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

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 417

[Docket No. FSIS–2012–0007]

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

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of extension of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is extending the comment period for the December 6, 2012, **Federal Register** document ''HACCP Plan Reassessment for Not-Ready-to-Eat Comminuted Poultry Products and Related Agency Verification Procedures'' until April 20, 2013. FSIS will also provide an additional 45 days for establishments that produce not-ready-to-eat (NRTE) comminuted chicken or turkey products to reassess their Hazard Analysis and Critical Control Points (HACCP) plans for those products. FSIS will postpone by 45 days the date inspection personnel will begin verifying that those establishments have reassessed their HACCP plans. In addition, starting approximately on April 20, 2013, the Agency intends to begin obtaining samples to determine the prevalence of Salmonella in NRTE comminuted poultry product announced in the document. The Agency is taking these actions in response to a request made by a coalition of trade associations.

DATES: The comment period for the document published December 6, 2012, at 77 FR 72686, is extended. Comments are due by April 20, 2013.

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

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

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

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

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

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

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

SUPPLEMENTARY INFORMATION:

On December 6, 2012, FSIS published a document in the **Federal Register** to inform establishments producing NRTE ground or otherwise comminuted chicken and turkey products that they must reassess their HACCP plans for these products to take into account several recent *Salmonella* outbreaks associated with consumption of comminuted NRTE turkey products (77 FR 72686). In the document, FSIS describes how it will determine whether the association of NRTE meat or poultry product with an illness outbreak would make subsequently-produced like product adulterated. The Agency also announced the expansion of its *Salmonella* verification sampling program to include all forms of non-breaded, non-battered comminuted NRTE poultry product not destined for further processing into ready-to-eat products. In addition, the document announces that the Agency will begin sampling to determine the prevalence of *Salmonella* in NRTE comminuted poultry and will use the results from this sampling to develop performance standards for these products. FSIS gave the public until March 6, 2013, to submit comments on the document.

In a letter addressed to FSIS Administrator Alfred V. Almanza, dated January 18, 2013, a coalition of trade associations stated that additional time was needed to formulate meaningful comments.

FSIS will extend the comment period by an additional 45 days; the comment period will now end on April 20, 2013. FSIS will also provide an additional 45 days for establishments that produce NRTE comminuted chicken or turkey products to reassess their HACCP plans for those products. Recognize, however, that the December 6, 2012, document was based on the Agency's determination that changes have occurred that could affect establishments' hazard analysis or affect their HACCP plan. As is explained in the **Federal Register** document, FSIS is requiring the reassessments because of the outbreaks and recalls that have occurred. Thus, the predicate for requiring reassessment under 9 CFR 417.4(a)(3) clearly exists. Therefore, establishments should use this additional time to conduct a reassessment of their HACCP plans for those products.

FSIS will postpone by 45 days—until April 20, 2013—the date inspection personnel will begin verifying that those establishments have reassessed their HACCP plans. In addition, starting approximately on April 20, 2013, the Agency intends to begin obtaining samples to determine the prevalence of Salmonella in NRTE comminuted poultry announced in the **Federal Register** document. FSIS expects to use the verification testing program as the means for obtaining samples and will use the results from this sampling to develop performance standards for these products.

FSIS will not further delay verifying that establishments have reassessed their HACCP plans, nor will the Agency delay its sampling of such comminuted

products. However, FSIS will not make any changes to the performance standards for these products until FSIS has evaluated all comments received and has analyzed the results of the new testing.

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Additional Public Notification

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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: February 11, 2013.

Alfred V. Almanza,

Administrator.

[FR Doc. 2013–05342 Filed 3–6–13; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 424

[Docket No. FSIS–2011–0018]

RIN 0583–AD47

Food Ingredients and Sources of Radiation Listed and Approved for Use in the Production of Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to remove sodium benzoate, sodium propionate, and benzoic acid from the list of substances that the regulations prohibit for use in meat or poultry products. New uses of these substances in meat or poultry products will continue to be approved by the Food and Drug Administration (FDA) for safety and by FSIS for suitability. FSIS will add approved uses of these substances to the list of approved substances contained in the Agency's directive system.

DATES: Effective May 6, 2013.

FOR FURTHER INFORMATION CONTACT: Charles Williams, Director, Policy Issuances Division, Office of Policy and Program Development, FSIS, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250–3700, (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Background

On May 7, 2012, FSIS issued a proposed rule entitled ''Food Ingredients and Sources of Radiation Listed and Approved for Use in the Production of Meat and Poultry Products'' and requested comments on the document (77 FR 26706). FSIS proposed to remove sodium benzoate, sodium propionate, and benzoic acid from the list of substances that the regulations prohibit for use in meat or poultry products.

As explained in the proposal, under the Federal Food Drug and Cosmetics Act (FFDCA)(21 U.S.C. 301 *et seq.*), FDA is responsible for determining the safety of ingredients and sources of irradiation used in the production of meat and poultry products, as well as prescribing safe conditions of use. Under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), FSIS is responsible for determining the suitability of FDA-approved substances in meat and poultry products. Pursuant to a Memorandum of Understanding (MOU) that was implemented in January 2000, FDA and FSIS work together to evaluate petitions requesting the approval of new substances, or new uses of previously approved substances, for use in or on meat and poultry products. The MOU is available for viewing by the public in the FSIS docket room and on the FSIS Web site at: *http://www.fsis.usda.gov/Regulations_&_Policies/Labeling_FDA_MOU/index.asp.* Under this MOU, if FDA and FSIS approve an ingredient for use in meat or poultry products, FDA establishes the parameters of the approved use under its regulatory system. FSIS also lists the substance in FSIS Directive 7120.1, ''Safe and Suitable Ingredients Used in the Production of Meat, Poultry, and Egg Products,'' as part of a comprehensive listing of the substances that have been reviewed and that have been accepted as safe and suitable. (The Directive is available at: *http://www.fsis.usda.gov/OPPDE/rdad/FSISDirectives/7120.1.pdf.*)

The proposed rule also explained that, under FSIS's regulations, certain antimicrobial substances are prohibited for use in meat or poultry products because these substances have the potential to conceal damage or inferiority when used at certain levels (9 CFR 424.23(a)(3)). Among these substances are potassium sorbate, propylparaben (propyl phydroxybenzoate), calcium propionate, sodium propionate, benzoic acid, and sodium benzoate.

In 2006, Kraft Foods Global, Inc. petitioned FSIS to amend the Federal meat and poultry products inspection regulations to permit the use of sodium benzoate and sodium propionate as acceptable antimicrobial agents that may be used in combination with other approved ingredients to inhibit the growth of *Listeria monocytogenes* (*Lm*) in ready-to-eat (RTE) meat and poultry products. On July 26, 2010, Kemin Food Technologies petitioned FSIS to amend the regulations to permit the use of liquid sodium propionate and liquid sodium benzoate as acceptable antimicrobial agents in meat and poultry products.

After receiving each petition, FSIS conducted an initial evaluation of the requested action to confirm that FDA had no objections to the safety of sodium benzoate, sodium propionate, or benzoic acid at the proposed levels of use. FSIS also considered each petitioner's supporting data on the suitability of these substances for use in meat and poultry products. FSIS concluded that the petitioners had established the safety of sodium benzoate, sodium propionate, and benzoic acid at the proposed levels of use but that the Agency needed additional data to make a final suitability determination. Therefore, in July 2007, FSIS issued a waiver of provisions under 9 CFR 303.1(h) and 381.3(b) to enable Kraft to conduct various experimental trials involving the use of sodium benzoate and sodium propionate, in combination with other ingredients, to control the growth of *Lm* in RTE meat and poultry products. Additionally, from September 2010 through March 2011, FSIS issued waivers to Kemin and to various meat and poultry product processing establishments to conduct trials on the use of antimicrobial agents containing liquid sodium propionate and propionic acid supplied by Kemin for *Lm* control in RTE meat an poultry products.

While operating under the waivers, the Kemin and Kraft companies gathered sufficient data to support the use of sodium propionate, sodium benzoate, and benzoic acid as antimicrobial agents in RTE meat and poultry products. Kraft submitted data collected from its in-plant-trials and from scientific studies that show that these substances do not conceal damage or inferiority or make products appear better or of greater value than they are under the proposed conditions of use. Kraft submitted research findings to demonstrate that its proposed use of sodium benzoate and sodium propionate is effective in controlling the growth of *Lm* in RTE meat and poultry products. Kemin also submitted findings supporting the use of its sodium propionate and propionic acid formulations.

The Kemin petition and supporting materials are available for viewing by the public on the FSIS Web site at *http://www.fsis.usda.gov/PDF/Petition_Kemin.pdf.* The Kraft petition is available at: *http://www.fsis.usda.gov/PDF/Petition_Kraft.pdf.*

Final Rule

After considering the comments received and discussed below, FSIS has determined that sodium benzoate, sodium propionate, and benzoic acid, under the conditions proposed in the petitions, are both safe and suitable for use as antimicrobial agents in certain RTE meat and poultry products. Therefore, FSIS is amending 9 CFR 424.23(a)(3) to remove these substances from the list of prohibited substances that may be used "* * * in or on any product, only as provided in 9 CFR Chapter III."

Under this final rule, use of these substances in or on meat or poultry products will continue to be approved by FDA for safety and by FSIS for suitability. FDA will continue to establish the parameters of the approved use under its regulatory system, and FSIS will list approved uses of these substances in the table of approved substances in Directive 7120.1. In that directive, FSIS will specify that sodium propionate (generally recognized as safe under 21 CFR 184.1784) can be used as an antimicrobial in various meat and poultry products in an amount not to exceed 0.5 percent (by weight of total formulation) when used alone. Sodium propionate is a direct food ingredient that must be labeled by its common or usual name in the ingredients statement of a product (21 CFR 101.4, 9 CFR 317.2(f), 381.118(a)).

The directive also will state that, when used as an antimicrobial, sodium benzoate can be used in various meat and poultry products at up to 0.1 percent when used alone (21 CFR 184.1733). Sodium benzoate is a direct food additive that must be labeled by its common or usual name in the ingredients statement of a product. Similarly, benzoic acid is a generally recognized as safe (GRAS) direct food ingredient that can be used in various meat and poultry products at up to 0.1 percent (21 184.1021 and similarly must be labeled (21 CFR 101.4, 9 CFR 317.2(f) and 381.118(a)).

The uses of these substances are consistent with FDA regulations and reflect the levels that the petitioners requested to use in meat and poultry products and that they provided supporting data. Also, the use of these substances enhances food safety by controlling *Lm* in RTE products.

The Kraft petition also addressed sodium diacetate (GRAS under 21 CFR 184.1754 when used as an antimicrobial agent under cGMP). The company intends to use this substance in combination with sodium benzoate and sodium propionate. Sodium diacetate is not one of the substances considered in this rulemaking because is not prohibited by FSIS regulations. When sodium benzoate, sodium propionate, or sodium diacetate are used in combination with each other, the overall maximum level for the combination cannot exceed 0.1 percent (in accordance with 21 CFR 184.1(d)). FSIS will include this information in the directive.

As a result of amending 9 CFR 424.23(a)(3), the procedures for listing approved uses of sodium propionate, benzoic acid, and sodium benzoate in the FSIS directive will be consistent with the procedures for listing approved uses in meat and poultry products of other safe and suitable substances. Approved new uses of potassium sorbate, propylparaben (propyl p-hydroxybenzoate), and calcium propionate will continue to be listed through rulemaking because the regulations (9 CFR 424.23(a)(3)) prohibit their use in meat and poultry products.

FSIS carefully considered all the comments received and developed the following responses.

Discussion of Comments

FSIS received 20 comments in response to the proposed rule. Members of the public submitted twelve, organizations related to the food industry five, and a food safety consulting firm, a non-profit association, and a trade association each submitted one. Several commenters supported the proposal to remove sodium benzoate, sodium propionate, and benzoic acid from the list of substances that the regulations prohibit for use in meat or poultry products. They stated that the additives are effective as anti-Listerial agents and are suitable for specified uses in meat and poultry products.

FSIS agrees that adding sodium propionate to the list of approved ingredients also provides meat and poultry processors greater flexibility in formulating new products while protecting the food supply against *Listeria.* Moreover, sodium propionate and propionic acid, which are GRAS (21 CFR 170.30, 21 CFR 184.1784) for use as antimicrobials under current good manufacturing practices, have been confirmed as safe and effective at inhibiting *Lm.* Sodium propionate does not mask spoilage or negatively affect sensory attributes. This ingredient provides the benefit of lowering sodium contribution in meat and poultry products, while extending shelf-life.

The following is a discussion of the relevant issues raised in the comments.

Comment: A commenter asked why there were no tests involving the human body after eating the substances. Another commenter expressed concern about the cumulative effects of combined dosages of sodium benzoate,

sodium propionate, and benzoic acid on children.

Response: FSIS and FDA do not conduct tests of the effects of food ingredients directly on humans. For a GRAS substance, such as the substances discussed in this rule, generally available data and information about the use of the substance are known and widely accepted and FDA has a basis for concluding that there is consensus among qualified experts that the data and information establish that the substance is safe under the conditions of its intended use (21 CFR 170.36(c)(4)(i)(C)). For a food additive, privately held data and information about the use of the substance are sent by the sponsor to FDA. FDA then evaluates the data and information to determine whether they establish that the substance is safe under the conditions of its intended use (21 CFR 171.1).

FSIS and FDA have evaluated all the data and determined that the uses of these substances considered in this rule are safe for individual consumers, including children.

Comment: A few commenters disapproved removing sodium benzoate, sodium propionate, and benzoic acid from the list of substances prohibited from use in meat and poultry products because they stated that these ingredients would have harmful effects on human health. One commenter explained that, as a potential consumer of harmful additives, she found the evidence submitted by Kraft Foods and Kemin Food Technologies insufficient to prove that all three agents are safe for use in meat and poultry products. Specifically, the commenter stated that Kemin had relied on old research (a 1973 study conducted by the Select Committee on Generally Recognized as Safe Substances) to prove the safe use of sodium benzoate and benzoic acid and that new research must be performed to ensure the safety of benzoic acid for public use.

Another commenter expressed concern because Kraft stated that it used Lem-O-Fos in its meat and poultry products to ''enhance antimicrobial activity.'' The commenter stated that studies have shown that when benzoic acid is mixed with citric acid it forms benzene, which is a carcinogen. In the commenter's opinion, the substances should be kept separate from one another or concrete evidence must prove that the mixture does not constitute a hazard to consumers.

Another commenter stated that, in the early 1990s, the FDA urged companies not to use benzoate in products that also contain ascorbic acid. The commenter noted that a lawsuit filed in 2006 by private attorneys ultimately forced Coca-Cola, PepsiCo, and other soft-drink makers in the United States to reformulate affected beverages—typically fruit-flavored products. According to this commenter, soft-drink makers are now eliminating the use of benzoate in combination with vitamin C worldwide. This commenter stated that these developments should cause FDA and FSIS to reconsider whether benzoate should continue to be classified as GRAS. Another stated that the GRAS status of the sodium benzoate should be reviewed to take into account changes in consumer diets and advances in science and technology. The commenter also stated that FSIS should not expand its use until a safety assessment is done and noted that the European Union is in the process of reviewing its safety now.

Response: FDA and FSIS have considered the points made by the commenters and have determined that there are no human health hazards arising from the approved uses that will be listed in FSIS Directive 7120.1.

The conditions under which benzene is produced in soft drinks are different from the conditions under which benzene could be produced in ready-to-eat (RTE) meats. RTE meats have a pH close to neutral, are continuously refrigerated or stored at room temperature (canned RTE meats), and are protected from excessive exposure to light. Therefore, the use of sodium benzoate in RTE meats does not present a safety concern even if combined with Vitamin C or similar compounds.

Regarding the concern that the GRAS status of sodium benzoate should be reviewed, FDA has confirmed that the petitioner's intended use of sodium benzoate is covered under the GRAS regulations (at 21 CFR 184.1733) and that there are no safety issues with the intended use. FSIS accepts the conclusion of FDA. Further, FSIS is aware that the Codex Committee on Food Additives (1995)[1] has also approved the use of benzoates in cured (including salted) and dried non-heat treated processed (including comminuted) meat and poultry products, at a maximum level of 0.1 percent.

Regarding the European Union's evaluation, the European Food Safety Authority (EFSA) issued a data call June 1, 2012, on the occurrence in foods and beverages of certain food additives (sorbates, benzoates, and gallates) that were already permitted in the EU before January 20, 2009. Benzoic acid and sodium benzoate are among the ingredients on the list. The data are to be used to re-evaluate the ingredients. We understand from EFSA that the report on this re-evaluation will be available in late Spring 2013. When the re-evaluation is completed, experts in this Agency, and particularly in FDA, will consider the results and their possible implications. At this time, however, the available evidence supports the safety of the use of these ingredients.

Comment: One commenter supported the proposed rule but suggested that more studies be conducted on the effects of these three preservatives in higher dosages (higher than the use levels currently permitted under the FDA GRAS regulations), possible allergic reactions through contact or ingestion and the extent of those reactions, and potential alternatives to these preservatives that produce the same outcome without the use of preservatives.

Response: The levels that FSIS would allow to be used under this rule have not been shown to cause allergic reactions. Data on uses at higher levels would be evaluated under the joint FDA and FSIS ingredient approval system.

Data in the scientific literature on the amounts of these substances that are necessary to trigger or give rise to allergic reactions are not available. Food additives, such as benzoic acid and benzoates, have been known to cause hypersensitivity reactions. Such reactions are known to be very unusual in healthy individuals. However, in some cases, doses as low as 50 mg of benzoates have been shown to cause allergic reactions in individuals already suffering from allergic reactions. Information on the effects of these doses on healthy individuals is not currently available. Therefore, it is important that food additives or ingredients that may cause severe allergic or hypersensitivity reactions be appropriately declared in the ingredient statement on the product label.

Industry is likely to pursue research on the preservatives that are the subject of this rulemaking and on others. FSIS and FDA will continue to review new substances for safety and suitability under the MOU.

Comment: A commenter recommended not specifying a pH range of 4.8 to 5.2 percent for the use of sodium propionate as indicated in the Kemin petition, increasing the permissible use level of propionate

[1] Codex Alimentarius Committee on Food Additives. 1995. Codex General Standard for Food Additive, Codex Stan 192, pg 80. Available at: *http://www.codexalimentarius.org/committees-and-task-forces/en/?provide=committeeDetail&idList=9.* Accessed November 9, 2012.

when used in combination with other antimicrobial ingredients, and specifying that the substances are to be used in meat and poultry, including RTE products. The commenter explained that a higher pH provides several benefits including greater stability of the antimicrobial solution, better handling and shipping classifications, and improved sensory characteristics in finished meat products.

The commenter further stated that not including a pH specification in the approved ingredient listing in the FSIS Directive will provide room for innovation and fair competition in the market. Moreover, a permitted use level of sodium propionate in RTE meat and poultry products is necessary because the firm's testing results indicate that propionate, when combined with commonly used existing antimicrobials for meat and poultry (e.g., lactate, acetate, and diacetate), is required at higher levels to ensure safety of uncured high-moisture items.

Response: As noted above, sodium propionate that meets food grade standards as outlined in the Food Chemicals Codex, when used in accordance with 21 CFR 184.1784, is GRAS for use as an antimicrobial agent in meat products with no other limitations than cGMP. Therefore, FSIS will not specify a pH level in its Directive 7120.1. Also, since 21 CFR 184.1784 does not prescribe a maximum use level for sodium propionate, when the substance is used in combination with another antimicrobial agent, the maximum level for the combination is governed by the maximum use level of the other antimicrobial. For example, when sodium propionate is used in combination with sodium benzoate, the maximum level for the mixture is not to exceed 0.1 percent. When sodium propionate is used in combination with sodium diacetate, the maximum use level for the mixture is not to exceed 0.25 percent.

The directive will specify the uses of benzoic acid, sodium benzoate, and sodium propionate in meat and poultry products, including RTE meat and poultry products.

Executive Order 12866, Executive Order 13563, and Regulatory Flexibility Act

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

The rule will benefit companies that want to use these substances in the production of meat and poultry products by expediting the approval process. It will also benefit consumers by expediting the approved use of substances that enhance food safety by controlling the growth of *Lm* in RTE meat and poultry products. The rule also will make the approval process for new uses of sodium propionate, sodium benzoate, and benzoic acid in meat and poultry products consistent with the process for obtaining approval for other safe and suitable substances.

There are no expected costs associated with this final rule. All substances intended for use in the production of meat and poultry products will continue to be subject to FDA evaluation for safety and FSIS evaluation for suitability. Company costs and the agencies' costs associated with these evaluations will not be affected by this final rule.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FSIS Administrator has determined that this final rule will not have a significant impact on a substantial number of small entities. This determination is based primarily on the fact that the final rule will not affect the process for approving new uses of sodium benzoate, sodium propionate, and benzoic acid in meat or poultry products. This final rule will make the process of listing approved uses of these substances more efficient by eliminating the need for FSIS to conduct rulemaking each time a new use is approved.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) has no retroactive effect; and (2) does not require administrative proceedings before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5, 381.35, and 590.300 through 590.370, respectively, must be exhausted before any judicial challenge may be made of the application of the provisions of the final rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA, PPIA, or EPIA.

Paperwork Reduction Act

This rule does not contain any new information collection or record keeping requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

E-Government Act

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.

Additional Public Notification

FSIS will announce the availability of this final rule on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Interim_&_Final_Rules/index.asp.*

FSIS also will 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 our constituents and stakeholders. The *Update* is communicated via Listserv, a free email subscription service for industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The *Update* also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an email 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_and_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.

List of Subjects in 9 CFR Part 424

Food additives, Food packaging, Meat inspection, Poultry and poultry products.

For the reasons set forth in the preamble, FSIS is amending 9 CFR part 424 as follows:

PART 424—PREPARATION AND PROCESSING OPERATIONS

■ 1. The authority citation for part 424 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 451–470, 601–695; 7 CFR 2.18, 2.53.

■ 2. In § 424.23, revise paragraph (a)(3) to read as follows:

§ 424.23 Prohibited uses.

(a) * * *

(3) Sorbic acid, calcium sorbate, sodium sorbate, and other salts of sorbic acid shall not be used in cooked sausages or any other meat; sulfurous acid and salts of sulfurous acid shall not be used in or on any meat; and niacin or nicotinamide shall not be used in or on fresh meat product; except that potassium sorbate, propylparaben (propyl p-hydroxybenzoate), and calcium propionate, may be used in or on any product, only as provided in 9 CFR Chapter III.

* * * * *

Done at Washington, DC on: February 28, 2013.

Alfred V. Almanza,

Administrator.

[FR Doc. 2013–05341 Filed 3–6–13; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0720; Directorate Identifier 2012–NM–059–AD; Amendment 39–17360; AD 2013–04–03]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Cessna Aircraft Company Model 750 airplanes. This AD was prompted by reports of loss of displayed airspeed. This AD requires inspecting certain logic modules to determine if certain cabin altitude/pitot static heater module assemblies are installed and replacing those assemblies with a new assembly; and revising the Non-Normal Procedures Section of the airplane flight manual (AFM) to include procedures for resetting the pitot switch in the event of pitot heater failure and for total loss of airspeed indication. We are issuing this AD to prevent the loss of all displayed airspeed, which could result in reduced ability to control the airplane.

DATES: This AD is effective April 11, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publication listed in the AD as of April 11, 2013.

ADDRESSES: For service information identified in this AD, contact Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277; telephone 316–517–6215; fax 316–517–5802; email *citationpubs@cessna.textron.com;* Internet *https://www.cessnasupport.com/newlogin.html.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Christine Abraham, Aerospace Engineer, Electrical Systems and Avionics Branch, ACE–119W, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; phone: 316–946–4165; fax: 316–946–4107; email: *Christine.Abraham@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on July 17, 2012 (77 FR 41937). That NPRM proposed to require inspecting certain logic modules to determine if certain cabin altitude/pitot static heater module assemblies are installed and replacing those assemblies with a new assembly; and revising the Non-Normal Procedures Section of the AFM to include procedures for resetting the pitot switch in the event of pitot heater failure and for total loss of airspeed indication.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (77 FR 41937, July 17, 2012) and the FAA's response to each comment.

Request To Change Compliance Time

Cessna Aircraft Company (Cessna) requested that the NPRM (77 FR 41937, July 17, 2012) use the compliance time described in Cessna Service Letter SL750–30–08, Revision 1, dated July 11, 2011, of within two years or 1,200 flight hours after July 11, 2011 (The issue date of Cessna Service Letter SL750–30–08, Revision 1), whichever occurs first. Cessna noted that the proposed NPRM compliance time is within 600 flight hours or one year after the effective date of the AD, whichever occurs first. Cessna stated that the NPRM compliance time will extend the compliance time beyond what is suggested by Cessna Service Letter SL750–30–08, Revision 1, dated July 11, 2011.

We disagree with the request to change the compliance time. We coordinated with Cessna regarding the compliance time difference prior to issuing the NPRM (77 FR 41937, July 17, 2012). We have determined that a compliance time of within 600 flight hours or one year after the effective date of the AD (whichever occurs first) is an appropriate compliance time to adequately address the identified unsafe condition. If additional data are presented to justify a shorter compliance time, we might consider further rulemaking. We have not changed the AD in this regard.

Request To Change Logic Module Designators

Cessna requested that we change the reference designators to the logic modules in paragraph (g) of the NPRM (77 FR 41937, July 17, 2012). Cessna stated that NC006 and NC007 are the correct reference designators for the logic modules.

We agree to change the references because we have determined that the commenter's stated references are

correct. We have changed paragraph (g) of this AD to refer to the logic modules as NC006 and NC007.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously and minor editorial changes. We have determined that these minor changes:

• Are consistent with the intent that was proposed in the NPRM (77 FR 41937, July 17, 2012) for correcting the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 41937, July 17, 2012).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 210 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	2 work-hours × $85 per hour = $170	$0	$170	$35,700
Revision	1 work-hour × $85 per hour = $85	0	85	17,850

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	1 work-hour × $85 per hour = $85	$4,058	$4,143

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–04–03 Cessna Aircraft Company: Amendment 39–17360; Docket No. FAA–2012–0720; Directorate Identifier 2012–NM–059–AD.

(a) Effective Date

This AD is effective April 11, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Cessna Aircraft Company Model 750 airplanes, certificated in any category, serial numbers 0001 through 0245 inclusive.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 3030, Pitot/Static Anti-Ice System.

(e) Unsafe Condition

This AD was prompted by reports of loss of displayed airspeed. We are issuing this AD to prevent the loss of all displayed airspeed, which could result in reduced ability to control the airplane.

(f) Compliance

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

(g) Inspection and Replacement

Within 600 flight hours or one year after the effective date of this AD, whichever occurs first: Do an inspection of logic

modules NC006 and NC007 to determine if any cabin altitude/pitot static heater module assemblies having part number (P/N) 6718477–9, P/N 6718477–10, or P/N 9914731–1 are installed, in accordance with the Accomplishment Instructions of Cessna Service Letter SL750–30–08, Revision 1, dated July 11, 2011. If any altitude/pitot static heater module assembly having P/N 6718477–9, P/N 6718477–10, or P/N 9914731–1 is installed: Before further flight, replace that assembly with a new assembly having P/N 6718477–11, in accordance with the Accomplishment Instructions of Cessna Service Letter SL750–30–08, Revision 1, dated July 11, 2011.

(h) Airplane Flight Manual (AFM) Revision

Concurrently with the actions required by paragraph (g) of this AD: Revise the Non-Normal Procedures Section of the Cessna 750 AFM to include the information in the flight manual changes identified in paragraphs (h)(1), (h)(2), (h)(3), (h)(4), (h)(5), and (h)(6) of this AD. This may be done by inserting copies of these flight manual changes into the Cessna 750 AFM. When these flight manual changes have been included in general revisions of the AFM, the general revisions may be inserted in the AFM, provided the relevant information in the general revision is identical to that in these flight manual changes, and then these temporary flight manual changes may be removed.

(1) Cessna Temporary FAA Approved Airplane Flight Manual Change 75FM TC–R11–23, approved June 26, 2012.

(2) Cessna Temporary FAA Approved Airplane Flight Manual Change 75FM TC–R11–24, approved June 26, 2012.

(3) Cessna Temporary FAA Approved Airplane Flight Manual Change 75FM TC–R11–25, approved June 26, 2012.

(4) Cessna Temporary FAA Approved Airplane Flight Manual Change 75FM TC–R11–26, approved June 26, 2012.

(5) Cessna Temporary FAA Approved Airplane Flight Manual Change 75FMA TC–R02–03, approved April 10, 2012.

(6) Cessna Temporary FAA Approved Airplane Flight Manual Change 75FMA TC–R02–07, approved June 26, 2012.

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install an altitude/pitot static heater module assembly having P/N 6718477–9, P/N 6718477–10, or P/N 9914731–1, on any airplane.

(j) Special Flight Permit

Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the airplane can be modified (if the operator elects to do so), provided the actions required by paragraph (h) of this AD have been accomplished.

(k) Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(l) Related Information

For more information about this AD, contact Christine Abraham, Aerospace Engineer, Electrical Systems and Avionics Branch, ACE–119W, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; phone: 316–946–4165; fax: 316–946–4107; email: *Christine.Abraham@faa.gov.*

(m) Material Incorporated by Reference

(1) The Director of the **Federal Register** approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Cessna Service Letter SL750–30–08, Revision 1, dated July 11, 2011.

(ii) Cessna Temporary FAA Approved Airplane Flight Manual Change 75FM TC–R11–23, approved June 26, 2012.

(iii) Cessna Temporary FAA Approved Airplane Flight Manual Change 75FM TC–R11–24, approved June 26, 2012.

(iv) Cessna Temporary FAA Approved Airplane Flight Manual Change 75FM TC–R11–25, approved June 26, 2012.

(v) Cessna Temporary FAA Approved Airplane Flight Manual Change 75FM TC–R11–26, approved June 26, 2012.

(vi) Cessna Temporary FAA Approved Airplane Flight Manual Change 75FMA TC–R02–03, approved April 10, 2012.

(vii) Cessna Temporary FAA Approved Airplane Flight Manual Change 75FMA TC–R02–07, approved June 26, 2012.

(3) For Cessna service information identified in this AD, contact Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277; telephone 316–517–6215; fax 316–517–5802; email *citationpubs@cessna.textron.com;* Internet *https://www.cessnasupport.com/newlogin.html.*

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on February 8, 2013.

Ali Bahrami,

Manager,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–04901 Filed 3–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1157; Directorate Identifier 2012–NM–061–AD; Amendment 39–17371; AD 2013–04–13]

RIN 2120–AA64

Airworthiness Directives; BAE SYSTEMS (OPERATIONS) LIMITED Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all BAE SYSTEMS (OPERATIONS) LIMITED Model BAe 146 and Avro 146–RJ series airplanes. This AD was prompted by a report that certain ceramic terminal blocks, through which the wiring for the engine fire extinguishers, fire detection circuits, and engine and intake anti-ice system are routed, have been found to have moisture ingress, which can degrade the insulation resistance of the ceramic terminal blocks. This AD requires a one-time insulation resistance test of ceramic terminal blocks, and if necessary, replacement of the blocks. We are issuing this AD to prevent latent failure of the number 2 fire bottle, which, in the event of an engine fire, could result in failure of the fire bottle to discharge when activated and possibly preventing the flightcrew from extinguishing an engine fire.

DATES: This AD becomes effective April 11, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 11, 2013.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer,

International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on November 5, 2012 (77 FR 66415). That NPRM proposed to correct an unsafe condition for the specified products. The Mandatory Continuing Airworthiness Information (MCAI) states:

> Moisture ingress has been discovered on certain ceramic terminal blocks, mounted on the engine cowlings, through which the wiring for the engine fire extinguishers, fire detection circuits and engine and intake anti ice system are routed. The affected terminal blocks were introduced through BAE Systems SB 71–077–01693A (modification HCM01693A) during the period 2002–2004, as this modification was mandated by CAA UK AD 005–10–2001 [which corresponds with FAA AD 2003–03–10, Amendment 39–13034 (68 FR 4902, January 31, 2003)]. Moisture ingress has a detrimental effect on the insulation resistance of the ceramic terminal block with the resultant possibility of interconnections between all terminals. Most of the possible failure conditions in the terminal block should result in an evident warning or other indication. However, the functional loss of the number 2 fire bottle would be a dormant failure.
>
> This condition, if not corrected, could result in the failure of a fire bottle to discharge when activated, possibly preventing the flight crew in extinguishing an engine fire.
>
> For the reasons described above, this [European Aviation Safety Agency (EASA)] AD requires a one-time inspection of the ceramic terminal blocks to determine the insulation resistance and, depending on findings, replacement of terminal blocks, and the reporting of the results to the BAE Systems. These will be used to establish a suitable repetitive inspection interval, which is expected to be introduced through the Maintenance Review Board (MRB) process.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (77 FR 66415, November 5, 2012) or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 66415, November 5, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 66415, November 5, 2012).

Costs of Compliance

We estimate that this AD will affect 2 products of U.S. registry. We also estimate that it will take about 10 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $1,700, or $850 per product.

In addition, we estimate that any necessary follow-on actions would take about 1 work-hour and require parts costing $949, for a cost of $1,034 per product. We have no way of determining the number of products that may need these actions.

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 66415, November 5, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2013–04–13 BAE SYSTEMS (OPERATIONS) LIMITED: Amendment 39–17371. Docket No. FAA–2012–1157; Directorate Identifier 2012–NM–061–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective April 11, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all BAE SYSTEMS (OPERATIONS) LIMITED Model BAe 146–100A, –200A, and –300A airplanes; and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes; certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 24: Electrical Power.

(e) Reason

This AD was prompted by a report that certain ceramic terminal blocks, through which the wiring for the engine fire extinguishers, fire detection circuits, and engine and intake anti-ice system are routed, have been found to have moisture ingress, which can degrade the insulation resistance of the ceramic terminal blocks. We are issuing this AD to prevent latent failure of the number 2 fire bottle, which, in the event of an engine fire, could result in failure of the fire bottle to discharge when activated and possibly preventing the flightcrew from extinguishing an engine fire.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Inspection

Within 4,000 flight cycles or 18 months, whichever occurs first after the effective date of this AD, do an insulation resistance test on each terminal block, in accordance with paragraphs 2.C., 2.D., 2.E., and 2.F. of the Accomplishment Instructions of BAE SYSTEMS (OPERATIONS) LIMITED Inspection Service Bulletin 24–143, Revision 1, dated October 2, 2012.

(h) Replacement

If, during the test required by paragraph (g) of this AD, any terminal block is found to have a value of less than 50 megohms, before next flight, replace it with a new or serviceable terminal block, in accordance with paragraph 2.G. of the Accomplishment Instructions of BAE SYSTEMS (OPERATIONS) LIMITED Inspection Service Bulletin 24–143, Revision 1, dated October 2, 2012.

(i) Inspection Report Difference

Where BAE SYSTEMS (OPERATIONS) LIMITED Inspection Service Bulletin 24–143, Revision 1, dated October 2, 2012, specifies to complete the test result sheets in Appendices 1, 2, 3, and 4 and the inspection report in Appendix 6, and send the information to BAE SYSTEMS (OPERATIONS) LIMITED, this AD does not require that action.

(j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using BAE SYSTEMS (OPERATIONS) LIMITED Inspection Service Bulletin 24–143, dated September 26, 2011, which is not incorporated by reference in this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Information may be emailed to: *9–ANM–116–AMOC–REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(l) Related Information

(1) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2012–0040, dated March 13, 2012; and BAE SYSTEMS (OPERATIONS) LIMITED Inspection Service Bulletin 24–143, Revision 1, dated October 2, 2012; for related information.

(2) For service information identified in this AD, contact BAE SYSTEMS (OPERATIONS) LIMITED, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(m) Material Incorporated by Reference

(1) The Director of the **Federal Register** approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) BAE SYSTEMS (OPERATIONS) LIMITED Inspection Service Bulletin 24–143, Revision 1, dated October 2, 2012.

(ii) Reserved.

(3) For service information identified in this AD, contact BAE SYSTEMS (OPERATIONS) LIMITED, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.*

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on February 21, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–04629 Filed 3–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0860; Directorate Identifier 2012–NM–123–AD; Amendment 39–17369; AD 2013–04–11]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 737–600, –700, –800, and –900ER series airplanes. This AD was prompted by incorrect wire support clamps installed within the left environmental control systems (ECS) bay, which could allow wiring to come in contact with the exposed metal of the improper clamp. This AD requires inspections to identify the part number of the wire support clamp, related investigative actions, and corrective actions if necessary. We are issuing this AD to prevent electrical arcing and a potential ignition source within the ECS bay, which in combination with flammable fuel vapors, could result in a center wing fuel tank explosion, and consequent loss of the airplane.

DATES: This AD is effective April 11, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 11, 2013.

ADDRESSES: For service information identified in this AD, contact Boeing

Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6482; fax: 425–917–6590; email: *georgios.roussos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on August 27, 2012 (77 FR 51720). That NPRM proposed to require inspections to identify the part number (P/N) of the wire support clamp, related investigative actions, and corrective actions if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (77 FR 51720, August 27, 2012) and the FAA's response to each comment.

Statement To Address Effects of NPRM (77 FR 51720, August 27, 2012) on Winglets

Aviation Partners Boeing stated that the installation of winglets per Supplemental Type Certificate (STC) ST00830SE *(http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/408E012E008616A7862578880060456C?OpenDocument&Highlight=st00830se*) does not affect the actions specified by the NPRM (77 FR 51720, August 27, 2012).

Requests To Remove or Change the ''Parts Installation Prohibition'' Section

Boeing requested the ''Parts Installation Prohibition,'' paragraph (h) of the NPRM (77 FR 51720, August 27, 2012), be removed because there are other types of clamps installed within the ECS bay that are not included in either Boeing Special Attention Service Bulletin 737–28–1303, dated April 26, 2012, or the NPRM (77 FR 51720, August 27, 2012). Boeing also requested that we include P/Ns TA0930034–10P, TA0930034–11, and TA0930034–12P wire support clamps because they are interchangeable with P/N TA0930034–10. Alaska Airlines requested that the ''Parts Installation Prohibition'' paragraph be changed to clarify affected airplanes, and pointed out that AD 2010–24–11, Amendment 39–16530 (75 FR 74616, December 1, 2010), also addresses clamps installed in the left ECS bay, but allows installation of clamp P/N TA0930034–11 at the same clamp position. Delta Air Lines (Delta) requested that we ensure that paragraph (h) of the NPRM, only applies to those airplanes subject to the NPRM. Japan Airlines requested that we specify, in paragraph (h) of the NPRM, the locations within the left ECS bay that P/N TA0930034–10P clamps may be installed.

We agree to revise paragraph (i) of this AD (referred to as paragraph (h) in the NPRM (77 FR 51720, August 27, 2012)). We agree to allow installation of wire support clamps P/Ns TA0930034–10P, TA0930034–11, and TA0930034–12P, in addition to P/N TA0930034–10, and to limit the prohibition to the locations specified in Figures 1 through 4 of Boeing Special Attention Service Bulletin 737–28–1303, dated April 26, 2012. We have revised paragraph (i) of this AD accordingly.

In addition, we agree to clarify the phrase ''on any airplane'' used in paragraph (i) of this AD. The applicability statement in all AD actions lists all airplanes affected by that AD. All of the requirements stated in an AD are applicable only to the airplanes listed in the applicability of that AD. We have not changed the final rule regarding this issue.

Requests To Allow Use of Certain Other Wire Support Clamps

Boeing and Japan Airlines requested that the NPRM (77 FR 51720, August 27, 2012) allow use of certain other wire support clamps in addition to P/N TA0930034–10, as specified by Boeing Special Attention Service Bulletin 737–28–1303, dated April 26, 2012. Japan Airlines requested that we allow the use of clamp P/N TA0930034–10P, and referred to discussions with Boeing that support use of this part number clamp, that is also fully cushioned. Boeing requested the corrective actions statement in the ''Relevant Service Information'' section of the preamble of the NPRM (77 FR 51720, August 27, 2012) be revised to read, ''Corrective actions include replacing the discrepant clamp with a new or serviceable TA0930034–10, TA0930034–10P, TA0930034–11, or TA0930034–12P wire support clamp if the part number is incorrect, and repairing or replacing chafed wiring.'' Boeing stated that P/Ns TA0930034–10P, TA0930034–11, and TA0930034–12P are interchangeable with P/N TA0930034–10.

We agree to allow installation of P/Ns TA0930034–10P, TA0930034–11, and TA0930034–12P wire support clamps. We have added new paragraph (h) in this final rule to provide an exception to Boeing Special Attention Service Bulletin 737–28–1303, dated April 26, 2012, allow use of P/Ns TA0930034–10P, TA0930034–11, and TA0930034–12P wire support clamps. We have re-identified subsequent paragraphs accordingly.

We partially agree with the intent of Boeing's request to revise the ''Relevant Service Information'' section of the NPRM (77 FR 51720, August 27, 2012). Boeing's request included removing the phrase ''or if the flange cushions do not completely surround the two metal strap sections of the wire support clamp.'' This phrase is based on the procedures specified in Step 1 of Figures 1 and 2 of Boeing Special Attention Service Bulletin 737–28–1303, dated April 26, 2012, and is part of the inspection required by this AD. Therefore, we do not agree that this phrase should be removed from the description of the inspection. As stated previously, we do agree that installing P/Ns TA0930034–10P, TA0930034–11, and TA0930034–12P wire support clamps is acceptable for accomplishing the corrective action. However, the ''Relevant Service Information'' section of the NPRM is not restated in this AD, so we have not revised this AD in this regard.

Request To Clarify Impacted Fuel Tank

Boeing requested that the ''Summary'' and ''Discussion'' sections in the NPRM (77 FR 51720, August 27, 2012) be revised to add the text, ''in the center wing tank,'' and to read, ''We are proposing this AD to prevent electrical arcing and a potential ignition source in the center wing tank, which in combination with flammable fuel vapors could result in a fuel tank explosion, and consequent loss of the airplane,'' to clarify the area that might be potentially impacted by the unsafe condition identified in the NPRM.

We partially agree. We agree with Boeing's request to identify the center wing tank as the impacted tank, because the center wing tank located above the ECS bay is the fuel tank potentially affected by the unsafe condition identified in this AD. We disagree to state that this AD will prevent electrical arcing and a potential ignition source in the center wing tank, because the potential ignition source has been identified to be within the ECS bay, which is a flammable leakage fluid zone. A potential ignition within the ECS bay could lead to a fire in the area and potentially result in a center wing tank explosion. Therefore, we agree to identify the center wing tank as the affected fuel tank without including the misleading statement that this AD will prevent electrical arcing within the fuel tank. We further recognize that the same issue applies to paragraph (e), ''Unsafe Condition,'' of this AD and note that the ''Discussion'' section that appeared in the NPRM (77 FR 51720, August 27, 2012) is not restated in the final rule. We have revised the Summary and paragraph (e) of this AD to specify that we are issuing this AD ''to prevent electrical arcing and a potential ignition source within the ECS bay, which in combination with flammable fuel vapors, could result in a center wing fuel tank explosion, and consequent loss of the airplane.''

Request To Clarify Airplane Maintenance Data

Delta pointed to inconsistencies between the type design data and the aircraft illustrated parts catalog (AIPC) used for maintaining airplanes. Delta stated that the AIPC does not accurately identify all clamp locations that are needed for AD compliance, and pointed out that discrepancies within type design data and maintenance data could result in a re-occurrence of clamp installation discrepancies, which occurred in production and resulted in the airworthiness directive.

We acknowledge that if operators refer to and use an inaccurate AIPC, it could result in non-compliance with AD requirements. However, it is the responsibility of the operators to ensure that they are in compliance with AD requirements. In addition, the AIPC is not an FAA approved or controlled document. We have not changed the AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously—and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 51720, August 27, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 51720, August 27, 2012).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 297 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Number of airplanes	Cost on U.S. operators
Inspection Group 1 airplanes	10 work-hours × $85 per hour = $850.	$0	$850	185	$157,250
Inspection Group 2 airplanes	2 work-hours × $85 per hour = $170	0	170	112	19,040

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of wire support clamp	1 work-hour × $85 per hour = $85	$3	$88

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

We have received no definitive data that would enable us to provide cost estimates for the on-condition repair of chafed or damaged wiring specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition

that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–04–11 The Boeing Company: Amendment 39–17369; Docket No. FAA–2012–0860; Directorate Identifier 2012–NM–123–AD.

(a) Effective Date

This AD is effective April 11, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–600, –700, –800, and –900ER series airplanes, certificated in any category, identified in Boeing Special Attention Service Bulletin 737–28–1303, dated April 26, 2012.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 28, Fuel System.

(e) Unsafe Condition

This AD was prompted by incorrect wire support clamps installed within the left environmental control systems (ECS) bay, which could allow wiring to come in contact with the exposed metal of the improper clamp. We are issuing this AD to prevent electrical arcing and a potential ignition source within the ESC bay, which in combination with flammable fuel vapors, could result in a center wing fuel tank explosion, and consequent loss of the airplane.

(f) Compliance

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

(g) Inspection and Corrective Actions

Within 60 months after the effective date of this AD, do a detailed inspection for part number (P/N) TA0930034–10 wire support clamp at the locations specified in Figures 1 through 4 of Boeing Special Attention Service Bulletin 737–28–1303, dated April 26, 2012, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–28–1303, dated April 26, 2012, except as provided by paragraph (h) of this AD. Do all applicable related investigative and corrective actions before further flight.

(h) Exception to Service Information

Where Boeing Special Attention Service Bulletin 737–28–1303, dated April 26, 2012, specifies to install P/N TA0930034–10 wire support clamp, this AD also allows installation of P/Ns TA0930034–10P, TA0930034–11, and TA0930034–12P wire support clamps.

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install a wire support clamp at the locations specified in Figures 1 through 4 of Boeing Special Attention Service Bulletin 737–28–1303, dated April 26, 2012, on any airplane, unless the wire support clamp is P/N TA0930034–10, TA0930034–10P, TA0930034–11, or TA0930034–12P.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office.

(k) Related Information

For more information about this AD, contact Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6482; fax: 425–917–6590; email: *georgios.roussos@faa.gov.*

(l) Material Incorporated by Reference

(1) The Director of the **Federal Register** approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Special Attention Service Bulletin 737–28–1303, dated April 26, 2012.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

(4) You may view this service information at FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on February 20, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–04633 Filed 3–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1164; Directorate Identifier 2012–NM–075–AD; Amendment 39–17370; AD 2013–04–12]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A310–204, –222, –304, –322, and –324 airplanes. This AD was prompted by the manufacturer re-classifying slat extension eccentric bolts as principle structural elements (PSE) with replacement due at or before newly calculated fatigue life limits. This AD requires replacing slat extension eccentric bolts and associated washers with new slat extension eccentric bolts and washers. We are issuing this AD to prevent fatigue cracking, which could result in the loss of structural integrity of the airplane.

DATES: This AD becomes effective April 11, 2013.

The Director of the **Federal Register** approved the incorporation by reference of a certain publication listed in this AD as of April 11, 2013.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on November 19, 2012 (77 FR 69391). That NPRM proposed to correct an unsafe condition for the specified products. The Mandatory Continuing Airworthiness Information (MCAI) states:

> Slat extension eccentric bolts have been reclassified as Principal Structural Elements (PSE). As a result, associated fatigue lives will be published in the Airbus A310 Airworthiness Limitation Section (ALS) Part 1 and bolts must be replaced at or before their calculated fatigue lives.
>
> Failure to replace the bolts within the new fatigue life limits constitutes an unsafe condition.
>
> For the reasons explained above, this [European Aviation Safety Agency (EASA)] AD requires:
>
> —for A310–300 aeroplanes, the replacement of slat extension eccentric bolts, Part Number (P/N) A57844015200, with slat extension eccentric bolts P/N A57844015204 at the slat 2 tracks 4 and 7 and slat 3 track 8 positions on both Left Hand (LH) and Right Hand (RH) wings, and
>
> —for A310–300 and A310–200 aeroplanes that incorporate Airbus modification 04809, the replacement of slat extension eccentric bolts, P/N A57843624200 and associated washers P/N A57844016200, with slat extension eccentric bolts P/N A57843624202 and washers P/N A57844391200 at the slat 2 track 5 position, on both LH and RH wings.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (77 FR 69391, November 19, 2012) or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed—except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 69391, November 19, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 69391, November 19, 2012).

Costs of Compliance

We estimate that this AD will affect 1 product of U.S. registry. We also estimate that it will take about 9 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $25,250 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $26,015, or $26,015 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 69391, November 19, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2013–04–12 Airbus: Amendment 39–17370. Docket No. FAA–2012–1164; Directorate Identifier 2012–NM–075–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective April 11, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A310–204, –222, –304, –322, and –324 airplanes, certificated in any category, having received in production Airbus modification 04809 without Airbus modification 06243 or 13596.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by the manufacturer re-classifying slat extension eccentric bolts as principle structural elements (PSE) with replacement due at or before newly calculated fatigue life limits. We are issuing this AD to prevent fatigue cracking, which could result in the loss of structural integrity of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Compliance Times

At the applicable time specified in paragraphs (g)(1), (g)(2), or (g)(3) of this AD: Do the replacements specified in paragraphs (h)(1) and (h)(2) of this AD, as applicable. For the purposes of this AD, to establish the average flight time (AFT), take the accumulated flight time (counted from the take-off up to the landing) and divide it by the number of accumulated flight cycles. This gives the AFT per flight cycle.

(1) For Model A310–304, –322, and –324 airplanes operated with an AFT of less than 4 hours: Before the accumulation of 66,000 total flight hours or 40,000 total flight cycles, whichever occurs first.

(2) For Model A310–304, –322, and –324 airplanes operated with an AFT of 4 hours or more: Before the accumulation of 66,000 total flight hours or 31,400 total flight cycles, whichever occurs first.

(3) For Model A310–204 and –222 airplanes with Airbus modification 04809: Before the accumulation of 71,800 total flight hours or 35,900 total flight cycles, whichever occurs first.

(h) Replacement of Slat Extension Eccentric Bolt and Hardware on Both Wings

(1) For Model A310–304, –322, and –324 airplanes: Replace the slat extension eccentric bolts, part number (P/N) A57844015200, at the slat 2, tracks 4 and 7, and slat 3, track 8 positions with new slat eccentric extension bolts, P/N A57844015204, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2100, Revision 01, dated February 3, 2012.

(2) For Model A310–304, –322, and –324 airplanes, and Model A310–204 and –222 airplanes that have incorporated Airbus modification 04809: Replace the slat extension eccentric bolts, P/N A57843624200, at the slat 2, track 5, position with new slat extension eccentric bolts, P/N A57843624202; and replace the associated washers of eccentric bolts, P/N A57844016200, at the slat 2, track 5, position with washers, P/N A57844391200; in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2100, Revision 01, dated February 3, 2012.

(i) Parts Installation Prohibition

After the modification of the airplane with the replacement of slat extension eccentric bolts and associated hardware required by paragraphs (g) and (h) of this AD, no person may install any slat extension eccentric bolt, P/N A57844015200 or P/N A57843624200, with associated washer P/N A57844016200, on that airplane.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(k) Related Information

Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2012–0042, dated April 10, 2012; and Airbus Mandatory Service Bulletin A310–57–2100, Revision 01, dated February 3, 2012; for related information.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Airbus Mandatory Service Bulletin A310–57–2100, Revision 01, dated February 3, 2012.

(ii) Reserved.

(3) For service information identified in this AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on February 21, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–04632 Filed 3–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0080; Airspace Docket No. 12–AWA–6]

RIN 2120–AA66

Amendment of Class B Airspace Description; Tampa, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This action amends the description of the Tampa International Airport, FL, Class B airspace area by changing the references for defining the

centerpoint of the airspace from the ''airport surveillance radar (ASR) antenna'' to ''Point of Origin.'' In addition, the description is edited throughout to improve clarity. These changes are editorial only and do not alter the current charted boundaries or altitudes or the ATC procedures for the Tampa Class B airspace area.

DATES: Effective date: April 8, 2013. The Director of the **Federal Register** approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy and ATC Procedures Group, Office of Mission Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The Tampa Class B airspace area was established as a ''Terminal Control Area (TCA)'' on September 20, 1990 (55 FR 19226, May 8, 1990). In 1993, as part of the Airspace Reclassification Final Rule (56 FR 65638, December 17, 1991), the term ''terminal control area'' was replaced by ''Class B airspace area.'' Because there was no VHF Omnidirectional Range (VOR) navigation aid located on the Tampa International Airport to serve as a reference for describing the airspace, the area was designed using the latitude/longitude position of the ASR antenna as the centerpoint. In 2012, the ASR antenna was moved to another location on the airport. So that there will be no change to the existing charted boundaries of the Tampa Class B airspace area, the FAA is retaining the same latitude/longitude of the ''old'' ASR antenna location as the centerpoint for the Class B airspace. To accomplish this, all references to the ASR in the Tampa Class B airspace description (as published in FAA Order 7400.9) are replaced by ''Point of Origin.'' This practice is consistent with other Class B airspace locations that do not have a suitable navigation aid located on the airport.

The current Tampa Class B description also refers to the LOC/DME antenna. However, the FAA's Digital Navigation Products Team reviewed the charted boundaries and determined that none of the boundaries are defined from the LOC/DME antenna position. Therefore, those references are unnecessary and are removed from the description. Additionally, the description has been edited to eliminate confusing wording and improve clarity.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by editing the description of the Tampa. FL, Class B airspace (as published in FAA Order 7400.9) to remove references to the ''ASR antenna'' and replace them with ''Point of Origin'' for defining the centerpoint of the airspace. The Point of Origin uses the same latitude/longitude of the ''old'' ASR antenna location. The FAA is taking this action so that the currently charted boundaries of the Class B airspace area are not affected by the recent relocation of the ASR antenna to a new position on the airport. The Class B airspace description is also edited to remove unnecessary references to the LOC/DME antenna and to improve the clarity of the description.

Because this action is a minor editorial change that does not alter the currently charted boundaries or altitudes or ATC procedures for the Tampa International Airport, I find that notice and public procedure under 5 U.S.C 553(b) are unnecessary and contrary to the public interest.

Class B airspace areas are published in paragraph 3000 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class B airspace area listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the 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 I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it makes editorial corrections to an existing Class B airspace description to maintain accuracy.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9W, Airspace Designations and Reporting Points, signed August 8, 2012, and effective September 15, 2012, is amended as follows:

Paragraph 3000 Subpart B—Class B Airspace.

* * * * *

ASO FL B Tampa, FL [Amended]

Tampa International Airport (Primary Airport)
(Lat. 27°58′32″ N., long. 82°32′00″ W.)
Point of Origin
(Lat. 27°59′15″ N., long. 82°32′40″ W.)

Boundaries.

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL bounded by an area beginning at lat.

27°54′29″ N., long. 82°30′56″ W.; then clockwise along the 5-mile radius of the Point of Origin to lat. 27°57′43″ N., long. 82°27′18″ W.; then southwest to the point of beginning.

Area B. That airspace extending upward from 1,200 feet MSL to and including 10,000 feet MSL beginning at the intersection of the Anna Maria Island, FL, shoreline and the 30-mile radius of the Point of Origin; then north along the shoreline to lat. 27°40′47″ N., long. 82°44′14″ W.; then northeast to lat. 27°42′15″ N., long. 82°40′45″ W. (the end of the Skyway Bridge); then north along the shoreline to the 10-mile radius of the Point of Origin; then clockwise along the 10-mile radius to U.S. Highway 301; then south along U.S. Highway 301 to Interstate 75; then south along Interstate 75 to the 10-mile arc of the Sarasota, FL, Class C airspace area; then counterclockwise along the Sarasota Class C airspace area 10-mile arc to the 30-mile radius of the Point of Origin; then clockwise along the 30-mile radius to the point of beginning.

Area C. That airspace extending upward from 3,000 feet MSL up to and including 10,000 feet MSL bounded by a line beginning at the shoreline (lat. 28°19′48″ N., long. 82°43′37″ W.); then east to the intersection of Highway 19 and Highway 52; then east along Highway 52 to Interstate 75; then south along the eastern edge of Interstate 75 to Highway 54; then east along Highway 54 to Highway 39–301 at Zephyrhills, FL; then south on Highway 39 to Highway 60; then west on Highway 60 to lat. 27°56′17″ N., long. 82°11′05″ W.; then south to and along the railroad to Parrish, FL; then southwest along Highway 301 to the 10-mile DME arc of the Sarasota Class C airspace area; then counterclockwise along the Sarasota Class C airspace area 10-mile DME arc to Interstate 75; then north along Interstate 75 to the 10-mile radius of the Point of Origin; then counterclockwise along 10-mile radius of the Point of Origin to the shoreline; then south along the shoreline to lat. 27°42′15″ N., long. 82°40′45″ W.; then direct to the shoreline at lat. 27°40′47″ N., long. 82°44′14″ W.; then north along the shoreline to the point of beginning.

Area D. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at the intersection of the Anna Maria Island, FL, shoreline and the 30-mile radius of the Point of Origin; then clockwise along the 30-mile radius of the Point of Origin to long. 83°00′00″ W.; then north along long. 83°00′00″ W. to the 30-mile radius of the Point of Origin; then clockwise along the 30-mile radius of the Point of Origin to Dade City, FL; then south on Highway 39–301 to Highway 54 at Zephyrhills, FL; then west on Highway 54 to Interstate 75; then north on the eastern edge of Interstate 75 to Highway 52; then west on Highway 52 to the intersection of Highway 52 and Highway 19 at Hudson, FL; then due west to and south along the shoreline to lat. 27°40′47″ N., long. 82°44′14″ W.; then south along the shoreline to the point of beginning; and that airspace beginning at the intersection of Highway 301 and the Sarasota Class C airspace area 10-mile DME arc; then northeast along Highway 301 to Parrish, FL; then northeast along the railroad to lat. 27°56′17″ N., long. 82°11′05″ W.; then east along Highway 60 to the intersection of Highway 60 and Highway 39; then south along Highway 39 to the 30-mile radius of the Point of Origin; then clockwise along the 30-mile radius of the Point of Origin to the Sarasota, FL, Class C airspace area 10-mile DME arc; then counterclockwise along the Sarasota Class C airspace area 10-mile DME arc to the point of beginning.

Issued in Washington, DC, on February 21, 2013.

Gary A. Norek,

Manager, Airspace Policy and ATC Procedures Group.

[FR Doc. 2013–04829 Filed 3–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0610; Airspace Docket No. 12–ASO–28]

Amendment of Class E Airspace; Goldsboro, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E Airspace in the Goldsboro, NC area, to accommodate new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures at Mount Olive Municipal Airport. Airspace reconfiguration is necessary for the continued safety and management of instrument flight rules (IFR) operations within the Goldsboro, NC, airspace area. This action also updates the geographic coordinates of Mount Olive Municipal Airport and the Seymour Johnson TACAN, and recognizes the airport name change of Goldsboro-Wayne Municipal Airport to Wayne Executive Jetport.

DATES: Effective 0901 UTC, May 2, 2013. The Director of the **Federal Register** approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On September 28, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace in the Goldsboro, NC area (77 FR 59572). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication, the FAA found an error in the name of the Wayne Executive Jetport and makes the correction in the rule. Except for editorial changes, and the change noted above, this rule is the same as published in the NPRM.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface in the Goldsboro, NC, area, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for Mount Olive Municipal Airport. The geographic coordinates of Mount Olive Municipal Airport and the Seymour Johnson TACAN are also adjusted to coincide with the FAAs aeronautical database. This action also recognizes the airport name change of Goldsboro-Wayne Municipal Airport to Wayne Executive Jetport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the 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 I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace in the Goldsboro, NC, area.

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for Part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, effective September 15, 2012, is amended as follows:

Paragraph 6005. Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO NC E5 Goldsboro, NC [Amended]

Goldsboro, Seymour Johnson, AFB, NC

(Lat. 35°20′22″ N., long. 77°57′38″ W.)
Seymour Johnson TACAN
(Lat. 35°20′07″ N., long. 77°58′17″ W.)
Goldsboro, Wayne Executive Jetport
(Lat. 35°27′38″ N., long. 77°57′54″ W.)
Mount Olive, Mount Olive Municipal Airport
(Lat. 35°13′17″ N., long. 78°02′19″ W.)

That airspace extending upward from 700 feet above the surface within a 6–6 mile radius of Seymour Johnson, AFB, and within 2.5 miles each side of the Seymour Johnson TACAN 265° radial extending from the 6.6-mile radius to 12 miles west of the TACAN, and within a 5-mile radius of Wayne Executive Jetport, and within a 6.5-mile radius of Mount Olive Municipal Airport.

Issued in College Park, Georgia, on February 15, 2013.

Barry A. Knight,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2013–05223 Filed 3–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1401; Airspace Docket No. 11–AGL–27]

Amendment of Class E Airspace; Gaylord, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Gaylord, MI. Additional controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Gaylord Regional Airport. The airport's name and geographic coordinates are also adjusted. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective Date:* 0901 UTC, June 27, 2013. The Director of the **Federal Register** approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

SUPPLEMENTARY INFORMATION:

History

On September 13, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace for the Gaylord, MI, area, creating additional controlled airspace at Gaylord Regional Airport (77 FR 56586) Docket No. FAA–2011–1401. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface to ensure that required controlled airspace exists to contain new standard instrument approach procedures at Gaylord Regional Airport, Gaylord, MI. This action enhances the safety and management of IFR operations at the airport. Geographic coordinates of the airport are updated, as well as the airport name from Otsego County Airport to Gaylord Regional Airport, to coincide with the FAA's aeronautical database.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, 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 I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Gaylord Regional Airport, Gaylord, MI.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

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

* * * * *

AGL MI E5 Gaylord, MI [Amended]

Gaylord Regional Airport, MI
(Lat. 45°00′47″ N., long. 84°42′12″ W.)
Gaylord VOR/DME
(Lat. 45°00′45″ N., long. 84°42′15″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Gaylord Regional Airport, and within 2 miles each side of the 090° bearing from the airport extending from the 7-mile radius to 10.5 miles east of the airport, and within 8 miles north and 4 miles south of the Gaylord VOR/DME 278° radial extending from the 7-mile radius to 14.1 miles west of the airport, and within 8 miles north and 4 miles south of the Gaylord VOR/DME 270° radial extending from the 7-mile radius to 14.2 miles west of the airport.

Issued in Fort Worth, Texas, on February 12, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013–05209 Filed 3–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0791; Airspace Docket No. 12–AGL–9]

Amendment of Class E Airspace; Sault Ste Marie, ON

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Sault Ste Marie, ON. Changes to controlled airspace are necessary to coincide with the Canadian control zone over Sault Ste Marie Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective Date:* 0901 UTC, June 27, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

SUPPLEMENTARY INFORMATION:

History

On September 14, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace for the Sault Ste Marie, ON, area, amending controlled airspace at Sault Ste Marie Airport (77 FR 56796) Docket No. FAA–2012–0791. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace designated as an extension to Class D at Sault Ste Marie Airport, Sault Ste Marie, ON, to coincide with that portion of the control zone in Canadian airspace. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, 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 I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Sault Ste Marie Airport, Sault Ste Marie, ON.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is

not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

Paragraph 6004: Class E airspace designated as an extension to a Class D or Class E surface area

* * * * *

AGL ON E4 Sault Ste Marie, ON [Amended]

Sault Ste Marie Airport, ON, Canada (Lat. 46°29′06″ N., long. 84°30′34″ W.)

That airspace in the United States extending upward from the surface within 1.6 miles each side of the 118° bearing from Sault Ste Marie Airport extending from the 5-mile radius of the airport to 9.6 miles southeast of the airport.

Issued in Fort Worth, Texas, on February 12, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013–05220 Filed 3–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 38

[Docket No. RM05–5–020; Order No. 676–G]

Standards for Business Practices and Communication Protocols for Public Utilities

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations which establish standards for business practices and electronic communications for public utilities to incorporate by reference updated business practice standards adopted by the Wholesale Electric Quadrant of the North American Energy Standards Board to categorize various products and services for demand response and energy efficiency and to support the measurement and verification of these products and services in organized wholesale electric markets. These standards provide common definitions and processes regarding demand response and energy efficiency products in organized wholesale electric markets where such products are offered. The standards also require each regional transmission organization (RTO) and independent system operator (ISO) to address in the RTO or ISO's governing documents the performance evaluation methods to be used for demand response and energy efficiency products. The standards thereby facilitate the ability of demand response and energy efficiency providers to participate in organized wholesale electric markets, reducing transaction costs and providing an opportunity for more customers to participate in these programs, especially for customers that operate in more than one organized market.

DATES: This rule will become effective May 6, 2013. Dates for implementation of the standards are provided in the Final Rule. This incorporation by reference of certain publications in the rule is approved by the Director of the Federal Register as of May 6, 2013.

FOR FURTHER INFORMATION CONTACT:

David Kathan (technical issues), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6404.

Mindi Sauter (legal issues), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6830.

SUPPLEMENTARY INFORMATION:

Order No. 676–G

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Before Commissioners: Jon Wellinghoff, Chairman; Philip D. Moeller, John R. Norris, Cheryl A. LaFleur, and Tony T. Clark.

Order No. 676–G

Final Rule

Issued February 21, 2013.

1. The Federal Energy Regulatory Commission (Commission) is amending its regulations at 18 CFR 38.2(a) (which establish standards for business practices and electronic communications for public utilities) [1] to incorporate by reference [2] updated business practice standards adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB) to categorize various products and services for demand response and energy efficiency and to support the measurement and verification (M&V) of these products and services in organized wholesale electric markets. These standards provide common definitions and processes regarding demand response and energy efficiency products in organized wholesale electric markets where such products are offered. The standards also require each regional transmission organization (RTO) and independent system operator (ISO) to address in the RTO's or ISO's governing documents the performance evaluation methods to be used for demand response and energy efficiency products. The standards thereby facilitate the ability of demand response and energy efficiency providers to participate in organized wholesale electric markets, reducing transaction costs and providing an opportunity for more customers to participate in these programs, especially for customers that operate in more than one organized market.

I. Background

2. NAESB is a private consensus standards developer that divides its activities among four quadrants, each of which is composed of members from all segments of its respective industry.[3] NAESB is an accredited standards organization under the auspices of the American National Standards Institute (ANSI). NAESB's procedures are designed to ensure that all industry participants can have input into the development of a standard, whether or not they are members of NAESB, and each wholesale electric standard that NAESB's WEQ adopts is supported by a consensus of the seven industry segments: End Users, Distribution/Load Serving Entities, Transmission, Generation, Marketers/Brokers, Independent Grid Operators/Planners, and Technology/Services. The WEQ process requires a super-majority vote of 67 percent of the members of the WEQ's Executive Committee, with support from at least 40 percent of each of the seven industry segments, to approve a business practice standard.[4] For final approval, 67 percent of the WEQ's general membership must ratify the standards,[5] at which point compliance with NAESB's standards would be voluntary.

3. In 2006, the Commission adopted Order No. 676, a Final Rule that incorporated by reference business practice standards adopted by NAESB applicable to public utilities.[6] Since 2006, the NAESB consensus industry stakeholder process has reviewed the NAESB business practice standards for public utilities with a view to creating a more efficient marketplace and it has adopted revisions. In a number of instances, the Commission has incorporated the standards by reference into the Commission's regulations, making them mandatory for the entities identified in the standards.[7]

4. NAESB began work on developing business practice standards pertaining to the measurement and verification of demand response [8] products and services in July 2007, when the NAESB WEQ Demand Side Management (DSM)—Energy Efficiency (EE) subcommittee began work on this issue. Key to obtaining consensus on the initial set of demand response measurement and verification standards was the agreement to proceed with further work on more detailed technical standards for the measurement and verification of demand response resources. This effort led to the adoption and ratification by NAESB of measurement and verification standards early in 2009.

5. On April 17, 2009, NAESB filed a report informing the Commission that it had adopted an initial set of business practice standards to categorize various demand response products and services and to support the measurement and verification of these products and services in organized wholesale electric markets (Phase I Demand Response M&V Standards).[9] As mentioned above, the NAESB report recognized that adoption of these standards would need to be followed by the development of more detailed technical standards for the measurement and verification of demand response products and services in RTO and ISO areas.

6. On April 15, 2010, the Commission issued Order No. 676–F, incorporating by reference the Phase I Demand Response M&V Standards that categorize various demand response products and services and support the measurement and verification of these products and services in organized wholesale electric markets.[10] The Commission stated that ''[w]hile NAESB's Phase I [Demand Response] M&V Standards represent a good first step, additional substantive standards would appear beneficial in creating transparent and consistent measurement and verification of demand response products and services in wholesale electric markets.''[11] The Commission also stated that ''we expect Phase II will address issues related to baseline development * * *.''[12] The Commission anticipated that the measurement and verification standards needed to accomplish this goal would be a focus of NAESB's Phase II measurement and verification standards development efforts.[13]

[1] 18 CFR 38.2(a) (2012).

[2] Incorporation by reference makes compliance with these standards mandatory for public utilities subject to Part 38 of the Commission's regulations.

[3] The four quadrants are the wholesale and retail electric quadrants and the wholesale and retail natural gas quadrants.

[4] Under NAESB's procedures, interested persons may attend and participate in NAESB committee meetings, and phone conferences, even if they are not NAESB members.

[5] *See Standards for Business Practices and Communication Protocols for Public Utilities,* Order No. 676, FERC Stats. & Regs. ¶ 31,216, n.5 (2006), *reh'g denied,* Order No. 676–A, 116 FERC ¶ 61,255 (2006).

[6] *Id.*

[7] *Standards for Business Practices and Communication Protocols for Public Utilities,* Final Rule, Order No. 676–F, FERC Stats. & Regs. ¶ 31,309 (2010); Final Rule, Order No. 676–E, FERC Stats. & Regs. ¶ 31,299 (2009); *order granting clarification and denying reh'g,* Order No. 676–D, 124 FERC ¶ 61,317 (2008), Final Rule, Order No. 676–C, FERC Stats. & Regs. ¶ 31,274 (2008), Final Rule, Order No. 676–B, FERC Stats. & Regs. ¶ 31,246 (2007).

[8] Demand response means a reduction in the consumption of electric energy by customers from their expected consumption in response to an increase in the price of electric energy or to incentive payments designed to induce lower consumption of electric energy. 18 CFR 35.28(b)(4) (2012).

[9] Report, North American Energy Standards Board, Measurement and Verification of Demand Response Products, Docket No. RM05–5–017, at 2 (filed Apr. 17, 2009) (April 2009 Report).

[10] *Standards for Business Practices and Communication Protocols for Public Utilities,* Order No. 676–F, FERC Stats. & Regs. ¶ 31,309 (2010).

[11] Order No. 676–F, FERC Stats. & Regs. ¶ 31,309 at P 32.

[12] *Id.* P 37. The NAESB Phase I Demand Response M&V Standards defines ''baseline'' as ''an estimate of the electricity that would have been consumed by a Demand Resource in the absence of a Demand Response Event.''

[13] *Id.* P 32.

7. NAESB subsequently initiated specific plans to improve and adopt additional technical standards and filed a report[14] with the Commission on May 3, 2011 informing the Commission that NAESB had adopted a revised set of standards covering measurement and verification (Phase II Demand Response M&V Standards) and a new set of standards covering energy efficiency[15] (Wholesale Energy Efficiency M&V Standards), and explaining its efforts to develop these standards.

8. After a review of NAESB's May 2011 Report, the Commission issued a notice of proposed rulemaking (NOPR) on April 19, 2012 proposing to amend the Commission's regulations at 18 CFR 38.2 to incorporate by reference specific enumerated business practice standards[16] and seeking comment on both the proposed Energy Efficiency and Phase II Demand Response M&V Standards.[17] In light of the Commission's statements in Order No. 676–F regarding the importance of consistency and specificity as discussed above, the Commission requested comments in the NOPR as to whether the Phase II Demand Response M&V Standards were sufficiently detailed to provide transparent measurement and verification among regions, and whether greater detail or prescriptiveness would be appropriate. The Commission also requested comments on the degree to which encouraging greater consistency among markets and regions would reduce costs for customers and market participants or otherwise facilitate participation by end users in multiple markets.

9. To the extent that commenters recommended greater detail in the standards, the Commission requested additional comment as to whether market participants have attained sufficient experience in demand response to allow them to identify best practices in the area of measurement and verification, particularly for performance evaluation-type areas such as baseline calculations, to help inform any guidance that the Commission may provide. Similarly, the Commission requested comment regarding particular areas where enhancing such detail or consistency would be most useful. The Commission also requested comment on whether further development of more substantive measurement and verification standards broadly applicable to RTOs and ISOs is necessary and, if so, whether a NAESB or a Commission-led, or other process should carry out the task. Further, the Commission requested that, if commenters prefer the NAESB process, they comment on the best relationship between NAESB and the RTO and ISO stakeholder process to facilitate the formulation of standards.

10. In response to the NAESB Energy Efficiency and Phase II M&V NOPR, 21 entities filed comments.[18] On July 17, 2012, NAESB filed a report with the Commission stating it made a modification to the Energy Efficiency M&V Standards by deleting reference to the International Performance Measurement and Verification Protocol (IPMVP).[19] Using NAESB operating procedures for minor clarifications and corrections to standards, the WEQ Executive Committee approved the correction on June 15, 2012.

II. Discussion

A. Overview

11. In this Final Rule, the Commission is revising its regulations at 18 CFR 38.2 to incorporate by reference the Phase II Demand Response M&V Standards and the Wholesale Energy Efficiency M&V Standards. The Commission concludes that the Phase II Demand Response M&V Standards represent an incremental improvement to the business practices for measuring and verifying demand resource products and services in the organized wholesale electric markets. This phase of demand response standard development builds upon the work that already has been accomplished to provide demand response resources with opportunities to participate in organized wholesale electric markets, including accurate measurement and verification of demand response resources' performance. Similarly, the Commission concludes that the Wholesale Energy Efficiency M&V Standards facilitate energy efficiency providers' ability to participate in electricity markets by providing standardized measurement requirements and reducing transaction costs, and assure more effective evaluation of the performance of energy efficiency products and services.

12. The Phase II Demand Response M&V Standards and Wholesale Energy Efficiency Standards were approved by the WEQ and ratified by the NAESB membership under NAESB's consensus procedures.[20] As the Commission found in Order No. 587,[21] adoption of consensus business practice standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the

[14] Report, North American Energy Standards Board, Measurement and Verification of Demand Response Products, Docket No. RM05–5–020 (filed May 3, 2011) (May 2011 Report).

[15] Energy efficiency, Electricity:

[r]efers to programs that are aimed at reducing the energy used by specific end-use devices and systems, typically without affecting the services provided. These programs reduce overall electricity consumption (reported in megawatthours), often without explicit consideration for the timing of program-induced savings. Such savings are generally achieved by substituting technologically more advanced equipment to produce the same level of end-use services (e.g. lighting, heating, motor drive) with less electricity. Examples include high-efficiency appliances, efficient lighting programs, high-efficiency heating, ventilating and air conditioning (HVAC) systems or control modifications, efficient building design, advanced electric motor drives, and heat recovery systems.

U.S. Energy Information Administration Glossary, *http://www.eia.gov/tools/glossary/index.cfm?id=E* (last visited Feb. 6, 2013).

[16] NAESB Phase II Demand Response M&V Standards collectively identified by NAESB as 2010 Wholesale Electric Quadrant Annual Plan Item 4(a) and 4(b): General—Section 015–1.0; Telemetry—Section 015–1.1; After-the-Fact Metering—Section 015–1.2; Performance Evaluation—Section 015–1.3; General—Section 015–1.4; Telemetry—Section 015–1.5; After-the-Fact Metering—Section 015–1.6; Performance Evaluation—Section 015–1.7; General—Section 015–1.8; Telemetry—Section 015–1.9; After-the-Fact Metering—Section 015–1.10; Performance Evaluation—Section 015–1.11; General—Section 015–1.12; Telemetry—Section 015–1.13; After-the-Fact Metering—Section 015–1.14; Performance Evaluation—Section 015–1.15; Baseline Information—Section 015–1.16; Event Information—Section 015–1.17; Special Processing—Section 015–1.18; Baseline Information—Section 015–1.19; Event Information—Section 015–1.20; Special Processing—Section 015–1.21; Baseline Information—Section 015–1.22; Event Information—Section 015–1.23; Special Processing—Section 015–1.24; Baseline Information—Section 015–1.25; Event Information—Section 015–1.26; Special Processing—Section 015–1.27; Baseline Information—Section 015–1.28; Event Information—Section 015–1.29; and Special Processing—Section 015–1.30. NAESB Energy Efficiency M&V Standards collectively identified by NAESB as 2010 Wholesale Electric Quadrant Annual Plan Item 4(d): Energy Efficiency Resource Use Criteria in Wholesale Markets—Section 021–3.1; General Measurement and Verification Plan Requirements—Section 021–3.2; Post Installation M&V Report Components—Section 021–3.3; Performance Reporting—Section 021–3.4; M&V Supporting Documents—Section 021–3.5; M&V Methodologies—Section 021–3.6; Energy Efficiency Baseline Conditions—Section 021–3.7; Statistical Significance—Section 021–3.8; Nominated Energy Efficiency Value Calculations/Demand Reduction Value Calculations—Section 021–3.9; Measurement and Monitoring—Section 021–3.10; Measurement Equipment Specifications—Section 021–3.11; and Data Validation—Section 021–3.12.

[17] *Standards for Business Practices and Communication Protocols for Public Utilities,* Notice of Proposed Rulemaking, 77 FR 24427 (Apr. 24, 2012), FERC Stats. & Regs. ¶ 32,688 (2012) (Energy Efficiency and Phase II M&V NOPR).

[18] The names of entities that filed comments are listed in the Appendix to this Final Rule.

[19] Errata Report, North American Energy Standards Board, Measurement and Verification of Demand Response Products, Docket No. RM05–5–000, RM05–5–020 (filed July 17, 2012).

[20] As noted earlier, 67 percent of the WEQ's general membership voting is required for ratification of a business practice standard.

[21] *Standards for Business Practices of Interstate Natural Gas Pipelines,* Order No. 587, 61 FR 39053 (July 26, 1996), FERC Stats. & Regs. ¶ 31,038 (1996).

standards draw support from a broad spectrum of industry participants representing all segments of the industry. Moreover, since the industry itself has to conduct business under these standards, the Commission's regulations should reflect those business practice standards that have the widest possible support.

13. The specific NAESB standards that the Commission is incorporating by reference in this Final Rule are the Phase II Demand Response M&V Standards and associated terms, and the Wholesale Energy Efficiency M&V Standards and associated terms.[22]

B. NAESB Phase II Demand Response M&V Standards

14. In the NOPR, the Commission proposed to incorporate by reference the NAESB Phase II Demand Response M&V standards, which include three sections: the first section (Introduction and Definition of Terms) contains an overview of the standards and definitions, the second section (Standards 015–1.0 through 015–1.15) contains standards on Provision of Wholesale Electric Demand Response Energy, Capacity, Reserve and Regulation Products, and the third section (Standards 015–1.16 through 015–1.30) contains standards on the five performance evaluation methodologies: (1) Maximum Base Load; (2) Meter Before/Meter After; (3) Baseline Type-I (Interval Meter); (4) Baseline Type-II (Non-Interval Meter); and (5) Metering Generator Output.

