proposed exception to apply in instances in which a failure to make funds available to the designated recipient by the disclosed date of availability resulted from a mistake by a sender other than providing an incorrect account number. Any optional costs might depend on the nature of any such extension.

[27] The Bureau expects that remittance transfer providers will generally experience low error rates. Prior to the February Final Rule, the Credit Union National Association reported a rate of less than 1% for international wire ''exceptions.'' The proposed changes would address only resends that occur under certain circumstances for certain types of errors. Specifically, the proposed change in the comment would apply in instances in which the error is a failure to make funds available to a designated recipient by the date of availability and such an error is due to incorrect or insufficient information provider by a sender.

saved disclosure costs, as well as the costs of third party fees or related exchange rate risk, would be very small because the covered circumstances would arise infrequently.

Either the proposed changes regarding certain instances in which remittance transfer providers resend transactions to correct errors, or the alternative on which the Bureau seeks comment, could impose a cost on providers to revise their procedures. Providers might also change their systems to generate the proposed streamlined disclosures, which could include the date of transfer, an element that is required on disclosures only for some remittance transfers. *See* §§ 1005.30(b)(2)(vii) and 1005.36(d). However, the Bureau expects these costs to be modest, because modifications could be made based on an existing disclosure form. Also, given the small percentage of transactions to which the provisions would apply, the Bureau expects that many small providers might implement the relevant provisions in the Final Rule or the proposed modifications manually, rather than through software-based automations. Finally, the Bureau expects that many small providers (or their software vendors) would incorporate such modifications into the modifications they would carry out to comply with the Final Rule.

E. Effective Date

The proposal would temporarily delay the February 7, 2013 effective date of the Final Rule and extend it to 90 days after this proposal is finalized. This change would generally benefit small remittance transfer providers, by delaying the start of any ongoing compliance costs. The additional time might also enable providers (and their vendors) to build solutions that cost less than those that might otherwise have been possible.

F. Certification

Accordingly, the undersigned hereby certifies that if promulgated, this rule would not have a significant economic impact on a substantial number of small entities. The Bureau requests comment on the analysis above and requests any relevant data.

VII. Paperwork Reduction Act

The Bureau's collection of information requirements contained in this proposal, and identified as such, will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) on or before publication of this proposal in the **Federal Register**. Under the PRA, the Bureau may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid OMB control number. The proposed collections of information that are subject to the PRA in this proposal amend portions of 12 CFR Part 1005 (''Regulation E''). Regulation E currently contains collections of information approved by OMB. The Bureau's OMB control number for Regulation E is 3170–0014.

A. Overview

The title of these information collections is Electronic Fund Transfer Act (Regulation E) 12 CFR 1005. The frequency of collection is on occasion. As described below, the proposed rule would amend portions of the collections of information currently in Regulation E. Some portions of these information collections are required to provide benefits for consumers and are mandatory. However, some portions are voluntary because certain information collections under this proposal would simply give remittance transfer providers optional methods of compliance. Because the Bureau does not collect any information under the proposed rule, no issue of confidentiality arises. The likely respondents are remittance transfer providers, including small businesses. Respondents are required to retain records for 24 months, but this proposed regulation does not specify the types of records that must be maintained.

Under the proposed rule, the Bureau generally would account for the paperwork burden associated with Regulation E for the following respondents pursuant to its administrative enforcement authority: insured depository institutions and insured credit unions with more than $10 billion in total assets, and their depository institution and credit union affiliates (together, ''the Bureau depository respondents''), and certain non-depository remittance transfer providers, such as certain state-licensed money transmitters (''the Bureau non-depository respondents'').

Using the Bureau's burden estimation methodology, the Bureau estimates that the total one-time burden for the estimated 5,753 respondents potentially affected by the proposal would be approximately 420,000 hours.[28] The Bureau estimates that the ongoing burden to comply with Regulation E would be reduced by approximately 268,000 hours per year by the proposal. The aggregate estimates of total burdens presented in this analysis are based on estimated costs that are averages across respondents. The Bureau expects that the amount of time required to implement the proposed changes for a given remittance transfer provider may vary based on the size, complexity, and practices of the respondent.

For the 153 Bureau depository respondents, the Bureau estimates for the purpose of this PRA analysis that the proposal would increase one-time burden by approximately 11,000 hours and reduce ongoing burden by approximately 7,300 hours per year. For the estimated 300 Bureau non-depository respondents, the Bureau estimates that the proposal would increase one-time burden by 21,900 hours and reduce ongoing burden by 6,300 hours per year.[29] The Bureau and the Federal Trade Commission (FTC) generally both have enforcement authority over non-depository institutions under Regulation E, including state-licensed money transmitters. The Bureau has allocated to itself half of its estimated burden to

[28] The decrease in respondents relative to the PRA analysis for the August Final Rule reflects a change in the number of insured depository institutions and credit unions supervised by the Bureau, a focus on the Bureau's estimate of the number of insured depository institutions and credit unions that would qualify as remittance transfer providers, and a revision by the Bureau of the estimated number of state-licensed money transmitters that offer remittance services. The revised estimate of the number of state-licensed money transmitters that offer remittance services is based on subsequent analysis of publicly available state registration lists and other information about the business practices of licensed entities. The decrease in burden relative to what was previously reported for the Final Rule from this revision is not included in the change in burden reported here. However, the revised entity counts are used for the purpose of calculating other changes in burden that would arise from the proposal.

[29] The Bureau's estimate of non-depository respondents is based on an estimate of the number of state-licensed money transmitters that are remittance transfer providers. The Bureau notes that there may be other entities that are not insured depository institutions or credit unions and that serve as providers, such as broker-dealers or money transmission companies that are not state-licensed. However, the Bureau does not have an estimate of the number of any such entities. Furthermore, the Bureau notes that while its analysis in the February Final Rule attributed burden to the agents of state-licensed money transmitters, in this case, the Bureau expects that the changes in burden discussed in this PRA analysis would generally be borne only by money transmitters themselves, not their agents. In particular, the Bureau believes that money transmitters will generally gather and prepare recipient institution fee and foreign tax information centrally, rather than requiring their agents to do so. Similarly, the Bureau expects that money transmitters will generally investigate and respond to errors centrally, rather than asking their agents to take responsibility for such functions. Comment 30(f)–1 states that a person is not deemed to be acting as a remittance transfer provider when it performs activities as an agent on behalf of a remittance transfer provider.

Bureau non-depository respondents, which is based on an estimate of the number of state-licensed money transmitters that are remittance transfer providers. The FTC is responsible for estimating and reporting to OMB its total paperwork burden for the institutions for which it has administrative enforcement authority. It may, but is not required to, use the Bureau's burden estimation methodology.

B. Analysis of Potential Burden

1. Recipient Institution Fees and Foreign Taxes

As described in parts V and VI above, to take advantage of the new flexibility that would be provided by the proposal with regard to the disclosure of recipient institution fees and foreign taxes, remittance transfer providers might choose to bear some cost of modifying their systems to calculate disclosures using the new methods permitted by the proposal, or to describe certain disclosures using the term ''Estimated'' or a substantially similar term. Though the proposal would not require such modification, for purposes of this analysis, the Bureau assumes that all remittance transfer providers would decide to take advantage of the new flexibility permitted due to the related benefits. The Bureau believes that in many instances providers would have already modified their systems to use the term ''Estimated'' or a substantially similar term in other cases, in order to comply with the Final Rule. The Bureau also expects that many depository institutions and credit unions will rely on correspondent institutions or other service providers to provide recipient institution fee and foreign tax information, as well as standard disclosure forms; as a result, any development cost associated with the proposal would be spread across multiple institutions. Furthermore, the Bureau expects that some providers may not have finished any systems modifications necessary to comply with the Final Rule, and thus may be able to incorporate any changes into previously accounted-for work. In the interest of providing a conservative estimate, however, the Bureau assumes that all providers would need to modify their systems to calculate disclosures and to add the term ''Estimated'' or a substantially similar term to a pre-payment disclosure form and a receipt. The Bureau estimates that making revisions to systems to calculate disclosures would take 40 hours per provider. Because the forms to be modified are existing forms, the Bureau estimates that adding the term ''Estimated'' or a substantially similar term would require eight hours per form per provider.

On the other hand, the proposal would give remittance transfer providers options that may reduce the ongoing cost of obtaining and updating information on taxes and fees. By taking advantage of the new flexibility permitted by the proposal, the Bureau estimates that insured depository institutions and credit unions would save, on average, 48 hours per year and non-depository institutions would save, on average, 21 hours per year.

The Bureau is particularly seeking comment on whether or not to adopt an alternative to the term ''Estimated,'' or to require no disclosure, in instances in which foreign subnational taxes were not disclosed. The relative cost of any such alternative would depend on the form of the requirement; if no disclosure were required, the above calculated burden could be less, but if some alternative form of disclosure were required for providers that chose to take advantage of the new flexibility that the proposal would permit, the cost might be higher.

2. Incorrect or Insufficient Information

As described in parts V and VI above, the Bureau expects that remittance transfer providers that send money to accounts, in order to benefit from the proposed changes to the definition of the term error, may choose to provide senders with notice that if they provide incorrect account numbers, they could lose the transfer amount, and providers may also choose to maintain sufficient records to satisfy, wherever possible, the conditions enumerated in proposed § 1005.33(h) (though no such recordkeeping is required). These enumerated conditions regard being able to demonstrate facts regarding senders' responsibility for any account number mistake; the above-referenced notice; the results of an incorrect account number; and the provider's effort to recover funds.

Because this will likely involve modifications to existing communications, the Bureau estimates that providing senders with the notice described above would require a one-time burden of eight hours per provider and would not generate any ongoing burden. With regard to demonstrating facts related to the conditions enumerated in proposed § 1005.33(h), the Bureau believes that any related record retention would be a usual and customary practice by providers under the Final Rule, and that therefore there would be no additional burden associated with these aspects of the proposal.[30]

In certain circumstances when a remittance transfer provider resends a remittance transfer to correct an error caused by incorrect or insufficient information provided by a sender, the proposal would require that the provider give the sender a single simplified set of disclosures rather than the pre-payment disclosures and receipt generally required by the Final Rule. In some cases, the proposal would permit providers to rely solely on information that is already required to be included on pre-payment disclosures and receipts; under other circumstances, the proposal would require the simplified disclosures to include one additional piece of information that is not required on existing disclosures: The date that the provider will make the remittance transfer. Though the Bureau expects that some providers may avoid these circumstances altogether or incorporate modifications into those they would carry out to comply with the Final Rule, in the interest of providing a conservative estimate, the Bureau estimates that the modified disclosure requirement would require a one-time change to an existing form that would take each provider eight hours to make.

The Bureau also estimates that to reflect the proposed changes regarding certain errors, remittance transfer providers would spend, on average, one hour, to update written policies and procedures designed to ensure compliance with respect to the error resolution requirements applicable to providers, pursuant to § 1005.33(g).

The Bureau expects that the proposed requirement for a simplified set of disclosures would also reduce providers' ongoing burden, by eliminating the need to provide both a pre-payment disclosure and a receipt under covered circumstances. However, because the Bureau expects that the covered circumstances would arise very infrequently, the Bureau expects that this burden reduction would be minimal.

Alternatively, the Bureau seeks comment on whether to change the error resolution procedures such that, among other things, no additional disclosures would be required when remittance transfers providers resend transfers in order to correct errors. Under that alternative scenario, the Bureau expects that a similar analysis would apply. Providers would need to make small

[30] The Bureau seeks comment on whether the proposed provisions regarding account number mistakes should be expanded to apply to other sender mistakes. Any associated PRA burden might depend on the nature of any such extension.

systems changes to eliminate required disclosures, as well as update their error resolution procedures; the burden on providers would be reduced minimally, due to the need to send fewer disclosures in a very small number of circumstances.

C. Comments Requested

Comments on this analysis must be received by January 30, 2013. With regard to this PRA analysis, comments are specifically requested concerning:

(i) Whether the proposed collections of information are necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility;

(ii) The accuracy of the estimated burden associated with the proposed collections of information;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of complying with the proposed collections of information, including the application of automated collection techniques or other forms of information technology.

All comments will become a matter of public record.

Comments on the collection of information requirements should be sent to the Office of Management and Budget (OMB), Attention: Desk Officer for the Consumer Financial Protection Bureau, Office of Information and Regulatory Affairs, Washington, DC 20503, or by the internet to *oira_submission@omb.eop.gov,* with copies to the Bureau at the Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, or by the internet to *CFPB_Public_PRA@cfpb.gov.*

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold arrows, and language that would be deleted is shown inside bold brackets.

List of Subjects in 12 CFR Part 1005

Banking, Banks, Consumer protection, Credit unions, Electronic fund transfers, National banks, Remittance transfers, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons stated in the preamble, the Bureau proposes to amend 12 CFR part 1005, as added February 7, 2012 (77 FR 6285), and amended August 20, 2012 (77 FR 5028) as set forth below:

PART 1005—ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 1005 continues to read as follows:

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1693b. Subpart B is also issued under 12 U.S.C. 5601.

Subpart B—Requirements for Remittance Transfers

2. Amend § 1005.31 to revise paragraphs (b)(1)(vi) and (d) to read as follows:

§ 1005.31 Disclosures.

* * * * *

(b) *Disclosure requirements.* * * *

(1) * * *

(vi) ►Except as set forth in this paragraph, any◄**[**Any**]** fees and taxes imposed on the remittance transfer by a person other than the provider, in the currency in which the funds will be received by the designated recipient, using the terms ''Other Fees'' for fees and ''Other Taxes'' for taxes, or substantially similar terms. ►With respect to tax disclosures, only taxes imposed on the remittance transfer by a foreign country's central government need be disclosed. ◄The exchange rate used to calculate these fees and taxes is the exchange rate in paragraph (b)(1)(iv) of this section, including an estimated exchange rate to the extent permitted by § 1005.32, prior to any rounding of the exchange rate; and

* * * * *

(d) *Estimates.* Estimated disclosures may be provided to the extent permitted by § 1005.32. Estimated disclosures must be described using the term ''Estimated'' or a substantially similar term in close proximity to the estimated term or terms. ►The term ''Estimated'' also must be used if a provider is not disclosing regional, provincial, state, or other local foreign taxes, as permitted by paragraph (b)(1)(vi) of this section.◄

* * * * *

3. Amend § 1005.32 to add paragraphs (b)(3) and (b)(4) to read as follows:

§ 1005.32 Estimates.

* * * * *

(b) *Permanent Exceptions.* * * *

►(3) *Permanent exception where variables affect taxes imposed by a person other than the provider.* For purposes of determining the taxes to be disclosed under § 1005.31(b)(1)(vi), if a remittance transfer provider does not have specific knowledge regarding variables that affect the amount of taxes imposed by a person other than the provider, the provider may disclose the highest possible tax that could be imposed on the remittance transfer with respect to any unknown variable.

(4) *Permanent exception where variables affect recipient institution fees.* (i) For purposes of determining the fees to be disclosed under § 1005.31(b)(1)(vi), if a remittance transfer provider does not have specific knowledge regarding variables that affect the amount of fees imposed by a designated recipient's institution for receiving a transfer in an account, the provider may disclose the highest possible recipient institution fees that could be imposed on the remittance transfer with respect to any unknown variable, as determined based on either fee schedules made available by the recipient institution or information ascertained from prior transfers to the same recipient institution.

(ii) If the provider cannot obtain such fee schedules or does not have such information, a provider may rely on other reasonable sources of information, if the provider discloses the highest fees identified through the relied-upon source.◄

* * * * *

4. Amend § 1005.33 to revise paragraphs (a)(2)(iv), (c)(2) introductory text, (c)(2)(ii)(A)(*2*) and to add paragraphs (a)(1)(iv)(D), (c)(3) and (h) to read as follows:

§ 1005.33 Procedures for resolving errors.

* * * * *

(a) *Definition of Error.* (1) *Types of transfers or inquiries covered.* * * *

(iv) * * *

►(D) The sender having given the remittance transfer provider an incorrect account number, provided that the remittance transfer provider meets the conditions set forth in paragraph (h) of this section; or ◄

* * * * *

(2) *Types of transfers or inquiries not covered.* * * *

(iv) A change in the amount or type of currency received by the designated recipient from the amount or type of currency stated in the disclosure provided to the sender under § 1005.31(b)(2) or (3) ►because◄**[**if**]** the remittance transfer provider ►did not disclose foreign taxes other than those imposed by a country's central government, or◄ relied on information provided by the sender as permitted under § 1005.31 in making such disclosure.

* * * * *

(c) * * *

(2) *Remedies.* **[**If**]** ►Except as provided in paragraph (c)(3) of this section, if◄ * * *

* * * * *

(ii) * * *

(A) * * *

(*2*) Making available to the designated recipient the amount appropriate to resolve the error. Such amount must be made available to the designated recipient without additional cost to the sender or to the designated recipient unless the sender provided incorrect or insufficient information to the remittance transfer provider in connection with the remittance transfer, in which case, third party fees may be imposed for resending the [remittance transfer] ►funds◄ with the corrected or additional information; and

* * * * *

►(3) *Disclosures where refund not previously chosen.* If an error under paragraph (a)(1)(iv) of this section occurred because the sender provided incorrect or insufficient information, and if the sender has not previously designated a refund remedy pursuant to paragraph (c)(2)(ii)(A)(*1*) of this section, then:

(i) If the remittance transfer provider does not make direct contact with the sender when providing the report required by paragraph (c)(1) of this section, the provider shall provide, orally or in writing, as applicable, the following disclosures:

(A) The disclosures required by § 1005.31(b)(2)(i) through (iii) for remittance transfers and the date the remittance transfer provider will complete the resend, using the term ''Transfer Date'' or a substantially similar term. These disclosures must be accurate when the resend is made except that the disclosures may contain estimates to the extent permitted by § 1005.32(a) or (b) for remittance transfers; and

(B) If the transfer is scheduled three or more business days before the date of transfer, a statement about the rights of the sender regarding cancellation reflecting the requirements of § 1005.36(c), the requirements of which shall apply to the resend; or

(ii) If the remittance transfer provider makes direct contact with the sender at the same time or after providing the report required by paragraph (c)(1) of this section, the provider shall provide, orally or in writing, as applicable, the disclosures required by § 1005.31(b)(2)(i) through (iii) for remittance transfers. These disclosures must be accurate when the resend is made except that the disclosures may contain estimates to the extent permitted by § 1005.32(a), (b)(1), (b)(3) or (b)(4) for remittance transfers.◄

* * * * *

►(h) *Incorrect account number provided by the sender.* No error has occurred under paragraph (a)(1)(iv) of this section for failure to make funds available to a designated recipient by the date of availability stated in the disclosure provided pursuant to § 1005.31(b)(2) or (3) if the remittance transfer provider can demonstrate that:

(1) The sender provided an incorrect account number to the remittance transfer provider in connection with the remittance transfer;

(2) The sender had notice that, in the event the sender provided an incorrect account number, that the sender could lose the transfer amount;

(3) The incorrect account number resulted in the deposit of the remittance transfer into a customer's account at the recipient institution other than the designated recipient's account; and

(4) The provider promptly used reasonable efforts to recover the amount that was to be received by the designated recipient.◄

* * * * *

5. Amend § 1005.36 to revise paragraph (b)(3) to read as follows:

§ 1005.36 Transfers scheduled before the date of transfer.