1. Comments

a. Adoption of Phase II Demand Response M&V Standards

15. The Commission sought comments on whether it should incorporate by reference NAESB's proposed Phase II Demand Response M&V Standards. Commenters supporting incorporation of the proposed NAESB Phase II Demand Response M&V business practice standards into the Commission's regulations include the IRC, EPSA, AEP, Indicated New York Transmission Owners, DR Supporters, IECA, Hess, PSEG, and WEM. DR Supporters, IECA, Hess and PSEG also recommend further standardization, as discussed in detail below.

16. Viridity generally supports the incorporation of the Phase II Demand Response M&V Standards, but also requests that the Commission include in the final rule a requirement for RTOs and ISOs to adopt performance evaluation methods that provide a reasonably accurate, reasonably unbiased, and reasonably consistent baseline for a customer's highly-variable load.[23]

17. EEI and Southern also generally support incorporation of the Phase II Demand Response M&V Standards, but request that, to avoid inadvertent ambiguity, the Commission clarify in the Final Rule and in revisions to 18 CFR 38.2 that the NAESB standards and associated terms for the Phase II Demand Response M&V and the Wholesale Energy Efficiency M&V apply only in markets administered by RTOs and ISOs. EEI and Southern further request that the Commission incorporate by reference those provisions of the NAESB standards that limit their applicability to RTO and ISO markets.

18. NAPP and the PJM IMM recommend against adopting the Phase II Demand Response M&V Standards. As discussed below, the PJM IMM states that the proposed standards do not reference the Peak Load Contribution recently adopted in PJM, that they do not adequately define ''Capacity Service,'' and that they inappropriately allow the same five approaches for capacity as for energy products. It states that adopting the standards as applicable to capacity creates the potential to ''reopen and confuse the issue of double counting in PJM that was only recently resolved.'' [24] The PJM IMM also notes the difficulty of trying to apply common measurement and verification standards across all RTOs and ISOs.

b. Level of Detail, Standardization, and Best Practices

19. The Commission sought comments on whether the proposed NAESB Phase II Demand Response M&V Standards were sufficiently detailed and whether greater detail would be appropriate. The IRC believes that the five performance evaluation methodologies in the NAESB Phase II Demand Response M&V standards provide RTOs and ISOs with the necessary flexibility to enable accurate M&V. EPSA agrees and believes it is appropriate to defer to the RTO and ISO for an assessment of whether greater detail is needed for a particular region, and to establish the best next steps for refining demand response M&V mechanisms.

20. On the other hand, IECA states there has been minimal forward movement in developing greater standardization and ''best practices'' for demand response M&V, and argues that the status quo is unjust, unreasonable or unduly discriminatory and that the NAESB process discriminates against manufacturers. DR Supporters indicate that the proposed standards do not include specific and detailed characteristics of performance evaluation methodologies and that, because the NAESB standards defer to the RTO and ISO governing documents, the Phase II standards do little to bring consistency or standardization to the manner in which demand response is measured. The DR Supporters argue that greater detail or prescriptiveness is appropriate with respect to the measurement and verification of energy. However, DR Supporters state that efforts to impose consistent M&V approaches across RTO and ISO capacity markets would be misspent given that M&V in those markets is so intertwined with the details of the specific capacity markets themselves.

21. PSEG suggests that additional standards be developed that define the testing and auditing requirements for demand response resources to ensure that they have the capability to reduce demand during their time commitment. PSEG also argues that the requirement to provide real-time telemetry data for all four products (i.e., energy, capacity, reserve, and regulation) should be mandatory, and requests that the language in the standards be revised in the future to require specific language in this regard. PSEG also requests that additional standards be developed that require providers to measure demand response delivered via behind-the-meter generation, noting that it is important for system reliability planners to evaluate the impact of environmental regulations that affect those types of facilities.

22. The Commission also sought comments on whether encouraging greater consistency would reduce costs and facilitate participation. The IRC contends that further efforts at developing a standardized M&V performance evaluation methodology will not be productive at this time, and could reduce the accuracy of demand response M&V and exclude participation by resources with load shapes that do not conform to the standard. The IRC believes that a flexible, regional approach to demand

[22] The specific standards are enumerated in n.16 *supra.*

[23] Viridity notes that NAESB defines ''highly-variable load'' as a customer that has a ''fluctuating or unpredictable electricity usage pattern.'' Viridity states that these customers' ''business-as-usual'' loads may have little or no relation to the weather; thus predicting their loads is based on factors specific to the customer instead of more universal factors such as the weather.

[24] *See PJM Interconnection, L.L.C.,* 138 FERC ¶ 61,138 (2012).

response M&V is crucial to ensuring the growth of demand response resources in wholesale electric markets. Hess recommends that the Commission pursue simplicity and consistency over time (i.e., stability), as opposed to simply consistency across all RTOs and ISOs. Hess urges the Commission to be mindful that confusion and loss of customer confidence due to frequent rule changes might outweigh marginal benefits of rule improvements.

23. However, DR Supporters indicate that encouraging greater consistency among RTO and ISO energy markets and regions would reduce costs and facilitate participation. DR Supporters argue that differences in baseline designs require demand response providers that are active across the country to pay for and/or develop, maintain and adapt diverse systems in order to settle energy payments for demand response customers in order to accommodate each market's differences, and that this can result in customer dissatisfaction related to increased costs and confusion.

24. The Commission also sought comments on whether the demand response industry has had sufficient experience to enable it to identify best practices. DR Supporters believe the industry has had sufficient experience, and that this experience should be used to develop a common energy baseline methodology for use across all RTOs and ISOs, which would be available as an alternative to the approach a particular RTO and ISO already has implemented. Hess agrees that there is sufficient experience to identify best practices, and suggests that the standards proposed for incorporation do not draw upon available market experience to provide the details necessary to allow for true standardization.

25. The Commission also asked commenters to identify particular areas in which enhancing detail or consistency would be useful. Viridity indicates that the proposed M&V standards give RTOs and ISOs complete discretion as to whether a region utilizes any baseline methodology that is suitable for highly-variable loads,[25] leaving these resources without a reasonable baseline against which their performance can be measured. EPSA asserts that a lack of specific comparability between demand resources and other resources that participate in the wholesale market risks artificially skewing incentives towards potentially less reliable resources, discouraging needed investments and compromising the reliability of the system.

c. Other Matters

26. The Commission requested comments on whether, if further development of more substantive measurement and verification standards broadly applicable to RTOs and ISOs is required, a NAESB, Commission-led, or other process should carry out the task.[26] Several commenters, including EVO, Hess, IECA, DR Supporters, PSEG, and NYTOs prefer a Commission-led process, with some suggesting that the Department of Energy and NAESB also should participate. IECA, NYTOs, and DR Supporters variously ask the Commission to undertake technical conferences to review the M&V methods used by the different RTOs and ISOs in order to fully understand their differences, develop a set of consistent, detailed demand response M&V standards to enable demand response resources to participate in multiple jurisdictions without incurring costs of complying with different standards, determine the M&V floor required to provide demand response compensation, and establish a single Baseline Type I measurement and verification approach for energy that any curtailment service provider would be permitted to use in any Commission-jurisdictional market.

27. IRC states that in some cases, Commission action has provided critical guidance that can be more effective in providing direction than can be achieved in trying to reach consensus; therefore, future Commission guidance potentially can avoid significant hours of debate among NAESB participants on additional contentious M&V issues.

28. IRC further states that stakeholders have expressed only limited support for launching an additional NAESB process. IRC urges the Commission not to press for additional standardization at this time; however, should the Commission decide to do so, IRC suggests that the NAESB process is preferable to creating a new institutional process and requests that the Commission provide detailed guidance on the nature of further efforts. EPSA supports using existing NAESB processes in order to avoid establishing competing processes for developing demand response M&V baselines. EPSA believes the Phase II standards serve as a benchmark for RTO and ISO governing documents, establishing parameters that regional standards must either meet or surpass.

29. NAPP supports an industry-led standard development process, because it believes the NAESB process has little participation from demand response providers, energy efficiency providers and end use customers.

30. The PJM IMM also recommends that if the Commission decides to incorporate NAESB standards into its rules, the Commission should clarify that ''Capacity Service'' necessarily means achieving a reduction to a level at or below a resource's peak load contribution in order to prevent confusion in the industry and to avoid inefficient market rules. Additionally, the PJM IMM considers the NAESB standards to be flawed because they do not differentiate metrics appropriate to energy demand from metrics appropriate for capacity demand.

31. EPSA requests that the Commission confirm EPSA's understanding of the NOPR's explanation regarding conflicts between the RTO's or ISO's governing documents and the NAESB business standards. Specifically, EPSA requests that the Commission clarify that, if a conflict arises between a system operator's governing documents and the NAESB business standards, the system operator's governing documents would have precedence over the NAESB business standards with respect to things such as consistency of terms or definitions, but that such conflicts should not refer to use of or reliance on less rigorous regional demand response M&V techniques. EPSA believes this provision should allow for regional variation while protecting against a region adopting measures and protocols that are inferior to those prescribed in the Phase II proposal.

32. Mr. Lynch states that he opposes the proposed standard for power plants regulating carbon dioxide emissions from new coal-based power plants, arguing that such a regulation would effectively outlaw coal as a fuel source for the next generation of power plants, causing energy costs to rise.

2. Commission Determination

33. The Commission is revising its regulations at 18 CFR 38.2 to incorporate by reference the revised NAESB Phase II Demand Response M&V Standards, as they represent an incremental improvement to the existing standards that we incorporated by reference in Order No. 676–F. This phase of the demand response standard development builds upon the work that allows demand response to participate in organized wholesale electric markets, including accurate measurement and

[25] *See supra* note 23.

[26] NOPR, FERC Stats. & Regs. ¶ 32,688 at P 19.

monitoring of demand response resources' performance.

34. The Phase II Demand Response M&V Standards provide common definitions and processes regarding demand response products in organized wholesale electric markets where such products are offered. The standards address the applicability of performance evaluation, metering, and processes to each of the organized wholesale electric markets. The changes included in the Phase II Demand Response M&V Standards add greater specificity on items such as meter data reporting deadlines. The standards also require each RTO and ISO to address in the RTO's or ISO's governing documents the performance evaluation methods to be used for demand response products. The performance evaluation standards define each of the individual methods and their use during demand response events. The changes to the performance evaluation standards included in the Phase II Demand Response M&V Standards add greater specificity on the use of the individual performance evaluation methods.

35. The Commission concludes that the Phase II Demand Response M&V Standards facilitate the ability of demand response providers to participate in organized wholesale electric markets, reducing transaction costs and providing an opportunity for more customers to participate in these programs, especially for customers that operate in more than one organized market. The improvements to the uniform set of definitions and applicability requirements in the Phase II Demand Response M&V Standards should further reduce differences in performance evaluation methods between regions. Incorporating by reference these measurement and verification standards also will improve the methods and procedures for accurately measuring the performance of demand response resources and assist in monitoring demand response services for potential market manipulation.

36. The Commission appreciates the thoughtful comments and proposals related to increasing the detail of the Phase II Demand Response M&V Standards, as well as the proposals to establish a common M&V approach that would supplement each RTO's and ISO's approved methods. As the Commission has explained in prior orders, in choosing to take advantage of the efficiency of the NAESB process to establish technical standards for business practices and communication protocols for the gas and electric industries, we follow the standard regulatory process by which standards are incorporated by reference.[27] These rules appropriately balance the interests of the standards organization and the expediency of governmental use of privately developed standards. We find that, on balance, the objections raised to adopting the standards do not warrant rejecting them. While additional efforts to increase consistency across regions could benefit end users and demand response providers, as presented the Phase II Demand Response M&V Standards nonetheless represent an incremental improvement to the standards incorporated by reference in Order No. 676–F. The Commission therefore will incorporate by reference the standards without modification. While the Commission will not require any additional process to further refine or develop demand response measurement and verification standards at this time, we will monitor efforts at RTOs and ISOs and NAESB to address the issues raised in this proceeding and otherwise made known to us, and take action in the future in a separate docket as necessary.

37. We agree with EEI and Southern that the particular standards we are incorporating by reference in this Final Rule apply only in organized wholesale electric markets administered by RTOs or ISOs. NAESB made this clear in the applicability section of its standards, and we do not see any need to further amend 18 CFR 38.2. With respect to questions regarding whether the relevant RTO or ISO governing documents take precedence over the standards that we are incorporating by reference, we find that the standards adopted are sufficiently clear. To the extent that the Phase II Demand Response M&V Standards refer to ''Governing Documents,'' in the event of a conflict with the otherwise applicable NAESB standard, the governing documents will take precedence. If such a conflict arises and is of concern to affected parties, they may bring that concern to the Commission for consideration.

38. We also find merit in the suggestions to develop baselines that are more accurate for highly-variable load, to consider whether further work is needed to reflect in the standards the distinct functions provided by capacity and energy products, and to consider further development of appropriate rules for demand response supported by behind-the-meter generation. We encourage stakeholders to pursue these issues as they consider potential enhancements to the NAESB standards.

39. Mr. Lynch's comments are not related to the issues in this proceeding and, therefore, we will not address them here.

C. NAESB Energy Efficiency M&V Standards

40. In the NOPR, the Commission proposed to incorporate by reference the NAESB Wholesale Energy Efficiency M&V Standards, which include the following new standards—Energy Efficiency Resource Use Criteria in Wholesale Markets—Section 021–3.1; General Measurement and Verification Plan Requirements—Section 021–3.2; Post Installation M&V Report Components—Section 021–3.3; Performance Reporting—Section 021–3.4; M&V Supporting Documents—Section 021–3.5; M&V Methodologies—Section 021–3.6; Energy Efficiency Baseline Conditions—Section 021–3.7; Statistical Significance—Section 021–3.8; Nominated Energy Efficiency Value Calculations/Demand Reduction Value Calculations—Section 021–3.9; Measurement and Monitoring—Section 021–3.10; Measurement Equipment Specifications—Section 021–3.11; and Data Validation—Section 021–3.12. We address below the issues raised by the commenters.

1. Comments

a. Adoption of Wholesale Energy Efficiency M&V Standards

41. The Commission sought comments on whether it should incorporate by reference NAESB's proposed Energy Efficiency M&V Standards. Several commenters, including EEI, AEP, and IRC support incorporating the NAESB Energy Efficiency M&V business practice standards into the Commission's regulations.

42. Several other parties offer qualified support, including the DR Supporters, IECA, and PSEG. While generally supporting the incorporation of the energy efficiency business standards into the Commission rules, these commenters recommend several changes. The DR Supporters and IECA recommend that ''streamlined, cost-effective application of coincidence factors for simple conversion of energy use to peak demand reduction'' be included in the NAESB Energy Efficiency M&V standards, particularly for capacity markets. In its comments, PSEG recommends several specific modifications to the proposed Energy Efficiency M&V standards including wording changes, changes in report

[27] *See, e.g., Standards for Business Practices and Communication Protocols for Public Utilities,* Order No. 676–E, FERC Stats. & Regs. ¶ 31,299, at P 118 (2009).

timing, and deletion of Standard 021–3.11.1.9, which addresses the precision of measurement or monitoring equipment for proxy variables that do not directly measure electrical demand. IRC states that the Commission also should adopt and incorporate into its regulations the Introduction and Principles and Applicability sections identified in the Annual Plan item 4(d) as WEQ–021–1 and WE1–021–2, respectively. IRC argues that the Introduction and Principles frame the context of the standards and that the Applicability section: limits the applicability of the standard to RTOs and ISOs; establishes that RTO and ISO governing documents take precedence over the standard where there is a conflict; clarifies that the standard does not establish requirements related to compensation, design, operation, or use of energy efficiency products and services, and does not require system operators to offer energy efficiency products and services; and states that the standard includes the requirements on energy efficiency resource providers for M&V of energy efficiency products and services offered into wholesale electric markets.

43. NEEP, NAPP, WEM, Alliance to Save Energy, and EVO recommend against adopting the NAESB Energy Efficiency M&V Standards. NEEP and EVO share PSEG's objections to the required precision of measurement of monitoring equipment in Standard 021–3.11.1.9. NAPP, NEEP, Alliance to Save Energy, and EVO object to removing references to the International Performance Measurement and Verification Protocol (IPMVP). These commenters are concerned that deleting references to the IPMVP in the body of the Energy Efficiency M&V Standards removes the connection of the NAESB energy efficiency standards to the leading industry-accepted energy efficiency M&V guidance document. They argue that removing the references to IPMVP could cause confusion in the field and impede credible and consistent energy efficiency M&V, and will make it much more difficult for the Commission to be assured of consistency and transparency. NAPP argues that the NAESB process resulting in removing references to the IPMVP did not involve broad industry participation.

44. DNV KEMA and NEEP recommend several modifications to the Energy Efficiency M&V standards that address statistical significance and accuracy of the measurement of proxy variables. NEEP proposes modifications stating that the plus or minus two percent accuracy requirement on equipment required in WEQ.021.3.11.9 is redundant with the overall accuracy level required in Section WEQ.021.3.8. NEEP argues that this requirement could lead to a departure from standard practice in evaluating energy efficiency resources, and may compromise the overall accuracy of the M&V results while imposing higher evaluation costs. NEEP contends the prescribed level of accuracy for measurement for monitoring equipment extends beyond the hardware-specific scope of Section WEQ.021.3.11.

b. Other Matters

45. Several comments request that the Commission initiate a process to examine specific energy efficiency standards or to convene a technical conference to discuss the proposed energy efficiency standards in general in order to resolve areas of concern. IECA requests that the Commission add a process to create streamlined, cost-effective application of factors for simple conversion of energy use to peak reduction. EVO, NECPUC, and NEEP ask the Commission to convene a technical conference to address energy efficiency issues identified by commenters in this rulemaking process and to resolve areas of concern. EVO, supported by NEEP, also asks the Commission to convene a technical conference to address the removal of references to IPMVP from the energy efficiency standards, arguing that the removal constitutes a material change to the substance of the Wholesale Energy Efficiency M&V Standards.

46. NECPUC states its understanding that there is a significant divergence in views amongst the NAESB board with respect to the equipment accuracy requirement in WEQ.021.3.11.9, and NEEP states that its comments on statistical precision (discussed above) were not sufficiently considered or understood within the NAESB process.

2. Commission Determination

47. The Commission is revising its regulations at 18 CFR 38.2 to incorporate by reference the NAESB Wholesale Energy Efficiency M&V Standards. The new standards define terms and definitions that can be used to facilitate communications and provide standards for measurement and verification methodologies for energy efficiency in organized wholesale electric markets. These standards will reduce transaction costs and provide an additional opportunity and increased incentive for energy efficiency resources to participate in the wholesale markets established in RTO and ISO regions.

48. As with the Phase II Demand Response M&V Standards discussed above, the Wholesale Energy Efficiency M&V Standards were developed through the consensus-based NAESB process. Most of the modifications commenters suggest in response to the NOPR have already been considered through the NAESB process; consequently, the Commission declines to require that such modifications be included here. We find the standard requiring a plus or minus two percent accuracy for measuring equipment, to be reasonable; thus we incorporate it here, noting that its applicability is limited to measuring equipment only. These standards on measuring equipment accuracy reflect industry consensus, arrived at through the NAESB standards development process, on the specific statistical precision requirements associated with the reliable operation of organized wholesale electric markets. Additionally, while some express concern with NAESB's use of the minor clarifications and correction procedures to remove the IPMVP requirement, this procedure is permitted by NAESB's rules, and the NAESB Executive Committee reached a consensus on the removal of references to IPMVP from the energy efficiency M&V standards. Since the standards before us do not include the IPMVP references, we will not address the comments in that regard. As previously stated, NAESB followed its processes to remove these references. We find that standards as presented are incremental improvements and incorporation by reference does not foreclose stakeholders from pursuing these enhancements and their concerns through RTO and ISO or NAESB processes. The Commission, therefore, incorporates the standards.[28]

49. Additionally, a few commenters suggested modifications that were not considered during the consensus-based NAESB process, and the Commission declines to require that those additional modifications here. Specifically, we will not include provisions requiring RTOs to carefully consider acceptance of industry developed coincidence factors when evaluating Energy Efficiency M&V plans, and thus the Commission will not undertake a Commission-led process to develop such coincidence factors. We encourage stakeholders to pursue these issues as they consider potential enhancements to the NAESB standards.

50. We will not incorporate into our regulations the Introduction and Principles and Applicability sections

[28] *See* n.21 *supra; see also* OMB Circular A–119 Revised, February 10, 1998, *available at http://www.whitehouse.gov/omb/circulars_a119.*

identified in the Annual Plan item 4(d) as WEQ–021–1 and WE1–021–2, respectively, as we find that standards that we are incorporating by reference are sufficiently clear that the standards apply to organized wholesale electric markets administered by RTOs or ISOs.

51. The Commission also declines to convene a process or conduct technical conferences to discuss potential changes to the Wholesale Energy Efficiency M&V Standards. We conclude that it is appropriate to allow industry to gain additional experience with these new standards prior to considering additional enhancements. If the Commission determines that further efforts are warranted at a later time, it will take appropriate steps in a separate docket.

D. Incorporation by Reference/ Copyrighted Standards

52. EVO and WEM object to the incorporation by reference of the NAESB standards, maintaining they should not have to pay to obtain copies of the copyrighted standards. Similarly, WEM expresses concern that NAESB was utilized to develop the standards and contends that the fee NAESB charges for access to its standards will be onerous for some entities, noting that it experienced complications in getting free access to the standards from NAESB during the NOPR comment period. The PJM IMM also recommends that the Commission ensure that any standards incorporated into its rules are published in full in the **Federal Register**.

53. We addressed this issue at length in Order No. 676–E [29] in November of 2009, concluding that the NAESB process is an efficient and cost-effective method of developing these standards, incorporation by reference is the appropriate method for the Commission to adopt the regulations, and the Commission is required to observe NAESB's copyright.[30] As we pointed out in that order, obtaining these standards is not cost prohibitive. NAESB, in fact, makes the standards available free for a limited period of time to those that want to view the standards during comment periods related to Commission proposals to incorporate standards by reference.[31] For non-members seeking to purchase a copy, an email copy of any final action (e.g., the Demand Response Phase II standards) is available for $50, which is not prohibitive.

[29] Order No. 676–E, FERC Stats. & Regs. ¶ 31,299 at PP 115–121.

[30] *Id.*

[31] *See http://www.naesb.org/misc/NAESB_Nonmember_Evaluation_LockLizard.pdf.*

III. Implementation Dates and Procedures

54. The Commission is requiring, consistent with our regulations at 18 CFR 35.28(c)(vi), each RTO and ISO to revise its OATT to include the NAESB Energy Efficiency and Phase II Demand Response M&V Standards we are incorporating by reference herein. For standards that do not require implementing tariff provisions, the Commission will allow the RTO or ISO to incorporate the WEQ standard by reference in its OATT. Compliance with the standards incorporated in this Final Rule will be required beginning on the same date that the rule becomes effective (i.e., sixty days after publication in the **Federal Register**), even if this precedes the filing of a revised OATT reflecting these new requirements.

55. However, as we directed in the Phase I Demand Response M&V Final Rule, to lighten the burden associated with an immediate, stand-alone filing of a revised tariff reflecting the standards incorporated by reference in this Final Rule, we are giving RTOs and ISOs the option of including these changes as part of an unrelated tariff filing, even though compliance with the revised standards is required beginning on the effective date of this Final Rule.[32] If the RTO or ISO makes no unrelated tariff filing by December 31, 2013, it must make a separate tariff filing incorporating these standards by that date.

56. If adoption of these standards does not require any changes or revisions to existing OATT provisions, RTOs and ISOs may comply with this rule by adding a provision to their OATTs that incorporates the standards adopted in this rule by reference, including the standard number used to identify the standard. To incorporate this standard into their OATTs, RTOs and ISOs must use the following language in their OATTs: Measurement and Verification of Wholesale Electricity Efficiency (WEQ–021 2010 Annual Plan Item 4(d), July 16, 2012; and Measurement and Verification of Wholesale Electricity Demand Response (WEQ–015, 2010 Annual Plan Items 4(a) and 4(b), March 21, 2011).

57. If a RTO or ISO requests waiver of a standard, it will not be required to comply with the standard until the Commission acts on its waiver request. Therefore, if a RTO or ISO has obtained a waiver or has a pending request for a waiver, its proposed revision to its OATT should not include the standard number associated with the standard for which it has obtained or seeks a waiver. Instead, the RTO's or ISO's OATT should specify those standards for which the RTO or ISO has obtained a waiver or has pending a request for waiver. If and when a waiver request is denied, the RTO or ISO will be required to include in its OATT the standard(s) for which waiver was denied.

[32] *See* Order No. 676–F, FERC Stats. & Regs. ¶ 31,309 at P 44.

IV. Notice of Use of Voluntary Consensus Standards

58. In section 12(d) of NTT&AA,[33] Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB, as the means to carry out policy objectives or activities determined by the agencies unless use of such standards would be inconsistent with applicable law or otherwise impractical.[34] NAESB approved the standards under its consensus procedures. Office of Management and Budget Circular A–119 (§ 11) (February 10, 1998) provides that federal agencies should publish a request for comment in a NOPR when the agency is seeking to issue or revise a regulation proposing to adopt a voluntary consensus standard or a government-unique standard. The Commission published a request for comment in the Energy Efficiency and Phase II Demand Response M&V NOPR.

V. Information Collection Statement

59. The Office of Management and Budget's (OMB) regulations require approval of certain information collection requirements imposed by agency rules.[35] Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. The OMB Control Numbers will not be displayed in the NAESB standards; an explanation will be included in the clearance package submitted to OMB.

60. This Final Rule upgrades the Commission's current business practice and communication standards to include NAESB's Energy Efficiency M&V Standards and Phase II Demand Response M&V Standards. The implementation of these standards is necessary to increase the efficiency of demand response and energy efficiency

[33] National Technology Transfer and Advancement Act of 1995.

[34] *Id.*

[35] 5 CFR 1320.11.

in organized wholesale electric markets. In addition, requiring such information ensures a common means of communication and ensures common business practices that provide participants engaged in transactions with demand response programs with timely information and consistent business procedures across multiple markets. The implementation of these data requirements will help the Commission carry out its responsibilities under the Federal Power Act.

61. The Commission sought comments on its burden estimates associated with adoption of the NOPR proposals. In response to the NOPR, no comments were filed that addressed the reporting burden imposed by these requirements. Therefore the Commission will use these same estimates in this Final Rule.

	FERC collection number	No. of respondents (A)	No. of responses per respondent (B)	Hours per response (C)	Total No. of hours (A) × (B) × (C)
Demand Response Standards	FERC–516[36]	6	1	4	24
	FERC–717[37]	6	1	9	54
Energy Efficiency Standards	FERC–516	6	1	6	36
	FERC–717	6	1	12	72
Total for FERC–516					60
Total for FERC–717					126
Total One-Time Burden					186

Total Annual Hours for Collection: (Reporting and Recordkeeping, (if appropriate)) = 186 hours.

Information Collection Costs: The Commission projects the average annualized cost for all respondents to be the following:[38]

FERC–516: 60 hours*$59/hour = $3,540 ($590 per respondent).

FERC–717: 126 hours*59/hour = $7,434 ($1,239 per respondent).

The following table breaks out the cost by standard:

	FERC–516 (tariff filing)	FERC–717 (standards implementation)
Demand Response Standards Capital/Startup Costs	$1,416	$3,186
Demand Response Standards Annualized Costs (Operations & Maintenance)	N/A	N/A
Energy Efficiency Standards Capital/Startup Costs	2,124	4,248
Energy Efficiency Standards Annualized Costs (Operations & Maintenance)	N/A	N/A
Demand Response Standards Total Costs	1,416	3,186[39]
Energy Efficiency Standards Total Costs	2,124	4,248[40]
All Standards Total Costs	3,540	7,434

62. These new information collection requirements are mandatory.

Title: Standards for Business Practices and Communication Protocols for Public Utilities (FERC–717); Electric Rate Schedule Filings (FERC–516).

Action: Information collection.

OMB Control No.: 1902–0096 (FERC–516); 1902–0173 (FERC–717).

Respondents: RTO and ISOs.

Frequency of Responses: One-time implementation.

63. *Necessity of Information:* The Commission's regulations adopted in this rule upgrade the Commission's current business practices and communication standards by standardizing the definitions used by RTOs and ISOs to identify their various energy efficiency and demand response products and to measure and verify the results obtained by these products. Moreover, the implementation of these data requirements will help ensure consistency among the RTOs/ISOs with respect to the measurement and verification of energy efficiency and demand response performance in their organized wholesale electric markets.

64. *Internal Review:* The Commission has reviewed the information collection requirements and has determined, as discussed above, that its action in this proceeding is necessary because this rule increases access to standardized information for participants in wholesale energy markets that administer demand response and energy efficiency products and services. This rule also facilitates the ability of demand response and energy efficiency providers to participate in electricity markets, reducing transaction costs and providing an opportunity for more

[36] ''FERC–516'' is the Commission's identifier that corresponds to OMB control no. 1902–0096 which identifies the information collection associated with Electric Rate Schedules and Tariff Filings.

[37] ''FERC–717'' is the Commission's identifier that corresponds to OMB control no. 1902–0173, which identifies the information collection associated with Standards for Business Practices and Communication Protocols for Public Utilities.

[38] The Total Annual Cost for information collection is $10,974. This number is reached by multiplying the total hours to prepare responses (186) by an hourly wage estimate of $59 (a composite estimate of wages plus benefits that includes legal, technical and support staff rates. Based on data from the Bureau of Labor Statistics at *http://bls.gov/oes/current/naics3_221000.htm* and *http://www.bls.gov/news.release/ecec.nr0.htm).* (78 hours for demand response standards + 108 hours for energy efficiency standards) × $59/hour = $10,974.

[39] We note that 24 hours at $59/hour = $1,416 and 54 hours at $59/hour = $3,186.

[40] We note that 36 hours at $59/hour = $2,124 and 72 hours at $59/hour = $4,248.

customers to participate in these programs.

65. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attn: Ellen Brown, Office of the Executive Director, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873],

66. For submitting comments concerning the collection of information and the associated burden estimate, please send your comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4718, fax: (202) 395–7285]. For security reasons, comments to OMB should be submitted by email to: *oira submission@omb.eop.gov.* Comments submitted to OMB should reference the appropriate OMB Control Number(s) and collection number(s) (OMB Control No. 1902–0096 for FERC–516, and/or OMB Control No. 1902–0173 for FERC–717).

VI. Environmental Analysis

67. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[41] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[42] The actions adopted here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering analysis, and dissemination, and for sales, exchange, and transportation of natural gas and electric power that requires no construction of facilities. Therefore, an environmental assessment is unnecessary and has not been prepared in this Final Rule.

VII. Regulatory Flexibility Act

68. The Regulatory Flexibility Act of 1980 (RFA)[43] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[44] The SBA has established a size standard for electric utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours.[45]

69. The regulations we are incorporating by reference in this Final Rule impose filing requirements only on RTOs and ISOs, none of which is a small business. Moreover, these requirements are designed to benefit all customers, including small businesses. As noted above, adoption of consensus standards helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of industry participants representing all segments of the industry. Because of that representation and the fact that industry conducts business under these standards, the Commission's regulations should reflect those standards that have the widest possible support.

70. Accordingly, pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations incorporated by reference herein will not have a significant impact on a substantial number of small entities.

VIII. Document Availability

71. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page *(http://www.ferc.gov)* and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

72. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

73. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

IX. Effective Date and Congressional Notification

74. These regulations are effective May 6, 2013. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of subjects in 18 CFR Part 38

Conflict of interests, Electric power plants, Electric utilities, Incorporation by reference, Reporting and recordkeeping requirements.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission amends part 38, Chapter I, Title 18, *Code of Federal Regulations,* as follows.

PART 38—BUSINESS PRACTICE STANDARDS AND COMMUNICATION PROTOCOLS FOR PUBLIC UTILITIES

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

Authority: 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Section 38.2 is amended by revising paragraph (a)(12) and adding paragraph (a)(13) to read as follows:

§ 38.2 Incorporation by reference of North American Energy Standards Board Wholesale Electric Quadrant standards.

(a) * * *

(12) Business Practices for Measurement and Verification of Wholesale Electricity Demand Response (WEQ–015, 2010 Annual Plan Items 4(a) and 4(b), March 21, 2011).

(13) Business Practice Standards for Measurement and Verification of Energy Efficiency Products (WEQ–021, 2010 Annual Plan Item 4(d), May 13, 2011).

* * * * *

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

Appendix

List of Commenters[46]

Alliance to Save Energy (Alliance)

[41] *Regulations Implementing National Environmental Policy Act* of 1969, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[42] 18 CFR 380.4.

[43] 5 U.S.C. 601–612.

[44] 13 CFR 121.101.

[45] 13 CFR 121.201, Sector 22, Utilities & n.1.

[46] The abbreviations used to identify these commenters in this Final Rule are shown parenthetically.

American Electric Power Service Corporation (AEP)
DNV KEMA
DR Supporters [47]
Edison Electric Institute (EEI)
Efficiency Evaluation Organization (EVO)
Electricity Consumers Resource Council (ELCON)
Electric Power Supply Association (EPSA)
Hess Corporation (HESS)
Independent Market Monitor for PJM (PJM IMM)
Industrial Energy Consumers of America (IECA)
ISO/RTO Council (IRC)
John Lynch (Mr. Lynch)
North America Power Partners (NAPP)
New England Conference of Public Utilities Commissioners (NECPUC)
New York Transmission Owners (NYTOs) [48]
Northeast Energy Efficiency Partnerships, Inc. (NEEP)
PSEG Companies (PSEG) [49]
Southern Company Services, Inc. (Southern)
Viridity Energy, Inc.; EnergyConnect, Inc.; and PJM Industrial Customer Coalition (Viridity)
Women's Energy Matters (WEM)

[FR Doc. 2013–04433 Filed 3–6–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 73, 172, 173, 176, 177, 178, 184, and 189

[Docket No. FDA–2012–N–0010]

Food and Color Additives; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA) is amending certain regulations regarding food and color additives to correct minor errors (such as misspelled chemical names) and to update office names and addresses. This action is editorial in nature and is intended to improve the accuracy of the Agency's regulations.

DATES: This rule is effective March 7, 2013.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1200.

SUPPLEMENTARY INFORMATION: We are making technical amendments to our regulations under 21 CFR parts 73, 172, 173, 176, 177, 178, 184, and 189. In brief, these amendments are as follows:

- Correct misspelled chemical names in §§ 73.3129, 176.180, and 177.1210. For example, we are revising § 73.3129 to replace ''Disodium 1-amino-4-[[4-[(2-bromo-1-oxoallyl)amino]-2-sulphonatophenyl]amino]-9, 10-dihydro-9,10-dioxoanthracene-2-sulphonate'' with ''Disodium 1-amino-4-[[4-[(2-bromo-1-oxoallyl)amino]-2-sulfonatophenyl]amino]-9,10-dihydro-9.10-dioxoanthracene-2-sulfonate'';
- Correct a table entry in § 177.1500 regarding the melting point of certain nylon 12T resins; and
- Amend §§ 172.712, 172.723, 172.809, 172.831, 172.833, 172.886, 173.25, 173.45, 173.325, 173.368, 177.1350, 177.1360, 177.1637, 177.2440, 177.2600, 178.1010, 178.3297, 184.1012, 184.1024, 184.1034, 184.1063, 184.1259, 184.1316, 184.1415, 184.1583, 184.1595, 184.1866, 184.1914, 184.1985, 189.110, and 189.180 to remove archaic or obsolete office names and replace them with the current Office name ''Office of Food Additive Safety.'' Where appropriate, we also are updating the street address to reflect our present location at 5100 Paint Branch Parkway, College Park, MD 20740, and contact information to reflect our new telephone number, 240–402–1200. The final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required. Publication of this document constitutes final action of these changes under the Administrative Procedure Act (5 U.S.C. 553). These amendments are merely correcting nonsubstantive errors. FDA, therefore, for good cause, finds under 5 U.S.C. 553(b)(3)(B) and (d)(3) that notice and public comment are unnecessary.

List of Subjects

21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

21 CFR Part 173

Food additives.

21 CFR Parts 176, 177, and 178

Food additives, Food packaging.

21 CFR Part 184

Food additives, Substances generally recognized as safe.

21 CFR Part 189

Food additives, Food packaging, Substances prohibited from use in human food.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR parts 73, 172, 173, 176, 177, 178, 184, and 189 are amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

■ 1. The authority citation for 21 CFR part 73 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

■ 2. Amend § 73.3129 as follows:
■ a. Revise the section heading to read as set forth below.
■ b. In paragraph (a), remove ''disodium 1-amino-4-[[4-[(2-bromo-1-oxoallyl)amino]-2-sulphonatophenyl]amino]-9,10-dihydro-9,10-dioxoanthracene-2-sulphonate'' and in its place add ''disodium 1-amino-4-[[4-[(2-bromo-1-oxoallyl)amino]-2-sulfonatophenyl]amino]-9,10-dihydro-9,10-dioxoanthracene-2-sulfonate''.

§ 73.3129 Disodium 1-amino-4-[[4-[(2-bromo-1-oxoallyl)amino]-2-sulfonatophenyl]amino]-9,10-dihydro-9,10-dioxoanthracene-2-sulfonate.

* * * * *

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

■ 3. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

§ 172.712 [Amended]

■ 4. In § 172.712, in paragraph (b), remove ''the Office of Premarket Approval, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., College Park, MD 20740'' and in its place add ''the Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition,

[47] DR Supporters include Comverge, Inc., Energy Connect, Inc., Energy Curtailment Specialists, Inc., EnerNOC, Inc., and Wal-Mart Stores, Inc.

[48] New York Transmission Owners includes Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

[49] The PSEG Companies are: Public Service Electric and Gas Company (PSE&G), PSEG Power LLC (PSEG Power) and PSEG Energy Resources & Trade LLC (PSEG ER&T).

5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

§ 172.723 [Amended]

■ 5. In § 172.723, in paragraph (b)(1), remove ''Division of Petition Control (HFS–215), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 1110 Vermont Ave. NW., suite 1200, Washington, DC'' and in its place add ''Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

§ 172.809 [Amended]

■ 6. In § 172.809, in paragraph (b), remove ''Division of Petition Control (HFS–215), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and in its place add ''Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

§ 172.831 [Amended]

■ 7. In § 172.831, in paragraph (b), remove ''Division of Product Policy (HFS–206), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and in its place add ''Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

§ 172.833 [Amended]

■ 8. In § 172.833, in paragraph (b)(2), remove ''Office of Premarket Approval, Center for Food Safety and Applied Nutrition (HFS–200), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and in its place add ''Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

§ 172.886 [Amended]

■ 9. In § 172.886, in paragraph (c)(2)(iii), remove ''Office of Premarket Approval (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and in its place add ''Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

■ 10. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

§ 173.25 [Amended]

■ 11. In § 173.25, in paragraph (b)(2)(ii)(B), remove ''Division of Petition Control (HFS–215), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and in its place add ''Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

§ 173.45 [Amended]

■ 12. In § 173.45, in paragraph (a), remove ''Division of Product Policy, Center for Food Safety and Applied Nutrition (HFS–205), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and in its place add ''Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

§ 173.325 [Amended]

■ 13. In § 173.325, in paragraph (h), remove ''Division of Petition Control (HFS–215), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and in its place add ''Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

§ 173.368 [Amended]

■ 14. In § 173.368, in paragraph (c), remove ''Office of Premarket Approval (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and in its place add ''Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

■ 15. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 346, 348, 379e.

§ 176.180 [Amended]

■ 16. In § 176.180, in the table in paragraph (b)(2), in the first column, remove ''Methyl napthalene sulfonic acid-formaldehyde condensate, sodium salt'' and in its place add ''Methyl naphthalene sulfonic acid-formaldehyde condensate, sodium salt''; and remove ''Napthalene sulfonic acid-formaldehyde condensate, sodium salt'' and in its place add ''Naphthalene sulfonic acid-formaldehyde condensate, sodium salt''.

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

■ 17. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

§ 177.1210 [Amended]

■ 18. In § 177.1210, in table 1 in paragraph (b)(5), in the first column, remove ''Napthalene sulfonic acid-formaldehyde condensate, sodium salt'' and in its place add ''Naphthalene sulfonic acid-formaldehyde condensate, sodium salt''; and remove ''Sodium salt of trisopropyl napthalenesulfonic acid'' and in its place add ''Sodium salt of trisopropyl naphthalenesulfonic acid''.

§ 177.1350 [Amended]

■ 19. In § 177.1350, in paragraph (b)(2), remove ''Division of Petition Control (HFS–215) Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and in its place add ''Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

§ 177.1360 [Amended]

■ 20. In § 177.1360, in paragraph (d), remove ''Office of Premarket Approval (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and in its place add ''Office of Food Additive Safety (HFS–200)), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

§ 177.1500 [Amended]

■ 21. In § 177.1500, in table 1 in paragraph (b), in the third column of the entry for ''11. Nylon 12T resins for use in contact with all types of food except those containing more than 8 percent alcohol,'' remove ''290–310'' and in its place add ''N/A''.

§ 177.1637 [Amended]

■ 22. In § 177.1637, in paragraph (b)(2), remove ''Office of Premarket Approval, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and in its place add ''Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

§ 177.2440 [Amended]

■ 23. In § 177.2440, in paragraph (a)(3), remove ''Division of Petition Control (HFS–215), Center for Food Safety and Applied Nutrition, 1110 Vermont Ave. NW., Suite 1200, Washington, DC'' and in its place add ''Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

§ 177.2600 [Amended]

■ 24. In § 177.2600, in paragraph (c)(4)(i), remove ''Division of Petition Control (HFS–215), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and in its place add ''Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

■ 25. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

§ 178.1010 [Amended]

■ 26. In § 178.1010, in paragraph (c)(40), remove ''Division of Petition Control, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and in its place add ''Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

§ 178.3297 [Amended]

■ 27. Amend § 178.3297 as follows:

■ a. In paragraph (c), remove ''Center for Food Safety and Applied Nutrition, (HFS–200) Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740,'' and in its place add ''Food and Drug Administration, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

■ b. In paragraph (e), in the entry for ''High-purity furnace black,'' remove ''Office of Premarket Approval (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and in its place add ''Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

■ 28. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

§ 184.1012 [Amended]

■ 29. In § 184.1012, in paragraph (b), remove ''Office of Premarket Approval (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 1110 Vermont Ave. NW., Suite 1200, Washington, DC'' and in its place add ''Office Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

§ 184.1024 [Amended]

■ 30. In § 184.1024, in paragraph (b), remove ''Office of Premarket Approval (HFS–200), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and in its place add ''Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

§ 184.1034 [Amended]

■ 31. In § 184.1034, in paragraph (b), remove ''Office of Premarket Approval (HFS–200), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and in its place add ''Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

§ 184.1063 [Amended]

■ 32. In § 184.1063, in paragraph (b)(8), remove ''Division of Petition Control, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and in its place add ''Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

§ 184.1259 [Amended]

■ 33. In § 184.1259, in paragraph (b)(8), remove ''Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFS–200), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and in its place add ''Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

§ 184.1316 [Amended]

■ 34. In § 184.1316, in paragraph (b), remove ''Office of Premarket Approval (HFS–200), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and in its place add ''Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

§ 184.1415 [Amended]

■ 35. In § 184.1415, in paragraph (b), remove ''Office of Premarket Approval (HFS–200), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and in its place add ''Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

§ 184.1583 [Amended]

■ 36. In § 184.1583, in paragraph (b), remove ''Office of Premarket Approval (HFS–200), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and in

its place add ''Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

§ 184.1595 [Amended]

■ 37. In § 184.1595, in paragraph (b), remove ''Office of Premarket Approval (HFS–200), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and in its place add ''Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

§ 184.1866 [Amended]

■ 38. In § 184.1866, in paragraph (b), remove ''Office of Premarket Approval, Center for Food Safety and Applied Nutrition (HFS–200), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and in its place add ''Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

§ 184.1914 [Amended]

■ 39. In § 184.1914, in paragraph (b), remove ''Office of Premarket Approval (HFS–200), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and in its place add ''Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

§ 184.1985 [Amended]

■ 40. In § 184.1985, in paragraph (b), remove ''Division of Petition Control (HFS–215), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 1110 Vermont Ave. NW., Suite 1200, Washington, DC'' and in its place add ''Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

PART 189—SUBSTANCES PROHIBITED FROM USE IN HUMAN FOOD

■ 41. The authority citation for 21 CFR part 189 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371, 381.

§ 189.110 [Amended]

■ 42. In § 189.110, in paragraph (c), remove ''Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFS–200), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and in its place add ''Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

§ 189.180 [Amended]

■ 43. In § 189.180, in paragraph (c), remove ''Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFS–200), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and in its place add ''Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200''.

Dated: February 1, 2013.

Susan M. Bernard,

Director, Office of Regulations, Policy and Social Sciences, Center for Food Safety and Applied Nutrition.

[FR Doc. 2013–04701 Filed 3–6–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, 529, and 558

[Docket No. FDA–2012–N–1167]

New Animal Drug Applications; Alfaprostol; Bicyclohexylammonium Fumagillin; *N*-Butyl Chloride; Competitive Exclusion Culture; Dichlorophene and Toluene; Flurogestone Acetate; Isoflurane; Pyrantel; Tylosin; Tylosin and Sulfamethazine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule, technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the withdrawal approval of 19 new animal drug applications (NADAs) and one abbreviated new animal drug application (ANADA). The applications are being withdrawn for lack of compliance with the reporting requirements in an FDA regulation.

DATES: This rule is effective March 18, 2013.

FOR FURTHER INFORMATION CONTACT: David Alterman, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855; 240–453–6843; *david.alterman@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA gave notice that approval of the 19 NADAs and one ANADA listed in table 1, and all supplements and amendments thereto, is withdrawn, effective March 18, 2013, for lack of compliance with reporting requirements in 21 CFR 514.80. As provided in the regulatory text of this document, the animal drug regulations are amended to reflect withdrawal of approval of the following applications and a current format. Withdrawal of approval of some applications did not require amending the regulations.

TABLE 1—NADAS AND ANADA FOR WHICH APPROVAL IS WITHDRAWN

Application No.	Trade name (drug)	Applicant	Citation in 21 CFR
NADA 009–252	FUMIDIL B (bicyclohexylammonium fumagillin)	Mid-Continent Agrimarketing, Inc., 8833 Quivira Rd., Overland Park, KS 66214	520.182
NADA 034–601	SYNCHRO–MATE (flurogestone acetate)	G. D. Searle LLC, Pharmacia Corp., 4901 Searle Pkwy., Skokie, IL 60077	529.1003

TABLE 1—NADAS AND ANADA FOR WHICH APPROVAL IS WITHDRAWN—Continued

Application No.	Trade name (drug)	Applicant	Citation in 21 CFR
NADA 039–284	Swisher Super Broiler 300–108 (amprolium, ethopabate, bacitracin zinc, and roxarsone).	Swisher Feed Division, William Davies Co., Inc., P.O. Box 578, Danville, IL 61832	558.58
NADA 040–920	Chick Grower Developer Fortified (amprolium)	Honeggers and Co., Inc., 201 W. Locust St., Fairbury, IL 61739	Not codified
NADA 094–223	Canine Worm Caps (*n*-butyl chloride)	K. C. Pharmacal, Inc., 8345 Melrose Dr., Lenexa, KS 66214	520.260
NADA 098–429	Medic-Meal-T Premix (tylosin phosphate)	J. C. Feed Mills, 1050 Sheffield, P.O. Box 224, Waterloo, IA 50704	558.625
NADA 098–639	TYLAN Sulfa-G (tylosin phosphate and sulfamethazine).	Bioproducts, Inc., 320 Springside Dr., suite 300, Fairlawn, OH 44333–2435	558.630
NADA 106–507	TYLAN 10 (tylosin phosphate)	Custom Feed Blenders Corp., 540 Hawkeye Ave., Fort Dodge, IA 50501	558.625
NADA 110–044	PRO–TONE Plus Pak GF T–1 (tylosin phosphate).	Peavey Co., 730 Second Ave. South, Minneapolis, MN 55402	558.625
NADA 117–688	Dichlorophene and Toluene Capsules	Texas Vitamin Co., P.O. Box 18417, 10695 Aledo St., Dallas, TX 57218	520.580
NADA 120–614	TYLAN Sulfa-G (tylosin phosphate and sulfamethazine).	Webel Feeds, Inc., R.R. 3, Pittsfield, IL 62363	558.630
NADA 120–671	Pet-Worm-Caps (dichlorophene and toluene)	K. C. Pharmacal, Inc., 8345 Melrose Dr., Lenexa, KS 66214	520.580
NADA 121–147	Nutra-Mix TYLAN (tylosin phosphate)	Ag-Mark, Inc., P.O. Box 127, Teachey, NC 28464	558.625
NADA 122–522	TYLAN Sulfa-G (tylosin phosphate and sulfamethazine).	Custom Feed Blenders Corp., 540 Hawkeye Ave., Fort Dodge, IA 50501	558.630
NADA 124–391	Nutra-Mix TYLAN-Sulfa Premixes (tylosin phosphate and sulfamethazine).	Ag-Mark, Inc., P.O. Box 127, Teachey, NC 28464	558.630
NADA 127–195	TYLAN 10 (tylosin phosphate)	I.M.S. Inc., 13619 Industrial Rd., Omaha, NE 68137	558.625
NADA 129–415	Custom Ban Wormer 9.6 Banminth (pyrantel tartrate).	Custom Feed Blenders Corp., 540 Hawkeye Ave., Fort Dodge, IA 50501	558.485
NADA 130–092	ALFAVET (alfaprostol)	Vetem, S.p.A., Viale E. Bezzi 24, 20146 Milano, Italy	522.46
NADA 141–101	PREEMPT (competitive exclusion culture)	Bioscience Division, of Milk Specialties Co., 1902 Tennyson Lane, Madison, WI 53704	529.469
ANADA 200–187	Isoflurane, USP	Marsam Pharmaceuticals, LLC, Bldg. 31, 24 Olney Ave., Cherry Hill, NJ 08034	529.1186

Following these withdrawals of approval, Ag-Mark, Inc.; Bioproducts, Inc.; Bioscience Division of Milk Specialties Co.; Custom Feed Blenders Corp.; G. D. Searle LLC; I.M.S. Inc.; J. C. Feed Mills; K. C. Pharmacal, Inc.; Marsam Pharmaceuticals, LLC; Mid-Continent Agrimarketing, Inc.; Peavey Co.; Texas Vitamin Co.; Vetem, S.p.A.; and Webel Feeds, Inc., are no longer the sponsor of an approved application. Accordingly, 21 CFR 510.600(c) is being amended to remove the entries for these firms. In addition, the entries for Wyeth Laboratories, Division American Home Products Corp. are being removed because that firm is not the sponsor of an approved NADA.

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.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

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 the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, 522, 529, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

■ 2. In § 510.600, in the table in paragraph (c)(1), remove the entries for ''Ag-Mark, Inc.'', ''Bioproducts, Inc.'', ''Bioscience Division of Milk Specialties Co.'', ''Custom Feed Blenders Corp.'', ''G. D. Searle LLC'', ''I.M.S. Inc.'', ''J. C. Feed Mills'', ''K. C. Pharmacal, Inc.'', ''Marsam Pharmaceuticals, LLC'', ''Mid-Continent Agrimarketing, Inc.'', ''Peavey Co.'', ''Texas Vitamin Co.'', ''Vetem, S.p.A.'', ''Webel Feeds, Inc.'', and ''Wyeth Laboratories, Division American Home Products Corp.''; and in the table in paragraph (c)(2), remove the entries for ''000008'', ''000014'', ''000209'', ''000842'', ''024174'', ''028459'', ''032761'', ''035098'', ''038782'', ''039741'', ''046987'', ''050639'', ''051359'', ''055882'', and ''059620''.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.182 [Removed]

■ 4. Remove § 520.182.

■ 5. In § 520.260, revise the section heading and add paragraphs (b)(1) through (3) to read as follows:

§ 520.260 n-Butyl chloride.

* * * * *

(b) * * *

(1) *Specifications.* Each capsule contains 221, 272, 442, 816, 884, 1,768 milligrams, or 4.42 grams of *n*-butyl chloride.

(2) *Sponsors.* See sponsors in § 510.600(c) of this chapter for use as in paragraph (c) of this section:

(i) No. 000069 for use of 221-milligram capsules.

(ii) No. 021091 for use of 272- or 816-milligram capsules.

(iii) No. 023851 for use of 221-, 442-, 884-, or 1,768-milligram, or 4.42-gram capsules.

(3) *Conditions of use in dogs*—(i) *Amount.* Administered capsules orally. Capsules containing 221 milligrams of *n*-butyl chloride are administered to dogs weighing under 5 pounds at a dosage of 1 capsule per 1¼ pounds of body weight. Capsules containing 442 milligrams of *n*-butyl chloride are administered to dogs weighing under 5 pounds at a dosage of 1 capsule per 2½ pounds body weight. Capsules containing 884 milligrams of *n*-butyl chloride are administered to dogs as follows: Weighing under 5 pounds, 1 capsule; weighing 5 to 10 pounds, 2 capsules; weighing 10 to 20 pounds, 3 capsules; weighing 20 to 40 pounds, 4 capsules; over 40 pounds, 5 capsules. Capsules containing 1,768 milligrams of *n*-butyl chloride are administered at a dosage level of 1 capsule per dog weighing 5 to 10 pounds. Capsules containing 4.42 grams of *n*-butyl chloride are administered at a dosage level of 1 capsule per dog weighing 40 pounds or over.

(ii) *Indications for use.* For the removal of ascarids (*Toxocara canis* and *Toxascaris leonina*) and hookworms (*Ancylostoma caninum, Ancylostoma braziliense,* and *Uncinaria stenocephala*).

(iii) *Limitations.* Dogs should not be fed for 18 to 24 hours before being given the drug. Administration of the drug should be followed in ½ to 1 hour with a mild cathartic. Normal feeding may be resumed 4 to 8 hours after treatment. Animals subject to reinfection may be retreated in 2 weeks. A veterinarian should be consulted before using in severely debilitated dogs.

■ 6. In § 520.580, revise the section heading and paragraphs (a), (b), and (d)(1) and (2) to read as follows:

§ 520.580 Dichlorophene and toluene.

(a) *Specifications.* Each capsule contains 50 milligrams (mg) of dichlorophene and 60 mg of toluene, or multiples thereof.

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter for use as in paragraph (c) of this section:

(1) Nos. 017135, 023851, 051311, and 058670 for use only as a single dose.

(2) Nos. 000010 and 000061 for use in a single dose or divided-dosage regimen.

* * * * *

(d) * * *

(1) *Amount.* Administer as follows:

(i) Single dose: Administer 100 mg of dicholorophene and 120 mg of toluene per pound of body weight.

(ii) Divided dose: Administer 100 mg of dichlorophene and 120 mg of toluene per 5 pounds of body weight (20 and 24 mg per pound) daily for 6 days.

(2) *Indications for use.* For the removal of ascarids (*Toxocara canis* and *Toxascaris leonina*) and hookworms (*Ancylostoma caninum* and *Uncinaria stenocephala*); and as an aid in removing tapeworms (*Taenia pisiformis, Dipylidium caninum,* and *Echinococcus granulosus*) from dogs and cats.

* * * * *

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 7. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.46 [Removed]

■ 8. Remove § 522.46.

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 9. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 529.469 [Removed]

■ 10. Remove § 529.469.

§ 529.1003 [Removed]

■ 11. Remove § 529.1003.

§ 529.1186 [Amended]

■ 12. In paragraph (b) of § 529.1186, remove ''000209,''.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 13. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.485 [Amended]

■ 14. In § 558.485, in paragraph (b)(6), remove ''Nos. 034936 and 046987'' and add in its place ''No. 034936''.

§ 558.625 [Amended]

■ 15. In § 558.625, remove and reserve paragraphs (b)(35), (b)(63), (b)(66), and (b)(77).

■ 16. In § 558.630, add paragraph (b)(5) to read as follows:

§ 558.630 Tylosin and sulfamethazine.

* * * * *

(b) * * *

(5) Nos. 000986, 012286, 034936, and 046573: 5, 10, 20, or 40 grams per pound each for use as in paragraph (e)(2)(ii) of this section.

* * * * *

Dated: February 27, 2013.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2013–04999 Filed 3–6–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[CPCLO Order No. 002–2013]

Privacy Act of 1974; Implementation

AGENCY: Drug Enforcement Administration, United States Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice (DOJ or Department), Drug Enforcement Administration (DEA) is issuing a final rule for the recently modified system of records titled ''Investigative Reporting and Filing System'' (IRFS), JUSTICE/DEA–008. This system, which has already been exempted from particular subsections of the Privacy Act of 1974, is now being exempted further. Information in this system relates to law enforcement and intelligence matters, and for the reasons set forth in the rule these exemptions are necessary to avoid interference with the law enforcement, counterterrorism, and national security functions and responsibilities of the DEA.

DATES: Effective March 7, 2013.

FOR FURTHER INFORMATION CONTACT: DEA Headquarters, Attn: Bettie E. Goldman, Assistant Deputy Chief Counsel (CV), 8701 Morrissette Drive, Springfield, VA 22152, telephone 202–307–8040.

SUPPLEMENTARY INFORMATION:

Background

On April 11, 2012, the Department published an updated Privacy Act

system of records notice (SORN) for IRFS at 77 FR 21808, a DEA system of records notice originally published on August 8, 1975, at 40 FR 38712. In conjunction with the IRFS SORN update, on April 18, 2012, the Department published a proposed rule at 77 FR 23173 to amend 28 CFR 16.98, which had established exemptions of IRFS from various Privacy Act provisions, as expressly authorized by Privacy Act subsections (j) and (k). The proposed rule did not significantly change the previously established exemptions of IRFS from Privacy Act subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g). However, the proposed rule did add new exemptions of IRFS from Privacy Act subsections (e)(4)(G), (H), and (I); (f); and (h) and made general editorial revisions to the reasons for the existing IRFS exemptions. The public was provided with thirty (30) days in which to comment on the updated SORN and the proposed rule.

Public Comments

The only comments the Department received with regard to the proposed rule were from the Electronic Privacy Information Center (EPIC).[1] The Department has carefully considered these comments but has declined to adopt them in the final rule. The Department has, however, added additional information in paragraphs 16.98(j)(9) and (11) of the final rule to provide greater clarity and help enhance public understanding of the reasons for these exemptions. A summary of EPIC's comments and the Department's responses are set forth below.

EPIC specifically noted five issues that it stated were raised by the proposed rule that EPIC considered to be substantial. In EPIC's opinion: (1) The proposed exemptions contravene the intent of the Privacy Act; (2) the DEA does not clearly articulate its legal authority to claim certain exemptions; (3) the DEA is required to collect only relevant and necessary information, and therefore, it should limit its information collection; (4) individuals within the IRFS system of records should have access to their information after criminal investigations are complete; and (5) individuals within the system should have a right to correct their information. Each of these contentions is separately discussed below.

(1) The Proposed Exemptions Do Not Contravene the Intent of the Privacy Act

EPIC noted that IRFS may contain records about not only convicted drug offenders but also presumptively innocent individuals, such as those simply suspected of or alleged to have committed drug offenses. EPIC asserted that the ''broad exemptions'' established for IRFS would allow DEA employees to use sensitive information with little accountability and would contravene the intent of the Privacy Act.

The Privacy Act itself, specifically 5 U.S.C. 552a(j) and (k), authorizes DOJ to apply exemptions to IRFS. 5 U.S.C. 552a(j) states, ''the head of any agency may promulgate rules * * * to exempt any system of records within the agency from any part of [the Privacy Act] except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i).'' Similarly, Privacy Act subsection (k) expressly authorizes ''[t]he head of any agency * * * [to] promulgate rules * * * to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of [the Privacy Act].'' Thus, DOJ's application of exemptions to IRFS is fully within the intent of the Privacy Act as it falls squarely within the statutory terms of the Act.

Further, applying exemptions to IRFS does not equate to DEA employees using IRFS ''with little accountability.'' The DEA and its employees still must comply with important agency requirements in the Privacy Act that are not subject to exemption. For example, 5 U.S.C. 552a(j) lists the provisions of the Privacy Act from which the statute permits no exemption. In addition, as the proposed rule stated, exemptions apply only to the extent that information in the system is subject to the exemption.

The need for these exemptions exists even if a record subject may only be suspected of or alleged to have committed an offense, or may even be clearly innocent (such as victims or witnesses), because the reasons for these exemptions are present even if the individual may not be culpable. For example, disclosures to non-suspect individuals may present risks that the individual may either intentionally or accidently reveal the information to the suspect or to others involved in criminal activities or for whom disclosure would otherwise be inappropriate; may reveal sensitive investigative or intelligence techniques; may reveal classified information; may invade the privacy of third parties; or may otherwise prejudice investigative and adjudicative processes.

In addition, although the Department has exempted IRFS from subsection (e)(4)(1), the Department continues to describe the record source categories in order to provide greater public transparency. Withholding additional details is necessary to protect the sources of law enforcement and intelligence information and to protect the privacy and safety of witnesses and informants and others who provide information to the DEA; and further, greater specificity of properly classified records could compromise national security. (The Department has added a discussion of this point in § 16.98(j)(9) of the final rule.) Finally, the Department again notes that most of these exemptions were in place prior to the notice of proposed rulemaking.

(2) DOJ Has Clear Legal Authority To Establish These Exemptions

EPIC commented on DOJ's statutory authority to apply exemptions to IRFS, especially under subsection (k)(2), and questioned whether DOJ's application of exemptions is procedurally and substantively sound. As discussed above, the Privacy Act provides clear statutory authority for the exemptions DOJ is applying to IRFS,[2] the rule expressly provides that the exemptions will apply only to the extent that the IRFS information is subject to exemption, and the exemptions are justified for the reasons set forth in § 16.98(j) of the rule. Further, DOJ has complied with procedural requirements to promulgate this rule.

The Department fully appreciates that exemption under (k)(2) generally does not permit an agency to deny an individual access to a record where the agency's maintenance of the record has resulted in the individual 'being denied a right, privilege, or benefit to which he or she would otherwise be entitled by Federal law, or for which he or she would otherwise be eligible. Subsection (k)(2) exemptions apply to investigatory material compiled for law enforcement purposes that is not otherwise subject to exemption under subsection (j)(2). The DEA is establishing (k)(2) exemptions in order to protect investigatory

[1] DOJ did not receive any comments directed at the updated IRFS SORN during the SORN comment period. EPIC's comments on the proposed rule did characterize the IRFS SORN as containing ''a staggering twenty-seven routine uses'' that EPIC perceived as presaging the disclosure of ''troves of personally identifiable information to a seemingly endless list of recipients.'' To the extent that this might be deemed a general comment on the number and substance of the IRFS routine uses, the Department considers that these routine uses support disclosures that in appropriate circumstances are functionally equivalent to the purpose for which the information was collected or necessary and proper to the lawful furtherance of DEA's authorized mission functions. The Department also notes that many of these routine uses were in place before the most recent update to the SORN.

[2] 5 U.S.C. 552a(j) and (k).

information that may not be subject to exemption under subsection (j)(2), as well as in circumstances where there is no issue relating to a denial of a right, privilege, or benefit.

EPIC further objected to the provision in paragraph 16.98(i) of the rule that DEA may waive an applicable exemption in DEA's sole discretion. EPIC asserted that ''it is not within the agency's sole discretion to waive an exemption if the exemption does not apply.'' As previously noted, the exemptions to IRFS only apply to the extent that information in this system is subject to exemption. If a record in IRFS is not subject to exemption under Privacy Act subsections (j)(2), (k)(1), or (k)(2), then the record will be subject to all pertinent Privacy Act provisions. It is only where a record is subject to an exemption that DEA would have the administrative discretion to waive an exemption in whole or in part.

(3) The Scope of IRFS's Information Collection Is Necessary and Specifically Authorized by the Privacy Act

EPIC's comments stated that the Privacy Act's ''relevant and necessary'' requirements were ''designed to assure observance of basic principles of privacy and due process'' and preclude arbitrary agency action. EPIC expressed the concern that government databases might become dossiers and be pressed into unintended uses (''mission creep''). EPIC suggested that, ''[a]s investigations proceed to a close, information can be added or removed from the system as it becomes more or less relevant and necessary.''

Both subsection (e)(1) and subsection (e)(5) are subject to exemption under subsection (j)(2), and subsection (e)(1) is also subject to exemption under subsection (k). As discussed in detail above, IRFS exemptions such as these are fully consistent with the language and intent of the Privacy Act, will apply only to the extent that the IRFS information is subject to exemption, and are justified for the reasons set forth in paragraph 16.98(j) of the rule. It is not always possible to know in advance what information will turn out to be relevant or necessary, nor to know in advance whether information is accurate, timely, or complete. The process of conducting a law enforcement investigation involves the movement, in time, toward collection of relevant, necessary, accurate, timely, and complete information; however, it would be administratively impracticable for DEA to persistently add and remove information. The Privacy Act's exemption provisions strike the appropriate balance in anticipating and accommodating the law enforcement investigative process and administrative practicalities. This rule simply applies the law's provisions to help ensure the most effective and efficient accomplishment of DEA's statutory mission.

(4) Exempting IRFS From Subsections (c)(3) and (e)(8) (and Similar Privacy Act Provisions) Is Necessary and Specifically Authorized by the Privacy Act

EPIC's comments stated that DOJ should limit the extent of the (c)(3) and (e)(8) exemptions: ''While EPIC recognizes the need to withhold notice during the period of the investigation, entities should be able to know, after an investigation is completed or made public, the information stored about them in the system.''

The Privacy Act authorizes DOJ to exempt IRFS from subsections (c)(3) and (e)(8) under subsection (j)(2), and subsection (c)(3) is also subject to exemption under subsection (k). As discussed in detail above, these exemptions will apply only to the extent that the IRFS information is subject to exemption, and they are justified for the reasons set forth in paragraph 16.98(j) of the rule (e.g., because access to accounting of disclosures under subsection (c)(3) could impede or compromise an ongoing investigation, interfere with a law enforcement activity, lead to the disclosure of properly classified information which could compromise the national defense or disrupt foreign policy, invade the privacy of a person who provides information in connection with a particular investigation, or result in danger to an individual's safety, including the safety of a law enforcement officer). Notice under subsection (e)(8) could impede criminal law enforcement by giving persons sufficient warning to evade investigative efforts, revealing investigative techniques, procedures, evidence, or interest, and interfering with the ability to issue warrants or subpoenas. In regard to subsection (e)(8), the Department would additionally note that investigations may still be ongoing even when related compulsory process becomes a matter of public record, and thus disclosures about related compulsory process may also have the same potentially adverse consequences explained in the proposed rule. Further, a necessity for DEA to monitor all instances of compulsory process involving IRFS records, to individually assess when each instance becomes a matter of public record, and to then provide notices to affected individuals would pose an impossible administrative burden on the maintenance of these records and the conduct of the underlying investigations. (The Department has added a discussion of this burden in § 16.98(j)(11) of the final rule.)

In addition, pursuant to subsection (t)(2) of the Privacy Act, the Department cannot use Privacy Act exemptions established for IRFS as grounds to withhold from an individual any record which is otherwise accessible to such individual under the FOIA. To the extent that appropriately redacted IRFS records of completed investigations would not undermine law enforcement interests or invade the privacy of others, the individual may be able to obtain access to such records under the FOIA.

(5) Exempting IRFS From Subsections (d)(2), (3), and (4) and (g) Is Necessary and Specifically Authorized by the Privacy Act

EPIC objected to the Department's proposed exemption of IRFS from Privacy Act subsections (d)(2), (3), and (4) (which provide a process for individuals to seek and obtain correction of agency records about them), and from subsection (g) (which provides for judicial review of agency compliance with the Privacy Act). EPIC commented that individuals should be able to correct records about them because, ''[i]ndividuals erroneously listed in the IRFS system of records can be subject to investigations by federal and local law enforcement agencies.'' EPIC also asserted that in proposing these exemptions the Department gave no consideration to the burdens placed on individuals from government agency misinformation. EPIC's comments also objected to exempting IRFS from subsection (g) because ''individuals will have no judicially enforceable rights of access to their records or correction of erroneous information in such records.''

Just as for the other exemptions that the Department proposed, Privacy Act subsections (d)(2), (3), and (4) and (g) are all subject to exemption under subsection (j)(2), and subsections (d)(2), (3), and (4) are also subject to exemption under subsection (k). IRFS exemptions such as these are thus fully consistent with the language and intent of the Privacy Act, will apply only to the extent that the IRFS information is subject to exemption, and are justified for the reasons set forth in § 16.98(j) of the rule. Further, contrary to EPIC's contention, in proposing these exemptions the Department did carefully consider the interests of the affected individuals. This consideration is reflected in the express notation in

the proposed rule that, notwithstanding that the system may be exempted from a particular Privacy Act provision, where compliance with the provision would not appear to interfere with or adversely affect the law enforcement or counterterrorism purposes of this system, or the overall law enforcement process, the DEA in its discretion may waive the exemption. The Department remains convinced that the proposed rule strikes the appropriate balance between the potential burdens the exemptions may place on individuals and the potential burdens the absence of exemptions may place on authorized law enforcement processes.

In sum, DOJ is adding a few new exemptions and making a few general revisions to its longstanding and existing IRFS exemptions, as permitted by the Privacy Act. The Department has carefully considered EPIC's comments, but declines to adopt them in the final rule.

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of information, Privacy, Sunshine Act.

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

PART 16—[AMENDED]

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

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

Subpart E—Exemption of Records Systems Under the Privacy Act

■ 2. Amend § 16.98 by revising the section heading, paragraph (c), and paragraph (d) introductory text, and adding paragraphs (i) and (j) to read as follows:

§ 16.98 Exemption of Drug Enforcement Administration (DEA) Systems—limited access.

* * * * *

(c) Systems of records identified in paragraphs (c)(1) through (6) of this section are exempted pursuant to the provisions of 5 U.S.C. 552a (j)(2) from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g) of 5 U.S.C. 552a. In addition, systems of records identified in paragraphs (c)(1) through (5) of this section are also exempted pursuant to the provisions of 5 U.S.C. 552a(k)(1) from subsections (c)(3); (d)(1), (2), (3) and (4); and (e)(1):

(1) Air Intelligence Program (Justice/DEA–001).

(2) Clandestine Laboratory Seizure System (CLSS) (Justice/DEA–002).

(3) Planning and Inspection Division Records (Justice/DEA–010).

(4) Operation Files (Justice/DEA–011).

(5) Security Files (Justice/DEA–013).

(6) System to Retrieve Information from Drug Evidence (STRIDE/Ballistics) (Justice/DEA–014).

(d) Exemptions apply to the following systems of records only to the extent that information in the systems is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2): Air Intelligence Program (Justice/DEA–001); Clandestine Laboratory Seizure System (CLSS) (Justice/DEA–002); Planning and Inspection Division Records (Justice/DEA–010); and Security Files (Justice/DEA–013). Exemptions apply to the Operations Files (Justice/DEA–011) only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). Exemptions apply to the System to Retrieve Information from Drug Evidence (STRIDE/Ballistics) (Justice/DEA–014) only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2). Exemption from the particular subsections is justified for the following reasons:

* * * * *

(i) The following system of records is exempt from 5 U.S.C. 552a (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G), (H), (I), (5), and (8); (f); (g); and (h): Investigative Reporting and Filing System (IRFS) (JUSTICE/DEA–008). These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1), or (k)(2). Where compliance would not appear to interfere with or adversely affect the law enforcement or counterterrorism purposes of this system, or the overall law enforcement process, the applicable exemption may be waived by the DEA in its sole discretion.

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

(1) From subsection (c)(3) because to provide a record subject with an accounting of disclosure of records in this system could impede or compromise an ongoing investigation, interfere with a law enforcement activity, lead to the disclosure of properly classified information which could compromise the national defense or disrupt foreign policy, invade the privacy of a person who provides information in connection with a particular investigation, or result in danger to an individual's safety, including the safety of a law enforcement officer.

(2) From subsection (c)(4) because this subsection is inapplicable to the extent that an exemption is being claimed for subsections (d)(1), (2), (3), and (4).

(3) From subsection (d)(1) because disclosure of records in the system could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his activities, of the identity of confidential witnesses and informants, or of the investigative interest of the DEA; lead to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; reveal the details of a sensitive investigative or intelligence technique, or the identity of a confidential source; or otherwise impede, compromise, or interfere with investigative efforts and other related law enforcement and/or intelligence activities. In addition, disclosure could invade the privacy of third parties and/or endanger the life, health, and physical safety of law enforcement personnel, confidential informants, witnesses, and potential crime victims. Access to records could also result in the release of information properly classified pursuant to Executive order, thereby compromising the national defense or foreign policy.

(4) From subsection (d)(2) because amendment of the records thought to be incorrect, irrelevant, or untimely would also interfere with ongoing investigations, criminal or civil law enforcement proceedings, and other law enforcement activities; would impose an impossible administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised; and may impact information properly classified pursuant to Executive order.

(5) From subsections (d)(3) and (4) because these subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(6) From subsection (e)(1) because, in the course of its acquisition, collation, and analysis of information under the statutory authority granted to it, an agency may occasionally obtain information, including information properly classified pursuant to Executive order, that concerns actual or potential violations of law that are not strictly within its statutory or other authority, or may compile information in the course of an investigation which may not be relevant to a specific

prosecution. It is impossible to determine in advance what information collected during an investigation will be important or crucial to the investigation and the apprehension of fugitives. In the interests of effective law enforcement, it is necessary to retain such information in this system of records because it can aid in establishing patterns of criminal activity and can provide valuable leads for federal and other law enforcement agencies. This consideration applies equally to information acquired from, or collated or analyzed for, both law enforcement agencies and agencies of the U.S. foreign intelligence community and military community.

(7) From subsection (e)(2) because in a criminal investigation, prosecution, or proceeding, the requirement that information be collected to the greatest extent practicable from the subject individual would present a serious impediment to law enforcement because the subject of the investigation, prosecution, or proceeding would be placed on notice as to the existence and nature of the investigation, prosecution, and proceeding and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Moreover, thorough and effective investigation and prosecution may require seeking information from a number of different sources.

(8) From subsection (e)(3) because the requirement that individuals supplying information be provided a form stating the requirements of subsection (e)(3) would constitute a serious impediment to criminal law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants and endanger their lives, health, and physical safety. The individual could seriously interfere with undercover investigative techniques and could take appropriate steps to evade the investigation or flee a specific area.

(9) From subsections (e)(4)(G) and (H) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act, and from subsection (e)(4)(I) to preclude any claims that the Department must provide more detail regarding the record sources for this system than the Department publishes in the system of records notice for this system. Exemption from providing any additional details about sources is necessary to preserve the security of sensitive law enforcement and intelligence information and to protect the privacy and safety of witnesses and informants and others who provide information to the DEA; and further, greater specificity of properly classified records could compromise national security.

(10) From subsection (e)(5) because the acquisition, collation, and analysis of information for criminal law enforcement purposes from various agencies does not permit a determination in advance or a prediction of what information will be matched with other information and thus whether it is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can often only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators, intelligence analysts, and government attorneys to exercise their judgment in collating and analyzing information and would impede the development of criminal or other intelligence necessary for effective law enforcement.

(11) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to criminal law enforcement by revealing investigative techniques, procedures, evidence, or interest, and by interfering with the ability to issue warrants or subpoenas; could give persons sufficient warning to evade investigative efforts; and would pose an impossible administrative burden on the maintenance of these records and the conduct of the underlying investigations.

(12) From subsections (f) and (g) because these subsections are inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

(13) From subsection (h) when application of this provision could impede or compromise an ongoing criminal investigation, interfere with a law enforcement activity, reveal an investigatory technique or confidential source, invade the privacy of a person who provides information for an investigation, or endanger law enforcement personnel.

Dated: February 28, 2013.

Joo Y. Chung,

Acting Chief Privacy and Civil Liberties Officer, United States Department of Justice.

[FR Doc. 2013–05146 Filed 3–6–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[NPS–NCR–10414] [PPNCNAMA00, PPMPSPD1Z.YM0000]

RIN 1024–AD89

Special Regulation; Areas of the National Park System, National Capital Region, Demonstrations and Special Events

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: We, the National Park Service, are amending the regulations on demonstrations and special events for the National Capital Region. This rule revises the definition of ''demonstration,'' lifts the prior regulatory ban on soliciting money or funds but requires a permit for the in-person solicitation of money or funds on Federal park land, and revises an introductory sentence prohibiting demonstrations or special events in designated memorial areas. This rule also changes the name of the permit office to the Division of Permits Management.

DATES: *Effective Date:* April 8, 2013.

FOR FURTHER INFORMATION CONTACT: Marisa Richardson, Acting Chief, Division of Permits Management, 900 Ohio Drive SW., Washington, DC 20024, Telephone: 202–245–4715.

SUPPLEMENTARY INFORMATION:

Introduction and Background

We published a proposed rule in the **Federal Register** on January 3, 2011 (76 FR 57) and provided a 60-day period for public review and comment that closed on March 4, 2011. In this rule we proposed to:

- Revise the definition of ''demonstration'' at 36 CFR 7.96(g)(1)(i) by replacing the phrase ''intent or propensity'' with the phrase ''reasonably likely.'' This change was based upon the court's decision in *Boardley* v. *U.S. Department of the Interior,* 605 F. Supp. 2d 8 (D.D.C. 2009), holding that the prior phrase granted overly broad discretion to NPS personnel in the permit process, which may result in an impermissible regulation of speech protected by the First Amendment.
- Amend 36 CFR 7.96(h) to allow solicitation of gifts, money, goods, or services funds as part of a permit issued for a demonstration or special event, to be consistent with the United States Court of Appeals for the District of

Columbia decision in *ISKCON of Potomac* v. *Kennedy,* 61 F.3d 949 (DC Cir. 1995).

• Amend the introductory sentence to 36 CFR 7.96(g)(3)(ii) to more clearly indicate that demonstrations or special events are not allowed in certain designated memorial areas.

Analysis of Comments

We received a total of 12 timely written comments on the proposed rule. Six comments came from individuals associated with Stanford Law School; five comments came from members of the general public; and one comment came from the American Civil Liberties Union (ACLU) of the National Capital Area. We have reviewed the comments and decided to publish the proposed regulation as a final regulation with one change.

In response to comments, we are revising the final rule to center more narrowly on in-person solicitation for money or funds for donation on Federal park lands as part of a permit issued for a demonstration or special event. Besides reaffirming the explanations found in our earlier rulemaking, we offer the following responses to the various issues raised by the comments.

Revised Definition of Demonstration—36 CFR 7.96(g)(1)

As detailed in the proposed rule, the revised definition of demonstration at 36 CFR 7.96(g)(1)(i) eliminates the term ''intent or propensity'' and replaces it with the term ''reasonably likely.'' In *Boardley,* the District Court commented that this part of the current regulatory definition could raise problems, because it allowed NPS officials to restrict speech based on their determination that a person intended to draw a crowd with his or her conduct. The Court reasoned that this determination could rest on impermissible grounds, such as an official's perception that certain expression is controversial or inappropriate, which would be a content-based decision and therefore impermissible under the First Amendment. This portion of the District Court's decision was not appealed. While we have not applied the regulation in such an impermissible manner and have since issued a clarifying memorandum to preclude such a determination, this revised definition of ''demonstration'' will minimize the possibility of a decision being based on impermissible grounds.

Some comments focused on our revised narrowed definition of a demonstration. Two comments favored the change, noting that it would encourage, among other things, greater transparency and consistency within the NPS. The ACLU also supported the definitional change, finding it to be more objective and not lending itself to a subjective, and perhaps biased, judgment.

Other commenters expressed concern that the narrowed definition was still insufficient, believing that it contained an impermissible content-based regulation of speech. These comments stated that park personnel may be likely to refer to the content of speech when determining whether conduct is ''reasonably likely'' to draw a crowd. As a remedy, some commenters suggested that the definition use the term ''has the effect or express intent of drawing a crowd,'' while others suggested including a mandate that directs park officials not to consider the content of speech when determining whether a permit is required.

We believe that our narrowed definition addresses the District Court's concerns in *Boardley,* and is designed to be applied by park personnel in an objective, fair, and even-handed manner, regardless of the identity or cause of demonstrators. We believe that the use of the ''reasonably likely'' standard ensures the necessary objectivity in the regulatory process, while negating the possibility of a permit being granted or rejected on impermissible grounds. In addition, we consider the ''reasonably likely'' standard to be easily and consistently understood, thus preventing us from regulating First Amendment activities more than necessary to further our legitimate interests.

We also expect that park officials will continue to comply with NPS policies that already specifically prohibit impermissible content-based discrimination of First Amendment activities. See NPS Management Policies § 8.6.3 (2006) (''No group wishing to assemble lawfully may be discriminated against or denied the right of assembly provided that all permit conditions are met''); NPS Director's Order 53 § 9.1 (2010) (''Note that it is the conduct associated with the exercise of these [First Amendment] rights that is regulated, and never the content of the message.''); NPS RM–53 Appendix 3, Page A3–1 (April 2000) (''It should be noted that it is the conduct associated with the exercise of these [First Amendment] rights that is regulated, and never the content of the message'') (emphasis in original).

Finally, one commenter expressed concerns that the ''casual park use'' exclusion found in the definition was vague and may not include a visitor who merely had ''a strange haircut'' or wore ''a controversial T-shirt.'' We believe that the ''casual park use'' exclusion is not vague, is well understood, and would not result in discrimination. As we earlier explained in our rulemaking for the same demonstration definition found in 36 CFR 2.51(a):

> Application of the NPS's narrowed definition of a demonstration thus excludes visitors who merely have tattoos or are wearing baseball caps, T-shirts, or other articles of clothing that convey a message; or visitors whose vehicles merely display bumper stickers. By limiting the definition of what constitutes a demonstration, and by explicitly excluding casual park use by visitors or tourists which is not reasonably likely to attract a crowd or onlookers * * * the NPS believes that the rule comports with the First Amendment and is narrowly tailored to serve significant government interests.

75 FR 64150 October 19, 2010.

Revised Solicitation Regulation—36 CFR 7.96(h)

The proposed regulation would have allowed in-person soliciting or demanding of gifts, money, goods, or services, if it occurs as part of a permit issued for a demonstration or special event. The proposed regulation also provided that persons permitted to solicit must not give false or misleading information regarding their purposes or affiliations or give false or misleading information regarding whether any item is available without donation.

No commenters objected to the regulation's prohibition of giving false or misleading information regarding a solicitor's purposes or affiliations or giving false or misleading information regarding whether any item is available without donation. However, three comments expressed concerns with the permit requirement. After review, we have narrowed the text of the final solicitation regulation so that it clearly centers on prohibiting the ''in-person soliciting or demanding of money or funds for contemporaneous donation on Federal park land * * * unless it occurs as part of a permit issued for a demonstration or special event.'' We believe that this revised and narrowed regulation, which centers on in-person solicitation of money or funds for donations on Federal park land as part of a permit issued for a demonstration or special event, is not a content-based regulation of speech.

By focusing on in-person solicitation for the receipt of money or funds on Federal park land, we believe that we have a narrowly tailored regulation of conduct that is not broader than necessary, and that addresses the risks

and problems caused by the in-person request for the receipt of money or funds on Federal park land. We believe that this type of solicitation creates well-recognized risks and problems that other NPS regulations do not address, including fraud and duress, questionable solicitation practices including the targeting of vulnerable and easily coerced persons, and even outright theft. We also believe that requiring a permit will help ensure that unregulated solicitation activities that have the potential to be disruptive and intrusive will not interfere with other visitors' enjoyment of the park. Our narrowly focused final solicitation regulation thus centers on in-person soliciting or demanding of money or funds for receipt on Federal park land as part of a permit issued for a demonstration or special event, described in the prefatory statement as ''in-person solicitation for immediate funds'' (76 FR 57, January 3, 2011). Courts have recognized the risks and problems posed by in-person solicitation for funds.

The term ''funds'' includes monetary funds obtained through the use of credit cards or other electronic payment methods. One commenter suggested that an immediate credit card or electronic commitment of funds should be allowed for later processing. We have not accepted that suggestion, however, because these kinds of solicitations pose an even greater risk of later theft and fraud than an in-person, immediate exchange of funds. The Federal Trade Commission states that credit and charge card fraud costs cardholders and issuers hundreds of millions of dollars each year, and can occur when an unauthorized person uses another person's card number.

This rule prohibits in-person solicitation for immediate funds on Federal park land; it does not prohibit other forms of communication that allow the person to obtain the funds later off park land, such as soliciting funds that would be sent at a later time by mail or through the internet, or distributing literature describing where funds could be sent. The rule does not address persons seeking signatures for petitions or donations for food or clothing drives; these activities can be addressed under the Park Service demonstration or special event regulations.

One commenter stated that the solicitation regulation would encourage an impermissible content-based regulation of speech because solicitation, itself, is the form of expression being regulated. We disagree, because we believe that the narrowed regulation is consistent with the Court of Appeal's decision in *ISKCON,* which found that the earlier NPS solicitation regulation's focus on the in-person solicitation of donations on Federal park land was not content based. The Court found that the earlier regulation did not prohibit any particular expression or message based on content but merely regulated the manner in which the message is conveyed, although the earlier NPS solicitation prohibition failed because it was not ''narrowly tailored.'' *ISKCON,* 61 F.3d at 955–956.

We believe that this new and revised final solicitation regulation is narrowly tailored because this rule focuses on persons who seek to engage in the in-person solicitation for the receipt of money or funds on Federal park land and does not include goods or services as originally proposed. We believe that it is not broader than necessary to address the particular problems and risks posed by such in-person solicitation and does not ''sweep in'' expressive activities that do not contribute to those problems. ''A narrowly tailored permitting scheme—one that reasonably identifies particular expressive conduct for which a permit is required—is an entirely appropriate tool.'' *Community For Creative Non-Violence* v. *Turner,* 893 F.2d 1387, 1393 (D.C. Cir. 1990).

This NPS solicitation regulation requires that in-person solicitation for funds on Federal park land may only occur under a permit that designates well-defined areas for the activity. The rule is thus fully consistent with the Court of Appeals decision in *ISKCON.* The Court of Appeals observed that a future NPS solicitation regulation could require a permit, so ''[t]he effects of solicitation will be confined to the permit area, and those who wish to escape them may simply steer clear of the authorized demonstration or special event.'' 61 F.3d at 956. The Court of Appeals in *ISKCON* also made clear that its ''holding allows only those individuals or groups participating in an authorized demonstration or special event to solicit donations in the confines of a restricted permit area . * * * It does not require the Park Service to let rampant panhandling go unchecked.'' *Id.*

The NPS solicitation regulation controls the in-person solicitation for funds on Federal park land; it does not regulate sales. An attempt to sell items or offer items for sale, whether directly or by the use of deceit, is still governed by the NPS sales regulation at 36 CFR 7.96(k), which limits items to be sold to books, newspapers, leaflets, pamphlets, buttons, and bumper stickers. As we explained in the prefatory statement to the sales regulation, at 60 FR 17648 (April 7, 1995), ''restricted merchandise cannot be 'given away' and a 'donation accepted' or one item 'given away' in return for the purchase of another item; such transactions amount to sales.''

The ACLU supported our amendment of the solicitation regulation ''to provide that donations or contributions may be solicited within an area that is covered by a permit for a demonstration or a special event.'' Earlier the ACLU had asked, and our National Capital Region confirmed, that buskers may, consistent with NPS regulations, be able to conduct their activities by obtaining a demonstration or a special event permit. (The ACLU defined buskers as ''individuals who play music or entertain in public parks, streets and other places and seek voluntary contributions.'')

Focusing on buskers, however, the ACLU expressed concern about the proposed regulatory requirement for a permit if the activity involves a group of less than 25 people who would otherwise qualify under the existing ''small group exception'' for demonstrations at 36 CFR 7.96 (g)(2)(i). Using the example of a lone person who plays his guitar and asks for donations, the ACLU thought that requiring a permit for a single individual busker was an ''unnecessary burden'' on First Amendment rights. Instead, the ACLU suggested that we modify the regulation such that either (1) no permit is needed for a single busker who solicits donations or contributions with his or her performance, or (2) the regulation would authorize a U.S. Park Police officer to issue an on-the-spot permit, after checking with the permit office to be sure that the busker's location does not conflict with any existing permit.

We have carefully considered the ACLU's views on this matter and its two suggested modifications, but we believe that requiring a permit when an in-person solicitation of funds occurs is warranted. For the reasons stated herein, we believe that the solicitation regulation is not an unnecessary burden on First Amendment rights but rather is a proper time, place, and manner restriction. Moreover, we believe that it is not appropriate to require or ask U.S. Park Police officers to issue an ''on the spot'' permit when a lone busker is engaged in in-person solicitation for immediate funds.

The NPS regulatory ''small group exception'' has applied only to demonstrations, and was the product of rulemaking after discussions with the ACLU as detailed at 45 FR 29858 (May 6, 1980) and 46 FR 55959 (November 13,

1981). Whether a busker's activity qualifies as a demonstration or is characterized as a special event will ultimately depend on the facts of the activity; special events have always required a permit, while most ''small group'' demonstrations do not require a permit under 36 CFR 7.96(g)(2)(i). Regardless of whether the activity qualifies as a demonstration or is characterized as a special event, we believe that the risks and potential problems posed by the in-person solicitation for funds justify and support a permit requirement for solicitation.

Moreover, we believe that the problems and risks of in-person solicitation for funds on Federal park land occur regardless of whether the number of persons engaged in the solicitation activity is one, 24, 26, or 1,000, or whether the person is or is not a busker. As one busker readily acknowledged, busking for cash does create the risk of theft. He also wrote that buskers may need to move around to multiple locations, given that there may be busker competition at ''popular, centralized areas where the crowds gather''; that one needs to ''[m]ake sure your audience knows you're looking for cash''; and that one needs to ''[w]atch for thieves.'' Jacob Bear ''Making the Scene: Busking Can Pay for Travel in Europe,'' Transitions Abroad Magazine (March/April 2004).

Accordingly, we believe that it is the solicitation for funds that generates risks and potential problems, rather than the size of the group involved in such activities. Similar risks and problems exist when 24 people together engage in-person solicitation for funds, when compared to 24 people who separately engage in such solicitation activities. By requiring a permit for all who engage in the in-person solicitation for funds regardless of the number of participants, we are able to minimize the risks and problems of theft, fraud, and duress.

Requiring a permit protects both the public and the permit holder. If a visitor complains that theft, fraud, or duress occurred, the U.S. Park Police will be able to investigate the incident because they will know the identity of, and contact information for, the permit holder. Knowing where and when in-person solicitation is authorized under permit also allows the U.S. Park Police to monitor and protect the permit holder from theft, as well as to ensure public safety, the orderly movement of park visitors, and the avoidance of conflicts among permit holders.

Accordingly, we believe that the problems and risks posed by in-person solicitation of funds on Federal park land by individuals and groups under 25 in number should require a permit. If a permit was not required, then people engaged in in-person solicitation for funds on Federal park land could simply follow the park visitor, preventing the visitor from avoiding them, a result that the Court of Appeals in *ISKCON* specifically rejected.

The ACLU's other suggestion is to authorize U.S. Park Police officers to issue on-site written permits for buskers. After review, we believe this approach is not workable, since it exceeds the expertise and proper role of law enforcement officers and is inconsistent with our centralized regulatory process, whereby a staff park ranger reviews applications and coordinates permit issuance. The ACLU suggestion would be impractical because it would rely on a U.S. Park Police officer who encounters a busker to successfully do all of the following:

- Recognize and assess the situation;
- Obtain on-site information as to who, where, and when they want to engage in their activities;
- Know where and when other First Amendment or other activities have been permitted; and
- Decide whether to issue a written permit based upon the NPS regulations.

U.S. Park Police officers are limited in number and their activities are focused on performing a wide array of law enforcement functions in extensive areas that constitute Federal park land within the National Capital Region. In the District of Columbia, these park areas include the National Mall, Lafayette Park, DuPont Circle, and Rock Creek Park, as well as scores of large and small park areas located throughout the city. The National Mall alone covers approximately 684 acres and receives approximately 22 million visits per year. It is therefore unrealistic to expect that officers could regularly chance upon people engaged in solicitation activity and issue them a permit.

We also believe that the ACLU suggestion runs counter to our centralized permit system, where applications are submitted to the permit office in advance of any proposed demonstration or special event and under which only the NPS Regional Director or, in certain circumstances, a supervisory U.S. Park Police officer may revoke a permit. To have U.S. Park Police officers issue ''on-site permits'' deviates from a generally successful NPS regulatory permit process. The current permit process relies upon a limited number of park rangers who are trained and knowledgeable about NPS regulations and who:

- Evaluate the application:
- Review other pending or issued permits;
- Consult with other park officials;
- Determine whether a permit should be issued; and
- If a permit is issued, determine the appropriate permit conditions.

Finally, two other comments cited the Court of Appeals decision in *Boardley* v. *Department of the Interior,* 615 F.3d 508 (D.C. Cir. 2010), and contended that requiring a permit for small groups who engage in the in-person solicitation for immediate funds is an unnecessary burden on First Amendment rights. We respectfully disagree and believe that problems and risks posed by in-person solicitation for funds on Federal park land justify a permit requirement because they differ from the likely effects of small group demonstrations that do not involve solicitation activities. We further believe that the problems and risks posed by solicitations were recognized by the Court of Appeals in *ISKCON* when it concluded that we may regulate solicitation of funds through a permit system. The basis for our solicitation regulation is also significantly different than what the Court of Appeals considered in *Boardley.* By focusing on the problems and risks posed by in-person solicitation for funds on park land, we believe that the solicitation regulation is narrowly tailored, no broader than necessary, and does not sweep into expressive activities that don't contribute to these problems and risks.

Revised Introductory Sentence—36 CFR 7.96(g)(3)(ii)

The ACLU submitted the only comment regarding our proposed amendment of the introductory sentence to 36 CFR 7.96(g)(3)(ii), which was intended to more clearly indicate that demonstrations or special events are not allowed in restricted areas of designated memorials. It has been our longstanding reading of our regulations that demonstrations and special events, whether under permit or not, are not allowed in the restricted areas identified at 36 CFR 7.96(g)(3)(ii). This was a natural reading that was recently accepted by the Court of Appeals in *Oberwetter* v. *Hilliard,* 639 F.3d 545, 551 (D.C. Cir. 2011). The ACLU comment also concluded that this was their understanding of our regulations, but that they ''are not opposed to greater clarity.'' This revision provides greater clarity that demonstrations and special events, either with or without a permit, are not allowed in restricted areas of designated memorials.

Change of Name—Permit Office

Recently the name of the permit office, which had been called the ''Division of Park Programs,'' was administratively changed to the ''Division of Permits Management.'' While this name change was not included in the proposed rule, the name change at 36 CFR 7.96(g)(3) is an internal administrative matter that has no substantive implications and, therefore, does not require public review and comment.

Compliance With Other Laws and Executive Orders

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) 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.

Regulatory Flexibility Act (RFA)

The rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). The rule expands opportunities for individuals and organizations to solicit funds, associated with a demonstration or special event for which a permit has been issued. Other organizations with interest in the rule will not be effected economically.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. 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.

Unfunded Mandates Reform Act (UMRA)

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. The 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 UMRA, (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630

Under the criteria in section 2 of Executive Order12630, this rule does not have significant takings implications. It pertains specifically to operation and management of locations within the NPS—National Capital Region. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian tribes (Executive Order 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required. The rule only applies to management and operation of NPS areas within the National Capital Region.

Paperwork Reduction Act (PRA)

The Office of Management and Budget (OMB) has approved the information collection requirements in this rule and assigned control number 1024–0021 (expires 02/28/2014). We estimate the burden associated with this information collection to be 30 minutes. The information collection activities are necessary for the public to obtain benefits in the form of special park use permits. A Federal 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.

National Environmental Policy Act (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA of 1969 is not required because the rule is covered by a categorical exclusion. We have determined that the rule is categorically excluded under 516 DM 12.5 A (10), insofar as it is a modification of existing NPS regulations that does not increase public use to the extent of compromising the nature and character of the area or causing physical damage to it. Further, the rule will not result in the introduction of incompatible uses which might compromise the nature and characteristics of the area or cause physical damage to it. Finally, the rule will not cause conflict with adjacent ownerships or land uses, or cause a nuisance to adjacent owners or occupants. We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under the NEPA.

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

List of Subjects in 36 CFR Part 7

District of Columbia, National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the NPS amends 36 CFR Part 7 as set forth below:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C. 1, 3, 9a, 462(k); Sec. 7.96 also issued under 36 U.S.C. 501–511, DC Code 10–137 (2001) and DC Code 50–2201 (2001).

■ 2. In § 7.96:
■ A. Revise paragraph (g)(1)(i);
■ B. Revise the heading and first two sentences of paragraph (g)(3);
■ C. Revise the introductory text of paragraph (g)(3)(ii);
■ D. Revise paragraph (g)(3)(ii)(D);
■ E. Add paragraph (g)(3)(ii)(E) and maps;
■ F. Remove maps following paragraph (g)(7); and
■ G. Revise paragraph (h).

The revisions and addition read as follows:

§ 7.96 National Capital Region.

* * * * *

(g) * * *

(1) * * *

(i) The term ''demonstration'' includes demonstrations, picketing, speechmaking, marching, holding vigils or religious services and all other like forms of conduct that involve the communication or expression of views or grievances, engaged in by one or more persons, the conduct of which is reasonably likely to draw a crowd or onlookers. This term does not include casual park use by visitors or tourists that is not reasonably likely to attract a crowd or onlookers.

* * * * *

(3) *Permit applications.* Permit applications may be obtained at the Division of Permits Management, National Mall and Memorial Parks, 900 Ohio Drive SW., Washington DC 20024. Applicants shall submit permit applications in writing on a form provided by the National Park Service so as to be received by the Regional Director at the Division of Permits Management at least 48 hours in advance of any proposed demonstration or special event. * * *

* * * * *

(ii) *Other park areas.* Demonstrations and special events are not allowed in the following other park areas:

* * * * *

(D) The Vietnam Veterans Memorial, except for official annual Memorial Day and Veterans Day commemorative ceremonies.

(E) Maps of the park areas designated in this paragraph are as follows. The darkened portions of the diagrams show the areas where demonstrations or special events are prohibited.

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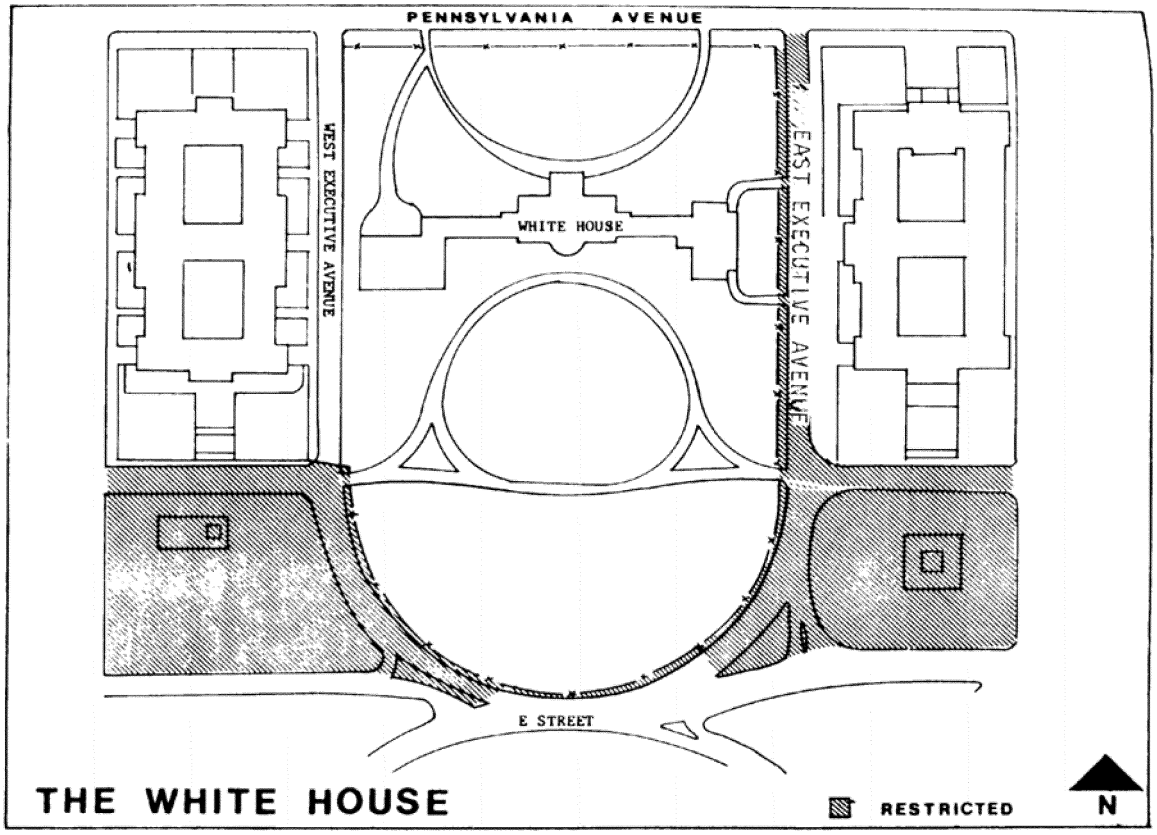
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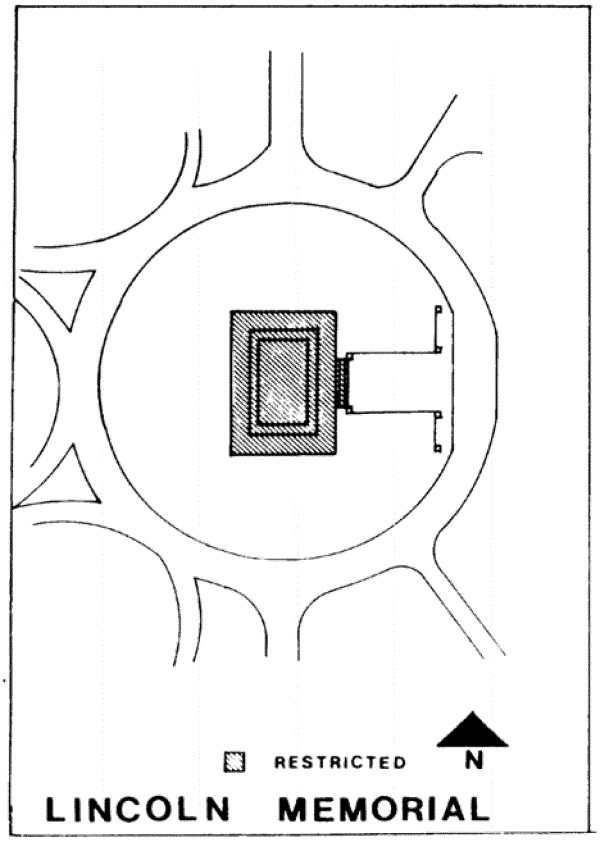
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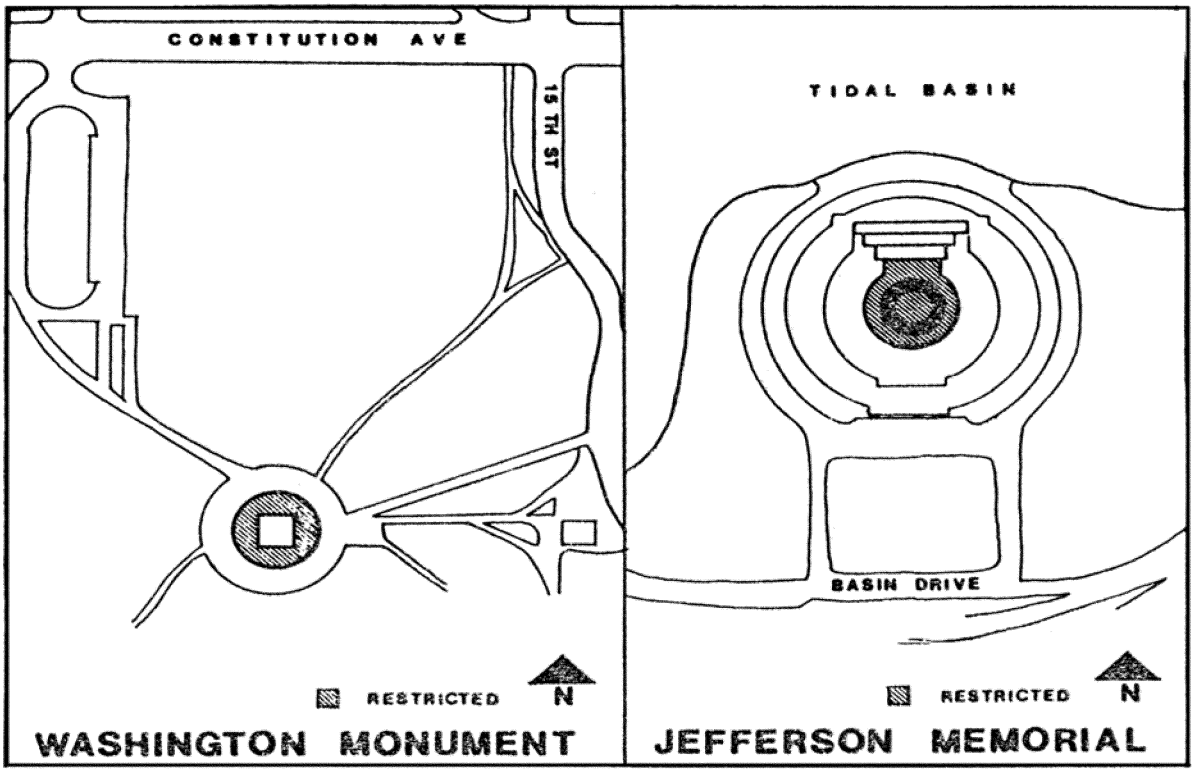

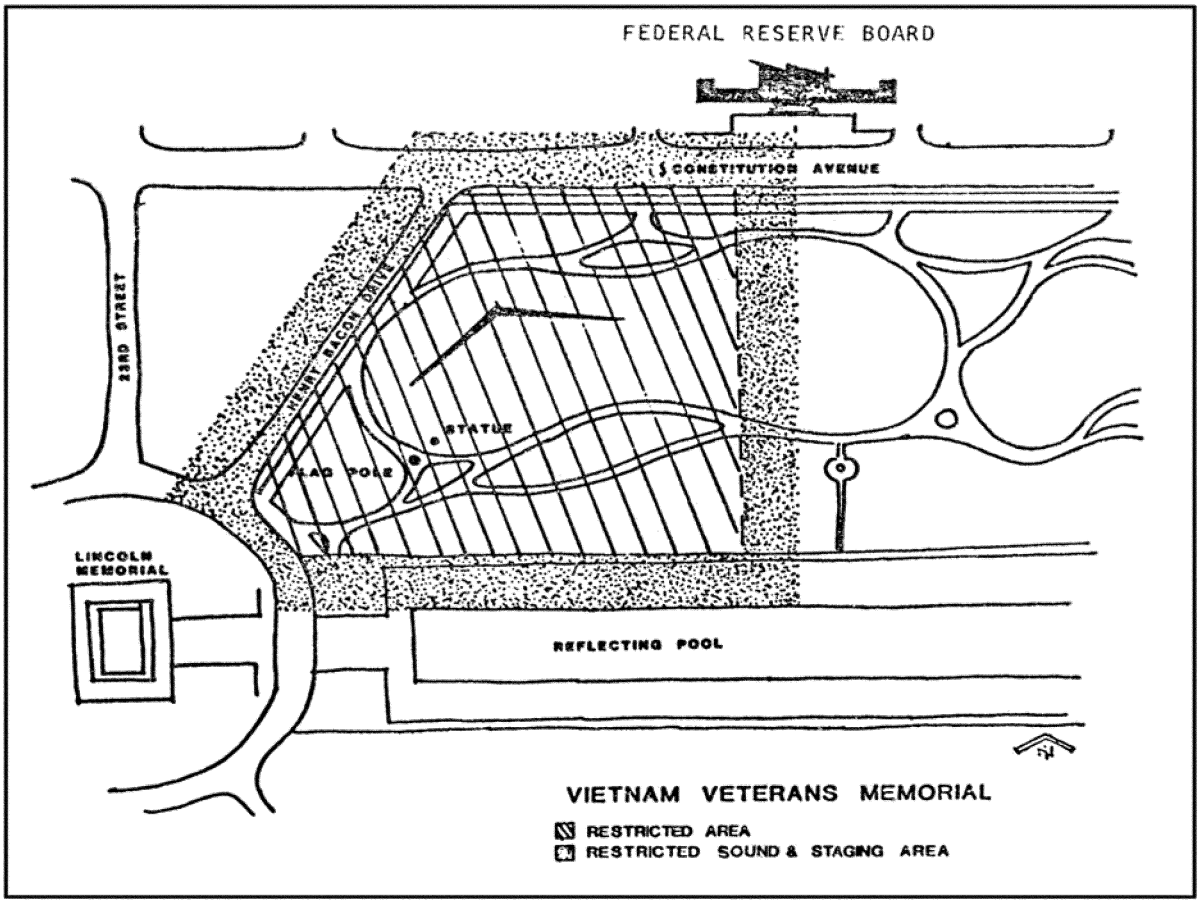

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* * * * *

(h) *Soliciting.* (1) The in-person soliciting or demanding of money or funds for donation on Federal park land is prohibited, unless it occurs as part of

a permit issued for a demonstration or special event.

(2) Persons permitted to solicit must not:

(i) Give false or misleading information regarding their purposes or affiliations;

(ii) Give false or misleading information as to whether any item is available without donation.

* * * * *

Dated: January 25, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–05249 Filed 3–6–13; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0700; FRL–9788–6]

Approval and Promulgation of Implementation Plans; Kentucky; 110(a)(1) and (2) Infrastructure Requirements for the 2008 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve in part, conditionally approve in part, and disapprove in part, the July 17, 2012, State Implementation Plan (SIP) submission provided by the Commonwealth of Kentucky, through the Division of Air Quality (DAQ) of the Kentucky Energy and Environment Cabinet. Kentucky DAQ submitted the July 17, 2012, SIP submission as a replacement to its original September 8, 2009, SIP submission. Specifically, this final rulemaking pertains to the Clean Air Act (CAA or Act) requirements for the 2008 8-hour ozone national ambient air quality standards (NAAQS) infrastructure SIP. The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an ''infrastructure'' SIP. Kentucky DAQ made a SIP submission demonstrating that the Kentucky SIP contains provisions that ensure the 2008 8-hour ozone NAAQS are implemented, enforced, and maintained in the Commonwealth (hereafter referred to as ''infrastructure submission''). EPA is now taking final action on three related actions on Kentucky DAQ's infrastructure SIP submission. First, EPA is taking action to approve Kentucky DAQ's infrastructure submission provided to EPA on July 17, 2012, as meeting certain required infrastructure elements for the 2008 8-hour ozone NAAQS. Second, with respect to the infrastructure elements related to specific prevention of significant deterioration (PSD) requirements, EPA is taking final action to approve, in part and conditionally approve in part, the infrastructure SIP submission based on a December 19, 2012, commitment from Kentucky DAQ to submit specific enforceable measures for approval into the SIP to address specific PSD program deficiencies. Third, EPA is taking final action to disapprove Kentucky DAQ's infrastructure SIP submission with respect to certain interstate transport requirements for the 2008 8-hour ozone NAAQS because the submission does not address the statutory provisions with respect to the relevant NAAQS and thus does not satisfy the criteria for approval. The CAA requires EPA to act on this portion of the SIP submission even though under a recent court decision, Kentucky DAQ was not yet required to submit a SIP submission to address these interstate transport requirements. Moreover, under that same court decision, this disapproval does not trigger an obligation for EPA to promulgate a Federal Implementation Plan (FIP) to address these interstate transport requirements.

DATES: This rule will be effective April 8, 2013.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2012–0700. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9140. Ms. Ward can be reached via electronic mail at *ward.nacosta@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. Background
II. Response to Comments
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I. Background

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic structural SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS.

Section 110(a) of the CAA generally requires states to make a SIP submission to meet applicable requirements in order to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. These SIP submissions are commonly referred to as ''infrastructure'' SIP submissions. Section 110(a) imposes the obligation upon states to make an infrastructure SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the infrastructure SIP for a new or revised NAAQS affect the content of the submission. The contents of such infrastructure SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 2008 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly

established or revised NAAQS. As mentioned above, these requirements include basic structural SIP requirements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The applicable infrastructure SIP requirements that are the subject of this rulemaking are listed below.[1]

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

On January 17, 2013, EPA proposed to approve Kentucky's July 17, 2012, infrastructure SIP submission and proposed to conditionally approve in part sections 110(a)(2)(C), prong 3 of (D)(i), and (J), and disapprove in part section 110(a)(2)(D)(i) for the 2008 8-hour ozone NAAQS. *See* 78 FR 3867.

EPA proposed conditional approval in part for sections 110(a)(2)(C), prong 3 of (D)(i),[5] and (J) because, while the Commonwealth's SIP does not currently contain provisions to address the structural PSD requirements of the PSD and Nonattainment New Source Review (NNSR) requirements related to the implementation of the NSR $PM_{2.5}$ Rule and the $PM_{2.5}$ PSD Increment-SILs-SMC Rule (only as it relates to $PM_{2.5}$ Increments), Kentucky DAQ committed in a letter dated December 19, 2012, to submit, within one year, specific enforceable measures to EPA for incorporation into the SIP to address these requirements. *See* 78 FR 3867. This commitment letter meets the requirements of section 110(k)(4) of the CAA. Kentucky DAQ's December 19, 2012, letter can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2012–0700.

With respect to section 110(a)(2)(D)(i)(I),[6] for the 2008 8-hour ozone NAAQS, EPA published a proposal to disapprove Kentucky DAQ's July 17, 2012, SIP revision. EPA proposed disapproval of these elements because the infrastructure SIP submission asserted that the requirements of 110(a)(2)(D)(i)(I) with respect to the 2008 8-hour ozone NAAQS were satisfied by the Commonwealth's approved regulations to meet the Clean Air Interstate Rule (CAIR) requirements. CAIR, however, was promulgated before the 2008 8-hour ozone NAAQS were promulgated, and CAIR did not, in any way, address interstate transport requirements related to the 2008 8-hour ozone NAAQS. *See* 78 FR 3867.

Finally, EPA notes that this final action on Kentucky's infrastructure SIP submission for the 2008 8-hour ozone NAAQS is required not only by section 110(k), but also by order issued by the U.S. District Court for the Northern District of California in *WildEarth Guardians* v. *Jackson,* Case No. 11–CV–5651 YGR. In an October 17, 2012, order granting partial summary judgment in the case, as modified in a December 7, 2012, order granting in part EPA's motion for an amended order, that court directed EPA to take final action upon the infrastructure SIP at issue in this action by March 4, 2013. With respect to Kentucky, the court specifically ordered EPA to act upon the infrastructure SIP submission made by the Commonwealth on September 8, 2009, as revised on July 17, 2012. As explained in more detail in response to relevant comments, EPA is addressing the requirements of section 110(a)(2)(D)(i)(I) consistent with the opinion of the DC Circuit Court's opinion in *EPA Homer City Generation* v. *EPA,* 696 F.3d 7 (DC Cir. 2012).

II. Response to Comments

EPA received five sets of comments on the January 17, 2013, proposed rulemaking to approve in part, conditionally approve in part, and disapprove in part, Kentucky DAQ's infrastructure SIP submission intended to meet the CAA requirements for the 2008 8-hour ozone NAAQS. A summary of the comments and EPA's responses are provided below.

Comment 1: One commenter contends that EPA cannot approve the section 110(a)(2)(A) portion of Kentucky DAQ's infrastructure SIP submission because certain counties in the Commonwealth have air quality monitors with data that suggest such areas are not attaining the 2008 8-hour ozone NAAQS. Specifically, the Commenter cites air monitoring reports for Jefferson and Oldham counties indicating violations of the NAAQS based on 2009–2011 design values. The Commenter further contends that, based on available data for 2010–2012, 10 Kentucky counties will violate the 2008 8-hour ozone NAAQS based on 2010–2012 design values. According to the Commenter, if a designated attainment area violates the NAAQS, then this means that the state must necessarily lack adequate emissions limits in its infrastructure SIP submission to attain and maintain that NAAQS.

Response 1: EPA disagrees with the Commenter's contention that Kentucky DAQ's 2008 8-hour ozone infrastructure SIP submission is not approvable with respect to section 110(a)(2)(A) because of the monitor design values noted by the Commenter. While EPA shares the Commenter's concern regarding counties monitoring exceedances of the

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

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

[3] Section 110(a)(2)(D)(i) includes four requirements referred to as prongs 1 through 4. Prongs 1 and 2 are provided at section 110(a)(2)(D)(i)(I); prongs 3 and 4 are provided at section 110(a)(2)(D)(i)(II). At this time, pursuant to a recent decision of the U.S. Court of Appeals for the DC Circuit, the SIP submission from Kentucky DAQ to meet section 110(a)(2)(D)(i)(I) is not a required SIP submission. The portions of the SIP submission relating to 110(a)(2)(D)(i)(II) and 110(a)(2)(D)(ii), in contrast, are required. Although prongs 1 and 2 are not required, EPA is acting today to disapprove Kentucky's submittal related to these prongs for the reasons described in the proposed rule associated with this rulemaking. *See* 78 FR 3867. Further information regarding EPA's disapproval of prongs 1 and 2 is also provided below in section II.

[4] This requirement as mentioned above is not relevant to today's final rulemaking.

[5] Section 110(a)(2)(D)(i) includes four requirements referred to as prongs 1 through 4. Prongs 1 and 2 are provided at section 110(a)(2)(D)(i)(I); prongs 3 and 4 are provided at section 110(a)(2)(D)(i)(II). Today's conditional approval only relates to the structural PSD requirements of section 110(a)(2)(D)(i)(II), also known as prong 3 as noted above in footnote 3.

[6] Section 110(a)(2)(D)(i)(I) includes two distinct requirements referred to as prongs 1 and 2. Prong 1 requires states to prohibit emissions that significantly contribute to nonattainment of the NAAQS in another state and prong 2 request states to prohibit emissions that interfere with maintenance of the NAAQS in another state.

2008 8-hour ozone NAAQS based upon 2009–2011 design values, such concerns are outside the scope of what is germane to an evaluation of section 110(a)(2)(A) of an infrastructure SIP.[7]

Pursuant to section 110(a)(2)(A), an infrastructure SIP submission must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the Act. The Commenter, however, seems to believe that in the context of an infrastructure SIP submission, section 110(a)(2)(A) requires that a state must monitor attainment of the NAAQS at all monitors throughout the state in order to demonstrate that the SIP contains the requisite emissions limitations and other control measures, means or techniques prescribed by the Act. EPA does not believe that this is a reasonable interpretation of the provision with respect to infrastructure SIP submissions. Rather, EPA believes that the proper inquiry at this juncture is whether the state has met the basic structural SIP requirements appropriate at the point in time EPA is acting upon it. The Act provides states and EPA with other tools to address concerns that arise with respect to violations of the NAAQS in a designated attainment area, such as the authority to redesignate areas pursuant to section 107(d)(3), the authority to issue a ''SIP Call'' pursuant to section 110(k)(5), or the general authority to approve SIP revisions that can address such violations of the NAAQS through other appropriate measures. As stated in EPA's proposed approval for this rule, to meet section 110(a)(2)(A), Kentucky submitted a list of existing emission reduction measures in the SIP that control emissions of volatile organic compounds and nitrogen oxides (NOx) in order to address ambient ozone levels. EPA believes that this is sufficient for purposes of infrastructure SIP submission.

Comment 2: The Commenter contends that EPA must disapprove Kentucky's infrastructure SIP submission as it relates to section 110(a)(2)(A) because the submittal fails to contain enforceable ozone precursor limits and schedules/timetables for compliance to ensure attainment and maintenance of the NAAQS. Specifically, the Commenter contends that Kentucky has failed to identify how it will address the violations for those counties monitoring violations of the NAAQS.

Response 2: EPA disagrees with the Commenter's contention that Kentucky should be required to submit the emissions limitations and other control measures associated with a nonattainment plan in order to satisfy section 110(a)(2)(A) requirements. This would be beyond the scope of what is required per section 110(a)(2)(A) in the context of an infrastructure SIP submission. Nonattainment area plans are due on a different schedule from the section 110 infrastructure elements, and such plans, if required, are reviewed and acted upon through a separate process. Here, the most of the counties cited by the Commenter are not designated nonattainment,[8] and as such, the nonattainment plan requirements referenced by the Commenter are not currently due. As noted above, EPA shares the Commenter's concern regarding areas that are monitoring exceedances of the 2008 8-hour ozone NAAQS and will work appropriately with state and local agencies to address such exceedances. Further, in approving Kentucky's infrastructure SIP, EPA is affirming that Kentucky has sufficient authority to take the types of actions required by the CAA in order to bring such areas back into attainment.

Comment 3: A number of Commenters disagreed with EPA's position that disapproval of the Kentucky's infrastructure SIP, as it relates to section 110(a)(2)(D)(i)(I) requirements, would not trigger a mandatory duty for EPA to promulgate a FIP to address these requirements. Specifically, the Commenters contend that the plain language of the CAA requires EPA to issue a FIP within two years of a disapproval action. In addition, the Commenters contend that the decision in *EME Homer City Generation* v. *EPA,* 696 F.3d 7 (DC Cir. 2012) (*EME Homer City*), was incorrectly decided and is inconsistent with previous decisions by the DC Circuit Court of Appeals. The Commenters suggest that EPA should not voluntarily follow the incorrectly decided *EME Homer City* opinion, particularly in the context of an infrastructure action that only impacts sources in Kentucky, a state under the jurisdiction of the Sixth Circuit Court of Appeals rather than the DC Circuit Court of Appeals.

Response 3: EPA has historically adopted the interpretation suggested by the Commenters that disapproval of section 110(a)(2)(D)(i)(I) would trigger an obligation for the Agency to promulgate a FIP within two years if the state did not correct the SIP deficiency within that time. EPA continues to agree that the plain language of the statute establishes these obligations, and for those reasons, we asked the U.S. Court of Appeals for the DC Circuit to grant rehearing en banc of the decision in *EME Homer City.* That petition, however, was denied on January 24, 2012, and the mandate was issued to EPA on February 4, 2012. The deadline for any party to file a petition for *certiorari* with the Supreme Court has not passed[9] and the United States has not yet decided whether to pursue further appeals. In the meantime, EPA intends to act in accordance with the *EME Homer City* opinion in which the court concluded that states have no obligation to make a SIP submission to address section 110(a)(2)(D)(i)(I) for a new or revised NAAQS until EPA has first defined a state's obligations pursuant to that section. As described in the proposed rulemaking for today's action, Kentucky did make such a submittal, and consistent with section 110(k) of the CAA, EPA is required to act upon that submittal. Because CAIR does not, in any way, address transport with respect to the 2008 8-hour ozone NAAQS, it cannot be relied upon to satisfy the requirements of 110(a)(2)(D)(i)(I) for that NAAQS. For this reason, the Agency proposed to disapprove this portion of the infrastructure SIP submission. However, because this portion of the infrastructure SIP submission is not currently required for the 2008 8-hour ozone NAAQS per the *EME Homer City* opinion, EPA's disapproval action today does not presently trigger a FIP obligation.

EPA also disagrees with the Commenters' suggestion that the Agency need not follow the DC Circuit's decision in *EME Homer City* in the context of an infrastructure action for Kentucky. The EPA rule reviewed by the court in *EME Homer City*—''Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and

[7] EPA also notes that the Commenter relies upon preliminary data to suggest that certain areas are violating the 2008 8-hour ozone NAAQS based upon 2010–2012 data. This data has not yet been certified, and as such, is not yet finalized. Regardless, for the reasons discussed in Response 1, EPA does not believe that such data, were it certified and final, would provide an appropriate basis upon which to disapprove Kentucky's infrastructure SIP as it relates to section 110(a)(2)(A) requirements.

[8] As noted below, a portion of Campbell County, Kentucky is designated nonattainment for the 2008 8-hour ozone NAAQS in association with the Cincinnati-Hamilton nonattainment area.

[9] Pursuant to Rule 13 of the Supreme Court Rules, a petition for certiorari must be filed within 90 days of the date of denial of rehearing. The court may extend this deadline for good cause by up to 60 days.

Ozone and Correction of SIP Approvals,'' 76 FR 48207 (August 8, 2011) also known as the Cross State Air Pollution Rule (CSAPR)—was designated by EPA as a ''nationally applicable'' rule within the meaning of section 307(b)(1) of the CAA. *See id.* at 48352. Accordingly, all petitions for review of the CSAPR had to be filed in the U.S. Court Appeals for the DC Circuit and could not be filed in any other federal court. 42 U.S.C. 7607(b)(1). Accordingly, EPA believes the DC Circuit's decision in *EME Homer City* vacating this rule is also nationally applicable. As such, EPA does not intend to take any actions, even if they are only reviewable in another federal Circuit Court of Appeals, that are inconsistent with the decision of the DC Circuit.

Comment 4: A number of states commented that Kentucky contributes significantly to ozone nonattainment in other states. Specifically, the Maryland Department of the Environment commented that it has performed modeling to demonstrate that Maryland will continue to violate the 2008 8-hour ozone NAAQS even if all anthropogenic emissions in Maryland are eliminated. It contends that corrective actions in states like Kentucky that contribute to Maryland's nonattainment are necessary in order for the state to meet the NAAQS. The Delaware Department of Natural Resources and Environmental Control commented that modeling from the CSAPR demonstrated that Kentucky emissions significantly contribute to Delaware's ozone pollution by as much as 4.3 percent of the 2008 8-hour ozone NAAQS in 2012 and that Delaware has done its fair share to address ozone, and it expects EPA to ensure that upwind contributing states fully address their contribution to downwind nonattainment. Finally, the Connecticut Department of Energy & Environmental Protection commented that CSAPR modeling demonstrates that Kentucky emissions significantly contribute to Connecticut's ozone pollution by as much as 3.4 percent of the 2008 8-hour ozone NAAQS in 2012, and that Connecticut has done its fair share to address ozone emissions in the state, and it now expects EPA to ensure that upwind contributing states fully address their contribution to downwind nonattainment.

Response 4: EPA acknowledges the Commenters' concern that interstate transport of ozone and ozone precursors from upwind states to downwind states may have adverse consequences on the ability of downwind areas to attain the NAAQS in a timely fashion. It is for this reason that EPA attempted, through CSAPR, to address emissions found to significantly contribute to nonattainment of or interfere with maintenance of the 1997 8-hour ozone NAAQS. The modeling done for CSAPR, however, did not address the 2008 8-hour ozone NAAQS and EPA did not draw any conclusions with respect to the 2008 8-hour ozone NAAQS which did not exist when CAIR was promulgated. Moreover, the DC Circuit, in its decision vacating the CSAPR, held that states are not required to submit SIPs addressing the requirements of section 110(a)(2)(D)(i)(I) until EPA has quantified their obligation under that provision. *See EME Homer City,* 696 F.3d at 37. The *EME Homer City* opinion was issued in August of 2012, and on January 24, 2013, the court denied all petitions for rehearing. As noted in the responses above, the deadline for asking the Supreme Court to review the DC Circuit's decision has not passed and the United States has not yet decided whether to seek further appeal. In the meantime, and unless the *EME Homer City Generation* decision is reversed or otherwise modified, EPA intends to act in accordance with the DC Circuit's opinion. Under this opinion, EPA has no authority to promulgate a FIP for section 110(a)(2)(D)(i)(I) until such time as the Agency quantifies States' obligations under this section.

Comment 5: One Commenter contended even if EPA chose to follow the *EME Homer City Generation* decision, EPA should acknowledge that the disapproval starts a FIP clock and then move expeditiously to provide Kentucky with the information the *EME Homer City* court said EPA must provide. The Commenter contended that EPA should be able to quantify Kentucky's obligations under section 110(a)(2)(D)(i)(I) within six months, thereby providing the Commonwealth with 18 months to submit a new SIP to address this requirements.

Response 5: EPA disagrees. As discussed above in the response to comment 3, unless the D.C. Circuit's decision in *EME Homer City* is reversed or otherwise modified, disapproval Kentucky DAQ's 2008 infrastructure SIP as it relates to section 110(a)(2)(i)(I) does not give EPA authority, much less obligate it, to promulgate a FIP for Kentucky. EPA intends to move forward expeditiously to address the interstate transport requirements of the CAA in accordance with all applicable court decisions.

Comment 6: A number of Commenters contend that EPA's disapproval section 110(a)(2)(D)(i)(I) triggers a section 110(k)(5) obligation to initiate a ''SIP Call'' to revise Kentucky's inadequate infrastructure SIP related to interstate transport requirements.

Response 6: EPA disagrees. Section 110(k)(5) of the CAA provides a mechanism (i.e., a ''SIP Call'') for correcting SIPs that the Administrator finds to be substantially inadequate to meet CAA requirements. As discussed above, EPA has historically interpreted section 110(a)(1) of the CAA as establishing the required submittal date for SIPs addressing all of the ''interstate transport'' requirements in section 110(a)(2)(D) including the provisions in section 110(a)(2)(D)(i)(I) regarding significant contribution to nonattainment and interference with maintenance. The D.C. Circuit's recent opinion in *EME Homer City,* however, concluded that a SIP cannot be deemed to lack a required submission or deemed deficient for failure to meet the 110(a)(2)(D)(i)(I) obligation until EPA first quantifies that obligation. As such, and consistent with the *EME Homer City* opinion, EPA does not at this time believe that disapproval of section 110(a)(2)(D)(i)(I) requirements for Kentucky's 2008 8-hour ozone infrastructure SIP constitutes a substantial inadequacy in the Kentucky SIP because EPA has yet to quantify the Commonwealth's obligation under this requirement. EPA intends to move forward expeditiously to implement the interstate transport requirements of the CAA.

Comment 7: One Commenter contends that EPA should disapprove Kentucky's 2008 8-hour ozone infrastructure SIP submission with regard to the visibility component of 110(a)(2)(D)(i)(II) until such time that Kentucky imposes best available retrofit technology (BART) for nitrogen oxides (NOx) and sulfur dioxides for electric generating units. The Commenter asserts that the substitution of the CAIR for BART is not permanent and enforceable and references the previous litigation related to CAIR. The Commenter provides a number of comments in relation to EPA's ''better than BART'' approach and reliance on CAIR to support an approval action for the visibility components of Kentucky's 2008 8-hour ozone infrastructure submission.

Response 7: EPA disagrees. As explained in detail in EPA's proposed rulemaking related to today's action, EPA believes that in light of the D.C. Circuit court's decision to vacate CSAPR, also known as the Transport Rule (*see EME Homer City,* 696 F.3d 7), and the court's order for EPA to ''continue administering CAIR pending the promulgation of a valid replacement,'' it is appropriate for EPA

to rely at this time on CAIR to support approval of Kentucky's 2008 8-hour ozone infrastructure submission as it relates to visibility. EPA has been ordered by the court to develop a new rule, and to continue implementing CAIR in the meantime. While EPA had filed a petition for rehearing of the court's decision on the Transport Rule, this petition was later denied on January 24, 2013. The deadline for any party to file a petition for *certiorari* with the Supreme Court has not passed, and the United States has not yet decided whether to pursue further appeals. In the meantime, EPA does not intend to act in a manner inconsistent with the decision of the D.C. Circuit. Based on the current direction from the court to continue administering CAIR, EPA believes that it is appropriate to rely on CAIR emission reductions for purposes of assessing the adequacy of Kentucky's infrastructure SIP with respect to prong 4 of section 110(a)(2)(D)(i)(II) while a valid replacement rule is developed and until implementation plans complying with any such new rule are submitted by the states and acted upon by EPA or until the *EME Homer City* case is resolved in a way that provides different direction regarding CAIR and CSAPR.

Furthermore, as neither the Commonwealth nor EPA has taken any action to remove CAIR from the Kentucky SIP, CAIR remains part of the federally-approved SIP and can be considered in determining whether the SIP as a whole meets the requirement of prong 4 of 110(a)(2)(D)(i)(II). EPA is taking final action to approve the infrastructure SIP submission with respect to prong 4 because Kentucky's regional haze SIP, which EPA has given a limited approval in combination with its SIP provisions to implement CAIR adequately, prevents sources in Kentucky from interfering with measures adopted by other states to protect visibility during the first planning period. While EPA is not at this time proposing to change the March 30, 2012, limited approval and limited disapproval of Kentucky's regional haze SIP, EPA expects to propose an appropriate action regarding Kentucky's regional haze SIP if necessary upon final resolution of the *EME Homer City* litigation. More detailed rationale to support EPA's approval of prong 4 for Kentucky's 2008 8-hour ozone infrastructure submission can be found in EPA's proposed rulemaking for today's final action. *See* 78 FR 3867.

Comment 8: One Commenter states that EPA should disapprove the visibility prong of Kentucky's 2008 8-hour ozone infrastructure submission because the Commenter asserts that Kentucky has failed to conduct its 5-year progress review for its regional haze SIP by the required date.

Response 8: EPA does not agree that Kentucky has missed its deadline to submit its 5-year progress review SIP related to regional haze. Kentucky's initial regional haze SIP was submitted on June 25, 2008, so the Commonwealth's 5-year regional haze progress review SIP is not due until June 25, 2013. Even assuming, however, that the deadline for the Commonwealth's submittal of its progress review SIP had passed, this alone would not warrant the disapproval of Kentucky's 2008 8-hour ozone infrastructure SIP submission as it relates to visibility.

Comment 9: One Commenter states ''[n]ow that *en banc* review of *Homer* has been denied, EPA should promptly propose and promulgate a full approval of KY's regional haze SIP.'' The Commenter also asserts that, ''[t]his prospective action should also apply to the other elements of the KY SIP that address reasonable progress and the long term strategy for visibility.''

Response 9: This comment is outside of the scope of today's action. As explained in EPA's proposal notice related to today's action, EPA has already taken final action on Kentucky's regional haze SIP. *See* 77 FR 19098 (March 30, 2012). EPA's proposal notice related to today's action did not involve a reconsideration of the Agency's March 30, 2012, final action on the Commonwealth's regional haze SIP. While EPA's proposal notice did note the litigation related to the Transport Rule and also noted that based on the *EME Homer City* court's decision on the Transport Rule that it would be appropriate to propose to rescind its limited disapproval of Kentucky's regional haze SIP and propose a full approval, EPA did not take such action because the Agency was awaiting a decision related to the possibility that the court would grant EPA's petition for an *en banc* review. EPA mentioned in that proposal notice that an *en banc* review of the court's decision could have a different outcome that could bear on such action on the regional haze SIP. Since the time of EPA's proposal for Kentucky's 2008 8-hour ozone infrastructure SIP, the court has denied EPA's petition for *en banc* review. As noted above, on January 24, 2013, EPA's petition was denied and the mandate was issued to EPA on February 4, 2013. The deadline for any party to file a petition for *certiorari* with the Supreme Court has not passed and the United States has not yet decided whether to pursue further appeals. In the meantime, EPA does not intend to act in a manner inconsistent with the decision of the D.C. Circuit. However, EPA does not think it is appropriate in today's action to rescind its limited disapproval of Kentucky's regional haze SIP. Notably, as explained in EPA's proposal notice related to Kentucky's 2008 8-hour ozone infrastructure action, EPA does not believe that rescinding the Agency's previous limited disapproval of Kentucky's regional haze SIP is necessary to support a full approval of the visibility components of 110(a)(2)(D)(i)(I) and 110(a)(2)(J) for Kentucky's 2008 8-hour ozone infrastructure SIP. Moreover, EPA has not proposed to rescind the Agency's previous limited disapproval, which would be an appropriate procedural step prior to rescinding that disapproval.

Comment 10: One Commenter contends that ''EPA must disapprove the infrastructure SIP because it does not contain the 2008 ozone NAAQS.'' In support of this contention, the Commenter points to a table codified at 401 KAR 53:010, as evidence that Kentucky's ozone limits ''remain at levels set in 1997.''

Response 10: EPA does not agree with the Commenter's assertion that Kentucky's 2008 8-hour ozone infrastructure SIP should be disapproved because ''it does not contain the 2008 8-hour ozone NAAQS.'' In response to this comment, EPA has investigated the facts concerning the table in question. EPA acknowledges that the table in Appendix A to 401 KAR 53:010 pointed to by the Commenter currently does not list the 2008 8-hour ozone NAAQS. However, EPA does not believe that the out-of-date table indicates that the Kentucky SIP does not adequately address infrastructure requirements for the 2008 8-hour ozone NAAQS.

The Commonwealth's infrastructure SIP submission explicitly stated that it was submitted to address the 2008 8-hour ozone NAAQS. Within that submission, the Commonwealth indicated that its existing provisions are appropriate for purposes of the 2008 8-hour ozone NAAQS. EPA considers this to be accurate, based upon the specific contents of the infrastructure SIP submission for various elements of section 110(a)(2). For example, Kentucky's applicable permitting regulations define a ''regulated NSR pollutant'' as ''[a] pollutant for which a national ambient air quality standard has been promulgated* * *.'' 401 KAR 51:001(207). In assessing permits issued by the Commonwealth, EPA routinely interprets the ''for which a national

ambient air quality standard has been promulgated'' language in the Kentucky SIP as referring to the current federally-promulgated NAAQS. EPA notes that in practice the Commonwealth is also addressing the 2008 8-hour ozone NAAQS.[10]

Finally, EPA understands that the Commonwealth has initiated action to update the out-of-date table cited by the Commenter to eliminate any ambiguity or confusion regarding this point. In consultation with the Commonwealth, EPA's understanding is that the Commonwealth is in the process of updating the table to reflect the current NAAQS. EPA believes that, with correction of the table, there should be no misunderstandings concerning the fact that the Commonwealth's SIP is designed to address the 2008 8-hour ozone NAAQS in accordance with the requirements of section 110(a)(1) and (2). As such, EPA does not agree that Kentucky's infrastructure SIP submission must be disapproved as a result of the out-of-date table cited by the Commenter.

Comment 11: One Commenter contends that EPA cannot determine that the Kentucky SIP provides the necessary assurances required by section 110(a)(2)(E)(i) that the Commonwealth will have adequate personnel, funding and authority under state law to carry out its implementation plan given (in the Commenter's opinion) that Kentucky's infrastructure SIP fails to adequately address the significant and important requirements of element (D)(i).

Response 11: EPA does not agree. Section 110(a)(2)(E)(i) requires that the SIP provide ''necessary assurances that the State * * * will have adequate personnel, funding, and authority under State * * * law to carry our such implementation plan * * *.'' As described in the proposal for today's action, Kentucky has submitted information to demonstrate that DAQ is responsible for promulgating rules and regulations for the NAAQS, emissions standards, general policies, a system of permits, fee schedules for the review of plans and other planning needs. In addition, EPA noted the March 14, 2012, Agency letter to DAQ outlining the current status of grant commitments for 2011, each of which have since been finalized. Finally, the proposed rule for today's action described that Kentucky's personnel, funding, and legal authority to carry out the Commonwealth's implementation plan is included with all prehearings and final SIP submittals to EPA. Based upon this information EPA proposed to approve Kentucky's infrastructure submission for purposes of the 2008 8-hour ozone NAAQS. The Commenter does not refute these facts.

While the Commenter is correct in asserting that Kentucky's infrastructure SIP presently fails to address section 110(a)(2)(D)(i)(I) for the 2008 8-hour ozone NAAQS, it is incorrect to conclude that such failure must result in a disapproval of section 110(a)(2)(E)(i). EPA does not view the satisfaction of section 110(a)(2)(D)(i)(I) requirements as germane to an evaluation of whether a state has met its obligations under section 110(a)(2)(E)(i). Rather, EPA interprets section 110(a)(2)(E)(i) as requiring that the state have adequate authority under statutes, rules, and regulations to carry out applicable SIP obligations with respect to the relevant NAAQS. *See* 40 CFR Part 51, Subparts L and O.

As described above, EPA's disapproval of the Kentucky infrastructure SIP as it relates to the section 110(a)(2)(D)(i)(I) transport requirements is based upon the Commonwealth's reliance upon CAIR to satisfy the interstate transport obligations of a NAAQS which CAIR did not address. The fact that this portion of the SIP cannot be approved, however, does not in any way demonstrate a deficiency in the underlying authority of the Kentucky DAQ to promulgate rules and regulations to address these requirements. The Commenter provided no information to suggest that Kentucky lacks the personnel, authority to address the interstate transport requirements.

Comment 12: One Commenter asserts that EPA must disapprove Kentucky's infrastructure SIP related to section 110(a)(2)(J) (127 public notice requirements) because in the Commenter's opinion Kentucky does not provide public notification of 2008 8-hour ozone NAAQS violations in areas beyond Oldham and Jefferson counties. Specifically, the Commenter indicates that the state agency does not notify the public of 2008 8-hour ozone violations in counties that are currently designated attainment for the 1-hour and 1997 8-hour standards (i.e., all counties but Jefferson and Oldham).

Response 12: EPA does not agree with the Commenter's assertion that EPA must disapprove Kentucky's infrastructure SIP submission as it relates to the section 110(a)(2)(J) requirements for public notification because the SIP does not provide for public notification of 2008 8-hour ozone NAAQS violations.

First the Commenter fails to note the distinction between exceeding the ozone NAAQS and violating the ozone NAAQS. Under the CAA, there is a clear distinction between a violation and an exceedance of an ambient air quality standard.[11] Pursuant to the public notification requirements of section 110(a)(2)(J), states are not required to notify the public of NAAQS *violations* as suggested by the Commenter. Instead, states are required ''to notify the public during any calendar [year] on a regular basis of instances or areas in which any national primary ambient air quality standard *is exceeded or was exceeded* during any portion of the preceding calendar year * * *'' (emphasis added). *See* 42 U.S.C. 7427.

Second, the Commenter is mistaken because the Commonwealth does notify the public regarding ambient air quality in Kentucky, including exceedances of the standard. As described in the proposal for today's action, notification to the public regarding exceedances is accomplished through Kentucky DAQ's Web site at *http://air.ky.gov/Pages/AirQualityIndexMonitoring.aspx*, which provides real time monitoring data for all of the Commonwealth's ozone monitors and provides access to Air Quality Index (AQI) information.[12] In addition, Kentucky's Web site also provides information related to health considerations based on the concentration of the pollutants in the air and information related to ways the public can help reduce air pollution. EPA has determined that that this method of notify the public of ambient quality is sufficient to meet Kentucky's infrastructure SIP obligations described at section 110(a)(2)(J) regarding public notification.

Finally, EPA also notes that this comment presupposes that there have

[10] For example, EPA is currently reviewing the Suncoke Energy PSD Application (PSD–KY–265), which was submitted to DAQ on December 7, 2012, and received by EPA for review February 7, 2013. The terms of this application reflect the 2008 8-hour ozone standard as the applicable NAAQS.

[11] An exceedance occurs when monitored ozone concentrations exceed the NAAQS. Ozone is collected as an hourly average of continuous data and, in the context of the 2008 8-hour ozone NAAQS is then used to determine the daily 8-hour average value. An ozone exceedance occurs when a monitor records an 8-hour averaged ambient level of ozone above the standard, in this case, above 0.075 parts per million (ppm). A violation of an ozone standard (as opposed to an exceedance) is based on 3-year averages of data. Violations of the 8-hour standard are determined using the annual 4th-highest daily maximum 8-hour ozone value at each monitor. A violation requires a 3-year average of the annual 4th-highest daily maximum 8-hour value that is greater than 0.075 ppm.

[12] EPA notes that Kentucky provides this information for monitors through the Commonwealth, and that the locations of the monitors are included in the Commonwealth's approved network monitoring plan. Thus this information is available for appropriate locations throughout the state.

been violations of the 2008 ozone NAAQS based on 2010 to 2012 design values which have yet to be certified. Although the Kentucky DAQ maintains the above-referenced Web site with real time monitoring data for the Commonwealth's ozone monitors, Kentucky is not required to certify each year's data until April 1, 2013. As such, until the 2012 data referenced by the Commenter is certified, it remains preliminary and EPA does not view a NAAQS violation as having occurred. Consequently, the Commenter's reference to data not-yet-certified is premature.[13]

III. This Action

In this rulemaking, EPA is taking final action to approve Kentucky DAQ's infrastructure submission as demonstrating that the Commonwealth meets the applicable requirements of sections 110(a)(1) and (2) of the CAA for the 2008 8-hour ozone NAAQS, with the exception of section 110(a)(2)(D)(i)(I) concerning interstate transport, and sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J) pertaining to structural PSD requirements.

With respect to section 110(a)(2)(D)(i)(I), which pertains to interstate transport, EPA is taking final action to disapprove this portion of Kentucky DAQ's infrastructure SIP for the 2008 8-hour ozone NAAQS.

With respect to sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J), EPA is finalizing conditional approval for this portion of Kentucky DAQ's infrastructure SIP for the 2008 8-hour ozone NAAQS. Today's final action to conditionally approve of these portions of sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J) specifically related to the structural PSD requirements is based upon a December 19, 2012, commitment letter submitted by Kentucky DAQ to EPA. The Commonwealth's December 19, 2012, letter can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2012–0700. Through this letter, Kentucky DAQ, committed to adopt specific enforceable measures to address current deficiencies in its SIP related to the structural PSD requirements of the PSD and NNSR requirements related to the implementation of the NSR $PM_{2.5}$ Rule and the $PM_{2.5}$ PSD Increment-SILs-SMC Rule (only as it relates to $PM_{2.5}$ Increments). This commitment letter meets the requirements of section 110(k)(4) of the CAA, and as such, EPA is relying upon this commitment to conditionally approve sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J). For more information, see EPA's proposal for today's rulemaking. *See* 78 FR 3867.

Accordingly, for purposes of today's conditional approval sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J) as it relates to the structural PSD requirements, Kentucky DAQ must submit to EPA by March 10, 2014, a SIP revision adopting the specific enforceable measures as described in the Commonwealth's commitment letter described above. If the Commonwealth fails to actually submit this revision by March 10, 2014, today's conditional approval will automatically become a disapproval for the 2008 8-hour ozone NAAQS.

IV. Final Action

EPA is taking final action to approve most elements contained in Kentucky DAQ's infrastructure SIP submission made by the Commonwealth on September 8, 2009, as revised on July 17, 2012, because it addresses the required infrastructure elements for the 2008 8-hour ozone NAAQS with exception of sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J) as they relate to structural PSD requirements, and section 110(a)(2)(D)(i)(I) as it relates to interstate transport. With the exceptions noted above Kentucky DAQ has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to section 110 of the CAA to ensure that the 2008 8-hour ozone NAAQS are implemented, enforced, and maintained in Kentucky.

With respect to section 110(a)(2)(D)(i)(I) specifically pertaining interstate transport, EPA is finalizing disapproval for this portion of Kentucky DAQ's infrastructure SIP for the 2008 8-hour ozone NAAQS.

With respect to sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J) as they relate to the structural PSD requirements of the PSD and NNSR requirements related to the implementation of the NSR $PM_{2.5}$ Rule and the $PM_{2.5}$ PSD Increment-SILs-SMC Rule (only as it relates to $PM_{2.5}$ Increments), EPA is taking final action to conditionally approve the Commonwealth's infrastructure SIP in part, based on an December 19, 2012, commitment that Kentucky DAQ will adopt specific enforceable measures related to the structural PSD requirements detailed above into its SIP and submit these revisions to EPA by March 10, 2014. If the Commonwealth fails to actually submit these revisions by the applicable dates described above, today's conditional approval(s) will automatically be disapproved on that date.

V. Statutory and Executive Order Reviews

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

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

[13] EPA also wishes to clarify that Commenter incorrectly indicates that all counties aside from Jefferson and Oldham are designated attainment for the 2008 8-hour ozone NAAQS. There are also three partial counties in Northern Kentucky (i.e., Boone, Campbell and Kenton) are designated nonattainment for the 2008 8-hour ozone NAAQS as part of the Cincinnati-Hamilton Nonattainment Area. The Campbell County monitor referred to by the Commenter is included in the 2008 8-hour ozone nonattainment area and is not in area designated attainment as suggested by one Commenter. *See* 77 FR 30088.

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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 6, 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 1, 2013.

A. Stanley Meiburg

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart S—Kentucky

■ 2. Section 52.919 is amended by designating the existing undesignated paragraph as paragraph (a) and adding paragraph (b) to read as follows:

§ 52.919 Identification of plan-conditional approval.

(a) * * *

(b) Conditional Approval—Submittal from the Commonwealth of Kentucky, through the Division of Air Quality (DAQ) of the Kentucky Energy and Environment Cabinet, dated December 19, 2012, to address the Clean Air Act (CAA) sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J) for the 2008 8-hour Ozone National Ambient Air Quality Standards. With respect to CAA sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J), the Commonwealth must submit to EPA by March 10, 2014, SIP revisions adopting specific enforceable measures related the structural PSD requirements of the PSD and NNSR requirements related to the implementation of the NSR $PM_{2.5}$ Rule and the $PM_{2.5}$ PSD Increment-SILs-SMC Rule (only as it relates to $PM_{2.5}$ Increments) as described in the Commonwealth's commitment letter.

■ 3. In § 52.920, the table in paragraph (e) is amended by adding a new entry ''110(a)(1) and (2) Infrastructure Requirements for the 2008 8-Hour Ozone National Ambient Air Quality Standards'' at the end of the table to read as follows:

§ 52.920 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/effective date	EPA approval date	Explanations
*	* *		* *	* *
110(a)(1) and (2) Infrastructure Requirements for the 2008 8-Hour Ozone National Ambient Air Quality Standards.	Commonwealth of Kentucky.	7/17/2012	3/7/2013 ..... [Insert citation of publication].	With the exception of section 110(a)(2)(D)(i)(I) concerning interstate transport which is being disapproved and, the portions of sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J) related to structural PSD requirements, which are being conditionally approved.

■ 4. Section 52.930 is amended by adding paragraph (l) to read as follows:

§ 52.930 Control strategy: Ozone.

* * * * *

(l) *Disapproval.* EPA is disapproving in part, the Commonwealth of Kentucky's Infrastructure SIP for the 2008 8-hour Ozone National Ambient Air Quality Standards addressing section 110(a)(2)(D)(i)(I) concerning interstate transport requirements, submitted July 17, 2012.

[FR Doc. 2013–05352 Filed 3–6–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1588–N]

RIN 0938–AR12

Medicare Program; Extension of the Payment Adjustment for Low-volume Hospitals and the Medicare-dependent Hospital (MDH) Program Under the Hospital Inpatient Prospective Payment Systems (IPPS) for Acute Care Hospitals for Fiscal Year 2013

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of extension.

SUMMARY: This notice announces changes to the payment adjustment for low-volume hospitals and to the Medicare-dependent hospital (MDH) program under the hospital inpatient prospective payment systems (IPPS) for FY 2013 in accordance with sections 605 and 606, respectively, of the American Taxpayer Relief Act of 2012.

DATES: *Effective date:* March 4, 2013. *Applicability dates:* The provisions described in this notice are applicable for discharges on or after October 1, 2012 and on or before September 30, 2013.

FOR FURTHER INFORMATION CONTACT:
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SUPPLEMENTARY INFORMATION:

I. Background

On January 2, 2013, the American Taxpayer Relief Act of 2012 (ATRA) (Pub. L. 112–240) was enacted. Section 605 of the ATRA extends changes to the payment adjustment for low-volume hospitals for an additional year, through fiscal year (FY) 2013. Section 606 of the ATRA extends the Medicare-dependent hospital (MDH) program for an additional year, through FY 2013.

II. Provisions of the Notice

A. Extension of the Payment Adjustment for Low-Volume Hospitals

1. Background

Section 1886(d)(12) of the Social Security Act (the Act) provides for an additional payment to each qualifying low-volume hospital under the hospital inpatient prospective payment systems (IPPS) beginning in FY 2005. Sections 3125 and 10314 of the Affordable Care Act provided for a temporary change in the low-volume hospital payment policy for FYs 2011 and 2012. Prior to the enactment of the ATRA, beginning with FY 2013, the low-volume hospital qualifying criteria and payment adjustment returned to the statutory requirements under section 1886(d)(12) of the Act that were in effect prior to the amendments made by the Affordable Care Act. (For additional information on the expiration of the provisions of the Affordable Care Act that amended the low-volume hospital adjustment at section 1886(d)(12) of the Act, we refer readers to the FY 2013 IPPS/LTCH PPS final rule (77 FR 53406 through 53408).) The regulations describing the payment adjustment for low-volume hospitals are at 42 CFR 412.101.

2. Low-Volume Hospital Payment Adjustment for FYs 2011 and 2012

For FYs 2011 and 2012, sections 3125 and 10314 of the Affordable Care Act expanded the definition of low-volume hospital and modified the methodology for determining the payment adjustment for hospitals meeting that definition. Specifically, the provisions of the Affordable Care Act amended the qualifying criteria for low-volume hospitals under section 1886(d)(12)(C)(i) of the Act to specify that, for FYs 2011 and 2012, a hospital qualifies as a low-volume hospital if it is more than 15 road miles from another subsection (d) hospital and has less than 1,600 discharges of individuals entitled to, or enrolled for, benefits under Part A during the fiscal year. In addition, section 1886(d)(12)(D) of the Act, as added by the Affordable Care Act, provides that the low-volume hospital payment adjustment (that is, the percentage increase) is to be determined ''using a continuous linear sliding scale ranging from 25 percent for low-volume hospitals with 200 or fewer discharges of individuals entitled to, or enrolled for, benefits under Part A in the fiscal year to zero percent for low-volume hospitals with greater than 1,600 discharges of such individuals in the fiscal year.''

We revised the regulations at 42 CFR 412.101 to reflect the changes to the qualifying criteria and the payment adjustment for low-volume hospitals according to the provisions of the Affordable Care Act in the FY 2011 IPPS/LTCH PPS final rule (75 FR 50238 through 50275 and 50414). In addition, we also defined, at § 412.101(a), the term ''road miles'' to mean ''miles'' as defined at § 412.92(c)(1), and clarified the existing regulations to indicate that a hospital must continue to qualify as a low-volume hospital in order to receive the payment adjustment in that year (that is, it is not based on a one-time qualification). Furthermore, in that same final rule, we discussed the process for requesting and obtaining the low-volume hospital payment adjustment for FY 2011 (75 FR 50240). For the second year of the changes to the low-volume hospital adjustment provided for by the provisions of the Affordable Care Act (that is, FY 2012), consistent with the regulations at § 412.101(b)(2)(ii), we updated the discharge data source used to identify qualifying low-volume hospitals and calculate the payment adjustment (percentage increase) in the FY 2012 IPPS/LTCH PPS final rule (76 FR 51677 through 51680). Under § 412.101(b)(2)(ii), for FYs 2011 and 2012, a hospital's Medicare discharges from the most recently available MedPAR data, as determined by CMS, are used to determine if the hospital meets the discharge criteria to receive the low-volume payment adjustment in the current year. In that same final rule, we established that, for FY 2012, qualifying low-volume hospitals and their payment adjustment are determined using Medicare discharge data from the March 2011 update of the FY 2010 MedPAR file, as these data were the most recent data available at that time. In addition, we noted that eligibility for the low-volume payment adjustment for FY 2012 was also dependent upon meeting (if the hospital was qualifying for the low-volume payment adjustment for the first time in FY 2012), or continuing to meet (if the hospital qualified in FY 2011) the mileage criteria specified at § 412.101(b)(2)(ii). Furthermore, we established a procedure for a hospital to request low-volume hospital status for FY 2012 (which was consistent with the process we employed for the low-volume hospital payment adjustment for FY 2011).

3. Implementation of the Extension of the Low-Volume Hospital Payment Adjustment for FY 2013

Section 605 of the ATRA extends, for FY 2013, the temporary changes in the low-volume hospital payment policy provided for in FYs 2011 and 2012 by the Affordable Care Act. As noted previously, prior to the enactment of section 605 of the ATRA, beginning with FY 2013, the low-volume hospital definition and payment adjustment methodology returned to the policy established under statutory requirements that were in effect prior to the amendments made by the Affordable Care Act. Specifically, section 605 of the ATRA extends the changes made by the Affordable Care Act by amending section 1886(d)(12)(B) of the Act by striking ''2013'' and inserting ''2014'' and by amending sections 1886(d)(12)(C)(i) and (D) of the Act by striking ''and 2012'' and inserting '', 2012, and 2013''.

Prior to the enactment of the ATRA, in the FY 2013 IPPS/LTCH PPS final rule (77 FR 53406 through 53409), we discussed the low-volume hospital payment adjustment for FY 2013 and subsequent fiscal years. Specifically, we discussed that in accordance with section 1886(d)(12) of the Act, beginning with FY 2013, the low-volume hospital definition and payment adjustment methodology reverted back to the statutory requirements that were in effect prior to the amendments made by the Affordable Care Act. Therefore, we explained, as specified under the existing regulations at § 412.101, effective for FY 2013 and subsequent years, in order to qualify as a low-volume hospital, a subsection (d) hospital must be more than 25 road miles from another subsection (d) hospital and have less than 200 discharges (that is, less than 200 total discharges, including both Medicare and non-Medicare discharges) during the fiscal year. We also established a procedure for hospitals to request low-volume hospital status for FY 2013 (which was consistent with our previously established procedures for FYs 2011 and 2012).

To implement the extension of the temporary change in the low-volume hospital payment policy for FY 2013 provided for by the ATRA, in accordance with the existing regulations at § 412.101(b)(2)(ii) and consistent with our implementation of the changes in FYs 2011 and 2012, we are updating the discharge data source used to identify qualifying low-volume hospitals and calculate the payment adjustment (percentage increase) for FY 2013. As noted previously, under § 412.101(b)(2)(ii), for FYs 2011 and FY 2012, a hospital's Medicare discharges from the most recently available MedPAR data, as determined by us, are used to determine if the hospital meets the discharge criteria to receive the low-volume payment adjustment in the current year. The applicable low-volume percentage increase provided for by the provisions of the Affordable Care Act is determined using a continuous linear sliding scale equation that results in a low-volume adjustment ranging from an additional 25 percent for hospitals with 200 or fewer Medicare discharges to a zero percent additional payment adjustment for hospitals with 1,600 or more Medicare discharges.

For FY 2013, consistent with our historical policy, qualifying low-volume hospitals and their payment adjustment will be determined using Medicare discharge data from the March 2012 update of the FY 2011 MedPAR file, as these data were the most recent data available at the time of the development of the FY 2013 payment rates and factors established in the FY 2013 IPPS/LTCH PPS final rule. Table 14 of this notice (which is available only through the Internet on the CMS Web site at *http://www.cms.hhs.gov/AcuteInpatientPPS/01_overview.asp*) lists the ''subsection (d)'' hospitals with fewer than 1,600 Medicare discharges based on the March 2012 update of the FY 2011 MedPAR files and their FY 2013 low-volume payment adjustment (if eligible). Eligibility for the low-volume hospital payment adjustment for FY 2013 is also dependent upon meeting (in the case of a hospital that did not qualify for the low-volume hospital payment adjustment in FY 2012) or continuing to meet (in the case of a hospital that did qualify for the low-volume hospital payment adjustment in FY 2012) the mileage criterion specified at § 412.101(b)(2)(ii). We note that the list of hospitals with fewer than 1,600 Medicare discharges in Table 14 does not reflect whether or not the hospital meets the mileage criterion, and a hospital also must be located more than 15 road miles from any other IPPS hospital in order to qualify for a low-volume hospital payment adjustment in FY 2013.