* * * * *

(b) * * *

(3) Disclosures provided pursuant to paragraph (a)(1)(ii) or (a)(2)(ii) of this section must be accurate as of when the remittance transfer to which it pertains is made, except to the extent estimates are permitted by § 1005.32(a)[or] ►,◄ (b)(1)►, (b)(3) or (b)(4)◄.

6. In Supplement I to part 1005:

a. Under *Section 1005.31 Disclosures,*

i. Under subheading *31(b)(1) Pre-Payment Disclosures,* revise paragraph 1.ii and add paragraphs 1.iii through v.

ii. Under subheading *31(b)(1)(vi) Fees and Taxes imposed by a Person Other than the Provider,* revise paragraph 2 and add paragraphs 3 and 4.

iii. Under subheading 31(d) *Estimates,* revise paragraph 1.

b. Under *Section 1005.32 Estimates,*

i. Revise comment 32–1.

ii. Under subheading *32(b) Permanent Exceptions,* add new subheading *32(b)(3) Permanent Exception Where Variables Affect Foreign Taxes* and add new comment 32(b)(3)–1.

iii. Under subheading *32(b) Permanent Exceptions,* add new subheading *32(b)(4) Permanent Exception Where Variables Affect Recipient Institution Fees* and add new comments 32(b)(4)–1 and 32 (b)(4)–2.

iv. Under subheading *32(d) Bases for Estimates for Transfers Scheduled Before the Date of Transfer,* revise the second sentence of comment 32(d)–1 and add a new sentence immediately following it.

c. Under Section 1005.33, *Procedures for Resolving Errors,*

i. Under subheading *33(a) Definition of Error,* revise the second sentence of comment 33(a)–3.ii and comment 33(a)–4, redesignate comments 33(a)–7 and 33(a)–8 as comments 33(a)–8 and 33(a)–9 respectively, revise newly redesignated comment 33(a)–9, and add new comment 33(a)–7.

ii. Under subheading *33(c) Time Limits and Extent of Investigation,* revise comment 33(c)–2 and add new comment 33(c)–11.

iii. Add new subheading *33(h) Incorrect Account Number Supplied* and add paragraphs 1 and 2 under the subheading.

d. Under Section 1005.36, under subheading *36(b) Accuracy,* revise the second sentence of comment 36(b)–3.

The additions and revisions read as follows:

Supplement I to Part 1005—Official Interpretations

* * * * *

Section 1005.31—Disclosures

* * * * *

31(b) Disclosure Requirements

* * * * *

31(b)(1) Pre-Payment Disclosures.

1. *Fees and taxes.* * * *

ii. The fees and taxes required to be disclosed by § 1005.31(b)(1)(ii) include all fees and taxes imposed on the remittance transfer by the provider. For example, a provider must disclose a service fee and any State taxes imposed on the remittance transfer. In contrast, the fees and taxes required to be disclosed by § 1005.31(b)(1)(vi) include fees and taxes imposed on the remittance transfer by a person other than the provider.

►iii.◄ Fees and taxes imposed on the remittance transfer include only those fees and taxes that are charged to the sender or designated recipient and are specifically related to the remittance transfer. For example, a provider must disclose fees imposed on a remittance transfer by the [receiving] ►recipient's◄ institution or agent at pick-up for receiving the transfer, fees imposed on a remittance transfer by intermediary institutions in connection with an international wire transfer, and taxes imposed on a remittance transfer by a foreign ►country's central◄ government. However, a provider need not disclose, for example, overdraft fees that are imposed by a recipient's bank or funds that are garnished from the proceeds of a remittance transfer to satisfy an unrelated debt, because these charges are not specifically related to the remittance transfer. ►Account fees are also not specifically related to a remittance transfer if such fees are merely assessed based on general account activity and not for receiving transfers. Where an incoming remittance transfer results in a balance increase that triggers a monthly maintenance

fee, that fee is not specifically related to a remittance transfer.◄ Similarly, fees that banks charge one another for handling a remittance transfer or other fees that do not affect the total amount of the transaction or the amount that will be received by the designated recipient are not charged to the sender or designated recipient. For example, an interchange fee that is charged to a provider when a sender uses a credit or debit card to pay for a remittance transfer need not be disclosed.

►iv. A fee that specifically relates to a remittance transfer may be structured on a flat per-transaction basis, or may be conditioned on other factors (such as account status or the quantity of remittance transfers received) in addition to the remittance transfer itself. For example, where an institution charges an incoming wire fee on most customers' accounts, but not on preferred accounts, such a fee is nonetheless specifically related to a remittance transfer. Similarly, if the institution assesses a fee for every transfer beyond the fifth received each month, such a fee would be specifically related to the remittance transfer regardless of how many remittance transfers preceded it that month. In either case, the fee is subject to disclosure under § 1005.31(b)(1)(vi); *see* comment 31(b)(1)(vi)–4 regarding how to make such disclosures.

v.◄ The terms used to describe the fees and taxes imposed on the remittance transfer by the provider in § 1005.31(b)(1)(ii) and imposed on the remittance transfer by a person other than the provider in § 1005.31(b)(1)(vi) must differentiate between such fees and taxes. For example, the terms used to describe fees disclosed under § 1005.31(b)(1)(ii) and (vi) may not both be described solely as ''Fees.''

* * * * *

31(b)(1)(vi) Fees and Taxes Imposed by a Person Other than the Provider.

* * * * *

2. *Determining taxes.* The amount of taxes imposed by a person other than the provider may depend on the tax status of the sender or recipient, the type of accounts or financial institutions involved in the transfer, or other variables. For example, the amount of tax may depend on whether the receiver is a resident of the country in which the funds are received or the type of account to which the funds are delivered. If a provider does not have specific knowledge regarding variables that affect the amount of taxes imposed by a person other than the provider for purposes of determining these taxes, the provider may rely on a sender's representations regarding these variables. ⟦If a sender does not know the information relating to the variables that affect the amount of fees or taxes imposed by a person other than the provider, the provider may disclose the highest possible tax that could be imposed for the remittance transfer with respect to any unknown variable.⟧

►3. *Taxes imposed by a country's central government.* A provider need only disclose foreign taxes assessed on the transfer by a country's central government. Regional, provincial, state, or other local foreign taxes need not be disclosed, although a provider may choose to disclose them.

4. *Determining recipient institution fees.* In some cases, where a remittance transfer is sent to a designated recipient's account at a financial institution, the institution imposes a fee on the remittance transfer pursuant to an agreement with the recipient. The amount of the fee imposed by the institution may vary based on whether the designated recipient holds a preferred status account with a financial institution, the quantity of transfers received, or other variables. If a remittance transfer provider does not have specific knowledge regarding variables that affect the amount of fees imposed by the recipient's institution for receiving a transfer in an account, the provider may rely on a sender's representations regarding these variables. ◄

* * * * *

31(d) Estimates

1. *Terms.* A remittance transfer provider may provide estimates of the amounts required by § 1005.31(b), to the extent permitted by § 1005.32. ►A provider also may choose not to disclose regional, provincial, state, or other local foreign taxes under § 1005.31(b)(1)(vi). This may also result in disclosures that do not match the amount actually received by the designated recipient. In both cases, the relevant disclosures◄ ⟦An estimate⟧ must be described using the term ''Estimated'' or a substantially similar term in close proximity to the term or terms described. For example, a remittance transfer provider could describe an estimated disclosure as ''Estimated Transfer Amount,'' ''Other Estimated Fees and Taxes,'' or ''Total to Recipient (Est.).'' ► However, if the provider is relying on the sender's representations or has specific knowledge regarding variables that affect the amount of fees disclosed under § 1005.31(b)(1)(vi), and is not otherwise providing estimated disclosures, § 1005.31(d) does not apply. Section 1005.31(d) also does not apply to foreign tax disclosures if the provider discloses all applicable taxes (including applicable regional, provincial, state, or other local foreign taxes), if the provider is relying on the sender's representations or has specific knowledge regarding variables that affect the amount of foreign taxes imposed by a country's central government, and if the provider is not otherwise providing estimated disclosures.◄

* * * * *

Section 1005.32—Estimates

1. *Disclosures where estimates can be used.* Section 1005.32(a)[and]►,◄ (b)(1)►, (b)(3) and (b)(4)◄ permit estimates to be used in certain circumstances for disclosures described in §§ 1005.31(b)(1) through (b)(3) and 1005.36(a)(1) and (2). To the extent permitted in § 1005.32(a)[and]►,◄ (b)(1)►, (b)(3) and (b)(4)◄, * * *

* * * * *

32(b) Permanent Exceptions

* * * * *

►*32(b)(3) Permanent Exception Where Variables Affect Taxes Imposed by a Person Other Than the Provider*

1. *Application of exception.* The amount of taxes imposed by a person other than the provider may depend on certain variables. *See* comment 32(b)(1)(vi)–2. Under § 1005.32(b)(3), a provider may disclose the highest possible tax that could be imposed on the remittance transfer with respect to any unknown variable. For example, if a tax may vary based upon whether a recipient's institution is grandfathered under existing law, or whether the recipient has reached a transaction threshold above which taxes are assessed, the provider may simply assume that a tax applies without having to ask the sender first. In such a case, the provider should disclose the highest possible tax that could be imposed. If the provider expects that variations may result from differing interpretations of law or regulation by the paying agent or recipient institution, the provider may assume that the highest possible tax that could be imposed applies.

32(b)(4) Permanent Exception Where Variables Affect Recipient Institution Fees

1. *Application of exception.* The amount of fees imposed by a designated recipient's institution for receiving a transfer in an account a person other than the provider may depend on certain variables. *See* comment 32(b)(1)(vi)–4. Under § 1005.32(b)(4)(i), a provider may disclose the highest possible fees that could be imposed on the remittance transfer with respect to any unknown variable based on, among other things, fee schedules made available by the recipient institution. For example, if a provider relies on an institution's fee schedules, and the institution offers three accounts with different incoming wire fees, the provider should take the highest fee and use that as the basis for disclosure.

2. *Reasonable sources of information.* Reasonable sources of information include: fee schedules published by competitor institutions; surveys of financial institution fees; or information provided by the recipient institution's regulator or central bank.◄

* * * * *

32(d) Bases for Estimates for Transfers Scheduled Before the Date of Transfer

1. *In general.* * * *. If, for the same-day remittance transfer, the provider could utilize either of the [other two] exceptions permitting the provision of estimates in § 1005.32(a) or (b)(1), the provider may provide estimates based on a methodology permitted under § 1005.32(c).► The provider could also provide estimates in accordance with § 1005.32(b)(3) or (b)(4). ◄ * * *

Section 1005.33—Procedures for Resolving Errors

33(a) Definition of Error

* * * * *

3. *Incorrect amount of currency received—examples.* * * *

* * * * *

ii. * * *. The remittance transfer provider provides the sender a receipt stating an amount of currency that will be received by

the designated recipient, which does not reflect additional foreign taxes that will be imposed [in]►by◄ Colombia►'s central government◄ on the transfer. * * *

* * * * *

4. *Incorrect amount of currency received–extraordinary circumstances.* Under ►§ 1005.33(a)(1)(iii)(B), a remittance transfer provider's failure to make available to a designated recipient the amount of currency stated in the disclosure provided pursuant to § 1005.31(b)(2) or (3) for the remittance transfer◄ [§ 1005.33(a)(1)(iv)(B), a remittance transfer provider's failure to deliver or transmit a remittance transfer by the disclosed date of availability] is not an error if such failure was caused by extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated. Examples of extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated under ►§ 1005.33(a)(1)(iii)(B)◄ [§ 1005.33(a)(1)(iv)(B)] include circumstances such as war or civil unrest, natural disaster, garnishment or attachment of some of the funds after the transfer is sent, and government actions or restrictions that could not have been reasonably anticipated by the remittance transfer provider, such as the imposition of foreign currency controls or foreign taxes unknown at the time the receipt or combined disclosure is provided under § 1005.31(b)(2) or (3).

* * * * *

7. ►*Sender Account Number Error.* The exception in § 1005.33(a)(1)(iv)(D) applies where a sender gives the remittance transfer provider an incorrect account number that results in the deposit of the remittance transfer into a customer's account at the recipient institution other than the designated recipient's account. This exception does not apply where the failure to make funds available is the result of a mistake by a provider or a third party or due to incorrect or insufficient information other than an incorrect account number.◄

►8.◄ [7]*Recipient-requested changes.*

* * *

►9.◄ [8]*Change from disclosure made in reliance on sender information* ►*or because only foreign taxes imposed by a country's central government disclosed*◄. Under ►§ 1005.31(b)(1)(vi), providers need not disclose regional, provincial, state, or other local foreign taxes. Further, under◄ the commentary accompanying § 1005.31, the remittance transfer provider may rely on the sender's representations in making certain disclosures. *See, e.g.* comments 31(b)(1)(iv)–1 [,] ►and◄ 31(b)(1)(vi)–1 [, and 31(b)(1)(vi)–2] ► through 31(b)(1)(vi)–4. Any discrepancy between the amount disclosed and the actual amount received resulting from the provider's reliance upon these provisions does not constitute an error under § 1005.33(a)(2)(iv).◄ For example, suppose a sender requests U.S. dollars to be deposited into an account of the designated recipient and represents that the account is U.S. dollar-denominated. If the designated recipient's account is actually denominated in local currency and the recipient's account-holding institution must convert the remittance transfer into local currency in order to deposit the funds and complete the transfer, the change in currency does not constitute an error [pursuant to] ►as set forth in◄ § 1005.33(a)(2)(iv). Similarly, if the remittance transfer provider relies on the sender's representations regarding variables that affect the amount of ►recipient institution fees or◄ taxes imposed by a person other than the provider for purposes of determining ►fees or◄ [these] taxes► required to be disclosed under § 1005.31(b)(1)(vi), or does not disclose regional, provincial, state, or other local foreign taxes, as permitted by § 1005.31(b)(1)(vi), ◄the change in the amount of currency the designated recipient actually receives due to the ►recipient institution fees or foreign◄ taxes actually imposed does not constitute an error, [pursuant to] ►as set forth in◄ § 1005.33(a)(2)(iv).

* * * * *

33(c) Time Limits and Extent of Investigation

* * * * *

2. *Incorrect or insufficient information provided for transfer.* Under § 1005.33(c)(2)(ii)(A)(*2*), if a remittance transfer provider's failure to make funds in connection with a remittance transfer available to a designated recipient by the disclosed date of availability occurred because the sender provided incorrect or insufficient information in connection with the transfer, such as by erroneously identifying the designated recipient►'s address◄ [or the recipient's account number] or by providing insufficient information to enable the entity distributing the funds to identify the correct designated recipient, the sender may choose to have the provider make funds available to the designated recipient and third party fees may be imposed for resending the remittance transfer with the corrected or additional information. The remittance transfer provider may not require the sender to provide the principal transfer amount again. ►When resending funds, the entire transfer amount is to be sent again except that § 1005.33(c)(2)(ii)(A)(*2*) permits a provider to deduct those third party fees that were actually incurred as part of the first unsuccessful remittance transfer attempt. While a request to resend is not a request for a remittance transfer, § 1005.33(c)(3) requires providers to provide certain disclosures◄. [Third parties fees that were not incurred during the first unsuccessful remittance transfer attempt may not be imposed again for resending the remittance transfer. A request to resend is a request for a remittance transfer. Therefore, a provider must provide the disclosures required by § 1005.31 for a resend of a remittance transfer, and] ►To the extent currency must be exchanged when resending funds, ◄ the provider must use the exchange rate it is using for such transfers on the date of the resend [if funds were not already exchanged in the first unsuccessful remittance transfer attempt]. A sender providing incorrect or insufficient information does not include a provider's miscommunication of information necessary for the designated recipient to pick-up the transfer ►nor does it include a sender providing an incorrect account number when the provider has satisfied the requirements of § 1005.33(h). *See* § 1005.33(a)(1)(iv)(D)◄. For example, a sender is not considered to have provided incorrect or insufficient information if the provider discloses the incorrect location where the transfer may be picked up or gives the wrong confirmation number/code for the transfer. The following examples illustrate these concepts.