In order to receive a low-volume hospital payment adjustment under § 412.101, in accordance with our previously established procedure, a hospital must notify and provide documentation to its fiscal intermediary or Medicare Administrative Contractor (MAC) that it meets the mileage criterion. The use of a Web-based mapping tool, such as MapQuest, as part of documenting that the hospital meets the mileage criterion for low-volume hospitals, is acceptable. The fiscal intermediary or MAC will determine if the information submitted by the hospital, such as the name and street address of the nearest hospitals, location on a map, and distance (in road miles, as defined in the regulations at § 412.101(a)) from the hospital requesting low-volume hospital status, is sufficient to document that it meets the mileage criterion. The fiscal intermediary or MAC may follow up with the hospital to obtain additional necessary information to determine whether or not the hospital meets the low-volume mileage criterion. In addition, the fiscal intermediary or MAC will refer to the hospital's Medicare discharge data determined by CMS to determine whether or not the hospital meets the discharge criterion, and the amount of the FY 2013 payment adjustment, once it is determined that the mileage criterion has been met. The Medicare discharge data shown in Table 14, as well as the Medicare discharge data for all ''subsection (d)'' hospitals with claims in the March 2012 update of the FY 2011 MedPAR file, is also available on the CMS Web site for hospitals to view their Medicare discharges to help hospitals to decide whether or not to apply for low-volume hospital status.

Consistent with our previously established procedure, we are implementing the following procedure for a hospital to request low-volume hospital status for FY 2013. In order for the applicable low-volume percentage increase to be applied to payments for its discharges beginning on or after October 1, 2012 (that is, the beginning of FY 2013), a hospital must make its request for low-volume hospital status in writing to its fiscal intermediary or MAC by March 22, 2013. A hospital that qualified for the low-volume payment adjustment in FY 2012 may continue to receive a low-volume payment adjustment in FY 2013 without reapplying, if it continues to meet the Medicare discharge criterion, based on the March 2012 update of the FY 2011 MedPAR data (shown in Table 14) and the distance criterion; however, the hospital must verify in writing to its fiscal intermediary or MAC no later than March 22, 2013, that it continues to be more than 15 miles from any other ''subsection (d)'' hospital. Furthermore, for requests for low-volume hospital status for FY 2013 received after March 22, 2013, if the hospital meets the criteria to qualify as a low-volume hospital, the fiscal intermediary or MAC

will apply the applicable low-volume adjustment in determining payments to the hospital's FY 2013 discharges prospectively effective within 30 days of the date of the fiscal intermediary's or MAC's low-volume status determination. (As noted previously, this procedure is similar to the policy we established for a hospital to request low-volume hospital status for FYs 2011 and 2012 in the FY 2011 IPPS/LTCH PPS final rule (75 FR 20574 through 20575) and FY 2012 IPPS/LTCH PPS final rule (76 FR 51680), respectively.)

Program guidance on the systems implementation of these provisions, including changes to PRICER software used to make payments, will be announced in an upcoming transmittal. We intend to make conforming changes to the regulations text at 42 CFR 412.101 to reflect the changes to the qualifying criteria and the payment adjustment for low-volume hospitals according to the amendments made by section 605 of the ATRA in future rulemaking.

B. Extension of the Medicare-Dependent, Small Rural Hospital (MDH) Program

Section 606 of the ATRA provides for a 1-year extension of the Medicare-dependent, small rural hospital (MDH) program effective from October 1, 2012 to September 30, 2013. Specifically, section 606 of the ATRA of 2012 amended sections 1886(d)(5)(G)(i) and 1886(d)(5)(G)(ii)(II) of the Act by striking ''October 1, 2012'' and inserting ''October 1, 2013''. Section 606 of the ATRA of 2012 also made conforming amendments to sections 1886(b)(3)(D)(i) and 1886(b)(3)(D)(iv) of the Act. Generally, as a result of the section 606 extension, a provider that was classified as an MDH prior to the September 30, 2012 expiration of the MDH program will be reinstated as an MDH effective October 1, 2012, with no need to reapply for MDH classification.

Prior to the enactment of section 606 of the ATRA, under section 3124 of the Affordable Care Act, the MDH program authorized by section 1886(d)(5)(G) of the Act was set to expire at the end of FY 2012. (For additional information on the MDH program and the payment methodology, we refer readers to the FY 2012 IPPS/LTCH PPS final rule (76 FR 51683 through 51684).

In the FY 2011 IPPS/LTCH PPS final rule (75 FR 50287 and 50414), we amended the regulations at § 412.108(a)(1) and (c)(2)(iii) to reflect the Affordable Care Act extension of the MDH program through FY 2012. We intend to amend the regulations at § 412.108(a)(1) and (c)(2)(iii) to reflect the statutory extension of the MDH program through FY 2013 provided for by the provisions of the ATRA in future rulemaking.

Since MDH status is now extended by statute through the end of FY 2013, generally, hospitals that previously qualified for MDH status will be reinstated as an MDH retroactively to October 1, 2012. However, in the following two situations, the effective date of MDH status may not be retroactive to October 1, 2012.

1. MDHs That Classified as Sole Community Hospitals (SCHs) on or After October 1, 2012

In anticipation of the September 30, 2012 expiration of the MDH provision, we allowed MDHs that applied for reclassification as sole community hospitals (SCHs) by August 31, 2012, to have such status be effective on October 1, 2012 under the regulations at § 412.92(b)(2)(v). Hospitals that applied by the August 31, 2012 deadline and were approved for SCH classification received SCH status effective October 1, 2012. Additionally, some hospitals that had MDH status as of the September 30, 2012 expiration of the MDH program may have missed the August 31, 2012 application deadline. These hospitals applied for SCH status in the usual manner instead and were approved for SCH status effective 30 days from the date of approval, resulting in an effective date later than October 1, 2012. These hospitals must reapply for MDH status under § 412.108(b).

2. MDHs That Requested a Cancellation of Their Rural Classification Under § 412.103(b)

One of the criteria to be classified as an MDH is that the hospital must be located in a rural area. To qualify for MDH status, some MDHs reclassified from an urban to a rural hospital designation, under the regulations at § 412.103(b). With the expiration of the MDH provision, some of these providers may have requested a cancellation of their rural classification. Therefore, in order to qualify for MDH status, these hospitals must request to be reclassified as rural under § 412.103(b) and must reapply for MDH status under § 412.108(b).

Any provider that falls within either of the two exceptions listed previously may not have its MDH status automatically reinstated effective October 1, 2012. That is, if a provider reclassified to SCH status or cancelled its rural status effective October 1, 2012, its MDH status will not be retroactive to October 1, 2012, but will instead be applied prospectively based on the date the hospital is notified that it again meets the requirements for MDH status in accordance with § 412.108(b)(4) after reapplying for MDH status. Once granted, this status will remain in effect through FY 2013, subject to the requirements at § 412.108. However, if a provider reclassified to SCH status or cancelled its rural status effective on a date later than October 1, 2012, MDH status will be reinstated effective from October 1, 2012 but will end on the date on which the provider changed its status to an SCH or cancelled its rural status. Those hospitals may also reapply for MDH status to be effective again 30 days from the date the hospital is notified of the determination, in accordance with § 412.108(b)(4). Once granted, this status will remain in effect through FY 2013, subject to the requirements at § 412.108. Providers that fall within either of the two exceptions will have to reapply for MDH status according to the classification procedures in 42 CFR 412.108(b). Specifically, the regulations at § 412.108(b) require the following:

- The hospital submit a written request along with qualifying documentation to its contractor to be considered for MDH status.
- The contractor make its determination and notify the hospital within 90 days from the date that it receives the request for MDH classification and all required documentation.
- The determination of MDH status be effective 30 days after the date of the contractor's written notification to the hospital.

The following are examples of various scenarios that illustrate how and when MDH status will be determined for hospitals that were MDHs as of the September 30, 2012 expiration of the MDH program:

Example 1: Hospital A was classified as an MDH prior to the September 30, 2012 expiration of the MDH program. Hospital A retained its rural classification and did not reclassify as an SCH. Hospital A's MDH status will be automatically reinstated to October 1, 2012.

Example 2: Hospital B was classified as an MDH prior to the September 30, 2012 expiration of the MDH program. per the regulations at § 412.92(b)(2)(v) and in anticipation of the expiration of the MDH program, Hospital B applied for reclassification as an SCH by August 31, 2012, and was approved for SCH status effective on October 1, 2012. Hospital B's MDH status will not be automatically reinstated. In order to reclassify as an MDH, Hospital B must cancel its SCH status, in accordance with § 412.92(b)(4), and reapply for

MDH status under the regulations at § 412.108(b).

Example 3: Hospital C was classified as an MDH prior to the September 30, 2012 expiration of the MDH program. Hospital C missed the application deadline of August 31, 2012 for reclassification as an SCH under the regulations at § 412.92(b)(2)(v) and was not eligible for its SCH status to be effective as of October 1, 2012. Hospitals C's Medicare contractor approved its request for SCH status effective November 16, 2012. Hospital C's MDH status will be reinstated effective October 1, 2012 through November 15, 2012 and will subsequently be cancelled effective November 16, 2012. In order to reclassify as an MDH, Hospital C must cancel its SCH status, in accordance § 412.92(b)(4), and reapply for MDH status under the regulations at § 412.108(b).

Example 4: Hospital D was classified as an MDH prior to the September 30, 2012 expiration of the MDH program. In anticipation of the expiration of the MDH program, Hospital D requested that its rural classification be cancelled per the regulations at § 412.103(g). Hospital D's rural classification was cancelled effective October 1, 2012. Hospital D's MDH status will not be automatically reinstated. In order to reclassify as an MDH, Hospital D must request to be reclassified as rural under § 412.103(b) and must reapply for MDH status under § 412.108(b).

Example 5: Hospital E was classified as an MDH prior to the September 30, 2012 expiration of the MDH program. In anticipation of the expiration of the MDH program, Hospital E requested that its rural classification be cancelled per the regulations at § 412.103(g). Hospital E's rural classification was cancelled effective January 1, 2013. Hospital E's MDH status will be reinstated but only for the period of time during which it met the criteria for MDH status. Since Hospital E cancelled its rural status and was classified as urban effective January 1, 2013, MDH status will only be reinstated effective October 1, 2012 through December 31, 2012 and will be cancelled effective January 1, 2013. In order to reclassify as an MDH, Hospital E must request to be reclassified as rural under § 412.103(b) and must reapply for MDH status under § 412.108(b).

We note that hospitals that were MDHs as of the September 30, 2012 expiration of the MDH program that have returned to urban status will first need to apply for rural status under § 412.103(b), and hospitals that became SCHs will first need to request cancellation of SCH status under § 412.92(b)(4).

Finally, we note that hospitals continue to be bound by § 412.108(b)(4)(i) through (iii) to report a change in the circumstances under which the status was approved. Thus, if a hospital's MDH status has been extended and it no longer meets the requirements for MDH status, it is required under § 412.108(b)(4)(i) through (iii) to make such a report to its fiscal intermediary or MAC. Additionally, under the regulations at § 412.108(b)(5), Medicare contractors are required to evaluate on an ongoing basis whether or not a hospital continues to qualify for MDH status.

A provider affected by the MDH program extension will receive a notice from its Medicare contractor detailing its status in light of the MDH program extension.

Program guidance on the systems implementation of these provisions, including changes to PRICER software used to make payments, will be announced in an upcoming transmittal. We intend to make the conforming changes to the regulations text at 42 CFR 412.108 to reflect the changes made by section 606 of the ATRA in future rulemaking.

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

IV. Waiver of Proposed Rulemaking and Delay of Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment prior to a rule taking effect in accordance with section 553(b) of the Administrative Procedure Act (APA) and section 1871 of the Act. In addition, in accordance with section 553(d) of the APA and section 1871(e)(1)(B)(i) of the Act, we ordinarily provide a 30-day delay to a substantive rule's effective date. For substantive rules that constitute major rules, in accordance with 5 U.S.C. 801, we ordinarily provide a 60-day delay in the effective date.

None of the processes or effective date requirements apply, however, when the rule in question is interpretive, a general statement of policy, or a rule of agency organization, procedure or practice. They also do not apply when the Congress itself has created the rules that are to be applied, leaving no discretion or gaps for an agency to fill in through rulemaking.

In addition, an agency may waive notice and comment rulemaking, as well as any delay in effective date, when the agency for good cause finds that notice and public comment on the rule as well the effective date delay are impracticable, unnecessary, or contrary to the public interest. In cases where an agency finds good cause, the agency must incorporate a statement of this finding and its reasons in the rule issued.

The policies being publicized in this notice do not constitute agency rulemaking. Rather, the Congress, in the ATRA, has already required that the agency make these changes, and we are simply notifying the public of the extension of the changes to the payment adjustment for low-volume hospitals and the MDH program for an additional year effective October 1, 2012. As this notice merely informs the public of these extensions, it is not a rule and does not require any notice and comment rulemaking. To the extent any of the policies articulated in this notice constitute interpretations of the Congress's requirements or procedures that will be used to implement the Congress's directive; they are interpretive rules, general statements of policy, and rules of agency procedure or practice, which are not subject to notice and comment rulemaking or a delayed effective date.

However, to the extent that notice and comment rulemaking or a delay in effective date or both would otherwise apply, we find good cause to waive such requirements. Specifically, we find it unnecessary to undertake notice and comment rulemaking in this instance as this notice does not propose to make any substantive changes to the policies or methodologies already in effect as a matter of law, but simply applies rate adjustments under the ATRA to these existing policies and methodologies. As the changes outlined in this notice have already taken effect, it would also be impracticable to undertake notice and comment rulemaking. For these reasons, we also find that a waiver of any delay in effective date, if it were otherwise applicable, is necessary to comply with the requirements of the ATRA. Therefore, we find good cause to waive notice and comment procedures as well as any delay in effective date, if such procedures or delays are required at all.

V. Regulatory Impact Analysis

A. Introduction

We have examined the impacts of this notice as required by Executive Order

12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. A regulatory impact analysis (RIA) must be prepared for regulatory actions with economically significant effects ($100 million or more in any 1 year). Although we do not consider this notice to constitute a substantive rule or regulatory action, the changes announced in this notice are ''economically'' significant, under section 3(f)(1) of Executive Order 12866, and therefore we have prepared a RIA, that to the best of our ability, presents the costs and benefits of this notice. In accordance with Executive Order 12866, the notice has been reviewed by the Office of Management and Budget.

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small government jurisdictions. We estimate that most hospitals and most other providers and suppliers are small entities as that term is used in the RFA. The great majority of hospitals and most other health care providers and suppliers are small entities, either by being nonprofit organizations or by meeting the SBA definition of a small business (having revenues of less than $7.5 to $34.5 million in any 1 year). (For details on the latest standard for health care providers, we refer readers to page 33 of the Table of Small Business Size Standards at the Small Business Administration's Web site at *http://www.sba.gov/services/contractingopportunities/sizestandardstopics/tableofsize/index.html*.) For purposes of the RFA, all hospitals and other providers and suppliers are considered to be small entities. Individuals and States are not included in the definition of a small entity. We believe that this notice will have a significant impact on small entities. Because we acknowledge that many of the affected entities are small entities, the analysis discussed in this section would fulfill any requirement for a final regulatory flexibility analysis.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we now define a small rural hospital as a hospital that is located outside of an urban area and has fewer than 100 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2012, that threshold is approximately $136 million. This notice will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This notice will not have a substantial effect on State and local governments.

Although this notice merely reflects the implementation of two provisions of the ATRA and does not constitute a substantive rule, we nevertheless prepared this impact analysis in the interest of ensuring that the impacts of these changes are fully understood. The following analysis, in conjunction with the remainder of this document, demonstrates that this notice is consistent with the regulatory philosophy and principles identified in Executive Order 12866 and 13563, the RFA, and section 1102(b) of the Act. The notice will positively affect payments to a substantial number of small rural hospitals and providers, as well as other classes of hospitals and providers, and the effects on some hospitals and providers may be significant. The impact analysis, which discusses the effect on total payments to IPPS hospitals and providers, is presented in this section.

B. Statement of Need

This notice is necessary to update the IPPS final FY 2013 payment policies to reflect changes required by the implementation of two provisions of the ATRA. Section 605 of the ATRA extends the payment adjustment for low-volume hospitals through FY 2013. Section 606 of the ATRA extends the MDH program through FY 2013. As noted previously, program guidance on the systems implementation of these provisions, including changes to PRICER software used to make payments, will be announced in an upcoming transmittal.

C. Overall Impact

The FY 2013 IPPS/LTCH PPS final rule included an impact analysis for the changes to the IPPS included in that rule. This notice updates those impacts to the IPPS to reflect the changes made by sections 605 and 606 of the ATRA. Since these sections were not budget neutral, the overall estimates for hospitals have changed from our estimates that were published in the FY 2013 IPPS/LTCH PPS final rule (77 FR 53748). We estimate that the changes in the FY 2013 IPPS/LTCH PPS final rule, in conjunction with the changes included in this notice, will result in an approximate $2.54 billion increase in total payments to IPPS hospitals relative to FY 2012. In the FY 2013 IPPS/LTCH PPS final rule (77 FR 53748), we had projected that total payments to IPPS hospitals would increase by $2.04 billion relative to FY 2012. However, since the changes in this notice will increase payments by an estimated $509 million relative to what was projected in the FY 2013 IPPS/LTCH PPS final rule, these changes will result in a net increase of $2.54 billion in total payments to IPPS hospitals relative to FY 2012, as noted previously.

D. Anticipated Effects

The impact analysis reflects the change in estimated payments to IPPS hospitals in FY 2013 due to sections 605 and 606 of the ATRA relative to estimated FY 2013 payments to IPPS hospitals published in the FY 2013 IPPS/LTCH PPS final rule (77 FR 53748). As described later in the regulatory impact analysis, FY 2013 IPPS payments to hospitals affected by sections 605 and 606 of the ATRA are projected to increase by $509 million (relative to the FY 2013 payments estimated for these hospitals for the FY

2013 IPPS/LTCH PPS final rule). Furthermore, we project that, on the average, overall IPPS payments in FY 2013 for all hospitals will increase by 0.5 percent due to these provisions in the ATRA compared to the previous estimate of FY 2013 payments to all IPPS hospitals published in the FY 2013 IPPS/LTCH PPS final rule.

1. Effects of the Extension of the Payment Adjustment for Low-Volume Hospitals

The extension, for FY 2013, of the temporary changes to the payment adjustment for low-volume hospitals (originally provided for by the Affordable Care Act for FYs 2011 and 2012) as provided for under section 605 of the ATRA is a non-budget neutral payment provision. The provisions of the Affordable Care Act expanded the definition of low-volume hospital and modified the methodology for determining the payment adjustment for hospitals meeting that definition for FYs 2011 and 2012. Prior to the enactment of the ATRA, beginning with FY 2013, the low-volume hospital definition and payment adjustment methodology was to return to the statutory requirements that were in effect prior to the amendments made by the Affordable Care Act. With the additional year extension provided for by the ATRA, based on FY 2011 claims data (March 2012 update of the MedPAR file), we estimate that approximately 600 hospitals will now qualify as a low-volume hospital for FY 2013. We project that these hospitals will experience an increase in payments of approximately $326 million compared to our previous estimates of payments to these hospitals for FY 2013 published in the FY 2013 IPPS/LTCH PPS final rule.

2. Effects of the Extension of the MDH Program

The extension of the MDH program in FY 2013 as provided for under section 606 of the ATRA is a non-budget neutral payment provision. Hospitals that qualify to be MDHs receive the higher of operating IPPS payments made under the Federal standardized amount or the payments made under the Federal standardized amount plus 75 percent of the difference between the Federal standardized amount and the hospital-specific rate (a hospital-specific cost-based rate). Because this provision is not budget neutral, we estimate that the extension of this payment provision will result in a 0.2 percent increase in payments overall. Prior to the extension of the MDH program, there were 213 MDHs, of which 98 were estimated to be paid under the blended payment of the Federal standardized amount and hospital-specific rate in FY 2013. Because those 98 MDHs will now receive the blended payment (that is, the Federal standardized amount plus 75 percent of the difference between the Federal standardized amount and the hospital-specific rate) in FY 2013, we estimate that those hospitals will experience an overall increase in payments of approximately $183 million compared to our previous estimates of payments to these hospitals for FY 2013 published in the FY 2013 IPPS/LTCH PPS final rule.

E. Alternatives Considered

This notice provides descriptions of the statutory provisions that are addressed and identifies policies for implementing these provisions. Due to the prescriptive nature of the statutory provisions, no alternatives were considered.

F. Accounting Statement and Table

As required by OMB Circular A–4 (available at *http://www.whitehousegov/omb/circulars/a004/a-4.pdf*), in Table I below, we have prepared an accounting statement showing the classification of expenditures associated with the provisions of this notice as they relate to acute care hospitals. This table provides our best estimate of the change in Medicare payments to providers as a result of the changes to the IPPS presented in this notice. All expenditures are classified as transfers from the Federal government to Medicare providers. As previously discussed, relative to what was projected in the FY 2013 IPPS/LTCH PPS final rule, the changes in this notice for implementing sections 605 and 606 of the ATRA are projected to increase FY 2013 payments to IPPS hospitals by $509 million.

TABLE I—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES UNDER THE IPPS FROM PUBLISHED FY 2013 TO REVISED FY 2013

Category	Transfers
Annualized Monetized Transfers	$509 million
From Whom to Whom	Federal Government to IPPS Medicare Providers
Total	$509 million

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 30, 2013.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: March 1, 2013.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2013–05263 Filed 3–4–13; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–8273]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained

from FEMA's Community Status Book (CSB). The CSB is available at *http://www.fema.gov/fema/csb.shtm.*

DATES: *Effective dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community no.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
Pennsylvania:				
Apolacon, Township of, Susquehanna County.	422072	February 10, 1976, Emerg; July 17, 1989, Reg;. April 2, 2013, Susp	April 2, 2013	April 2, 2013
Ararat, Township of, Susquehanna County.	422073	August 6, 1975, Emerg; May 1, 1986, Reg; April 2, 2013, Susp	do	Do.
Bridgewater, Township of, Susquehanna County.	422585	March 23, 1976, Emerg; May 1, 1986, Reg; April 2, 2013, Susp	do	Do.
Brooklyn, Township of, Susquehanna County.	422075	February 4, 1976, Emerg; May 1, 1986, Reg;. April 2, 2013, Susp	do	Do.

State and location	Community no.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Choconut, Township of, Susquehanna County.	422076	January 26, 1976, Emerg; November 15, 1989, Reg;. April 2, 2013, Susp	.....do	Do.
Clifford, Township of, Susquehanna County.	422077	February 6, 1981, Emerg; March 16, 1989, Reg;. April 2, 2013, Susp	.....do	Do.
Dimock, Township of, Susquehanna County.	422078	March 22, 1976, Emerg; April 1, 1986, Reg; April 2, 2013, Susp	.....do	Do.
Forest City, Borough of, Susquehanna County.	422067	August 2, 1976, Emerg; February 5, 1986, Reg;. April 2, 2013, Susp	.....do	Do.
Forest Lake, Township of, Susquehanna County.	422578	November 2, 1976, Emerg; April 1, 1986, Reg;. April 2, 2013, Susp	.....do	Do.
Franklin, Township of, Susquehanna County.	422079	December 4, 1975, Emerg; May 17, 1989, Reg;. April 2, 2013, Susp	.....do	Do.
Friendsville, Borough of, Susquehanna County.	422579	April 20, 1979, Emerg; February 5, 1986, Reg;. April 2, 2013, Susp	.....do	Do.
Gibson, Township of, Susquehanna County.	422080	October 3, 1975, Emerg; December 1, 1986, Reg;. April 2, 2013, Susp	.....do	Do.
Great Bend, Borough of, Susquehanna County.	422068	January 21, 1975, Emerg; September 30, 1980, Reg;. April 2, 2013, Susp	.....do	Do.
Great Bend, Township of, Susquehanna County.	421212	February 13, 1975, Emerg; January 2, 1981, Reg;. April 2, 2013, Susp	.....do	Do.
Hallstead, Borough of, Susquehanna County.	422069	July 2, 1975, Emerg; September 30, 1980, Reg;. April 2, 2013, Susp	.....do	Do.
Harford, Township of, Susquehanna County.	422081	November 2, 1976, Emerg; September 1, 1986, Reg;. April 2, 2013, Susp	.....do	Do.
Harmony, Township of, Susquehanna County.	422082	February 2, 1976, Emerg; January 16, 1981, Reg;. April 2, 2013, Susp	.....do	Do.
Herrick, Township of, Susquehanna County.	422580	May 10, 1976, Emerg; December 19, 1984, Reg;. April 2, 2013, Susp	.....do	Do.
Hop Bottom, Borough of, Susquehanna County.	420812	October 14, 1975, Emerg; May 17, 1989, Reg;. April 2, 2013, Susp	.....do	Do.
Jackson, Township of, Susquehanna County.	422083	December 2, 1975, Emerg; May 1, 1986, Reg;. April 2, 2013, Susp	.....do	Do.
Jessup, Township of, Susquehanna County.	422084	January 22, 1976, Emerg; May 17, 1989, Reg;. April 2, 2013, Susp	.....do	Do.
Lanesboro, Borough of, Susquehanna County.	420813	April 17, 1975, Emerg; October 15, 1980, Reg;. April 2, 2013, Susp	.....do	Do.
Lathrop, Township of, Susquehanna County.	422085	July 30, 1980, Emerg; April 3, 1989, Reg; .. April 2, 2013, Susp	.....do	Do.
Lenox, Township of, Susquehanna County.	422086	April 4, 1977, Emerg; April 3, 1989, Reg; .... April 2, 2013, Susp	.....do	Do.
Liberty, Township of, Susquehanna County.	422087	February 3, 1976, Emerg; May 17, 1989, Reg;. April 2, 2013, Susp	.....do	Do.
Little Meadows, Borough of, Susquehanna County.	420814	October 29, 1975, Emerg; July 4, 1989, Reg;. April 2, 2013, Susp	.....do	Do.
Montrose, Borough of, Susquehanna County.	422070	November 28, 1975, Emerg; June 25, 1976, Reg;. April 2, 2013, Susp	.....do	Do.
New Milford, Borough of, Susquehanna County.	420815	July 29, 1975, Emerg; July 4, 1989, Reg; ... April 2, 2013, Susp	.....do	Do.

State and location	Community no.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
New Milford, Township of, Susquehanna County.	422089	January 26, 1976, Emerg; April 3, 1989, Reg;. April 2, 2013, Susp	.....do	Do.
Oakland, Borough of, Susquehanna County.	422071	October 14, 1975, Emerg; January 2, 1981, Reg;. April 2, 2013, Susp	.....do	Do.
Oakland, Township of, Susquehanna County.	422581	November 13, 1975, Emerg; October 15, 1980, Reg;. April 2, 2013, Susp	.....do	Do.
Rush, Township of, Susquehanna County.	422090	January 26, 1976, Emerg; September 1, 1986, Reg;. April 2, 2013, Susp	.....do	Do.
Silver Lake, Township of, Susquehanna County.	422091	March 18, 1976, Emerg; September 1, 1986, Reg;. April 2, 2013, Susp	.....do	Do.
Susquehanna Depot, Borough of, Susquehanna County.	420816	April 1, 1975, Emerg; October 15, 1980, Reg;. April 2, 2013, Susp	.....do	Do.
Thompson, Borough of, Susquehanna County.	422582	January 26, 1976, Emerg; June 30, 1976, Reg;. April 2, 2013, Susp	.....do	Do.
Thompson, Township of, Susquehanna County.	422583	October 15, 1975, Emerg; September 1, 1986, Reg;. April 2, 2013, Susp	.....do	Do.
Union Dale, Borough of, Susquehanna County.	422584	January 11, 1980, Emerg; February 4, 1983, Reg;. April 2, 2013, Susp	.....do	Do.
Region VI				
Louisiana:				
Greensburg, Town of, Saint Helena Parish.	220330	February 23, 1976, Emerg; April 1, 1980, Reg;. April 2, 2013, Susp	.....do	Do.
Montpelier, Village of, Saint Helena Parish.	220300	March 8, 1976, Emerg; March 20, 1979, Reg;. April 2, 2013, Susp	.....do	Do.
Saint Helena Parish, Unincorporated Areas.	220161	February 3, 1976, Emerg; September 27, 1991, Reg;. April 2, 2013, Susp	.....do	Do.

*do = Ditto.
Code for reading third column: Emerg—Emergency; Reg—Regular; Susp—Suspension.

Dated: February 5, 2013.

David L. Miller,

Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–05260 Filed 3–6–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2013–0002]

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
Cecil County, Maryland, and Incorporated Areas Docket No.: FEMA–B–1145			
Back Creek	Approximately 224 feet downstream of 2nd Street	+11	Unincorporated Areas of Cecil County
	Approximately 1,136 feet upstream of Old Telegraph Road.	+11	
Big Elk Creek	Approximately 0.68 mile downstream of West Pulaski Road.	+11	Town of Elkton, Unincorporated Areas of Cecil County.
	Approximately 1,140 feet downstream of Elk Mills Road	+81	
Bohemia River	At Augustine Herman Highway	+11	Unincorporated Areas of Cecil County.
	Approximately 860 feet upstream of Old Telegraph Road	+11	
Chesapeake and Delaware Canal.	Approximately 0.92 mile upstream of Augustine Herman Highway.	+11	Unincorporated Areas of Cecil County.
	Approximately 1.96 miles upstream of Augustine Herman Highway.	+11	
Christina River	At the New Castle County boundary	+160	Unincorporated Areas of Cecil County.
	Approximately 100 feet downstream of the Chester County boundary.	+268	
Dogwood Run	At the Little Elk Creek confluence	+22	Town of Elkton, Unincorporated Areas of Cecil County.
	Approximately 60 feet downstream of Blue Ball Road	+27	
Gravelly Run	At the Little Elk Creek confluence	+50	Unincorporated Areas of Cecil County.
	Approximately 246 feet downstream of Blue Ball Road	+57	
Hall Creek	At Glebe Road	+11	Unincorporated Areas of Cecil County.
	Approximately 0.86 mile upstream of Mill Lane	+11	
Herring Creek	Approximately 2.74 miles downstream of Augustine Herman Highway.	+11	Unincorporated Areas of Cecil County.
	Approximately 1,609 feet downstream of Augustine Herman Highway.	+11	
Laurel Run	At the Little Elk Creek confluence	+40	Unincorporated Areas of Cecil County.
	Approximately 1,500 feet downstream of the West Branch Laurel Run confluence.	+59	
Little Bohemia Creek	At the Bohemia Creek confluence	+11	Unincorporated Areas of Cecil County.
	At Bohemia Church Road	+11	

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
Little Elk Creek	Approximately 631 feet downstream of West Pulaski Highway.	+14	Town of Elkton, Unincorporated Areas of Cecil County.
	Approximately 1,220 feet downstream of Elkton Road	+16	
Little Elk Creek	Approximately 425 feet downstream of the Laurel Run confluence.	+39	Unincorporated Areas of Cecil County.
	Approximately 910 feet downstream of Heron Lane	+58	
Little Northeast Creek	Approximately 210 feet upstream of Pulaski Highway	+38	Unincorporated Areas of Cecil County.
	Approximately 757 feet downstream of Chessie System Railroad.	+74	
Long Creek	At Boat Yard Road	+11	Unincorporated Areas of Cecil County.
	At Woods Road	+11	
Mill Creek	Approximately 1,095 feet downstream of Access Road	+12	Town of Perryville, Unincorporated Areas of Cecil County.
	Approximately 260 feet downstream of Principio Road	+284	
Mill Creek (Tributary to Little Elk Creek).	Approximately 1,624 feet downstream of Old Elk Neck Road.	+11	Unincorporated Areas of Cecil County.
	Approximately 1,939 feet upstream of Old Elk Neck Road	+11	
Northeast Creek	Approximately 542 feet downstream of Main Street	+12	Town of North East, Unincorporated Areas of Cecil County.
	Approximately 125 feet downstream of Chessie System Railroad.	+72	
Perch Creek	Approximately 0.49 mile downstream of Augustine Herman Highway.	+11	Unincorporated Areas of Cecil County.
	At Augustine Herman Highway	+11	
Plum Creek	Approximately 1.32 miles downstream of Old Field Point Road.	+11	Unincorporated Areas of Cecil County.
	Approximately 1,154 feet upstream of Old Elk Neck Road	+11	
Susquehanna River	Approximately 1.75 miles upstream of I–95	+12	Unincorporated Areas of Cecil County.
	At U.S. Route 1	+38	
Tributary 1 to Stone Run	At the Stone Run confluence	+271	Town of Rising Sun, Unincorporated Areas of Cecil County.
	Approximately 460 feet downstream of Pierce Road	+359	
Tributary 2 to Stone Run	At the Stone Run confluence	+271	Town of Rising Sun, Unincorporated Areas of Cecil County.
	At the upstream side of Harrington Drive	+312	
Unnamed Tributary to Laurel Run.	Approximately 230 feet upstream of the Laurel Run confluence.	+41	Unincorporated Areas of Cecil County.
	Approximately 1,400 feet upstream of the Laurel Run confluence.	+52	
West Branch Christina River	Approximately 600 feet upstream of the Newcastle County boundary.	+108	Unincorporated Areas of Cecil County.
	Approximately 250 feet upstream of Jackson Hall School Road.	+193	
West Branch Laurel Run	Approximately 494 feet upstream of the Laurel Run confluence.	+64	Unincorporated Areas of Cecil County.
	Approximately 93 feet upstream of Marley Road	+74	

* 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 Elkton

Maps are available for inspection at the Municipal Building, 100 Railroad Avenue, Elkton, MD 21921.

Town of North East

Maps are available for inspection at the Town Hall, 106 South Main Street, North East, MD 21901.

Town of Perryville

Maps are available for inspection at the Municipal Building, 515 Broad Street, Perryville, MD 21903.

Town of Rising Sun

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 the Municipal Building, 1 East Main Street, Rising Sun, MD 21911.

Unincorporated Areas of Cecil County

Maps are available for inspection at the Cecil County Office of Planning and Zoning, 200 Chesapeake Boulevard, Suite 2300, Elkton, MD 21921.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Roy Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–05313 Filed 3–6–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2013–0002]

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
Redwood County, Minnesota, and Incorporated Areas Docket No.: FEMA–B–1170			
Cottonwood River	Approximately 0.93 mile downstream of U.S. Route 71.	+1,042	City of Sanborn, Unincorporated Areas of Redwood County.
	Approximately 2.1 miles upstream of County Road 57.	+1,105	
Crow Creek	Approximately 900 feet downstream of Minnesota Prairie Railroad.	+840	City of Redwood Falls, Unincorporated Areas of Redwood County.
	Approximately 0.45 mile upstream of County Highway 1.	+1,009	
Minnesota River	Approximately 2.54 miles downstream of County Highway 11.	+825	City of Redwood Falls, Unincorporated Areas of Redwood County.
	Approximately 1.09 miles upstream of County Highway 7.	+877	
Ramsey Creek	At the Redwood River confluence	+884	City of Redwood Falls, Unincorporated Areas of Redwood County.
	Approximately 245 feet upstream of Kenwood Avenue.	+1,016	
Redwood River	At the Minnesota River confluence	+843	City of Redwood Falls, City of Seaforth, City of Vesta, Unincorporated Areas of Redwood County.
	Approximately 0.88 mile upstream of County Road 51.	+1,067	

* 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 Redwood Falls
Maps are available for inspection at 333 South Washington Street, Redwood Falls, MN 56283.
City of Sanborn
Maps are available for inspection at 171 North Main Street, Sanborn, MN 56083.
City of Seaforth
Maps are available for inspection at 414 Dewey Street, Seaforth, MN 56287.
City of Vesta
Maps are available for inspection at 150 Front Street West, Vesta, MN 56292.
Unincorporated Areas of Redwood County
Maps are available for inspection at 403 South Mill Street, Redwood Falls, MN 56283.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Roy Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–05307 Filed 3–6–13; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 13–24 and 03–123; FCC 13–13]

Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Interim rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of six months, the information collection associated with the Commission's Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Order (*Order*). This document is consistent with the *Order,*

which stated that the Commission would publish a document in the **Federal Register** announcing OMB approval and the effective date of the requirements.

DATES: 47 CFR 64.604(c)(9), published at 78 FR 8032, February 5, 2013, is effective from March 7, 2013 through September 3, 2013.

FOR FURTHER INFORMATION CONTACT: Eliot Greenwald, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418–2235075, or email *Eliot.Greewald@fcc.gov*.

SUPPLEMENTARY INFORMATION: This document announces that, on February 25, 2013, OMB approved, for a period of six months, the new information collection requirements contained in the Commission's *Order,* FCC 13–13, published at 78 FR 8032, February 5, 2013. The OMB Control Number is 3060–1182. The Commission publishes this document as an announcement of the effective date of the requirements. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1182, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov*.

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

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on February 25, 2013, for the new information collection requirements contained in the Commission's rules at 47 CFR 64.604(c)(9).

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

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1182.

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

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

OMB Control Number: 3060–1182.

OMB Approval Date: February 25, 2013.

OMB Expiration Date: August 31, 2013.

Title: Section 64.604(c)(9), Emergency Interim Rule for Registration and Documentation of Disability for Eligibility to Use IP Captioned Telephone Service, CG Docket Nos. 13–24 and 03–123.

Form Number: N/A.

Type of Review: New collection.

Respondents: Businesses or other for-profit entities; individuals or households.

Number of Respondents and Responses: 12,004 respondents; 24,000 responses.

Estimated Time per Response: 30 minutes (.50 hours) to 1 hour.

Frequency of Response: On-going reporting requirement; One-time reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is Sec. 225 [47 U.S.C. 225] Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals; The Americans with Disabilities Act of 1990 (ADA), Public Law 101–336, 104 Stat. 327, 366–69, enacted on July 26, 1990.

Total Annual Burden: 18,000 hours.

Total Annual Cost: $600,000.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: In the Emergency Interim Order (IP CTS Interim Order) the Commission finds good cause to adopt on an emergency basis interim rules requiring each Internet Protocol Captioned Telephone Service (IP CTS) provider, in order to be eligible for compensation from the Interstate Telecommunications Relay Service (TRS) Fund (Fund) for providing service to each new IP CTS user to register each new IP CTS user. As part of the registration process, each IP CTS provider must obtain from each user a self-certification that (1) The user has a hearing loss that necessitates IP CTS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users; (2) the user understands that the captioning service is provided by a live communications assistant (CA); and (3) the user understands that the cost of the IP CTS calls is funded by the TRS Fund. Where the consumer accepts IP CTS equipment at a price below $75 from any source other than a governmental program, the IP CTS provider must also obtain from the user a certification from an independent, third-party professional attesting to the same. IP CTS providers are required to maintain the confidentiality of the registration and certification information that they obtain, as well as the content of such information, except as required by law. The Commission takes this action to prevent the unnecessary subscription to and use of the service by consumers without a hearing loss that necessitates the use of IP CTS to obtain functionally equivalent telephone service. If left unchecked, the TRS Fund that disburses to IP CTS providers may be compromised due to an unprecedented growth in new IP CTS consumers. The action taken in this IP CTS Interim Order will enable the Commission to better control the level of TRS disbursements and protect the programmatic, legal, and financial integrity of the TRS program. Conversely, failing to take immediate action to stem such practices could well threaten the availability of the IP CTS service and other relay services that are supported by the Fund for the benefit of legitimate users.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–04986 Filed 3–6–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 172, 173, 176, and 178

[Docket No. PHMSA–2011–0142 (HM–219)]

RIN 2137–AE79

Hazardous Materials: Miscellaneous Petitions for Rulemaking (RRR)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: PHMSA is amending the Hazardous Materials Regulations in

response to petitions for rulemaking submitted by the regulated community to update, clarify, or provide relief from miscellaneous regulatory requirements. Specifically, PHMSA is amending the recordkeeping and package marking requirements for third-party labs and manufacturers to assure the traceability of packaging; removing the listing for ''NA1203, Gasohol, gasoline mixed with ethyl alcohol, with not more than 10% alcohol''; harmonizing internationally and providing a limited quantity exception for Division 4.1, Self-reactive solids and Self-reactive liquids Types B through F; allowing smokeless powder classified as a Division 1.4C material to be reclassified as a Division 4.1 material; and providing greater flexibility by allowing the Dangerous Cargo Manifest to be in locations designated by the master of the vessel besides ''on or near the vessel's bridge'' while the vessel is in a United States port.

DATES: *Effective Date:* This rule is effective May 6, 2013.

Voluntary Compliance Date: Voluntary compliance with all amendments is authorized March 7, 2013.

FOR FURTHER INFORMATION CONTACT: Lisa O'Donnell at (202) 366–8553 at the Office of Hazardous Materials Standards, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

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I. Background

A. Notice of Proposed Rulemaking (NPRM)

On May 24, 2012, PHMSA (also ''we'' or ''us'') published a Notice of Proposed Rulemaking (NPRM) titled, ''Hazardous Materials: Miscellaneous Petitions for Rulemaking (RRR)'' under Docket PHMSA 2011–0142 (HM–219) in the **Federal Register**. The NPRM and this final rule are part of the Department of Transportation's Retrospective Regulatory Review (RRR) designed to identify ways to improve the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). The Administrative Procedure Act (APA) requires Federal agencies to give interested persons the right to petition an agency to issue, amend, or repeal a rule (5 U.S.C. 553(e)). PHMSA's rulemaking procedure regulations, in 49 CFR § 106.95, provide for persons to ask PHMSA to add, amend, or delete a regulation by filing a petition for rulemaking containing adequate support for the requested action. The NPRM responded to eight petitions for rulemaking submitted to PHMSA by various stakeholders. In the NPRM, we proposed to amend the HMR to update, clarify, or provide relief from miscellaneous regulatory requirements at the request of the regulated community. Below is a summary of the proposed changes in the May 24, 2012 NPRM:

- Revise § 178.3 to clearly indicate that a manufacturer or third-party laboratory mark may not be used when continued certification of a packaging is conducted by someone other than the original manufacturer or third-party testing laboratory, unless specifically authorized by the original manufacturer or third-party testing laboratory;
- Revise §§ 178.601(l), 178.801(l) and 178.955(i) to relax the record retention requirements for packaging test reports and provide a chart to clearly identify the retention requirements;
- Revise the Hazardous Materials Table (HMT; 49 CFR § 172.101) by removing the listing for ''NA1203, Gasohol, gasoline mixed with ethyl alcohol, with not more than 10% alcohol''; and removing reference to gasohol in Sections §§ 172.336(c)(4) and 172.336(c)(5);
- Revise § 172.101 to refer to § 173.151 to harmonize internationally and provide a limited quantity exception for Division 4.1, Self-reactive solids and Self-reactive liquids, Types B through F;
- Add a reference in 49 CFR § 178.601(c)(4) and § 178.801(c)(7) to ASTM D4976–06 Standard Specification for Polyethylene Plastics Molding and Extrusion Materials to provide a range of acceptable resin tolerances in the plastic drum and IBC material;
- Allow smokeless powder classed as a Division 1.4C material to be reclassed as a Division 4.1 material to relax the regulatory requirements for these materials without compromising safety; and
- Allow the Dangerous Cargo Manifest (DCM) to be in locations designated by the master of the vessel besides ''on or near the vessel's bridge'' while the vessel is in a United States port to ensure that the DCM is readily available to communicate to emergency responders and enforcement personnel the presence and nature of the hazardous materials on board a vessel.

PHMSA received six public comments in response to the above amendments proposed in the May 24, 2012, HM–219 NPRM. These comments are discussed in further detail in this final rule.

B. Commenters

The comment period for the May 24, 2012 NPRM closed on July 23, 2012. PHMSA received comments from six entities, five of which submitted the petitions discussed in the NPRM, and one is a council of manufacturers, shippers and carriers of hazardous materials, and their representative associations. Two commenters supported proposed changes in the HMR in their entirety; one commenter supported the proposed changes and asked for a further revision; one commenter disagreed with proposed changes pertaining to packaging marking and test report record retention, our intent to retain Special provision 172, and our intent to incorporate by reference ASTM Standard 04976–06 without stating that plastic drums and IBCs made from polyethylene meeting that standard do not constitute a different design type; one commenter asked that we adopt changes as they were written in their petition, not as they were proposed in the NPRM; and one commenter withdrew their petition.

In consideration of the comments received to the public docket, PHMSA has developed this final rule. We address and discuss the proposals adopted and those not adopted into the HMR in this rulemaking under the heading: *Discussion of Amendments and Applicable Comments.* One commenter asked that we make additional amendments that were not specifically addressed in the NPRM and, therefore, these suggested amendments are considered beyond the scope of this

rulemaking. The comments, as submitted to this docket, may be accessed via *http://www.regulations.gov* and were submitted by the following companies, and associations (abbreviations used throughout the document and Docket Reference numbers are also provided):

Commenter	Abbreviation	Docket reference
Association of Hazmat Shippers	AHS	PHMSA–2011–0142–0004.
Dangerous Goods Advisory Council	DGAC	PHMSA–2011–0142–0005.
Hapag-Lloyd		PHMSA–2011–0142–0003.
International Vessel Operators Dangerous Goods Association	IVODGA	PHMSA–2011–0142–0002.
Plastic Drum Institute, Inc. and the Rigid Intermediate Bulk Container Association, Inc.	PDI and RIBCA	PHMSA–2011–0142–0007.
Sporting Arms and Ammunition Manufacturers' Institute, Inc.	SAAMI	PHMSA–2011–0142–0006.

II. Discussion of Amendments and Applicable Comment

A. General Comments

On September 30, 1993, President Bill Clinton issued Executive Order 12866, which asked Federal agencies ''to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public.''

On October 21, 2011, President Barack Obama issued Executive Order 13563, which is supplemental to and reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in Executive Order 12866. This executive order urged government agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. Finally, federal agencies were directed to periodically review existing significant regulations; retrospectively analyze rules that may be outmoded, ineffective, insufficient, or excessively burdensome; and modify, streamline, expand, or repeal regulatory requirements in accordance with what has been learned.

On May 10, 2012, President Barack Obama issued Executive Order 13610 (Identifying and Reducing Regulatory Burdens) reaffirming the goals of Executive Order 13563 (Improving Regulation and Regulatory Review) and Executive Order 12866 (Regulatory Planning and Review). Executive Order 13610 directs agencies to prioritize ''those initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens while protecting public health, welfare, safety, and our environment.'' Executive Order 13610 further instructs agencies to give ''consideration to the cumulative effects of their regulations, including cumulative burdens, and prioritize reforms that will significantly reduce burdens.'' In response to Executive Orders 12866, 13610, and 13563, PHMSA has undertaken a retrospective review of the HMR. This final rule, and the NPRM that preceded it, are part of PHMSA's regulatory review initiative. This initiative was in response to petitions for rulemaking by the regulated community. Its intent is to update, clarify, or provide relief from miscellaneous regulatory requirements. The NPRM provided an opportunity for further public participation in the development of the regulatory amendments, and promoted exchange of information and perspectives among the various stakeholders.

Six entities commented on the NPRM. PHMSA fully considered all comments. The comments are comprehensive and raised important issues that need to be addressed. A detailed description of the original proposals in the May 24, 2012 NPRM, a summary of the comments received, a response to those comments, and PHMSA's decision are detailed below.

B. Comments Beyond the Scope of This Rulemaking

In this section, PHMSA discusses the comments to the NPRM that provided suggestions for additional revisions that were not specifically addressed in the NPRM. Based on an assessment of the proposed changes and the comments received, PHMSA identifies one comment as beyond the scope of this rulemaking action. The comments submitted by IVODGA asked that we consider a revision to the proposed language in § 176.30(a) to insert: ''The carrier may use the DCM format found in the International Conference on Facilitation of Maritime Travel and Transport (FAL Convention), Form 7, as amended, for these purposes.''

Referring to the FAL Convention Form 7 as an acceptable DCM format was not proposed in the NPRM and, therefore, the regulated community was not given the opportunity to comment on this amendment. For this reason, PHMSA is unable to address this suggested revision in this rule. However, it should be noted that the HMR would not prohibit the use of the FAL Convention Form 7 provided that it contains all of the required information on the DCM. If we do choose to pursue adoption of this beyond the scope comment, we will do so in a separate rulemaking. Alternatively, if IVODGA believes this amendment warrants rulemaking action, we encourage them to file a petition for rulemaking in accordance with § 106.95 including all information (see § 106.100) needed to support a petition.

C. Provisions Not Adopted in This Final Rule and Discussion of Comments

In this section, PHMSA discusses the changes proposed in the NPRM and the comments received in response to the NPRM. Based on an assessment of the proposed changes and the comments received, PHMSA identified one provision that we are not adopting in this final rule. Specifically, PHMSA received a comment from Plastic Drum Institute, Inc. (PDI) and the Rigid Intermediate Bulk Container Association, Inc. (RIBCA) withdrawing their petitions for rulemaking. Below is a summary of the amendment proposed, the comment received, and PHMSA's rationale for not adopting such an amendment.

In two petitions (P–1554 and P–1564) addressed in the NPRM, RIBCA and PDI asked that we incorporate by reference ''ASTM D4976–06, Standard Specification for Polyethylene Plastics Molding and Extrusion Materials,'' which provides standard requirements for polyethylene plastic molding and extrusion materials. The petitioners also asked that we revise the HMR to state that plastic drums or Intermediate Bulk Containers (IBCs) made from polyethylene meeting ASTM D4976–06 would not constitute a different packaging provided the polyethylene used is within a tolerance defined in the standard. PDI and RIBCA indicated in the petitions that their members have been cited for ''probable violations'' for a number of reasons pertaining to

changes in material construction in their plastic drums and IBCs.

In the NPRM we proposed to incorporate by reference in § 171.7 ASTM D4976–06, Standard Specification for Polyethylene Plastics Molding and Extrusion Materials, and revise §§ 178.509(b)(1) and 178.707(c)(3) to include reference to ASTM D4976–06. Packaging testing data was not provided and, consequently, we were unable to determine if packagings manufactured of resins within the tolerance range specified in the standard passed the performance criteria. For this reason, we did not propose to revise the HMR to state that plastic drums or IBCs made from polyethylene meeting ASTM D4976–06 tolerances would not constitute a different packaging.

RIBCA and PDI filed a notice of withdrawal of the petitions. Therein, they suggested that by proposing the incorporation of ASTM D4976–06 without stating that plastic drums or IBCs made from polyethylene meeting ASTM D4976–06 do not constitute a ''different packaging'' as defined in § 178.601(c), PHMSA was in effect imposing a greater burden on industry. They indicate that their petitions were essentially intended ''to advise enforcement staff that a certain range of specifications should be recognized as 'equivalent' for purposes of deciding whether new design qualification tests were required under the HMRs.'' They further state that they did not intend for ASTM D4976–06 to be considered an exhaustive list of what is acceptable in manufacturing their products. Furthermore, they contend that ''a change in resin specifications, whether within or outside the referenced ASTM standard, cannot by itself, absent a performance test failure, justify imposition of a fine.'' The Dangerous Goods Advisory Council (DGAC) also commented on this provision. DGAC supported the incorporation by reference of ASTM 04976–06, but expressed a preference that PHMSA state that variations of material density within ASTM D4976–06 would not constitute a new design type.

While we support the incorporation by reference of ASTM D4976–06 to provide acceptable ranges for materials used in the manufacture of plastic drums and IBCs, we are not incorporating this standard in this final rule. The intent of PHMSA in its proposal was not to impose a greater burden on industry, but rather to refer to an industry standard for guidance as to acceptable ranges in materials used to manufacture hazardous materials packagings. For this reason, we are not incorporating by reference ASTM D4976–06 into the HMR.

D. Provisions Adopted in This Final Rule and Discussion of Comments

In this section, PHMSA discusses the changes proposed in the NPRM and the comments received in response to the NPRM. Based on an assessment of the proposed changes and the comments received, PHMSA is adopting these provisions in this final rule. Also, to clearly identify the issues addressed in this rule, PHMSA provides the following list of adopted amendments discussed in this section:

- Revise § 178.3 to clearly indicate that a manufacturer or third-party laboratory mark may not be used when continued certification of a packaging is conducted by someone other than the original manufacturer or third-party testing laboratory, unless specifically authorized by the original manufacturer or third-party testing laboratory;
- Revise §§ 178.601(l), 178.801(l), and 178.955(i) to relax the record retention requirements for packaging test reports and provide a chart to clearly identify the recordkeeping requirements;
- Revise the Hazardous Materials Table (HMT; 49 CFR § 172.101) by removing the listing for ''NA1203, Gasohol, gasoline mixed with ethyl alcohol, with not more than 10% alcohol''; and removing reference to gasohol in §§ 172.336(c)(4) and 172.336(c)(5);
- Revise § 172.101 to refer to § 173.151 to harmonize internationally and provide a limited quantity exception for Division 4.1, Self-reactive solids and Self-reactive liquids, Types B through F;
- Allow smokeless powder classed as a Division 1.4C material to be reclassed as a Division 4.1 material to relax the regulatory requirements for these materials without compromising safety;
- Allow the DCM to be in locations designated by the master of the vessel besides ''on or near the vessel's bridge'' while the vessel is in a United States port to ensure that the DCM is readily available to communicate to emergency responders and enforcement personnel the presence and nature of the hazardous materials on board a vessel.

Certification Packaging Marking and Recordkeeping Requirements (P–1479)

In a petition for rulemaking (P–1479), gh Package & Product, Testing and Consulting, Inc. requested that PHMSA consider amending the HMR to indicate that an entity performing continued packaging certification on a UN certification packaging is not allowed to use the original manufacturer's or third party laboratory's mark unless authorized by the manufacturer or third-party laboratory. The petitioner also requested PHMSA to amend the HMR to provide that packaging test reports are kept for a limited time instead of the current requirement of ''until the packaging is no longer manufactured.''

Marking

Regarding the manufacturer's or third party tester's mark, the petitioner stated that his laboratory tested a packaging at least three times, and the packaging failed each time. Eleven years after the petitioner had tested the packaging, he learned that the package that had failed in his laboratory was still being manufactured and that the petitioner's symbol was being used on the packaging as the packaging tester's mark. For these reasons, the petitioner was concerned that the regulations expose the manufacturer and the original third-party test laboratory to potential liability for defective packaging and other packaging violations.

The current regulations provide the person who is certifying compliance of a packaging the option of marking the packaging with a symbol rather than the company name and address provided that the symbol is registered with PHMSA's Associate Administrator for Hazardous Materials Safety. While it is implied that the symbol being used is that of the person who has registered the symbol, it is not explicit. The petitioner has indicated that since the regulations do not specify who is authorized to use the mark, some third-party retesters that did not initially certify the packaging are continuing to use the original third-party laboratory's symbol to certify compliance. While the symbol is associated with the original manufacturer or third-party laboratory, that entity has no control over the packaging being retested by someone else.

In the NPRM, we proposed to revise § 178.3 to clarify that the required marking must identify the person who is certifying that the packaging meets the applicable UN Standard. We further proposed that, for continued certification of the packaging through periodic retesting, the mark must identify the person who certifies the packaging.

DGAC disagrees with the proposed changes stating that they would have the effect of replacing, in the UN performance packaging marking, the mark of the person who performed the design qualification tests with the mark of the person who performed the most recent periodic retest. DGAC states that ''periodic retesting does not necessarily

confirm compliance with all requirements applicable to a UN design type (e.g., requirements in §§ 178.504–523).'' Further, they state that:

> [A] consequence of the proposed changes is that the UN package marking for a given design type would have to be changed at least every year in the case of single or composite packagings and every two years in the case of combination packagings. It does not appear that PHMSA has considered the costs of changing these package markings at this frequency in its regulatory evaluation. At a minimum, such marking changes could result in considerable administrative costs. In addition, we question whether these changes would provide a meaningful enhancement to safety.

PHMSA's intent has been that the certification mark that is used on the packaging is that of the person manufacturing that packaging or testing the packaging on behalf of the manufacturer. If a packaging that passed an original design qualification test by one manufacturer is then made and retested by another manufacturer, the symbol or name of the manufacturer doing the retesting should be on the packaging. While the periodic retesting requirements are less stringent in some regards than the design qualification tests, e.g., with respect to the vibration test as detailed in § 178.608, when a manufacturer or third party places the UN marking on a packaging following either a design qualification test or a retest, that entity is certifying that the packaging meets the UN requirements for that packaging. PHMSA's intent with respect to whose mark may be used at what time is documented in penalty action reports published on PHMSA's Web site that indicate that it is a violation to mark a packaging with the symbol of a manufacturer or packaging certifier other than the company that actually manufactured or certified the packaging.[1] Since this is a clarification of the HMR, the administrative costs will not change if the packaging testers are already complying with the HMR.

For these reasons, PHMSA is adopting the changes proposed regarding the packaging certifier's mark in this final rule and is revising § 178.3 to clearly indicate that the required marking must identify the person who is certifying that the packaging meets the applicable UN Standard. Further, for continued certification of the packaging through periodic retesting, the marking must identify the person who certifies that the packaging continues to meet the applicable UN standard.

[1] See *http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Press%20Releases/2011%20Hazmat%20Penalty%20Action%20Report.pdf,*

Test Reports

Regarding the packaging test reports, the petitioner explained that the record retention requirements indicate that the test report must be maintained at each location where the packaging is manufactured and each location where the design qualification tests are conducted for as long as the packaging is produced and for at least two years thereafter. According to petitioner, often the original manufacturer or third-party laboratory is not aware that a packaging is still being made. The petitioner sought relief from the paperwork burden.

In the NPRM we proposed to revise § 178.601(l), which specifies recordkeeping requirements for testing non-bulk packaging; § 178.801(l), which specifies recordkeeping requirements for testing IBCs; and § 178.955(i), which specifies recordkeeping requirements for testing large packagings to indicate that records are maintained until the next periodic retest.

DGAC opposes this change, stating that:

> PHMSA may alter the required frequency based on an approval and, in the case of IBCs and Large packagings, PHMSA may substitute a quality control program for required periodic retesting (see § 178.801(e)(2)). As such, the periodic retest date is not a date certain, raising the question of how the person who conducted the design qualification tests can know the actual time period for retaining records. If PHMSA maintains the proposed record retention requirements in some form, we recommend the retention period be tied to the date of the design qualification testing rather than the date of periodic retesting.

When the required packaging retest frequency is based on an approval and, in the case of IBCs and Large packagings, a quality control program is substituted for required periodic retesting, records would have to be maintained predicated on the specifications of each approval. We do agree with DGAC that retest dates may vary depending on a variety of factors and, in this final rule, we are adding the word ''required'' in conjunction with ''periodic retest'' to clarify that records of the retest must be kept only five years after the HMR-required test is performed successfully. Specifically, we are revising the language proposed in the NPRM in § 178.601(l), which specifies recordkeeping requirements for testing non-bulk packaging; § 178.801(l), which specifies recordkeeping requirements for testing IBCs; and § 178.955(i), which specifies recordkeeping requirements for testing large packagings, to indicate that records are maintained until the next *required* periodic retest is successfully performed and a new test report produced. In all other respects we are amending the HMR as proposed in the NPRM. In doing so, we are limiting the document retention period for persons conducting initial design testing to five years beyond the next successful required periodic retest. In addition, we provide a chart to clearly identify the retention requirements for test reports.

Clarification of Alcohol and Gasoline Mixtures (P–1522)

In its petition (P–1522), Shell Chemicals asked PHMSA to remove from the HMT the listing for ''Gasohol, with not more than 10% ethanol.'' Shell stated that the proper shipping names for ''Gasoline, includes gasoline mixed with ethyl alcohol (ethanol), with not more than 10% alcohol'' and ''Ethanol and gasoline mixture or Ethanol and motor spirit mixture or Ethanol and petrol mixture with more than 10% ethanol,'' provide the necessary entries for accurate and specific descriptions of these fuel blends. Consistent with the removal of gasohol from the HMT, Shell Chemicals asked that we remove reference to gasohol in §§ 172.336(c)(4) and 172.336(c)(5), which contain hazard communication requirements for compartmented cargo tanks, tank cars, or cargo tanks containing these fuels. These provisions were amended as the result of a final rule issued on January 28, 2008 under Docket HM–218D (73 FR 4699) intended to help emergency responders identify and respond to the hazards unique to fuel blends with high ethanol concentrations.

In the January 28, 2008 final rule, we revised the entry for ''Gasohol, gasoline mixed with ethyl alcohol, with not more than 20% alcohol'' to limit the applicability of the entry to gasoline mixtures with not more than 10% alcohol. In addition, we amended the listing for Gasoline, to read ''Gasoline, includes gasoline mixed with ethyl alcohol, with not more than 10% alcohol.'' At the time, Shell suggested that we remove the entry ''NA1203, Gasohol'' and revise the entry for ''Gasoline'' to add a special provision that specifically communicates to shippers that the entry ''Gasoline'' may be used for gasoline and ethanol blends with not more than 10% ethanol for use in spark ignition engines. While we agreed then that Shell's suggestion had merit, we did not remove the entry ''Gasohol'' in HM–218D. We did however revise the entry ''Gasoline'' to allow for that description to be used for gasoline and ethanol blends with not more than 10% ethanol.

We agree that the proper shipping names for ''Gasoline, includes gasoline

mixed with ethyl alcohol, with not more than 10% alcohol,'' and ''Ethanol and gasoline mixture or Ethanol and motor spirit mixture or Ethanol and petrol mixture with more than 10% ethanol,'' provide the necessary entries for accurate and specific description of these fuel blends. We also agree that the proper shipping name for ''Alcohol, n.o.s.'' is not as specific as the listings for Gasoline, including ''gasoline mixed with ethyl alcohol, with not more than 10% alcohol,'' and ''Ethanol and gasoline mixture or Ethanol and motor spirit mixture or Ethanol and petrol mixture with more than 10% ethanol.''

Shell Chemicals also petitioned for the removal of Special Provision 172 from Column 7 in association with all packing groups for the Proper Shipping Name ''UN1987, Alcohols, n.o.s.'' Special Provision 172 stated that ''this entry includes alcohol mixtures containing up to 5% petroleum products.'' Shell contended that:

> Canada does not permit the use of 'UN1987, Alcohols, n.o.s.' for alcohol mixtures containing up to 5% petroleum products. A shipment originating in the United States, destined for a customer in Canada using the proper shipping name of ''UN1987, Alcohols, n.o.s.'' must change the placard and the proper shipping name and to use the entry 'UN3475, Ethanol and Gasoline mixture,' when the packaging is returned to the United States. The use of both PSN entries causes a lot of confusion.

For these reasons, Shell stated that these blends should not be permitted to be transported under the ''UN 1987, Alcohols, n.o.s.''; rather, ''NA 1987, Denatured alcohol,'' and ''UN 3475, Ethanol and gasoline mixture or Ethanol and motor spirit mixture or Ethanol and petrol mixture,'' are more appropriate descriptions.

In the NPRM we retained Special Provision 172 in association with ''Alcohols, n.o.s.'' We indicated that, while we agree that ''Denatured alcohol'' is a more accurate description, this proper shipping name applies to domestic shipments only and may not be available to imported shipments of alcohol mixtures containing up to 5% petroleum products.

DGAC, in their comments, agrees with Shell and states that:

> [I]n North America, international shipments of gasoline/ethanol mixtures are predominately between the US and Canada by either highway or rail. Canada does not permit the use of UN1987 in the manner permitted by Special Provision 172. Shipments where UN1987 is used for ethanol/gasoline mixtures face frustrations when moving into Canada, requiring placards to be changed to comply with Canadian regulations.'' DGAC states that the full range of gasoline and ethanol concentrations is covered by UN1203 and UN3475, making Special Provision 172 unnecessary.

An alert issued by Transport Canada contradicts these statements.[2] That alert was issued to respond to incidents involving alcohol and petroleum mixtures and states:

> [W]hen dealing with mixtures that contain a high percentage of alcohol (example ethanol) and a low percentage (maximum 5%) of petroleum products (example gasoline), the following shipping name is to be used: Alcohols, n.o.s., Class 3, UN1987, (mixture of alcohol with a petroleum product content up to 5%).

This is to ensure that these mixtures are readily identifiable and refer emergency responders to emergency response guidance specifying use of alcohol-resistant foam.

While PHMSA agrees that the full range of gasoline and ethanol concentrations can be covered by UN1203 and UN3475, when the regulations were changed to incorporate UN3475 and the number of shipments and types of gasoline/ethanol blends increased, it was made readily apparent by multiple stakeholders, including industry, emergency responders, and local, state and Federal government entities, that there was a need for that special provision. Also, removing Special Provision 172 from the UN1987 entry as suggested by Shell and DGAC leaves no HMT entry for a blend of ethanol and gasoline that is not directly intended for use in an internal combustion engine and does not meet PG II criteria. As such, in this final rule we are amending the HMT by removing the listing for ''Gasohol, gasoline mixed with ethyl alcohol, with not more than 10% alcohol.'' We are also revising § 172.336 to remove all references to ''gasohol'' and to add a table to more clearly indicate hazard communication requirements for compartmented cargo tanks, tank cars, or cargo tanks containing these fuels. While the preamble of the NPRM indicated that we were intending to retain Special Provision 172, the regulatory text showed that it was removed. This was a typographical error on our part. In this final rule we are retaining reference to Special Provision 172 in the listings for ''Alcohols, n.o.s.''

Self-Reactive Solid Type F (P–1542)

In a petition (P–1542), the Association of Hazmat Shippers (AHS) requested that PHMSA amend the HMT to reference § 173.151, exceptions for Class 4, in column 8A to provide the limited quantity exception for Self-reactive solid, Type F materials, consistent with international regulations.

According to the petitioner, imports of this material may be handled as limited quantities, but domestic shipments must be treated as fully regulated hazardous materials. They indicated that this situation has led to confusion and frustration, particularly upon reshipment of the same products either in the United States or internationally.

In the interest of international harmonization and clarification, in the NPRM we proposed to expand on the AHS petition to authorize all eligible self-reactive liquid and solid material as limited quantities in accordance with the type and quantity of substances authorized in the UN Model Regulations. AHS offered ''strong support for adoption into the rules of general applicability of the changes proposed for § 173.151.''

In this final rule we authorize types B through F non-temperature controlled liquid and solid self-reactive materials as limited quantities by amending the listings in the HMT for Self-reactive solids and Self-reactive liquids, Types B through F, to add references in column 8(a) in the HMT to § 173.151.

DOT–SP 9735, Dangerous Cargo Manifest (DCM) Location (P–1556)

The International Vessel Operators Dangerous Goods Association (IVODGA) (formerly known as the International Vessel Operators Hazardous Materials Association, Inc.) submitted a petition (P–1556) requesting that PHMSA revise the requirements for where the DCM is kept onboard when the vessel is docked a United States port. Section 176.30(a) requires the DCM be ''kept in a designated holder on or near the vessel's bridge.'' According to IVODGA, when a vessel is underway, the bridge is occupied at all times and the DCM is readily accessible; however, when a vessel is docked in port during loading and unloading operations, the bridge is often left unattended and locked for security purposes. Thus, the requirement to keep the DCM on or near the vessel's bridge at all times is contrary to the purpose of the DCM, which should be readily available to communicate to the crew and emergency responders the presence and nature of the hazardous materials on board a vessel.

Given the impracticality of maintaining the DCM on or near the vessel's bridge while the vessel is docked in port, IVODGA requested that PHMSA allow the DCM to be kept in a place other than the bridge of the vessel.

[2] *http://www.tc.gc.ca/eng/tdg/newsletter-spring2006–323.htm* (Date modified: 3/6/2012) (Date accessed: 9/12/2012).

Hapag-Lloyd AG currently holds a special permit (DOT–SP 9735) that authorizes the DCM ''to be retained in a location other than on or near the bridge'' that subject vessels are in port. The special permit requires the DCM to be maintained either in the vessel's cargo office or another location designated by the master of the vessel. The special permit further requires the DCM to be readily accessible to emergency responders, and for a sign to be placed in the designated holder on or near the vessel's bridge indicating the location of the DCM while the vessel is in port. During loading and discharging operations, the vessel's cargo office is attended and a working copy of the DCM is updated as hazardous materials are loaded and discharged. This working copy, therefore, would contain the most complete and correct information concerning hazardous materials aboard the vessel at any time during the loading/discharging process. The cargo office would also be readily accessible in an emergency, so the DCM would be immediately available to first responders.

We received only positive comments on this proposal. Hapag-Lloyd commented in support of the proposed change. They wrote:

> Hapag-Lloyd is the world's fifth largest liner shipping company, handling 5.5 million containers each year, operating a fleet of more than 135 containerships which have a capacity exceeding 600,000 TEU (20-ft. equivalent units), serving 130 countries throughout Europe, Asia, the Americas, and Africa. Since it was first issued in 1987, Hapag-Lloyd, as holder of DOT–SP 9735, has handled over one million dangerous goods shipments without incidents related to the terms of this exemption/special permit.

IVODGA welcomes the proposed change and asks that PHMSA consider a further minor revision to the proposed language in § 176.30 (a) to include the language: ''The carrier may use the DCM format found in the FAL Convention, Form 7, as amended, for these purposes.'' As indicated in the background section of this rule, such a revision would be beyond the scope of this rulemaking because the language was not proposed in the NPRM and was, therefore, not available for public comment. If IVODGA believes that such language should be incorporated in the HMR, we encourage them to file a petition for rulemaking in accordance with § 106.95 including all information (see § 106.100) needed to support a petition.

We agree with the petitioner and the commenters that the DCM should be allowed to be in locations designated by the master of the vessel besides ''on or near the bridge'' while the vessel is docked in a United States port while cargo unloading, loading, or handling operations are underway and the bridge is unmanned. The location of the DCM chosen by the master of the vessel must be readily accessible to emergency personnel in an emergency and enforcement personnel for inspection purposes. Allowing alternate locations of the DCM while the vessel is docked provides greater flexibility to the master of the vessel without diminishing the DCM requirements. For this reason, in this final rule we are incorporating DOT–SP 9735 into § 176.30 of the HMR as proposed in the May 24, 2012 NPRM.

Smokeless Powder, Division 1.4C (P–1559)

The Sporting Arms and Ammunition Manufacturers Institute, Inc. (SAAMI), in a petition (P–1559), requested that PHMSA amend § 173.171 to allow Division 1.4C smokeless powder to be reclassed as a Division 4.1 material. Currently § 173.171 allows smokeless powder for small arms that has been classed in Division 1.3C (Explosive) to be reclassed for domestic transportation as a Division 4.1 (Flammable Solid) material for transportation by motor vehicle, rail car, vessel, or cargo-only aircraft, subject to certain conditions.

In a final rule published on January 14, 2009 under Dockets HM–215J and HM–224D (74 FR 2199), PHMSA added a new description to the HMT for Powder, smokeless, Division 1.4C; however, the rule did not extend the allowance provided for Division 1.3C to the Division 1.4C materials.

The petition seeks, with proper examination and approval, to allow a Division 1.4C material which, by definition (see § 173.50), poses the lesser safety risk when compared with Division 1.3 explosives, to be reclassed as a Division 4.1 material.

We believe that this petition has merit, as Division 1.4 explosives pose less of a hazard in transportation than Division 1.3 explosives, which are already allowed to move as Division 4.1 materials. In the NPRM we deviated from the petition by proposing a different net mass allowance for the inner packaging for Division 1.4 materials than what is currently allowed for Division 1.3 materials. The petition asked that we amend § 173.171(c) to include Division 1.4 materials in the exception allowed, which stipulates that materials must be in combination packagings with inner packaging not exceeding 3.6 kg (8 pounds). Instead we proposed to add a paragraph (d) that stipulates that Division 1.4 materials must be in combination packagings with inner packagings not exceeding the net mass that have been examined and approved as required in § 173.56.

PHMSA received a comment from SAAMI stating that they:

> [H]ave studied this proposed change, and find that the sole effect is to allow a flammable solid which emanated from a Division 1.4 classification to exceed the current eight pound limit per inner package. Unless a need for this change is substantiated, we see no reason why the flammable solid classification limit for inner packages should be amended. Furthermore this would be unenforceable in the field.

Our intent with the modification to the SAAMI petition was to ensure that the allowable net mass did not exceed the net mass of the material that had been examined and approved. Instead of making the proposed modification, and adding a new paragraph (d), in this final rule, we are revising Special Provision 16 and § 173.171 for clarification purposes. Specifically, we are revising the following:

- The wording of Special Provision 16 to read: ''This description applies to smokeless powder and other propellant powders that are used as powder for small arms that have been classed as Division 1.3C or 1.4C and reclassed to Division 4.1 in accordance with § 173.56 and § 173.58 of this subchapter.'' The current wording of Special Provision 16 uses the term ''solid'' and, consequently, narrows the application to only smokeless powder or propellant in powder form to be qualified for reclassification as a Division 4.1 material. Also, by using the term ''propellant powders'' we are ensuring that powders that have hazard properties different from ''propellants'' are not reclassified as a Division 4.1 material.
- The introductory paragraph of § 173.171 to read: ''Powders that have been classed in Division 1.3 or Division 1.4C may be reclassed in Division 4.1, for domestic transportation by motor vehicle, rail car, vessel, or cargo-only aircraft, subject to the following conditions.''
- Section 173.171(a) to read: ''Powders that have been approved as Division 1.3C or Division 1.4C may be reclassed to Division 4.1 in accordance with §§ 173.56 and 173.58 of this part,'' as we see no need to retest powders already classed as 1.3C or 1.4C to be tested again.
- Current paragraph (c) to read: ''Only combination packagings with inner packagings not exceeding 3.6 kg (8 pounds) net mass and outer packaging of UN 4G fiberboard boxes meeting the Packing Group I standards are authorized. Inner packagings must be

arranged and protected so as to prevent simultaneous ignition of the contents. The complete package must be of the same type that has been examined as required in § 173.56 of this part.''

• Current paragraph (d) of § 173.171 to read: ''The net weight of smokeless powder in any one box (one package) must not exceed 7.3 kg (16 pounds).''

The changes in this final rule to Special Provision 16 and § 173.171 are non-substantive and clarify existing language.

III. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under authority of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 et seq.). Section 5103(b) of Federal hazmat law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. This final rule amends the recordkeeping and packaging marking requirements for third-party labs and manufacturers to assure the traceability of packaging; removes the listing for ''Gasohol, gasoline mixed with ethyl alcohol, with not more than 10% alcohol, NA1203''; provides a limited quantity exception for Division 4.1, Self-reactive solids and Self-reactive liquids, Types B through F; allows smokeless powder classified as a Division 1.4C material to be reclassified as a Division 4.1 material to relax the regulatory requirements for these materials without compromising safety; and provides greater flexibility by allowing the Dangerous Cargo Manifest to be in locations designated by the master of the vessel besides ''on or near the vessel's bridge'' while the vessel is in a United States port.

B. Executive Order 12866, Executive Order 13563, Executive Order 13610, and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget (OMB). The final rule is not considered a significant rule under the Regulatory Policies and Procedures order issued by the U.S. Department of Transportation (44 FR 11034).

In this final rule, we amend miscellaneous provisions in the HMR to clarify the provisions and to relax overly burdensome requirements. PHMSA anticipates the changes contained in this rule will have economic benefits to the regulated community. This final rule is designed to increase the clarity of the HMR, thereby increasing voluntary compliance while reducing compliance costs.

Executive Order 13610 (Identifying and Reducing Regulatory Burdens) reaffirming the goals of Executive Order 13563 (Improving Regulation and Regulatory Review) issued January 18, 2011, and Executive Order 12866 (Regulatory Planning and Review) issued September 30, 1993. Executive Order 13610 directs agencies to prioritize ''those initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens while protecting public health, welfare, safety, and our environment.'' Executive Order 13610 further instructs agencies to give consideration to the cumulative effects of their regulations, including cumulative burdens, and prioritize reforms that will significantly reduce burdens.

Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866 Regulatory Planning and Review of September 30, 1993. In addition, Executive Order 13563 specifically requires agencies to: (1) Involve the public in the regulatory process; (2) promote simplification and harmonization through interagency coordination; (3) identify and consider regulatory approaches that reduce burden and maintain flexibility; (4) ensure the objectivity of any scientific or technological information used to support regulatory action; consider how to best promote retrospective analysis to modify, streamline, expand, or repeal existing rules that are outmoded, ineffective, insufficient, or excessively burdensome.

In this final rule, PHMSA has involved the public in the regulatory process in a variety of ways. Specifically, in this rulemaking PHMSA is incorporating regulatory changes in response to five petitions that have been submitted by the public in accordance with the Administrative Procedure Act and PHMSA's rulemaking procedure regulations, in 49 CFR 106.95. Furthermore, the public was given the opportunity to comment on the proposed changes during the open comment period. Key issues covered by the petitions include requests from the public to revise the packaging requirements, clarify the HMR pertaining to alcohol and gasoline mixtures, and allow additional exceptions for the classification of smokeless powder used for small arms ammunition.

C. Executive Order 13132

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule would preempt state, local and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The federal hazardous material transportation law, 49 U.S.C. 5125(b)(1), contains an express preemption provision (49 U.S.C. 5125(b)) preempting state, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, content, and placement of those documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) The design, manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container which is represented, marked, certified, or sold as qualified for use in the transport of hazardous materials.

This final rule concerns the classification, packaging, marking, labeling, and handling of hazardous materials, among other covered subjects. This final rule would preempt any state, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are ''substantively the same'' (see 49 CFR 107.202(d) as the Federal requirements.)

Federal hazardous materials transportation law provides at 49 U.S.C. 5125(b)(2) that if PHMSA issues a regulation concerning any of the covered subjects, PHMSA must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of

issuance. PHMSA proposes the effective date of federal preemption be 90 days from publication of this final rule in the **Federal Register**.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have tribal implications and does not impose substantial direct compliance costs on Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines the rule is not expected to have a significant impact on a substantial number of small entities. This final rule amends miscellaneous provisions in the HMR to clarify provisions based on petitions for rulemaking. While maintaining safety, it relaxes certain requirements that are overly burdensome and provides clarity where requested by the regulated community. The changes are generally intended to provide relief to shippers, carriers, and packaging manufacturers, including small entities.

Consideration of alternative proposals for small businesses. The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where it is possible to do so and still meet the objectives of applicable regulatory statutes. In the case of hazardous materials transportation, it is not possible to establish exceptions or differing standards and still accomplish our safety objectives.

The changes shown herein are generally intended to provide relief to shippers, carriers, and packaging manufactures and testers, including small entities. The benefits are modest and, therefore, this final rule will not have a significant economic impact on a substantial number of small entities, though it will provide economic relief to some small businesses. For example, limiting the document retention period for persons conducting initial design testing of packagings to five years beyond the next required periodic retest, should reduce the paperwork burden for some small businesses.

This final rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

PHMSA has an approved information collections under OMB Control Numbers 2137–0018 ''Inspection and Testing of Portable Tanks and Intermediate Bulk Containers'', 2137–0051 ''Rulemaking, Special Permits, and Preemption Requirements'', and 2137–0572 ''Testing Requirements for Non-Bulk Packaging.'' This final rule may result in a decrease in the annual burden and costs under this information collection due to proposed changes to incorporate provisions contained in certain widely used or longstanding special permits that have an established safety record and a minimal decrease in this information collection burden because of a reduction in the record retention period for non-bulk packages, IBCs and large packagings. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d), title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests.

This final rule identifies a revised information collection request that PHMSA will submit to OMB for approval based on the requirements in this final rule. PHMSA has developed burden estimates to reflect changes in this final rule. PHMSA estimates that the information collection and recordkeeping burden of this final rule is as follows:

- OMB Control Nos. 2137–0018 (Inspection and Testing of Portable Tanks and Intermediate Bulk Containers) and 2137–0572 (Testing Requirements for Non-Bulk Packaging.) We anticipate a minimal decrease in this information collection burden because this rule establishes a finite record retention period. Specifically, § 178.601(l), which specifies recordkeeping requirements for testing non-bulk packaging; § 178.801(l), which specifies recordkeeping requirements for testing IBCs; and § 178.955(i), which specifies recordkeeping requirements for testing large packagings are revised to limit the document retention period for persons conducting initial design testing from an indefinite period to five years beyond the next required periodic retest.
- Office of Management and Budget (OMB) Control Number 2137–0051; Rulemaking and Special Permit Petitions: We anticipate a minimal decrease in this information collection burden due to the elimination of the application process for DOT–SP 9735. Specifically, the holder of DOT–SP 9735 is no longer required to re-apply for a Special Permit to place the DCM in locations designated by the master of the vessel besides ''on or near the bridge'' while the vessel is docked in a United States port while cargo unloading, loading, or handling operations are underway and the bridge is unmanned.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141,300,000 or more to either state, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act, 42 U.S.C. 4321–4375, requires federal agencies to analyze proposed actions to determine whether the action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations require federal agencies to conduct an environmental review considering: (1) The need for the proposed action; (2) alternatives to the proposed action; (3) probable environmental impacts of the proposed action and alternatives; and (4) the agencies and persons consulted during the consideration process.

Description of Action

Docket No. PHMSA–2011–0142 (HM–219), Final Rule

Transportation of hazardous materials in commerce is subject to requirements in the HMR, issued under authority of Federal hazardous materials transportation law, codified at 49 U.S.C. 5001 et seq. To facilitate the safe and efficient transportation of hazardous materials in international commerce, the HMR provide that both domestic and international shipments of hazardous materials may be offered for transportation and transported under provisions of the international regulations.

Adopted Amendments to the HMR

In this final rule, PHMSA is adopting amendments to:

- Revise § 178.3 to indicate that a manufacturer or third-party laboratory mark may not be used when continued certification of a packaging is conducted by someone other than the original manufacturer or third-party testing laboratory, unless specifically authorized by the original manufacturer or third-party testing laboratory. This change will ensure that the mark used is tied to the entity that was issued the mark.
- Revise §§ 178.601(l), 178.801(l), and 178.955(i) to require that the test report must be maintained at each location where the packaging is manufactured and each location where the design qualification tests are conducted for the duration of the certification plus five years beyond the last certification, instead of the current requirement that it be maintained until the packaging is no longer made.
- Revise the HMT by removing the listing for ''Gasohol, gasoline mixed with ethyl alcohol, with not more than 10% alcohol, NA1203,'' and remove reference to gasohol in §§ 172.336(c)(4) and 172.336(c)(5). This change clarifies the HMR and harmonizes the HMR with international recommendations.
- Revise § 172.101 to refer to § 173.151 to provide the limited quantity exception for Division 4.1, Self-reactive solids and Self-reactive liquids, Types B through F, consistent with international regulations.
- Allow smokeless powder classified as a Division 1.4C material to be reclassified as a Division 4.1 material to relax the regulatory requirements for these materials without compromising safety.
- Allow the DCM to be in locations designated by the master of the vessel besides ''on or near the vessel's bridge'' while the vessel is docked in a United States port to ensure that the DCM is readily available to communicate the presence and nature of the hazardous materials on board a vessel. This revision would provide greater flexibility by allowing the document to be maintained in either the vessel's cargo office or another location designated by the master of the vessel.

Alternatives Considered

Alternative (1): Do nothing.

Our goal is to update, clarify and provide relief from certain existing regulatory requirements to promote safer transportation practices, eliminate unnecessary regulatory requirements, finalize outstanding petitions for rulemaking, and facilitate international commerce. We rejected the do-nothing alternative.

Alternative (2): Go forward with the proposed amendments to the HMR in the NPRM.

This is the selected alternative.

Environmental Consequences

Hazardous materials are substances that may pose a threat to public safety or the environment during transportation because of their physical, chemical, or nuclear properties. The hazardous material regulatory system is a risk management system that is prevention oriented and focused on identifying a safety hazard and reducing the probability and quantity of a hazardous material release. Hazardous materials are categorized by hazard analysis and experience into hazard classes and packing groups. The regulations require each shipper to classify a material in accordance with these hazard classes and packing groups; the process of classifying a hazardous material is itself a form of hazard analysis. Further, the regulations require the shipper to communicate the material's hazards through use of the hazard class, packing group, and proper shipping name on the shipping paper and the use of labels on packages and placards on transport vehicles. Thus, the shipping paper, labels, and placards communicate the most significant findings of the shipper's hazard analysis. A hazardous material is assigned to one of three packing groups based upon its degree of hazard, from a high hazard, Packing Group I to a low hazard, Packing Group III. The quality, damage resistance, and performance standards of the packaging in each packing group are appropriate for the hazards of the material transported.

Under the HMR, hazardous materials are transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in accidents or en route incidents resulting from cargo shifts, valve failures, packaging failures, loading, unloading, collisions, handling problems, or deliberate sabotage. The release of hazardous materials can cause the loss of ecological resources (e.g. wildlife habitats) and the contamination of air, aquatic environments, and soil. Contamination of soil can lead to the contamination of ground water. For the most part, the adverse environmental impacts associated with releases of most hazardous materials are short term impacts that can be reduced or eliminated through prompt clean up and decontamination of the accident scene.

When developing potential regulatory requirements, PHMSA evaluates those requirements to consider the environmental impact of each amendment. Specifically, PHMSA evaluates the: (1) Risk of release and resulting environmental impact; (2) risk to human safety, including any risk to first responders; (3) longevity of the packaging; and (4) if the proposed regulation would be carried out in a defined geographic area, the resources, especially any sensitive areas, and how they could be impacted by any proposed regulations. The adopted packaging changes would establish greater accountability for certifying packagings, reduce paperwork for the affected packaging testing agencies, and potentially reduce packaging failures that result in hazardous materials incidents. The amendments that harmonize the HMR with international standards and recommendations are intended to enhance the safety of international hazardous materials transportation through an increased level of industry compliance, the smooth flow of hazardous materials from their points of origin to their points of destination, and effective emergency response in the event of a hazardous materials incident. The revision regarding where the DCM is keep when a vessel is in a U.S. port should help to expedite a response to an emergency and reduce the environmental impact to a hazardous materials spill.

Conclusion

PHMSA is making miscellaneous amendments to the HMR in response to petitions for rulemaking. The amendments adopted in this final rule are intended to update, clarify, or provide relief from certain existing regulatory requirements to promote safer transportation practices; eliminate unnecessary regulatory requirements; finalize outstanding petitions for rulemaking; facilitate international commerce; and, in general, make the

requirements easier to understand and follow.

While the net environmental impact of this rule will be positive, we believe there will be no significant environmental impacts associated with this final rule.

J. Privacy Act.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://www.gpo.gov/fdsys/pkg/FR-2000-04-11/pdf/00-8505.pdf.*

K. Executive Order 13609 International Trade Analysis

Under E.O. 13609, agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, 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 any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, provided that the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude 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.

PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we have assessed the effects of the final rule to ensure that it does not cause unnecessary obstacles to foreign trade. In this final rule, PHMSA is revising the HMR to align with international standards by: removing reference to ''gasohol''; providing a limited quantity exception for Division 4.1, Self-reactive solids and Self-reactive liquids, Types B through F; and allowing smokeless powder classified as a Division 1.4C material to be reclassified as a Division 4.1 material. These amendments are intended to enhance the safety of international hazardous materials transportation through an increased level of industry compliance, ensure the smooth flow of hazardous materials from their points of origin to their points of destination, and facilitate effective emergency response in the event of a hazardous materials incident. Accordingly, this rulemaking is consistent with E.O. 13609 and PHMSA's obligations under the Trade Agreement Act, as amended.

List of Subjects

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Training, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, we are amending 49 CFR Chapter I as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

■ 1. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 1.53.

■ 2. In § 172.101, The Hazardous Materials Table is amended by removing and revising entries, in the appropriate alphabetical sequence as follows.

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

172.101—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*	*	*	*		*	*		*				
	.....	[REVISE]											
	*	*	*	*		*	*		*				
	Powder, smokeless	1.4C	UN0509	II	1.4C		(1)	62	None	(2)	(2)	06	
	*	*	*	*		*	*		*				
G	Self-reactive liquid type B	4.1	UN3221	II	4.1	53	151	224	None	(2)	(2)	D	52, 53
	*	*	*	*		*	*		*				
G	Self-reactive liquid type C	4.1	UN3223	II	4.1		151	224	None	5 L	10 L	D	52, 53
	*	*	*	*		*	*		*				
G	Self-reactive liquid type D	4.1	UN3225	II	4.1		151	224	None	5 L	10 L	D	52, 53
	*	*	*	*		*	*		*				
G	Self-reactive liquid type E	4.1	UN3227	II	4.1		151	224	None	10 L	25 L	D	52, 53
	*	*	*	*		*	*		*				
G	Self-reactive liquid type F	4.1	UN3229	II	4.1		151	224	None	10 L	25 L	D	52, 53
	*	*	*	*		*	*		*				
G	Self-reactive solid type B	4.1	UN3222	II	4.1	53	151	224	None	([1])	([2])	D	52, 53
	*	*	*	*		*	*		*				
G	Self-reactive solid type C	4.1	UN3224	II	4.1		151	224	None	5 kg	10 kg	D	52, 53
	*	*	*	*		*	*		*				
G	Self-reactive solid type D	4.1	UN3226	II	4.1		151	224	None	5 kg	10 kg	D	52, 53
	*	*	*	*		*	*		*				
G	Self-reactive solid type E	4.1	UN3226	II	4.1		151	224	None	5 kg	10 kg	D	52, 53
	*	*	*	*		*	*		*				
G	Self-reactive solid type F	4.1	UN3230	II	4.1		151	224	None	10 kg	25 kg	D	52, 53
	*	*	*	*		*	*		*				
	[REMOVE]												
	*	*	*	*		*	*		*				
	Gasohol *gasoline mixed with ethyl alcohol, with not more than 10% alcohol.*	3	NA1203	II	3	144, 177	150	202	242	5 L	60 L	E	
	*	*	*	*		*	*		*				

[1] None.
[2] Forbidden.

* * * * *

■ 3. In § 172.102, in paragraph (c)(1), Special provision 16 is revised to read as follows:

§ 172.102 Special provisions

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

16 This description applies to smokeless powder and other propellant powders that are used as powder for small arms and have been classed as Division 1.3C and 1.4C and reclassed to Division 4.1 in accordance with § 173.56 and § 173.58 of this subchapter.

* * * * *

■ 4. In § 172.336, paragraph (c) is revised to read as follows:

§ 172.336 Identification numbers; special provisions.

* * * * *

(c) Identification Numbers are not required:

Packaging:	*When:*	*Then the alternative marking requirement is:*
(1) On the ends of portable tanks, cargo tanks, or tank cars.	They have more than one compartment and hazardous materials with different identification numbers are being transported therein.	The identification numbers on the sides of the tank are displayed in the same sequence as the compartments containing the materials they identify.
(2) On cargo tanks	They contain only gasoline	The tank is marked "Gasoline" on each side and rear in letters no less than 50 mm (2 inches) high, or is placarded in accordance with § 172.542(c).
(3) On cargo tanks	They contain only fuel oil	The cargo tank is marked "Fuel Oil" on each side and rear in letters no less than 50 mm (2 inches) high, or is placarded in accordance with § 172.544(c).
(4) On nurse tanks	They meet the provisions of § 173.315(m) of this subchapter.	N/A
(5) On cargo tanks, including compartmented cargo tanks, or tank cars.	They contain more than one petroleum distillate fuel.	The identification number for the liquid petroleum distillate fuel having the lowest flash point is displayed. If the cargo tank also contains gasoline and alcohol fuel blends consisting of more than 10% ethanol the identification number "3475" or "1987," as appropriate, must also be displayed.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 5. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 1.53.

■ 6. In § 173.171, the introductory text and paragraphs (a), (c) and (d) are revised to read as follows:

§ 173.171 Smokeless powder for small arms.

Powders that have been classed in Division 1.3 or Division 1.4 may be reclassed in Division 4.1, for domestic transportation by motor vehicle, rail car, vessel, or cargo-only aircraft, subject to the following conditions:

(a) Powders that have been approved as Division 1.3C or Division 1.4C may be reclassed to Division 4.1 in accordance with §§ 173.56 and 173.58 of this part.

* * * * *

(c) Only combination packagings with inner packagings not exceeding 3.6 kg (8 pounds) net mass and outer packaging of UN 4G fiberboard boxes meeting the Packing Group I standards are authorized. Inner packagings must be arranged and protected so as to prevent simultaneous ignition of the contents. The complete package must be of the same type that has been examined as required in § 173.56 of this part.

(d) The net weight of smokeless powder in any one box (one package) must not exceed 7.3 kg (16 pounds).

* * * * *

PART 176—CARRIAGE BY VESSEL

■ 7. The authority citation for Part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 1.53.

■ 8. In § 176.30, paragraph (a) introductory text is revised to read as follows:

§ 176.30 Dangerous cargo manifest.

(a) The carrier, its agents, and any person designated for this purpose by the carrier or agents must prepare a dangerous cargo manifest, list, or stowage plan. This document may not include a material that is not subject to the requirements of the Hazardous Material Regulations (49 CFR parts 171 through 180) or the International Maritime Dangerous Goods Code (IMDG Code) (IBR, see § 171.7 of this subchapter). This document must be kept on or near the vessel's bridge, except when the vessel is docked in a United States port. When the vessel is docked in a United States port, this document may be kept in the vessel's cargo office or another location designated by the master of the vessel provided that a sign is placed beside the designated holder on or near the vessel's bridge indicating the location of the dangerous cargo manifest, list, or stowage plan. This document must always be in a location that is readily accessible to emergency response and enforcement personnel. It must contain the following information:

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 9. The authority citation for Part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 1.53.

■ 10. In § 178.3, paragraph (a)(2) is revised to read as follows:

§ 178.3 Marking of packaging.

(a) * * *

(2) Unless otherwise specified in this part, the name and address or symbol of the packaging manufacturer or the person certifying compliance with a UN standard. Symbols, if used, must be

registered with the Associate Administrator. Unless authorized in writing by the holder of the symbol, symbols must represent either the packaging manufacturer or the approval agency responsible for providing the most recent certification for the packaging through design certification testing or periodic retesting, as applicable. Duplicative symbols are not authorized.

* * * * *

■ 11. In § 178.601, paragraph (l) is revised to read as follows:

§ 178.601 General requirements.

* * * * *

(l) *Record retention.* Following each design qualification test and each periodic retest on a packaging, a test report must be prepared. The test report must be maintained as follows:

(1) The test report must be maintained at each location where the packaging is manufactured, certified, and a design qualification test or periodic retest is conducted. The test report must be maintained as follows:

Responsible party	Duration
Person manufacturing the packaging	As long as manufactured and two years thereafter.
Person performing design testing	Until next required periodic retest is successfully performed, a new test report produced, and five years thereafter.
Person performing periodic retesting	Until next required periodic retest is successfully performed and a new test report produced.

(2) The test report must be made available to a user of a packaging or a representative of the Department upon request. The test report, at a minimum, must contain the following information:

(i) Name and address of test facility;

(ii) Name and address of applicant (where appropriate);

(iii) A unique test report identification;

(iv) Date of the test report;

(v) Manufacturer of the packaging;

(vi) Description of the packaging design type (*e.g.* dimensions, materials, closures, thickness, *etc.*), including methods of manufacture (*e.g.* blow molding) and which may include drawing(s) and/or photograph(s);

(vii) Maximum capacity;

(viii) Characteristics of test contents, *e.g.* viscosity and relative density for liquids and particle size for solids;

(ix) Test descriptions and results; and

(x) Signed with the name and title of signatory.

■ 12. In § 178.801, paragraph (l) is revised to read as follows:

§ 178.801 General requirements.

* * * * *

(l) *Record retention.* (1)(i) The person who certifies an IBC design type must keep records of design qualification tests for each IBC design type and for each periodic design requalification as specified in this part. These records must be maintained at each location where the IBC is manufactured and at each location where design qualification and periodic design requalification testing is performed. The test report must be maintained as follows:

Responsible party	Duration
Person manufacturing the packaging	As long as manufactured and two years thereafter.
Person performing design testing	Until next required periodic retest is successfully performed, a new test report produced, and five years thereafter.
Person performing periodic retesting	Until next required periodic retest are successfully performed and a new test report produced.

(ii) These records must include the following information: name and address of test facility; name and address of the person certifying the IBC; a unique test report identification; date of test report; manufacturer of the IBC; description of the IBC design type (e.g., dimensions, materials, closures, thickness, representative service equipment, etc.); maximum IBC capacity; characteristics of test contents; test descriptions and results (including drop heights, hydrostatic pressures, tear propagation length, etc.). Each test report must be signed with the name of the person conducting the test, and name of the person responsible for testing.

(2) The person who certifies each IBC must make all records of design qualification tests and periodic design requalification tests available for inspection by a representative of the Department upon request.

■ 13. In § 178.955, paragraph (i) is revised to read as follows:

§ 178.955 General requirements

* * * * *

(i) *Record retention.* (1) Following each design qualification test and each periodic retest on a Large Packaging, a test report must be prepared. The test report must be maintained at each location where the Large Packaging is manufactured and each location where the design qualification tests are conducted. The test report must be maintained as follows:

Responsible party	Duration
Person manufacturing the packaging	As long as manufactured and two years thereafter.
Person performing design testing	Until next required periodic retest is successfully performed, a new test report produced, and five years thereafter.
Person performing periodic retesting	Until next required periodic retest is successfully performed and a new test report produced.

(2) The test report must be made available to a user of a Large Packaging or a representative of the Department of Transportation upon request. The test report, at a minimum, must contain the following information:

(i) Name and address of test facility;

(ii) Name and address of applicant (where appropriate);

(iii) A unique test report identification;

(iv) Date of the test report;

(v) Manufacturer of the packaging;

(vi) Description of the packaging design type (*e.g.,* dimensions, materials, closures, thickness, etc.), including methods of manufacture (*e.g.,* blow molding) and which may include drawing(s) and/or photograph(s);

(vii) Maximum capacity;

(viii) Characteristics of test contents, *e.g.,* viscosity and relative density for liquids and particle size for solids;

(ix) Mathematical calculations performed to conduct and document testing (for example, drop height, test capacity, outage requirements, etc.);

(x) Test descriptions and results; and

(xi) Signature with the name and title of signatory.

Issued in Washington, DC on February 19, 2013 under authority delegated in 49 CFR part 106.

Cynthia L. Quarterman

Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2013–04197 Filed 3–6–13; 8:45 am]

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Proposed Rules

Federal Register
Vol. 78, No. 45
Thursday, March 7, 2013

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

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2010–BT–NOA–0067]

RIN 1904–AC52

Energy Conservation Standards for Set-Top Boxes: Availability of Initial Analysis

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

ACTION: Notice of data availability (NODA).

SUMMARY: The U.S. Department of Energy (DOE) has completed an initial analysis that estimates the potential economic impacts and energy savings that could result from promulgating a regulatory energy conservation standard for set-top boxes. At this time, DOE is not proposing any energy conservation standard for set-top boxes. However, it is publishing this initial analysis so stakeholders can review the analysis's output and the underlining assumptions and calculations that might ultimately support a proposed standard. DOE encourages stakeholders to provide any additional data or information that may improve the analysis. The analysis is now publically available at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/33.*

ADDRESSES: The docket, EERE–20111–BT–NOA–0067, 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.

A link to the docket web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2011-BT-NOA-0067.* The regulations.gov web page contains instructions on how to access all documents in the docket, including public comments.

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. Jeremy Dommu, 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) 586–9870. Email: *set-top@ee.doe.gov.*

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: *Celia.Sher@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

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I. History of Energy Conservation Standards Rulemaking for Set-Top Boxes

Under the authority established in Title III, Part B [1] of the Energy Policy and Conservation Act of 1975, as amended, (EPCA or the Act),[2] Public Law 94–163 (42 U.S.C. 6291–6309, as codified), DOE published a notice of proposed determination that tentatively determined that set-top boxes and network equipment qualify as a covered product because classifying products of such type as a covered product is necessary or appropriate to carry out the purposes of EPCA, and the average U.S. household energy use for set-top boxes and network equipment is likely to exceed 100 kilowatt-hours (kWh) per year. 76 FR 34914 (June 15, 2011).

DOE then prepared a document titled ''Rulemaking Overview and Preliminary Market and Technical Assessment: Energy Efficiency Program for Consumer Products: Set-Top Boxes and Network Equipment'' (Rulemaking Overview), which describes an initial market and technical analysis as well as the procedural and analytical approaches DOE anticipates using to evaluate potential energy conservation standards for set-top boxes.[3]

DOE also published a Request for Information (RFI) on December 16, 2011, requesting feedback from interested parties on several topics related to test procedures and potential energy conservation standards for set-top boxes. 76 FR 78174.

DOE held a public meeting on January 26, 2012, at which it described the various analyses DOE would conduct as part of the rulemaking, such as the engineering analysis, the manufacturer impact analysis (MIA), the life-cycle cost (LCC) and payback period (PBP) analyses, and the national impact analysis (NIA). DOE also discussed questions raised in the RFI and solicited feedback from stakeholders. Representatives for manufacturers, trade associations, environmental and energy efficiency advocates, and other interested parties attended the meeting.[4] Comments received since publication of the Rulemaking Overview and RFI have helped DOE identify and resolve issues related to the initial analyses.

In May 2012, DOE received a request from set-top box manufacturers, video programming distributors, and energy efficiency advocates to suspend its rulemaking activities to allow these stakeholders time to negotiate a non-regulatory agreement to improve the efficiency of set-top boxes in lieu of a federal regulatory standard.[5] These stakeholders cited several reasons why a non-regulatory agreement is preferable to a federal standard, including the ability to have an agreement come into effect sooner, the additional savings born of updating set-top boxes already in the field via software downloads, and

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

[2] All references to EPCA in this document refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210 (Dec. 18, 2012).

[3] This document is available at: *http://www.regulations.gov/#!docketDetail;D=EERE-2011-BT-NOA-0067.*

[4] Supporting documents from this public meeting, including presentation slides and meeting transcript, are available at: *http://www.regulations.gov/#!docketDetail;D=EERE-2011-BT-NOA-0067.*

[5] Ex Parte communication between DOE and stakeholders available at: *http://www.regulations.gov/#!documentDetail;D=EERE-2011-BT-NOA-0067-0037.*

the flexibility this industry requires given the rapid cycles of innovation and the complexity of networks. Following this meeting, DOE suspended the issuance of a proposed rule for an energy conservation standard or test procedure until after October 1, 2012 to allow industry representatives and energy efficiency advocates time to negotiate a non-regulatory agreement to improve the energy efficiency of set-top boxes.

During this time, DOE continued testing and evaluating the energy efficiency of set-top boxes in support of developing a DOE test procedure. Though DOE suspended the issuance of any new proposal, DOE continued developing an analysis in preparation for a regulatory standard in the event a non-regulatory agreement could not be reached or to cover any class of set-top boxes not covered by a non-regulatory agreement.

Despite the participants' best efforts to negotiate a non-regulatory agreement, these talks ultimately did not produce an agreement that was supported by all parties, and the negotiations were terminated.[6] Following the negotiations with energy efficiency advocacy groups, industry representatives signed and announced an agreement amongst themselves to improve the efficiency of set-top boxes. The five-year industry agreement, signed on December 6, 2012 between 15 video programming distributors and set-top box manufacturers, went into effect on January 1, 2013.[7] DOE has since moved forward with the regulatory process. On January 23, 2013, DOE published a notice of proposed rulemaking (NOPR) for a set-top box test procedure. 78 FR 5075.

II. Current Status

The analysis tools described in this NODA were developed to support a potential energy conservation standard for set-top boxes. DOE's primary goal is to improve the efficiency of consumer products, which result in significant national energy savings, consumer utility bill savings, and greenhouse gas emission reductions. DOE recognizes that there are multiple paths forward to reach this goal. At this time, DOE intends to move forward with its traditional regulatory rulemaking activities to develop an energy conservation standard for set-top boxes. The initial analysis presented in today's notice is a step in this process. However, as part of the regulatory impact analysis performed for a NOPR proposing an energy conservation standard, DOE will consider any non-regulatory agreement reached between all stakeholders as an alternative to a regulatory standard.

At this time, DOE is not proposing any energy conservation standards for set-top boxes, and is therefore not requesting comments on any proposal at this time. If DOE issues a NOPR proposing new energy conservation standards, stakeholders will have an opportunity to provide statements on the record at a public meeting and to also submit written comments. DOE may revise the analysis presented in today's NODA based on any new or updated information or data it obtains between now and the publication of any future NOPR proposing energy conservation standards for set-top boxes. DOE encourages stakeholders to provide any additional data or information that may improve the analysis.

III. Summary of the Analyses Performed by DOE

DOE conducted initial analyses of set-top boxes in the following areas: (1) Engineering; (2) manufacturer impacts; (3) life-cycle cost and payback period; and (4) national impacts. The tools used in preparing these analyses (engineering, life-cycle cost, national impacts, and manufacturer impacts spreadsheets) and their respective results are available at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/33*[8]. Each individual spreadsheet includes an introduction describing the various inputs and outputs to the analysis, as well as operation instructions. A brief description of each of these 4 analysis tools is provided below. If DOE proposes an energy conservation standard for set-top boxes, then DOE will also publish a Technical Support Document (TSD), which will contain a detailed written account of the analyses performed.

A. Engineering Analysis

The engineering analysis establishes the relationship between the cost and efficiency levels of set-top boxes. This relationship serves as the basis for cost-benefit calculations performed in the other three analysis tools for individual consumers, manufacturers, and the Nation.

As a first step in the engineering analysis, DOE established 17 potential set-top box groupings based on a characterization of the relevant set-top box markets. For each of these groupings, DOE identified existing technology options, including prototype designs that could improve the energy efficiency of set-top boxes. DOE then reviewed each technology option to decide whether it is technologically feasible; is practicable to manufacture, install, and service; would adversely affect product utility or product availability; or would have adverse impacts on health and safety. The engineering analysis identifies representative baseline products, which is the starting point for analyzing technologies that provide energy efficiency improvements. ''Baseline product'' refers to a model or models having features and technologies typically found in minimally-efficient products currently available on the market. DOE modeled the power consumption of baseline products in on and sleep modes of operation by system level components (e.g., tuners, hard disk, processor, power supply, etc.). DOE then identified design options to improve the efficiency of STBs and considered these options in the analysis as candidate standard levels (CSLs). DOE estimated the manufacturer production costs for the baseline and each of the three CSLs. The manufacturer production costs were derived from product teardowns, using more efficient components and modeling efficiency savings from power scaling when components are not in use. The main outputs of the engineering analysis are the manufacturer production costs (including material, labor, and overhead) and power consumption in each mode of operation at the baseline and each of 3 CSLs for all 17 possible groupings of set-top boxes.

B. Manufacturer Impact Analysis

For the MIA, DOE used the Government Regulatory Impact Model (GRIM) to assess the economic impact of potential standards on set-top box manufacturers and multichannel video programming distributors. DOE developed key industry average financial parameters for the GRIM using publicly available data from corporate annual reports along with information received through confidential interviews with manufacturers and industry representatives. Additionally, DOE used this and other publicly available information to estimate and

[6] See Joint Letter to Secretary Chu, signed November 1, 2012, available at: *http://www.regulations.gov/#!documentDetail;D=EERE-2011-BT-NOA-0067-0041.*

[7] Full text of the industry voluntary agreement is available at: *http://www.ce.org/CorporateSite/media/ce_news/FINAL-PUBLIC-VOLUNTARY-AGREEMENT-%2812-6-2012%29.pdf.*

[8] These spreadsheets are also available on the rulemaking docket at *http://www.regulations.gov/#!docketDetail;D=EERE-2011-BT-NOA-0067.*

account for the aggregate industry investment in research and development required to produce compliant products at each efficiency level.

The GRIM uses this information in conjunction with inputs from other analyses including manufacturer production costs from the engineering analysis, and shipments and price trends from the NIA to model industry annual cash flows from the base year through the end of the analysis period. The primary quantitative output of this model is the industry net present value (INPV), which DOE calculates as the sum of industry cash flows, discounted to the present day using industry specific weighted average costs of capital.

Standards can affect INPV in several ways including increasing the cost of production and impacting manufacturer markups, as well as requiring upfront investments in manufacturing capital and product development. Under potential standards for set-top boxes, DOE expects that manufacturers and video programming distributors may lose a portion of the INPV, which is calculated as the difference between INPV in the base-case (absent new energy conservation standards) and in the standards-case (with new energy conservation standards in effect). DOE examines a range of possible impacts on industry by modeling scenarios with various standard levels and pricing strategies.

In addition to INPV, the MIA also calculates the manufacturer markups, which are applied to the engineering cost estimates to arrive at the manufacturer selling price. For efficiency levels that require extensive software development, DOE calibrated the manufacturer markups to allow for the recovery of this upfront cost by amortizing the investment over the units shipped in the first three years of the analysis period. Due to the complexities of video programming distributor pricing models, DOE simplified its assumption regarding markups from the video programming distributor to the consumer by assuming that the incremental cost of a more efficient set-top box is directly passed on to the consumer. The resulting selling prices are then used in the LCC and PBP analyses, as well as in the NIA.

C. Life-Cycle Cost and Payback Period Analyses

The LCC and PBP analyses determine the economic impact of potential standards on individual consumers. The LCC is the total cost of purchasing, installing and operating a set-top box over the course of its lifetime. The LCC analysis compares the LCC of a set-top box designed to meet possible energy conservation standards with the LCC of a set-top box likely to be installed in the absence of standards. DOE determines LCCs by considering: (1) Total installed cost to the consumer (which consists of manufacturer selling price, distribution chain markups, and sales taxes); (2) the range of annual energy consumption of set-top boxes that meet each of the efficiency levels considered as they are used in the field; (3) the operating cost of set-top boxes (e.g., energy cost); (4) set-top box lifetime; and (5) a discount rate that reflects the real consumer cost of capital and puts the LCC in present-value terms. The PBP represents the number of years needed to recover the increase in purchase price of higher-efficiency set-top boxes through savings in the operating cost. PBP is calculated by dividing the incremental increase in installed cost of the higher efficiency product, compared to the baseline product, by the annual savings in operating costs.

For set-top boxes, DOE determined the range in annual energy consumption using outputs from the engineering analysis (power consumption at each efficiency level) and from a representative field-metered sample of television usage (both live broadcast and DVR viewing). Total installed costs at each CSL are outputs from the MIA. Recognizing that several inputs to the determination of consumer LCC and PBP are either variable or uncertain (e.g., annual energy consumption, product lifetime, electricity price, discount rate), DOE conducts the LCC and PBP analysis by modeling both the uncertainty and variability in the inputs using Monte Carlo simulation and probability distributions.

The primary outputs of the LCC and PBP analyses are: (1) Average LCCs; (2) median PBPs; and (3) the percentage of households that experience a net benefit, have no impact, or have a net cost for each potential set-top box grouping and efficiency level. The average annual energy consumption derived in the LCC analysis is used as an input in the NIA.

D. National Impact Analysis

The NIA estimates the national energy savings (NES) and the net present value (NPV) of total consumer costs and savings expected to result from potential new standards at each CSL. DOE calculated NES and NPV for each CSL as the difference between a base-case forecast (without new standards) and the standards-case forecast (with standards). Cumulative energy savings are the sum of the annual NES determined for the lifetime of set-top boxes shipped during the analysis period. Energy savings include the full-fuel cycle energy savings (i.e., the energy needed to extract, process, and deliver primary fuel sources such as coal and natural gas, and the conversion and distribution losses of generating electricity from those fuel sources). The NPV is the sum over time of the discounted net savings each year, which consists of the difference between total operating cost savings and increases in total installed costs. NPV results are reported for discount rates of 3%, 5%, and 7%.

To calculate the NES and NPV, DOE projected future shipments and efficiency distributions (for each CSL) for each potential set-top box grouping. DOE recognizes the uncertainty in projecting shipments and efficiency distributions, and as a result the NIA includes several different scenarios for each. Other inputs to the NIA include the estimated set-top box lifetime used in the LCC analysis, manufacturer selling prices from the MIA, and average annual energy consumption from the LCC.

The purpose of this NODA is to notify industry, manufacturers, consumer groups, efficiency advocates, government agencies, and other stakeholders of the publication of the initial analysis of potential energy conservation standards for set-top boxes. Stakeholders should contact DOE for any additional information pertaining to the analyses performed for this NODA.

Issued in Washington, DC, on February 28, 2013.

Kathleen B. Hogan,

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

[FR Doc. 2013–05344 Filed 3–6–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0205; Directorate Identifier 2012–NM–226–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 747SP series airplanes, and certain The Boeing Company Model 747–100B SUD and 747–300 series airplanes. This proposed AD was prompted by an evaluation by the design approval holder (DAH) indicating that the fuselage skin just above certain lap splice locations is subject to widespread fatigue damage (WFD). This proposed AD would require repetitive inspections for cracking of the fuselage skin above certain lap splice locations, and repair if necessary. We are proposing this AD to detect and correct fatigue cracking of the fuselage skin, which could result in reduced structural integrity of the airplane and sudden loss of cabin pressure.

DATES: We must receive comments on this proposed AD by April 22, 2013.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket 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: Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *Nathan.P.Weigand@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0205; Directorate Identifier 2012–NM–226–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

Structural fatigue damage is progressive. It begins as minute cracks, and those cracks grow under the action of repeated stresses. This can happen because of normal operational conditions and design attributes, or because of isolated situations or incidents such as material defects, poor fabrication quality, or corrosion pits, dings, or scratches. Fatigue damage can occur locally, in small areas or structural design details, or globally. Global fatigue damage is general degradation of large areas of structure with similar structural details and stress levels. Multiple-site damage is global damage that occurs in a large structural element such as a single rivet line of a lap splice joining two large skin panels. Global damage can also occur in multiple elements such as adjacent frames or stringers. Multiple-site-damage and multiple-element-damage cracks are typically too small initially to be reliably detected with normal inspection methods. Without intervention, these cracks will grow, and eventually compromise the structural integrity of the airplane, in a condition known as widespread fatigue damage (WFD). As an airplane ages, WFD will likely occur, and will certainly occur if the airplane is operated long enough without any intervention.

The FAA's WFD final rule (75 FR 69746, November 15, 2010) became effective on January 14, 2011. The WFD rule requires certain actions to prevent catastrophic failure due to WFD throughout the operational life of certain existing transport category airplanes and all of these airplanes that will be certificated in the future. For existing and future airplanes subject to the WFD rule, the rule requires that DAHs establish a limit of validity (LOV) of the engineering data that support the structural maintenance program. Operators affected by the WFD rule may not fly an airplane beyond its LOV, unless an extended LOV is approved.

The WFD rule (75 FR 69746, November 15, 2010) does not require identifying and developing maintenance actions if the DAHs can show that such actions are not necessary to prevent WFD before the airplane reaches the LOV. Many LOVs, however, do depend on accomplishment of future maintenance actions. As stated in the WFD rule, any maintenance actions necessary to reach the LOV will be mandated by airworthiness directives through separate rulemaking actions.

We recognize that the WFD rule (75 FR 69746, November 15, 2010) is unusual in that it might depend on future rulemaking to fully achieve its safety objectives. In the context of WFD, this approach is necessary to enable DAHs to propose LOVs that allow operators the longest operational lives for their airplanes, and still ensure that WFD will not occur. This approach allows for an implementation strategy that provides flexibility to DAHs in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes.

Two operators of Model 757 airplanes have reported cracking on two airplanes that initiated at multiple locations on the inboard surface of the skin, along the edge of the chem-milled step just above the skin lap splice (which was addressed by AD 2011–01–15, Amendment 39–16572 (76 FR 1351, January 10, 2011)). No cracking of this kind has been reported on Model 747 airplanes, but analysis has determined that the Model 747 fuselage skin in certain areas might be susceptible to similar cracking. Such fatigue cracking of the fuselage skin could result in

reduced structural integrity of the airplane and sudden loss of cabin pressure. The skin at the edge of chem-milled steps above certain skin lap splices has been determined to be structure that is susceptible to WFD.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 747–53A2854, dated September 17, 2012. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2013–0205.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Information.''

The phrase ''related investigative actions'' might be used in this proposed AD. ''Related investigative actions'' are follow-on actions that: (1) are related to the primary actions, and (2) are actions that further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

In addition, the phrase ''corrective actions'' might be used in this proposed AD. ''Corrective actions'' are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Differences Between the Proposed AD and the Service Information

Boeing Alert Service Bulletin 747–53A2854, dated September 17, 2012, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 4 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	Up to 57 work-hours × $85 per hour = $4,845, per inspection cycle.	$0	Up to $4,845, per inspection cycle	Up to $19,380, per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2013–0205; Directorate Identifier 2012–NM–226–AD.

(a) Comments Due Date

We must receive comments by April 22, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company airplanes, certificated in any category, identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) All Model 747SP airplanes.

(2) Model 747–100B SUD airplanes, line numbers 636 and 655.

(3) Model 747–300 airplanes, line numbers 692 through 695 inclusive.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder (DAH) indicating that the fuselage skin just above certain lap splice locations is subject to widespread fatigue damage (WFD). We are issuing this AD to detect and correct fatigue cracking of the fuselage skin, which could result in reduced structural integrity of the airplane and sudden loss of cabin pressure.

(f) Compliance

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

(g) Repetitive Inspection

Perform external sliding probe eddy current inspections of the fuselage skin for cracking, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2854, dated September 17, 2012, except where this service bulletin specifies to contact Boeing for inspection instructions, this AD requires doing the inspection using a method approved in accordance with the procedures specified in paragraph (h) of this AD. Do the inspection at the applicable initial compliance time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2854, dated September 17, 2012, except where this service bulletin specifies a compliance time after the ''original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(1) If no cracking is found during any inspection required by paragraph (g) of this AD, repeat the inspection thereafter at the applicable compliance time intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2854, dated September 17, 2012.

(2) If any cracking is found during any inspection required by paragraph (g) of this AD: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (h) of this AD.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(i) Related Information

(1) For more information about this AD, contact Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *Nathan.P.Weigand@faa.gov*.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*. You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on February 20, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–05191 Filed 3–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0618; Directorate Identifier 2007–NM–355–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for all The Boeing Company Model 777 airplanes. That NPRM proposed to require performing repetitive operational tests of the engine fuel suction feed of the fuel system, and other related testing if necessary. That NPRM was prompted by reports of two in-service occurrences on Model 737–400 airplanes of total loss of boost pump pressure of the fuel feed system, followed by loss of fuel system suction feed capability on one engine, and in-flight shutdown of the engine. This action revises that NPRM by proposing to revise the maintenance program to incorporate a revision to the Airworthiness Limitations Section of the maintenance planning data (MPD) document. We are proposing this supplemental NPRM to detect and correct failure of the engine fuel suction feed of the fuel system, which, in the event of total loss of the fuel boost pumps, could result in dual engine flameout, inability to restart the engines, and consequent forced landing of the airplane. Since these actions impose an additional burden over that proposed in the previous NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this supplemental NPRM by April 22, 2013.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket 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: Sue Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6438; fax: 425–917–6590; email: *suzanne.lucier@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–2008–0618; Directorate Identifier 2007–NM–355–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 all The Boeing Company Model 777 airplanes. That NPRM published in the **Federal Register** on June 6, 2008 (73 FR 32253). That NPRM proposed to require repetitive operational tests of the engine fuel suction feed of the fuel system, and other related testing if necessary. That NPRM was prompted by reports of two in-service occurrences on The Boeing Company Model 737–400 airplanes of total loss of boost pump pressure of the fuel feed system, followed by loss of fuel system suction feed capability on one engine, and in-flight shutdown of the engine. The subject area on Model 777 airplanes is almost identical to that on the affected Model 737–400 airplanes. Therefore, those Model 777 airplanes may be subject to the unsafe condition revealed on the Model 737–400 airplanes.

Actions Since Previous NPRM (73 FR 32253, June 6, 2008) Was Issued

Since we issued the previous NPRM (73 FR 32253, June 6, 2008), we have received comments from operators indicating a high level of difficulty performing the actions in the previous NPRM during maintenance operations.

Relevant Service Information

We reviewed Section 9, ''Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs),'' D622W001–9, Revision February 2012, of the Boeing 777 Maintenance Planning Data (MPD) Document. Among other things, Section 9 describes AWL No. 28–AWL–101, ''Engine Fuel Suction Feed Operational Test, of Section D.2., Engine Fuel Suction Feed System,'' which provides procedures for performing repetitive operational tests of the engine fuel suction feed of the fuel system.

Comments

We gave the public the opportunity to comment on the previous NPRM (73 FR 32253, June 6, 2008). The following presents the comments received on the previous NPRM and the FAA's response to each comment.

Requests To Clarify if Engine Fuel Suction Feed Test Is Allowed in Lieu of the Operational Test

Airlines for America (A4A) on behalf of its member American Airlines (AAL), Japan Airlines (JAL), Air New Zealand (ANZ), British Airways (BA), and Boeing asked that we clarify the engine fuel suction feed test procedure in the airplane maintenance manual (AMM) as an option to performing the operational test in the previous NPRM (73 FR 32253, June 6, 2008). AAL and BA asked that we consider adding the engine fuel suction feed manifold leak-test procedure specified in the AMM task card as an option to performing the operational test. AAL, JAL, and ANZ stated that Boeing 777 Task Card 28–020–02–01 specifies two approved procedures to perform the operational test, but operators need only one of those to perform the test. JAL also stated that it has been doing the operational test as specified in MPD Item 28–020–00 or 28–02–01, as applicable; these MPD items identify AMM Task 28–22–00–710–802, ''Engine Fuel Suction Feed—Operational Test,'' and AMM Task 28–22–15–790–808, ''Engine Fuel Feed and Refuel Manifold Leak Isolation,'' at 7,500 flight-hour intervals. JAL stated that the two tasks are equivalent tests and each would satisfy the operations test requirement of the previous NPRM.

We agree to provide clarification. The manifold test (Task 28–22–00–710–801) is not equivalent to the operational test (Task 28–22–00–710–802) for the purposes of this proposed action. The positive internal fuel line pressure applied during the manifold test does not simulate the same conditions encountered during fuel suction feed (i.e., vacuum), and might mask a failure. Therefore, we have not changed the supplemental NPRM in this regard.

Request to Extend Compliance Time

United Airlines (UAL) asked that we extend the compliance time in the previous NPRM (73 FR 32253, June 6, 2008) from 7,500 flight hours to 7,500 flight hours or 25 months. UAL stated that this extension would provide operators the opportunity to do the test during maintenance checks.

We agree with the commenter for the reason provided; however, Boeing has recommended a standardized calendar time for that compliance time extension of ''Within 7,500 flight hours or 3 years, whichever is first.'' Therefore, we have changed this supplemental NPRM to revise the maintenance program to incorporate the AWL identified in Appendix 1 of this AD, which includes an interval of ''7,500 flight hours or 3 years, whichever is first.'' With the exception of including a calendar time in the task interval, Appendix 1 of this AD is equivalent to AWL No. 28–AWL–101, ''Engine Fuel Suction Feed Operational Test,'' of Section D.2., ''AWLS—Fuel Systems,'' of Section 9, ''Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs),'' D622W001–9, Revision February 2012, of the Boeing 777 Maintenance Planning Data (MPD) Document.

Request To Include Corrective Action

Boeing asked that additional testing, better described as corrective action, be included in the proposed requirements of the previous NPRM (73 FR 32253, June 6, 2008). Boeing recommended that paragraph (f) of the previous NPRM be changed to add corrective actions in case the engine suction feed operational test is not successful.

We disagree with the request to include corrective action for this supplemental NPRM, since the AWL already includes that requirement. Therefore, we have not changed the supplemental NPRM in this regard.

Request To Clarify Reason for the Unsafe Condition

Boeing asked that we clarify the reason for the unsafe condition identified in the previous NPRM (73 FR 32253, June 6, 2008). Boeing asked that the AD include the results from a report of in-service occurrences of loss of fuel system suction feed capability on one engine, due to two in-service engine flameout events on a Model 737–400 airplane while operating on suction feed with undetected air leak failures. Boeing

stated that there are no known reports of any engine flameout related to events on Model 777 airplanes. Boeing acknowledged that undetected air leaks could exist and that this maintenance procedure is a proactive measure to ensure engine flameout will not occur during suction feed operation.

We agree to clarify the unsafe condition. We have revised the Summary section and paragraph (e) of this supplemental NPRM accordingly.

Requests for Changes to Certain Maintenance Document References

Boeing asked that we remove the AMM reference to Section 28–22–00 specified in paragraph (f) of the previous NPRM (73 FR 32253, June 6, 2008). Boeing stated that the AMM is covered in Boeing 777 Task Card 28–020–02–01, and noted that having fewer references included lessens the chance of errors. UAL asked that we specify using the task card or the AMM, but not require using both. UAL also noted that the AMM reference to the General Description section of the AMM is incorrect. UAL stated that the correct reference is in Section 28–22–00, titled ''Engine Fuel Feed System—Adjustment/Test.'' ANZ added that, since the task cards are extracts from the AMM, the previous NPRM should state that two methods are approved. BA stated that the task card is already covered by the AMM, and noted that the task card identified in paragraph (g) of the previous NPRM applies only to Trent powered airplanes. Boeing also asked that we consider adding engine specific task cards for operational tests of the engine fuel suction feed.

We acknowledge and agree with the commenters concerns regarding the maintenance documents referenced in the previous NPRM (73 FR 32253, June 6, 2008). However, these maintenance documents are not FAA approved and we do not have the publication controls associated with AD-related service documents. We do not agree with incorporating the requested changes because we have mandated an FAA-approved document instead, which should eliminate these issues. We have made no change to the supplemental NPRM in this regard.

Requests To Allow the Use of Later Revisions of the Maintenance Documents

ANZ, BA, and Boeing asked that we allow using later revisions of the referenced maintenance documents, because those documents could be revised over time and would require frequent requests for alternative methods of compliance (AMOCs).

We do not agree with the request. Allowing later revisions of service documents in an AD is not allowed by the Office of the Federal Register regulations for approving materials incorporated by reference. We have made no change to the supplemental NPRM in this regard.

Request To Revise Costs of Compliance Section

AAL asked that the cost estimate be changed. AAL stated that the cost estimate specified in the previous NPRM (73 FR 32253, June 6, 2008) should not reflect labor only, because approximately 10 minutes of engine run-time will consume roughly 600 pounds of fuel per operational test. AAL noted that for its current fleet of 47 Model 777 airplanes, this equates to an additional 28,200 pounds of fuel expended every 7,500 flight hours to accomplish the proposed test.

We acknowledge the commenter's request. Although fuel is used during the operational test, we have not received data on the amount of fuel used during a test. In addition, fuel costs vary among operators. Therefore, we do not have definitive data that would enable us to provide a cost estimate for the fuel used. In any case, we have determined that direct and incidental costs are still outweighed by the safety benefits of the AD. We have made no change to the supplemental NPRM in this regard.

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 (73 FR 32253, June 6, 2008). 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 revises the previous NPRM (73 FR 32253, June 6, 2008), by proposing to revise the maintenance program to incorporate a revision to the Airworthiness Limitations Section of the MPD document.

This supplemental NPRM proposes to require a revision to certain operator maintenance documents to include new operational tests. Compliance with these tests is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these tests, the operator might not be able to accomplish the tests described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an AMOC according to the procedures specified in paragraph (j) of this AD. The request should include a description of changes to the required tests that will ensure the continued operational safety of the airplane.

Explanation of Change to Costs of Compliance

Since issuance of the previous NPRM (73 FR 32253, June 6, 2008), we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified labor rate.

Costs of Compliance

We estimate that this proposed AD would affect 676 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Cost per product	Cost on U.S. operators
Maintenance Program Revision.	1 work-hour × $85 per hour = $85	$85 per test	$57,460, per test.

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions or the optional terminating action specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2008–0618; Directorate Identifier 2007–NM–355–AD.

(a) Comments Due Date

We must receive comments by April 22, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 777–200, –200LR, –300, and –300ER series airplanes, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 2800, Aircraft Fuel System.

(e) Unsafe Condition

This AD was prompted by reports of two in-service occurrences on Model 737–400 airplanes of total loss of boost pump pressure of the fuel feed system, followed by loss of fuel system suction feed capability on one engine, and in-flight shutdown of the engine. We are issuing this AD to detect and correct failure of the engine fuel suction feed of the fuel system, which, in the event of total loss of the fuel boost pumps, could result in dual engine flameout, inability to restart the engines, and consequent forced landing of the airplane.

(f) Compliance

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

(g) Maintenance Program Revision

Within 90 days after the effective date of this AD: Revise the maintenance program to incorporate the Airworthiness Limitation (AWL) identified in Appendix 1 of this AD. The initial compliance time for accomplishing AWL No. AWL–28–101 is within 7,500 flight hours or 3 years after the effective date of this AD, whichever is first.

(h) No Alternative Actions, Intervals, and/or Critical Design Configuration Control Limitations (CDCCLs)

After accomplishing the revision required by paragraph (g) of this AD, no alternative actions (e.g., tests), intervals, or CDCCLs may be used unless the actions, intervals, or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j) of this AD.

(i) Credit for Incorporating Previous Maintenance Program Revision

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using AWL No. 28–AWL–101, Engine Fuel Suction Feed Operational Test, of Section D.2., AWLS—Fuel Systems of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622W001–9, Revision February 2012, of the Boeing 777 Maintenance Planning Data (MPD) Document, provided the revised ''interval'' specified in Appendix 1 of this AD is incorporated into the existing maintenance program within 90 days after the effective date of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(k) Related Information

(1) For more information about this AD, contact Sue Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6438; fax: 425–917–6590; email: *suzanne.lucier@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

APPENDIX 1

AWL No.	Task	Interval	Applicability	Description
28–AWL–101	ALI	7,500 FH or 3 years, whichever is first.	ALL	Engine Fuel Suction Feed Operational Test. An Engine Fuel Suction Feed Operational Test must be accomplished successfully on each engine individually. This test is required in order to protect against engine flameout during suction feed operations, and must meet the following requirements (refer to Boeing AMM 28–22–00): Fuel Tank Quantity Limitations: Engine No. 1 a. The Center Tank Fuel Quantity must not exceed 5,000 lbs (2,270 kg). b. The Main Tank No. 1 Fuel Quantity must be between 1,400 lbs–1,600 lbs (600 kg–800 kg). NOTE: Excess fuel can be transferred to Main Tank No. 2. Engine No. 2 a. The Center Tank Fuel Quantity must not exceed 5,000 lbs (2,270 kg). b. The Main Tank No. 2 Fuel Quantity must be between 1,400 lbs–1,600 lbs (600 kg–800 kg). NOTE: Excess fuel can be transferred to Main Tank No. 1. Test Procedural Limitations: 1. The Fuel Cross-Feed Valve must be CLOSED. 2. The APU Selector Switch must be OFF. 3. Idle Engine Warm-up time of minimum two minutes with Boost Pump ON. 4. Idle Engine Suction Feed (Boost Pump OFF) operation for a minimum of five minutes. NOTE: APU may be used to start the engines provided the Fuel Tank Quantity and Test Procedural Limitations are met. The test is considered a success if engine operation is maintained during the five-minute period and engine parameters (N1, N2, and Fuel Flow) do not decay relative to those observed with Boost Pump ON. A suction fee system that fails the operational test must be repaired or maintained, and successfully pass the Engine Suction Feed Operational Test prior to further flight.

Directorate Identifier 2007–NM–355–AD

Issued in Renton, Washington, on February 15, 2013.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–05202 Filed 3–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1052; Directorate Identifier 2012–CE–014–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for certain Cessna Aircraft Company (Cessna) Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H airplanes. That NPRM proposed to supersede an existing AD that currently requires an inspection of the engine oil pressure switch and, if applicable, replacement with an improved engine oil pressure switch. Since we issued the existing AD, we have received new reports of internal failure of the improved engine oil pressure switch, which could result in complete loss of engine oil with consequent partial or complete loss of engine power or fire. The NPRM proposed to increase the applicability of the AD and place a life-limit of 3,000 hours time-in-service (TIS) on the engine oil pressure switch, requiring replacement when the engine oil pressure switch reaches its life limit.

This action revises that NPRM by changing the applicable serial numbers ranges. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes. We are proposing this supplemental NPRM to correct the unsafe condition on these products.

DATES: We must receive comments on this supplemental NPRM by April 22, 2013.

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

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

For service information identified in this proposed AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; fax (316) 942–9006; Internet: *www.cessna.com/customer-service/technical-publications.html.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jeff Janusz, Sr. Propulsion Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, KS 67209; phone: (316) 946–4148; fax: (316) 946–4107; email: *jeff.janusz@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–2012–1052; Directorate Identifier 2012–CE–014–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We issued an NPRM to amend 14 CFR part 39 to include an AD that would apply to certain Cessna Aircraft Company Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H airplanes. That NPRM published in the **Federal Register** on October 2, 2012 (77 FR 60062). That NPRM proposed to supersede an existing AD that currently requires an inspection of the engine oil pressure switch and, if applicable, replacement with an improved engine oil pressure switch. Since we issued that AD, we received new reports of internal failure of the improved engine oil pressure switch, which could result in complete loss of engine oil with consequent partial or complete loss of engine power or fire. The NPRM proposed to increase the applicability of the existing AD and place a life-limit of 3,000 hours time-in-service (TIS) on the engine oil pressure switch, requiring replacement when the engine oil pressure switch reaches its life limit.

Actions Since Previous NPRM Was Issued

Since we issued the previous NPRM (77 FR 60062, October 2, 2012), the serial number applicability has been changed for Cessna Aircraft Company Models 172R, 172S, 182T, T182T, and 206H airplanes.

Comments

We gave the public the opportunity to comment on the previous NPRM. The following presents the comments received on the NPRM and the FAA's response to each comment.

Stated Maintenance Activity

Robert A. Hecht stated that he replaced the oil pressure switch on his 2000 Cessna 206H at 1,006 hours TIS because of light oil leaking from the case.

The commenter is making a pronouncement about maintenance activity on his airplane and offered no further explanation as to what his intent was.

Request for Replacement at Next Inspection

Stuart B. Harnden stated he believes the replacement of the oil switch should be mandatory at the next inspection, regardless of hours or condition of the oil pressure switch, since it cannot be predicted when a switch may fail.

We do not agree because we would expect to see oil pressure switches removed from service on condition anyway at whatever TIS they become unairworthy. The goal of the AD action is to remove all switches with more than 3,000 hours TIS, and, if they are removed earlier for condition, that is an acceptable maintenance practice and does not affect this rulemaking activity.

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 proposed AD would increase the applicability statement of the existing AD, require an inspection of the engine oil pressure switch and place a life limit of 3,000 hours TIS on the engine oil pressure switch. We are proposing this AD to correct the unsafe condition on these products.

Costs of Compliance

We estimate that this proposed AD affects 6,156 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of the airplane or engine records.	.5 work-hour × $85 per hour = $42.50	Not applicable	$42.50	$261,630
Inspection of the engine oil pressure switch installation.	.5 work-hour × $85 per hour = $42.50	Not applicable	42.50	261,630
Removal and replacement of the engine oil pressure switch and logbook entry.	.5 work-hour × $85 per hour = $42.50	$54	96.50	594,054

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2000–04–01, Amendment 39–11583 (65 FR 8649, February 22, 2000), and adding the following new AD:

Cessna Aircraft Company: Docket No. FAA–2012–1052; Directorate Identifier 2012–CE–014–AD.

(a) Comments Due Date

We must receive comments by April 22, 2013.

(b) Affected ADs

This AD supersedes AD 2000–04–01, Amendment 39–11583 (65 FR 8649, February 22, 2000).

(c) Applicability

This AD applies to Cessna Aircraft Company Models 172R, serial numbers (S/N) 17280001 through 17281618; 172S, S/N 172S8001 through 172S11256; 182S, S/N 18280001 through 18280944; 182T, S/N 18280945 through 18282357; T182T, S/N T18208001 through T18209089; 206H, S/N 20608001 through 20608349; and T206H, S/N T20608001 through T20609079; certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 7931, Engine Oil Pressure.

(e) Unsafe Condition

This AD was prompted by new reports of internal failure of the improved engine oil pressure switch, which could result in complete loss of engine oil with consequent partial or complete loss of engine power or fire. We are issuing this AD to increase the applicability of the AD and place a life-limit of 3,000 hours time-in-service (TIS) on the engine oil pressure switch, requiring replacement when the engine oil pressure switch reaches its life limit.

(f) Compliance

Comply with this AD within the compliance times specified, following Cessna Service Bulletin SB 07–79–01, dated January 29, 2007, unless already done.

(g) Actions

(1) At the next scheduled oil change, annual inspection, or 100-hour time-in-service (TIS) inspection after the effective date of this AD, whichever occurs later, but in no case later than 12 months after the effective date of this AD, inspect the engine oil pressure switch to determine if it is part-number (P/N) 77041 or P/N 83278.

(2) If after the inspection required in paragraph (g)(1) of this AD, P/N 77041 engine oil pressure switch is installed, before further flight, replace the engine oil pressure switch with a new, zero time, P/N 83278 engine oil pressure switch. Record the engine oil pressure switch part number, date, and airplane hours TIS in the airplane log book. The recorded engine oil pressure switch TIS will be used as the benchmark for calculation of the 3,000 hour TIS limit on the engine oil pressure switch.

(3) After the effective date of this AD, do not install a P/N 77041 engine oil pressure switch on any affected airplane.

(4) If after the inspection required in paragraph (g)(1) of this AD it is confirmed that P/N 83278 engine oil pressure switch is installed, through inspection of the airplane or engine logbooks determine the TIS of the engine oil pressure switch.

(5) If after the inspection required in paragraph (g)(1) of this AD you cannot positively identify the hours TIS on the P/N 83278 engine oil pressure switch, before further flight, replace the engine oil pressure switch with a new, zero time, P/N 83278 engine oil pressure switch. Record the engine oil pressure switch part number, date, and airplane hours in the airplane log book. The recorded engine oil pressure switch TIS will be used as the benchmark for calculation of the 3,000 hour TIS limit on the engine oil pressure switch.

(6) When the engine oil pressure switch is at or greater than 3,000 hours TIS or within 50 hours TIS after the effective date of this AD, whichever occurs later, and repetitively thereafter at intervals not to exceed 3,000

hours TIS on the P/N 83278 engine oil pressure switch, replace it with a new, zero time, P/N 83278 engine oil pressure switch. Record the engine oil pressure switch part number, date, and airplane hours in the airplane log book. The recorded engine oil pressure switch TIS will be used as the benchmark for calculation of the 3,000 hour TIS limit on the engine oil pressure switch.

(h) Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office.

(i) Related Information

(1) For more information about this AD, contact Jeff Janusz, Sr. Propulsion Engineer, Wichita ACO, FAA, 1801 Airport Road, Wichita, KS 67209 phone: (316) 946–4148; fax: (316) 946–4107; email: *jeff.janusz@faa.gov.*

(2) For service information identified in this AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; fax (316) 942–9006; Internet: *www.cessna.com/customer-service/technical-publications.html.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on February 27, 2013.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–05287 Filed 3–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0223; Directorate Identifier 2012–CE–049–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Pilatus Aircraft Ltd. Models PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6–A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC- 6/B2–H2, PC–6/B2–H4, PC–6/C–H2, and PC–6/C1–H2 airplanes that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as failure to inspect and maintain stabilizer-trim attachment components and the flap actuator could result in loss of control. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by April 22, 2013.

ADDRESSES: You may send comments by any of the following methods:

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

For service information identified in this proposed AD, contact PILATUS AIRCRAFT LTD., Customer Service Manager, CH–6371 STANS, Switzerland; telephone: +41 (0) 41 619 65 01; fax: +41 (0) 41 619 65 76; Internet: *http://www.pilatus-aircraft.com/#32.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@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–2013–0223; Directorate Identifier 2012–CE–049–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On December 28, 2010, we issued AD 2011–01–14, Amendment 39–16571 (76 FR 5647; February 1, 2011). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2011–01–14, (76 FR 5647; February 1, 2011), the airworthiness limitations of the airplane maintenance manual has been updated to include the flap actuator, which was not included when the limitations were initially created.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2012–0268, dated December 19, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> The mandatory instructions and airworthiness limitations applicable to the Structure and Components of the PC–6 are specified in the Aircraft Maintenance Manual (AMM) under Chapter 4 or in the Airworthiness Limitations Document (ALS), depending on the aeroplane model.

These documents include the maintenance instructions and/or airworthiness limitations developed by Pilatus Aircraft Ltd. and approved by EASA. Failure to comply with these instructions and limitations could potentially lead to an unsafe condition. To address this potentially unsafe condition EASA issued AD 2010–0176 to require implementation of maintenance instructions and/or airworthiness limitations in accordance with Pilatus PC–6 ALS issue 1, dated 14 May 2010 and Pilatus PC–6 AMM Chapter 4, issue 12, dated 14 May 2010.

Since that AD was issued, Pilatus Aircraft Ltd published Pilatus PC–6 AMM (Number 01975) Chapter 4, issue 16 and PC–6 ALS (Number 02334) issue 3 to introduce a threshold for replacement of previously not listed Flap Actuator.

For the reason described above, this AD retains the requirement of AD 2010–0176, which is superseded, and requires the implementation of more restrictive maintenance requirements and/or airworthiness limitation as specified in issue 16 of Chapter 4 of AMM and issue 3 of ALS. This AD also requires replacement of any Flap Actuator which, on the effective date of this AD, has accumulated or exceeded 7 years since new or since last overhaul.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Pilatus Aircraft Ltd. issued Chapter 04–00–00, Pilatus PC–6 B2–H2/B2–H4 Maintenance Manual, document No. 01975, Revision No. 16, dated July 31, 2012; and Pilatus PC–6 Airworthiness Limitations, Document No. 02334, Revision No. 3, dated July 31, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–16571 (76 FR 5647; February 1, 2011), and adding the following new AD:

Pilatus Aircraft Limited: Docket No. FAA–2013–0223; Directorate Identifier 2012–CE–049–AD.

(a) Comments Due Date

We must receive comments by April 22, 2013.

(b) Affected ADs

This AD supersedes AD number 2011–01–14, Amendment 39–16571 (76 FR 5647; February 1, 2011).

(c) Applicability

This AD applies to Pilatus Aircraft Ltd. Models PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6–A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, and PC–6/C1–H2 airplanes, all manufacturer serial numbers (MSN), and MSN 2001 through 2092, that are certificated in any category.

Note 1 of paragraph (c): For MSN 2001–2092, these airplanes are also identified as Fairchild Republic Company PC–6 airplanes, Fairchild Industries PC–6 airplanes, Fairchild Heli Porter PC–6 airplanes, or Fairchild-Hiller Corporation PC–6 airplanes.

(d) Subject

Air Transport Association of America (ATA) Code 5: Time Limits.

(e) Reason

This AD was prompted by inspection requirements of the stabilizer-trim attachment components that now include an additional inspection requirement for the flap actuator. We are issuing this proposed AD to update the maintenance program with new requirements and limitations.

(f) Actions and Compliance

(1) *For all affected Models PC–6/B2–H2 and PC–6/B2–H4:* Before further flight after the effective date of this AD, incorporate the maintenance requirements as specified in Chapter 04–00–00, Pilatus PC–6 B2–H2/B2–H4 Airplane Maintenance Manual (AMM); and Airworthiness Limitations, Document No. 01975, Revision No. 16, dated July 31, 2012; into your FAA-accepted maintenance program (maintenance manual).

(2) *For all affected Models PC–6 other than the Models PC–6/B2–H2 and PC–6/B2–H4:* Before further flight after the effective date of this AD, incorporate the maintenance requirements as specified in Pilatus PC–6 Airworthiness Limitations, Document No. 02334, Revision No. 3, dated July 31, 2012, into your FAA-accepted maintenance program.

(3) *For all Models PC–6 airplanes:* This AD provides a grace period for the initial replacement of the flap actuator (except part numbers 978.73.14.101 and 978.73.14.103) and replacement is required as indicated:

(i) *If the actuator has accumulated 3,150 hours or more time-in-service since new or overhaul, but does not have more than 8 years since new or overhaul:* Within 350 hours TIS after the effective date of this AD or 6 months after the effective date of this AD, whichever occurs first;

(ii) *If the actuator has accumulated 6.5 years or more since new or overhaul, but does not have more than 8 years since new or overhaul:* Within 350 hours TIS after the effective date of this AD or 6 months after the

effective date of this AD, whichever occurs first;

(iii) *If the actuator has accumulated more than 8 years since new or overhaul, but does not have 8.5 years or more since new or overhaul:* No later than accumulating 8.5 years hours since new or overhaul; or

(iv) *If the actuator has 8.5 years or more since new or overhaul:* Before further flight after the effective date of this AD.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

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

(h) Related Information

Refer to MCAI EASA AD No.: 2012–0268, dated December 19, 2012; Chapter 04–00–00, Pilatus PC–6 B2–H2/B2–H4 Airplane Maintenance Manual (AMM); and, Pilatus PC–6 Airworthiness Limitations, Document No. 02334, Revision No. 3, dated July 31, 2012; for related information. For service information related to this AD, contact Pilatus Aircraft Ltd., Customer Service Manager, CH–6371 STANS, Switzerland; telephone: +41 (0) 41 619 65 01; fax: +41 (0) 41 619 65 76; Internet: *http://www.pilatus-aircraft.com/#32.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on March 1, 2013.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–05292 Filed 3–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0204; Directorate Identifier 2012–NM–229–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 747–400 and 747–400F series airplanes. This proposed AD was prompted by reports of cracking in the outboard flange of the longeron extension fittings, which attach to the wing-to-body fairing support frame. This proposed AD would require repetitive inspections of the longeron extension fittings for cracking, and corrective actions if necessary. We are proposing this AD to detect and correct cracks in the longeron extension fittings, which can become large and adversely affect the structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by April 22, 2013.

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

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

For Boeing service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket 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: Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *Nathan.P.Weigand@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0204; Directorate Identifier 2012–NM–229–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 received reports that cracks were found in the outboard flanges of the

longeron extension fittings installed on the left and right sides of the airplane. Longeron extension fittings are installed on the fuselage under the wing-to-body fairing and attach the overwing longeron to the fuselage. The outboard flange of the fitting attaches to the wing-to-body fairing support frame web. Subsequent analysis by Boeing indicated that the cracks were caused by fatigue combined with preload stress from improper fit-up during assembly. A manufacturing process change that began at line number 1199 might have resulted in preloading the longeron extension fittings. We are proposing this AD to detect and correct cracks in the longeron extension fittings, which can become large and adversely affect the structural integrity of the airplane.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 747–53A2860, dated December 4, 2012. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2013–0204.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Information.''

The phrase ''related investigative actions'' might be used in this proposed AD. ''Related investigative actions'' are follow-on actions that (1) are related to the primary action, and (2) are actions that further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

In addition, the phrase ''corrective actions'' might be used in this proposed AD. ''Corrective actions'' are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Differences Between the Proposed AD and the Service Information

This proposed AD includes airplanes that are not included in the effectivity of Boeing Alert Service Bulletin 747–53A2860, dated December 4, 2012. That service bulletin defines actions for airplanes having line numbers 1199 through 1419 inclusive. Boeing recently reported an event that involved a cracked longeron extension fitting on the airplane having line number 1101. Based on this event we are expanding the airplane applicability in this proposed AD from airplanes having line numbers 1199 through 1419 inclusive to airplanes having line numbers 1076 through 1419 inclusive. We have coordinated this difference with Boeing.

Although Boeing Alert Service Bulletin 747–53A2860, dated December 4, 2012, specifies that operators may contact the manufacturer for the disposition of certain repair conditions, this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 41 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
High frequency eddy current inspection for cracking in longeron extension fittings.	32 work-hours × $85 per hour = $2,720, per inspection cycle.	$0	$2,720	$111,520, per inspection cycle.
Option to do preventative modification instead of repetitive inspections.	479 work-hours × $85 per hour = $40,715.	0	40,715	$1,669,315.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	464 work-hours × $85 per hour = $39,440	$0	$39,440

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures

the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2013–0204; Directorate Identifier 2012–NM–229–AD.

(a) Comments Due Date

We must receive comments by April 22, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–400 and 747–400F series airplanes, certificated in any category, line numbers 1076 through 1419 inclusive.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of cracking in the outboard flange of the longeron extension fittings, which attach to the wing-to-body fairing support frame. We are issuing this AD to detect and correct cracks in the longeron extension fittings, which can become large and adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Inspection of Longeron Extension Fitting

For all airplanes: Except as required by paragraphs (i)(1) and (i)(4) of this AD, at the time specified in table 1 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2860, dated December 4, 2012: Do a surface high frequency eddy current (HFEC) inspection of the left and right longeron extension fittings for cracking, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2860, dated December 4, 2012, except as required by paragraphs (i)(2) and (i)(3) of this AD. Do all applicable corrective actions before further flight. If no cracking is found, repeat the inspection thereafter at the intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2860, dated December 4, 2012, until a permanent repair, longeron extension fitting replacement, or preventative modification is done, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2860, dated December 4, 2012.

(h) Inspection of Temporary Repair and Corrective Actions

For airplanes on which a temporary repair as specified in Boeing Alert Service Bulletin 747–53A2860 has been done: At the times specified in table 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2860, dated December 4, 2012, do a surface HFEC inspection of the temporary repair of the longeron extension fittings for cracking, and all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2860, dated December 4, 2012, except as required by paragraph (i)(3) of this AD. Do all applicable corrective actions before further flight.

(i) Exceptions to Service Bulletin Specifications

The following exceptions apply to this AD.

(1) Where Boeing Alert Service Bulletin 747–53A2860, dated December 4, 2012, specifies a compliance time relative to the issue date of that service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Boeing Alert Service Bulletin 747–53A2860, dated December 4, 2012, specifies to contact Boeing for repair information: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

(3) For airplanes not identified in Boeing Alert Service Bulletin 747–53A2860, dated December 4, 2012: These airplanes are in Group 1 for the purposes of this AD and are required to do the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2860, dated December 4, 2012.

(4) Where Boeing Alert Service Bulletin 747–53A2860, dated December 4, 2012, specifies ''all airplanes,'' this means all airplanes identified in paragraph (c) of this AD.

(j) Optional Terminating Action

Doing the permanent repair, longeron extension fitting replacement, or preventative modification, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2860, dated December 4, 2012, terminates the repetitive inspection required by paragraph (g) of this AD.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(l) Related Information

(1) For more information about this AD, contact Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6428; fax: 425–917–6590; *email: Nathan.P.Weigand@faa.gov*.

(2) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206- 544–5000, extension 1; fax 206–766–

5680; Internet *https://www.myboeingfleet.com.* You may also review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on February 25, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–05189 Filed 3–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0268; Directorate Identifier 2011–NM–129–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for certain The Boeing Company Model 737–600, –700, –700C, –800, –900 and –900ER series airplanes. That NPRM proposed to require inspecting for a serial number that starts with the letters ''SAIC'' on the left- and right-side horizontal stabilizer identification plate; a detailed inspection for correct bolt protrusion and chamfer of the termination fitting bolts of the horizontal stabilizer rear spar, if necessary; inspecting to determine if certain bolts are installed, if necessary; and doing related investigative and corrective actions if necessary. That NPRM was prompted by reports of incorrectly installed bolts common to the rear spar termination fitting on the horizontal stabilizer. This action revises that NPRM by adding airplanes to the applicability. We are proposing this supplemental NPRM to prevent loss of structural integrity of the horizontal stabilizer attachment and loss of control of the airplane. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this supplemental NPRM by April 22, 2013.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket 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: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6440; fax: 425–917–6590; email: *nancy.marsh@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–2012–0268; Directorate Identifier 2011–NM–129–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We issued an NPRM to amend 14 CFR part 39 to include an AD that would apply to certain The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes. That NPRM published in the **Federal Register** on March 20, 2012 (77 FR 16188). That NPRM proposed to require inspecting for a serial number that starts with the letters ''SAIC'' on the left- and right-side horizontal stabilizer identification plate; a detailed inspection for correct bolt protrusion and chamfer of the termination fitting bolts of the horizontal stabilizer rear spar, if necessary; inspecting to determine if certain bolts are installed, if necessary; and doing related investigative and corrective actions if necessary.

Actions Since Previous NPRM (77 FR 16188, March 20, 2012) Was Issued

Since we issued the previous NPRM (77 FR 16188, March 20, 2012), we have determined that horizontal stabilizers are frequently rotated on the fleet and could be installed on any Model 737–600, –700, –700C, –800, and –900 airplane, including airplanes outside the applicability of the NPRM. Therefore, we have determined that the identified unsafe condition may exist on all Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes.

Comments

We gave the public the opportunity to comment on the previous NPRM (77 FR 16188, March 20, 2012). The following presents the comments received on the NPRM and the FAA's response to each comment.

Support for the Previous NPRM (77 FR 16188, March 20, 2012)

United Airlines stated it supports the previous NPRM (77 FR 16188, March 20, 2012).

Request To Revise Applicability

Southwest Airlines (Southwest) requested that we revise the applicability of the previous NPRM (77 FR 16188, March 20, 2012). Southwest suggested revising the applicability of the NPRM to identify serial numbers of the affected horizontal stabilizers, or to open the applicability of the NPRM to all airplanes, since the applicability listed in the previous NPRM and the effectivity of the service information do not account for horizontal stabilizers interchanged between airplanes.

We agree with the commenter's request for the reasons described in ''Actions Since Previous NPRM (77 FR 16188, March 20, 2012) was Issued.'' We have revised paragraph (c) of this supplemental NPRM to include all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, because the horizontal stabilizers can be rotated among airplanes. This change has been coordinated with Boeing.

We also have added new paragraph (k) to this supplemental NPRM (and re-identified subsequent paragraphs) to prohibit installation of a horizontal stabilizer on any airplane included in the applicability of this AD unless the horizontal stabilizer has been inspected and applicable corrective actions have been done and no incorrect bolt protrusion and no incorrect chamfer of the termination fitting fasteners have been found.

Request To Improve Inspection Procedures

Southwest and TUIfly Fluggesellschaft mbH requested we revise the previous NPRM (77 FR 16188, March 20, 2012) to permit operators to demonstrate compliance for inspecting the horizontal stabilizer to determine the serial number by means of a review of the manufacturer's delivery documentation for the accomplishment of Boeing Service Bulletin 737–55–1090, dated March 30, 2011. TUIfly Fluggesellschaft said that the delivery paperwork received with the airplane includes the serial number of the stabilizers installed on the airplane at the time of delivery.

We agree that the manufacturer's delivery documentation identifies the serial number of the horizontal stabilizer assembly installed on the airplane at the time of delivery. However, as discussed in the previous comment, horizontal stabilizers are rotable parts, so in addition to the delivery records, the airplane maintenance records must also be used to positively identify the current stabilizer installed on the airplane. We have added wording to paragraph (g) of this supplemental NPRM to state that a review of manufacturer delivery and operator maintenance records is acceptable if that review conclusively determines the serial number of the horizontal stabilizer.

STC Winglet Comment

Aviation Partners Boeing stated that the installation of winglets per Supplemental Type Certificate (STC) ST00830SE does not affect accomplishment of the proposed requirements.

We have added paragraph (c)(2) to this supplemental NPRM to state that installation of STC ST00830SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/408E012E008616A7862578880060456C?OpenDocument&Highlight=st00830se*) does not affect the ability to accomplish the actions proposed by this supplemental NPRM. Therefore, for airplanes on which STC ST00830SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of Section 39.17 of the Federal Aviation Regulations (14 CFR 39.17). For all other AMOC requests, the operator must request approval of an AMOC in accordance with the procedures specified in paragraph (l) of this supplemental NPRM.

Request To Revise Applicability To Include Bolt Type BACB30XL

American Airlines (American) requested that the inspections and corrective actions specified in Boeing Service Bulletin 737–55–1090, dated March 30, 2011, be used to address the inspections and corrective actions for the alternative bolt type part number (P/N) BACB30XL that may be installed at the same locations as bolt type P/N BACB30US14K() or BACB30US16K(). American indicated the existing service information does not provide corrective actions for the alternative bolt type P/N BACB30XL that may be installed in the locations requiring bolt inspection.

We disagree with the request because Boeing Service Bulletin 737–55–1090, dated March 30, 2011, provides specific inspection criteria and measurements that are applicable only to the bolt type P/N BACB30US. Those criteria cannot be directly applied to the alternative bolt types. The manufacturer plans to revise that service bulletin to include corrective actions for the alternative bolt type P/N BACB30XL. We will review the service bulletin and may approve the revised service instructions as an AMOC to the AD, when the revised service bulletin is available. We have not changed the supplemental NPRM in this regard.

Request To Allow Alternative Service Information

Oman Air (Oman) requested that credit for prior accomplishment of Boeing Service Letters 737–SL–55–027, dated April 12, 2007, and 737–SL–55–028, dated April 26, 2007, be given as an alternative to the accomplishment of the inspections and corrective actions specified in Boeing Service Bulletin 737–55–1090, dated March 30, 2011, which are required by paragraphs (g), (h), and (k) of the previous NPRM (77 FR 16188, March 20, 2012).

We disagree. Boeing Service Letter 737–SL–55–027, dated April 12, 2007, and Boeing Service Letter 737–SL–55–028, dated April 26, 2007, were published prior to the identification of the safety issues created by the missing washers. Although these service letters provide instructions for the replacement of any missing washers, they do not address the potential durability issues created by the unclamped joint that are addressed by the repetitive inspections of the structure, as specified in Boeing Service Bulletin 737–55–1090, dated March 30, 2011. The commenter did not provide any data to substantiate the durability of the corrective actions specified in those service letters. This proposal could be considered if data were provided to substantiate the request, using the procedures defined in paragraph (l) of this supplemental NPRM for requesting approval of an AMOC. We have not changed the supplemental NPRM in this regard.

Revision to Service Bulletin

The Boeing Company (Boeing) stated it will revise Boeing Service Bulletin 737–55–1090, dated March 30, 2011, to instruct operators to inspect for bolt types other than BACB30US, to provide repair methods for bolt configurations other than BACB30US, and to revise Figure 1 of that service bulletin to correctly identify the serial number location in lieu of the part number location.

Boeing did not request a specific change to the previous NPRM (77 FR 16188, March 20, 2012). We already specified the correct location of the serial number in paragraph (j) of the previous NPRM. We also already specified that an inspection for bolt types other than part number BACB30US14K() or BACB30US16K() is required for paragraph (g) of the previous NPRM.

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 these same type designs. Certain changes described above expand the scope of the original NPRM (77 FR 16188, March 20, 2012). 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 inspecting for a serial number that starts with the letters ''SAIC'' on the left- and right-side horizontal stabilizer identification plate; a detailed inspection for correct bolt protrusion and chamfer of the termination fitting bolts of the horizontal stabilizer rear spar, if necessary; inspecting to determine if certain bolts are installed, if necessary; and doing related investigative and corrective actions if necessary.