* * * * *

►11. *Procedure for resending a remittance transfer.* The disclosures in § 1005.33(c)(3) need not be provided either if the sender has elected a refund remedy or if the remittance transfer provider's default remedy is a refund and the sender has not selected a remedy prior to when the provider is providing the § 1005.33(c)(1) report. To the extent that the resend is not properly transmitted, the initial error has not been resolved and the provider's duty to resolve it is not fully satisfied.

i. For purposes of determining the date of transfer for disclosures made in accordance with § 1005.33(c)(3)(i), if the remittance transfer provider is unable to speak to or otherwise make direct contact with the sender, the provider may use the same date on which it would provide a default remedy (*i.e.* one business day after 10 days after the provider has sent the report provided under § 1005.33(c)(1)). *See* comment 33(c)-4.

ii. If the remittance transfer provider makes direct contact with the sender at the same time or after providing the report required by § 1005.33(c)(1), and if the time to cancel a resend disclosed pursuant to § 1005.33(c)(3)(i)(B) has not passed, § 1005.33(c)(2) requires the provider to resend the funds the next business day or as soon as reasonably practicable thereafter if the sender elects a resend remedy. For such a resend, the provider must provide the disclosures required by § 1005.33(c)(3)(ii) to use the exchange rate it is using for such transfers on the date of resend to the extent that currency must be exchanged when resending funds. When providing disclosures pursuant to § 1005.33(c)(3)(ii), the provider need not allow the sender to cancel the resend.◄

* * * * *

►*33(h) Incorrect Account Number Supplied.*

1. *Reasonable efforts.* Section 1005.33(h)(4) requires a remittance transfer provider to use reasonable efforts to recover the amount that was to be received by the designated recipient. Whether a provider has used reasonable efforts does not depend on whether the provider is ultimately successful in recovering the amount that was to be received by the designated recipient. The following are examples of how a provider might use reasonable efforts:

i. The remittance transfer provider promptly calls or otherwise contacts the recipient's institution, either directly or indirectly through any correspondent(s) or other intermediaries or service providers used for the particular transfer, to request that the amount that was to be received by the designated recipient be returned, and if required by law or contract, by requesting

that the recipient institution obtain a debit authorization from the holder of the incorrectly credited accountholder.

ii. The remittance transfer provider promptly uses a messaging service through a funds transfer system to contact the recipient's institution, either directly or indirectly through any correspondent(s) or other intermediaries or service providers used for the particular transfer, to request that the amount that was to be received by the designated recipient be returned, in accordance with the messaging service's rules and protocol, and if required by law or contract, by requesting that the recipient institution obtain a debit authorization from the holder of the incorrectly credited account.

iii. In addition to using the methods outlined above, to the extent that a correspondent institution, other service providers to the recipient institution, or the recipient institution requests documentation or other supporting information, the remittance transfer provider promptly provides such documentation or other supporting information to the extent available.

2. *Promptness of Reasonable Efforts.* Section 1005.33(h)(4) requires that a remittance transfer provider act promptly in using reasonable efforts to recover the amount that was to be received by the designated recipient. While promptness may depend on the circumstances, generally a remittance transfer provider acts promptly when it does not delay in seeking recovery of the mis-deposited funds. For example, if the sender informs the provider of the error before the date of availability disclosed pursuant to § 1005.31(b)(2)(ii), the provider should act to contact the recipient's institution before the date of availability, as doing so may prevent the funds from being mis-deposited.◄

* * * * *

36(b) Accuracy

* * * * *

3. *Receipts.* * * *. However, the remittance transfer provider may continue to disclose estimates to the extent permitted by § 1005.32(a)[or]►,◄ (b)(1)►, (b)(3) or (b)(4)◄. * * *

* * * * *

Dated: December 21, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2012–31170 Filed 12–27–12; 11:15 am]

BILLING CODE 4810–AM–P

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Part III

Department of Commerce

Economic Development Administration

Fiscal Year 2012 Annual Report to Congress on the Trade Adjustment Assistance for Firms Program; Notice

DEPARTMENT OF COMMERCE

Economic Development Administration

Fiscal Year 2012 Annual Report to Congress on the Trade Adjustment Assistance for Firms Program

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice .

Pursuant to 255A of chapter 3 of title II of the Trade Act of 1974, as amended (19 U.S.C. 2341 et seq.), the Economic Development Administration (EDA) publishes the Fiscal Year 2012 Annual Report to Congress on the Trade Adjustment Assistance for Firms program.

BILLING CODE 3510–WH–P

FISCAL YEAR 2012

ANNUAL REPORT TO CONGRESS

TRADE ADJUSTMENT ASSISTANCE FOR FIRMS PROGRAM

ECONOMIC DEVELOPMENT ADMINISTRATION

U.S. DEPARTMENT OF COMMERCE

December 15, 2012

"Following completion of assistance from EDA's Trade Adjustment Assistance for Firms (TAAF) program, firms reported that, on average, sales increased by 26.8 percent, employment increased by 13.2 percent, and productivity increased by 11.9 percent."

Key Findings

In September 2012, the U.S. Government Accountability Office (GAO) reported to Congress that the effect of participation by import-impacted U.S. firms in the Trade Adjustment Assistance for Firms (TAAF) program was an increase in firm sales ranging from 5 to 6 percent on average,'' and that ''the effect of the program on productivity was about a 4 percent increase.'' [1] GAO also noted in the report that manufacturing firms, specifically, associate the TAAF program with increased sales and productivity.

Meanwhile, this report—EDA's Annual Report to Congress on the TAAF program—finds that, two years after completing the program in FY 2010, participating firms experienced an average employment increase of 13.2 percent, an average sales increase of 26.8 percent, and an average productivity increase of 11.9 percent. For the sake of comparing TAAF-assisted firms to non-assisted similar firms, the Department of Labor's Bureau of Labor Statistics (BLS) reported that, in FY 2012, the manufacturing industry as a whole experienced an average employment increase of only 3.5 percent and an average productivity increase of 4.1 percent from FY 2010.[2].

Therefore, both GAO and EDA find that the TAAF program has a significant positive impact in helping import-impacted U.S. firms compete in the global marketplace. Additionally, all firms that completed the TAAF program in FY 2010 were in operation at the end of FY 2012, indicating strong survival rates for TAAF-assisted firms.

Furthermore, on May 11, 2012, the Department of Commerce Office of Inspector General (OIG) presented EDA with a copy of their letter to the House and Senate Committees on Appropriations reporting their findings related to an examination of the TAAC administrative costs.[3] As part of their review, OIG obtained expenditure data from a sample of three TAACs—Western, New England, and New York State—focusing on the use of Federal funds provided by EDA. The OIG reported that it ''did not determine that the level of administrative costs of the three TAACs to be unreasonable.'' Therefore, not only does the TAAF program produce results—it does so at reasonable costs.

Background

This annual report is submitted in accordance with Section 255A of chapter 3 of title II of the Trade Act of 1974, as amended (19 U.S.C. 2341 et seq.) (commonly referred to as the Trade Act). Section 255A of the Trade Act directs the Secretary of Commerce to submit an annual report on the Trade Adjustment Assistance for Firms (TAAF) program to Congress no later than December 15, 2012 and each year thereafter. The TAAF program is authorized by chapters 3 and 5 of title II of the Trade Act.

Administered by the U.S. Department of Commerce's Economic Development Administration (EDA), the goal of the TAAF program is to help economically distressed U.S. businesses develop strategies to compete in the global economy. Through a partnership with a national network of 11 EDA-funded Trade Adjustment Assistance Centers (TAACs), the program provides cost-sharing technical assistance to help eligible businesses create and implement targeted business recovery plans (referred to as ''Adjustment Proposals'' or ''APs'') aimed at boosting global competitiveness, increasing sales and retaining and creating jobs. The TAACs, which are either independent or university-affiliated entities, provide support to import-impacted firms in a public-private collaborative framework. The TAAF program provides a portion of the assistance while participating firms contribute a matching share to create and implement their recovery plans.

EDA's partnership with the TAAC network across the country allows firms to receive customized assistance from highly qualified experts who are knowledgeable about the needs, challenges and opportunities facing the industries in their region. The most common types of assistance provided in FY 2012 were marketing/sales improvement and production/engineering projects, which comprised over half of all projects supported throughout the year.

In January 2011, as authorization of the Trade Adjustment Assistance (TAA) programs at the U.S. Department of Labor (DOL), U.S. Department of Agriculture (USDA) and EDA was about to expire, Congress passed the Omnibus Trade Act of 2010 (Pub. L. 111–344). This Act extended the TAAF program through February 12, 2012, but allowed some provisions—such as eligibility for service firms and expanded time periods for qualifying firm eligibility—provided under the Trade and Globalization Adjustment Assistance Act of 2009 (TGAAA) to expire on February 13, 2011.[4] The TAAF program remained authorized in FY 2011 and continued to operate at FY 2010 spending levels of $15.8 million under a full-year continuing resolution, which prevented interruption of program operations.

On October 21, 2011, the President signed into law the Trade Adjustment Assistance Extension Act of 2011 (Pub. L. 112–40). This Act retroactively extended the provisions of the TAA programs that were enacted as part of the TGAAA.

The expiration of the TGAAA provisions did, however, limit the number of firms entering the program as TAACs were unable to assist service firms or use extended ''look-back periods'' to certify firms. In addition, uncertainty regarding the TAAF program's future caused TAACs to focus on existing clients instead of recruiting new firms.

As part of its overall commitment to performance evaluation and continuous improvement, EDA assesses the performance of the TAAF program both in terms of ''inputs'' (e.g., types of firms assisted, petition, and AP submissions) and ''outputs'' (changes in sales, employment levels, and productivity of client firms).

In terms of inputs, the TAAF program effectively targeted small and medium-sized firms in FY 2012. TAACs provided technical assistance to 341 firms in preparing petitions, 206 firms in preparing APs, and 935 firms in implementing projects within their APs. Meanwhile, EDA certified 79 petitions and approved 102 APs.

EDA successfully met both the 40-day processing deadline (to make a final determination for petitions accepted for filing) and the 60-day processing deadline for approval of APs, as required in the TGAAA. In FY 2012, the average processing time for petitions was 29 business days, and the average processing time for APs was 21 business days.

In order to assess the effectiveness of the TAAF program in terms of outputs, EDA assesses the extent to which client firms increased their sales, employment levels, and productivity following the implementation of TAAF-supported

[1] U.S. Government Accountability Office (GAO), *Trade Adjustment Assistance: Commerce Program Has Helped Manufacturing and Services Firms, but Measures, Data, and Funding Formula Could Improve (GAO–12–930),* September 13, 2012.

[2] BLS does not collect a sales measure comparable to EDA's measure in this report (i.e. average sales per employee).

[3] The information was requested in the House Committee Report that accompanied the FY 2012 Commerce, Justice, Science, and Related Agencies Appropriations bill.

[4] The TGAAA was included as subtitle I (letter ''I'') of title I of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111–5, Stat. 115 at 367).

projects (program completion). To measure these outputs, EDA compares average sales, average employment and average productivity of all firms completing the program in a particular year (the most recent ''base year'') to these same measures for the same firms one and two years following program completion. The base year used for this report is FY 2010, as this allows EDA to compare these measures looking back both one and two years from the date of this report.

Firms that completed the TAAF program in FY 2010 report that, at completion, average sales were $10.1 million, average employment was 53 and average sales per employee (productivity) was $191,328. One year after completing the program (FY 2011), these same firms reported that average sales increased by 11.4 percent, average employment increased by 13.2 percent, and average productivity decreased by 1.6 percent. For the sake of comparison to the universe of U.S. manufacturers, the U.S. Bureau of Labor Statistics (BLS) reports that, in FY 2011, the national manufacturing industry in aggregate experienced an average employment increase of only 1.9 percent.

Two years after completing the program (FY 2012), these same firms reported that average sales increased by 26.8 percent, average employment increased by 13.2 percent, and average productivity increased by 11.9 percent. Meanwhile, BLS reported that the manufacturing industry in FY 2012 experienced an average employment increase of 3.5 percent and average productivity increase of 4.1 percent from FY 2010. Therefore, firms assisted by the TAAF program performed more successfully than the manufacturing industry as a whole. Additionally, all firms that completed the TAAF program in FY 2010 were in operation as of the end of FY 2012, indicating strong survival rates for TAAF-assisted firms. It should be noted that TAAF clients are operating in the same economic environment as other firms, but are also attempting to adjust to import pressures that may not impact other firms as severely, making the success of TAAF-assisted firms even more notable.

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Conclusion

Supplement—TAAF Program Benefits to Manufacturing Firms

Introduction

This report is provided in compliance with Section 255A of chapter 3 of title II of the Trade Act. Section 255A of the Trade Act directs the Secretary of Commerce to provide an annual report on the Trade Adjustment Assistance for Firms (TAAF) program by the 15th of December. Section 255 of the Trade Act states:

IN GENERAL.—Not later than December 15, 2012, and annually thereafter, the Secretary shall prepare a report containing data regarding the trade adjustment assistance for firms program under this chapter for the preceding fiscal year. The data shall include the following:

This report will provide findings and results classified by intermediary organization,[5] state, and national totals,[6] to the extent that the data are available on the following 19 measures:

1. The number of firms that inquired about the program.

2. The number of petitions filed under section 251.

3. The number of petitions certified and denied by the Secretary.

4. The average time for processing petitions after the petitions are filed.

5. The number of petitions filed and firms certified for each Congressional district of the United States.

6. Of the number of petitions filed, the number of firms that entered the program and received benefits.

7. The number of firms that received assistance in preparing their petitions.

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11. Sales, employment, and productivity at each firm participating in the TAAF program at the time of certification.

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16. The types of technical assistance included in the business recovery plans of firms participating in the program.

17. The number of firms leaving the program before completing the project or projects in their business recovery plans and the reason the project was not completed.

18. The total amount expended by all intermediary organizations referred to in

[5] ''Intermediary Organization'' referred to in section 253(b)(1) are the Trade Adjustment Assistance Centers (TAACs).

[6] See chapter 3 of title II of the Trade Act, section 255A (b) *Classification of Data.*

Section 253(b)(1) and by each organization to administer the program.

19. The total amount expended by intermediary organizations to provide technical assistance to firms under the program nationally and in each region served by such an organization.

Program Description

The TAAF program is authorized by chapters 3 and 5 of title II of the Trade Act. The responsibility for administering the TAAF program is delegated to EDA by the Secretary of Commerce. The TAAF program provides technical assistance to manufacturers and service firms affected by import competition in order to help them develop and implement projects to regain global competitiveness, increase profitability and create jobs.

The mission of the TAAF program is to help U.S. firms regain competitiveness in the global economy. Import-impacted U.S. manufacturing, production and service firms can receive matching funds for projects that expand markets, strengthen operations and increase competitiveness through the TAAF program. The program provides assistance to support the development of business recovery plans (commonly referred to as ''Adjustment Proposals or ''APs''), under Section 252 of the Trade Act, and matching funds to implement projects outlined in the APs.

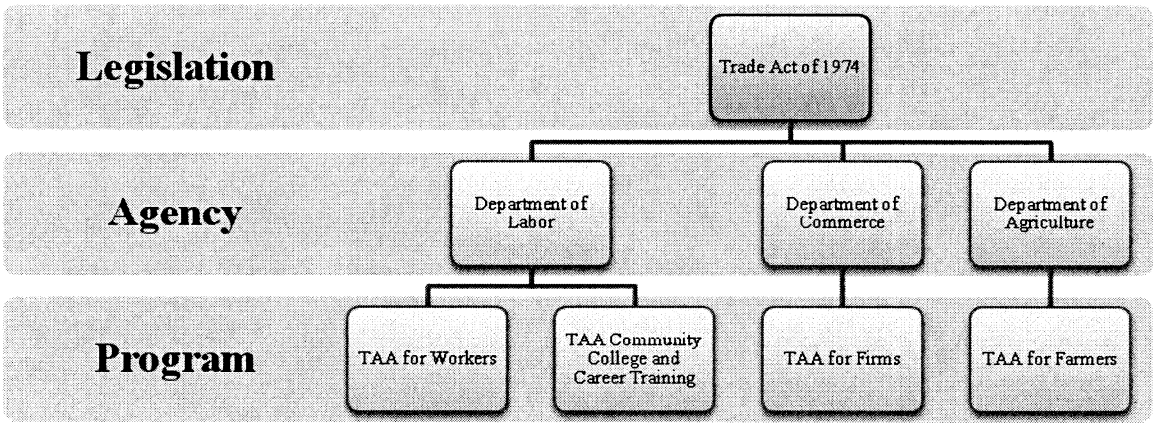
The TAAF program supports a national network of 11 independent non-profit or university-affiliated TAACs to help U.S. manufacturing, production, and service firms in all 50 States, the District of Columbia and the Commonwealth of Puerto Rico. Firms work with the TAACs to apply for certification of eligibility for TAAF assistance, and prepare and implement strategies to guide their economic recovery.

EXHIBIT 1—TAACS AND THEIR RESPECTIVE SERVICE AREAS

TAAC	Service areas
Great Lakes	Indiana, Michigan and Ohio.
Mid-America	Arkansas, Kansas and Missouri.
Mid-Atlantic	Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia and West Virginia.
Midwest	Illinois, Iowa, Minnesota and Wisconsin.
New England	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.
New York State	New York.
Northwest	Alaska, Idaho, Montana, Oregon and Washington.
Rocky Mountain	Colorado, Nebraska, New Mexico, North Dakota, South Dakota, Utah and Wyoming.
Southeastern	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee and the Commonwealth of Puerto Rico.
Southwest	Louisiana, Oklahoma and Texas.
Western	Arizona, California, Hawaii and Nevada.

The TAAF program is one of four distinct programs authorized under the Trade Act. The other TAA programs are TAA for Workers and TAA for Community Colleges, which are both administered by DOL, and TAA for Farmers, which is administered by USDA.

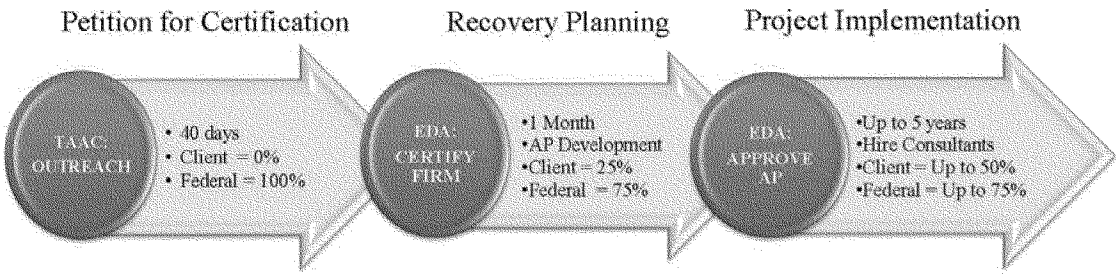
Exhibit 2: TAA Programs



Program Initiative

As noted above, the TAAF program provides technical assistance to help firms develop and implement business recovery plans, or APs. Projects identified in the AP are designed to improve a firm's competitive position. Specifically, under the TAAF program, funds are applied toward helping firms access consultants, engineers, designers or industry experts to implement business improvement projects. These projects may cover a range of functional areas to improve a firm's market position and increase its overall competitiveness, including engineering, information technology, management, market development, marketing, new product development, quality improvement and sales. Funds are not provided directly to firms; instead, EDA funds TAACs and TAACs use funds to pay a cost-shared proportion of the cost to secure specialized business consultants.