Costs of Compliance

We estimate that this proposed AD affects 1,147 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	1 work-hour × $85 per hour = $85 per inspection cycle.	$0	$85	$97,495
Replacement of bolts	17 work-hours × $85 per hour = $1,445	1,530	2,975	3,412,325

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions (contacting Boeing and repairing cracks or damage) specified in this supplemental NPRM.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2012–0268; Directorate Identifier 2011–NM–129–AD.

(a) Comments Due Date

We must receive comments by April 22, 2013.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category.

(2) Installation of Supplemental Type Certificate (STC) ST00830SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/408E012E008616A7862578880060456C?OpenDocument&Highlight=st00830se*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST00830SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 55: Stabilizer.

(e) Unsafe Condition

This AD was prompted by reports of incorrectly installed bolts common to the rear spar termination fitting of the horizontal stabilizer. We are issuing this AD to prevent loss of structural integrity of the horizontal stabilizer attachment and loss of control of the airplane.

(f) Compliance

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

(g) Inspecting the Horizontal Stabilizer and Corrective Actions

Except as provided by paragraph (i) of this AD, at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–55–1090, dated March

30, 2011: Do an inspection for a serial number that starts with the letters ''SAIC'' on the identification plates of the left- and right-side horizontal stabilizers, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–55–1090, dated March 30, 2011. A review of manufacturer delivery and operator maintenance records is acceptable to make the determination specified in this paragraph if the serial number can be conclusively identified from that review.

(1) If a serial number starting with the letters ''SAIC'' is found on a horizontal stabilizer identification plate: Except as provided by paragraph (i) of this AD, at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–55–1090, dated March 30, 2011, do a detailed inspection for correct bolt protrusion and correct chamfer of the termination fitting bolts of the horizontal stabilizer rear spar, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–55–1090, dated March 30, 2011. Concurrently with the detailed inspection, inspect to determine if bolts other than part number (P/N) BACB30US14K() or BACB30US16K(), as applicable, are installed. Before further flight, do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–55–1090, dated March 30, 2011.

(2) If no SAIC serial number is found, no further action is required by this AD.

(h) High Frequency Eddy Current (HFEC) and Ultrasonic Inspections of Termination Fitting and Repair

For any location where a new bolt having a P/N BACB30US14K() is installed due to damage found during any inspection required by paragraph (g) of this AD: Except as provided by paragraph (i) of this AD, at the times specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–55–1090, dated March 30, 2011, do HFEC and ultrasonic inspections for cracking of the forward and aft sides of the termination fitting, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–55–1090, dated March 30, 2011. If any crack is found in any termination fitting: Before further flight, repair in accordance with the procedures specified in paragraph (l) of this AD. Repeat the HFEC and ultrasonic inspections thereafter at intervals not to exceed 3,500 flight cycles.

(i) Exception to Compliance Time

Where Boeing Service Bulletin 737–55–1090, dated March 30, 2011, specifies a compliance time ''after the original issue date on the service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(j) Exceptions to Service Bulletin

(1) Where Figure 1 of Boeing Service Bulletin 737–55–1090, dated March 30, 2011, points to the location of a part number rather than the serial number, this AD requires an inspection for an identification plate with a serial number that starts with the letters ''SAIC.''

(2) If, during any inspection required by paragraphs (g) and (h) of this AD, any bolt other than P/N BACB30US14K() or BACB30US16K(), as applicable, is found: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(k) Parts Installation Limitation

As of the effective date of this AD, no person may install a horizontal stabilizer on any airplane included in the applicability of this AD unless it has been inspected and any applicable corrective actions done using the procedures specified in paragraph (g) of this AD.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(m) Related Information

(1) For more information about this AD, contact Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6440; fax: 425–917–6590; email: *nancy.marsh@faa.gov*.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on February 26, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–05328 Filed 3–6–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–B–1187]

Proposed Flood Elevation Determinations for Sussex County, Delaware, 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 Sussex County, Delaware, and Incorporated Areas.

DATES: The proposed rule published April 6, 2011 (76 FR 19006) is withdrawn as of March 7, 2013.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1187, 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 6, 2011, FEMA published a proposed rulemaking at 76 FR 19006, proposing flood elevation determinations along one or more flooding sources in Sussex County, Delaware. 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.

Roy Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–05316 Filed 3–6–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–B–1145]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On October 7, 2010, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. On September 11, 2012, a correction to that original notice was published in the **Federal Register.** This notice provides corrections to that initial table and the correction notice, to be used in lieu of the information published at 75 FR 62061 and at 77 FR 55785. The table provided here represents the flooding sources, location of referenced elevations, effective and modified elevations, and communities affected for Schuylkill County, Pennsylvania (All Jurisdictions). Specifically, it addresses the following flooding sources: Good Spring Creek, Little Schuylkill River, Mahanoy Creek, Schuylkill River, and West Branch Schuylkill River.

DATES: Comments are to be submitted on or before June 5, 2013.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1145, 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: 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 62061, in the October 7, 2010, issue of the **Federal Register,** FEMA published a table under the authority of 44 CFR 67.4. Corrections to that table were subsequently published at 77 FR 55785 in the September 11, 2012 issue of the **Federal Register** under the authority of 44 CFR 67.4. The corrected table, entitled ''Schuylkill County, Pennsylvania, (All Jurisdictions)'' addressed the following flooding sources: Good Spring Creek, Little Schuylkill River, Mahanoy Creek, Schuylkill River, and West Branch Schuylkill River. That table contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, and/or communities affected for the flooding source Schuylkill River. In addition, several of the map repository addresses and the community name of the Borough of Middleport included in the notice were incorrect. In this notice, FEMA is publishing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published.

In proposed rule FR Doc. 12–22302, beginning on page 55785 in the issue of September 11, 2012, make the following correction. On pages 55785 and 55786, correct the table to read 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)		Communities affected
		Effective	Modified	
Schuylkill County, Pennsylvania (All Jurisdictions)				
Good Spring Creek	Approximately 1,580 feet upstream of Locust Street	None	+810	Township of Frailey.
	Approximately 977 feet upstream of Spruce Street	None	+815	
Little Schuylkill River	Approximately 1,750 feet downstream of the State Route 895 bridge.	None	+548	Township of East Brunswick.
	At the upstream side of the railroad bridge	None	+560	
Mahanoy Creek	Approximately 0.71 mile upstream of Rice Road	None	+781	Township of Butler.
	Approximately 560 feet upstream of the railroad bridge.	None	+811	
Schuylkill River	Approximately 1,349 feet upstream of Mount Carbon Arch Road.	None	+594	Borough of Mechanicsville, Borough of Palo Alto.
	Approximately 100 feet upstream of Coal Street	None	+631	

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	
Schuylkill River	An area bound by a point approximately 31 feet south of State Route 209; a point approximately 618 feet south of State Route 209; and a point approximately 639 feet southwest of State Route 209.	None	+722	Borough of Middleporrt.
Schuylkill River	An area bound by a point approximately 475 feet northwest of State Route 209; a point approximately 472 feet northeast of State Route 209; and a point approximately 367 feet south of State Route 209.	None	+733	Borough of Middleport.
Schuylkill River	Approximately 0.5 mile downstream of Franklin Street.	None	+747	Township of Schuylkill.
	Approximately 0.4 mile downstream of Franklin Street.	None	+748	
West Branch Schuylkill River	Approximately 1,582 feet upstream of East Sunbury Street.	None	+702	Township of Branch, Township of New Castle, Township of Norwegian.
	Approximately 169 feet upstream of the intersection of Greenbury Road and State Route 4002.	None	+848	

* 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

Borough of Mechanicsville
Maps are available for inspection at the Mechanicsville Borough Hall, 1342 Pottsville Street, Pottsville, PA 17901.

Borough of Middleport
Maps are available for inspection at the Borough Hall, 27 Washington Street, Middleport, PA 17953.

Borough of Palo Alto
Maps are available for inspection at the Borough Hall, 142 East Bacon Street, Palo Alto, PA 17901.

Township of Branch
Maps are available for inspection at the Branch Township Municipal Building, 25 Carnish Street, Pottsville, PA 17901.

Township of Butler
Maps are available for inspection at the Butler Township Municipal Building, 211 Broad Street, Ashland, PA 17921.

Township of East Brunswick
Maps are available for inspection at the East Brunswick Township Municipal Building, 55 West Catawissa Street, New Ringgold, PA 17960.

Township of Frailey
Maps are available for inspection at the Frailey Township Municipal Building, 23 Maryland Street, Donaldson, PA 17981.

Township of New Castle
Maps are available for inspection at the New Castle Township Municipal Building, 248–250 Broad Street, Saint Clair, PA 17970.

Township of Norwegian
Maps are available for inspection at the Norwegian Township Municipal Building, 506 Maple Avenue, Mar Lin, PA 17951.

Township of Schuylkill
Maps are available for inspection at the Schuylkill Township Municipal Building, 675 Walnut Street, Mary-D, PA 17952.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Roy Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–05309 Filed 3–6–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Parts 204 and 206

[Docket ID FEMA–2013–0004]

RIN 1660–AA78

Disaster Assistance; Fire Management Assistance Grant (FMAG) Program—Deadline Extensions and Administrative Corrections

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: FEMA proposes to revise its Fire Management Assistance Grant (FMAG) program regulations to lengthen the potential extension for the grantee's submission of its grant application to FEMA from up to 3 months to up to 6 months. FEMA also proposes to lengthen the potential extension for a subgrantee to submit a project worksheet from up to 3 months to up to 6 months. These proposed deadline extensions provide increased flexibility to applicants who may benefit from additional time to prepare the documentation necessary to support a grant application and may reduce or eliminate financial losses due to delayed invoices by third parties that exceed the maximum 3-month deadline extension. In addition, FEMA proposes to exempt project worksheets claiming only administrative costs from the $1,000 minimum. FEMA also proposes to make additional minor administrative changes to its FMAG regulations to reflect current statutory and regulatory requirements and clarify grant application procedures.

DATES: Comments must be submitted by May 6, 2013.

ADDRESSES: You may submit comments, identified by Docket ID FEMA–2013–0004, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail/Hand Delivery/Courier: Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472–3100.

Instructions: All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Notice that is available via a link on the homepage of *www.regulations.gov.*

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov,* click on ''Advanced Search,'' then enter ''FEMA–2013–0004'' in the ''By Docket ID'' box, then select ''FEMA'' under ''By Agency,'' and then click ''Search.'' Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Regulatory Affairs Division, 500 C Street SW., Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: William Roche, Director, Public Assistance Division, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472–3100, (phone) 202–212–2340, or (email) *William.Roche@dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Fire Management Assistance Grant (FMAG) Program is authorized by section 420 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act [1] (Stafford Act). Section 420 authorizes the President to provide assistance, including grants, equipment, supplies, and personnel to any State or local government [2] for the mitigation, management, and control of any fire on public or private forest land or grassland that threatens destruction that would constitute a major disaster.[3]

In order to receive funding for a fire management assistance grant (FMAG), a State [4] must submit a request for an FMAG declaration. See 44 CFR 204.22. If FEMA approves the request and issues the declaration, the grantee [5] may begin preparing a grant application package for submission to the FEMA Regional Administrator. State agencies, Tribal governments, and local governments interested in applying for FMAG subgrants must submit a Request for Fire Management Assistance to the grantee. Once FEMA determines that the subgrantee meets the eligibility criteria, FEMA Regional staff begin to work with the grantee and local staff to prepare project worksheets. See 44 CFR 204.52(b). The project worksheet identifies actual costs incurred by the subgrantee or grantee as a result of firefighting activities, and is the mechanism by which FEMA reimburses eligible costs.

Under the FMAG program, certain administrative costs are reimbursable. Grantees and subgrantees may claim direct costs (i.e., those costs directly attributable to a particular project) associated with requesting, obtaining, and administering a grant for a declared fire, including regular and overtime pay and travel expenses for permanent, reassigned, temporary, and contract employees who assist in administering the fire management assistance grant. Other direct administrative costs incurred by the grantee or subgrantee, such as equipment and supply purchases, may be eligible, but must be reviewed by the grantee and FEMA Regional Administrator. Indirect costs incurred by the grantee during the administration of a grant are allowed in accordance with the provisions of 44 CFR part 13 and OMB Circular A–87; subgrantees may not claim indirect administrative costs.

To be eligible for reimbursement, costs reported on project worksheets must total $1,000 or more. 44 CFR 204.52(c)(5).

Subgrantees must submit all of their project worksheets to the grantee for review. The grantee determines the deadline for subgrantees to submit completed project worksheets, but the

[1] Disaster Relief Act of 1974, Public Law 93–288, section 417, 88 Stat. 158 (1974), redesignated as section 420 by the Stafford Act, Public Law 100–107, section 106(j), 102 Stat. 4705 (1988); codified as amended at 42 U.S.C. 5187.

[2] Disaster Mitigation Act of 2000, Public Law 106–390, section 303, 42 U.S.C. 5121, added ''local government'' to section 420 of the Stafford Act. Section 102(7) of the Stafford Act includes ''an Indian tribe or authorized tribal organization, or Alaska Native Village or organization'' in its definition of ''local government.''

[3] A major disaster under the Stafford Act is any natural catastrophe or, regardless of cause, any fire, flood, or explosion which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

[4] Pursuant to FEMA regulations at 44 CFR 204.22, only the Governor of a State or the Governor's Authorized Representative can request an FMAG declaration.

[5] The grantee is usually a State; however, an Indian Tribal government may also be the grantee, in which case it takes on the same responsibilities as the State. See 44 CFR 204.3.

deadline must be no later than 6 months from the close of the incident period.[6] At the request of the grantee, the Regional Administrator may grant an extension of up to 3 months for the submission of the project worksheet. The grantee must include a justification in its request for an extension. See 44 CFR 204.52(c).

The grantee submits the subgrantee project worksheets to the FEMA Regional Administrator as part of its grant application. See 44 CFR 204.51(b)(4) and 204.52(c). The grantee must submit its grant application within 9 months of the FMAG declaration. Upon receipt of a written request from the grantee, the Regional Administrator may grant an extension for up to 3 months. The grantee's request must include a justification for the extension. See 44 CFR 204.51(a).

II. Discussion of the Rule

A. Deadline Extensions

FEMA proposes to revise 44 CFR 204.52(c)(3) to allow the Regional Administrator to grant up to a 6-month extension for a subgrantee to submit the project worksheet. The current regulations allow for a maximum 3-month extension. In addition, FEMA proposes to lengthen the 3-month deadline extension for the grantee's submission of its grant application to FEMA in 44 CFR 204.51(a)(2) to a maximum 6-month extension.

As part of its application for a subgrant, a subgrantee must submit a project worksheet and its supporting documentation. The grantee then submits these project worksheets as part of its grant application. Any delays in compiling, organizing, and submitting invoices and billings can hinder a grantee's or subgrantee's ability to meet established deadlines. Financial losses may result when billable services and equipment employed in fire-suppression and related activities are not identified due to time constraints. FEMA proposes allowing an extension of up to 6 months to help alleviate some of the time pressure of completing necessary documentation following an FMAG declaration.

When the FMAG regulations were originally issued in 2001, the time requirements to gather and verify required documentation were informed estimates. Experience has shown that additional time is often necessary to complete these tasks. In practice, many States need to request an extension due to delays in obtaining costs, as documented on project worksheets, and a number of those States do not meet the deadline even with the 3-month extension.

There are several reasons for the need for additional time. There has been an overall increase in the number of fires and a decrease in the number of personnel available to gather and verify documents such as timesheets, equipment usage, supplies, and other resources. The longer fire seasons place greater demands on personnel, resulting in delays in compiling documentation as resources are employed for longer periods in support of fire-fighting operations. Wildfires occur without notice, and may spread and remain uncontrolled for a long time. The people, equipment, and other resources necessary to combat such fires are sent immediately and may involve numerous agencies, various political/municipal divisions, and numerous public and private organizations. Resources are tracked during fire suppression operations, but the task of reconstructing when and what equipment and resources were utilized for fire suppression efforts can be complex and time consuming. This is more pronounced when operations against multiple fires have been conducted, as documentation must be reviewed to ensure the service and equipment is billed toward the correct fire. This reconstruction must be done for proper preparation of the project worksheet. The proposed deadline extension will provide increased flexibility to subgrantees and grantees, who may benefit from additional time to prepare project worksheets and assemble the grant application package, and may reduce or eliminate financial losses due to delayed invoices by third parties.

B. Technical Changes To Clarify When Subgrantees Apply to the FMAG Program

Section 204.52(a) currently states that ''State, local, and tribal governments interested in applying for subgrants *under an approved fire management assistance grant* must submit a Request for Fire Management Assistance to the Grantee in accordance with State procedures and timelines.'' (emphasis added) FEMA proposes to remove ''under an approved fire management assistance grant'' from this paragraph in order to clarify that subgrants are actually submitted *before* a fire management assistance grant is approved. That is, when the grantee receives all of the subgrantee project worksheets, it submits them in a package to FEMA for approval as part of its grant application. This revision is not a substantive change to the FMAG Program.

In 44 CFR 204.52(c)(1), the regulations currently state that applicants should submit all project worksheets through the grantee for approval and transmittal to the Regional Administrator as amendments to the State's application. FEMA proposes to change the term ''amendments to'' to ''part of'' the State's application. This proposed change clarifies that the grantee submits the subgrantee project worksheets along with its grant application. This revision is not a substantive change to the FMAG Program.

C. Technical Change Regarding Submission of the Grant Application

The regulations currently state that States ''should'' submit their grant applications within 9 months of the declaration. See 44 CFR 204.51(a)(2). FEMA proposes to change the word ''should'' to ''must'' to clarify that it is a requirement, and not an option, for States to submit their grant applications within 9 months of the declaration in order to receive FMAGs. This revision is in keeping with the regulatory scheme which allows for an extension to the deadline. If the deadline were optional, there would be no need for an extension provision. This revision is not a substantive change to the FMAG Program, as FEMA currently treats the 9-month deadline as mandatory, and approves requests for extensions on a regular basis.

D. Requirement That the Request for a Grantee's Time Extension To Submit the Project Worksheet Be in Writing

In 44 CFR 204.52, FEMA proposes to add that a grantee's request and justification for a time extension to submit the project worksheet must be in writing. This is a nonsubstantive change that mirrors the requirement in 44 CFR 204.51 that the grantee must provide justification in writing for its request for a time extension to submit the grant application. FEMA currently requires the request and justification to be in writing; therefore this is not a substantive change.

E. Technical Change To Clarify Project Worksheet Deadline and Extension

In 44 CFR 204.52(c)(4), FEMA proposes to revise the paragraph to read that project worksheets will not be accepted after the deadline in paragraph (c)(2) has expired, or, if applicable, after an extension specified in paragraph (c)(3) has expired. This is a nonsubstantive change that clarifies that the deadline is required but an extension may be requested and

[6] The incident period is the time interval during which the declared fire occurs.

granted. It does not reflect any change to the FMAG Program.

F. Elimination of the $1,000 Project Worksheet Minimum for Administrative Costs

In 44 CFR 204.52(c)(5), FEMA proposes to revise the paragraph to indicate that the $1,000 project worksheet minimum does not apply to project worksheets that only request reimbursement for either grantee or subgrantee allowable administrative costs as defined in 44 CFR 204.63. This is a substantive change. Currently, FEMA does not allow reimbursement for administrative costs if the applicant submits them on a project worksheet that totals less than $1000. This proposed revision would allow for reimbursement for those costs. This ensures that grantees and subgrantees can be reimbursed for all eligible administrative expenses.

G. Technical Change To Clarify That Administrative Costs Under FMAG Are Not Subject to Management Cost Requirements

FEMA proposes to specify in 44 CFR 204.63 that allowable costs for the direct and indirect administration of an FMAG are only subject to part 13 and not to 44 CFR part 207. This is a nonsubstantive change that clarifies current regulatory authority; it does not reflect any change to the FMAG program.

H. Technical Change To Conform to the Statutory Requirement That the Fire or Fire Complex be on Public or Private Forest Land or Grassland

FEMA proposes to specify in 44 CFR 204.21(a) that the fire or fire complex must be on public or private forest land or grassland in order for a State to receive a fire declaration. FEMA inadvertently omitted this requirement from the regulations; the requirement is mandated by section 420 of the Stafford Act. In practice, FEMA has been meeting this requirement and therefore the proposed revision is not substantive; it does not reflect any change to the FMAG program.

I. Nomenclature

1. Office of Management and Budget (OMB) Form Numbers

FEMA proposes to remove Office of Management and Budget (OMB) approved form numbers that appear throughout 44 CFR part 204. Throughout 44 CFR part 204, FEMA refers to forms such as the Standard Form (SF) 424, Request for Federal Assistance, and FEMA Form 90–91, for the project worksheet. FEMA proposes to remove the form numbers and refer only to the title of the form, because the form numbers may change as OMB approves revised forms in the future. This is a nonsubstantive change.

2. Definitions

FEMA proposes to remove the definitions of ''FEMA Form 90–91'' and ''Standard Form (SF) 424'' because FEMA is proposing to remove all references to OMB form numbers in this regulation. Therefore, these definitions are no longer necessary. FEMA also proposes to change the title of the definition of ''Request for Federal Assistance'' to ''Application for Federal Assistance'' to reflect the proper title of this form.

FEMA proposes to remove the definition of ''we, our, us''; those terms refer to ''FEMA'' throughout part 204. However, FEMA is proposing to change all such references in part 204 to ''FEMA''. Therefore, this definition would no longer be necessary.

Finally, FEMA proposes to remove the words ''in block 13'' from the definition of ''performance period'' since the format and numbering of the form may change in the future. By removing ''in block 13,'' FEMA will not need to revise the regulation if the format and numbering of the form changes.

3. Removal of the Word ''Including'' in 44 CFR 204.42(b)(1)

FEMA proposes to remove the word ''including'' in 44 CFR 204.42(b)(1). Section 204.42(b) lists six separate categories of costs that FEMA considers eligible equipment and supplies costs. The use of the word ''including'' after the first category is a typographical error.

I. Removal of Part 206, Subpart L—Fire Suppression Assistance

FEMA proposes to remove subpart L, Fire Suppression Assistance, from part 206, Federal Disaster Assistance, because it is no longer necessary. The Disaster Mitigation Act of 2000 established the Fire Management Assistance Grant Program under Section 420 of the Stafford Act. The Fire Management Assistance Grant Program replaced the Fire Suppression Assistance Program. Part 204 of 44 CFR contains the current regulations for fire assistance authorized by section 420 of the Stafford Act.

III. Regulatory Analysis

A. Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

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

Summary

This rule does not impose mandatory costs on grantees and subgrantees. This rule does provide Regional Administrators increased flexibility to assist grantees and subgrantees who submit FMAG applications and warrant an extension. In addition, the exemption from the $1,000 project worksheet minimum would allow grantees and subgrantees not previously reimbursed for eligible program administrative expenses to receive additional compensation from FEMA and the Disaster Relief Fund. FEMA estimates this exemption would transfer between $10,000 and $50,000 in administrative costs over the next ten years (undiscounted) from grantees and subgrantees to FEMA.

Total Costs and Benefits of This Rule

There are no direct monetary costs associated with the increased extensions identified in the proposed rule. The cost of existing requirements (i.e., grant application submission) has the potential to be shifted, but not changed, by this rule. However, an extension may indirectly impact a grantee's or subgrantee's cash flow. For instance, if funds needed to reimburse fire suppression services (per a mutual aid fiscal agreement) are delayed due to an extension, then a grantee would have to use alternative means to avoid a budgetary shortfall. Regardless, it is the grantee's choice whether or not to apply for an extension and the grantee would need to consider if it was more beneficial to expend extra efforts to submit its FMAG application without an extension or to find alternative means to

cover any associated shortfalls. Based on previous FMAG application submittals, FEMA expects approximately twenty 6-month grantee extensions to be granted over the next 10 years. As is current practice (44 CFR 204.52(c)(3)), subgrantee extensions are at the request of the grantee. Our estimate of grantee extensions includes any subgrantee extension requests that may be included as part of the grantee's request. A grantee request may cover multiple subgrantee extensions.

The exemption from the $1000 project worksheet minimum, for those project worksheets submitted only to claim administrative costs, would transfer eligible administrative costs from grantees and subgrantees to FEMA and the Disaster Relief Fund. This would allow grantees and subgrantees not previously reimbursed for eligible program administrative expenses to receive compensation. FEMA subject matter experts from FEMA's Recovery Directorate estimate an average of 1 to 5 such project worksheets would be submitted a year. FEMA assumes for this analysis that the cost of such project worksheets to be $1,000. The resulting total additional transfer to grantees and subgrantees, over 10 years, ranges between $10,000 and $50,000 (undiscounted).

Benefits of the proposed rule would include increased flexibility to grantees and subgrantees for submitting their respective applications. A longer application period may also allow applicants to use lengthier but more cost efficient grant application preparation methods. The proposed rule would also more accurately reflect the operational and administrative demands of the FMAG grant process. In addition, the proposed rule's nonsubstantive modifications would improve regulatory clarity.

Retrospective Review

To facilitate the periodic review of existing regulations, Executive Order 13563 requires agencies to consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. The Executive Order requires agencies to issue a retrospective review plan, consistent with law and the agency's resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives. Review of FEMA's existing FMAG regulations revealed that they could be modified to provide for greater flexibility for FEMA to account for extenuating circumstances that may delay applications. Therefore, FEMA is increasing available extension times by 3 months for both grantee and subgrantee FMAG submissions. In addition, FEMA has decided to expand coverage of administrative costs by exempting the $1000 project worksheet minimum for those project worksheets submitted only to claim eligible program administrative costs.

B. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), and section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 note) require that special consideration be given to the effects of proposed regulations on small entities. The RFA mandates that an agency conduct an RFA analysis when an agency is ''required by section 553 * * * to publish general notice of proposed rulemaking for any proposed rule.'' See 5 U.S.C. 603(a). As the proposed rule imposes no direct monetary cost, FEMA certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act (NEPA)

Section 102 of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., as amended, requires agencies to consider the impacts in their decisionmaking on the quality of the human environment. The Council on Environmental Quality's procedures for implementing NEPA, 40 CFR part 1500 et seq., require Federal agencies to prepare Environmental Impact Statements (EIS) for major Federal actions significantly affecting the quality of the human environment. Each agency can develop categorical exclusions to cover actions that typically do not trigger significant impacts to the human environment individually or cumulatively. Agencies develop environmental assessments (EA) to evaluate those actions that do not fit an agency's categorical exclusion and for which the need for an EIS is not readily apparent. At the end of the EA process the agency will determine whether to make a Finding of No Significant Impact (FONSI) or whether to initiate the EIS process.

Rulemaking is a major Federal action subject to NEPA. The *List of exclusion categories* at 44 CFR 10.8(d)(2)(ii) excludes the preparation, revision, and adoption of regulations from the preparation of an environmental assessment or environmental impact statement, where the rule relates to actions that qualify for categorical exclusions. This rule deals with the FMAG program which is excluded under 44 CFR 10.8(d)(2)(xix)(N). The purpose of this rule is to lengthen the time for the submission of grantees' and subgrantees' applications and to provide for administrative changes that better reflect statutory requirements. These changes are administrative-related changes that are categorically excluded under 44 CFR 10.8(d)(2)(i). No extraordinary circumstances exist requiring the need to develop an environmental assessment or environmental impact statement. See 44 CFR 10.8(d)(3). An environmental assessment will not be prepared because a categorical exclusion applies to this rulemaking action and no extraordinary circumstances exist.

D. Executive Order 12898, Environmental Justice

Under Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629 (Feb. 16, 1994), as amended by Executive Order 12948, 60 FR 6381 (Feb. 1, 1995), FEMA incorporates environmental justice into its policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in our programs, denying persons the benefits of our programs, or subjecting persons to discrimination because of their race, color, or national origin.

No action that FEMA can anticipate under this rule will have a disproportionately high or adverse human health and environmental effect on any segment of the population. Accordingly, the requirements of Executive Order 12898 do not apply to this rule.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 658, 1501–1504, 1531–1536, 1571, applies to any notice of proposed rulemaking that would implement any rule which includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more

in any one year. If the rulemaking includes a Federal mandate, the Act requires an agency to prepare an assessment of the anticipated costs and benefits of the Federal mandate. The Act also pertains to any regulatory requirements that might significantly or uniquely affect small governments. Before establishing any such requirements, an agency must develop a plan allowing for input from the affected governments regarding the requirements.

FEMA has determined that this rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, nor by the private sector, of $100 million or more in any one year as a result of a Federal mandate, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

F. Executive Order 13132, Federalism

Executive Order 13132, Federalism, 64 FR 43255 (Aug. 10, 1999), sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action. This rule involves no policies that have federalism implications under Executive Order 13132.

G. Paperwork Reduction Act of 1995

This rule contains collections of information that are subject to review by OMB under the Paperwork Reduction Act of 1995, as amended, 44 U.S.C. 3501–3520. The information collections included in this rule are approved by OMB under control numbers 1660–0058, Fire Management Assistance Grant Program, and 1660–0025, FEMA Emergency Preparedness and Response Directorate Grants Administration Forms. There are no new information collections included in this proposed rule.

H. Privacy Act Analysis

Under the Privacy Act of 1974, 5 U.S.C. 552a, an agency must determine whether implementation of a proposed regulation will result in a system of records. A ''record'' is any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his/her education, financial transactions, medical history, and criminal or employment history and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. See 5 U.S.C. 552a(a)(4). A ''system of records'' is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. An agency cannot disclose any record which is contained in a system of records except by following specific procedures.

The E-Government Act of 2002, 44 U.S.C. 3501 note, also requires specific procedures when an agency takes action to develop or procure information technology that collects, maintains, or disseminates information that is in an identifiable form. This Act also applies when an agency initiates a new collection of information that will be collected, maintained, or disseminated using information technology if it includes any information in an identifiable form permitting the physical or online contacting of a specific individual.

The information maintained and collected for the FMAG program is covered by the Privacy Act, specifically under DHS/FEMA—004 Grants Management Information Files System of Records, 74 FR 39705 (Aug. 7, 2009). This rule does not affect this system of records notice. DHS/FEMA has a current Privacy Impact Assessment (PIA) addressing the maintenance of FMAG information as required by the e-Government Act.

I. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, 65 FR 67249 (Nov. 9, 2000), applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government, or the agency consults with Tribal officials. FEMA has determined that this rule does not have Tribal implications and does not impose substantial direct compliance costs on Indian Tribal governments. The changes proposed by this rule would not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The FMAG program is a voluntary grant program in which Indian Tribes may participate as grantees or subgrantees; the program provides monetary assistance to Indian Tribes, and does not affect the relationship between the Federal Government and Indian Tribes or the distribution of power and responsibilities between the Federal Government and Indian Tribes.

J. Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights

FEMA has reviewed this rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, 53 FR 8859 (Mar. 18, 1988), as supplemented by Executive Order 13406, Protecting the Property Rights of the American People, 71 FR 36973 (June 28, 2006). This rule will not affect the taking of private property or otherwise have taking implications under Executive Order 12630.

K. Executive Order 12988, Civil Justice Reform

FEMA has reviewed this rule under Executive Order 12988, Civil Justice Reform, 61 FR 4729 (Feb. 7, 1996). This rule meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden.

List of Subjects

44 CFR Part 204

Administrative practice and procedure, Fire prevention, Grant programs, Reporting and recordkeeping requirements.

44 CFR Part 206

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire

prevention, Grant programs-housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs-housing and community development, Natural resources, Penalties, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Federal Emergency Management Agency proposes to amend 44 CFR Chapter I as follows:

PART 204—FIRE MANAGEMENT ASSISTANCE GRANT PROGRAM

■ 1. Revise the authority citation for part 204 to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Homeland Security Act of 2002, 6 U.S.C. 101 et seq.; Department of Homeland Security Delegation 9001.1.

§ 204.1 [Amended]

■ 2. Remove the words ''We (FEMA)'' and add, in their place, the word ''FEMA''.

§ 204.3 [Amended]

■ 3. In § 204.3—
■ a. In the definition of ''Applicant'', remove the word ''us'' and add, in its place, the word ''FEMA'';
■ b. In the definition of ''Hazard mitigation plan'', remove the word ''We'', and add, in its place, the word ''FEMA'', and remove the word ''address'' and add, in its place, the word ''addresses'';
■ c. In the definition of ''Performance period'', remove the words ''(Standard Form 424)'' and ''in block 13'';
■ d. In the definition of ''Project worksheet'', remove the words ''FEMA Form 90–91, which identifies'', and add, in their place, the words ''The form which identifies'';
■ e. Remove the definitions of ''FEMA Form 90–91'', ''Request for Federal Assistance'', ''Standard Form (SF) 424'', and ''We, our, us''; and
■ f. Add a definition of ''Application for Federal Assistance'' in alphabetical order to read as follows:

§ 204.3 Definitions used throughout this part.

* * * * *

Application for Federal Assistance. The form the State submits to apply for a grant under a fire management assistance declaration.

§ 204.21 [Amended]

■ 4. In § 204.21–
■ a. In paragraphs (a) and (b) introductory text, remove the word ''We'' and add, in its place, the word ''FEMA''; and
■ b. In paragraph (a), after the word ''complex'', add the words ''on public or private forest land or grassland''.

§ 204.22 [Amended]

■ 5. In § 204.22, remove the word ''we'' and add, in its place, the word ''FEMA''; and remove the words ''(FEMA Form 90–58)''.

§ 204.25 [Amended]

■ 6. In § 204.25 paragraph (b), remove the word ''we'' and add, in its place, the word ''FEMA''.

§ 204.42 [Amended]

■ 7. In § 204.42–:
■ a. In paragraph (b)(1), after the word ''safety'', remove the comma and add, in its place, a period, and remove the word ''including:'';
■ b. In paragraphs (b)(5) and (f), remove the word ''We'' and add, in its place, the word ''FEMA''; and
■ c. In paragraph (b)(5), remove the word ''we'' and add, in its place, the word ''FEMA''; and remove the word ''determine'', and add, in its place, the word ''determines''.

§ 204.51 [Amended]

■ 8. In § 204.51–
■ a. In paragraph (a), remove the space after the word ''Administrator''; remove the words ''SF 424 (Request for Federal Assistance)'' and add, in their place, the words ''Application for Federal Assistance''; and remove the words ''(FEMA Form 20–16a (Summary of Assurances—Non-construction Programs)'' and add, in their place, the words ''Summary of Assurances—Non-construction Programs'';
■ b. In paragraph (a)(2), remove the word ''should'' and add, in its place, the word ''must''; and remove the number ''3'' and add, in its place, the number ''6'';
■ c. In paragraphs (b)(1) and (b)(5), remove the word ''We'' and add, in its place, the word ''FEMA'';
■ d. In paragraphs (b)(1) and (d), remove the word ''we'' and add, in its place, the word ''FEMA'';
■ e. In paragraph (b)(1), remove the word ''determine'', and add, in its place, the word ''determines'', and
■ f. In paragraph (d), after the words ''Regional Administrator'', remove the space wherever they appear; and remove the word ''approve'', and add, in its place, the word ''approves''.

§ 204.52 [Amended]

■ 9. In § 204.52–
■ a. In paragraph (b)(1), remove the words ''(FEMA Form 90–91)'';
■ b. In paragraph (c)(1), remove the words ''amendments to'' and add, in their place, the words ''part of'';
■ c. In paragraph (c)(5), remove the word ''we'' and add, in its place, the word ''FEMA'' wherever it appears; and
■ d. Revise paragraphs (a) and (c)(3), (4), and (5) to read as follows:

§ 204.52 Application and approval procedures for a subgrant under a fire management assistance grant.

(a) *Request for Fire Management Assistance.* (1) State, local, and tribal governments interested in applying for fire management assistance subgrants must submit a Request for Fire Management Assistance subgrant to the Grantee in accordance with State procedures and within timelines set by the Grantee, but no longer than 30 days after the close of the incident period.

* * * * *

(c) * * *

(3) At the request of the Grantee, the Regional Administrator may extend the time limitations in this section for up to 6 months when the Grantee justifies and makes a request in writing.

(4) Project Worksheets will not be accepted after the deadline in paragraph (c)(2) of this section has expired, or, if applicable, after an extension specified by the Regional Administrator in paragraph (c)(3) of this section has expired.

(5) *$1,000 Project Worksheet minimum.* When the costs reported are less than $1,000, that work is not eligible and FEMA will not approve that Project Worksheet. This minimum threshold does not apply to Project Worksheets submitted for the direct and indirect costs of administration of a fire grant, as defined in 44 CFR 204.63.

§ 204.53 [Amended]

■ 10. In § 204.53 paragraph (a), remove the word ''us'' and add, in its place, the word ''FEMA''.

§ 204.54 [Amended]

■ 11. In § 204.54–
■ a. In the introductory paragraph, remove the word ''we'' and add, in its place, the word ''FEMA''; remove the word ''make'' and add, in its place, the word ''makes'', and
■ b. In paragraph (a), after the words ''Regional Administrator'', remove the space wherever they appear.

§ 204.62 [Amended]

■ 12. In § 204.62–
■ a. In paragraphs (a), (b), (c), and (d), remove the word ''We'' wherever it appears and add, in its place, the word ''FEMA'';
■ b. In paragraph (a), remove the word ''provide'' and add, in its place, the word ''provides'';

■ c. In paragraph (c), remove the word ''consider'' and add, in its place, the word ''considers'';

■ d. In paragraph (d), remove the word ''incur'' and add, in its place, the word ''incurs'';

■ e. In paragraphs (c) and (d), remove the word ''we'' wherever it appears and add, in its place, the word ''FEMA''; and

■ f. In paragraphs (a), (b), and (d), remove the word ''us'' wherever it appears and add, in its place, the word ''FEMA''.

§ 204.63 [Amended]

■ 13. In § 204.63–

■ a. In paragraphs (a) and (b), remove the word ''We'' wherever it appears and add, in its place, the word ''FEMA'';

■ b. Add a new paragraph (c) to read as follows:

§ 204.63 Allowable costs.

* * * * *

(c) Management costs as defined in 44 CFR part 207 do not apply to this section.

§ 204.64 [Amended]

■ 14. In § 204.64 paragraph (a), remove the words ''(FEMA Form 20–10)''.

PART 206—FEDERAL DISASTER ASSISTANCE

■ 15. The authority citation for part 206 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Homeland Security Act of 2002, 6 U.S.C. 101 et seq.; Department of Homeland Security Delegation 9001.1.

Subpart L—[Removed and reserved]

■ 16. Remove and reserve subpart L, consisting of §§ 206.390 through 206.395.

Dated: February 8, 2013.

W. Craig Fugate

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–05254 Filed 3–6–13; 8:45 am]

BILLING CODE 9110–23–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 13, 14, 15, and 19

[FAR Case 2012–014; Docket 2012–0014; Sequence 1]

RIN 9000–AM46

Federal Acquisition Regulation; Small Business Protests and Appeals

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement the Small Business Administration's (SBA) revision of the small business size and small business status protest and appeal procedures to ensure that contracts set-aside for small businesses are awarded to eligible small business concerns.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before May 6, 2013 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2012–014 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2012–014''. Select the link ''Submit a Comment'' that corresponds with ''FAR Case 2012–014.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FAR Case 2012–014'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAR Case 2012–014, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Karlos Morgan, Procurement Analyst, at 202–501–2364, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAR Case 2012–014.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the FAR to update the small business size and small business status protest and appeal procedures, protest and appeal timeframes, and to address the application of the Small Business Administration's (SBA) decisions on a protested concern's size and other small business status determinations. These changes are consistent with SBA's final rule published in the **Federal Register** at 76 FR 5680, dated February 2, 2011, that amended SBA's regulations to clarify the effect, across all small business programs, of initial and appeal eligibility decisions; SBA's interim final rule, published in the **Federal Register** at 77 FR 1857, dated January 12, 2012, that amended its regulations pertaining to the Women-Owned Small Business Federal Contract Program so that its protest and appeal procedures would be consistent with all other small business programs; and SBA's final rule published in the **Federal Register** at 76 FR 8222, dated February 11, 2011, that amended SBA's regulations to address changes with regard to North American Industry Classification System (NAICS) code determinations and the nonmanufacturer rule.

In addition, this rule proposes to restructure sections of the FAR that address small business status protest and appeal procedures. This restructuring of the FAR text will provide uniformity to the protest and appeals guidance provided at FAR 19.306, Protesting a firm's status as a HUBZone small business concern, FAR 19.307, Protesting a firm's status as a service-disabled veteran-owned small business concern, and FAR 19.308, Protesting a firm's status as an economically disadvantaged women-owned small business (EDWOSB) concern or women-owned small business (WOSB) concern eligible under the WOSB Program. This rule also updates the protest and appeals guidance found at FAR 19.302, Protesting a small business representation or rerepresentation.

The initial restructuring of the protest and appeals process was established under FAR case 2010–015, Women-Owned Small Business (WOSB) Program, published in the **Federal Register** at 76 FR 18304 on April 1, 2011. This rule proposes to restructure FAR 19.306 and 19.307 to be uniform

and consistent with the structure of the text provided in FAR 19.308, which was established under FAR case 2010–015 and with SBA regulations.

This rule does not address revisions to FAR 19.305, protesting a representation of disadvantaged business status. A separate proposed rule, requesting public comments on revisions to FAR 19.305, was published in the **Federal Register** at 76 FR 55849 on September 9, 2011.

II. Discussion and Analysis

The following is a summary of the proposed FAR amendments associated with this rule:

A. Small Business Size Protests

Proposed revisions include amending FAR 19.302 to:

- Increase the amount of time the SBA has, after receiving a protest, to make a size determination of a protested concern, from 10 to 15 business days and to advise that an award may be made to a protested concern after SBA has determined it to be an eligible small business or has dismissed the protest.
- Clarify that the contracting officer has the authority to extend the amount of time needed by SBA to make a size determination.
- Provide guidance on actions available to the contracting officer in the event a size or status determination is not received within the 15-day timeframe or within any extension granted by the contracting officer.
- Clarify that it is within the discretion of SBA's Office of Hearing and Appeals (OHA) to accept an appeal from a size determination, and, that SBA may, at its sole discretion, reopen a formal size determination to correct an error or mistake, if it is within the appeal period and no appeal has been filed with OHA.
- Include the requirement that the contracting officer shall consider whether contract performance can be suspended until an OHA Judge renders a decision, when a post-award appeal is submitted to OHA within the required timeframe. In addition, if OHA finds a protested concern to be ineligible for award, the contracting officer may terminate the contract, and shall not exercise the next option or issue any further task or delivery orders.

B. Small Business Status Protest and Appeals

The proposed revisions include amending FAR 19.306, 19.307, and 19.308. Revisions to these sections of the FAR are necessary to provide consistent guidance on the application of protest and appeal decisions to Federal acquisitions. The proposed revisions address:

- What information the protest must contain in order for it to be considered and the timeframes for submittal of a protest by an interested party;
- What actions the contracting officer must take before and after receipt of an eligibility decision;
- What actions the contracting officer must take if a protest has been denied or dismissed;
- What actions to take if a protest has been sustained and the concern was determined to be ineligible;
- What actions to take if a concern has or has not filed a timely appeal; and
- If a protest has been sustained and the concern was determined to be ineligible as an SDB, SDVOSB, HUBZone, or an EDWOSB or WOSB eligible under the WOSB Program, what must happen before the concern can represent itself under one of these small business categories.

C. Reorganizing Status Protest and Appeal Regulations

As part of this proposed rule, FAR 19.306 and 19.307 will be restructured to be consistent with the reconfiguration of FAR 19.308 that was accomplished under FAR Case 2010–015, Women-Owned Small Business (WOSB) Program. Realignment of FAR 19.306 and 19.307 in an arrangement similar to FAR 19.308 will enable speedier access to protest and appeal information.

D. Other Changes

1. Updating Ineligibility Status

The proposed revisions to FAR 4.604 require contracting officers to update the Federal Procurement Data System (FPDS) to reflect the final decision of the SBA regarding the small business size determination.

2. Revisions to Nonmanufacturer Rule

The proposed revisions to FAR 19.102(f) clarify the requirements for a small business concern to be considered a ''nonmanufacturer.'' The proposed revisions include adding in the FAR that a small business concern must be primarily engaged in the retail or wholesale trade and normally sells the type of item being supplied; take ownership or possession of the item(s) with its personnel, equipment or facilities in a manner consistent with industry practice; and will supply the end item of a small business manufacturer, processor, or producer made in the United States or its outlying areas, or is granted a waiver. This change reflects current SBA regulations.

3. Clarifying the Use of Wholesale and Retail North American Industry Classification System (NAICS) Codes

The proposed revisions to FAR 19.303 clarify that the contracting officer shall select the NAICS code that best describes the principal purpose of the product or service being acquired.

Other proposed revisions to FAR 19.303 include (1) Clarifying who may appeal a contracting officer's NAICS code designations or applicable size standard; (2) the adding of a new requirement for contracting officers to advise the public, by amendment to the solicitation, of the existence of a NAICS code appeal; and (3) adding a notification that the SBA may file a NAICS code appeal at any time before offers are due.

4. System for Award Management (SAM)

The text of this proposed rule uses the new FAR reference, System for Award Management (SAM), for Central Contractor Registration (CCR) and Online Representations and Certifications Application (ORCA). There is a pending FAR rule (FAR Case 2012–023, System for Award Management Name Change, Phase 1 Implementation), which will make a global update to all of the existing references to CCR and ORCA throughout the FAR to the SAM designation.

III. Executive Order 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. The Office of Information and Regulatory Affairs (OIRA) has deemed that 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, and that this rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

The change may 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.* The SBA's final rule that was published in the **Federal Register** at 76 FR 5680, on February 2,

2011, provided a Final Regulatory Flexibility Analysis covering the same subject matter as that presented in this proposed rule. For this reason, the rationale and methodology used by the SBA in support of its final rule was also used in the development of the Initial Regulatory Flexibility Analysis (IRFA) performed for this rule. The IRFA is summarized as follows:

The purpose of this proposed rule is to amend the FAR to provide revised regulatory coverage for size or status protest and appeal procedures, and to ensure that the FAR contains consistent and coherent protest and appeal procedures that are congruent with SBA regulations. The objective of these changes is to provide in the FAR, procedures to assure that contracts set-aside for small businesses are awarded to eligible small business concerns.

This rule will not have a direct negative impact on any small business concern, since it is aimed at preventing businesses that are not small or are ineligible in terms of their status as a HUBZone, SDVOSB, or WOSB concern, from receiving or performing contracts that have been set aside for small business concerns. This rule may indirectly benefit small business concerns by preventing awards to ineligible firms, or shortening the length of time ineligible firms perform set-aside contracts.

SBA processes nearly 500 size protests each fiscal year, resulting in 41 percent being determined to be small and 26 percent determined to be other than small. The rest are dismissed on procedural grounds. Thus, the number of concerns that could be affected by this rule, regardless of size, is approximately 335 per year, or approximately one tenth of one percent of the more than 341,000 small business concerns that are registered in the System for Award Management. (The number of protests in other small business programs is significantly less than the numbers of size protests received).

This rule will not impose any new information collection requirements on small businesses. This rule does not duplicate, overlap, or conflict with any other Federal rules.

No alternatives were considered because there is no other means to accomplish the stated objectives of this statute.

The Regulatory Secretariat has submitted a copy of the Initial Regulatory Flexibility Analysis (IRFA) to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2012–014) in correspondence.

IV. Paperwork Reduction Act

The proposed 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 4, 13, 14, 15, and 19

Government procurement.

Dated: February 22, 2013.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 4, 13, 14, 15, and 19 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 13, 15, and 19 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 4—ADMINISTRATIVE MATTERS

■ 2. Amend section 4.604 by revising paragraph (b)(4) and adding paragraph (b)(5) to read as follows:

4.604 Responsibilities.

* * * * *

(b) * * *

(4) When the contracting office receives written notification that a contractor has changed its size status in accordance with the clause at 52.219–28, Post-Award Small Business Program Rerepresentation, the contracting officer must update the size status in FPDS.

(5) When the contracting office receives written notification of SBA's final decision on a protest concerning a size determination, the contracting officer shall update FPDS to reflect the final decision.

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.102 [Amended]

■ 3. Amend section 13.102 by removing from paragraph (a)(3) ''the Woman-owned'' and adding ''the Women-Owned'' in its place.

PART 14—SEALED BIDDING

■ 4a. The authority citation for 48 CFR part 14 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

14.502 [Amended]

■ 4b. Amend section 14.502 by removing from paragraph (b)(7) ''woman-owned small business concerns'' and ''Woman-Owned Small Business Program'' and adding ''women-owned small business concerns'' and ''Women-Owned Small Business Program'' in their places, respectively.

PART 15—CONTRACTING BY NEGOTIATION

■ 5. Amend section 15.503 by removing from paragraph (a)(2)(i)(E) ''the Woman-Owned'' and adding ''the Women-Owned'' in its place.

PART 19—SMALL BUSINESS PROGRAMS

■ 6. Amend section 19.001 by revising the definition ''Nonmanufacturer rule'' to read as follows:

19.001 Definitions.

* * * * *

Nonmanufacturer rule means that a contractor under a small business, service-disabled veteran-owned small business, economically disadvantaged women-owned small business or women-owned small business eligible under the women-owned small business program set-aside, or 8(a) contract shall be a small business under the applicable size standard and shall provide either its own product or that of another domestic small business manufacturing or processing concern (see 13 CFR 121.406). For non-manufacturer rules pertaining to HUBZone contracts, see 19.1303(e).

■ 7. Amend section 19.102 by revising paragraph (f) to read as follows:

19.102 Size standards.

* * * * *

(f)(1) To qualify to provide manufactured products as a small business concern for acquisitions set aside for small business (subpart 19.5), the Service-Disabled Veteran-Owned Small Business (SDVOSB) Procurement Program (subpart 19.14), the Women-Owned Small Business (WOSB) Program (subpart 19.15), or awards under section 8(a) of the Small Business Act (subpart 19.8), a concern must be the manufacturer or producer of the end item being procured and the end item must be manufactured or produced in the United States, or the concern must satisfy the conditions of the nonmanufacturers rule.

(2) Any concern submitting a bid or offer in its own name, other than on a construction or service contract, that proposes to furnish an end product it

did not manufacture (a ''nonmanufacturer''), is a small business if it—

(i) Has no more than 500 employees;

(ii) Is primarily engaged in the retail or wholesale trade and normally sells the type of item being supplied;

(iii) Takes ownership or possession of the item(s) with its personnel, equipment or facilities in a manner consistent with industry practice; and

(iv) Will supply the end item of a small business manufacturer, processor or producer made in the United States or its outlying areas; except as provided in paragraphs (f)(6) through (f)(9) of this section,

(3) The term ''nonmanufacturer'' includes a concern that can, but elects not to, manufacture or produce the end product for the specific acquisition. For size determination purposes, there can be only one manufacturer of the end product being acquired. The manufacturer of the end product being acquired is the concern that, with its own facilities performs the primary activities in transforming inorganic or organic substances, including the assembly of parts and components, into the end item being acquired (see 13 CFR 121.406(b)(2) for further guidance). However, see 52.219–14 for the limitations on subcontracting that apply to small business set-asides and 8(a) competitive or 8(a) sole source awards, 52.219–3 for HUBZone set-asides and HUBZone sole source awards, 52.219–27 for SDVOSB set-asides and SDVOSB sole source awards, 52.219–29 for economically disadvantaged women-owned small business (EDWOSB) set-asides, and 52.219–30 for set-asides to women-owned small business concerns eligible under the WOSB Program.

(4) A concern which purchases items and packages them into a kit is considered to be a nonmanufacturer small business and can qualify as such for a given acquisition if it meets the size qualifications of a small nonmanufacturer for the acquisition, and if more than 50 percent of the total value of the kit and its contents is accounted for by items manufactured by small business concerns in the United States that are small under the size standards for the NAICS codes of the components being assembled.

(5) For the purpose of receiving a Certificate of Competency on an unrestricted acquisition, a small business nonmanufacturer may furnish any domestically produced or manufactured product.

(6) In the case of acquisitions set aside for small businesses, SDVOSB concerns, EDWOSB concerns or WOSB concerns eligible under the WOSB Program, or awards under section 8(a) of the Small Business Act, when the acquisition is for a specific product (or a product in a class of products) for which the SBA has determined that there are no small business manufacturers or processors in the Federal market, then the SBA may grant an individual or class waiver so that a nonmanufacturer does not have to furnish the product of a small business. For the most current listing of classes for which SBA has granted a waiver, contact an SBA Office of Government Contracting. A listing is also available on SBA's Internet Homepage at *http://www.sba.gov/content/class-waivers.* Contracting officers may request that the SBA waive the nonmanufacturer rule for a particular class of products. For procedures in requesting a waiver see 13 CFR 121.1204.

(7) For a specific solicitation, a contracting officer may request a waiver of that part of the nonmanufacturer rule which requires that the actual manufacturer or processor be a small business concern if the contracting officer determines that no known domestic small business manufacturers or processors can reasonably be expected to offer a product meeting the requirements of the solicitation.

(8) Requests for waivers shall be sent to the Associate Administrator for Government Contracting, United States Small Business Administration, Mail Code 6250, 409 Third Street SW., Washington, DC 20416.

(9) The SBA provides for an exception to the nonmanufacturer rule if—

(i) The procurement of a manufactured end product processed under the procedures set forth in part 13—

(A) Is set aside for small business; and

(B) Is not anticipated to exceed $25,000; and

(ii) The offeror supplies an end product that is manufactured or produced in the United States or its outlying areas.

(10) For non-manufacturer rules pertaining to HUBZone contracts, see 19.1303(e).

■ 8. Amend section 19.302 by—

■ a. Revising paragraph (c)(1);

■ b. Adding paragraph (c)(3);

■ c. Removing from paragraph (d)(1) ''the 5th'' and adding ''the fifth'' in its place;

■ d. Revising paragraphs (d)(1)(ii) and (d)(2);

■ e. Adding paragraph (d)(4);

■ f. Removing paragraph (f);

■ g. Redesignating paragraphs (g) through (k) as paragraphs (f) through (j); and

■ h. Revising the newly designated paragraphs (f), (g), and (h).

The revised and added text reads as follows:

19.302 Protesting a small business representation or rerepresentation.

* * * * *

(c)(1) Any contracting officer who receives a protest, whether timely or not, or who, as the contracting officer, wishes to protest the small business representation of an offeror, or rerepresentation of a contractor, shall promptly forward the protest to the SBA Government Contracting Area Director located at the SBA Government Contracting Area Office serving the area in which the headquarters of the offeror is located.

(2) * * *

(3) The protest shall include a referral letter written by the contracting officer with information pertaining to the solicitation. The referral letter must include the following information to allow SBA to determine timeliness and standing:

(i) The protest and any accompanying materials.

(ii) A copy of the size self-certification.

(iii) Identification of the applicable size standard.

(iv) The solicitation number.

(v) The name, address, telephone number and fax number of the contracting officer.

(vi) The bid opening date, or notification provided to unsuccessful offerors.

(vii) The date the contracting officer received the protest.

(viii) A complete address and point of contact for the protested concern.

(d) * * *

(1) * * *

(ii) A protest may be made in writing if it is delivered to the contracting officer by hand, telegram, facsimile, email, express and overnight delivery service, or letter postmarked within the 5-day period.

(2) Except as provided in paragraph (d)(4) of this section, the contracting officer or SBA may file a protest before or after award.

(3) * * *

(4) A protest filed by any party, including the contracting officer, before bid opening or notification to offerors of the selection of the apparent successful offer, will be dismissed as premature by SBA.

* * * * *

(f)(1) Within 15 business days or within any extension of time granted by the contracting officer, after receiving a protest, the challenged concern's response, and other pertinent information, the SBA Area Office will

determine the size status of the challenged concern. The SBA Area Office will notify the contracting officer, the protester, and the challenged concern of its decision by certified mail, return receipt requested.

(2) Award may be made to a protested concern after the SBA Area Office has determined that either the protested concern is an eligible small business or has dismissed all protests against it.

(3) This determination is final unless it is appealed in accordance with paragraph (h) of this section, and the contracting officer is notified of the appeal before award. If an award was made before the time the contracting officer received notice of the appeal, the contract shall be presumed to be valid.

(4) If SBA's Office of Hearings and Appeals (OHA) subsequently overturns the Area Office's determination or dismissal, and contract award has not been made, the contracting officer may apply the OHA decision to the procurement in question.

(g)(1) After receiving a protest involving an offeror being considered for award, the contracting officer shall not award the contract until the SBA has made a size determination or 15 business days have expired since SBA's receipt of a protest, whichever occurs first; however, award shall not be withheld when the contracting officer determines in writing that an award must be made to protect the public interest.

(2) If SBA has not made a determination within 15 business days, or within any extension of time granted by the contracting officer, the contracting officer may award the contract after determining in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will be disadvantageous to the Government.

(3) Whenever an award is made before the receipt of SBA's size determination, the contracting officer shall notify SBA that the award has been made.

(4) SBA may, at its sole discretion, reopen a formal size determination to correct an error or mistake, if it is within the appeal period and no appeal has been filed with OHA.

(5) If a protest is received that challenges the small business status of an offeror not being considered for award, the contracting officer is not required to suspend contract action. The contracting officer shall forward the protest to the SBA (see paragraph (c)(1) of this section) with a notation that the concern is not being considered for award, and shall notify the protester of this action.

(h) An appeal from an SBA size determination may be filed by any concern or other interested party whose protest of the small business representation of another concern has been denied by an SBA Government Contracting Area Director, any concern or other interested party that has been adversely affected by an SBA Government Contracting Area Director's decision, or the SBA Associate Administrator for the SBA program involved. The appeal must be filed with the Office of Hearings and Appeals, Small Business Administration, Suite 5900, 409 3rd Street SW., Washington, DC 20416, within the time limits and in strict accordance with the procedures contained in subpart C of 13 CFR part 134. It is within the discretion of the SBA Judge whether to accept an appeal from a size determination. If a post-award appeal is submitted to OHA within the time limits specified in subpart C of 13 CFR part 134, the contracting officer shall consider suspending contract performance until an SBA Judge decides the appeal. If the Judge decides not to consider such an appeal, the Judge will issue an order denying review and specifying the reasons for the decision. SBA will inform the contracting officer of its ruling on the appeal. SBA's decision, if received before award, will apply to the pending acquisition. If the contracting officer has made a written determination in accordance with (g)(1) or (2) of this section, the contract has been awarded, and the SBA rulings is received after award, and OHA finds the protested concern to be ineligible for award, the contracting officer shall terminate the contract unless termination is not in the best interests of the Government, in keeping with the circumstances described in the written determination. However, the contracting officer shall not exercise any options or award further task or delivery orders.

* * * * *

■ 9. Amend section 19.303 by revising paragraphs (a) and (c) to read as follows:

19.303 Determining North American Industry Classification System codes and size standards.

(a)(1) The contracting officer shall determine the appropriate North American Industry Classification System (NAICS) code and related small business size standard and include them in solicitations above the micro-purchase threshold.

(2) The contracting officer shall select the NAICS code which best describes the principal purpose of the product or service being acquired. Generally, the principal purpose of the procurement is classified according to the product or service which account for the greatest percentage of contract value.

(3) A concern that submits an offer or quote for a contract where the NAICS code assigned to the contract is one for supplies, and furnishes a product it did not itself manufacture or produce, is categorized as a nonmanufacturer and deemed small if it meets the requirements of FAR 19.102(f).

* * * * *

(c) The contracting officer's determination is final unless appealed as follows:

(1) An appeal from a contracting officer's NAICS code designation and the applicable size standard must be served and filed within 10 calendar days after the issuance of the initial solicitation or any amendment affecting the NAICS code or size standard.

(2) Appeals from a contracting officer's NAICS code designation or applicable size standard may be filed with SBA's Office of Hearings and Appeals by—

(i) Any person adversely affected by a NAICS code designation or applicable size standard. However, with respect to a particular sole source 8(a) contract, only the Director, Office of Business Development may appeal a NAICS code designation; or

(ii) The Associate or Assistant Administrator for the SBA program involved, through SBA's Office of General Counsel.

(3) Contracting officers shall advise the public, by amendment to the solicitation, of the existence of a NAICS code appeal (see 5.102(a)(2)). Such notices shall include the procedures and the deadline for interested parties to file and serve arguments concerning the appeal.

(4) SBA may file a NAICS code appeal at any time before offers are due.

(5) SBA's Office of Hearings and Appeals (OHA) will dismiss summarily an untimely NAICS code appeal.

(6)(i) The appeal petition must be in writing and must be addressed to the Office of Hearings and Appeals, Small Business Administration, Suite 5900, 409 3rd Street, SW., Washington, DC 20416.

(ii) There is no required format for the appeal; however, the appeal must include—

(A) The solicitation or contract number and the name, address, and telephone number of the contracting officer;

(B) A full and specific statement as to why the NAICS code designation is allegedly erroneous and argument supporting the allegation; and

(C) The name, address, telephone number, and signature of the appellant or its attorney.

(7) The appellant must serve the appeal petition upon—

(i) The contracting officer who assigned the NAICS code to the acquisition;

(ii) SBA's Office of General Counsel, Associate General Counsel for Procurement Law, 409 Third Street SW., Washington, DC 20416, facsimile 202–205–6873, or email at *OPLService@sba.gov.*

(8) Upon receipt of a NAICS code appeal, OHA will notify the contracting officer by a notice and order of the date OHA received the appeal, the docket number, and Judge assigned to the case. The contracting officer's response to the appeal, if any, must include argument and evidence (see 13 CFR part 134), and must be received by OHA within 15 calendar days from the date of the docketing notice and order, unless otherwise specified by the Administrative Judge. Upon receipt of OHA's docketing notice and order, the contracting officer must withhold award and immediately send to OHA an electronic link to or a paper copy of both the original solicitation and all amendments relating to the NAICS code appeal. The contracting officer will inform OHA of any amendments, actions, or developments concerning the procurement in question.

(9) After close of record, OHA will issue a decision and inform the contracting officer. If OHA's decision is received by the contracting officer before the date the offers are due, the decision shall be final and the solicitation must be amended to reflect the decision, if appropriate. OHA's decision received after the due date of the initial offers shall not apply to the pending solicitation but shall apply to future solicitations of the same products or services.

■ 10. Amend section 19.306 by revising paragraphs (b) through (j), and paragraphs (l) and (m) to reads as follows:

19.306 Protesting a firm's status as a HUBZone small business concern.

* * * * *

(b)(1) An offeror that is an interested party, the contracting officer, or the SBA may protest the apparently successful offeror's status as a qualified HUBZone small business concern (see 13 CFR 126.800).

(2) SBA's protest regulations are found in subpart H ''Protests'' at 13 CFR 126.800 through 126.805.

(c) Protests relating to small business size status are subject to the procedures of 19.302. An interested party seeking to protest both the small business size and HUBZone status of an apparent successful offeror shall file two separate protests.

(d) All protests must be in writing and must state all specific grounds for the protest.

(1) SBA will consider protests challenging the status of a concern if—

(i) The protest presents evidence that the concern is not a qualified HUBZone small business concern as described at 13 CFR 126.103 and 13 CFR 126.200;

(ii) The principal office is not located in a HUBZone; or

(iii) At least 35 percent of the employees do not reside in a HUBZone.

(2) Assertions that a protested concern is not a qualified HUBZone small business concern, without setting forth specific facts or allegations, will not be considered by SBA (see 13 CFR 126.801(b)).

(e) *Protest by an interested party.*

(1) An offeror shall submit its protest to the contracting officer—

(i) For sealed bids—

(A) By the close of business on the fifth business day after bid opening; or

(B) By the close of business on the fifth business day from the date of identification of the apparent successful offeror, if the price evaluation preference was not applied at the time of bid opening.

(ii) For negotiated acquisitions, by the close of business on the fifth business day after notification by the contracting officer of the apparently successful offeror.

(2) Any protest received after the designated time limits is untimely, unless it is from the contracting officer or SBA.

(f)(1) The contracting officer shall forward all protests to SBA. The protests are to be submitted to the

SBA's Director, HUBZone Program, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416 or by fax to 202–205–7167, Attn: HUBZone Small Business Status Protest.

(2) The protest shall include a referral letter written by the contracting officer with information pertaining to the solicitation. The referral letter must include the following information to allow SBA to determine timeliness and standing:

(i) The solicitation number.

(ii) The name, address, telephone number and fax number of the contracting officer.

(iii) The type of HUBZone contract.

(iv) Whether the procurement was conducted using full and open competition with a HUBZone price evaluation preference, and whether the protester's opportunity for award was affected by the preference.

(v) If a HUBZone set-aside, whether the protester submitted an offer.

(vi) Whether the protested concern was the apparent successful offeror.

(vii) Whether the procurement was conducted using sealed bid or negotiated procedures.

(viii) The bid opening date, if applicable. If a price evaluation preference was applied after the bid opening date, also provide the date of identification of the apparent successful offeror.

(ix) The date the contracting officer received the protest.

(x) Whether a contract has been awarded.

(g) SBA will notify the protester and the contracting officer of the date SBA received the protest.

(h) *Before SBA decision.* (1) After receiving a protest involving the apparent successful offeror's status as a HUBZone small business concern, the contracting officer shall either—

(i) Withhold award of the contract until SBA determines the status of the protested concern; or

(ii) Award the contract after receipt of the protest but before SBA issues its decision if the contracting officer determines in writing that an award must be made to protect the public interest.

(2) SBA will determine the merits of the status protest within 15 business days after receipt of a protest, or within any extension of time granted by the contracting officer.

(3) If SBA does not issue its determination within 15 business days, or within any extension of time granted, the contracting officer may award the contract after determining in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will be disadvantageous to the Government. This determination shall be provided to the SBA's Director, HUBZone Program and a copy shall be included in the contract file.

(i) *After SBA decision.* SBA will notify the contracting officer, the protester, and the protested concern of its determination. The determination is effective immediately and is final unless overturned on appeal by SBA's Associate Administrator for Government Contracting and Administrator for Government Contracting and 8(a) Business Development (AA/GCBD).

(1) If the contracting officer has withheld contract award and SBA has denied or dismissed the protest, the contracting officer may award the contract to the protested concern. If AA/

GCBD subsequently overturns the decision of the Director, HUBZone Program, the contracting officer may apply the AA/GCBD decision to the procurement in question.

(2) If the contracting officer has withheld award and SBA has sustained the protest and determined that the concern is not a HUBZone small business, and no AA/GCBD appeal has been filed, then the contracting officer shall not award the contract to the protested concern.

(3) If the contracting officer has made a written determination in accordance with (h)(1)(ii) or (h)(3) of this section, awarded the contract, and SBA's ruling sustaining the protest is received after award—

(i) The contracting officer shall terminate the contract, unless termination is not in the best interests of the Government. However, the contracting officer shall not exercise any options or award further task or delivery orders.

(ii) The contracting officer shall update the Federal Procurement Data System to reflect the final SBA decision.

(iii) The concern's designation as a certified HUBZone small business concern will be removed by SBA from the Dynamic Small Business Database. The concern shall not submit an offer as a HUBZone small business concern, until SBA issues a decision that the ineligibility is resolved; and

(4) If the contracting officer has made a written determination in accordance with (h)(1)(ii) or (h)(3) of this section, awarded the contract, SBA has sustained the protest and determined that the concern is not a HUBZone small business, and a timely AA/GCBD appeal has been filed, then the contracting officer shall consider whether performance can be suspended until an AA/GCBD decision is rendered.

(5) If AA/GCBD affirms the decision of the Director of the HUBZone Program, finding the protested concern is ineligible, and contract award has occurred—

(i) The contracting officer shall terminate the contract, unless termination is not in the best interest of the Government. However, the contracting officer shall not exercise any options or award further task or delivery orders.

(ii) The contracting officer shall update the FPDS to reflect the AA/GCBD decision; and

(iii) The concern's designation as a certified HUBZone small business concern will be removed by SBA from the Dynamic Small Business Database. The concern shall not submit an offer as a HUBZone small business concern until SBA issues a decision that the ineligibility is resolved or AA/GCBD finds the concern is eligible on appeal.

(6) A concern found to be ineligible during a HUBZone status protest is precluded from applying for HUBZone certification for 90 calendar days from the date of the SBA final decision.

(j) *Appeals of HUBZone status determinations.* The protested HUBZone small business concern, the protester, or the contracting officer may file appeals of protest determinations with SBA's AA/GCBD. The AA/GCBD must receive the appeal no later than 5 business days after the date of receipt of the protest determination. SBA will dismiss any untimely appeal.

* * * * *

(l)(1) The party appealing the decision must provide notice of the appeal to—

(i) The contracting officer;

(ii) Director, HUBZone Program, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416 or by fax to 202–205–7167; and

(iii) The protested HUBZone small business concern or the original protester, as appropriate.

(2) SBA will not consider additional information or changed circumstances that were not disclosed at the time of the Director/HUB's decision or that are based on disagreement with the findings and conclusions contained in the determination.

(m) The AA/GCBD will make its decision within 5 business days of the receipt of the appeal, if practicable, and will base its decision only on the information and documentation in the protest record as supplemented by the appeal. SBA will provide a copy of the decision to the contracting officer, the protester, and the protested HUBZone small business concern. The SBA decision, if received before award, will apply to the pending acquisition. The AA/GCBD's decision is the final decision.

■ 11. Revise section 19.307 to read as follows:

19.307 Protesting a firm's status as a service-disabled veteran-owned small business concern.

(a) *Definition. Interested party,* as used in this section, has the meaning given in 13 CFR 125.8(b).

(b)(1) An offeror that is an interested party, the contracting officer, or the SBA may protest the apparently successful offeror's status as a service-disabled veteran-owned small business (SDVOSB) concern (see 13 CFR 125.24).

(2) SBA's protest regulations are found in subpart D ''Protests'' at 13 CFR 125.24 through 125.28.

(c) Protests relating to small business size status are subject to the procedures of 19.302. An interested party seeking to protest both the small business size and service-disabled veteran-owned small business status of an apparent successful offeror shall file two separate protests.

(d) All protests must be in writing and must state all specific grounds for the protest.

(1) SBA will consider protests challenging the service disabled veteran-owned status or the ownership and control of a concern if—

(i) For status protests, the protester presents evidence supporting the contention that the owner(s) cannot provide documentation from the Department of Veterans Affairs, Department of Defense determinations, or the U.S. National Archives and Records Administration to show that they meet the definition of ''service-disabled veteran'' or ''service disabled veteran with a permanent and severe disability'' as set forth in 13 CFR 125.8; or

(ii) For ownership and control protests, the protester presents evidence that the concern is not 51 percent owned and controlled by one or more service-disabled veterans. In the case of veteran with a permanent and severe disability, the protester presents evidence that the concern is not controlled by the veteran, spouse, or permanent caregiver of such veteran.

(2) Assertions that a protested concern is not a service-disabled veteran-owned small business concern, without setting forth specific facts or allegations, will not be considered by SBA (see 13 CFR 125.25(b)).

(e) *Protest by an interested party.* (1) An offeror shall submit its protest to the contracting officer—

(i) To be received by close of business on the fifth business day after bid opening (in sealed bid acquisitions); or

(ii) To be received by close of business on the fifth business day after notification by the contracting officer of the apparently successful offeror (for negotiated acquisitions).

(2) Any protest received after the designated time limits is untimely, unless it is from the contracting officer or SBA.

(f)(1) The contracting officer shall forward all protests to SBA. The protests are to be submitted to SBA's Director, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416 or by fax to 202–205–6390, Attn: Service-Disabled Veteran Status Protest.

(2) The protest shall include a referral letter written by the contracting officer with information pertaining to the solicitation. The referral letter must

include the following information to allow SBA to determine timeliness and standing:

(i) The solicitation number.

(ii) The name, address, telephone number and facsimile number of the contracting officer.

(iii) Whether the contract was sole-source or set-aside.

(iv) Whether the protestor submitted an offer.

(v) Whether the protested concern was the apparent successful offeror.

(vi) When the protested concern submitted its offer.

(vii) Whether the acquisition was conducted using sealed bid or negotiated procedures.

(viii) The bid opening date, if applicable.

(ix) The date the contracting officer received the protest.

(x) The date the protestor received notification about the apparent successful offeror, if applicable.

(xi) Whether a contract has been awarded.

(g) SBA will notify the protester and the contracting officer of the date SBA received the protest.

(h) *Before SBA decision.* (1) After receiving a protest involving the apparent successful offeror's status as a service-disabled veteran-owned small business concern, the contracting officer shall either—

(i) Withhold award of the contract until SBA determines the status of the protested concern; or

(ii) Award the contract after receipt of the protest but before SBA issues its decision if the contracting officer determines in writing that an award must be made to protect the public interest.

(2) SBA will determine the merits of the status protest within 15 business days after receipt of a protest, or within any extension of time granted by the contracting officer.

(3) If SBA does not issue its determination within 15 business days, or within any extension of time that is granted, the contracting officer may award the contract after determining in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will be disadvantageous to the government. This determination shall be provided to the SBA's Director, Office of Government Contracting and a copy shall be included in the contract file.

(i) *After SBA decision.* SBA will notify the contracting officer, the protester, and the protested concern of its determination. The determination is effective immediately and is final unless overturned on appeal by SBA's Office of Hearings and Appeals (OHA) pursuant to 13 CFR part 134.

(1) If the contracting officer has withheld contract award and SBA has denied or dismissed the protest, the contracting officer may award the contract to the protested concern. If OHA subsequently overturns the SBA Director for Government Contracting's determination or dismissal, the contracting officer may apply the OHA decision to the procurement in question.

(2) If the contracting officer has withheld contract award, SBA has sustained the protest and determined that the concern is not an SDVOSB, and no OHA appeal has been filed, then the contracting officer shall not award the contract to the protested concern.

(3) If the contracting officer has made a written determination in accordance with (h)(1)(ii) or (h)(3) of this section, the contract has been awarded, and SBA's ruling sustaining the protest is received after award—

(i) The contracting officer shall terminate the contract, unless termination is not in the best interests of the Government. However, the contracting officer shall not exercise any options or award further task or delivery orders;

(ii) The contracting officer shall update the FPDS to reflect the final SBA decision; and

(iii) The concern must remove its designation in the System for Award Management (SAM) as a SDVOSB concern, and shall not submit an offer as a SDVOSB concern, until SBA issues a decision that the ineligibility is resolved.

(4) If the contracting officer has made a written determination in accordance with (h)(1)(ii) or (h)(3) of this section and awarded the contract to the protested firm, SBA has sustained the protest and determined that the concern is not a SDVOSB, and a timely OHA appeal has been filed, then the contracting officer shall consider whether performance can be suspended until an OHA decision is rendered.

(5) If OHA affirms the SBA Director for Government Contracting's determination finding the protested concern is ineligible—

(i) The contracting officer shall terminate the contract unless it is not in the best interest of the Government. However, the contracting officer shall not exercise any options or award further task or delivery orders;

(ii) The contracting officer shall update the FPDS to reflect OHA's decision; and

(iii) The concern shall remove its designation in SAM as a SDVOSB concern, until SBA issues a decision that the ineligibility is resolved or OHA finds the concern is eligible on appeal.

(6) A concern found to be ineligible may not submit future offer's as an SDVOSB concern until the concern demonstrates to SBA's satisfaction that it has overcome the reason for the protest and SBA issues a decision to this effect.

(j) *Appeals of SDVOSB status determinations.* The protested SDVOSB small business concern, the protester, or the contracting officer may file appeals of protest determinations to OHA. OHA must receive the appeal no later than 10 business days after the date of receipt of the protest determination. SBA will dismiss an untimely appeal. See Subpart E ''Rules of Practice for Appeals From Service-Disabled Veteran Owned Small Business Concerns Protests'' at 13 CFR 134.501 through 134.515 for SBA's appeals regulations.

(k) *The appeal must be in writing.* The appeal must identify the protest determination being appealed and must set forth a full and specific statement as to why the SDVOSB protest determination is alleged to be based on a clear error of fact or law, together with an argument supporting such allegation.

(l) The party appealing the decision must provide notice of the appeal to—

(1) The contracting officer;

(2) Director, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, facsimile 202–205–6390;

(3) The protested SDVOSB concern or the original protester, as appropriate; and

(4) Associate General Counsel for Procurement Law, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416, facsimile 202–205–6873, or email at *OPLService@sba.gov.*

(m) OHA will make its decision within 15 business days of the receipt of the appeal, if practicable. SBA will provide a copy of the decision to the contracting officer, the protester, and the protested SDVOSB small business concern. The OHA decision is the final agency decision and is binding on the parties.

■ 12. Revise section 19.308 to read as follows:

19.308 Protesting a firm's status as an economically disadvantaged women-owned small business concern or women-owned small business concern eligible under the WOSB Program.

(a) *Definition. Interested party,* as used in this section, has the meaning given in 13 CFR 127.102.

(b)(1) An offeror that is an interested party, the contracting officer, or the SBA

may protest the apparent successful offeror's status as an economically disadvantaged women-owned small business (EDWOSB) concern or women-owned small business (WOSB) concern eligible under the WOSB Program.

(2) SBA's protest regulations are found in subpart F ''Protests'' at 13 CFR 127.600 through 127.605.

(c) Protests relating to small business size status are subject to the procedures of 19.302. An interested party seeking to protest both the small business size and WOSB or EDWOSB status of an apparent successful offeror shall file two separate protests.

(d) All protests shall be in writing and must state all specific grounds for the protest.

(1) SBA will consider protests challenging the status of a concern if—

(i) The protest presents evidence that the concern is not at least 51 percent owned and controlled by one or more women who are United States citizens; or

(ii) The protest presents evidence that the concern is not at least 51 percent owned and controlled by one or more economically disadvantaged women, when it is in connection with an EDWOSB contract.

(2) SBA shall consider protests by a contracting officer when the apparent successful offeror has failed to provide all of the required documents, as set forth in FAR 19.1503(c).

(3) Assertions that a protested concern is not a EDWOSB or WOSB concern eligible under the WOSB Program, without setting forth specific facts or allegations, will not be considered by SBA (see 13 CFR 127.603(a)).

(e) Protest by an interested party offeror.

(1) An offeror shall submit its protest to the contracting officer—

(i) To be received by the close of business by the fifth business day after bid opening (in sealed bid acquisitions); or

(ii) To be received by the close of business by the fifth business day after notification by the contracting officer of the apparent successful offeror (in negotiated acquisitions).

(2) Any protest received after the designated time limit is untimely, unless it is from the contracting officer or SBA.

(f)(1) The contracting officer shall forward all protests to SBA. The protests are to be submitted to SBA's Director for Government Contracting, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416 or by fax to 202–205–6390, Attn: Women-owned Small Business Status Protest.

(2) The protest shall include a referral letter written by the contracting officer with information pertaining to the solicitation. The referral letter must include the following information to allow SBA to determine timeliness and standing:

(i) The solicitation number.

(ii) The name, address, telephone number and facsimile number of the contracting officer.

(iii) Whether the protestor submitted an offer.

(iv) Whether the protested concern was the apparent successful offeror.

(v) When the protested concern submitted its offer.

(vi) Whether the acquisition was conducted using sealed bid or negotiated procedures.

(vii) The bid opening date, if applicable.

(viii) The date the contracting officer received the protest.

(ix) The date the protestor received notification about the apparent successful offeror, if applicable.

(x) Whether a contract has been awarded.

(g) SBA will notify the protester and the contracting officer of the date SBA received the protest.

(h) *Before SBA decision.* (1) After receiving a protest involving the apparent successful offeror's status as an EDWOSB or WOSB concern eligible under the WOSB Program, the contracting officer shall either—

(i) Withhold award of the contract until SBA determines the status of the protested concern; or

(ii) Award the contract after receipt of the protest but before SBA issues its decision if the contracting officer determines in writing that an award must be made to protect the public interest.