Exhibit 3: Program Phases



There are three main phases to receiving technical assistance under the TAAF program: (1) petitioning for certification, (2) recovery planning and (3) AP implementation.

Phase I—Petitioning for Certification

The first step to receiving assistance is the submission of a petition to EDA to be certified as a trade-impacted firm. A petition is comprised of Form ED–840P, titled ''*Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance,*'' and required supporting documentation. Generally, certification specialists in the TAACs work with the firm at no cost to complete and submit a petition to EDA.

Upon receipt of the petition, EDA performs an analysis of the petition and supporting documents to determine if the petition is complete and may be accepted. EDA is required to make a final determination on the petition within 40 days of accepting a petition.[7]

To certify a firm as eligible to apply for adjustment assistance, the Secretary must determine that the following three conditions are met:

1. A significant number or proportion of the workers in the firm have been or are threatened to be totally or partially separated;

2. Sales and/or production of the firm have decreased absolutely, or sales and/or production of an article or service that accounted for at least 25 percent of total production or sales of the firm during the 12, 24, or 36 months preceding the most recent 12-, 24-, or 36-month period for which data are available have decreased absolutely; and

3. Increased imports of articles like or directly competitive with articles produced or services provided by the firm have ''contributed importantly'' to both the layoffs and the decline in sales and/or production.

[7] As of May 17, 2009, the deadline for making a final determination is 40 days. Before May 17, 2009, EDA had 60 days to make a determination.

Phase II—Recovery Planning

Certified firms then work with TAAC staff to develop a customized AP for submission to EDA for approval. Once an AP has been submitted, EDA is required to make a final determination within 60 days.

Phase III—AP Implementation

The firm works with consultants to implement projects in an approved AP. As projects are implemented and if the firm is satisfied with the work, the firm will first pay their match to the consultant, and then send a notice to the TAAC stating that they are satisfied with the work and that they have paid their matching share. The TAAC will then pay the Federal matching share. Firms have up to five years from the date of an AP's approval to implement the approved business recovery strategy contained therein, unless they receive approval for an extension. Generally, firms complete the implementation of their respective APs over a two-year period.

In general, the TAACs provide an array of services to assist import-impacted firms throughout this process, including:

- Assisting firms in preparing their petitions for TAAF. Firms are not charged for any assistance related to the preparation of a petition.
- Once a petition has been approved, TAACs work closely with a firm's management to identify the firm's strengths and weaknesses and develop a customized business strategy (AP) designed to foster competitiveness. The program pays up to 75% of the cost of developing an AP and the firm must pay the rest. EDA must approve all APs to ensure they conform to statutory and regulatory requirements.
- After an AP has been approved, company management and TAAC staff jointly identify consultants with the specific expertise required to assist the firm in implementing their competitiveness strategy.
- Under the TAAF program, EDA shares the cost of implementing tasks under an approved AP to support competitiveness. For an AP in which proposed tasks total $30,000 or less, EDA provides up to 75 percent of the cost and the firm is responsible for the balance. For an AP in which proposed tasks total over $30,000, EDA pays 50 percent of the total cost and the firm pays the remaining 50 percent. In order to most efficiently and effectively utilize limited program funds, EDA limits its share of technical assistance to a certified firm to no more than $75,000. After a competitive procurement process, the TAAC and the firm generally contract with private consultants to implement the AP.

Results/Findings

Data for This Report

The data used in this report were collected from the TAACs as part of their reporting requirements, petitions for certification, and the APs submitted by the TAACs on behalf of firms. Eligibility Reviewers at EDA recorded data from these sources into a central database. The data presented in this report has been verified by the TAACs. Results for average processing times were derived by EDA. Data in this report reflect data as of the end of FY 2012. Therefore, data in this Annual Report may differ from previously published data that were based on different periods.

(1) The Number of Firms That Inquired About the Program

In FY 2012, the TAACs received 1,849 inquiries about the program.

Exhibit 4: Inquiries about the TAAF program by TAAC

TAAC	No. of firms that inquired about the TAAF program
Great Lakes	65

TAAC	No. of firms that inquired about the TAAF program
Mid-America	140
Mid-Atlantic	79
Midwest	49
New England	34
New York State	79
Northwest	81
Rocky Mountain	263
Southeastern	53
Southwest	390
Western	616
Total	1,849

(2) The number of petitions filed under section 251

(3) The number of petitions certified and denied by the Secretary

(4) The average time for processing petitions after the petitions are filed

As part of its overall commitment to performance evaluation and continuous improvement, EDA assesses the performance of the TAAF program both in terms of ''inputs'' (e.g., types of firms assisted, petition, and AP submissions) and ''outputs'' (changes in sales, employment levels, and productivity of client firms).

In terms of inputs, the TAAF program effectively targeted small and medium-sized firms in FY 2012. EDA received 85 petitions, of which 83 were filed (accepted for investigation) under section 251 of the Trade Act, down by 46 petitions, a 36 percent decrease, compared to the number of petitions filed in FY 2011. EDA certified 79 petitions, down by 70 petitions, a 47 percent decrease compared to the number of certifications in FY 2011.[8] Petitions are certified on a rolling basis throughout the year. Petitions certified in FY 2012 may be the result of those received or filed (accepted) in FY 2011, while petitions received or filed (accepted) in FY 2012 may not result in certification in FY 2012.

EDA met the 40-day processing deadline (to make a final determination for petitions accepted for filing) in FY 2012. In fact, the averageprocessing time for petitions was 29 business days.

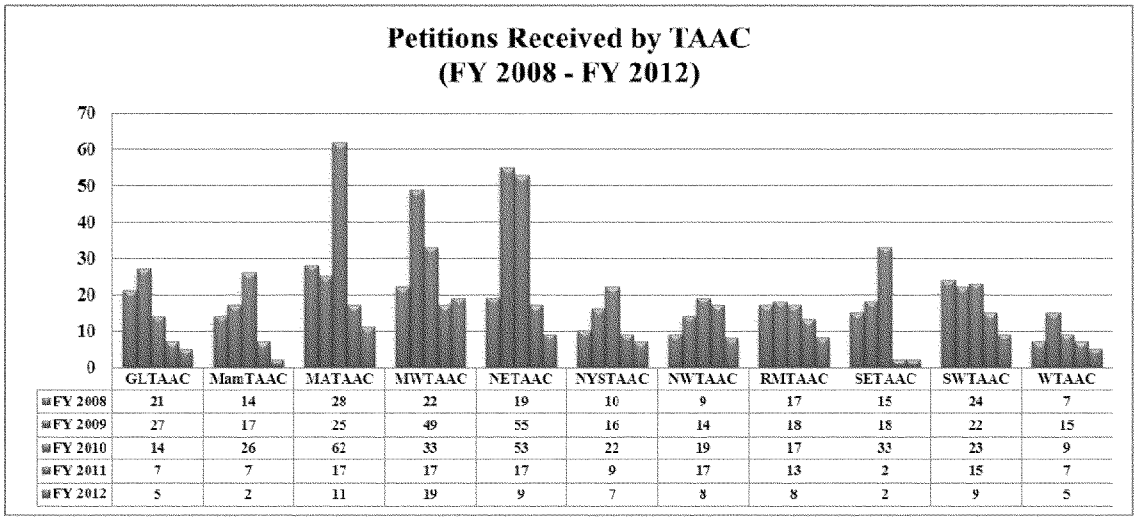
EXHIBIT 5—PETITION ACTIVITY: FY 2008—FY 2012[9]

FY	Number of petitions received	Number of petitions accepted for filing	Number of petitions certified	Number of petitions denied or withdrawn	Average days between acceptance (filing) and certification	Average days between receipt and certification
2008	186	189	182	0	35	43
2009	276	243	216	1	30	51
2010	311	329	330	0	31	74
2011	128	129	149	22	21	36
2012	85	83	79	3	29	58
% Change (2011 to 2012)	(34%)	(36%)	(47%)	(86%)	38%	61%

[8] Some TAACs believe that fewer firms were eligible to participate in the program because the economy's improvement from FY 2010 and FY 2011 prevented some firms from demonstrating a decrease in employment, sales and production required for eligibility.

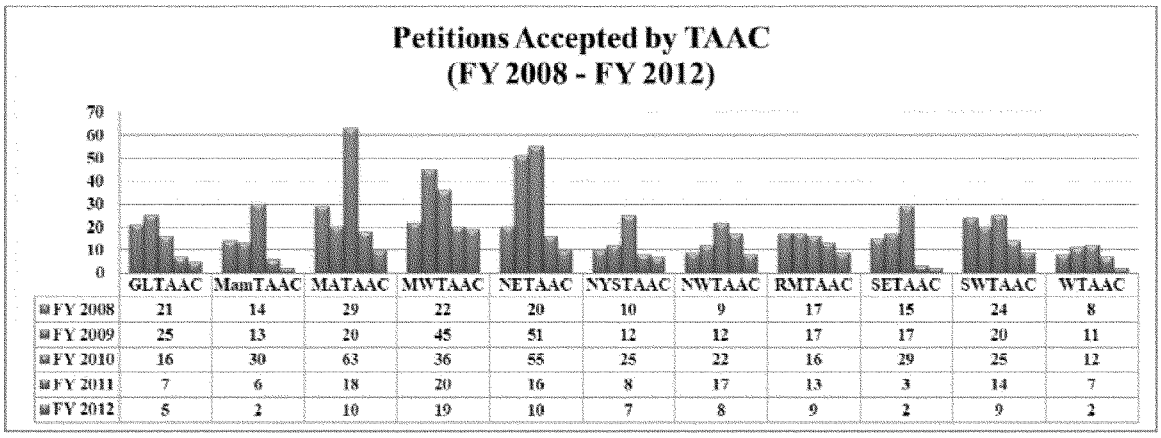
[9] Petitions are certified on a rolling basis throughout the year, therefore activity in these categories may not result in certification within the same FY. These totals represent the activity under each category within FY 2012.

Exhibit 6: Petitions Received by TAAC: FY 2008 – FY 2012



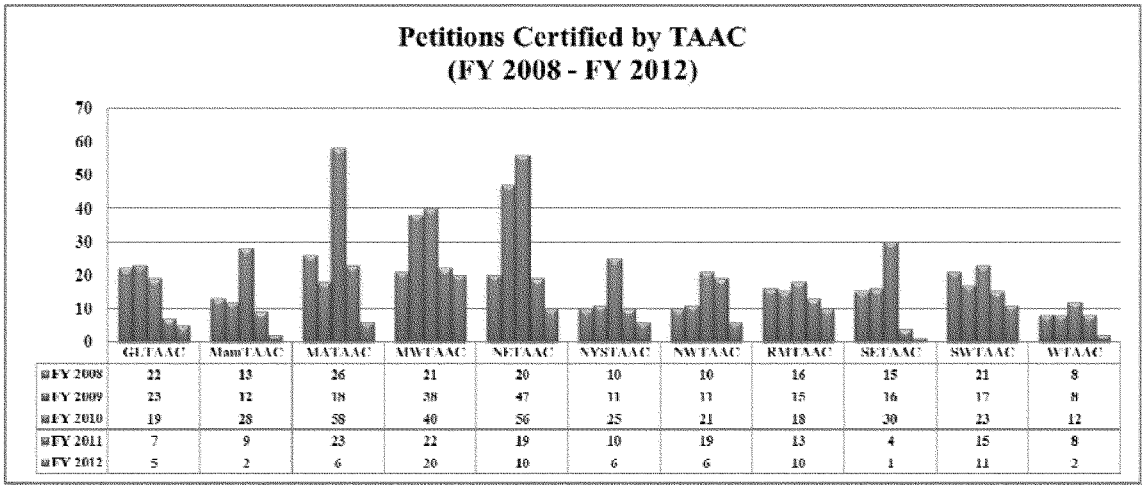
	GLTAAC	MamTAAC	MATAAC	MWTAAC	NETAAC	NYSTAAC	NWTAAC	RMTAAC	SETAAC	SWTAAC	WTAAC
FY 2008	21	14	28	22	19	10	9	17	15	24	7
FY 2009	27	17	25	49	55	16	14	18	18	22	15
FY 2010	14	26	62	33	53	22	19	17	33	23	9
FY 2011	7	7	17	17	17	9	17	13	2	15	7
FY 2012	5	2	11	19	9	7	8	8	2	9	5

Exhibit 7: Petitions Accepted by TAAC: FY 2008 – FY 2012



	GLTAAC	MamTAAC	MATAAC	MWTAAC	NETAAC	NYSTAAC	NWTAAC	RMTAAC	SETAAC	SWTAAC	WTAAC
FY 2008	21	14	29	22	20	10	9	17	15	24	8
FY 2009	25	13	20	45	51	12	12	17	17	20	11
FY 2010	16	30	63	36	55	25	22	16	29	25	12
FY 2011	7	6	18	20	16	8	17	13	3	14	7
FY 2012	5	2	10	19	10	7	8	9	2	9	2

Exhibit 8: Petitions Certified by TAAC: FY 2008 – FY 2012



	GLTAAC	MamTAAC	MATAAC	MWTAAC	NETAAC	NYSTAAC	NWTAAC	RMTAAC	SETAAC	SWTAAC	WTAAC
FY 2008	22	13	26	21	20	10	10	16	15	21	8
FY 2009	23	12	18	38	47	11	11	15	16	17	8
FY 2010	19	28	58	40	56	25	21	18	30	23	12
FY 2011	7	9	23	22	19	10	19	13	4	15	8
FY 2012	5	2	6	20	10	6	6	10	1	11	2

EXHIBIT 9—PETITIONS RECEIVED, ACCEPTED (FILED) AND CERTIFIED BY TAAC: FY 2012

TAAC	Number of petitions received	Number of petitions accepted for filing	Number of petitions certified
Great Lakes	5	5	5
Mid-America	2	2	2
MidAtlantic	11	10	6
Midwest	19	19	20
New England	9	10	10
New York State	7	7	6
Northwest	8	8	6
Rocky Mountain	8	9	10
Southeastern	2	2	1
Southwest	9	9	11
Western	5	2	2
Total	85	83	79

Exhibit 10: Petitions Received, Accepted (Filed) and Certified by TAAC: FY 2012

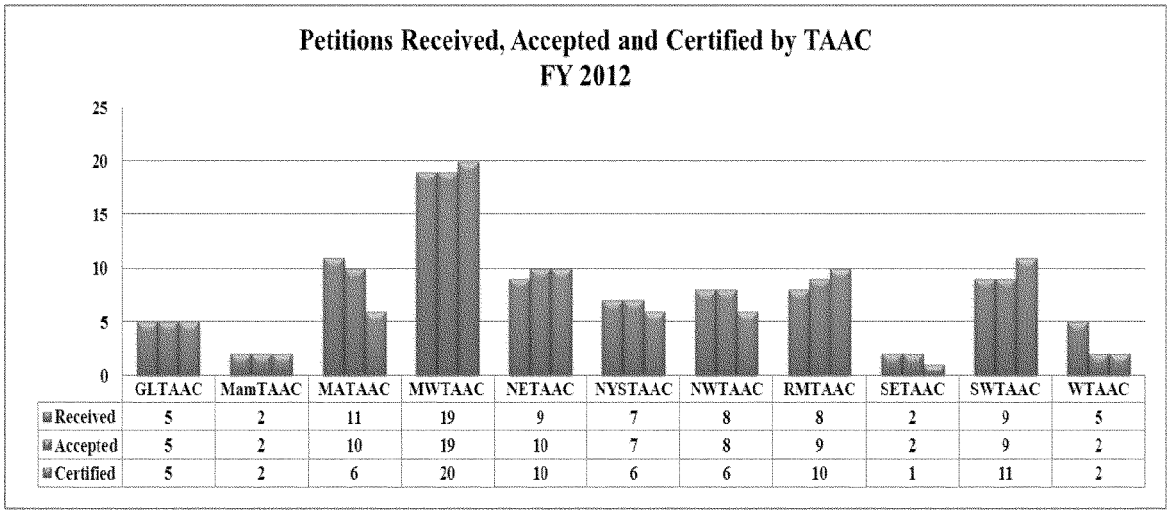


EXHIBIT 11—PETITIONS FILED, ACCEPTED, AND CERTIFIED BY TAAC/STATE: FY 2012

TAAC/State	Petitions received	Petitions accepted for filing	Petitions certified
Great Lakes	5	5	5
IN	0	0	0
MI	3	3	3
OH	2	2	2
Mid-America	2	2	2
AR	0	0	0
KS	1	1	1
MO	1	1	1
Mid-Atlantic	11	10	6
DC	0	0	0
DE	0	0	0
MD	0	0	0
NJ	2	1	0
PA	9	9	6
VA	0	0	0
WV	0	0	0
Midwest	19	19	20
IA	2	2	2
IL	13	13	13
MN	1	1	1
WI	3	3	4
New England	9	10	10
CT	1	1	1
MA	3	4	4
ME	2	2	2

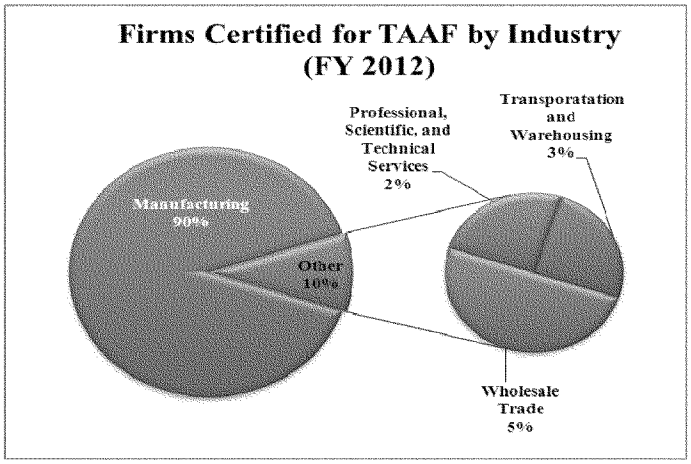
EXHIBIT 11—PETITIONS FILED, ACCEPTED, AND CERTIFIED BY TAAC/STATE: FY 2012—Continued

TAAC/State	Petitions received	Petitions accepted for filing	Petitions certified
NH	0	0	0
RI	1	1	1
VT	2	2	2
New York State	7	7	6
NY	7	7	6
Northwest	8	8	6
AK	0	0	0
ID	2	2	2
MT	1	1	1
OR	2	2	1
WA	3	3	2
Rocky Mountain	8	9	10
CO	3	4	4
NE	0	0	1
NM	0	0	0
ND	0	0	0
SD	2	2	2
UT	2	2	2
WY	1	1	1
Southeastern	2	2	1
AL	1	1	1
FL	0	0	0
GA	0	0	0
KY	0	0	0
MS	0	0	0
NC	1	1	0
SC	0	0	0
TN	0	0	0
PR	0	0	0
Southwest	9	9	11
LA	2	2	4
OK	0	0	0
TX	7	7	7
Western	5	2	2
AZ	2	1	1
CA	1	0	0
NV	2	1	1
Total	85	83	79

The majority of petitions certified under the TAAF program were submitted by firms in the manufacturing industry. Firms in technical services, transportation, and wholesale trade rounded out the remaining industries[10].

[10] As identified by the firm's North American Industry Classification System (NAICS) code.

Exhibit 12: Firms Certified for TAAF by Industry: FY 2012



In FY 2012, 6 percent of firms certified for TAAF were identified by the TAACs as service sector firms.[11] This is an increase over FY 2011, where 2 percent of firms certified were identified by the TAACs as service sector firms. As a result the Trade Adjustment Assistance Extension Act of 2011 (Pub. L. 112–40), which retroactively extended the provisions of the TAA programs that were enacted as part of the TGAAA, demand from service firms is likely to continue to increase.

EXHIBIT 13—FIRMS CERTIFIED FOR TAAF SERVICE VS. MANUFACTURING: FY 2012

FY	Total number of firms certified	Manufacturing firms	Percentage of manufacturing firms certified (percent)	Service firms	Percentage of service firms certified (percent)
2011	149	146	98	3	2
2012	79	74	94	5	6

(5) The number of petitions filed and firms certified for each Congressional District in the United States

EXHIBIT 14—PETITIONS FILED (ACCEPTED) AND CERTIFIED BY CONGRESSIONAL DISTRICT: FY 2012

TAAC/State congressional district	Petitions accepted for filing	Petitions certified
Great Lakes	5	5
IN	0	0
MI	3	3
2	1	1
3	1	1
4	1	1
OH	2	2
6	1	1
11	1	1
Mid-America	2	2
AR	0	0
KS	1	1
4	1	1
MO	1	1
8	1	1
MidAtlantic	10	6
DC	0	0
DE	0	0

EXHIBIT 14—PETITIONS FILED (ACCEPTED) AND CERTIFIED BY CONGRESSIONAL DISTRICT: FY 2012—Continued

TAAC/State congressional district	Petitions accepted for filing	Petitions certified
MD	0	0
NJ	1	0
7	1	0
PA	9	6
1	1	1
3	1	0
8	1	1
10	1	1
11	1	1
15	1	0
19	3	2
VA	0	0
WV	0	0
Midwest	19	20
IA	2	2
1	1	1
4	1	1
IL	13	13
1	1	1
5	1	2
6	1	1
7	2	2

EXHIBIT 14—PETITIONS FILED (ACCEPTED) AND CERTIFIED BY CONGRESSIONAL DISTRICT: FY 2012—Continued

TAAC/State congressional district	Petitions accepted for filing	Petitions certified
8	2	1
10	4	4
14	1	1
16	1	1
MN	1	1
4	1	1
WI	3	4
4	1	1
6	0	1
7	2	2
New England	10	10
CT	1	1
2	1	1
MA	4	4
2	1	1
5	1	1
9	1	1
10	1	1
ME	2	2
1	2	2
NH	0	0
RI	1	1

[11] Firms in the service sector may also perform dual functions as manufacturing firms and may have been categorized by TAACs as manufacturing firm.

EXHIBIT 14—PETITIONS FILED (ACCEPTED) AND CERTIFIED BY CONGRESSIONAL DISTRICT: FY 2012—Continued

TAAC/State congressional district	Petitions accepted for filing	Petitions certified
2	1	1
VT	2	2
1	1	1
5	1	1
New York State	7	6
NY	7	6
5	1	1
14	1	1
20	1	0
21	1	1
24	1	1
29	2	2
Northwest	8	6
AK	0	0
ID	2	2
1	1	1
2	1	1
MT	1	1
At-Large	1	1
OR	2	1
2	2	1
WA	3	2
2	2	1
3	1	1
Rocky Mountain	9	10
CO	4	4
1	2	2
2	1	1

EXHIBIT 14—PETITIONS FILED (ACCEPTED) AND CERTIFIED BY CONGRESSIONAL DISTRICT: FY 2012—Continued

TAAC/State congressional district	Petitions accepted for filing	Petitions certified
6	1	1
NE	0	1
2	0	1
NM	0	0
ND	0	0
SD	2	2
At-Large	2	2
UT	2	2
1	1	1
2	1	1
WY	1	1
At-Large	1	1
Southeastern	2	1
AL	1	1
3	1	1
FL	0	0
GA	0	0
KY	0	0
MS	0	0
NC	1	0
12	1	0
SC	0	0
TN	0	0
PR	0	0
Southwest	9	11
LA	2	4
1	1	2
3	1	2

EXHIBIT 14—PETITIONS FILED (ACCEPTED) AND CERTIFIED BY CONGRESSIONAL DISTRICT: FY 2012—Continued

TAAC/State congressional district	Petitions accepted for filing	Petitions certified
OK	0	0
TX	7	7
6	1	1
13	2	2
20	1	1
23	1	1
26	1	1
28	1	1
Western	2	2
AZ	1	1
4	1	1
CA	0	0
NV	1	1
2	1	1
Total	83	79

(6) Of the number of petitions filed, the number of firms that entered the program and received benefits[12]

In FY 2012, 83 petitions were accepted (filed) for certification, of which 79 were certified. Of the 79 firms certified in FY 2012, 57 firms submitted and were approved for an AP in the same fiscal year[13].

EXHIBIT 15—PETITIONS CERTIFIED AND APS APPROVED: FY 2012

TAAC	Number of petitions accepted for filing	Number of petitions certified	Number of APs approved for firms certified in FY 2012
Great Lakes	5	5	5
Mid-America	2	2	1
MidAtlantic	10	6	2
Midwest	19	20	16
New England	10	10	10
New York State	7	6	2
Northwest	8	6	6
Rocky Mountain	9	10	10
Southeastern	2	1	1
Southwest	9	11	4
Western	2	2	0
Total	83	79	57

(7) The number of firms that received assistance in preparing their petitions

In FY 2012, 341 firms received assistance in preparing petitions. Firms may receive assistance in all phases of preparing petitions more than once in a single year. Petition assistance rendered may not result in the submission of a petition in the fiscal year.

Exhibit 16: Petition Assistance Activity: FY 2012

EXHIBIT 16—PETITION ASSISTANCE ACTIVITY: FY 2012

TAAC	Petition Assistance
Great Lakes	13
Mid-America	15
MidAtlantic	22

[12] *Benefits* are defined as technical assistance provided to TAAF-certified firms in preparing and implementing business recovery plans (APs).

[13] Firms have up to two years from the date of TAAF certification to submit a business recovery plan (AP). These totals represent the firms certified for TAAF in FY 2012 that also submitted and received an approved business recovery plan in the same fiscal year. The total number of APs approved in FY 2012 is reported in Exhibits 19, 20 and 21.

EXHIBIT 16—PETITION ASSISTANCE ACTIVITY: FY 2012—Continued

TAAC	Petition Assistance
Midwest	117
New England	10
New York State	36
Northwest	18
Rocky Mountain	15
Southeastern	36
Southwest	37
Western	22
Total	341

(8) The number of firms that received assistance developing business recovery plans

In FY 2012, 206 firms received assistance in developing APs and 935 firms received assistance in implementing projects in these plans. Firms may receive assistance in developing and implementing APs more than once in a single year. AP assistance rendered may not result in the submission or implementation of an AP in the current fiscal year.

EXHIBIT 17—AP DEVELOPMENT ACTIVITY: FY 2012

TAAC	AP Development Assistance
Great Lakes	7
Mid-America	6
MidAtlantic	12
Midwest	61
New England	14
New York State	25
Northwest	11
Rocky Mountain	11
Southeastern	5
Southwest	48
Western	6
Total	206

EXHIBIT 18—AP IMPLEMENTATION ACTIVITY: FY 2012

TAAC	AP Implementation Assistance
Great Lakes	71
Mid-America	153

EXHIBIT 18—AP IMPLEMENTATION ACTIVITY: FY 2012—Continued

TAAC	AP Implementation Assistance
MidAtlantic	81
Midwest	142
New England	133
New York State	45
Northwest	80
Rocky Mountain	74
Southeastern	65
Southwest	52
Western	39
Total	935

(9) The number of business recovery plans approved and denied by the Secretary

In FY 2012, EDA approved 102 APs, down by 81 compared to FY 2011, a 44 percent decrease over this period [14]. EDA successfully met the 60-day processing deadline for approval of APs. The average processing time for APs was 21 business days [15].

EXHIBIT 19—SUMMARY OF APS APPROVED: FY 2008—FY 2012

FY	Number of APs approved	Total government share	Total firm share	Total projected AP costs	Average government assistance per firm	Average days between submission and approval
2008	143	$8,202,625	$7,711,375	$15,914,000	$57,361	21
2009	172	10,393,639	9,888,201	20,281,840	60,428	20
2010	264	16,448,946	15,743,946	32,192,892	62,307	24
2011	183	11,075,545	10,580,545	21,656,090	60,522	16
2012	102	5,437,455	5,033,455	10,470,910	53,308	21
Total	864	51,558,210	48,957,522	100,515,732	59,674	20
% Change (2011 to 2012)	(44%)	(51%)	(52%)	(52%)	(12%)	31%

[14] Some TAACs believe that fewer firms were eligible to participate in the program because the economy's improvement from FY 2010 and FY 2011 prevented some firms from demonstrating a decrease in employment, sales, and production required for eligibility. Subsequently, fewer APs were submitted.

[15] Firms have two years from the date of certification to submit an AP to EDA. APs approved in FY 2012 may represent firms that were certified for TAAF between FY 2010—FY 2012.

Exhibit 20: APs Approved by TAAC: FY 2008 – FY 2012

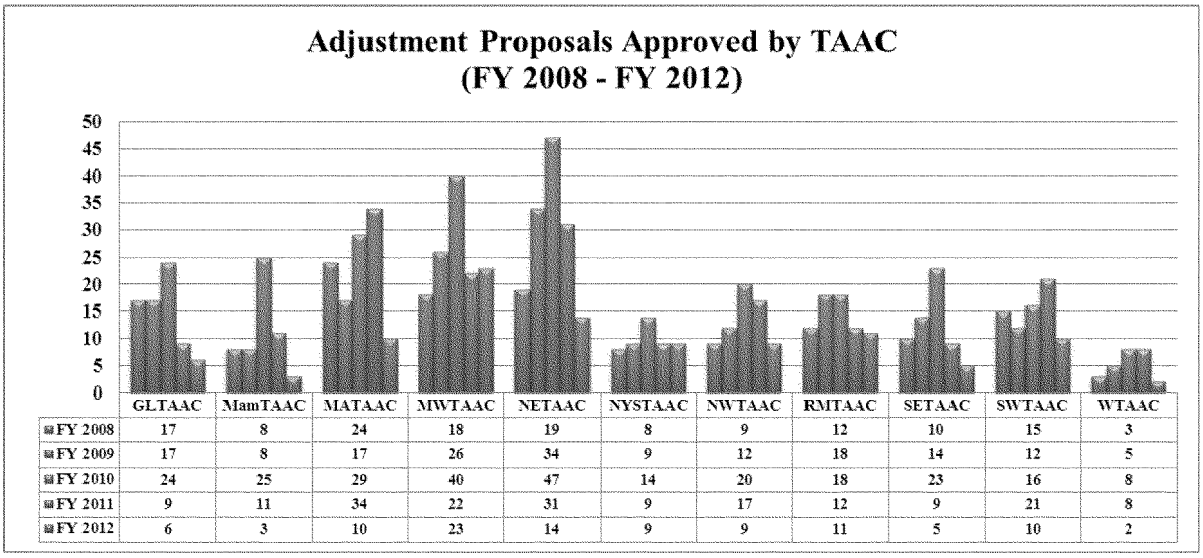


Exhibit 21: APs Approved by TAAC/ State: FY 2012

EXHIBIT 20—APS APPROVED BY TAAC: FY 2008—FY 2012

TAAC/State	Number of APs approved	Government share of approved AP projects	Firm share of approved AP projects	Total approved AP projects
Great Lakes	6	$345,000	$315,000	$660,000
MI	3	172,500	157,500	330,000
OH	3	172,500	157,500	330,000
Mid-America	3	225,000	225,000	450,000
KS	2	150,000	150,000	300,000
MO	1	75,000	75,000	150,000
MidAtlantic	10	519,650	504,650	1,024,300
PA	10	519,650	504,650	1,024,300
Midwest	23	1,177,972	1,057,972	2,235,944
IA	1	22,500	7,500	30,000
IL	17	885,472	810,472	1,695,944
MN	1	75,000	75,000	150,000
WI	4	195,000	165,000	360,000
New England	14	600,000	510,000	1,110,000
CT	3	122,500	107,500	230,000
MA	5	130,000	70,000	200,000
ME	2	150,000	150,000	300,000
RI	2	47,500	32,500	80,000
VT	2	150,000	150,000	300,000
New York State	9	604,000	590,000	1,194,000
NY	9	604,000	590,000	1,194,000
Northwest	9	583,333	568,333	1,151,666
ID	3	172,500	157,500	330,000
MT	1	75,000	75,000	150,000
OR	2	128,000	128,000	256,000
WA	3	207,833	207,833	415,666
Rocky Mountain	11	527,500	527,500	1,055,000
CO	4	160,000	160,000	320,000
NE	1	30,000	30,000	60,000
NM	1	75,000	75,000	150,000
SD	2	82,500	82,500	165,000
UT	2	150,000	150,000	300,000
WY	1	30,000	30,000	60,000
Southeastern	5	217,500	172,500	390,000
AL	1	75,000	75,000	150,000
GA	1	22,500	7,500	30,000
NC	2	97,500	82,500	180,000

EXHIBIT 20—APS APPROVED BY TAAC: FY 2008—FY 2012—Continued

TAAC/State	Number of APs approved	Government share of approved AP projects	Firm share of approved AP projects	Total approved AP projects
SC	1	22,500	7,500	30,000
Southwest	10	592,500	547,500	1,140,000
LA	3	120,000	90,000	210,000
OK	2	150,000	150,000	300,000
TX	5	322,500	307,500	630,000
Western	2	45,000	15,000	60,000
CA	2	45,000	15,000	60,000
Total	102	5,437,455	5,033,455	10,470,910

(10) Average duration of benefits received under the program nationally and in each region served by an intermediary organization (the TAAC) referred to in section 253(b)(1) of the Trade Act

In FY 2012, 145 firms exited the TAAF program after being approved for an AP. Nationally, firms receive on average 57 months [16] of benefits under the TAAF program. When calculating the average duration of benefits regionally, firms received on average 55 months of benefits under the TAAF program.

EXHIBIT 22: AVERAGE DURATION OF BENEFITS RECEIVED—FIRMS THAT COMPLETED PROGRAM: FY 2012

Firm number	No. of months firms received benefits under TAAF program
GLTAAC–EXT–001	34
GLTAAC–EXT–002	56
GLTAAC–EXT–003	53
GLTAAC–EXT–004	39
MamTAAC–EXT–001	63
MamTAAC–EXT–002	66
MamTAAC–EXT–003	135
MamTAAC–EXT–004	15
MamTAAC–EXT–005	82
MamTAAC–EXT–006	78
MamTAAC–EXT–007	78
MamTAAC–EXT–008	48
MamTAAC–EXT–009	66
MamTAAC–EXT–010	65
MamTAAC–EXT–011	64
MamTAAC–EXT–012	38
MamTAAC–EXT–013	91
MamTAAC–EXT–014	84
MamTAAC–EXT–015	74
MamTAAC–EXT–016	56
MamTAAC–EXT–017	90
MamTAAC–EXT–018	25

[16] Prior to 2008, firms were allowed in excess of five years to complete projects, resulting in a longer than average duration of benefits. Firms have five years from the date of AP approval to complete their projects.