(2) SBA will determine the merits of the status protest within 15 business days after receipt of a protest, or within any extension of time granted by the contracting officer.

(3) If SBA does not issue its determination within 15 business days, or within any extension of time granted, the contracting officer may award the contract after determining in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will be disadvantageous to the Government. This determination shall be provided to the SBA's Director, Office of Government Contracting and a copy shall be included in the contract file.

(i) *After SBA decision.* SBA will notify the contracting officer, the protester, and the protested concern of its determination. The determination is effective immediately and is final unless overturned on appeal by SBA's Office of Hearings and Appeals (OHA) pursuant to 13 CFR part 134.

(1) If the contracting officer has withheld contract award and SBA has denied or dismissed the protest, the contracting officer may award the contract to the protested concern. If OHA subsequently overturns the SBA Director for Government Contracting's determination or dismissal, the contracting officer may apply the OHA decision to the procurement in question.

(2) If the contracting officer has withheld contract award, SBA has sustained the protest and determined that the concern is not eligible under the WOSB Program, and no OHA appeal has been filed, then the contracting officer shall not award the contract to the protested concern.

(3) If the contracting officer has made a written determination in accordance with (h)(1)(ii) or (h)(3) of this section, awarded the contract, and SBA's ruling is received after award, and no OHA appeal has been filed, then—

(i) The contracting officer shall terminate the contract, unless termination is not in the best interests of the Government. However, the contracting officer shall not exercise any options or award further task or delivery orders;

(ii) The contracting officer shall update the FPDS to reflect the final SBA decision; and

(iii) The concern must remove its designation in the System for Award Management (SAM) as an EDWOSB or WOSB concern eligible under the WOSB Program, and shall not submit an offer as an EDWOSB concern or WOSB concern eligible under the WOSB Program, until SBA issues a decision that the ineligibility is resolved.

(4) If the contracting officer has made a written determination in accordance with (h)(1)(ii) or (h)(3) of this section, contract award has occurred, SBA has sustained the protest and determined that the concern is not eligible under the WOSB Program, and a timely OHA appeal has been filed, then the contracting officer shall consider whether performance can be suspended until an OHA decision is rendered.

(5) If OHA affirms the SBA Director for Government Contracting's determination finding the protested concern is ineligible, then—

(i) The contracting officer shall terminate the contract, unless termination is not in the best interests of the Government. However, the contracting officer shall not exercise any options or award further task or delivery orders;

(ii) The contracting officer shall update the Federal Data Procurement System (FPDS) to reflect OHA's decision; and

(iii) The concern must remove its designation in SAM as an EDWOSB or WOSB concern eligible under the WOSB Program, and shall not submit an offer as an EDWOSB concern or WOSB concern eligible under the WOSB Program, until SBA issues a decision that the ineligibility is resolved or OHA finds the concern is eligible on appeal.

(j) *Appeals of EDWOSB or WOSB concerns eligible under the WOSB Program status determinations.* (1) The protested EDWOSB concern or WOSB concern eligible under the WOSB program, the protester, or the contracting officer may file an appeal of a WOSB or EDWOSB status protest determination with OHA.

(2) OHA must receive the appeal no later than 10 business days after the date of receipt of the protest determination. SBA will dismiss an untimely appeal.

(3) See subpart G ''Rules of Practice for Appeals From Women-Owned Small Business Concerns (WOSB) and Economically Disadvantaged WOSB Concern (EDWOSB) Protests'' at 13 CFR 134.701 through 134.715 for SBA's appeals regulations.

(k) *The appeal must be in writing.* The appeal must identify the protest determination being appealed and must set forth a full and specific statement as to why the EDWOSB concern or WOSB concern eligible under the WOSB program protest determination is alleged to be based on a clear error of fact or law, together with an argument supporting such allegation.

(l) The party appealing the decision must provide notice of the appeal to—

(1) The contracting officer;

(2) Director, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416, facsimile 202–205–6390;

(3) The protested EDWOSB concern or WOSB concern eligible under the WOSB program, or the original protester, as appropriate; and

(4) SBA's Office of General Counsel, Associate General Counsel for Procurement Law, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416, facsimile 202–205–6873, or email at *OPLService@sba.gov.*

(m) OHA will make its decision within 15 business days of the receipt of the appeal, if practicable. SBA will provide a copy of the decision to the contracting officer, the protester, and the protested EDWOSB concern or WOSB concern eligible under the WOSB program. The OHA decision is the final agency decision and is binding on the parties.

19.402 [Amended]

■ 13. Amend section 19.402 by removing from paragraph (c)(1)(ii) ''the Woman-Owned'' and adding ''the Women-Owned'' in its place.

19.502–2 [Amended]

■ 14. Amend section 19.502–2 by removing from paragraph (c) ''(see 19.102(f)(4) and (5))'' and adding ''(see 19.102(f)(6) and (7))'' in its place.

19.508 [Amended]

■ 15. Amend section 19.508 by removing from paragraph (c) and paragraph (d) ''(see 19.102(f)(4) and (5))'' and adding ''(see 19.102(f)(6) and (7))'' in its place.

19.703 [Amended]

■ 16. Amend section 19.703 by removing from paragraph (a) introductory text and paragraph (a)(1) ''woman-owned small business concern'' and adding ''women-owned small business concern'' in its place; and removing from paragraph (b) ''a woman-owned'' and adding ''a women-owned'' in its place.

19.811–3 [Amended]

■ 12. Amend section 19.811–3 by removing from paragraph (d)(2) ''(see 19.102(f)(4) and (5))'' and adding ''(see 19.102(f)(6) and (7))'' in its place.

[FR Doc. 2013–04995 Filed 3–6–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 130104011–3011–01]

RIN 0648–BC87

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fishing Restrictions and Observer Requirements in Purse Seine Fisheries for 2013–2014

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) to implement limits on fishing effort by U.S. purse seine vessels in the U.S. exclusive economic zone and on the high seas, restrictions on the use of fish aggregating devices (FADs), and requirements for U.S. purse seine vessels to carry observers. This action is necessary for the United States to implement provisions of a conservation and management measure (CMM) adopted by the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC) and to satisfy the international obligations of the United States under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), to which it is a Contracting Party.

DATES: Comments must be submitted in writing by April 8, 2013.

ADDRESSES: You may submit comments on this proposed rule, identified by NOAA–NMFS–2013–0043, and the regulatory impact review (RIR) prepared for this proposed rule, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=;NOAA-NMFS-2013-0043,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, might not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name and address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

An initial regulatory flexibility analysis (IRFA) prepared under authority of the Regulatory Flexibility

Act is included in the Classification section of the **SUPPLEMENTARY INFORMATION** section of this proposed rule.

Copies of the EA and RIR prepared for this proposed rule are available from *www.regulations.gov* or may be obtained from Michael D. Tosatto, NMFS PIRO (see address above).

FOR FURTHER INFORMATION CONTACT: Tom Graham, NMFS PIRO, 808–944–2219.

SUPPLEMENTARY INFORMATION:

Background on the Convention and the WCPFC

The Convention Area comprises the majority of the western and central Pacific Ocean (WCPO). A map showing the boundaries of the Convention Area can be found on the WCPFC Web site at: *www.wcpfc.int/doc/convention-area-map.* The Convention focuses on the conservation and management of highly migratory species (HMS) and the management of fisheries for HMS. The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of HMS in the WCPO.

As a Contracting Party to the Convention and a Member of the WCPFC, the United States is obligated to implement the decisions of the WCPFC. The WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the WCPFC. The Secretary of Commerce has delegated the authority to promulgate regulations to NMFS.

WCPFC Decisions Regarding Purse Seine Fisheries and Description of the Proposed Action

At its Ninth Regular Session, in December 2012, the WCPFC adopted CMM 2012–01, ''Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean.'' The CMM's stated general objective is to ensure that the stocks of bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), and skipjack tuna (*Katsuwonus pelamis*) in the WCPO are, at a minimum, maintained at levels capable of producing their maximum sustainable yield as qualified by relevant environmental and economic factors. The CMM includes specific objectives for each of the three stocks: For each, the fishing mortality rate is to be reduced to or maintained at levels no greater than the fishing mortality rate associated with maximum sustainable yield. The requirements of the CMM, identified as ''interim'' measures, are for calendar year 2013. The CMM also calls for the WCPFC to establish, at its regular annual session in December 2013, a multi-year management program for 2014–2017 for the three stocks.

CMM 2012–01 is the most recent in a series of CMMs for the management of tropical tuna stocks under the purview of the WCPFC. It is a successor to CMM 2011–01, adopted in March 2012 (most provisions of which were applicable in 2012), and before that CMM 2008–01, adopted in December 2008 (most provisions of which were applicable in 2009–2011). These CMMs are available with other decisions of the WCPFC at *www.wcpfc.int/decisions.htm.*

In 2009 NMFS issued regulations to implement the purse seine-related provisions of CMM 2008–01 (final rule published August 4, 2009; 74 FR 38544; hereafter ''2009 rule''). In December 2011, after an intersessional decision by the WCPFC to extend CMM 2008–01, NMFS issued regulations to extend the purse seine-related regulations through December 31, 2012 (interim rule published December 30, 2011; 76 FR 82180; hereafter ''2011 rule''). NMFS did not develop regulations to implement the purse seine-related provisions of CMM 2011–01 because the applicable provisions had already been effectively implemented in the 2011 rule.

CMM 2012–01 obligates WCPFC Members, Cooperating Non-members and Participating Territories (collectively, CCMs) to implement, for purse seine vessels, in the Convention Area between the latitudes of 20° North and 20° South: (1) Limits on fishing effort on the high seas and in their respective exclusive economic zones (EEZs); (2) restrictions on the use of fish aggregating devices (FADs), including a prohibition on setting on FADs during specified periods; (3) a requirement that observers be on board during all fishing trips, with certain exceptions; and (4) a requirement that all bigeye tuna, yellowfin tuna, and skipjack tuna be retained on board up to the point of first landing or transshipment, with certain exceptions.

Unlike CMMs 2008–01 and 2011–01, the provisions of CMM 2012–01 apply only to areas of high seas and EEZs within the Convention Area; they do not apply to territorial seas or archipelagic waters. Accordingly, the requirements of this proposed rule would apply only in areas of high seas and EEZs, which was not the case with all the requirements established in the 2009 rule and 2011 rule.

The ''interim'' measures of CMM 2012–01 are applicable for 2013. The CMM also calls for the WCPFC to adopt a new CMM for bigeye, yellowfin, and skipjack tuna during its next regular annual session, in December 2013. The new CMM would be a multi-year management program for 2014–2017 that is designed to achieve the management objectives for the three stocks that are set out in CMM 2012–01. Under section 505(a) of the WCPFC Implementation Act, NMFS is authorized to promulgate such regulations as may be necessary to carry out the Unites States' international obligations under the Convention. It is foreseeable that the new CMM would include some of the same provisions for purse seine vessels as those included in CMM 2012–01. NMFS proposes to implement this proposed rule for 2014 as well as 2013, as it believes this is the most effective way to ensure that the United States satisfies its international obligations under the Convention for 2014. Implementing this proposed rule for both 2013 and 2014 would also serve to provide early public notice that the regulations would remain the same in 2014 unless the purse seine provisions of the new CMM differ from those in CMM 2012–01. Once the WCPFC adopts a new CMM, NMFS would take any steps necessary to implement the WCPFC's decision(s).

This proposed rule would satisfy the obligations of the United States under CMM 2012–01 with respect to U.S. purse seine vessels. CMM 2012–01 also includes requirements for longline vessels, which would be implemented for U.S. longline vessels in a separate rulemaking. This proposed rule includes three elements, corresponding to the first three of the four purse seine-related provisions of CMM 2012–01 identified above (i.e., fishing effort limits, FAD restrictions, and observer requirements). The fourth purse seine-related provision of CMM 2012–01—the catch retention requirement for bigeye tuna, yellowfin tuna and skipjack tuna—would not be implemented in this proposed rule because that requirement is already in effect for 2013 and 2014 (see final rule issued December 3, 2012, removing the December 31, 2012, termination date of the catch retention provisions; 77 FR 71501). Further information on the three elements of this proposed rule follows:

(1) Fishing Effort Limits

The proposed rule would establish limits for each of calendar years 2013 and 2014 on the number of fishing days that may be used by the U.S. purse seine fleet in the U.S. EEZ and on the high seas within the Convention Area between the latitudes of 20° North and 20° South.

With respect to the U.S. EEZ, CMM 2012–01 requires coastal CCMs to ''establish effort limits or equivalent catch limits for purse seine fisheries within their EEZs that reflect the geographical distributions of skipjack, yellowfin, and bigeye tunas, and are consistent with the objectives for those species.'' With respect to the high seas, CMM 2012–01 requires CCMs to ''take measures not to increase fishing days on high seas.'' For the purpose of these limits, and in order to provide continued operational flexibility for affected purse seine vessels, the high seas and U.S. EEZ within the Convention Area would be combined into a single area—called the Effort Limit Area for Purse Seine, or ELAPS, as similarly done in the 2009 rule and 2011 rule.

The limit in the ELAPS would apply on a calendar-year basis, in each of 2013 and 2014. The limit for each year would be 2,588 fishing days. This is the same rate at which fishing effort was limited in the 2009 rule for the years 2009–2011, and extended by interim final rule for the year 2012. The limiting fishing rate of 2,588 fishing days per year was based on fishing effort by the U.S. purse seine fleet in the reference year of 2004, as specified in CMM 2008–01, and the size of the fleet at that time as compared to the number of U.S. vessels allowed to be licensed under the Treaty on Fisheries between the Governments of Certain Pacific Islands States and the Government of the United States of America (aka South Pacific Tuna Treaty, or SPTT). The limits in 2009–2012 were implemented as overlapping multi-year limits, with a limit of 3,882 fishing days in each year, a limit of 6,470 fishing days in each two-year period, and a limit of 7,764 fishing days (i.e., three times the base rate of 2,588 fishing days per year) for each three-year period. The three-year limits were for the purpose of constraining fishing effort within the WCPFC-mandated limits, while the one- and two-year limits were aimed at avoiding unduly long closed periods. Further details on the basis for the limits established in the 2009 rule are available in that final rule and the proposed rule that led to it (published June 1, 2009; 74 FR 26160). Because the provisions of CMM 2012–01 are for a one-year period and because modifications to the effort limits established in this proposed rule might be needed if the WCPFC adopts a new CMM at the end of 2013, the fishing effort limits in this proposed rule are annual limits.

(2) FAD Restrictions

CMM 2012–01 requires CCMs to prohibit their purse seine vessels from setting on FADs in EEZs and on the high seas in the Convention Area between the latitudes of 20° North and 20° South from July 1 through September 30. The CMM further requires CCMs to either prohibit setting on FADs in October or limit the total number of FAD sets in the calendar year by the CCM's purse seine fleet to two-thirds of the fleet's average annual number in the 2001–2011 period, as specified in Attachment A of CMM 2012–01 (for a CCM that is a Small Island Developing State, the total annual limit on FAD sets would be eight-ninths of its fleet's 2009–2012 annual average). For the U.S. purse seine fleet, the calendar-year limit would be 1,464 FAD sets. Assuming that fishing patterns in 2013 would be similar to those in recent years, and because the limit-year would start January 1, the 2013 limit of 1,464 FAD sets would be expected to be reached as early as April 2013. It is infeasible for NMFS to complete the rulemaking process that would be necessary to establish the limit and the legal mechanism to prohibit further FAD sets once the limit is reached before April, the date the fleet would likely reach the FAD set limit. Furthermore, NMFS finds that it would not be feasible to establish by that time the mechanism needed to monitor FAD sets with respect to the limit and to reliably project when the limit is likely to be reached so that further FAD sets can be prohibited in a timely manner. For example, a system would have to be established for rapidly processing data collected from vessel observers and/or masters and for using those data to project future levels of FAD sets in advance of actually reaching the limit. Thus, the option of limiting the annual number of FAD sets would likely result in the mandated limit for 2013 being exceeded, and the United States would have failed to satisfy its international obligations with respect to the purse seine provisions of CMM 2012–01. Because the option of limiting the number of annual FAD sets would be infeasible to implement, and the United States would consequently fail to satisfy its international obligations under the Convention, this option is not considered in detail. Thus, this proposed rule would implement the first of the two options: an additional month, in October, of the FAD closure period. Again, this would be in addition to the three-month FAD prohibition period of July–September.

This proposed rule would maintain many of the same specific FAD-related restrictions during the FAD prohibition periods as those established in the 2009 rule, but to ensure the full effect to the prohibition on FAD setting during the FAD prohibition periods, the definition of FAD would be modified, a new prohibition would be added, and another prohibition would be modified to clarify already prohibited activities.

The 2009 rule defined a FAD to mean any artificial or natural floating object, whether anchored or not and whether situated at the water surface or not, that is capable of aggregating fish, as well as any objects used for that purpose that are situated on board a vessel or otherwise out of the water (see 74 FR 38544). The definition of FAD also specified that it did not include a fishing vessel, provided that the fishing vessel was not used for the purpose of aggregating fish. The 2009 rule included the following prohibitions during the FAD prohibition periods: (1) Setting a purse seine around a FAD or within one nautical mile of a FAD; (2) setting a purse seine in a manner intended to capture fish that have aggregated in association with a FAD, such as by setting the purse seine in an area from which a FAD has been moved or removed within the previous eight hours, or setting the purse seine in an area in which a FAD has been inspected or handled within the previous eight hours, or setting the purse seine in an area into which fish were drawn by a vessel from the vicinity of a FAD; (3) deploying a FAD into the water; and (4) repairing, cleaning, maintaining, or otherwise servicing a FAD, including any electronic equipment used in association with a FAD, in the water or on a vessel while at sea. The fourth prohibition, regarding the servicing of FADs, had the following exceptions: (a) A FAD could be inspected and handled as needed to identify the owner of the FAD, identify and release incidentally captured animals, un-foul fishing gear, or prevent damage to property or risk to human safety; and (b) a FAD could be removed from the water and if removed may be cleaned, provided that it is not returned to the water.

This proposed rule would change the definition of a FAD and the specific prohibitions established in the 2009 rule in two main respects. First, the regulatory text would emphasize that setting on fish that have aggregated in association with a vessel when a vessel

has used lights to aggregate, move or hold fish is prohibited during the FAD prohibition period. Setting in such a manner was already prohibited under the 2009 rule, as it was prohibited to set on fish aggregated in association with a vessel if the vessel was used to aggregate fish. This proposed rule would amplify that prohibition by explicitly prohibiting the use of lights in specific manners that are known to be used to aggregate fish. These prohibitions would include submerging lights under water from, or suspending or hanging lights over the side of, a purse seine vessel or associated skiffs, other watercraft or equipment; and directing lights into the water or using lights in a manner other than as needed to illuminate the deck of the purse seine vessel or associated skiffs, other watercraft or equipment, to comply with navigational requirements, and to ensure the health and safety of the crew. These light-related prohibitions would not apply in specific emergency situations. Second, the prohibitions would be expanded to address the fish aggregating properties of fishing vessels. Like other floating objects, fishing vessels tend to aggregate fish. In order to give better effect to CMM 2012–01's aim of eliminating fishing on schools associated with floating objects during specified months of the year, during the FAD prohibition period this proposed rule would prohibit setting a purse seine in a manner intended to capture fish that have aggregated in association with a vessel. For example, it would be prohibited to set a purse seine in an area from which a vessel has been moved or removed within the previous eight hours, or to set a purse seine in an area into which fish were drawn by a vessel from the vicinity of a vessel. Thus, vessels would be treated like FADs with respect to some of the prohibited activities. But since vessels would not be treated like FADs with respect to the prohibitions on deploying and servicing FADs, the definition of FAD would not include vessels. A FAD would be defined to mean any artificial or natural floating object, whether anchored or not and whether situated at the water surface or not, that is capable of aggregating fish, as well as any object used for that purpose that is situated on board a vessel or otherwise out of the water, but not including a vessel.

(3) Observer Requirements

CMM 2012–01 includes two observer provisions applicable to purse seine vessels. The first calls for each flag CCM to require that its purse seine vessels fishing in the Convention Area between the latitudes of 20° North and 20° South carry observers authorized under the WCPFC Regional Observer Programme (hereafter ''WCPFC observers''). This applies to vessels fishing on the high seas, on the high seas and in waters under the jurisdiction of at least one coastal State, or in waters under the jurisdiction of at least two coastal States. In other words, it does not apply to vessels fishing exclusively within the jurisdiction of a single coastal State. The CMM's second observer provision calls for each coastal CCM to require that all purse seine vessels—that is, purse seine vessels of any flag—fishing in the Convention Area between the latitudes of 20° North and 20° South solely within the jurisdiction of the coastal CCM carry an observer (not necessarily a WCPFC observer).

The first of these two observer provisions was included in similar form in CMM 2008–01 and implemented in the 2009 rule. It would be implemented in a similar fashion in this proposed rule, with one notable difference. The 2009 rule included an exception for fishing trips for which the NMFS Pacific Islands Regional Administrator has determined that a WCPFC observer is not available, provided that written documentation of such determination is carried on board the vessel during the entirety of the fishing trip. This exception was included in that rule because at that time it was not clear whether the observer programs in the region would be able to provide observers on all the required fishing trips made by U.S. purse seine vessels. Given that the Pacific Islands Forum Fisheries Agency observer program has deployed observers on all fishing trips by the U.S. WCPO purse seine fleet for more than three years, NMFS no longer believes that this exception is needed, and it is not included in this proposed rule.

CMM 2012–01's second provision, which is an obligation of coastal States with respect to waters under their jurisdiction, was not included in CMM 2008–01 and thus not included in the 2009 rule. Currently, no foreign purse seine fishing vessels are authorized to fish in the U.S. EEZ in the Convention Area, and no such authorizations are foreseeable during the duration of this proposed rule. Should a foreign vessel be authorized to fish in the U.S. EEZ, a requirement that the vessel carry an observer could be included as one of the terms of that authorization. Therefore, NMFS does not see any need to include a requirement in this proposed rule that foreign purse seine vessels that fish in the U.S. EEZ must carry observers, and this proposed rule does not include such a requirement. Thus, the CMM's second observer provision would be implemented only for U.S. purse seine vessels. Unlike the CMM's first observer provision, the second provision does not specify that the required observers must be WCPFC observers. However, NMFS has identified only two observer programs that would be used as sources of observers to satisfy this requirement—the Pacific Islands Forum Fisheries Agency observer program and the NMFS observer program. Currently, both these programs are authorized by the WCPFC as part of its Regional Observer Programme, so observers deployed by these two programs are WCPFC observers. Thus, this proposed rule would require that WCPFC observers be carried by U.S. purse seine vessels when fishing solely within the U.S. EEZ.

As described above, this proposed rule would not require U.S. purse seine vessels to carry observers when fishing exclusively in water under the jurisdiction of a single foreign nation. However, in that situation, the foreign nation might have its own observer requirements that apply to the U.S. vessel. Furthermore, U.S. regulations at 50 CFR 300.214 require that if a U.S. fishing vessel with a WCPFC Area Endorsement or for which a WCPFC Area Endorsement is required is used for fishing for HMS in the Convention Area in areas under the jurisdiction of a CCM other than the United States, the owner and operator of the vessel must ensure that the vessel is operated in compliance with the applicable laws of such CCM, including any laws related to carrying observers.

Summary of Proposed Action

(1) Fishing Effort Limits

This proposed rule would establish for U.S. purse seine vessels a limit of 2,588 fishing days for each of 2013 and 2014, applicable in the ELAPS, which would be defined to include all areas of high seas and the U.S. EEZ within the Convention Area between the latitudes of 20° North and 20° South, and would not include the territorial sea as in the 2009 rule and 2011 rule. Once NMFS determines during either of those years that, based on available information, the applicable limit is expected to be reached by a specific future date, NMFS would issue a notice announcing the closure of the U.S. purse seine fishery in the ELAPS starting on that specific future date. Upon such closure, it would be prohibited to use a U.S. purse seine vessel to fish in the ELAPS through the end of the calendar year. NMFS would publish the notice at least seven calendar days before the effective date

of the closure to provide fishermen advance notice of the closure.

(2) FAD Restrictions

This proposed rule would establish FAD prohibition periods from July 1 through October 31 in 2013 and in 2014, during which it would be prohibited for U.S. fishing vessels to set purse seines on FADs or to engage in specific other FAD-related activities in the Convention Area between the latitudes of 20° North and 20° South.

(3) Observer Requirements

This proposed rule would require that U.S. purse seine vessels carry WCPFC observers on all fishing trips in the Convention Area, except fishing trips that occur entirely outside the area bounded by 20° North and 20° South latitude or entirely within waters of single foreign nation.

In addition to establishing the three sets of requirements described above, this proposed rule would revise paragraph (c) of 50 CFR 300.223, which relates to areas closed to purse seine fishing. The requirements in that paragraph, which implemented the purse seine closed area provisions of CMM 2008–01, expired December 31, 2012. Under this proposed rule the contents of that paragraph would be removed and the paragraph would be reserved. Because the requirements in that paragraph have expired, this revision is merely of a housekeeping nature.

Classification

The Administrator, Pacific Islands Region, NMFS, has determined that this proposed rule is consistent with the WCPFC Implementation Act and other applicable laws, subject to further consideration after public comment.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act (RFA)

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** section of the preamble and in other sections of this **SUPPLEMENTARY INFORMATION** section of the preamble. The analysis follows:

There would be no disproportionate economic impacts between small and large entities operating vessels as a result of this proposed rule. Furthermore, there would be no disproportionate economic impacts based on vessel size, gear, or homeport.

Estimated Number of Small Entities Affected

The proposed rule would apply to owners and operators of U.S. purse seine vessels used for fishing in the Convention Area. The number of affected vessels is the number licensed under the SPTT. The current number of licensed vessels is 40, which is the maximum number of licenses available under the SPTT (excluding joint-venture licenses, of which there are five available under the SPTT, none of which have ever been applied for or issued). Based on limited financial information available on the purse seine fleet, including the fleet's total landings in 2010 and average cannery prices for tuna species in that year, most or all of the businesses that operate vessels in the fleet are large entities as defined by the RFA. However, it is possible that one or a few of these fish harvesting businesses meet the criteria for small entities (i.e., they are independently owned and operated and not dominant in their fields of operation, and have annual receipts of no more than $4.0 million), so the purse seine fleet is included in this analysis.

Recordkeeping, Reporting, and Other Compliance Requirements

The proposed rule would not establish any new reporting or recordkeeping requirements (within the meaning of the Paperwork Reduction Act). Affected vessel owners and operators would have to comply with all the proposed requirements, as described earlier in the **SUPPLEMENTARY INFORMATION** section of the preamble. Fulfillment of these requirements is not expected to require any professional skills that the affected vessel owners and operators do not already possess. The costs of complying with the proposed requirements are described below to the extent possible for each of the three elements of the proposed rule:

(1) *Fishing Effort Limits:* If and when the fishery in the U.S. EEZ and on the high seas (i.e., in the ELAPS) is closed as a result of the established annual effort limit being reached in either of 2013 or 2014, owners and operators of purse seine vessels would have to cease fishing in that area for the remainder of the calendar year. Closure of the fishery in the ELAPS could cause foregone fishing opportunities and associated economic losses if the ELAPS contains preferred fishing grounds during such a closure. The likelihood of the fishery being closed in the ELAPS in either of the two years and the economic losses a closure would bring cannot be estimated with certainty. Recent fishing patterns (2005 through 2010) suggest a fairly low likelihood of the fishery being closed in the ELAPS. Among the six years in that period, there was only one year, 2005, in which the fleet (extrapolated to a hypothetical 40-vessel fleet, the expected fleet size for the foreseeable future) spent 2,588 fishing days in the ELAPS (in 2005, the 15-vessel fleet spent 985 fishing days in the ELAPS, equivalent to 40 vessels spending 2,628 fishing days). Thus, the likelihood of the limit being reached appears to be fairly low, and the duration of any closure would likely be relatively brief. However, there is considerable inter-annual variation in the fleet's spatial distribution of fishing effort, influenced to some extent by oceanic conditions associated with El Niño-Southern Oscillation (ENSO) patterns. The eastern areas of the WCPO have tended to be comparatively more attractive to the fleet during El Niño events, when warm water spreads from the western Pacific to the eastern Pacific and large, valuable yellowfin tuna become more vulnerable to purse seine fishing. Consequently, the U.S. EEZ and portions of the high seas within the Convention Area are likely to be more important fishing grounds to the fleet during El Niño events (as compared to neutral or La Niña events).

The ELAPS constitutes a relatively small portion of the WCPO fishing grounds available to, and typically used by, the U.S. purse seine fleet. Unpublished NMFS data indicate that, on average, during 1997 through 2010, annual fishing effort in the ELAPS, in terms of vessel-days fished, made up about 27 percent of the fleet's annual total. The percentages among those years ranged from 6 to 40. In the event of a closure, affected vessels could continue to fish in the Convention Area in foreign EEZs, to the extent authorized. Given that foreign EEZs in the Convention Area have collectively received the majority of the U.S. purse seine fleet's fishing effort (60 to 94 percent in the years 1997–2010), the costs associated with being limited to such areas for what would likely be a relatively small portion of the year would likely not be substantial. Nonetheless, the closure of any fishing grounds for any amount of time would be expected to bring costs to affected entities (e.g., because revenues per unit of fishing effort in the open area might, during the closed period, be lower than in the closed area, and vessels might use

more fuel and spend more time having to travel to open areas). As indicated in the preceding paragraph, the magnitude of the losses would depend on where the best fishing grounds are during the closed period, which would likely be dependent in part on ENSO-related conditions. If the ELAPS is a preferred fishing ground during the closure, then the losses would be accordingly greater than if the ELAPS is not preferred relative to other fishing grounds.

The effort limit could also affect the temporal distribution of fishing effort in the U.S. purse seine fishery. Given that the limit would be competitive—that is, not allocated among individual vessels—vessel operators might have an incentive to fish harder in the affected area earlier in a given year than they otherwise would. A race-to-fish effect might also be expected in the time period between when a closure of the fishery is announced and when it is actually closed, which would be at least seven calendar days. To the extent such shifts occur, they could affect the seasonal timing of fish catches and deliveries to canneries. If deliveries from the fleet were substantially concentrated early in the year, it could adversely affect prices during that period. However, as discussed in the preceding paragraphs, the majority of fishing effort is expected to occur outside the area subject to the proposed limit, so the intensity of any race-to-fish is likely to be low if it occurs at all, and the timing of catches and deliveries would likely not be appreciably impacted. Furthermore, the timing of cannery deliveries by the U.S. fleet alone is unlikely to have an appreciable impact on prices, since many canneries buy from the fleets of multiple nations. A race to fish could bring costs to affected entities if it causes vessel operators to forego vessel maintenance or to fish in weather or ocean conditions that it otherwise would not. This could bring costs in terms of the health and safety of the crew, as well as the economic performance of the vessel. For the reasons stated above, any such costs are expected to be minor. In addition, there is no evidence that economies of scale would favor larger vessels or businesses over smaller ones, or vice versa, if the fleet's fishing effort is constrained by these limits.

(2) *FAD Restrictions:* The prohibitions on setting on FADs and on fish aggregating in association with fishing vessels (collectively called ''FAD restrictions'') in July through October in each of 2013 and 2014 would substantially constrain the manner in which purse seine fishing could be conducted during those periods. The costs associated with these constraints cannot be quantitatively estimated, but the fleet's historical use of FADs can help give a qualitative indication of the costs. The data on FAD sets presented below do not include sets made on fish aggregating in association with fishing vessels, but the number of the latter type of sets is small. According to logbooks maintained by vessel operators, sets on fish aggregating in association with vessels averaged about four per year for the entire fleet from 1997 through 2010 (examination by NMFS of observer data from selected years indicates a somewhat higher number than the number reported by vessel operators, so vessel logbook data might underestimate the actual number, but the number is still small in comparison to FAD sets). Thus, the data on FAD sets provide useful indicators of the fleet's historical fishing patterns with respect to the broader types of sets that would be prohibited under the proposed rule. In the years 1997–2010, the proportion of sets made on FADs in the U.S. purse seine fishery ranged from less than 30 percent in some years to more than 90 percent in others. The importance of FAD sets in terms of vessel revenues, and in turn profits, appears to be quite variable over time, and is probably a function of many factors, including fuel prices (e.g., unassociated sets involve more searching time and thus tend to bring higher fuel costs than FAD sets) and market conditions (e.g., FAD fishing, which tends to result in greater catches of lower-value skipjack tuna and smaller yellowfin tuna and bigeye tuna than unassociated sets, might be more attractive and profitable when canneries are not rejecting small fish). Thus, the costs of complying with the FAD restrictions would depend on a variety of factors. The fleet's experience during 2009–2012, when two- and three-month FAD prohibition periods were in place, should give an indication of what would be expected to occur under the proposed four-month FAD prohibition periods. The numbers of FAD sets during the prohibition periods were close to zero, but the number of FAD sets across each of the four entire years appears not to have been strongly impacted. That impact is difficult to evaluate in part because there is so much inter-annual variability in the use of FADs. The proportions of all sets that were made on FADs in 2009 and 2010 were lower than the average over the previous 12 years (2010 is the last year for which complete data on set types are available). The proportion in 2009 was within the historical range, while that in 2010 was the lowest during the entire period.

Although it is not possible to quantitatively estimate the costs that affected entities would bear as a result of the FAD prohibition periods, the fact that the fleet has made a relatively large portion of its sets on FADs suggests that prohibiting the use of FADs for four months each year may bring substantial costs and/or revenue losses. To help mitigate those costs, vessel operators might choose to schedule their routine vessel maintenance during the FAD prohibition periods. It also is conceivable that some might choose not to fish at all during the prohibition periods rather than fish without the use of FADs. Observations of the fleet's behavior in 2009–2012 do not suggest that either of these responses occurred to an appreciable degree. The proportion of the fleet that fished during the two- and three-month FAD prohibition periods of 2009–2012 did not appreciably differ from the proportion that fished during the same months in the years 1997–2008, when no FAD prohibition periods were in place.

(3) *Observer Requirements:* The requirement to carry a WCPFC observer on all fishing trips in the Convention Area between the latitudes of 20° North and 20° South would not bring any compliance costs to affected entities that are not already being borne under existing requirements. Under regulations at 50 CFR 300.215, U.S. fishing vessels with WCPFC Area Endorsements (which all vessels in the WCPO U.S. purse seine fleet currently have and are expected to continue to have) must carry a WCPFC observer whenever directed to do so by NMFS. Under that authority, NMFS has directed all U.S. purse seine fishing vessels to carry WCPFC observers on all fishing trips in the Convention Area; this directive is in effect from January 1 through December 31, 2013. The proposed observer requirements differ from those already in effect under 50 CFR 300.215 in that the latter apply to all fishing trips in the Convention Area while this proposed rule exempts fishing trips that take place exclusively within areas under the jurisdiction of a single foreign nation or exclusively outside the area bounded by 20° North and 20° South latitude. The proposed requirements are therefore slightly less constraining than the existing requirements (but in practice few trips in either of the two exemption categories are expected to be taken). Thus, the observer requirements in this proposed rule would not bring any costs over and above those already incurred

under existing requirements. A similar requirement to carry WCPFC observers on all fishing trips in the Convention Area, with specific exceptions, was also established in the 2009 rule. That requirement expired December 31, 2012. In the IRFA and final regulatory flexibility analysis (FRFA) prepared for the 2009 rule, the cost to purse seine vessels of having to carry a WCPFC observer on every fishing trip in the Convention Area (i.e., to carry a WCPFC observer on the 80 percent of trips that would be required over the 20-percent coverage already required under the SPTT, as discussed below) was estimated to be up to about $31,300 to $39,100 per vessel per year (in 2009 dollars).

Duplicating, Overlapping, and Conflicting Federal Regulations

NMFS has not identified any Federal regulations that duplicate, overlap with, or conflict with the proposed regulations, with the exception of the proposed observer requirements. As noted above, under regulations at 50 CFR 300.215, issued under authority of the WCPFC Implementation Act, U.S. fishing vessels with WCPFC Area Endorsements are required to carry WCPFC observers when directed to do so by NMFS. Additionally, U.S. purse seine vessels are subject to observer requirements under authority of the South Pacific Tuna Act of 1988 (SPTA; 16 U.S.C. 973–973r), at 50 CFR 300.43. These regulations require that operators and crew members of vessels operating pursuant to the SPTT allow and assist any person identified as an observer by the Pacific Island Parties to the SPTT to board the vessel and conduct and perform specified observer functions. Under the terms of the SPTT, U.S. purse seine vessels carry such observers on approximately 20 percent of their trips. The proposed observer requirement would overlap with the existing regulations at 50 CFR 300.215 in that carrying an observer during a given fishing trip under either requirement would satisfy the other requirement if it applies to that fishing trip. Similarly, the proposed requirement would overlap with the existing regulations at 50 CFR 300.43 in that carrying an observer under the latter regulation would satisfy the proposed requirement. The proposed requirement would not duplicate (e.g., the overlapping observer requirements would not result in a vessel having to carry two observers on a fishing trip) or conflict with existing regulations.

Alternatives to the Proposed Rule

NMFS has identified and considered several alternatives to the proposed rule, in addition to the no-action alternative. The action alternatives are limited to the ways in which the fishing effort limits and the FAD restrictions would be implemented; no alternatives other than the no-action alternative were identified for the observer requirements in the proposed rule.

(1) *Fishing Effort Limits:* NMFS has considered in depth two alternatives to the proposed fleet-wide limit of 2,588 fishing days per year in the ELAPS. One alternative would be more restrictive, with separate fleet-wide annual limits in the U.S. EEZ and the high seas in the Convention Area. The limits would be based on the respective levels of the fleet's fishing effort in those two areas in 2010, which were the lowest levels of fishing effort on a per-vessel basis from 1997 through 2010 (this time period was used to maintain consistency with the approach used to calculate the similar limits for the 2009 rule). The limits would be 27 fishing days per year in the U.S. EEZ and 433 fishing days per year on the high seas. These limits would be much more constraining than the proposed limits, and their separation into two areas would provide less operational flexibility for affected purse seine vessels. Thus, these alternative limits would be substantially more constraining and thus more costly than the proposed limits, and this alternative is not preferred for that reason. The second alternative would be less restrictive than the limits proposed in the rule. The high seas and the U.S. EEZ would be combined for the purpose of the limit, and the limit would be the sum of the fleet's respective greatest annual levels of fishing effort in each of the two areas (on an average per-vessel basis, then expanded to a 40-vessel-equivalent) during the 1997–2010 time period. The limit would be 3,943 fishing days per year in the ELAPS. Because this alternative limit is greater and thus less constraining than the proposed limit, the costs of complying with this alternative would be less than or equal to those of the proposed limits. This alternative is not preferred because it would depart from the effort limits established for the period 2009–2012. The limits proposed in this rule are consistent with the precedent set by the 2009 rule, and affected entities have already been exposed to the impacts of these limits for the past four years. In the RFA analysis for the 2009 rule, NMFS considered an alternative that would allocate the fishing effort limits among individual purse seine vessels in some manner. Given the complexity of setting up such an allocation scheme, which would require consideration of such things as which entities are to receive allocations, the criteria for making allocations, and whether and how the allocations would be transferable, as well as a mechanism to reliably monitor the fishing effort of the individual entities, NMFS does not believe it feasible to develop such an allocation scheme for this proposed rule, and thus has not considered it in depth. NMFS notes, however, that as found in the RFA analysis for the 2009 rule, such an alternative would likely alleviate any adverse impacts of the race-to-fish that might occur as a result of establishing the competitive fishing effort limits as in the proposed rule. Those impacts, however, are expected to be minor. The alternative of taking no action at all is not preferred because it would fail to accomplish the objective of the WCPFC Implementation Act or satisfy the international obligations of the United States as a Contracting Party to the Convention.

(2) *FAD Restrictions:* NMFS has considered one alternative to the proposed FAD restrictions. This alternative would be the same as the proposed restrictions except that it would not be prohibited to set on fish that have aggregated in association with a vessel (provided that the vessel is not used in a manner to aggregate fish). This would be less restrictive and thus presumably less costly to affected purse seine fishing businesses than the proposed requirements. The number of such sets made historically has been relatively small, averaging about four per year for the entire fleet from 1997 through 2010, according to data recorded by vessel operators in logbooks (examination by NMFS of observer data from selected years indicates a somewhat higher number than the number reported by vessel operators, so vessel logbook data might underestimate the actual number, but the number is still small in comparison to FAD sets). Therefore, the degree of relief in compliance costs of allowing such sets for four months each year would be expected to be relatively small. NMFS believes that this alternative would not serve CMM 2012–01's objective of reducing the fishing mortality rates of bigeye tuna and young tunas through seasonal prohibitions on the use of FADs as well as would the proposed rule. For that reason, this alternative is not preferred. The alternative of taking no action at all is not preferred because it would fail to accomplish the objective of the WCPFC Implementation Act or

satisfy the international obligations of the United States as a Contracting Party to the Convention.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: March 4, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 1. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

Authority: 16 U.S.C. 6901 *et seq.*

■ 2. In § 300.211, the definitions of ''Effort Limit Area for Purse Seine or ELAPS'', and ''Fish aggregating device'', or ''FAD'', are revised to read as follows:

§ 300.211 Definitions.

* * * * *

Effort Limit Area for Purse Seine, or *ELAPS,* means, within the area between 20° N. latitude and 20° S. latitude, areas within the Convention Area that either are high seas or within the EEZ.

Fish aggregating device, or *FAD,* means any artificial or natural floating object, whether anchored or not and whether situated at the water surface or not, that is capable of aggregating fish, as well as any object used for that purpose that is situated on board a vessel or otherwise out of the water. The definition of FAD does not include a vessel.

* * * * *

■ 3. In § 300.223, introductory text to the section, paragraph (a) introductory text and paragraph (a)(1), paragraphs (b) and (c), and paragraph (e) introductory text and paragraphs (e)(1) and (e)(2) are revised to read as follows:

§ 300.223 Purse seine fishing restrictions.

None of the requirements of this section apply in the territorial seas or archipelagic waters of the United States or any other nation, as defined by the domestic laws and regulations of that nation and recognized by the United States. All dates used in this section are in Universal Coordinated Time, also known as UTC; for example: the year 2013 starts at 00:00 on January 1, 2013 UTC and ends at 24:00 on December 31, 2013 UTC; and July 1, 2013, begins at 00:00 UTC and ends at 24:00 UTC.

(a) *Fishing effort limits.* This paragraph establishes limits on the number of fishing days that fishing vessels of the United States equipped with purse seine gear may collectively spend in the ELAPS.

(1) For each of the calendar years 2013 and 2014 there is a limit of 2,588 fishing days.

* * * * *

(b) *Use of fish aggregating devices.* From July 1 through October 31, 2013, and from July 1 through October 31, 2014, owners, operators, and crew of fishing vessels of the United States shall not do any of the activities described below in the Convention Area in the area between 20° N. latitude and 20° S. latitude:

(1) Set a purse seine around a FAD or within one nautical mile of a FAD.

(2) Set a purse seine in a manner intended to capture fish that have aggregated in association with a FAD or a vessel, such as by setting the purse seine in an area from which a FAD or a vessel has been moved or removed within the previous eight hours, or setting the purse seine in an area in which a FAD has been inspected or handled within the previous eight hours, or setting the purse seine in an area into which fish were drawn by a vessel from the vicinity of a FAD or a vessel.

(3) Deploy a FAD into the water.

(4) Repair, clean, maintain, or otherwise service a FAD, including any electronic equipment used in association with a FAD, in the water or on a vessel while at sea, except that:

(i) A FAD may be inspected and handled as needed to identify the FAD, identify and release incidentally captured animals, un-foul fishing gear, or prevent damage to property or risk to human safety; and

(ii) A FAD may be removed from the water and if removed may be cleaned, provided that it is not returned to the water.

(5) From a purse seine vessel or any associated skiffs, other watercraft or equipment, do any of the following, except in emergencies as needed to prevent human injury or the loss of human life, the loss of the purse seine vessel, skiffs, watercraft or aircraft, or environmental damage:

(i) Submerge lights under water;

(ii) Suspend or hang lights over the side of the purse seine vessel, skiff, watercraft or equipment, or;

(iii) Direct or use lights in a manner other than as needed to illuminate the deck of the purse seine vessel or associated skiffs, watercraft or equipment, to comply with navigational requirements, and to ensure the health and safety of the crew.

(c) *Closed areas.* [Reserved]

* * * * *

(e) *Observer coverage.* Until 24:00 UTC on December 31, 2014, a fishing vessel of the United States may not be used to fish with purse seine gear in the Convention Area without a WCPFC observer on board. This requirement does not apply to fishing trips that meet either of the following conditions:

(1) The portion of the fishing trip within the Convention Area takes place entirely within areas under jurisdiction of a single nation other than the United States.

(2) No fishing takes place during the fishing trip in the Convention Area in the area between 20° N. latitude and 20° S. latitude.

* * * * *

[FR Doc. 2013–05330 Filed 3–6–13; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 78, No. 45

Thursday, March 7, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington DC 20503. Copies of submission may be obtained by calling (202) 712–5007.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–XXXX.

Form Number: AID Form 101–1.

Title: Feed the Future Public-Private Partnership Opportunity Explorer.

Type of Submission: New Information Collection.

Purpose: United States Agency for International Development must collect information as part of the Public-Private Partnerships Opportunity Explorer (PPOE). Information collected will be used to respond to initial private-sector interest in a partnership with Feed the Future and provide additional information and contacts regarding partnerships (i.e., how to get the process started if it looks like a good fit or alternative options for partnership). The information will be collected from private-sector organizations that are interested in partnering with the U.S. Government. Responses are voluntary. The information will be collected electronically via an online decision tree and related online form. The form will be collected by the Bureau for Food Security at USAID. The decision tree and form help reduce the transaction costs for initial exploration of a partnership for both the private-sector organization and the U.S. Government. They also provide the initial point of entry for private sector organizations into partnerships with the U.S. Government. Electronic submission ensures the creation of a record. Submissions will be stored within an Excel spreadsheet (database) created for the purpose of archiving these submissions and managed by the Bureau for Food Security at USAID. At a later date, the Bureau for Food Security may use a more formalized system to maintain the records, such as Customer Relationship Management (CRM) software. Electronic record retention will adhere to USAID ADS Chapter 502 regulations USAID (ADS 502.3.4.10) and in cases where a registration of interest turns into a public-private partnership, record retention will adhere to procurement record regulations outlined in USAID ADS 324 (USAID ADS 324.3.7). In rare cases where completing the form via the online tool is impossible, USAID will provide the form in PDF or Word document format for completion and submission via email or fax.

Annual Reporting Burden:

Respondents: 120.

Total annual responses: 120.

Total annual hours requested: 30.

Dated: February 28, 2013.

Alecia Sillah,

Acting Chief, Bureau for Management, Office of Management Services, Information and Records Division, U.S. Agency for International Development.

[FR Doc. 2013–05235 Filed 3–6–13; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 1, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: WIC Infant and Toddler Feeding Practices Study-2 (ITFPS–2).

OMB Control Number: 0584–NEW.

Summary of Collection: The Healthy, Hunger-Free Kids Act of 2010 (Pub. L. 111–296, Sec. 305) mandates programs under its authorization, including WIC, to cooperate with USDA program research and evaluation activities. The United States Department of Agriculture's (USDA) Special Supplemental Nutrition Program for Women, Infants and Children (WIC) serves a highly-vulnerable population low-income pregnant and post-partum women, infants, and children through their fifth birthday who are at nutritional risk. The program provides supplemental food packages, health referrals and nutrition education for participants. The current study is a new information collection titled the ''WIC Infant and Toddler Feeding Practices

Study-2 (WIC ITEFPS–2).'' The study is needed to update information on the WIC Infant Feeding Practices Study (WIC IFPS–1), which was conducted in the fall of 1994, and only collected data on infants. Since that time WIC infant feeding practices may have changed in important ways, particularly since the new WIC food packages were introduced in 2009, and the program has instituted a greater emphasis on nutrition education and breastfeeding.

Need and Use of the Information: The Food and Nutrition Service (FNS) will collect information from the study to understand the nutritional intake and feeding patterns within the WIC population to assist in the development of appropriate and effective prevention strategies to improve the health of young children. If the study is not conducted, FNS will not have current information on the feeding practices and dietary intakes of WIC infants and toddlers or WIC operations for making policy decision about WIC services and nutrition education.

Description of Respondents: Not-for-profit institutions; Individual or households; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 13,504.

Frequency of Responses: Reporting: On occasion; Other (alt month).

Total Burden Hours: 5,094.

Food and Nutrition Service

Title: An Assessment of the Roles and Effectiveness of Community-Based Organizations in the Supplemental Nutrition Assistance Program.

OMB Control Number: 0584–NEW.

Summary of Collection: Section 17 (U.S.C. 2026 (a) (1)) of the Food and Nutrition Act of 2008 provides general legislative authority for the planned data collection. It authorizes the Secretary of Agriculture to enter into contracts with private institutions to undertake research that will help to improve the administration and effectiveness of SNAP in delivering nutrition-related benefits. To provide more timely and efficient services to the growing number of SNAP applicants, State and local SNAP offices are partnering with community-based organizations (CBOs) that have the capacity to conduct applicant interviews for SNAP. The Food and Nutrition Service (FNS) has approved these partnerships as part of a demonstration of ''Community Partner Interviewer Projects.'' Although these projects have existed for several years, they have never been fully evaluated. FNS will collect information using a customer satisfaction survey and in-depth interviews with staff at State or local agencies and CBOs.

Need and Use of the Information: The purpose of the information collection is to support research that assesses the roles and effectiveness of CBOs that are serving as representatives of the SNAP State agencies during the SNAP interview. If the information is not collected FNS will not have critical information for assessing the impact of the demonstrations.

Description of Respondents: Individual or households; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 2,807.

Frequency of Responses: Reporting: On occasion; Other (One-time).

Total Burden Hours: 1,144.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–05343 Filed 3–6–13; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities; Proposed Collection; Comment Request: Report of Disqualification From Participation—Institutions and Responsible Principals/Individuals (FNS–843) and Report of Disqualification From Participation—Individually Disqualified Responsible Principal/Individual or Day Care Home Provider (FNS–844)

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and public agencies to comment on a proposed information collection. This collection is a new collection for maintaining the National Disqualified List of institutions, day care home providers, and individuals that have been terminated or otherwise disqualified from Child and Adult Care Food Program (CACFP) participation. These federal requirements affect eligibility under the CACFP. The State Agencies will be required to enter data as institutions and individuals become disqualified from participating in the CACFP. The new collection is the result of a FNS web-based system constructed to update and maintain the list of disqualified institutions and individuals so that no State agency or sponsoring organization may approve any entity on the National Disqualified List to ensure the integrity of the Program.

DATES: Written comments must be submitted by May 6, 2013.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Jon Garcia, Acting Branch Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov*, and follow the online instructions for submitting comments electronically.

All written comment(s) will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Jon Garcia at (703) 305–2600.

SUPPLEMENTARY INFORMATION:

Title: National Disqualified List.

OMB Number: 0584–XXXX.

Expiration Date: TBD.

Type of Request: New collection.

Form Number: FNS–843 and FNS–844.

Abstract: The Food and Nutrition Service administers the Child Nutrition Act of 1966, as amended (42 U.S.C. 1771, *et seq.*). Section 243(c) of Public Law 106–224, the Agricultural Risk Protection Act of 2000, amended section 17(d)(5) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766 (d)(5)(E)(i) and (ii)) by requiring the Department of Agriculture to maintain a list of institutions, day care

home providers, and individuals that have been terminated or otherwise disqualified from Child and Adult Care Food Program participation. The law also requires the Department to make the list available to State agencies for their use in reviewing applications to participate and to sponsoring organizations to ensure that they do not employ as principals any persons who are disqualified from the program. New forms FNS–843 and FNS–844 will be used to collect and maintain this data. This statutory mandate has been incorporated into § 226.6(c)(7) of the Program regulations. In addition, the recordkeeping burden associated with maintaining documentation related to institutions and providers terminated for cause at the State agency level is captured under the Information Collection for the CACFP OMB Control Number 0584–0055, expiration date 8/31/2013. Therefore, there is no recordkeeping burden associated with this collection.

Affected Public: State Agencies.

Estimated Number of Respondents: 56.

Estimated Number of Responses per Respondent: 28.

Estimated Total Annual Responses: 1,568.

Estimate Time per Response: .50.

Estimated Total Annual Burden: 784.

Affected public	Instrument	Est. Number of respondents	Number of responses per respondent	Total annual responses	Est. total hours per response	Est. total burden
Reporting						
State Agencies	FNS 843	56	6	336	.50	168
State Agencies	FNS 844	56	22	1232	.50	616
Total Estimated Reporting Burden		56		1,568		784

Dated: February 28, 2013.

Audrey Rowe,

Administrator, Food and Nutrition Service.

BILLING CODE 3410–30–P

OMB APPROVED NO. 0584-0000
Expiration Date: XX/XX/XXXX

Department of Agriculture, Food and Nutrition Service

REPORT OF DISQUALIFICATION FROM PARTICIPATION - INSTITUTION AND RESPONSIBLE PRINCIPALS/INDIVIDUALS

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number. The valid OMB number for this collection is 0584-XXXX. The time required to complete this information collection is 30 minutes per response, including the time to review instructions, to search existing data resources, to gather the data needed, and to complete and review the information collection.

Section 243(c) of Public Law 106-224, the Agricultural Risk Protection Act of 2000, amended § 17(d)(5) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766 (d)(5)(E)(i) and (ii)) by requiring the Department of Agriculture to maintain a list of institutions, day care home providers, and individuals that have been terminated or otherwise disqualified from Child and Adult Care Food Program (CACFP) participation. The law also required the Department to make the list available to State agencies for their use in reviewing applications to participate and to sponsoring organizations to ensure that they do not employ as principals any persons who are disqualified from the Program. This statutory mandate has been incorporated into § 226.6(c)(7) of the CACFP regulations.

Instructions: Within the National Disqualified List web-based system, users click on "Add Institution" on the task bar to add the disqualification information of an institution and the responsible principals/individuals (RPI). When adding an institution and RPIs, fields that are marked with an "*" are required to be completed in order to save the record.

Upon entering the address, users click on "Validate Address". If the system does not recognize the address, an error message is displayed and the user must alter the address or override the validation.

Select at least one disqualification reason. If "Other" is selected, it must be explained in the "Additional Comments" section.

Enter all of the RPIs. If there is a debt associated with the institution, at least one of its RPI is responsible for the debt.

If the entered data passes all validations, the institution and RPI information is saved into the system when the **"Save"** button is clicked. After saving the information, State agency users cannot edit the information. If any changes need to be made to the saved record, State agency users must contact the FNS Regional Office to modify the record. After successfully saving the record, the disqualification status of the newly added institution and associated RPIs is set to "Pending". It will display this status until the FNS Regional Office approves the disqualification.

Institution

Institution Name: _____ Type of Institution: _____

Federal Employee Identification Number: _____ DUNS Number: _____

Street Number: _____ Street Name/PO Box Number: _____ Additional Address Information: _____

City: _____ State/Province: _____ Zip Code: _____

Other Business Names: (Please enter other business names below)

_____

_____

_____

Note: Users have the ability to validate the address within the National Disqualified List web-based system.

Disqualification Information

State Agency Imposing Disqualification: _____ Region: _____

Termination Date: _____ Debt Owed: ☐ Yes ☐ No

Original Debt Amount: (Please enter the amount in U.S. dollars) _____ Amount Paid: (Please enter the amount in U.S. dollars) _____

Date Debt Paid in Full: _____

Disqualification Reasons: (Please select one or more disqualification reasons as applicable)

- ☐ Submission of false information on the institution's application, including but not limited to a determination that the institution has concealed a conviction for any activity that occurred during the past seven years and that indicates a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by the State agency.
- ☐ Failure to operate the Program in conformance with the performance standards set forth in paragraphs (b)(1)(xviii) and (b)(2)(vii) of this section.
- ☐ Failure to return to the State agency any advance payments that exceeded the amount earned for serving eligible meals, or failure to return disallowed start-up or expansion payments.
- ☐ Failure to adjust meal orders to conform to variations in the number of participants.
- ☐ Claiming reimbursement for a significant number of meals that do not meet Program requirements.
- ☐ Failure of a sponsoring organization to disburse payments to its facilities in accordance with the regulations at §226.16(g) and (h) or in accordance with its management plan.
- ☐ Claiming reimbursement for meals served by a for-profit adult day care center during a calendar month in which less than 25 percent of its enrolled adult participants were title XIX or title XX beneficiaries.
- ☐ Failure by a sponsoring organization to properly train or monitor sponsored facilities in accordance with §226.16(d).
- ☐ Use of day care home funds by a sponsoring organization to pay for the sponsoring organization's administrative expenses.
- ☐ Failure to properly implement and administer the day care home termination and administrative review provisions set forth at paragraph (l) of this section and §226.16(l).
- ☐ Conviction of the institution or any of its principals for any activity that occurred during the past seven years and that indicates a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by the State agency.
- ☐ Permitting an individual who is on the National disqualified list to serve in a principal capacity with the institution or, if a sponsoring organization, permitting such an individual to serve as a principal in a sponsored center or as a day care home.
- ☐ Failure to comply with the bid procedures and contract requirements of applicable Federal procurement regulations.
- ☐ Failure to maintain adequate records.
- ☐ Claiming reimbursement for meals not served to participants.
- ☐ Use of a food service management company that is in violation of health codes.
- ☐ Claiming reimbursement for meals served by a for-profit child care center or a for-profit outside-school-hours care center during a calendar month in which less than 25 percent of the children in care (enrolled or licensed capacity, whichever is less) were eligible for free or reduced-price meals or were title XX beneficiaries.
- ☐ Failure by a sponsoring organization of day care homes to properly classify day care homes as tier I or tier II in accordance with §226.15(f).
- ☐ Failure to perform any of the other financial and administrative responsibilities required by this part.
- ☐ The fact the institution or any of the institution's principals have been declared ineligible for any other publicly funded program by reason of violating that program's requirements. However, this prohibition does not apply if the institution or the principal has been fully reinstated in, or is now eligible to participate in, that program, including the payment of any debts owed.
- ☐ Any other action affecting the institution's ability to administer the Program in accordance with Program requirements.
- ☐ Other

Comments

Responsible Principals/Individuals:

RPI 1:

First Name: Middle Name: Last Name:

Date of Birth: Title: Program Debt: ☐ Yes ☐ No

Street Number: Street Name/PO Box Number: Additional Address Information:

City: State/Province: Zip Code:

Other Legal Names: (Please enter other legal names below.)

Note: Users have the ability to validate the address within the National Disqualified List web-based system.

First Name: Middle Name: Last Name:

Note: Users may add and remove individuals prior to saving the record within the NDL web-based system.

OMB APPROVED NO. 0584-0000
Expiration Date: XX/XX/XXXX

Department of Agriculture, Food and Nutrition Service

REPORT OF DISQUALIFICATION FROM PARTICIPATION - INDIVIDUALLY DISQUALIFIED RESPONSIBLE PRINCIPAL/INDIVIDUAL OR DAY CARE HOME PROVIDER

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number. The valid OMB number for this collection is 0584-XXXX. The time required to complete this information collection is 30 minutes per response, including the time to review instructions, to search existing data resources, to gather the data needed, and to complete and review the information collection.

Section 243(c) of Public Law 106-224, the Agricultural Risk Protection Act of 2000, amended § 17(d)(5) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766 (d)(5)(E)(i) and (ii)) by requiring the Department of Agriculture to maintain a list of institutions, day care home providers, and individuals that have been terminated or otherwise disqualified from Child and Adult Care Food Program (CACFP) participation. The law also required the Department to make the list available to State agencies for their use in reviewing applications to participate and to sponsoring organizations to ensure that they do not employ as principals any persons who are disqualified from the Program. This statutory mandate has been incorporated into § 226.6(c)(7) of the CACFP regulations.

Instructions: Within the National Disqualified List web-based system, users click on "Add Individual" on the task bar to add the disqualification information of an individual (i.e., Day Care Home Provider or an Independent Responsible Principal/Individual. When adding an individual, fields that are marked with an "*" are required to be completed in order to save the record.

Upon entering the address, users click on "Validate Address". If the system does not recognize the address, an error message is displayed and the user must alter the address or override the validation.

Select at least one disqualification reason. If "Other" is selected, it must be explained in the "Additional Comments" section.

If the entered data passes all validations, the individual information is saved into the system when the **"Save"** button is clicked. After saving the information, State agency users cannot edit the information. If any changes need to be made to the saved record, State agency users must contact the FNS Regional Office to modify the record. After successfully saving the record, the disqualification status of the newly added individual record is set to "Pending". It will display this status until the FNS Regional Office approves the disqualification.

Individual

Personal Information

First Name: Middle Name: Last Name:

Date of Birth: Street Number: Street Name/PO Box Number:

Additional Address Information:

City: State/Province: Zip Code:

Note: Users have the ability to validate the address within the National Disqualified List web-based system.

Other Names: (Please enter other names below.)

First Name: Middle Name: Last Name:

Disqualification Information

State Agency Imposing Disqualification: Region:

Termination Date: Type of Individual Disqualification:

Debt Owed: ☐ Yes ☐ No Original Debt Amount: (Please enter the amount in U.S. dollars)

Amount Paid: (Please enter the amount with interest in U.S. dollars) Date Debt Paid in Full:

Name of Provider's Sponsoring Organization or Responsible Principal/Individual's Institutional Affiliation: Individual's Title with Organization:

Disqualification Reasons: (Please select one or more disqualification reasons as applicable)

- ☐ Submission of false claims for reimbursement.
- ☐ Simultaneous participation under more than one sponsoring organization.
- ☐ Failure to keep required records.
- ☐ A determination that the day care home has been convicted of any activity that occurred during the past seven years and that indicated a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by the State agency, or the concealment of such a conviction.
- ☐ Failure to participate in training.
- ☐ Submission of false information on application.
- ☐ Other
- ☐ Non-compliance with the Program meal pattern.
- ☐ Conduct or conditions that threaten the health or safety of a child(ren) in care, or the public health or safety.
- ☐ Any other circumstance related to non-performance under the sponsoring organization-day care home agreement, as specified by the sponsoring organization or the State agency.

Comments

[FR Doc. 2013–05351 Filed 3–6–13; 8:45 am]

BILLING CODE 3410–30–C

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Survey of Non-Tariff Trade Barriers to the U.S. Environmental Industry

AGENCY: International Trade Administration, 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 May 6, 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 Todd DeLelle, Office of Energy and Environmental Technologies, (202) 482–4877, fax: (202) 482–5665, or *todd.delelle@trade.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration's Office of Energy and Environmental Industries (OEEI) is the principal resource and key contact point within the U.S. Department of Commerce for American energy and environmental technology companies. The goal of OEEI is to facilitate and increase exports of energy and environmental goods and services by providing support and guidance to U.S. exporters. One aspect of increasing exports is to reduce trade barriers and non-tariff measures. OEEI works closely with the Office of the U.S. Trade Representative on trade negotiations and trade liberalization initiatives. The information collected by this survey is used to support these projects and enable OEEI to maintain a current, up-to-date list of non-tariff measures that create trade barriers for U.S. exports of environmental goods and services.

II. Method of Collection

Electronic submission via *http://www.export.gov/envirotech.*

III. Data

OMB Control Number: 0625–0241.
Form Number: ITA–4150P.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 200.
Estimated Time per Response: 10 minutes.
Estimated Total Annual Burden Hours: 33.
Estimated Total Annual Costs: $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: March 4, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–05335 Filed 3–6–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–820]

Fresh Tomatoes From Mexico: Termination of Suspension Agreement, Termination of Five-Year Sunset Review, and Resumption of Antidumping Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* March 1, 2013.

SUMMARY: On February 28, 2013, Mexican tomato growers/exporters accounting for a significant percentage of all fresh tomatoes imported into the United States from Mexico provided written notice to the Department of Commerce of their withdrawal from the agreement suspending the antidumping investigation on fresh tomatoes from Mexico. Because the suspension agreement no longer covers substantially all imports of fresh tomatoes from Mexico, the Department of Commerce is terminating the suspension agreement, terminating the sunset review of the suspended investigation, and resuming the antidumping investigation.

FOR FURTHER INFORMATION CONTACT: Judith Wey Rudman or Julie Santoboni at (202) 482–0192 or (202) 482–3063, respectively; Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 2013, the Department of Commerce (the Department) and Mexican tomato growers/exporters accounting for a significant percentage of all fresh tomatoes imported into the United States from Mexico initialed a proposed agreement that would suspend a resumed antidumping investigation on fresh tomatoes from Mexico. Based on this proposed agreement, and the anticipation that the Mexican tomato growers/exporters would withdraw from the 2008 Agreement in order to enter into a new agreement if an acceptable agreement was reached, the Department published a notice of intent to terminate the suspension agreement and resume the antidumping investigation, and intent to terminate the sunset review on February 8, 2013. (*See, Fresh Tomatoes from Mexico: Intent to Terminate Suspension Agreement and Resume Antidumping Investigation and Intent to Terminate Sunset Review,* 78 FR 9366 (February 8, 2013).

On February 28, 2013, Mexican tomato growers/exporters accounting for a significant percentage of all fresh tomatoes imported into the United States from Mexico provided written notice to the Department of their withdrawal from the 2008 Suspension Agreement, effective 90 days from the date of their withdrawal letter (*i.e.,* May 29, 2013), or earlier, at the Department's discretion. The Department is accepting the Mexican tomato growers/exporters withdrawal from the 2008 Suspension Agreement, effective March 1, 2013. Because the suspension agreement no longer covers substantially all imports of fresh tomatoes from Mexico, the Department of Commerce is terminating the suspension agreement, terminating the sunset review of the suspended investigation, and resuming the antidumping investigation.

Scope of the Investigation

The merchandise subject to this investigation is all fresh or chilled tomatoes (fresh tomatoes) which have Mexico as their origin, except for those tomatoes which are for processing. For purposes of this investigation, processing is defined to include preserving by any commercial process, such as canning, dehydrating, drying, or the addition of chemical substances, or converting the tomato product into juices, sauces, or purees. Fresh tomatoes that are imported for cutting up, not further processing (*e.g.,* tomatoes used in the preparation of fresh salsa or salad bars), are covered by this Agreement.

Commercially grown tomatoes, both for the fresh market and for processing,

are classified as Lycopersicon esculentum. Important commercial varieties of fresh tomatoes include common round, cherry, grape, plum, greenhouse, and pear tomatoes, all of which are covered by this investigation.

Tomatoes imported from Mexico covered by this investigation are classified under the following subheading of the Harmonized Tariff Schedules of the United States (HTSUS), according to the season of importation: 0702. Although the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is March 1, 1995, through February 29, 1996.

Termination of Suspension Agreement

The 2008 Suspension Agreement is an agreement to eliminate injury under section 734(c) of the Act. Under this type of suspension agreement, the Department may suspend an investigation based upon an agreement with exporters accounting for substantially all of the imports of the subject merchandise. The regulations in turn define ''substantially all'' as exporters (growers and resellers) which have accounted for not less than 85 percent by value or volume of the merchandise during the period for which the Department is measuring dumping in the investigation or such other period that the Secretary considers representative. *See* 19 CFR 353.18(c) (1996).

On February 28, 2013, signatory growers/exporters accounting for a large percentage of all fresh tomatoes imported into the United States from Mexico provided written notice to the Department of their withdrawal from the 2008 Suspension Agreement. Pursuant to the terms of the 2008 Suspension Agreement, signatory growers/exporters may withdraw from the agreement upon 90 days written notice to the Department. Therefore, in accordance with the terms of the 2008 Suspension Agreement and the notice of withdrawal from the signatory growers/exporters, these withdrawals from the 2008 Suspension Agreement become effective on May 29, 2013, or earlier at the Department's discretion. Virtually all imports of fresh tomatoes from Mexico into the United States are accounted for by those growers/exporters which have withdrawn from the 2008 Suspension Agreement; the few signatories remaining in the 2008 Suspension Agreement will not account for substantially all of the imports of subject merchandise once the withdrawal becomes effective.

Accordingly, because the 2008 Suspension Agreement will not cover substantially all imports of fresh tomatoes from Mexico without the participation of the growers/exporters which provided their notice of withdrawal on February 28, 2013, the Department is terminating the 2008 Suspension Agreement, effective March 1, 2013.

Termination of Five-Year Sunset Review

On December 3, 2012, the Department initiated a five-year sunset review of the suspended antidumping investigation on fresh tomatoes from Mexico pursuant to section 751(c) of the Act. *See Initiation of Five-Year (''Sunset'') Review,* 77 FR 71684 (December 3, 2012).

Because the Department is terminating the 2008 Suspension Agreement, there is no longer a suspended investigation for which to conduct a sunset review. Therefore, the Department is terminating the sunset review of the suspended antidumping investigation on fresh tomatoes from Mexico, effective March 1, 2013.

Resumption of Antidumping Investigation

With the termination of the 2008 Suspension Agreement, effective March 1, 2013, the Department is resuming the underlying antidumping investigation, in accordance with section 734(i)(1)(B) of the Act. Pursuant to section 734(i)(1)(B) of the Act, the Department resumes the investigation as if it had published the affirmative preliminary determination under section 733(b) of the Act on March 1, 2013.

As explained in the *Preliminary Determination,* 61 FR at 56609, the Department postponed the final determination in this investigation until the 135th day after the date of the preliminary determination. Accordingly, the Department intends to issue its final determination in the resumed investigation by July 15, 2013, unless the Department and the Mexican tomato growers/exporters accounting for substantially all fresh tomatoes imported into the United States from Mexico sign an agreement that would suspend the resumed antidumping investigation on fresh tomatoes from Mexico.

Verification

As provided in section 782(i) of the Act, the Department will verify all information determined to be acceptable for use in making the final determination.

Suspension of Liquidation

The Department will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of fresh tomatoes from Mexico that are entered, or withdrawn from warehouse, for consumption on or after March 1, 2013, the effective date of the termination of the 2008 Suspension Agreement. CBP shall require antidumping duty cash deposits or bonds for entries of the subject merchandise based on the preliminary dumping margins, which are as follows:

Grower/exporter	Weighted-average percentage margin
San Vincente Camalu	4.16
Ernesto Fernando Echavarria Salazar Grupo Solidario	11.89
Arturo Lomeli Villalobas S.A. de C.V.	26.97
Eco-Cultivos S.A. de C.V.	188.45
Ranchos Los Pinos S. de R.L. de C.V.	10.26
Administradora Horticola del Tamazula	28.30
Agricola Yory, S. de P.R. de R.I.	11.95
All Others	17.56

International Trade Commission

The Department will notify the International Trade Commission (ITC) of its termination of the 2008 Suspension Agreement, termination of the sunset review of the suspended investigation, and resumption of the antidumping investigation. If the Department makes a final affirmative determination, the ITC is scheduled to make its final determination concerning injury within 45 days after publication of the Department's final determination. If both the Department's and the ITC's final determinations are affirmative, the Department will issue an antidumping duty order.

Administrative Protective Order Access

Because of the significant changes made to the administrative protective order (APO) process since the initial suspension of the investigation, the Department will issue a new APO for this resumed investigation that will supersede the previously issued firm-specific APOs. Those authorized applicants that were granted APOs during the original investigation phase, as indicated in the most recent APO service list on the Department's Web site, will continue to have access to business proprietary information under

APO. Any new APO applications or necessary amendments for changes in staff under the pre-existing APOs should be submitted promptly, and in accordance with the Department's regulations currently in effect. *See* section 777(c)(1) of the Act; 19 CFR 351.103, 351.304, 351.305 and 351.306.

In addition, because of the significant changes made to the Department's filing and certification requirements since the initial suspension of the investigation, including the introduction of electronic filing, the Department will apply its current regulations and practices with regard to filing and certification for purposes of this resumed antidumping investigation. See 19 CFR 351.303(b) and (g). However, with respect to the procedures for the conduct of this resumed investigation generally, including any possible suspension thereof, the Department's regulations in effect in 1996 shall govern. *See* 19 CFR 351.701; *San Vicente Camalu SPR de RI* v. *United States,* 491 F.Supp.2d 1186 (CIT 2007).

We are issuing and publishing this determination under section 733(f) and 734(i) of the Act.

Dated: March 1, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–05211 Filed 3–6–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Environmental Solutions Toolkit—Landfill Standards

AGENCY: International Trade Administration, DOC.

ACTION: Notice and Request for Comment.

SUMMARY: This notice sets forth a request for input from U.S. businesses capable of exporting their goods or services relevant to landfill environmental standards. The Department of Commerce continues to develop the web-based *U.S. Environmental Solutions Toolkit* to be used by foreign environmental officials and foreign end-users of environmental technologies that will outline U.S. approaches to a series of environmental problems and highlight participating U.S. vendors of relevant U.S. technologies. The Toolkit will support the President's National Export Initiative by fostering export opportunities for the U.S. environmental industry, as well as advancing global environmental protection.

DATES: U.S. companies capable of exporting goods or services relevant to the environmental issues outlined above that are interested in participating in the U.S. Environmental Solutions Toolkit should self-identify by March 19, 2013, at 5:00 p.m. Eastern Daylight Time (EDT).

ADDRESSES: Please indicate interest in participating in the U.S. Environmental Solutions Toolkit by post, email, or fax to the attention of Todd DeLelle, Office of Energy & Environmental Industries, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Ave. NW., Room 4053, Washington, DC 20230; 202–482–4877; email *envirotech@trade.gov;* fax 202–482–5665.

SUPPLEMENTARY INFORMATION: The development of the *U.S. Environmental Solutions Toolkit* requires the identification of U.S. vendors capable of supplying relevant goods and services to foreign buyers. United States exporters interested in being listed on the Toolkit Web site are encouraged to submit their company's name, Web site address, contact information, and landfill environmental standards category of interest from the following list:

(a) Liners
(b) Leachate Collection Systems
(c) Landfill Gas Collection
(d) Bioreactors
(e) Controlled Injection Systems
(f) Landfill Gas Air Monitoring
(g) Landfill Groundwater Monitoring
(h) Landfill Covers
(i) Landfill Control Systems

For purposes of participation in the Toolkit, ''United States exporter'' has the meaning found in 15 U.S.C. 4721(j), which provides: ''United States exporter means (A) a United States citizen; (B) a corporation, partnership, or other association created under the laws of the United States or of any State; or (C) a foreign corporation, partnership, or other association, more than 95 percent of which is owned by persons described in subparagraphs (A) and (B), that exports, or seeks to export, goods or services produced in the United States* * *.''

An expression of interest in being listed on the Toolkit Web site in response to this notice will serve as a certification that the company is a United States exporter, as defined by 15 U.S.C. 4721(j), and seeks to export environmental solutions that fall within the category or categories indicated in your response. Responding to this notification constitutes consent to participate in the Toolkit and to the public sharing of the company name. It also constitutes consent to the inclusion of the name of the company on the Toolkit Web site. The company name will be listed along with a link to the company-specific Web site indicated in the response to this notice. No additional company information will be posted.

The U.S. Environmental Solutions Toolkit will refer users in foreign markets to U.S. approaches to solving environmental problems and to U.S. companies that can export related technologies. The Toolkit Web site will note that its contents and links do not constitute an official endorsement or approval by the U.S. Commerce Department or the U.S. Government of any of the companies, Web sites, products, or services listed.

FOR FURTHER INFORMATION CONTACT: Mr. Todd DeLelle, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 4053, 1401 Constitution Avenue NW., Washington, DC 20230. (Phone: 202–482–4877; Fax: 202–482–5665; email: *todd.delelle@trade.gov*).

Catherine Vial,

Team Leader, Environmental and Renewable Energy Industries, Office of Energy and Environmental Industries.

[FR Doc. 2013–05265 Filed 3–6–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Environmental Solutions Toolkit—Medical Waste

AGENCY: International Trade Administration, DOC.

ACTION: Notice and Request for Comment.

SUMMARY: This notice sets forth a request for input from U.S. businesses capable of exporting their goods or services relevant to management of medical waste. The Department of Commerce continues to develop the web-based *U.S. Environmental Solutions Toolkit* to be used by foreign environmental officials and foreign end-users of environmental technologies that will outline U.S. approaches to a series of environmental problems and highlight participating U.S. vendors of relevant U.S. technologies. The Toolkit will support the President's National Export Initiative by fostering export opportunities for the U.S. environmental industry, as well as advancing global environmental protection.

DATES: U.S. companies capable of exporting goods or services relevant to the environmental issues outlined above that are interested in participating in the U.S. Environmental Solutions Toolkit should self-identify by March 19, 2013, at 5:00 p.m. Eastern Daylight Time (EDT).

ADDRESSES: Please indicate interest in participating in the U.S. Environmental Solutions Toolkit by post, email, or fax to the attention of Todd DeLelle, Office of Energy & Environmental Industries, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Ave. NW., Room 4053, Washington, DC 20230; 202–482–4877; email *envirotech@trade.gov*; fax 202–482–5665.

SUPPLEMENTARY INFORMATION: The development of the *U.S. Environmental Solutions Toolkit* requires the identification of U.S. vendors capable of supplying relevant goods and services to foreign buyers. United States exporters interested in being listed on the Toolkit Web site are encouraged to submit their company's name, Web site address, contact information, and medical waste management category of interest from the following list:

Non-Incineration

(a) Autoclave
(b) Autoclave with Compaction
(c) Mechanical Disinfection Systems
(d) Chemical Disinfection Systems
(e) Microwave Disinfection
(f) Irradiation Disinfection Systems

Incineration

(a) Medical Waste Incineration Systems

For purposes of participation in the Toolkit, ''United States exporter'' has the meaning found in 15 U.S.C. 4721(j), which provides: ''United States exporter means (A) a United States citizen; (B) a corporation, partnership, or other association created under the laws of the United States or of any State; or (C) a foreign corporation, partnership, or other association, more than 95 percent of which is owned by persons described in subparagraphs (A) and (B), that exports, or seeks to export, goods or services produced in the United States* * *.''

An expression of interest in being listed on the Toolkit Web site in response to this notice will serve as a certification that the company is a United States exporter, as defined by 15 U.S.C. 4721(j), and seeks to export environmental solutions that fall within the category or categories indicated in your response. Responding to this notification constitutes consent to participate in the Toolkit and to the public sharing of the company name. It also constitutes consent to the inclusion of the name of the company on the Toolkit Web site. The company name will be listed along with a link to the company-specific Web site indicated in the response to this notice. No additional company information will be posted.

The U.S. Environmental Solutions Toolkit will refer users in foreign markets to U.S. approaches to solving environmental problems and to U.S. companies that can export related technologies. The Toolkit Web site will note that its contents and links do not constitute an official endorsement or approval by the U.S. Commerce Department or the U.S. Government of any of the companies, Web sites, products, or services listed.

FOR FURTHER INFORMATION CONTACT: Mr. Todd DeLelle, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 4053, 1401 Constitution Avenue, NW., Washington, DC 20230. (Phone: 202–482–4877; Fax: 202–482–5665; email: *todd.delelle@trade.gov*).

Catherine Vial,

Team Leader, Environmental and Renewable Energy Industries, Office of Energy and Environmental Industries.

[FR Doc. 2013–05261 Filed 3–6–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Environmental Solutions Toolkit—Universal Waste

AGENCY: International Trade Administration, DOC.

ACTION: Notice and Request for Comment.

SUMMARY: This notice sets forth a request for input from U.S. businesses capable of exporting their goods or services relevant to management of universal waste. The Department of Commerce continues to develop the web-based *U.S. Environmental Solutions Toolkit* to be used by foreign environmental officials and foreign end-users of environmental technologies that will outline U.S. approaches to a series of environmental problems and highlight participating U.S. vendors of relevant U.S. technologies. The Toolkit will support the President's National Export Initiative by fostering export opportunities for the U.S. environmental industry, as well as advancing global environmental protection.