EXHIBIT 22: AVERAGE DURATION OF BENEFITS RECEIVED—FIRMS THAT COMPLETED PROGRAM: FY 2012—Continued

Firm number	No. of months firms received benefits under TAAF program
MamTAAC–EXT–019	70
MamTAAC–EXT–020	76
MamTAAC–EXT–021	32
MamTAAC–EXT–022	72
MamTAAC–EXT–023	72
MamTAAC–EXT–024	78
MamTAAC–EXT–025	63
MamTAAC–EXT–026	24
MamTAAC–EXT–027	25
MamTAAC–EXT–028	43
MamTAAC–EXT–029	70
MamTAAC–EXT–030	79
MamTAAC–EXT–031	70
MamTAAC–EXT–032	71
MamTAAC–EXT–033	71
MamTAAC–EXT–034	83
MATAAC–EXT–001	23
MATAAC–EXT–002	53
MATAAC–EXT–003	16
MATAAC–EXT–004	53
MATAAC–EXT–005	59
MATAAC–EXT–006	34
MATAAC–EXT–007	46
MATAAC–EXT–008	35
MATAAC–EXT–009	46
MATAAC–EXT–010	59
MATAAC–EXT–011	41
MATAAC–EXT–012	32
MATAAC–EXT–013	72
MWTAAC–EXT–001	25
MWTAAC–EXT–002	24
MWTAAC–EXT–003	79
MWTAAC–EXT–004	72
MWTAAC–EXT–005	68
MWTAAC–EXT–006	76
MWTAAC–EXT–007	69
MWTAAC–EXT–008	65
MWTAAC–EXT–009	48
MWTAAC–EXT–010	61
MWTAAC–EXT–011	61
MWTAAC–EXT–012	71
MWTAAC–EXT–013	32
MWTAAC–EXT–014	24
MWTAAC–EXT–015	24
MWTAAC–EXT–016	72

EXHIBIT 22: AVERAGE DURATION OF BENEFITS RECEIVED—FIRMS THAT COMPLETED PROGRAM: FY 2012—Continued

Firm number	No. of months firms received benefits under TAAF program
NETAAC–EXT–001	19
NETAAC–EXT–002	64
NETAAC–EXT–003	53
NETAAC–EXT–004	23
NETAAC–EXT–005	18
NETAAC–EXT–006	22
NETAAC–EXT–007	14
NETAAC–EXT–008	42
NETAAC–EXT–009	33
NETAAC–EXT–010	70
NETAAC–EXT–011	53
NETAAC–EXT–012	23
NETAAC–EXT–013	26
NETAAC–EXT–014	25
NETAAC–EXT–015	33
NWTAAC–EXT–001	71
NWTAAC–EXT–002	92
NWTAAC–EXT–003	21
NWTAAC–EXT–004	81
NWTAAC–EXT–005	80
NWTAAC–EXT–006	82
NWTAAC–EXT–007	20
NWTAAC–EXT–008	13
NWTAAC–EXT–009	63
NWTAAC–EXT–010	20
NWTAAC–EXT–011	20
NWTAAC–EXT–012	40
NYSTAAC–EXT–001	43
NYSTAAC–EXT–002	22
NYSTAAC–EXT–003	64
NYSTAAC–EXT–004	49
RMTAAC–EXT–001	51
RMTAAC–EXT–002	81
RMTAAC–EXT–003	84
RMTAAC–EXT–004	81
RMTAAC–EXT–005	60
RMTAAC–EXT–006	69
RMTAAC–EXT–007	67
RMTAAC–EXT–008	36
RMTAAC–EXT–009	72
RMTAAC–EXT–010	36
RMTAAC–EXT–011	29
RMTAAC–EXT–012	79
RMTAAC–EXT–013	30
RMTAAC–EXT–014	77

EXHIBIT 22: AVERAGE DURATION OF BENEFITS RECEIVED—FIRMS THAT COMPLETED PROGRAM: FY 2012—Continued

Firm number	No. of months firms received benefits under TAAF program
RMTAAC–EXT–015	46
RMTAAC–EXT–016	78
RMTAAC–EXT–017	75
RMTAAC–EXT–018	49
SETAAC–EXT–001	36
SETAAC–EXT–002	30
SETAAC–EXT–003	45
SETAAC–EXT–004	36
SETAAC–EXT–005	36
SETAAC–EXT–006	53
SETAAC–EXT–007	80
SETAAC–EXT–008	73
SWTAAC–EXT–001	80
SWTAAC–EXT–002	26
SWTAAC–EXT–003	26
SWTAAC–EXT–004	68
SWTAAC–EXT–005	68
SWTAAC–EXT–006	69
SWTAAC–EXT–007	66
SWTAAC–EXT–008	80
SWTAAC–EXT–009	74
SWTAAC–EXT–010	24
WTAAC–EXT–001	90
WTAAC–EXT–002	122
WTAAC–EXT–003	81
WTAAC–EXT–004	91
WTAAC–EXT–005	116

EXHIBIT 22: AVERAGE DURATION OF BENEFITS RECEIVED—FIRMS THAT COMPLETED PROGRAM: FY 2012—Continued

Firm number	No. of months firms received benefits under TAAF program
WTAAC–EXT–006	87
WTAAC–EXT–007	82
WTAAC–EXT–008	127
WTAAC–EXT–009	114
WTAAC–EXT–010	108
WTAAC–EXT–011	109
Total National Average	57

EXHIBIT 23—AVERAGE DURATION OF BENEFITS RECEIVED—FIRMS THAT COMPLETED PROGRAM BY TAAC (REGION): FY 2012

TAAC	Average Number of months firms received benefits
Great Lakes	46
Mid-America	65
Mid-Atlantic	44
Midwest	54
New England	35

EXHIBIT 23—AVERAGE DURATION OF BENEFITS RECEIVED—FIRMS THAT COMPLETED PROGRAM BY TAAC (REGION): FY 2012—Continued

TAAC	Average Number of months firms received benefits
New York State	45
Northwest	50
Rocky Mountain	61
Southeastern	49
Southwest	58
Western	102

(11) Sales, employment, and productivity at each firm participating in the TAAF program at the time of certification

In FY 2012, 889 active firms participated in the TAAF program. A firm that has been certified for TAAF, and/or has an approved AP, has not completed all projects in their AP, and is still engaged in the TAAF program is considered ''active.'' For the purposes of this report, productivity is defined as net sales per employee. Since the certified firms are in various industries, which have a variety of ways to measure productivity, sales per employee is utilized as a standardized measure for assessing productivity across all firms assisted.

EXHIBIT 24—SALES, EMPLOYMENT, AND PRODUCTIVITY [17] AT ALL FIRMS PARTICIPATING IN THE TAAF PROGRAM IN FY 2012 BY TAAC AND STATE:

TAAC/State	Total No. of Active Firms in FY 2012	Total Sales at Certification	Total Employment at Certification	Total Average Productivity
Great Lakes	73	$1,791,172,281	9,760	$183,522
IN	18	278,004,201	2,253	123,393
MI	31	547,706,669	2,254	242,993
OH	24	965,461,411	5,253	183,792
Mid-America	46	682,877,581	4,951	137,927
AR	7	16,401,481	340	48,240
KS	15	149,072,277	1,436	103,811
MO	24	517,403,823	3,175	162,962
MidAtlantic	90	1,049,770,941	6,548	160,319
MD	3	5,500,143	47	117,024
NJ	4	22,286,404	195	114,289
PA	80	1,008,680,988	6,121	164,790
VA	3	13,303,406	185	71,910
Midwest	137	2,212,081,842	11,961	184,941
IA	5	120,097,360	519	231,401
IL	81	843,583,273	4,887	172,618
MN	23	367,933,664	2,512	146,470
WI	28	880,467,545	4,043	217,776
New England	133	1,011,453,493	6,479	156,113
CT	19	135,382,965	926	146,202
MA	60	400,041,096	2,574	155,416
ME	15	230,970,276	1,177	196,236
NH	20	131,043,944	902	145,282
RI	16	77,235,126	619	124,774
VT	3	36,780,086	281	130,890
New York State	61	1,172,727,977	4,823	243,153
NY	61	1,172,727,977	4,823	243,153

EXHIBIT 24—SALES, EMPLOYMENT, AND PRODUCTIVITY [17] AT ALL FIRMS PARTICIPATING IN THE TAAF PROGRAM IN FY 2012 BY TAAC AND STATE:—Continued

TAAC/State	Total No. of Active Firms in FY 2012	Total Sales at Certification	Total Employment at Certification	Total Average Productivity
Northwest	85	913,564,319	5,745	159,019
AK	4	22,825,992	110	207,509
ID	11	62,150,148	688	90,335
MT	11	54,667,266	415	131,728
OR	20	419,792,240	2,211	189,865
WA	39	354,128,673	2,321	152,576
Rocky Mountain	67	2,479,134,862	10,068	246,239
CO	28	994,105,459	2,956	336,301
ND	6	155,904,843	714	218,354
NE	5	32,840,837	243	135,147
NM	4	40,663,880	290	140,220
SD	8	342,138,076	1,246	274,589
UT	13	862,552,034	4,302	200,500
WY	3	50,929,733	317	160,662
Southeastern	67	998,693,863	10,038	99,491
AL	4	28,653,300	346	82,813
FL	6	18,996,354	191	99,457
GA	13	90,265,046	978	92,296
KY	3	91,456,507	488	187,411
MS	1	2,496,868	21	118,898
NC	25	511,427,054	6,607	77,407
SC	10	183,496,458	922	199,020
TN	5	71,902,276	485	148,252
Southwest	90	421,071,529	3,637	115,774
LA	19	114,522,181	551	207,844
OK	30	156,841,533	1,563	100,346
TX	41	149,707,815	1,523	98,298
Western	40	773,072,997	3,507	220,437
AZ	3	92,655,000	400	231,638
CA	35	657,349,131	2,981	220,513
HI	2	23,068,866	126	183,086
Total (Nationwide)	889	13,505,621,685	77,517	174,228[18]

(12) Sales, employment, and productivity at each firm upon completion of the program and each year for the two-year period following completion

(13) The number of firms in operation as of the date of this report and the number of firms that ceased operations after completing the program in each year during the two-year period following completion of the program

In order to assess the effectiveness of the TAAF program in terms of outputs, EDA assesses the extent to which client firms increased their sales, employment levels, and productivity following the implementation of TAAF-supported projects (program completion). To measure these outputs, EDA compares average sales, average employment and average productivity of all firms completing the program in a particular year (the most recent ''base year'') to these same measures for the same firms one and two years following program completion. The base year used for this report is FY 2010, as this allows EDA to compare these measures looking back both one and two years from the date of this report.

Firms that completed the TAAF program in FY 2010 reported that, at completion, average sales were $10.1 million, average employment was 53 and average sales per employee (productivity) was $191,328. One year after completing the program (FY 2011), these same firms reported that average sales increased by 11.4 percent, average employment increased by 13.2 percent, and average productivity decreased by 1.6 percent. For the sake of comparison to the universe of U.S. manufacturers, BLS reported that, in FY 2011, the national manufacturing industry in aggregate experienced an average employment increase of only 1.9 percent.

Two years after completing the program (FY 2012), these same firms reported that average sales increased by 26.8 percent, average employment increased by 13.2 percent, and average productivity [19] increased by 11.9 percent. Meanwhile, BLS reported that the manufacturing industry in FY 2012 experienced an average employment increase of 3.5 percent and an average productivity increase of 4.1 percent from FY 2010. Therefore, firms assisted by the TAAF program performed more successfully than the manufacturing industry as a whole. Additionally, all firms that completed the TAAF program in FY 2010 were in operation as of the end of FY 2012, indicating strong ''survival rates'' for TAAF-assisted firms. It should be noted that TAAF clients are operating in the same

[17] The total productivity as presented in across TAACs, States and the summary line of Exhibit 24 represents the actual total average productivity in FY 2012. This total, derived by calculating the mean horizontally (not vertically), is based on raw data and provides the most accurate representation of productivity for all TAACs and States. While this figure is provided in the table, it should be noted that calculating total productivity vertically introduces additional degrees of error as it represents the average of averages.[18] The total productivity as presented in across TAACs, States and the summary line of Exhibit 24 represents the actual total average productivity in FY 2012. This total, derived by calculating the mean horizontally (not vertically), is based on raw data and provides the most accurate representation of productivity for all TAACs and States. While this figure is provided in the table, it should be noted that calculating total productivity vertically introduces additional degrees of error as it represents the average of averages.

[19] BLS' productivity measures relate output to the labor hours used in the production of that output.

economic environment as other firms, but are also attempting to adjust to import pressures that may not impact other firms as severely, making the success of TAAF-assisted firms even more notable.

For the purposes of this report, data are reported only for firms where all data were available. Since the certified firms are in various industries, which have a variety of ways to measure productivity, sales per employee was chosen as the productivity measure. This measure is used because it can be generally applied to all certified firms.

EXHIBIT 25—SUMMARY OF AVERAGE SALES, EMPLOYMENT, AND PRODUCTIVITY AT FIRMS UPON COMPLETION OF THE PROGRAM AND THE ONE-YEAR AND TWO-YEAR PERIOD FOLLOWING COMPLETION

	Completion (FY 2010)	1st Year following completion (FY 2011)	2nd Year following completion (FY 2012)	% Change 1st Year (percent)	% Change 2nd Year (percent)
Average Sales	$10,140,385	$11,300,792	$12,855,193	11.4%	26.8%
Average Employment	53	60	60	13.2	13.2
Average Productivity	$191,328	$188,347	$214,253	(1.6%)	11.9%

EXHIBIT 26—SALES, EMPLOYMENT, AND PRODUCTIVITY AT EACH FIRM UPON COMPLETION OF THE PROGRAM AND TWO-YEAR PERIOD FOLLOWING COMPLETION

Firm ID	Average sales at completion (FY 2010)	Average sales 1st Yr. following completion (FY 2011)	Average sales 2nd Yr. following completion (FY 2012)	Average employment at completion (FY 2010)	Average employment 1st Yr. following completion (FY 2011)	Average employment 2nd Yr. following completion (FY 2012)	Average productivity at completion (FY 2010)	Average productivity 1st Yr. following completion (FY 2011)	Average productivity 2nd Yr. following completion (FY 2012)
GLTAAC–CMP–001	$23,000,000	$40,200,000	$70,000,000	108	103	125	$212,963	$390,291	$560,000
GLTAAC–CMP–002	33,291,000	35,000,000	46,200,000	118	115	120	282,127	304,348	385,000
GLTAAC–CMP–003	33,000,000	38,000,000	36,000,000	185	330	370	178,378	115,152	97,297
MamTAAC–CMP–002	30,421,806	35,697,560	28,980,224	145	161	139	209,806	221,724	208,491
MamTAAC–CMP–006	9,969,765	8,969,168	6,632,938	64	69	58	155,778	129,988	114,361
MamTAAC–CMP–007	5,849,007	4,778,810	5,394,320	28	18	15	208,893	265,489	359,621
MamTAAC–CMP–010	1,900,000	2,533,745	3,500,000	18	22	26	105,556	115,170	134,615
MamTAAC–CMP–013	1,261,088	2,084,480	2,875,000	14	17	17	90,078	122,616	169,118
MamTAAC–CMP–014	2,202,559	2,635,713	2,635,713	19	21	21	115,924	125,510	125,510
MamTAAC–CMP–016	10,613,000	10,980,000	8,825,000	38	43	43	279,289	255,349	205,233
MamTAAC–CMP–018	7,570,000	8,456,000	9,000,000	30	33	33	252,333	256,242	272,727
MamTAAC–CMP–021	4,412,568	6,984,385	939,327	19	32	20	232,240	218,262	46,966
MamTAAC–CMP–023	6,414,455	5,697,336	5,027,557	89	69	59	72,073	82,570	85,213
MamTAAC–CMP–025	8,694,000	5,630,530	6,331,934	45	40	45	193,200	140,763	140,710
MWTAAC–CMP–001	14,603,721	14,600,000	17,800,000	124	125	130	117,772	116,800	136,923
MWTAAC–CMP–006	18,585,466	21,900,000	21,900,000	80	90	90	232,318	243,333	243,333
NWTAAC–CMP–001	2,100,000	3,085,000	3,000,000	22	15	14	95,455	205,667	214,286
NWTAAC–CMP–002	13,000	6,000	10,000	1	1	1	13,000	6,000	10,000
NWTAAC–CMP–003	55,571,000	64,167,000	66,000,000	163	188	180	340,926	341,314	366,667
NWTAAC–CMP–004	3,500,000	2,680,000	8,000,000	28	18	22	125,000	148,889	363,636
NWTAAC–CMP–005	680,000	440,000	450,000	12	10	10	56,667	44,000	45,000
NWTAAC–CMP–006	8,000,000	13,000,000	15,000,000	65	125	100	123,077	104,000	150,000
NWTAAC–CMP–007	14,000,000	10,000,000	25,000,000	45	55	65	311,111	181,818	384,615
NWTAAC–CMP–008	1,730,000	1,975,000	2,400,000	35	30	28	49,429	65,833	85,714
NWTAAC–CMP–010	1,900,000	2,100,000	2,200,000	5	7	12	380,000	300,000	183,333
NYSTAAC–CMP–001	4,000,000	4,100,000	4,400,000	30	25	25	133,333	164,000	176,000
NYSTAAC–CMP–002	2,100,000	2,100,000	2,500,000	25	25	27	84,000	84,000	92,593
NYSTAAC–CMP–003	990,000	950,000	900,000	2	2	2	495,000	475,000	450,000
NYSTAAC–CMP–004	12,100,000	12,200,000	13,200,000	79	78	80	153,165	156,410	165,000
NYSTAAC–CMP–005	535,000	500,000	490,000	4	4	4	133,750	125,000	122,500
NYSTAAC–CMP–006	4,900,000	5,600,000	5,700,000	31	34	34	158,065	164,706	167,647
NYSTAAC–CMP–007	3,100,000	3,600,000	3,750,000	21	25	25	147,619	144,000	150,000
NYSTAAC–CMP–008	7,800,000	7,700,000	7,900,000	65	64	65	120,000	120,313	121,538
NYSTAAC–CMP–009	36,000,000	34,000,000	36,500,000	151	157	160	238,411	216,561	228,125
RMTAAC–CMP–001	123,000	138,000	130,000	2	6	5	61,500	23,000	26,000
RMTAAC–CMP–002	1,547,913	2,500,722	2,718,122	19	23	21	81,469	108,727	129,434
RMTAAC–CMP–003	2,715,885	3,139,869	3,352,000	42	42	37	64,664	74,759	90,595
Total Average	10,140,385	11,300,792	12,855,193	53	60	60	191,328	188,347	214,253

(14) The financial assistance received by each firm participating in the program

(15) The financial contribution made by each firm participating in the program

In FY 2012, firms received $9.8 million in technical assistance provided by the TAACs to prepare petitions and to develop and implement APs (often through business consultants and other experts). Firms participating in the program contributed $6.3 million towards the development and implementation of APs. Funds are not provided directly to firms; instead, EDA funds the TAACs and TAACs pay a proportion of the cost to secure specialized business consultants.

Exhibit 27: Summary of TAAF program Financial Assistance to Firms by TAAC: FY 2012

TAAC	Total TAAC Assistance to Firms[20]	Financial Contribution by the Firms
Great Lakes	$758,929	$419,220
Mid-America	$716,771	$485,977
MidAtlantic	$814,574	$965,378
Midwest	$1,145,974	$827,579
New England	$1,346,314	$1,199,216
New York State	$576,326	$418,940
Northwest	$1,017,666	$329,151
Rocky Mountain	$1,155,771	$599,855
Southeastern	$668,721	$363,352
Southwest	$814,909	$527,712
Western	$750,420	$190,648
Total	**$9,766,375**	**$6,327,028**

(16) The types of technical assistance included in the business recovery plans of firms participating in the program

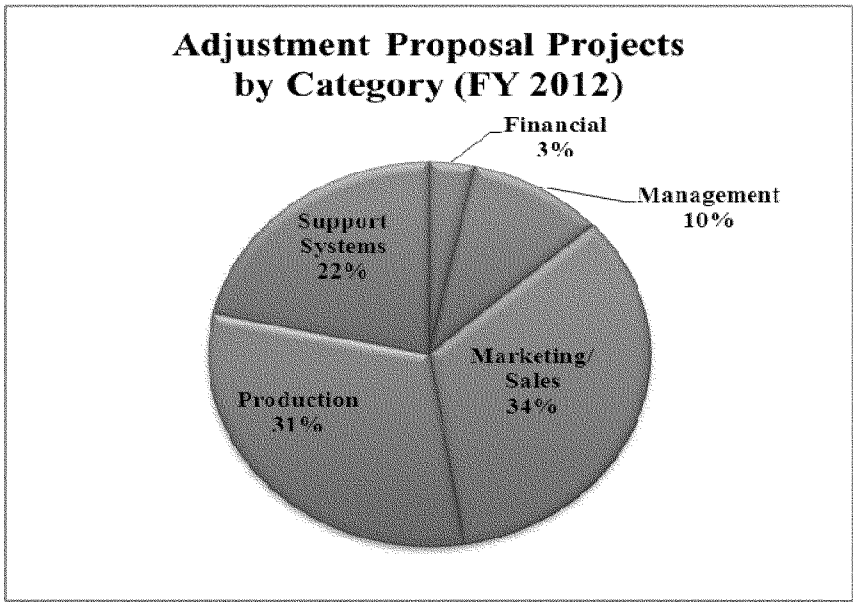
In FY 2012, firms proposed various types of projects in their APs. Marketing/sales projects are geared toward increasing revenue, whereas production/manufacturing projects tend to be geared toward cutting costs. Support system projects can provide a competitive advantage by either cutting costs or creating new sales channels. Management and financial projects are designed to improve management's decision making ability and business control. Over half of all firms proposed to implement a marketing/sales project or production/engineering project in their APs. Sample projects are listed below in Exhibit 28.

[20] This does not include the amount expended by the TAACs for outreach to potential new firms.

EXHIBIT 28—CHARACTERISTICS OF TECHNICAL ASSISTANCE IN APS: FY 2012

Project Classification	Sample types of projects	Number of AP projects [21]	AP Project costs
Financial	• Accounting systems upgrade • Cost control tracking system • Automatic Data Processing development.	10	$216,000
Management	• Strategic business planning • Succession management • Management development.	30	549,166
Marketing/Sales	• Sales process training • Market expansion and feasibility • Web site design and upgrade.	103	3,984,800
Production	• Lean manufacturing and certification • New product development • Production and warehouse automation.	93	3,490,944
Support Systems	• Enterprise Resource Planning • Management Information Systems upgrades • Computer Aided Design software • Supply chain management software.	65	2,230,000

Exhibit 29: APs by Project Classification: FY 2012



(17) The number of firms leaving the program before completing the project or projects in their business recovery plans and the reason the project or projects were not completed

In FY 2012, of the 145 firms that left the TAAF program, 84 completed the program, 34 did not complete approved projects in the time allotted, and the remaining 27 firms left for the reasons listed below in Exhibit 30.

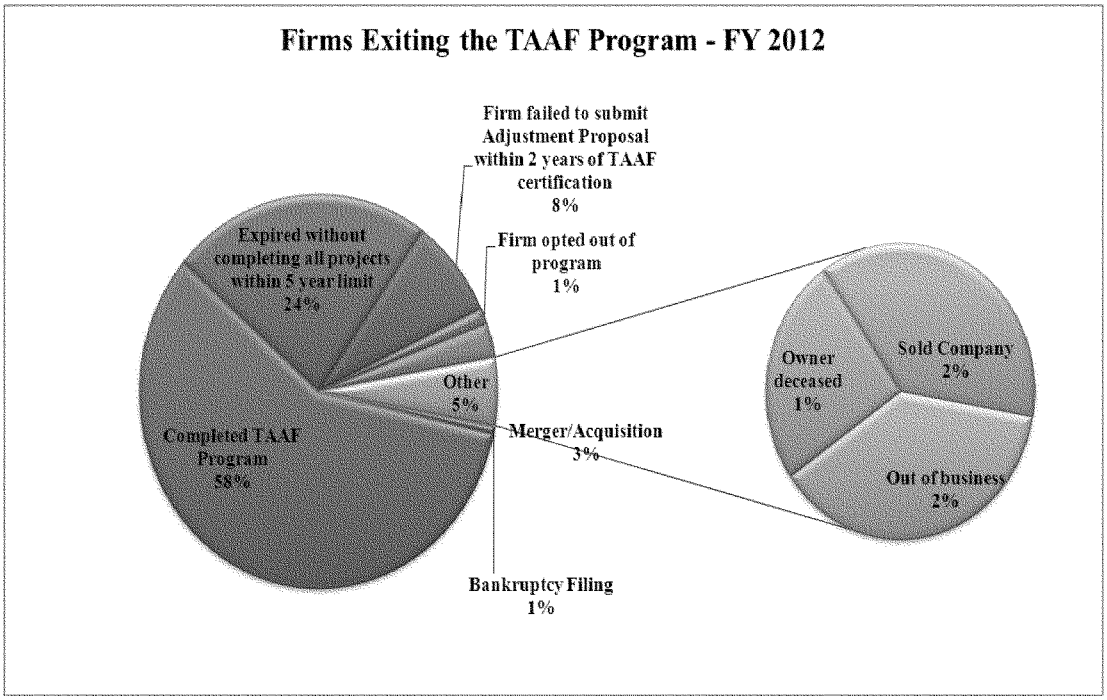
EXHIBIT 30—SUMMARY OF FIRMS LEAVING THE TAAF PROGRAM: FY 2012

Reason for leaving Program	Number of firms
Bankruptcy Filing	1
Completed TAAF Program	84
Expired without completing all projects within 5 year limit	34
Firm failed to submit AP within 2 years of TAAF certification	12
Firm opted out of program	2
Merger/Acquisition	4
Out of business	3

EXHIBIT 30—SUMMARY OF FIRMS LEAVING THE TAAF PROGRAM: FY 2012—Continued

Reason for leaving Program	Number of firms
Owner deceased	2
Sold Company	3
Total	145

[21] A firm may have up to five projects in an approval AP.



(18) The total amount expended by all intermediary organizations referred to in Section 253(b)(1) and by each organization to administer the program

On May 11, 2012, the Department of Commerce Office of Inspector General (OIG) presented EDA with a copy of their letter to the House and Senate Committees on Appropriations reporting their findings related to an examination of the TAAC administrative costs.[22] As part of their review, OIG obtained expenditure data from a sample of three TAACs—Western, New England, and New York State—focusing on the use of Federal funds provided by EDA. The OIG reported that it ''did not determine that the level of administrative costs of the three TAACs to be unreasonable.''

Indirect Costs, referred to as facilities and administrative (F&A) costs, include space rent and utilities, telephone, postage, printing, and other administrative costs. University-affiliated TAACs have indirect cost rate (ICR) agreements that cannot exceed the current rate negotiated with their cognizant Federal agency (non EDA/DOC). These costs are captured on the indirect cost line item on the Application for Federal Assistance, SF–424 (Form SF–424). Non-profit TAACs do not have ICR agreements; instead, they categorize similar expenditures in their ''Other'' line item of their Form SF–424.

(19) The total amount expended by intermediary organizations to provide technical assistance to firms under the program nationally and in each region served by such an organization

[22] The information was requested in the House Committee Report that accompanied the FY 2012 Commerce, Justice, Science, and Related Agencies Appropriations bill.

Exhibit 31: Summary of Expenditures by TAAC Across Budget Categories: FY 2012

TAAC	Personnel (including Fringe Benefits)	Contracts (Federal Share)	Travel	Equipment and Supplies	Other	Indirect Costs	Total TAAC Expenditures
Great Lakes	$494,254	$446,104	$13,917	$8,930	$23,443	$290,016	$1,276,664
Mid-America	$392,136	$675,089	$12,185	$3,633	$59,348	$182,691	$1,325,082
MidAtlantic	$447,535	$954,290	$15,159	$13,974	$165,296	$0	$1,596,254
Midwest	$670,495	$922,242	$15,324	$11,881	$136,206	$0	$1,756,148
New England	$306,895	$1,240,469	$8,549	$5,751	$68,204	$0	$1,629,868
New York State	$362,200	$498,078	$5,273	$5,801	$38,799	$89,208	$999,359
Northwest	$505,667	$461,216	$10,093	$4,225	$171,308	$0	$1,152,509
Rocky Mountain	$613,983	$636,074	$9,451	$12,451	$87,149	$167,761	$1,526,869
Southeastern	$404,191	$408,435	$9,163	$18,078	$0	$273,047	$1,112,914
Southwest	$625,264	$547,003	$54,541	$9,474	$14,211	$142,657	$1,393,150
Western	$489,782	$210,213	$15,826	$2,483	$24,388	$297,758	$1,040,450
Total	**$5,312,402**	**$6,999,213**	**$169,481**	**$96,681**	**$788,352**	**$1,443,138**	**$14,809,267**

In FY 2012, TAACs expended $10.7 million in technical assistance provided to the firms in outreach to firms, to prepare petitions, and to develop and implement APs (often through business consultants and other experts). Funds

are not provided directly to firms; instead, EDA funds the TAACs and TAACs pay a cost-shared proportion of the cost to secure specialized business consultants.

Exhibit 32: Summary of Expenditures—Technical Assistance to Firms by TAAC: FY 2012

TAAC	TAAC Expenditure-Outreach	TAAC Expenditures-Petitions	TAAC Expenditures-APs	Total TAAC Expenditures
Great Lakes	$253,229	$316,479	$442,450	$1,012,158
Mid-America	$14,464	$53,341	$663,430	$731,235
MidAtlantic	$66,708	$224,330	$590,244	$881,282
Midwest	$121,482	$223,733	$922,242	$1,267,457
New England	$5,673	$93,970	$1,252,344	$1,351,987
New York State	$25,943	$148,602	$427,724	$602,269
Northwest	$73,144	$556,450	$461,216	$1,090,810
Rocky Mountain	$64,425	$519,697	$636,074	$1,220,196
Southeastern	$103,687	$269,145	$399,576	$772,408
Southwest	$57,672	$268,580	$546,329	$872,581
Western	$152,638	$354,559	$395,861	$903,058
Total	**$939,065**	**$3,028,886**	**$6,737,490**	**$10,705,441**

Conclusion

Through TAAF program, EDA effectively assisted many small and medium-sized firms in becoming more competitive and successful in the global economy. EDA considers the most significant finding in this report to be that following completion of assistance from EDA's TAAF program, firms reported that, on average, sales increased by 26.8 percent, employment increased by 13.2 percent, and productivity increased by 11.9 percent.

The TAAF program effectively assisted small and medium-sized firms in FY 2012. TAACs provided technical assistance to 341 firms in preparing petitions, 206 firms in preparing APs, and 935 firms in implementing projects for an approved AP. Meanwhile, EDA certified 79 petitions and approved 102 APs. As of the end of FY 2012 (September 30, 2012), there are 889 active [23] firms participating in the TAAF program.

EDA successfully met both the 40-day processing deadline (to make a final determination for petitions accepted for filing) and the 60-day processing deadline for approval of APs, as required in the TGAAA. In FY 2012, the average processing time for petitions was 29 business days, and the average processing time for APs was 21 business days.

[23] A firm that has been certified for TAAF, and/or has an approved Adjustment Proposal, has not completed all projects in their AP, and is still engaged in the TAAF program is considered ''active.''

Firms that completed the TAAF program in FY 2010 report that average sales were $10.1 million, average employment was 53, and average sales per employee (productivity) was $191,328. One year after completing the program (FY 2011), these same firms reported that average sales increased by 11.4 percent, average employment increased by 13.2 percent, and average productivity decreased by 1.6 percent. For the sake of comparison to the universe of U.S. manufacturers, the U.S. Bureau of Labor Statistics (BLS) reported that, in FY 2011, the national manufacturing industry in aggregate experienced an average employment increase of only 1.9 percent meaning that firms who complete the program

are more successful than firms generally.

Two years after completing the program (FY 2012), these same firms reported that average sales increased by 26.8 percent, average employment increased by 13.2 percent, and average productivity increased by 11.9 percent. Meanwhile, BLS reported that the manufacturing industry in FY 2012 experienced an average employment increase of 3.5 percent and average productivity increase of 4.1 percent from FY 2010. Therefore, firms assisted by the TAAF program performed more successfully than the manufacturing industry as a whole. Additionally, all firms that completed the TAAF program in FY 2010 were in operation as of the end of FY 2012, indicating strong ''survival rates'' for TAAF-assisted firms. It should be noted that TAAF clients are operating in the same economic environment as other firms, but are also attempting to adjust to import pressures that may not impact other firms as severely, making the success of TAAF-assisted firms even more notable.

On May 11, 2012, the Department of Commerce Office of Inspector General (OIG) presented EDA with a copy of their letter to the House and Senate Committees on Appropriations reporting their findings related to an examination of the TAAC administrative costs[24]. As part of their review, OIG obtained expenditure data from a sample of three TAACs—Western, New England, and New York State—focusing on the use of Federal funds provided by EDA. The OIG reported that it ''did not determine that the level of administrative costs of the three TAACs to be unreasonable.''

On September 13, 2012, the U.S. Government Accountability Office (GAO) published the report, *Trade Adjustment Assistance: Commerce Program Has Helped Manufacturing and Services Firms, but Measures, Data, and Funding Formula Could Improve (GAO–12–930).* The GAO report documented the results of their independent analysis, which included strong evidence demonstrating the effectiveness of the TAAF program. GAO's key finding was that for firms receiving assistance between FY 2008 and FY 2011, ''the effect of participation in the program was an increase in firm sales ranging from 5 to 6 percent on average,'' and that ''the effect of the program on productivity was about a 4 percent increase.'' As part of this study, GAO contacted 163 firms who had been involved with the TAAF program, and received responses from 117. As noted in the report, nearly all of the responding firms reported they were generally or very satisfied with the program. Manufacturing firms, specifically, reported that the program was associated with increased sales and productivity. Notably, an impressive 73 percent of the firms reported the program helped them with profitability, 71 percent said it helped them retain employees, and 57 percent reported that the program helped them hire new employees.

EDA is currently implementing a performance measurement improvement process for all its programs, including TAAF, which began in late 2011 and consists of two phases: planning and development, and implementation. The one-year planning and development stage is expected to be completed in FY 2013. The first phase includes the following activities: researching and identifying improved metrics and indicators, testing the metrics and indicators across the full portfolio of EDA investments, and developing a work plan for implementing measures that are adopted. To assist with this effort, EDA has partnered with the University of North Carolina and George Washington University to develop draft performance measures utilizing state-of-the-art performance measurement and program evaluation techniques.

The subsequent implementation phase of the performance measurement improvement process will include the following activities: obtaining Office of Management and Budget approval of data collection forms, developing a database to store collected data, updating programmatic guidance and regulations, and examining the allocation formula used to distribute program funds to the TAACs in collaboration with both TAACs and Congressional stakeholders. The entire process is expected to be completed by the end of 2014.

The performance measurement improvement process will help EDA be even a stronger partner to its clients and grantees. Through more effective program management and performance assessment, EDA will be in a better position to achieve the desired results for each of its programs.

Supplement

TAAF Program Benefits to Manufacturing Firms

On September 13, 2012, the U.S. Government Accountability Office (GAO) published the report, *Trade Adjustment Assistance: Commerce Program Has Helped Manufacturing and Services Firms, but Measures, Data, and Funding Formula Could Improve (GAO–12–930).* The GAO report documented the results of their independent analysis, which included strong evidence demonstrating the effectiveness of the TAAF program. GAO's key finding was that for firms receiving assistance between FY 2008 and FY 2011, ''the effect of participation in the program was an increase in firm sales ranging from 5 to 6 percent on average,'' and that ''the effect of the program on productivity was about a 4 percent increase.'' As part of this study, GAO contacted 163 firms who had been involved with the TAAF program, and received responses from 117. As noted in the report, nearly all of the responding firms reported they were generally or very satisfied with the program. Manufacturing firms, specifically, reported that the program was associated with increased sales and productivity. Notably, an impressive 73 percent of the firms reported the program helped them with profitability, 71 percent said it helped them retain employees, and 57 percent reported that the program helped them hire new employees.

Examples of TAAF Assistance

Great Lakes Trade Adjustment Assistance Center (GLTAAC)

This Michigan firm manufactures self-adhesive strip and sheet products for the automotive industry. The firm lost 38 percent of its sales in 2009 as demand disappeared and customers frantically switched to low cost foreign suppliers. It entered the TAAF program in 2010. The firm needed to improve its productivity and streamline its business processes. To accomplish this, replacing the firm's antiquated Enterprise Resource Planning (ERP) system was paramount. After much research, the firm licensed a new system and used TAAF assistance to train the workforce in its use. The new ERP went live in January 2011, and the impact was immediate. Not only has it cut hardware costs and annual fees by 50 percent, it has also greatly reduced data input and handling time. The firm has been able to go virtually paperless, as documents are seamlessly handled and hardcopies are rarely required. Further, the new system is connected to its automotive forecasting service so that high-level sales forecasts are made automatically as customers release their model plans. Results of this ERP implementation have been truly transformative for the

[24] The information was requested in the House Committee Report that accompanied the FY 2012 Commerce, Justice, Science, and Related Agencies Appropriations bill.

firm, resulting in ''fabulous'' performance, according to the firm's CFO. As a result of this project and much hard work by the firm, it has been able to rehire many of the workers that were laid off in 2009. Though not yet fully recovered, the firm has now increased employment by 40 percent since entering the TAAF program. The firm currently employs about 90 workers and generates over $20 million in sales. The firm just started another worker training project via the program.

An Ohio packaging firm was hit hard by rising import competition from China and other East Asian countries. Its customers were increasingly looking to cut costs by sourcing their packaging from abroad. This forced serious production cuts at the firm, which ultimately necessitated employee layoffs. The firm entered the TAAF program in early 2008. Its Adjustment Plan was approved in June of that year and included a wide range of needed improvements. The firm's first projects included a detailed evaluation and restructuring of its sales team, as well as the development of much needed marketing materials. Improvements to its costing and quoting system were next, followed by a revamping of its Web site. The firm's most recent TAAF project, completed in June 2012, was part of a major lean manufacturing initiative. Following classroom training financed in part by the State of Ohio, the TAAF program helped provide on-site employee training and hands-on coaching to jumpstart the firm's productivity improvement efforts. This ''last mile'' project—the customized on-site lean training—had a huge impact on the overall success of the effort. The firm has made great progress to date—sales have rebounded significantly (up 50 percent from their low), and productivity is much improved. However, considerable work remains to be done. The firm is about to begin a project that will dramatically strengthen its finance function. By the time this firm completes the program, it will be positioned to thrive, not just survive.

Mid-America Trade Adjustment Assistance Center (MamTAAC)

A Missouri fabric-based products manufacturer has been receiving technical assistance funded by the TAAF program since December 2010. The first project included a comprehensive review of their pay scale compared with market salaries and wages. The intent of this project included addressing personnel issues and forming a strong cohesive team to bring the business out of the recession. The next project involved employee training in the use of their Computer Aided Design software, which supported high investment equipment that enabled them to keep work in-house and support additional employees to be added. A portion of the TAAF assistance enabled the firm to implement an International Organization for Standardization (ISO) compliant quality system and to subsequently become certified to ISO 9001:2008. The ISO certification has enabled the firm to increase sales to a major defense contractor by over 50 percent. This sales increase and business from new market segments have necessitated increasing employees by 15 percent. With the help of MamTAAC and TAAF-funded technical assistance, the firm has been able to build a manufacturing organization that can continue to effectively compete and grow.

A Missouri wood products manufacturer has been enrolled in the program since 2004. In 2004, the firm had 16 employees and average revenue of $3 million and faced fierce competition with Chinese imports. TAAF funding allowed the firm to upgrade its management information systems, upgrade their ERP system, and purchase a production module to help with manufacturing data capture and tracking. Later, with technical assistance from MamTAAC, the firm leveraged TAAF program funds to provide human resources, employee, and executive training, which in addition to educating the firm's leadership on sound business practices, allowed the owner to take actual business problems that were especially related to growth to a group of business owner peers for feedback. Today the firm has 36 employees with 6 more slated to be added in 2012, and revenues are projected to be above $8 million. The firm expects that by 2015, revenue will increase to $14 million and employment to 60.

MidAtlantic Trade Adjustment Assistance Center (MATAAC)

A Pennsylvania maker of pressure control devices for the fluid power and chemical industries was in its third year of declining sales, profits, and employment when awarded TAAF-funded technical assistance in 2008. Sales had fallen by 37 percent, profits had declined 67 percent and 8 percent of the employees were laid off as a direct result of imports. The company implemented projects in strategic planning, lean manufacturing, marketing communications, and six sigma. Since program entry, sales have improved by more than 20 percent, jobs have grown by 12 percent, earnings have increased 42 percent, productivity has increased 7.5 percent, and return on human capital has grown 26.9 percent. As a direct consequence of this success, a world leader in the American fluid power industry acquired the firm in October 2012.

A Pennsylvania manufacturer of industrial wear products for the construction and material handling industries had suffered a 25 percent drop in sales, an 83 percent reduction in earnings, an 81 percent decline in productivity and 13 percent of its employees had been separated—all over a 24-month period. A flood of imports impacted virtually all of the company's products. Management recognized that its product line had been commoditized and that it could no longer compete on price alone. With projects addressing new product development, e-commerce and systems technology, the firm began to add value through superior design, cost mastery, and marketing. The firm was awarded TAAF-funded technical assistance in 2011. Since program entry, sales have grown by more than 50 percent, earnings have improved five-fold, productivity has increased more than 12 percent, jobs have grown 36 percent, and the return on the firm's human capital has more than tripled.

Midwest Trade Adjustment Assistance Center (MWTAAC)

A Wisconsin manufacturer of custom solenoids was experiencing tough competition from Asian importers in the automotive, recreational vehicle, motorcycle, and industrial application markets. Several key customers moved their purchases to overseas providers with cheaper prices, resulting in a 21 percent decline in sales, forcing the firm to lay off workers. The firm was certified for TAAF in June 2010. The firm was able to enhance marketing tools with two projects in late 2010 that helped attract new domestic and international customers. In addition, the firm was able to cost-share export development assistance early in 2012, including research and marketing material translation. As a result of assistance from MWTAAC and TAAF-funded technical assistance, the manufacturer's exports have grown dramatically and both sales and employment have increased over 90 percent in less than two years.

A Minnesota manufacturer of commercial and residential air filtration systems received TAAF-funded technical assistance between 2008 and 2011 for export-related quality certifications, testing and marketing material translation. In addition, TAAF program technical assistance provided

Management Information System (MIS) enhancement and training which has allowed the company to manage the expansion and control costs. In the most recent year, the manufacturer has identified $77,659 of new export sales directly attributable solely to TAAF assistance.

New England Trade Adjustment Assistance Center (NETAAC)

A Connecticut metal finishing firm, the largest full-service metal finisher in the Northeast, experienced a significant decline in sales due to increased foreign competition and a shrinking domestic market. In 2010, the firm was certified for TAAF and with the assistance of NETAAC, prepared an AP to fund projects such as leadership training, a new Web site, upgraded marketing materials, establish lean manufacturing, and NADCAP, a critical certification that could potentially open many new markets for the firm. After merging with another local Connecticut firm, they are now able to service a much larger market providing full-service metal finishing services. As a result of TAAF-funded technical assistance, the firm has become stronger and more competitive, increasing sales by 20 percent and adding 20 more jobs.

A Rhode Island full-service contract manufacturer serving a diverse group of customers including electronic manufacturers of medical instrumentation, military electronics, oceanographic instruments, and commercial products was adversely affected by a combination of growing foreign market competition and the global recession. In 2010, the firm was certified for TAAF and, with the assistance of NETAAC, prepared a business recovery plan (AP) to fund projects such as development of a strategic business plan, marketing and sales plan, MIS upgrades, and process improvement program. Within one year of TAAF-funded technical assistance, the firm has realized a 10 percent increase in employment and a 15 percent increase in sales. After successful realization of Lean Manufacturing and sales and marketing projects, the firm was able to capture new orders, increased the need for continuous improvement, and was able to lower cost of production by further streamlining their processes. The firm is now focusing on re-shoring efforts and committed to bringing jobs back to America.

New York State Trade Adjustment Assistance Center (NYSTAAC)

A New York manufacturer of precision optical fabrication machines and systems was suffering from the adverse effects of foreign competition from Germany. The combination of the foreign competition, coupled with the recent downturn in the economy, significantly reduced the firm's sales revenues. The firm needed to react to the continual loss of market share to foreign competition and did not have a formal strategic-based sales and marketing plan in place nor did it have the internal expertise to develop one. In order to effectively recover from the adverse effects of foreign competition, the firm sought technical assistance from NYSTAAC. At the time of TAAF certification, the firm had 35 full-time employees and annual sales of approximately $6 million. In order to stop the decline in sales and employment levels, the firm with assistance from NYSTAAC and TAAF-funded technical assistance, developed a business recovery plan (AP) that included a formal sales and marketing plan. In following the plan, the firm was able to achieve 85 percent growth in sales revenue to an annual rate of $12 million. This in turn has resulted in the firm adding 17 new employees since the implementation of the plan. An additional major outcome of the planning process was the recent expansion of the firm's manufacturing facility to accommodate new business.

A New York manufacturer of clipboards sought technical assistance from NYSTAAC to develop a business recovery plan (AP) to address inefficiencies with an outdated Management Information System (MIS) and production software, which when improved, would reduce deficits and increase productivity, resulting in higher output and increased sales. Since the firm was certified for TAAF in 2008, their sales have increased approximately $3.4 million and they have been able to maintain the same employment level.

Northwest Trade Adjustment Assistance Center (NWTAAC)

A Montana manufacturer of high performance laser diode and fiber optic control, test and measurement products used in research laboratories, telecommunication, and photonic production facilities received TAAF certification in 2005 based on a 74 percent increase in imports of these devices from China and Japan. Implementation of TAAF-funded projects such as extensive CE product testing, lean manufacturing and training, and sales market analysis and development over a 5 year period have resulted in firm product expansion into European markets, and increased penetration into China, Japan, and Korea. As a result of NWTAAC assistance and TAAF-funded technical assistance, as of the end of 2011, employment has stabilized and sales have increased 48 percent since certification, with export sales now comprising 50 percent of total sales, a 22 percent increase since entering the program.

An Idaho light duty manufacturer of sheet metal and plastic ventilation and roofing components was certified for TAAF in 2010 based on a 20 percent decline in sales resulting from increased imports from China, Canada, and Mexico. TAAF-funded technical assistance projects thus far have included Web site redesign and a two-phased search engine optimization project. As a result of these projects the firm has gone from zero exports and internet orders to over 300 new orders per month to customers all over the U.S. and Canada with about 75 percent of the orders coming from repeat customers. This increase in sales of $400,000 from two years ago provides better profit margins with 10-to-15 percent of the sales going to Canada. The firm has also increased employment by about 2.5 full time employees and is about to add another just for parcel packaging for the internet orders. As an added benefit, this new nationwide customer base gives this firm a better idea of what people want, and these sales are much more profitable than their wholesale business.

Rocky Mountain Trade Adjustment Assistance Center (RMTAAC)

Faced with intense foreign competition and an increasingly competitive market, a Utah manufacturer of plastic folding tables and chairs contacted RMTAAC in 2010 for assistance to improve the firm's competitive position. RMTAAC conducted a thorough business assessment and competitive analysis to identify strategic areas for improvement to build a more solid foundation for future growth. The firm was awarded technical assistance through the TAAF program to target cost reductions in its manufacturing processes. The firm has been able to utilize TAAF-funded technical assistance to shift its efforts to a firm-wide lean manufacturing initiative. The firm implemented lean manufacturing to reduce wasteful or non-value added activities in the manufacturing process. The firm has seen a 25 percent reduction in inventory carrying costs since applying lean manufacturing principles. In addition, the firm's sales are up 27 percent since

entering the TAAF program two years ago.

A South Dakota manufacturer of industrial cleaning machinery had noted increased competition from foreign countries. Over the last decade, consolidation has been a significant trend in the industrial machinery industry. As larger multi-national conglomerates have gained scale in their operations through acquisitions, the competitive challenges continue to mount for smaller manufacturers in the industry. The firm contacted RMTAAC in 2010 for assistance with TAAF certification. Upon certification, RMTAAC worked with the firm to develop a customized business recovery plan (AP) focused on implementing strategic improvements to strengthen the firm's competitiveness in the global marketplace. Between July 2011 and December 2011, the firm developed a customized sales and marketing program. To date, the firm's sales have increased 18.8 percent from the previous year, and the quote-to-order conversion rate has increased 7 percent. As a result of TAAF-funded technical assistance, the firm's sales are at a 72-year high.

Southeastern Trade Adjustment Assistance Center (SETAAC)

After losing sales to a major customer in 2000, a Georgia manufacturing firm ended an era of selling a complete textile machine to a U.S. customer. The impact of low-cost textile imports from China and Mexico was devastating the firm's domestic customers. In 2006, as sales and employment continued to decline, the firm turned to the TAAF program for help. The SETAAC team developed a customized business recovery plan (AP) which focused on planning and implementing strategic improvements to strengthen the firm's competitiveness in the global marketplace. With TAAF-funded technical assistance, the firm received certification from the Historically Underutilized Business Zone (HUBZone) program, which helps small businesses in urban and rural communities gain access to Federal procurement opportunities. The firm also redesigned its Web site and other marketing materials in order to appeal to a broader client base. The work paid off, as the firm now provides an ammunition testing system for the Air Force. As a result of TAAF-funded technical assistance, the firm has increased employment by 37 percent and revenue by 10 percent. At the end of the first quarter of 2012, the firm was on track for a 25 percent increase in revenue over 2011.

Based in South Carolina, a producer of screens for rotary screen textile printing experienced a 22 percent loss in sales from 2008 to 2009 as a result of Chinese competitors. To address the issue of foreign competition, the firm applied for and was certified for TAAF in 2009. The SETAAC team outlined key projects to help the firm increase its competitive edge. With consultants from the South Carolina Manufacturing Extension Partnership (SCMEP), the firm was able to transition from textile-based screen engraving to digital printing of designs directly to fabric by using a new brand. Projects performed by the SCMEP included Web site redesign, organic search engine optimization, lead generation and pay-per-click advertising. This outreach lead the firm to an opportunity with a large promotional and graphic communications firm with over 750 member locations in the U.S. and Canada. Since the initiation of this project, annual sales have steadily increased by over $220,000. May 2012 saw a 50 percent sales increase, and June 2012 as the highest sales month in four years. In addition to increasing sales, the firm has also added three additional employees.

Southwest Trade Adjustment Assistance Center (SWTAAC)

A Texas manufacturer of uniforms, industrial safety, and rehabilitation equipment was certified for TAAF in 2008. The firm had experienced a 21 percent decline in sales and 31 percent decline in employment since the previous year. The foreign impact was traced to imports from China, Bangladesh, Indonesia, Mexico and the Caribbean basin countries. The firm received EDA approval of an AP focusing on technical assistance in the areas of strategic marketing, Enterprise Resource Planning (ERP) implementation, and lean manufacturing techniques. To date, the firm has worked on four marketing projects, which included photography of their products, a complete redesign of their marketing materials such as catalogs, brochures, and press packages, along with product imaging improvements and a branding strategy. Management information systems projects integrated the firm's MAS 200 SAGE accounting software to interface with their Web site projects to streamline and improve the functionality of accounting, inventory control, on-line customer ordering accessible year round (24 hours a day) with the capability to track orders by oilrig number/employee, and create automated customized reports. The firm has completed 99 percent of their projects and seen a dramatic increase in sales. They recorded sales of $20.9 million in 2011 and an employment of 30, an increase of 345 percent and 25 percent respectively since the date of certification.

A Louisiana manufacturer of Creole pralines and a variety of other pecan-based confections was adversely impacted by imports from Canada, Mexico, and Thailand. The firm was certified for TAAF in May 2009. At the time of certification, annualized sales were approximately $2.7 million, down from $3.3 million the previous year. The firm AP project plans included a support system upgrade required to make significant Management Information System (MIS) upgrades. Although they had an MIS system, it did not have the capacity to allow the firm to manage their increasingly diversifying business. Although implementation of the projects outlined in their business recovery plan is ongoing, the firm has fared better than many other firms that are recovering from the aftermath of not only Hurricane Katrina, but also the generalized impact of the recession during this period. Annual sales two years from the date of certification grew to $3.6 million—an annualized growth rate of roughly 15 percent.

Western Trade Adjustment Assistance Center (WTAAC)

A California custom packaging manufacturer serving customers in the medical, food, and electronics industries suffered injury from import competition from Asia from 2004 through 2006. Its customers increased the purchase of packaging solutions made in the Pacific Rim. A severe downturn in the static packaging industry resulted in the Pacific Rim producing the bulk share of electronic components. The firm was certified for TAAF in December of 2006. WTAAC and the firm's management developed a strategy to change the way the customers think about flexible barrier packaging and to provide new ideas to industry to use this packaging. Specifically, the goal was to develop innovative ways of using barrier packaging to enter the advertising niche, a market segment that has not previously used flexible packaging. The firm completed the implementation phase of the TAAF program in January 2010. While active in the program, the firm implemented its marketing project and two information technology projects. Since TAAF certification, sales increased 34 percent, employment increased 28 percent, profitability

increased 68 percent, and productivity increased 4 percent.

A second-generation California bonding wedge manufacturer, specializing in the design and manufacture of bonding wedges for the microelectronics industry was suffering from continued shrinking market share due to increasing competition from low price Pacific Rim manufacturers from 2000 to 2002. As a result, 2002 annual sales decreased 44 percent and employment decreased 34 percent. The firm was certified for TAAF in October of 2002. WTAAC and the firm's management developed a strategy for the firm to specialize in the manufacture of high quality bonding wedges for the microelectronic industry while expanding its brand sales and diversifying its customer base. The firm successfully completed the implementation phase of the TAAF program in February 2009. While active in the program, the firm implemented two quality management system projects, three production engineering projects, four marketing and promotion projects, and one information technology project. These projects focused on significantly expanding international sales while improving manufacturing efficiency, reducing production cost and shortening cycle times. Since TAAF certification, the firm regained profitability, with sales increasing 45 percent, and productivity improving 45 percent.

Dated: December 21, 2012.

Miriam Kearse,

Eligibility Examiner.

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FEDERAL REGISTER

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No. 250 December 31, 2012

Part IV

The President

Executive Order 13634—Reestablishment of Advisory Commission

Federal Register
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Monday, December 31, 2012

Presidential Documents

Title 3—

The President

Executive Order 13634 of December 21, 2012

Reestablishment of Advisory Commission

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Reestablishing the President's Advisory Commission on Educational Excellence for Hispanics.* The President's Advisory Commission on Educational Excellence for Hispanics (Commission), as set forth under the provisions of Executive Order 13555 of October 19, 2010, is hereby reestablished and shall terminate on September 30, 2013, unless extended by the President. The same members who were serving on the Commission on October 19, 2012, are hereby reappointed to the Commission as reestablished by this order, as if the Commission had continued without termination through the date of this Executive Order.

Sec. 2. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(1) the authority granted by law to an executive department, agency, or the head thereof; or

(2) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

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

THE WHITE HOUSE,
Washington, December 21, 2012.

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H.R. 2467/P.L. 112–212
Bridgeport Indian Colony Land Trust, Health, and Economic Development Act of 2012 (Dec. 20, 2012; 126 Stat. 1538)

H.R. 2838/P.L. 112–213
Coast Guard and Maritime Transportation Act of 2012 (Dec. 20, 2012; 126 Stat. 1540)

H.R. 3319/P.L. 112–214
To allow the Pascua Yaqui Tribe to determine the requirements for membership in that tribe. (Dec. 20, 2012; 126 Stat. 1588)

H.R. 4014/P.L. 112–215
To amend the Federal Deposit Insurance Act with respect to information provided to the Bureau of Consumer Financial Protection. (Dec. 20, 2012; 126 Stat. 1589)

H.R. 4367/P.L. 112–216
To amend the Electronic Fund Transfer Act to limit the fee disclosure requirement for an automatic teller machine to the screen of that machine. (Dec. 20, 2012; 126 Stat. 1590)

S. 1998/P.L. 112–217
DHS Audit Requirement Target Act of 2012 (Dec. 20, 2012; 126 Stat. 1591)

S. 3542/P.L. 112–218
No-Hassle Flying Act of 2012 (Dec. 20, 2012; 126 Stat. 1593)

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