DATES: U.S. companies capable of exporting goods or services relevant to the environmental issues outlined above that are interested in participating in the U.S. Environmental Solutions Toolkit should self-identify by March 19, 2013, at 5:00 p.m. Eastern Daylight Time (EDT).

ADDRESSES: Please indicate interest in participating in the U.S. Environmental Solutions Toolkit by post, email, or fax to the attention of Todd DeLelle, Office of Energy & Environmental Industries, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Ave. NW., Room 4053, Washington, DC 20230; 202–482–4877; email *envirotech@trade.gov*; fax 202–482–5665.

SUPPLEMENTARY INFORMATION: The development of the *U.S. Environmental Solutions Toolkit* requires the identification of U.S. vendors capable of supplying relevant goods and services to foreign buyers. United States exporters interested in being listed on the Toolkit Web site are encouraged to submit their company's name, Web site address, contact information, and universal waste management category of interest from the following list:

(a) Mercury Recycling Technology
(b) E-Waste Recycling Technology
(c) CRT Recycling Technology
(d) Lamp Crushing Systems

For purposes of participation in the Toolkit, ''United States exporter'' has the meaning found in 15 U.S.C. 4721(j), which provides: ''United States exporter means (A) a United States citizen; (B) a corporation, partnership, or other association created under the laws of the United States or of any State; or (C) a foreign corporation, partnership, or other association, more than 95 percent of which is owned by persons described in subparagraphs (A) and (B), that exports, or seeks to export, goods or services produced in the United States* * *.''

An expression of interest in being listed on the Toolkit Web site in response to this notice will serve as a certification that the company is a United States exporter, as defined by 15 U.S.C. 4721(j), and seeks to export environmental solutions that fall within the category or categories indicated in your response. Responding to this notification constitutes consent to participate in the Toolkit and to the public sharing of the company name. It also constitutes consent to the inclusion of the name of the company on the Toolkit Web site. The company name will be listed along with a link to the company-specific Web site indicated in the response to this notice. No

additional company information will be posted.

The U.S. Environmental Solutions Toolkit will refer users in foreign markets to U.S. approaches to solving environmental problems and to U.S. companies that can export related technologies. The Toolkit Web site will note that its contents and links do not constitute an official endorsement or approval by the U.S. Commerce Department or the U.S. Government of any of the companies, Web sites, products, or services listed.

FOR FURTHER INFORMATION CONTACT: Mr. Todd DeLelle, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 4053, 1401 Constitution Avenue, NW., Washington, DC 20230. (Phone: 202–482–4877; Fax: 202–482–5665; email: *todd.delelle@trade.gov*).

Catherine Vial,

Team Leader, Environmental and Renewable Energy Industries, Office of Energy and Environmental Industries.

[FR Doc. 2013–05262 Filed 3–6–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Survey of Charter Boat and Headboat Angler Interactions With Sea Turtles

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 6, 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 Sara McNulty, (301) 427–8402 or *sara.mcnulty@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a new collection.

The collection of recreational fishing bycatch data is necessary to fulfill statutory requirements of Section 303 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852 *et. seq.*), Section 401 of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act, and to comply with Executive Order 12962 on Recreational Fisheries. Additionally, the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) imposed prohibitions against the taking of endangered species as the sea turtle. This collection will seek to better understand the nature and overall level of sea turtle interactions with recreational anglers on charter boat and headboats. The information collected will be used to develop more reliable bycatch estimates.

II. Method of Collection

Respondents will be asked to fill out a paper form and return via mail.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission (new collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,990.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 332.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 4, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–05332 Filed 3–6–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Survey of Coastal Managers To Assess Needs for Ecological Forecasts

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 6, 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 Elizabeth Turner (603) 862–4680 or *Elizabeth.Turner@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a new survey of coastal managers to determine their needs and potential uses for ecological forecasts or scenarios. Coastal managers would be staff from state agencies who deal with issues such as coastal water quality and habitat management. The survey will be conducted under a cooperative agreement between the NOAA National Centers for Coastal Ocean Science (NCCOS) and HDR, Inc., an environmental consulting firm. NOAA has a long history of conducting operational modeling and forecasting, mostly in the National Weather Service

for weather and climate and the National Ocean Service for tides and currents. Expanding this capacity to include forecasting of ecological trends and conditions can be critical to many coastal management applications. This survey will help to assess coastal managers' needs for ecological forecasts and scenarios, and how such forecasts may be used in management contexts.

II. Method of Collection

Coastal managers will be emailed a link to an internet survey. The survey will be a one-time needs assessment, and will not be repeated on a regular basis.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission (request for a new information collection).

Affected Public: Not-for-profit institutions; state, local, or tribal governments; business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Response: 20 minutes.

Estimated Total Annual Burden Hours: 33.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 4, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–05325 Filed 3–6–13; 8:45 am]

BILLING CODE 3510–JS–P

DEPARTMENT OF EDUCATION

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs; 2013–2014 Award Year Deadline Dates

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary announces the 2013–2014 award year deadline dates for the submission of requests and documents from postsecondary institutions for the Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs (collectively, the ''campus-based programs'').

SUPPLEMENTARY INFORMATION: The Federal Perkins Loan program encourages institutions to make low-interest, long-term loans to needy undergraduate and graduate students to help pay for their education.

The FWS program encourages the part-time employment of needy undergraduate and graduate students to help pay for their education and to involve the students in community service activities.

The FSEOG program encourages institutions to provide grants to exceptionally needy undergraduate students to help pay for their cost of education.

The Federal Perkins Loan, FWS, and FSEOG programs are authorized by parts E and C, and part A, subpart 3, respectively, of title IV of the Higher Education Act of 1965, as amended.

Throughout the year, in its ''Electronic Announcements,'' the Department expects to continue to provide additional information for the individual deadline dates listed in the table under the DEADLINE DATES section of this notice. You will find the information on the Information for Financial Aid Professionals (IFAP) Web site at: *www.ifap.ed.gov.*

Deadline Dates: The following table provides the 2013–2014 award year deadline dates for the submission of applications, reports, waiver requests, and other documents for the campus-based programs. Institutions must meet the established deadline dates to ensure consideration for funding or waiver, as appropriate.

2013–2014 AWARD YEAR DEADLINE DATES

What does an institution submit?	How is it submitted?	What is the deadline for submission?
1. The Campus-Based Reallocation Form designated for the return of 2012–2013 funds and the request for supplemental FWS funds for the 2013–2014 award year.	The Reallocation Form is located in the ''Setup'' section of the electronic FISAP and must be submitted from the eCampus-Based Web site at *www.cbfisap.ed.gov*.	August 16, 2013.
2. The 2012–2013 Fiscal Operations Report and 2014–2015 Application to Participate (FISAP).	The FISAP must be submitted electronically via the Internet from the eCampus-Based Web site at *www.cbfisap.ed.gov*. The FISAP signature page must be mailed to: FISAP Administrator, 3130 Fairview Park Drive, Suite 800, Falls Church, VA 22042–4548.	October 1, 2013.
3. The Work Colleges Program Report of 2012–2013 award year expenditures.	The Work Colleges Program Report is located in the ''Setup'' section of the electronic FISAP and must be submitted from the eCampus-Based Web site at *www.cbfisap.ed.gov*. A printed copy of the signed report with an original signature must be submitted by one of the following methods: Hand deliver to: U.S. Department of Education, Federal Student Aid, Grants & Campus-Based Division, 830 First Street, NE., room 63C5 ATTN: Work Colleges Coordinator, Washington, DC 20002, or	October 1, 2013.

2013–2014 AWARD YEAR DEADLINE DATES—Continued

What does an institution submit?	How is it submitted?	What is the deadline for submission?
	Mail to: The address listed above for hand delivery. However, please use ZIP Code 20202–5453.	
4. The 2012–2013 Financial Assistance for Students with Intellectual Disabilities Expenditure Report.	The Financial Assistance for Students with Intellectual Disabilities Expenditure Report is located in the ''Setup'' section of the electronic FISAP and must be submitted from the eCampus-Based Web site at *www.cbfisap.ed.gov*. A printed copy of the signed report with an original signature must be submitted by one of the following methods: Hand deliver to: U.S. Department of Education, Federal Student Aid, Grants & Campus-Based Division, CTP Program, 830 First Street, NE., room 63C1 Washington, DC 20002, or Mail to: The address listed above for hand delivery. However, please use ZIP Code 20202–5453.	October 1, 2013.
5. The 2012–2013 FISAP Edit Corrections and Perkins Cash on Hand Update.	Corrections to the FISAP due to edits and Perkins Cash on Hand updates must be submitted on the electronic FISAP from eCampus-Based Web site at *www.cbfisap.ed.gov*. Instructions for submitting the corrections and update will be provided in an Electronic Announcement on the Information for Financial Aid Professionals (IFAP) Web site, prior to the deadline date.	December 13, 2013.
6. Request for a waiver of the 2014–2015 award year penalty for the underuse of 2012–2013 award year funds.	The request for an underuse penalty waiver is located in Part II, Section C of the electronic FISAP at the eCampus-Based Web site at *www.cbfisap.ed.gov*. The request and justification must be submitted from the eCampus-Based Web site. Instructions for submitting the request and justification will be provided in an Electronic Announcement on the Information for Financial Aid Professionals (IFAP) Web site, prior to the deadline date.	February 7, 2014.
7. The Institutional Application and Agreement for Participation in the Work Colleges Program for the 2014–2015 award year.	The Institutional Application and Agreement for Participation in the Work Colleges Program is located in the ''Setup'' section of the electronic FISAP and must be submitted from the eCampus-Based Web site at *www.cbfisap.ed.gov*. A printed copy of the signed report with an original signature must be submitted by one of the following methods: Hand deliver to: U.S. Department of Education, Federal Student Aid, Grants & Campus-Based Division, 830 First Street, NE., room 63C5, ATTN: Work Colleges Coordinator, Washington, DC 20002, or Mail to: The address listed above for hand delivery. However, please use ZIP Code 20202–5453. Instructions for submitting the application will be provided in an Electronic Announcement on the Information for Financial Aid Professionals (IFAP) Web site, prior to the deadline date.	March 7, 2014.
8. Request for a waiver of the FWS Community Service Expenditure Requirement for the 2014–2015 award year.	The FWS Community Service waiver request is located in the ''Setup'' section of the electronic FISAP and must be submitted via from the eCampus-Based Web site at *www.cbfisap.ed.gov*. Instructions for submitting the request and justification will be provided in an Electronic Announcement on the Information for Financial Aid Professionals (IFAP) Web site, prior to the deadline date.	April 25, 2014.

Notes:

- The deadline for electronic submissions is 11:59:00 p.m. (Eastern Time) on the applicable deadline date. Transmissions must be completed and accepted by 12:00:00 midnight to meet the deadline.
- Paper documents that are sent through the U.S. Postal Service must be postmarked or you must have a mail receipt stamped by the applicable deadline date.
- Paper documents that are hand delivered by a commercial courier must be received no later than 4:30:00 p.m. (Eastern Time) on the applicable deadline date.
- The Secretary may consider on a case-by-case basis the effect that a major disaster, as defined in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)), or another unusual circumstance has on an institution in meeting the deadlines.

Proof of Mailing or Hand Delivery of Paper Documents

If you submit paper documents when permitted by mail or by hand delivery (or from a commercial courier), we accept as proof one of the following:

(1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(2) A legibly dated U.S. Postal Service postmark.

(3) A legibly dated shipping label, invoice, or receipt from a commercial courier.

(4) Other proof of mailing or delivery acceptable to the Secretary.

If you mail your paper documents 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.

An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. All institutions are encouraged to use certified or at least first-class mail.

The Department accepts hand deliveries from you or a commercial courier between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, Monday through Friday except Federal holidays.

Sources for Detailed Information on These Requests

A more detailed discussion of each request for funds or waiver is provided in specific ''Electronic Announcements,'' which are posted on the Department's IFAP Web site (*www.ifap.ed.gov*) at least 30 days before the established deadline date for the specific request. Information on these items is also found in the Federal Student Aid Handbook which is also posted on the Department's IFAP Web site.

Applicable Regulations: The following regulations apply to these programs:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673.

(3) Federal Perkins Loan Program, 34 CFR part 674.

(4) Federal Work-Study Programs, 34 CFR part 675.

(5) Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 676.

(6) Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(7) New Restrictions on Lobbying, 34 CFR part 82.

(8) Governmentwide Requirements for Drug-Free Workplace (Financial Assistance), 34 CFR part 84.

(9) Governmentwide Debarment and Suspension (Nonprocurement), 34 CFR part 85.

(10) Drug and Alcohol Abuse Prevention, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT: Pat Stephenson, Manager, Campus-Based Programs, U.S. Department of Education, Federal Student Aid, 830 First Street, NE., Union Center Plaza, room 63C5, Washington, DC 20202–5453. Telephone: (202) 377–3782 or via email: *pat.stephenson@ed.gov.*

Accessible Format: If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed in this section.

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.

Program Authority: 20 U.S.C. 1070b *et seq.* and 1087aa *et seq.;* 42 U.S.C. 2751 *et seq.*

Dated: March 4, 2013.

James W. Runcie,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 2013–05347 Filed 3–6–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–338–A]

Application to Export Electric Energy; Shell Energy North America (US), L.P.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Shell Energy North America (US), L.P. (Shell Energy) has applied to renew its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before April 8, 2013.

ADDRESSES: Comments, protests, or motions to intervene should be addressed to: Lamont Jackson, Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Lamont.Jackson@hq.doe.gov,* or by facsimile to 202–586–8008.

FOR FURTHER INFORMATION CONTACT: Lamont Jackson (Program Office) at 202–586–0808, or by email to *Lamont.Jackson@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On May 5, 2008, DOE issued Order No. EA–338, which authorized Shell Energy to transmit electric energy from the United States to Mexico as a power marketer for a five-year term using existing international transmission facilities. That authority expires on May 5, 2013. On February 5, 2013, Shell Energy filed an application with DOE for renewal of the export authority contained in Order No. EA–338 for an additional five-year term.

In its application, Shell Energy states that it does not own any electric generating or transmission facilities nor does the applicant have a franchised service area. The electric energy that Shell Energy proposes to export to Mexico would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States. The existing international transmission facilities to be utilized by Shell Energy have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments on the Shell Energy application to export electric energy to

Mexico should be clearly marked with OE Docket No. EA–338–A. An additional copy is to be provided directly to both Robert Reilley and Jane Barnett, Shell Energy North America (US), L.P., 1000 Main, Level 12, Houston, TX 77002. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on February 28, 2013.

Jon Worthington,

Deputy Assistant Secretary, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2013–05362 Filed 3–6–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–339–A]

Application to Export Electric Energy; Shell Energy North America (US), L.P.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Shell Energy North America (US), L.P. (Shell Energy) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before April 8, 2013.

ADDRESSES: Comments, protests, or motions to intervene should be addressed to: Lamont Jackson, Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Lamont.Jackson@hq.doe.gov,* or by facsimile to 202–586–8008.

FOR FURTHER INFORMATION CONTACT: Lamont Jackson (Program Office) at 202–586–0808, or by email to *Lamont.Jackson@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On May 5, 2008, DOE issued Order No. EA–339, which authorized Shell Energy to transmit electric energy from the United States to Canada as a power marketer for a five-year term using existing international transmission facilities. That authority expires on May 5, 2013. On February 5, 2013, Shell Energy filed an application with DOE for renewal of the export authority contained in Order No. EA–339 for an additional five-year term.

In its application, Shell Energy states that it does not own any electric generating or transmission facilities nor does the applicant have a franchised service area. The electric energy that Shell Energy proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States. The existing international transmission facilities to be utilized by Shell Energy have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments on the Shell Energy application to export electric energy to Canada should be clearly marked with OE Docket No. EA–339–A. An additional copy is to be provided directly to both Robert Reilley and Jane Barnett, Shell Energy North America (US), L.P., 1000 Main, Level 12, Houston, TX 77002. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on February 28, 2013.

Jon Worthington,

Deputy Assistant Secretary, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2013–05363 Filed 3–6–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–1006–000
Applicants: Colorado Interstate Gas Company LLC
Description: Operational Purchases and Sales Report of Colorado Interstate Gas Company LLC
Filed Date: 8/31/12
Accession Number: 20120831–5156
Comments Due: 5 p.m. ET 3/8/13

Docket Numbers: RP13–596–000
Applicants: Southern Natural Gas Company, L.L.C.
Description: Fuel Retention Rates—2013 to be effective 4/1/2013
Filed Date: 2/28/13
Accession Number: 20130228–5065
Comments Due: 5 p.m. ET 3/12/13

Docket Numbers: RP13–597–000
Applicants: Millennium Pipeline Company, LLC
Description: RAM 2013 to be effective 4/1/2013
Filed Date: 2/28/13
Accession Number: 20130228–5066
Comments Due: 5 p.m. ET 3/12/13

Docket Numbers: RP13–598–000
Applicants: Elba Express Company, L.L.C.
Description: Elba Express Pipeline Project—Phase B Compression to be effective 4/1/2013
Filed Date: 2/28/13

Accession Number: 20130228–5067
Comments Due: 5 p.m. ET 3/12/13

Docket Numbers: RP13–599–000
Applicants: El Paso Natural Gas Company, L.L.C.
Description: Non-Conforming OPASA Filing to be effective 3/1/2013
Filed Date: 2/28/13
Accession Number: 20130228–5072
Comments Due: 5 p.m. ET 3/12/13

Docket Numbers: RP13–600–000
Applicants: Natural Gas Pipeline Company of America
Description: Removal of Agreements to be effective 4/1/2013
Filed Date: 2/28/13
Accession Number: 20130228–5073
Comments Due: 5 p.m. ET 3/12/13

Docket Numbers: RP13–601–000
Applicants: High Island Offshore System, L.L.C.
Description: High Island Offshore System, L.L.C. submits 2013 Annual Fuel Filing for calendar year 2012 activity
Filed Date: 2/28/13
Accession Number: 20130228–5084
Comments Due: 5 p.m. ET 3/12/13

Docket Numbers: RP13–602–000
Applicants: Tallgrass Interstate Gas Transmission, L
Description: Neg Rate Choice Ethanol (fka Nedak) 2013–02–28 to be effective 2/28/2013
Filed Date: 2/28/13
Accession Number: 20130228–5091
Comments Due: 5 p.m. ET 3/12/13

Docket Numbers: RP13–603–000
Applicants: Guardian Pipeline, L.L.C.
Description: EPC Semi Annual Adjustment—Spring 2013 to be effective 4/1/2013
Filed Date: 2/28/13
Accession Number: 20130228–5100
Comments Due: 5 p.m. ET 3/12/13

Docket Numbers: RP13–604–000
Applicants: Viking Gas Transmission Company
Description: LMCRA—Spring 2013 to be effective 4/1/2013
Filed Date: 2/28/13
Accession Number: 20130228–5101
Comments Due: 5 p.m. ET 3/12/13

Docket Numbers: RP13–605–000
Applicants: El Paso Natural Gas Company, L.L.C.
Description: Willcox Lateral Expansion Tariff Compliance Filing to be effective 4/1/2013
Filed Date: 2/28/13
Accession Number: 20130228–5116
Comments Due: 5 p.m. ET 3/12/13

Docket Numbers: RP13–606–000
Applicants: Columbia Gas Transmission, LLC
Description: LNG Settlement—Pro-Forma to be effective 12/31/9998
Filed Date: 2/28/13
Accession Number: 20130228–5150
Comments Due: 5 p.m. ET 3/12/13

Docket Numbers: RP13–607–000
Applicants: Northern Natural Gas Company
Description: 20130228 Negotiated Rate to be effective 3/1/2013
Filed Date: 2/28/13
Accession Number: 20130228–5157
Comments Due: 5 p.m. ET 3/12/13

Docket Numbers: RP13–608–000
Applicants: American Midstream (Midla), LLC
Description: Midla Non-Conforming Agreements to be effective 3/1/2013
Filed Date: 2/28/13
Accession Number: 20130228–5165
Comments Due: 5 p.m. ET 3/12/13

Docket Numbers: RP13–609–000
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: Fuel Tracker 2013 to be effective 4/1/2013
Filed Date: 2/28/13
Accession Number: 20130228–5185
Comments Due: 5 p.m. ET 3/12/13

Docket Numbers: RP13–610–000
Applicants: Rockies Express Pipeline LLC
Description: Rockies Express Pipeline LLC submits tariff filing per 154.204: 2013 Annual FL&U Percentage Adjustment to be effective 4/1/2013
Filed Date: 2/28/13
Accession Number: 20130228–5204
Comments Due: 5 p.m. ET 3/12/13

Docket Numbers: RP13–611–000
Applicants: Transwestern Pipeline Company, LLC
Description: 2013 TW Settlement Fuel Filing to be effective 4/1/2013
Filed Date: 2/28/13
Accession Number: 20130228–5261
Comments Due: 5 p.m. ET 3/12/13

Docket Numbers: RP13–612–000
Applicants: Dominion Cove Point LNG, LP
Description: DCP—2013 Annual EPCA to be effective 4/1/2013
Filed Date: 2/28/13
Accession Number: 20130228–5292
Comments Due: 5 p.m. ET 3/12/13

Docket Numbers: RP13–613–000
Applicants: Dominion Cove Point LNG, LP
Description: DCP—2013 Annual Fuel Retainage to be effective 4/1/2013
Filed Date: 2/28/13
Accession Number: 20130228–5297
Comments Due: 5 p.m. ET 3/12/13

Docket Numbers: RP13–614–000
Applicants: ANR Pipeline Company
Description: Marshfield Reduction Phase IV to be effective 4/1/2013
Filed Date: 2/28/13
Accession Number: 20130228–5330
Comments Due: 5 p.m. ET 3/12/13

Docket Numbers: RP13–615–000
Applicants: Cheniere Creole Trail Pipeline, L.P.
Description: Transportation Retainage Adjustment to be effective 4/1/2013
Filed Date: 2/28/13
Accession Number: 20130228–5357
Comments Due: 5 p.m. ET 3/12/13

Docket Numbers: RP13–616–000
Applicants: Kern River Gas Transmission Company
Description: 2013 Daggett Surcharge to be effective 4/1/2013
Filed Date: 3/1/13
Accession Number: 20130301–5002
Comments Due: 5 p.m. ET 3/13/13

Docket Numbers: RP13–617–000
Applicants: Columbia Gas Transmission, LLC
Description: Firm to IPP Pooling Modifications to be effective 4/1/2013
Filed Date: 3/1/13
Accession Number: 20130301–5027
Comments Due: 5 p.m. ET 3/13/13

Docket Numbers: RP13–618–000
Applicants: Transcontinental Gas Pipe Line Company,
Description: Annual Electric Power Tracker Filing effective April 1, 2013 to be effective 4/1/2013
Filed Date: 3/1/13
Accession Number: 20130301–5038
Comments Due: 5 p.m. ET 3/13/13

Docket Numbers: RP13–619–000
Applicants: Big Sandy Pipeline, LLC
Description: Big Sandy Pipeline, LLC submits tariff filing per 154.204: Troublesome Creek 1009027 Negotiated Rate to be effective 4/1/2013
Filed Date: 3/1/13
Accession Number: 20130301–5039
Comments Due: 5 p.m. ET 3/13/13

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: RP11–65–003
Applicants: Trans-Union Interstate Pipeline, L.P.
Description: Order 587–V Compliance Filing to Modify Tariff (2.14.13) to be effective 12/1/2012
Filed Date: 2/14/13
Accession Number: 20130214–5054
Comments Due: 5 p.m. ET 3/5/13

Docket Numbers: RP12–955–003
Applicants: CenterPoint Energy—Mississippi River T

Description: MRT Rate Case Motion Rate Filing to be effective 3/1/2013

Filed Date: 2/28/13

Accession Number: 20130228–5103

Comments Due: 5 p.m. ET 3/12/13

Docket Numbers: RP12–993–002

Applicants: Transcontinental Gas Pipe Line Company,

Description: Compliance Filing to Update Suspended Tariff Records in Docket No. RP12–993 to be effective 3/1/2013

Filed Date: 2/28/13

Accession Number: 20130228–5346

Comments Due: 5 p.m. ET 3/12/13

Docket Numbers: RP13–147–002

Applicants: WestGas InterState, Inc.

Description: 20130228_Compliance Filing to be effective 12/1/2012

Filed Date: 2/28/13

Accession Number: 20130228–5366

Comments Due: 5 p.m. ET 3/12/13

Docket Numbers: RP13–588–001

Applicants: Natural Gas Pipeline Company of America

Description: Interstate Power Amended Negotiated Rate Filing to be effective 3/1/2013

Filed Date: 2/28/13

Accession Number: 20130228–5152

Comments Due: 5 p.m. ET 3/12/13

Docket Numbers: RP13–147–003

Applicants: WestGas InterState, Inc.

Description: 20130301_Compliance Filing to be effective 12/1/2012

Filed Date: 3/1/13

Accession Number: 20130301–5003

Comments Due: 5 p.m. ET 3/13/13

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: March 1, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary

[FR Doc. 2013–05326 Filed 3–6–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–4050–001; ER11–4027–002; ER11–4028–002.

Applicants: Cogentrix of Alamosa, LLC, Portsmouth Genco, LLC, James River Genco, LLC.

Description: Second Supplement to January 14, 2013 Notice of Non-Material Change in Status of Cogentrix of Alamosa, LLC, et al.

Filed Date: 2/27/13.

Accession Number: 20130227–5029.

Comments Due: 5 p.m. ET 3/14/13.

Docket Numbers: ER12–2068–002.

Applicants: Blue Sky East, LLC.

Description: Notice of Change in Status of Blue Sky East, LLC.

Filed Date: 2/28/13.

Accession Number: 20130228–5296.

Comments Due: 5 p.m. ET 3/21/13.

Docket Numbers: ER13–486–001.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits Response to the Commission's 1/29/2013 Letter Requesting Additional Information to be effective 1/31/2013.

Filed Date: 2/28/13.

Accession Number: 20130228–5324.

Comments Due: 5 p.m. ET 3/21/13.

Docket Numbers: ER13–681–001.

Applicants: The Empire District Electric Company.

Description: The Empire District Electric Company submits Supplement to Filing to be effective 1/1/2013.

Filed Date: 2/28/13.

Accession Number: 20130228–5340.

Comments Due: 5 p.m. ET 3/21/13.

Docket Numbers: ER13–698–001.

Applicants: Southard Energy Partners LLC.

Description: Southard Energy Partners, LLC FERC Electric Tariff to be effective 2/11/2013.

Filed Date: 2/28/13.

Accession Number: 20130228–5232.

Comments Due: 5 p.m. ET 3/21/13.

Docket Numbers: ER13–708–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: 02–28–13 Appendix K 205 Rights Amendment to be effective 12/18/2013.

Filed Date: 2/28/13.

Accession Number: 20130228–5255.

Comments Due: 5 p.m. ET 3/21/13.

Docket Numbers: ER13–773–001.

Applicants: CCI Roseton LLC.

Description: CCI Roseton LLC submits Supplement MBR Filing to be effective 1/18/2013.

Filed Date: 2/28/13.

Accession Number: 20130228–5318.

Comments Due: 5 p.m. ET 3/14/13.

Docket Numbers: ER13–1002–000.

Applicants: Public Service Company of New Mexico.

Description: Transmission Construction and Interconnection Agreement with Jicarilla Nation to be effective 4/26/2013.

Filed Date: 2/28/13.

Accession Number: 20130228–5057.

Comments Due: 5 p.m. ET 3/21/13.

Docket Numbers: ER13–1003–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits Notices of Termination of Service Agreement Nos. 28 and 29.

Filed Date: 2/28/13.

Accession Number: 20130228–5085.

Comments Due: 5 p.m. ET 3/21/13.

Docket Numbers: ER13–1004–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: 2013–02–28 Schedule 27 DAMAP to be effective 3/1/2013.

Filed Date: 2/28/13.

Accession Number: 20130228–5090.

Comments Due: 5 p.m. ET 3/8/13.

Docket Numbers: ER13–1005–000.

Applicants: PacifiCorp.

Description: DGT, UAMPS, UMPA Revised TSOAs to be effective 5/1/2013.

Filed Date: 2/28/13.

Accession Number: 20130228–5231.

Comments Due: 5 p.m. ET 3/21/13.

Docket Numbers: ER13–1006–000.

Applicants: Public Service Company of Colorado.

Description: Public Service Company of Colorado submits Notice of Power Purchase Agreement with Colorado Springs Utilities.

Filed Date: 2/28/13.

Accession Number: 20130228–5291.

Comments Due: 5 p.m. ET 3/21/13.

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: February 28, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–05270 Filed 3–6–13; 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: RP13–587–000.
Applicants: Viking Gas Transmission Company.
Description: Semi Annual FLRP—Spring 2013 to be effective 4/1/2013.
Filed Date: 2/27/13.
Accession Number: 20130227–5019.
Comments Due: 5 p.m. ET 3/11/13.

Docket Numbers: RP13–588–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Negotiated Rate—Interstate Power to be effective 3/1/2013.
Filed Date: 2/27/13.
Accession Number: 20130227–5062.
Comments Due: 5 p.m. ET 3/11/13.

Docket Numbers: RP13–589–000.
Applicants: Northwest Pipeline GP.
Description: Northwest Pipeline GP submits tariff filing per 154.204: 2013 Summer Fuel Factor Filing to be effective 4/1/2013.
Filed Date: 2/27/13.
Accession Number: 20130227–5067.
Comments Due: 5 p.m. ET 3/11/13.

Docket Numbers: RP13–590–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: Trailblazer Pipeline Company LLC submits tariff filing per 154.204: Housekeeping to incorporate gas quality into Baseline to be effective 3/1/2013.
Filed Date: 2/27/13.
Accession Number: 20130227–5068.
Comments Due: 5 p.m. ET 3/11/13.

Docket Numbers: RP13–591–000.
Applicants: ANR Pipeline Company.
Description: Fuel Filing 2013 to be effective 4/1/2013.
Filed Date: 2/27/13.
Accession Number: 20130227–5092.
Comments Due: 5 p.m. ET 3/11/13.

Docket Numbers: RP13–592–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Negotiated Rates—Eminence Enhancement—Revise Contract Quantities to be effective 2/28/2013.
Filed Date: 2/27/13.
Accession Number: 20130227–5102.
Comments Due: 5 p.m. ET 3/11/13.

Docket Numbers: RP13–593–000.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: Imbalance Resolution 2013 to be effective 4/1/2013.
Filed Date: 2/28/13.
Accession Number: 20130228–5045.
Comments Due: 5 p.m. ET 3/12/13.

Docket Numbers: RP13–594–000.
Applicants: Dominion Transmission, Inc.
Description: DTI—February 28, 2013 Negotiated Rate Agreements to be effective 3/1/2013.
Filed Date: 2/28/13.
Accession Number: 20130228–5046.
Comments Due: 5 p.m. ET 3/12/13.

Docket Numbers: RP13–595–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Amendment to Neg Rate Agmt (Sequent 34693–14) to be effective 2/28/2013.
Filed Date: 2/28/13.
Accession Number: 20130228–5053.
Comments Due: 5 p.m. ET 3/12/13.

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: RP13–47–002.
Applicants: WBI Energy Transmission, Inc.
Description: NAESB 2.0 Compliance Filing Regarding Removal of EDI/EDM Suspension to be effective 2/27/2013.
Filed Date: 2/27/13.
Accession Number: 20130227–5021.
Comments Due: 5 p.m. ET 3/11/13.

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: February 28, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–05271 Filed 3–6–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3670–001.
Applicants: ArcelorMittal USA LLC.
Description: Notice of Change in Status of ArcelorMittal USA LLC.
Filed Date: 2/27/13.
Accession Number: 20130227–5191.
Comments Due: 5 p.m. ET 3/20/13.

Docket Numbers: ER13–998–000.
Applicants: PJM Interconnection, L.L.C.
Description: Original Service Agreement No. 3503; Queue No. X4–031 to be effective 2/1/2013.
Filed Date: 2/27/13.
Accession Number: 20130227–5135.
Comments Due: 5 p.m. ET 3/20/13.

Docket Numbers: ER13–999–000.
Applicants: New England Power Company.
Description: Rate Schedule CRA–NEP–04—Cost Allocation Agreement with NSTAR Electric Co. to be effective 2/28/2013.
Filed Date: 2/27/13.
Accession Number: 20130227–5136.
Comments Due: 5 p.m. ET 3/20/13.

Docket Numbers: ER13–1000–000.
Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.
Description: LGIA No. 1954 between NiMo and Indeck-Olean Limited Partnership to be effective 12/26/2012.
Filed Date: 2/27/13.
Accession Number: 20130227–5174.
Comments Due: 5 p.m. ET 3/20/13.

Docket Numbers: ER13–1001–000.
Applicants: Pacific Gas and Electric Company.
Description: Filing to Extend PWRPA Interconnection and WDT Service Agreements to be effective 5/1/2013.

Filed Date: 2/27/13.
Accession Number: 20130227–5176.
Comments Due: 5 p.m. ET 3/20/13.

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: February 28, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–05269 Filed 3–6–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of ISO New England Inc., New York Independent System Operator, Inc., and PJM Interconnection, L.L.C.:

Joint Inter-Regional Planning Task Force/Electric System Planning Working Group

March 6, 2012, 10:00 a.m. to 4:00 p.m., Local Time
March 21, 2012, 1:00 p.m. to 4:00 p.m., Local Time

Electric System Planning Working Group

March 12, 2012, 10:00 a.m. to 4:00 p.m., Local Time
April 5, 2012, 11:00 a.m. to 4:00 p.m., Local Time
April 25, 2012, 10:00 a.m. to 4:00 p.m., Local Time

The above-referenced meetings are open to stakeholders and will be held at:

NYISO's offices, Rensselaer, NY.

Further information may be found at *www.nyiso.com.*

The discussions at the meetings described above may address matters at issue in the following proceedings:

Docket No. ER08–1281, *New York Independent System Operator, Inc.*

For more information, contact James Eason, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–8622 or *James.Eason@ferc.gov.*

Dated: February 28, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–05255 Filed 3–6–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL13–49–000]

Citizens Energy Task Force, Save Our Unique Lands (Complainants) v. Midwest Reliability Organization, Midwest Independent Transmission System Operator, Inc., Xcel Energy, Inc., Great River Energy, Dairyland Power Cooperative, Wisconsin Public Power Inc., (Respondents); Notice of Complaint

Take notice that on February 28, 2013, pursuant to section 306 of the Federal Power Act (FPA) and Rule 206 of the Rules of Practice and Procedures of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, Citizens Energy Task Force (CETF) and Save Our Unique Lands (SOUL) filed a complaint requesting that the Commission order: (1) That the MTEP 08 addition of the Hampton-Rochester-La Crosse transmission line is prohibited because electrical impacts of the addition of this project to the grid were not considered, and that instead of improving the reliability of the system, it contributes to and/or causes electrical system instability; (2) that the Midwest Reliability Organization has neglected its duty to preserve the reliability of the system, and (3) that the Commission order revocation of the Midwest Independent Transmission Service Operator approval of the CapX 2020 Hampton-La Crosse transmission project because the addition of the Hampton-Rochester-La Crosse transmission line contributes to and/or causes system instability.

The Complainants certify that copies of the complaint were served on the contacts for the Respondents as listed on the commission's list of Corporate Officials and on parties and the regulatory agencies the Complainants reasonably expect to be affected by this complaint.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on March 21, 2013.

Dated: March 1, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–05275 Filed 3–6–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL13–48–000]

Delaware Division of the Public Advocate, Delaware Municipal Electric Corporation, Inc., Delaware Public Service Commission, Maryland Office of People's Counsel, Maryland Public Service Commission, New Jersey Board of Public Utilities, New Jersey Division of Rate Counsel, Office of the People's Counsel of the District of Columbia, Public Service Commission of the District of Columbia v. Baltimore Gas and Electric Company, Pepco Holdings, Inc., Potomac Electric Power Company, Delmarva Power & Light Company, Atlantic City Electric Company;

Notice of Complaint

Take notice that on February 27, 2013, pursuant to Rules 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206 (2013) and section 206 of the Federal Power Act, 16 U.S.C. 824(e), Delaware Division of the Public Advocate, Delaware Municipal Electric Corporation, Inc., Delaware Public Service Commission, Maryland Office of People's Counsel, Maryland Public Service Commission, New Jersey Board of Public Utilities, New Jersey Division of Rate Counsel, Office of the People's Counsel of the District of Columbia, and Public Service Commission of the District of Columbia (collectively, Complainants) filed a formal complaint against Baltimore Gas and Electric Company (BGE), Pepco Holdings, Inc. (PHI), and affiliates; Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company (Respondents), seeking a Commission order to reduce the base return equity used in BGE's and PHI Companies' formula transmission rates to 8.7 percent and directing the Respondents to submit compliance filings to implement the changes to the formula transmission rate implementation protocols, as more fully described in the complaint.

The Complainants certify that copies of the complaint were served on the contacts for the Respondents as listed on the Commission's list of Corporate Officials and on parties the Complainants reasonably expect to be affected by this Complaint.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on March 19, 2013.

Dated: February 28, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–05258 Filed 3–6–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–53–000]

Northern Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Garner Lng Offloading Facilities and Utilization Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Garner liquefied natural gas (LNG) Offloading Facilities and Utilization Project (Project) involving construction and operation of LNG offloading facilities by Northern Natural Gas Company (Northern) in Hancock County, Iowa. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Details on how to submit written comments are in the Public Participation section of this notice. Please note that the scoping period will close on April 1, 2013.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

Northern provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?''. This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Summary of the Proposed Project

Northern proposes to construct and operate an LNG offloading facility, immediately adjacent to the existing Garner LNG storage facility that would allow Northern to provide trailer-delivered LNG service to support the operation and maintenance of its pipeline system, and provide LNG to third parties on an interruptible basis.

The Project would consist of the following facilities:

- Offloading station including, LNG pump skid, LNG trailer loading skid, and skid enclosures;
- aboveground transfer piping including, pipe, and concrete and steel pipe support;
- isolation, check, and flow control valves;
- mass flow meter and overpressure protection system;
- spill containment system;
- security fence, an electrical operated security gate, and security monitoring system;
- fire and gas detection system and emergency shutdown system;
- widen the existing driveway of the Garner LNG storage facility; and

• add new access road from the existing driveway.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

The property owned by Northern encompasses a total of 169 acres. The existing Garner LNG storage facility occupies approximately 25.6 acres. Construction of the Project would require approximately 49.5 acres, including areas within and outside of the existing Garner LNG storage facility. Operation of the Project would require approximately 1.07 acres. All construction materials and construction equipment would be staged and stored within the Project area.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

• Geology and soils;
• land use;
• water resources, fisheries, and wetlands;
• cultural resources;
• vegetation and wildlife;
• air quality and noise;
• endangered and threatened species;
• cumulative impacts; and
• public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section beginning on page 4.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA[3]. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the Iowa State Historic Preservation Office (SHPO), and to solicit its views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before April 1, 2013.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP13–53–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (www.ferc.gov) under the link to Documents and Filings. This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the eFiling feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are located under the Help link on the Commission's Web site, by clicking on ''How to Intervene.''

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., CP13–53). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: February 28, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–05257 Filed 3–6–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2277–023]

Union Electric Company (dba Ameren Missouri); Notice of Availability of Draft Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new license for the Taum Sauk Pumped Storage Project (FERC Project No. 2277), located on the East Fork of the Black River in Reynolds County, Missouri, and prepared a draft environmental assessment (EA).

In the draft EA, Commission staff analyzes the potential environmental effects of licensing the project, and concludes that issuing a new license for the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the draft EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's web site at www.ferc.gov using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659.

You may also register online at www.ferc.gov/docs-filing/esubscription.asp to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *www.ferc.gov/docfiling/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *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. Please affix ''Taum Sauk Pumped Storage Project No. 2277–023'' to all comments.

For further information, please contact Janet Hutzel by telephone at (202) 502–8675, or by email at *janet.hutzel@ferc.gov.*

Dated: March 1, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–05278 Filed 3–6–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14447–000—MA]

L.S. Starrett Company; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for exemption from licensing for the Crescent Street Dam Hydroelectric Project, located on the Millers River, in the Town of Athol, Worcester County, Massachusetts, and has prepared an Environmental Assessment (EA). In the EA, Commission staff analyzes the potential environmental effects of the project and concludes that issuing an exemption for the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number

field, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact Tom Dean at (202) 502–6041.

Dated: March 1, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–05281 Filed 3–6–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–14–000]

Millennium Pipeline Company, L.L.C.; Notice of Availability of the Environmental Assessment for the Proposed Hancock Compressor Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the Hancock Compressor Project proposed by Millennium Pipeline Company, L.L.C. (Millennium) in the above-referenced docket. Millennium requests authorization to construct and operate its Hancock Compressor Project in Delaware County, New York, to meet the demands of existing customers and allow bi-directional gas flow.

The EA assesses the potential environmental effects of the construction and operation of the Hancock Compressor Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The U.S. Environmental Protection Agency participated as a cooperating agency in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis.

The proposed Hancock Compressor Project includes the following facilities:

- One 15,900-horsepower natural gas-fired compressor unit at the new Hancock Compressor Station;
- About 320 feet of 30-inch-diameter pipeline for suction from the existing Millennium mainline and about 290 feet of 30-inch-diameter pipeline for discharge to the existing Millennium mainline;
- A new 650-foot-long permanent access driveway; and
- Associated ancillary facilities.

The FERC staff mailed copies of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding. In addition, the EA is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before April 1, 2013.

For your convenience, there are three methods you can use to file your comments to the Commission. In all instances, please reference the project docket number (CP13–14–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). [1] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (i.e., CP13–14). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

[1] See the previous discussion on the methods for filing comments.

Dated: March 1, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–05279 Filed 3–6–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–497–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Availability of the Environmental Assessment for the Proposed Brandywine Creek Replacement Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Brandywine Creek Replacement Project, proposed by Transcontinental Gas Pipe Line Company, LLC (Transco) in the above-referenced docket. Transco requests authorization to remove approximately 2,167 feet of existing 30-inch-diameter natural gas pipeline and replace it with 42-inch-diameter natural gas pipeline in Chester County, Pennsylvania.

The EA assesses the potential environmental effects of the construction and operation of the Brandywine Creek Replacement Project in accordance with the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The FERC staff mailed copies of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding. In addition, the EA is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before March 29, 2013.

For your convenience, there are three methods you can use to file your comments to the Commission. In all instances, please reference the project docket number (CP12–497–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings*. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings*. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister*.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (i.e., CP12–497). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Dated: February 28, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–05256 Filed 3–6–13; 8:45 am]

BILLING CODE 6717–01–P

[1] See the previous discussion on the methods for filing comments.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR13–37–000]

Duke Energy Ohio, Inc.; Notice of Petition for Rate Approval

Take notice that on February 28, 2013, Duke Energy Ohio, Inc. (DE-Ohio) filed a Rate Election pursuant to 284.123(b)(1) of the Commissions regulations proposing to utilize the commodity charge under DE-Ohio's Rate IT (Interruptible Transportation Service), as approved by the Public Utilities Commission of Ohio, as more fully detailed in the petition.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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

date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not 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 7 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 Wednesday, March 13, 2013.

Dated: March 1, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–05274 Filed 3–6–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–405–000]

Cayuga Operating Co., LLC; Notice of Petition for Rate Withdrawal

Take notice that on February 28, 2013, Cayuga Operating Co., LLC, filed pursuant to 18 CFR 35.17(a) to withdraw its Federal Power Act section 205 filing and proposed unexecuted reliability must-run agreement (RMR Agreement), and also filed a motion to extend or suspend the current March 4, 2013 comment due date.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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 date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not 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 7 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 Friday, March 15, 2013.

Dated: March 1, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–05277 Filed 3–6–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e) (1) (v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped chronologically, in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnline Support@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202)502–8659.

Exempt

Docket No.	Filed date	Presenter or requester
1. CP12–495–000	02–11–13	FERC Staff.[1]
2. CP12–507–000, CP12–508–000	02–13–13	FERC Staff.[2]
3. P–2790–55	02–26–13	Milford Wayne Donaldson.

[1] Phone record.
[2] Phone record.

Dated: March 1, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–05268 Filed 3–6–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–80–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

Take notice that on February 19, 2013, National Fuel Gas Supply Corporation (National Fuel), 6363 Main Street, Williamsville, New York 14221, filed in Docket No. CP13–80–000, a prior notice request, pursuant to sections 157.205, 157.208, 157.210 and 157.216 of the Commission's Regulations under the Natural Gas Act, and National Fuel's blanket certificate issued in Docket No. CP83–4, for authorization to construct and operate approximately 1.27 miles of 24-inch diameter pipeline in Washington County, Pennsylvania, and to abandon in place 1.27 miles of 20-inch diameter pipeline, which would be paralleled by the new 24-inch pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this Application should be directed to David W. Reitz, Deputy General Counsel for National Fuel, 6363 Main Street, Williamsville, New York 14221, or call at (716) 857–7949.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with he Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and ill not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: March 1, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–05280 Filed 3–6–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9787–3]

Notice of Meeting of the EPA Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held April 17th and 18th, 2013 at the National Archives Museum (700 Pennsylvania Avenue NW., Washington, DC 20408) in the Jefferson Room. The CHPAC advises the Environmental Protection Agency on science, regulations, and other issues relating to children's environmental health.

DATES: April 17–18, 2013.

ADDRESSES: 700 Pennsylvania Avenue NW., Washington, DC 20408. Enter on 7th Street near Constitution Avenue.

FOR FURTHER INFORMATION CONTACT: Martha Berger, Office of Children's Health Protection, USEPA, MC 1107A, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 564–2191 or *berger.martha@epa.gov.*

SUPPLEMENTARY INFORMATION: The meetings of the CHPAC are open to the public. The CHPAC will meet on Wednesday, April 17th from 1 p.m. to 6 p.m., and Thursday, April 18th from 8:30 a.m. to 4:00 p.m. in the Jefferson Room. An agenda will be posted to epa.gov/children.

Access and Accommodations: For information on access or services for individuals with disabilities, please

contact Martha Berger at 202–564–2191 or *berger.martha@epa.gov.,* preferably at least 10 days prior to the meeting.

Martha Berger,

Designated Federal Official.

[FR Doc. 2013–05095 Filed 3–6–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9788–7]

Public Water System Supervision Program Approval for the State of Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the EPA has tentatively approved three revisions to the State of Indiana's public water system supervision program. The Indiana Department of Environmental Management (IDEM) has revised several of its rules to comply with the National Primary Drinking Water Regulations, including the Interim Enhanced Surface Water Treatment Rule (IESWTR), the Stage 1 Disinfectants and Disinfection Byproducts Rule (Stage 1 DDBPR), and the Filter Backwash Recycling Rule (FBRR). EPA has determined that Indiana's revised rules are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve these revisions to the State of Indiana's public water system supervision program, thereby giving IDEM primary enforcement responsibility for these regulations. IDEM adopted the IESWTR, Stage 1 DDBPR, and the FBRR on December 1, 2002.

Any interested party may request a public hearing. A request for a public hearing must be submitted by April 8, 2013, to the Regional Administrator at the EPA Region 5 address shown below. The Regional Administrator may deny frivolous or insubstantial requests for a hearing. However, if a substantial request for a public hearing is made by April 8, 2013, EPA Region 5 will hold a public hearing, and a notice of such hearing will be given in the **Federal Register** and a newspaper of general circulation. If EPA Region 5 does not receive a timely and appropriate request for a hearing and the Regional Administrator does not elect to hold a hearing on her own motion, this determination shall become final and effective on April 8, 2013. Any request for a public hearing shall include the following information: the name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection at the following offices: Indiana Department of Environmental Management, 100 North Senate Avenue, Indianapolis, Indiana 46204, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, and the United States Environmental Protection Agency, Region 5, Ground Water and Drinking Water Branch (WG–15J), 77 West Jackson Boulevard, Chicago, Illinois 60604, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: William Spaulding, EPA Region 5, Ground Water and Drinking Water Branch, at the address given above, by telephone at (312) 886–9262, or at *spaulding.william@epa.gov.*

Authority: Section 1413 of the Safe Drinking Water Act, 42 U.S.C. 300g–2, and the federal regulations implementing Section 1413 of the Act set forth at 40 CFR part 142.

Dated: February 22, 2013.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2013–05356 Filed 3–6–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Issuance of Exposure Draft on Implementation Guidance on General Property, Plant, and Equipment Cost Accumulation, Assignment, and Allocation

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 2010, notice is hereby given that the Accounting and Auditing Policy Committee (AAPC) has issued a Federal Financial Accounting Technical Release Exposure Draft entitled *Implementation Guidance on General Property, Plant, and Equipment Cost Accumulation, Assignment, and Allocation.*

The Exposure Draft is available on the FASAB Web site: *http://www.fasab.gov/board-activities/documents-for-comment/exposure-drafts-and-documents-for-comment/.*

Copies can be obtained by contacting FASAB at (202) 512–7350.

Respondents are encouraged to comment on any part of the exposure draft. Written comments are requested by May 1, 2013, and should be sent to: Wendy M. Payne, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street NW., Suite 6814, Mail Stop 6H19, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Wendy Payne, Executive Director, at (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: March 4, 2013.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. 2013–05348 Filed 3–6–13; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, March 12, 2013 At 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC

STATUS: This Meeting Will Be Closed To The Public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2013–05472 Filed 3–5–13; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO), and/or Ocean Freight Forwarder (OFF) pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov*.

A.G. Cargo Import, Inc. (NVO & OFF), 3340A Greens Road, Houston, TX 77032. Officers: Justiniano Nunez, President (QI); Fatima Ugueto, Secretary. Application Type: New NVO & OFF License

American Forwarding & Logistics, LLC (NVO & OFF), 1919 NW 19th Street, Unit 624, Ft. Lauderdale, FL 33311. Officers: Gabriele Awada, Manager (QI); Philipp Stachow, Stockholder. Application Type: New NVO & OFF License

Art Van Lines USA, Inc. (NVO), , 501 Penhorn Avenue, Unit 2, Secaucus, NJ 07094. Officers: Kazuhiko Kato, Treasurer (QI); Shozo Murata, President. Application Type: QI Change

Autolink Express Inc (NVO & OFF), 1614 Potrero Avenue, Suite D, South El Monte, CA 91733. Officers: Alex C. Huang, CEO (QI); Wei Zheng, Shareholder. Application Type: New NVO & OFF License

Bay Logistics, Inc. dba Important Cargo Express Co. (NVO), 1677 Atlantic Court, Union City, CA 94587. Officer: Han K. Lim, President (QI). Application Type: Delete Trade Name Important Cargo Express Co.

BL Worldwide Corp. (NVO), 1680 NW 82nd Avenue, Doral, FL 33126. Officer: Maria J. Bembhy, President (QI). Application Type: New NVO License

Browman Freight Services Inc. (NVO), 2800 14th Avenue, Suite 404, Markham, Canada. Officers: Philip Browman, President (QI); Daniel Browman, Vice President. Application Type: New NVO License

Cesar Eddy Quinones dba Jersey Marine Services (NVO), 716 Irving Place, Secaucus, NJ 07094. Officer: Cesar E. Quinones, Sole Proprietor (QI). Application Type: New NVO License

Denizabel Shipping, Inc. (OFF), 19558 NW 50th Court, Miami, FL 33055. Officer: Isabel Ramirez, President (QI). Application Type: New OFF License

Di Global Logistics, Inc. (NVO & OFF), 1730 NW 96 Avenue, Miami, FL 33172. Officers: Johan Arenas, Vice President (QI); Carlos Delgado Arenas, President. Application Type: New NVO & OFF License

DTI Group Inc. (NVO & OFF), 10913 NW 30th Street, Miami, FL 33172. Officer: Sebastian A. Detullio, President (QI). Application Type: Add NVO Service

Excom USA Inc. (NVO & OFF), 10300 W. McNab Road, Tamarac, FL 33321. Officers: Maria J. Oliveira, President (QI); Dercilio Oliveira, Vice President. Application Type: Add NVO Service

F. M. Air Inc. (OFF), 8140 NW 74th Avenue, Unit 6, Medley, FL 33166. Officers: Uilson Nacimento Jr., Vice President (QI); Marcos H. Munhoz, President. Application Type: New OFF License

Freightit, Inc. (NVO), 18701 SW 28th Court, Miramar, FL 33029. Officer: Peter M. Acham, President (QI). Application Type: New NVO

Global Express Forwarding, Inc. (NVO), 5125 N. Oneida Avenue, Norridge, IL 60706. Officer: Michal Gaglewski, President (QI). Application Type: New NVO License

Javelin Logistics Corporation (NVO & OFF), 7447A Morton Avenue, Newark, CA 94560. Officers: Susan M. Foster, Director (QI), Malcolm Winspear, President. Application Type: QI Change

JK International Inc. (NVO & OFF), 1700 S. Third Street, Memphis, TN 38109. Officers: Linda Weddington, Corporate Secretary (QI); James Kim, President. Application Type: QI Change

Maritrans Shipping Ltd. (NVO), 170 E. Sunrise Highway, Valley Stream, NY 11581. Officer: Michael De Filippis, President (QI). Application Type: Name Change to Cargotrans Inc. dba Maritrans Shipping

Miami Warehouse Logistics, Inc. (NVO & OFF), 10800 NW 97th Street, Suite 101, Miami, FL 33178. Officer: Alexis Roldos, President (QI). Application Type: Add OFF Service

Multimodal International Shipping Inc. dba Masterpiece Ocean Freight Limited (NVO & OFF), 615 N. Nash Street, Suite 300, El Segundo, CA 90245. Officers: Andrew Pearlstein, Secretary (QI); David B. Epstein, President. Application Type: QI Change

NMC Logistics Solutions, Inc. (NVO & OFF), 9910 NW 21st Street, Doral, FL 33172. Officers: Orlando Jimenez, President (QI); Natty Moreno, Secretary. Application Type: New NVO & OFF License

OOCL Logistics (USA) Inc. (OFF), 88 Pine Street, 8th Floor, New York, NY 10005. Officers: Richard L. Giovannone, President (QI); Miranda L. Lou, Chairman. Application Type: QI Change

Rapidex USA LLC (NVO & OFF), 71 Veronica Avenue, Suite 2, Somerset, NJ 08873. Officers: Mohamed Y. Ali, Manager (QI); Abdul S. Mohamed, Member. Application Type: Add Trade Name Compass Logistics International LLC

ShemiTrans, LLC (OFF), 1500 Whetstone Way, Suite T100, Baltimore, MD 21230. Officer: Yashar Norhashemi, Managing Member (QI). Application Type: New OFF License

Ship A Pallet, LLC (OFF), 16840 Clay Road, Suite 118, Houston, TX 77084. Officer: Don McSwain, Manager (QI). Application Type: New OFF License

Ship International, Inc. (NVO & OFF), 10551 Hathaway Drive, Santa Fe Springs, CA 90670. Officers: Rigoberto S. Zavaleta, Secretary (QI); Patricia A. Whaley, CEO. Application Type: New NVO & OFF License

Triple Eagle Logistics Inc. dba Triple Eagle Logistic Canada Inc. (NVO & OFF), 17890 Castleton Street, Suite 367, City of Industry, CA 91748. Officers: Yao Wen Mai, Vice President (QI); Hongyi Deng, President. Application Type: New NVO & OFF License

Universal Shipping Lines LLC (NVO & OFF), 1810 Auger Drive, Suite G, Tucker, GA 30084. Officer: Nil A. Aryeetey, Member (QI). Application Type: New NVO & OFF License

Vision Shipping, Inc. (NVO & OFF), 4900 Leesburg Pike, Suite 401, Alexandria, VA 22302. Officers: Husam F. Atari, President (QI); Nasser I. Elzein, Secretary. Application Type: New NVO & OFF License

By the Commission.

Dated: March 1, 2013.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2013–05318 Filed 3–6–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

The Commission gives notice that the following Ocean Transportation Intermediary license has been reissued

pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101) effective on the date shown.

License No.: 017269N.

Name: Fastmark Corporation.

Address: 7206 NW 84th Avenue, Medley, FL 33166.

Date Reissued: January 22, 2013.

Vern W. Hill,

Director, Bureau of Certification and Licensing.

[FR Doc. 2013–05314 Filed 3–6–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Rescission of Order of Revocation

The Commission gives notice that it has rescinded its Order revoking the following license pursuant to section 40901 of the Shipping Act of 1984 (46 U.S.C. 40101).

License No.: 008504N.

Name: Hyun Dae Trucking Co., Inc.

Address: 3022 S. Western Avenue, Los Angeles, CA 90018.

Order Published: January 25, 2013 (Volume 78, No. 17, Pg. 5440).

Vern W. Hill,

Director, Bureau of Certification and Licensing.

[FR Doc. 2013–05315 Filed 3–6–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Commission gives notice that the following Ocean Transportation Intermediary license has been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101) effective on the date shown.

License No.: 021062F.

Name: International Trade Compliance Group, LLC.

Address: 101 North Riverside Drive, Suite 203, Pompano Beach, FL 33062.

Date Revoked: February 20, 2013.

Reason: Voluntary Surrender of License.

Vern W. Hill,

Director, Bureau of Certification and Licensing.

[FR Doc. 2013–05311 Filed 3–6–13; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Centers for Medicare & Medicaid Services

[CMS–0038–NC]

Advancing Interoperability and Health Information Exchange

AGENCY: Office of the National Coordinator for Health Information Technology (ONC) and Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice with comment; Request for Information.

SUMMARY: HHS seeks input on a series of potential policy and programmatic changes to accelerate electronic health information exchange across providers, as well as new ideas that would be both effective and feasible to implement. To further accelerate and advance interoperability and health information exchange beyond what is currently being done through ONC programs and the EHR Incentive Program, HHS is considering a number of policy levers using existing authorities and programs.

DATES: To be assured consideration, written or electronic comments must be received at one of the addresses provided below, no later than 5 p.m. on April 22, 2013.

ADDRESSES: You may submit comments identified by any of the following methods below (please do not submit duplicate comments). Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

- *Federal eRulemaking Portal:* Follow the instructions for submitting comments. Attachments should be in Microsoft Word or Excel, Adobe PDF; however, we prefer Microsoft Word. *http://www.regulations.gov*.
- *Regular, Express, or Overnight Mail:* Department of Health and Human Services, Office of the National Coordinator for Health Information Technology, Attention: *Interoperability RFI,* Hubert H. Humphrey Building, Suite 729D, 200 Independence Ave. SW., Washington, DC 20201. Please submit one original and two copies.
- *Hand Delivery or Courier:* Office of the National Coordinator for Health Information Technology, Attention: *Interoperability RFI,* Hubert H. Humphrey Building, Suite 729D, 200 Independence Ave. SW., Washington, DC 20201. Please submit one original and two copies. (Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without federal government identification, commenters are encouraged to leave their comments in the mail drop slots located in the main lobby of the building.)

Inspection of Public Comments: All comments received before the close of the comment period will be available for public inspection, including any personally identifiable or confidential business information that is included in a comment. Please do not include anything in your comment submission that you do not wish to share with the general public. Such information includes, but is not limited to: A person's social security number; date of birth; driver's license number; state identification number or foreign country equivalent; passport number; financial account number; credit or debit card number; any personal health information; or any business information that could be considered to be proprietary. We will post all comments received before the close of the comment period at *http://www.regulations.gov*.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the Department of Health and Human Services, Office of the National Coordinator for Health Information Technology, Hubert H. Humphrey Building, Suite 729D, 200 Independence Ave. SW., Washington, DC 20201 (call ahead to the contact listed below to arrange for inspection).

FOR FURTHER INFORMATION CONTACT:

- Kelly Cronin, Health Care Reform Coordinator; or
- Steven Posnack, Director, Federal Policy Division

Office of the National Coordinator for Health Information Technology, 202–690–7151.

SUPPLEMENTARY INFORMATION:

I. Background

Since enactment of the Health Information Technology for Clinical and Economic Health Act as part of the American Recovery and Reinvestment Act, adoption and use of electronic health records in the United States has dramatically increased. Adoption of EHRs that met the criteria for a basic EHR system by office-based physicians grew by over 80% between 2009 and 2012, from 22% in 2009 to 40% in 2012.[1 2] Among non-federal acute care

[1] Hsiao CJ, Hing E. Use and characteristics of electronic health record systems among office-based

Continued

hospitals, adoption of at least a basic EHR system has increased by over 260% since 2009, from 12% to 44%.[3 4] Since 2009, there has been strong and steady growth in adoption of EHR technology to meet Meaningful Use objectives to improve quality, safety and efficiency. Adoption of many of the computerized functionalities associated with Meaningful Use has substantially increased among both office-based physicians as well as hospitals.[5 6] For example, physician adoption of five core Meaningful Use functionalities—ranging from e-prescribing to clinical decision support—has grown by at least 66% since HITECH in 2009.

As part of stage 2 rulemaking HHS has taken major steps to expand the functionality and utility of EHRs to providers and patients. We seek to build on that work by engaging other policy areas within HHS jurisdiction to promote routine sharing of information among health care providers across settings of care to support care coordination and delivery system reform. We also recognize that economic and regulatory barriers may impair the development of a patient centered, information rich, high performance health care system where a persons' health information follows them wherever they access health care services.

The Medicare and Medicaid Electronic Health Record (EHR) Incentive Programs and Office of the National Coordinator (ONC) for Health IT (HIT) Certification Program are increasing standards based health information exchange (HIE) across health care providers and settings of care to support greater coordination of health care services. However, this alone will not be enough to achieve the widespread interoperability and electronic exchange of information necessary for delivery reform where information will routinely follow the patient regardless of where they receive care. With fee-for-service reimbursement and other business motivations often being the stronger influencer of provider behavior, both providers and their vendors do not yet have a business imperative to share person level health information across providers and settings of care.

For example, in 2011, 4 in 10 hospitals electronically sent laboratory and radiology data to providers outside their organization; however, only ¼ of hospitals could exchange medication lists and clinical summaries with outside providers.[7] In addition in 2011, only 31 percent of physicians are exchanging clinical summaries with other providers.[8] There is even more limited HIE involving post-acute and institutional long-term care providers as well as behavioral health and lab providers who may not eligible for incentive payments under the EHR incentive program. Only 6 percent of long-term acute care hospitals, 4 percent of rehabilitation hospitals, and 2 percent of psychiatric hospitals have a basic electronic health record system.[9] Close to ⅓ of all Medicare beneficiaries discharged from acute care hospitals are discharged to post-acute care settings such as rehabilitation hospitals but there is little capacity in the system today to support HIE across these settings.[10] Similarly consumers and patients are not actively engaged in accessing and using their personal health information and requesting that their providers do the same. Based upon the 2012 ONC Privacy & Security Survey, 19 percent of consumers reported that they were given online access to a part of their medical record by a health care provider within the last 12 months.

ONC has been advancing standards based HIE through a variety of programs and initiatives including the Standards and Interoperability Framework, the State HIE Cooperative Agreement Program, the Direct Project, the Nationwide Health Information Network Exchange and the HIT Certification Program. Other HHS policies also encourage HIE through the adoption of interoperable Electronic Health Record (EHR) technology. For example we recognize that the EHR exception to the federal Physician Self-Referral law and EHR safe harbor to the federal Anti-Kickback Statute which protect the donation of certain software and related training and services when various requirements are met, have created a pathway for arrangements that promote EHR implementation and use. To further accelerate and advance interoperability and health information exchange beyond what is currently being done through ONC programs and the EHR Incentive Program, HHS is considering a number of policy levers using existing authorities and programs. The overarching goal is to develop and implement a set of policies that would encourage providers to routinely exchange health information through interoperable systems in support of care coordination across health care settings. This goal potentially could be achieved through a combination of incentives, payment adjustments, and requirements that collectively result in a more coordinated, value-driven health care system over the next 1 to 3 years and beyond. The Patient Protection and Affordable Care Act (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (collectively referred to as the Affordable Care Act) has created new opportunities to align current and new policies in a way that provides a compelling business and patient care case to providers to change culture and share clinical data with all providers across the health care spectrum as a part of their routine delivery of care and services. The Affordable Care Act initiatives including the Medicare Shared Savings Program, hospital readmission payment adjustments, Medicaid health homes, and new models being tested by the Center for Medicare and Medicaid Innovation are creating a stronger business case for many providers to exchange health information.

HHS recognizes the need to use evidence and data on provider behavior to inform ongoing policy development

physician practices: United States, 2001–2012. NCHS data brief, no 111. Hyattsville, MD: National Center for Health Statistics. 2012.

[2] A basic EHR system for office-based practices includes the following functionalities: Patient history and demographics, patient problem lists, physician clinical notes, comprehensive list of patients' medications and allergies, computerized orders for prescriptions, and ability to view laboratory and imaging results electronically. Note that functionalities associated with basic EHR differ from functionalities required for meaningful use.

[3] ONC analysis of data from the 2011 American Hospital Association Survey Information Technology Supplement. Data brief forthcoming.

[4] A basic EHR system for hospitals includes the following functionalities: Patient history and demographics, patient problem lists, physician clinical notes, nursing assessments, comprehensive list of patients' medications and allergies, discharge summaries, computerized orders for prescriptions, and the ability to view diagnostic test results, laboratory reports and radiology reports electronically. Note that functionalities associated with basic EHR differ from functionalities required for meaningful use.

[5] King J, Patel V, Furukawa MF. Physician Adoption of Electronic Health Record Technology to Meet Meaningful Use Objectives: 2009–2012. ONC Data Brief, no. 7. Washington, DC: Office of the National Coordinator for Health Information Technology. December 2012.

[6] ONC analysis of data from the 2011 American Hospital Association Survey Information Technology Supplement. Data brief forthcoming.

[7] ONC analysis of data from the 2011 American Hospital Association Survey Information Technology Supplement.

[8] ONC analysis of data from the 2011 National Ambulatory Medical Care Survey Electronic Health Record Supplement.

[9] Wolf L, Harvell J, Jha A. Hospitals Ineligible For Federal Meaningful-Use Incentives Have Dismally Low Rates Of Adoption Of Electronic Health Records *http://content.healthaffairs.org/content/31/3/505.full.*

[10] Wolf L, Harvell J, Jha A. Hospitals Ineligible For Federal Meaningful-Use Incentives Have Dismally Low Rates Of Adoption Of Electronic Health Records *http://content.healthaffairs.org/content/31/3/505.full.*

that will result in a connected, person-centric health care system where health information is routinely shared across providers and settings of care to encourage the consistent provision of high-quality care, promote efficient use of health care resources, and ensure that health outcomes are good and care is affordable. As HHS, the provider, and the health IT vendor communities gain more experience with new delivery models, meaningful use of health IT, and HIE, these insights along with up-to-date market data on provider behavior will inform the evolution of policies and programs that accelerate HIE and contribute to better quality care.

This request for information (RFI) lays out some of the potential options to accelerate the existing progress and enhance a market environment that will accelerate HIE across providers thereby improving the likelihood of successful delivery and payment reform. HHS is seeking input on the options addressed below, as well as other options that stakeholders believe would be effective and feasible.

A. Vision

We are on the dawn of a new era of health care delivery—a transformed system that is person-centered and value-based. Existing CMS programs and demonstrations, as well as new programs and initiatives authorized by the Affordable Care Act, focus on improved care coordination and new service delivery and payment models that encourage and facilitate greater coordination of care and improved quality, including accountable care organizations (ACOs), bundled payments, health and medical homes, and reductions in hospital readmission. Critical to the success of these programs and the ultimate goal of a transformed health care system is the real-time electronic exchange of health information. Experts agree that greater access to person level health information is integral to improving the quality, efficiency, and safety of health care delivery.[11]

The lack of widespread electronic HIE is a significant barrier to achieving truly coordinated, person-centered health care. The Medicare and Medicaid EHR Incentive Programs and other value-based payment programs are significant drivers of use of interoperable health information technology and the exchange of health information. We introduced many concepts of interoperability in Stage 2 and expect that the Medicare and Medicaid EHR Incentive Programs criteria for Stage 3 of meaningful use will include requirements for advanced interoperability. As other value-based payment programs evolve, they might include a greater emphasis on HIE as either a requirement for participation, receipt of incentive payments, or avoidance of payment adjustments. However, gaps and challenges still remain to wide-spread use of interoperable systems and HIE across providers, settings of care, consumers and patients, and payers. CMS and ONC will continue to collaborate on the EHR Incentive Program and HIT Certification Program to ensure they support delivery and payment reform. In addition, HHS intends to rely on all applicable and appropriate statutory authorities, regulations, policies, and programs to accelerate rapid adoption of health information exchange across the care continuum in support of delivery and payment reform. This combination of diverse policies and programs will ensure health information follows a person regardless of where they access health care services. HHS envisions an information rich, person-centered, high performance health care system where every health care provider has access to longitudinal data on patients they treat to make evidence-based decisions, coordinate care and improve health outcomes. As the Affordable Care Act continues to be implemented, HHS will develop and evolve policies and programs to achieve this vision.

B. Policies and Questions

CMS and ONC are jointly issuing this RFI to seek input on policies and programs that would further drive HIE to support more person-centered, coordinated, value-driven care. In section II of this RFI, HHS discusses policies and programs that may further encourage HIE. They are organized by various gaps and challenges that the policies and programs are intended to address (for example, low rates of adoption and HIE among post-acute and long-term care providers). HHS is soliciting comments on these policy and programmatic options, as well as comments on other policy and programmatic options HHS could consider. In addition, the RFI includes several questions in section III on which HHS would like stakeholder input.

II. Policies and Programs Under Consideration by CMS and ONC

A. Low Rates of EHR Adoption and Health Information Exchange Among Post-Acute and Long-Term Care Providers

There are a variety of options HHS might pursue to encourage HIE among post-acute and long-term care providers. Some of these options are described below.

- CMS has existing authority to allow states flexibility to implement innovative delivery and payment models for Medicare and Medicaid beneficiaries which could accelerate HIE as a part of improving care coordination across acute, post-acute and long-term care providers, reducing avoidable readmissions and improving health outcomes. For example, under section 1945 of the Social Security Act (the Act), added by section 2703 of the Affordable Care Act, states can establish Medicaid health homes for certain beneficiaries by amending their state plans to include the new benefit. Use of HIT is required to the extent ''feasible and appropriate'' to link services.
- Section 1115 of the Act gives the HHS Secretary authority to approve experimental, pilot, or demonstration projects that promote the objectives of Medicaid and Childrens Health Insurance Program (CHIP). These demonstrations give states additional flexibility to design and improve their programs, demonstrate and evaluate policy approaches such as providing services not typically covered by Medicaid or using innovative service delivery systems that improve care, increase efficiency, and reduce costs. Some states use this authority to advance and support their ability to incentivize health outcomes improvement and rely less on traditional forms of payment that reward high volume of discrete services. Furthermore, some of these models build on the concepts in the Medicare Shared Savings Program and encourage disparate providers to create formal arrangements establishing responsibility for managing all Medicaid services and total cost of care for an assigned population, including behavioral health and long-term care. HIE could be an important component of programs like these or other programs that rely on care coordination across settings of care. Special terms and conditions (STCs) for these demonstration projects can require the use of HIE in delivery system and payment reform efforts, to coordinate and manage services, and monitor quality of care. For example, in Oregon's recent section 1115(a) demonstration

[11] McGlynn, E.A., S.M. Asch, J. Adams, J. Keesey, J. Hicks, A. DeCristofaro, and E.A. Kerr, ''The Quality of Health Care Delivered to Adults in the United States.'' *New England Journal of Medicine* 2003 348: 2635–45. *See also,* Rosenbaum, R., ''Data Governance and Stewardship: Designing Data Stewardship Entities and Advancing Data Access,'' *Health Services Research* 2010 45:5, Part II.

project (Oregon Health Plan),[1] HIE is fundamental to the delivery system and payment changes being demonstrated. For this reason, the STCs required coordination between the demonstration project, Oregon's HIE Operational Plan, and the State Medicaid HIT Plan to ensure that these systems support the overall quality improvement and decreased expenditures that are critical to the state's demonstration.

• Section 1915(c) of the Act permits states to provide an array of home and community based services (HCBS), including long term supports and services, to individuals who would otherwise require the level of care provided in certain institutions. Section 1915(i) of the Act permits states to provide these services to certain eligible individuals without considering whether such individuals would otherwise require an institutional level of care. Section 1915(k) permits states to provide home and community-based attendant services to certain eligible individuals that may include skills training for daily life activities and back-up systems to ensure continuity of care and provides an increase in the federal financial participation rate for these services. Under these authorities, states can offer an array of specified home and community based services as well as other services requested by the state and approved by the Secretary that serve the purposes of the benefit. These services are important adjuncts to the care people receive from other areas of the health care system. Encouraging the appropriate exchange of health and other information across all providers involved in caring for these individuals is necessary to support effective care coordination and cost-effective care delivery. Furthermore, tracking their use of the health care system through health information technology will be critically important to development of new models of care delivery. Exchange of health information as beneficiaries transition to home or between providers (including acute, specialty, and primary care) could significantly improve continuity and the quality of their health care and result in reduced expenditures when care is continually managed in community settings.

• In addition, CMS issued a State Medicaid Director (SMD) letter regarding a cost allocation policy for developing and sustaining HIE infrastructure as a part of the administration of the Medicaid EHR Incentive Program. Certain state expenditures related to the development and sustaining of HIE may be eligible for 90 percent Federal financial participation (FFP) under this program, however, CMS approval of funding for HIE infrastructure costs requires assurances that other payers and providers will bear an appropriate share of the costs, risks and governance. States could propose to implement HIE infrastructure enhancements that enable the creation and exchange of health information across settings of care, including post-acute and long-term care providers with the Medicaid program.

CMS' Conditions of Participation or Coverage are designed to ensure that providers and suppliers maintain health care quality and safety. CMS and State staff oversee compliance with Medicare health and safety standards in hospitals, laboratories, nursing homes, home health agencies, hospices, rural health clinics, ambulatory surgical centers, organ transplant centers, and End Stage Renal Disease facilities. CMS has a role in advancing clinical standards in keeping with advancements in health IT capacity and the implementation of delivery and payment reforms in the Affordable Care Act that increasingly rely on coordination of care across institutional and non-institutional settings of care. CMS could require new clinical standards in the form of conditions of participation or requirements to ensure timely, electronic exchange of health information to support patient admissions, discharge, and transfers as well as care planning to ensure care continuity as patients receive care across inpatient, post-acute and long-term care providers.

B. Low Rates of HIE Across Settings of Care and Providers

There are several potential ways in which HHS might accelerate HIE across providers including ambulatory care, post-acute and long-term care, behavioral health, and lab providers. Four examples of options are briefly summarized below.

• HHS can collaborate in the development of new e-specified measures of care coordination that encourage electronic sharing of summary records following transitions in care. This could be incorporated into and aligned across multiple programs including the EHR Incentive Program, and other CMS quality reporting programs.

• The Medicare Shared Savings Program establishes requirements for participating ACOs. CMS might consider new ways to require or encourage Medicare ACOs to exchange health information as a part of coordination of care across aligned providers or patient engagement strategies. Currently, meaningful use of EHRs is treated as a measure of quality, which is used to determine ACO eligibility for the shared savings and/or shared losses.

• Under the Affordable Care Act, CMS has the authority to test innovative payment and service delivery models that have the potential to reduce Medicare, Medicaid, or CHIP expenditures while maintaining or improving the quality of care for beneficiaries. Several new models are underway that encourage the use of HIE in support of care coordination such as the Bundled Payments for Care Improvement Initiative, Comprehensive Primary Care Initiative, the Pioneer ACO model and the State Innovation Model Initiative. For future and new models, CMS could request applicants to explain how they are using interoperable technology to advance HIE strategies in support of care coordination and quality improvement. Their HIE capacity could be factored into model participation decisions, as well as requirements over the model testing period, similar to meaningful use requirements under the Pioneer ACO model.

• Under the Affordable Care Act authority, CMS is testing models to better align the financing of Medicare and Medicaid and integrate care delivery for people who are enrolled in both Medicare and Medicaid, also known as dual eligibles. Under the Capitated Financial Alignment model, CMS will contract with states and health plans, and the health plans will receive a prospective, blended payment to provide comprehensive, coordinated care. CMS could address requirements, expectations, and/or the role of HIE in these new arrangements, which have the potential to use HIE to deliver a higher degree of coordinated care for this fragile and costly population whose members often see numerous types of providers and require a high degree of care.

C. Low Rates of Consumer and Patient Engagement

CMS wants to encourage beneficiary engagement in their care through improved beneficiary access to their personal health information and better electronic communication between beneficiaries and their health care team. There are several ways CMS could encourage beneficiary access to their information through the use of new measures or patient-reported care experiences, new technology tools, and

[1] *http://medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/or/or-health-plan2-ca.pdf* pgs 121–122.

new financial models. These options are described below.

• The Medicare Advantage Program could encourage improved beneficiary access to their personal health information by incorporating new measures in the Consumer Assessment of Healthcare Providers and Systems (CAHPS®) survey. The Medicare CAHPS® surveys are a set of surveys sponsored by CMS that collect consumer evaluations of health care experiences that are not currently assessed by other means. Questions could be expanded to include topics such as the extent to which patients believe they are able to participate collaboratively in decisions about their health, and the extent to which information technology supports their ability to share and communicate with providers and other members of their health care team, and manage their care between various providers.

• CMS could promote the use of Blue Button. The Blue Button provides easy electronic access to personal health information for consumers. To strengthen its success, ONC released guidelines for data holders and application developers that support the growth of an ecosystem of tools to help consumers manage their health. The Blue Button Plus guidelines include specifications for a structured data format (consistent with Meaningful Use Stage 2), and enable updates of the information contained in individual consumer's health records to be sent automatically to the applications of their choice. Tools built on Blue Button Plus specifications could be made available to all CMS beneficiaries, and widely promoted by healthcare providers and via avenues such as the Medicare Handbook, Medicare.gov, and Medicare Advantage plans.

• As stated previously, under the Affordable Care Act, CMS has the authority to test innovative payment and service delivery models that have the potential to reduce program expenditures while maintaining or improving the quality of care for beneficiaries. In future and new models, CMS could encourage applicants to experiment with providing incentives for consumers to more actively participate in their health and health care—including through shared-decision making—supported by the collection, use, and sharing of electronic health information.

• Modifications to Clinical Laboratory Improvement Amendments of 1988 regulations and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule could enable patients' direct access to their lab results from laboratories. CMS and the HHS Office for Civil Rights (OCR) received public comments on this potential modification through a notice for proposed rulemaking (76 FR 56712).

III. Questions for Public Comment

CMS and ONC are soliciting public comments on the following questions:

1. What changes in payment policy would have the most impact on the electronic exchange of health information, particularly among those organizations that are market competitors?

2. Which of the following programs are having the greatest impact on encouraging electronic health information exchange: Hospital readmission payment adjustments, value-based purchasing, bundled payments, ACOs, Medicare Advantage, Medicare and Medicaid EHR Incentive Programs (Meaningful Use), or medical/health homes? Are there any aspects of the design or implementation of these programs that are limiting their potential impact on encouraging care coordination and quality improvement across settings of care and among organizations that are market competitors?

3. To what extent do current CMS payment policies encourage or impede electronic information exchange across health care provider organizations, particularly those that may be market competitors? Furthermore, what CMS and ONC programs and policies would specifically address the cultural and economic disincentives for HIE that result in ''data lock-in'' or restricting consumer and provider choice in services and providers? Are there specific ways in which providers and vendors could be encouraged to send, receive, and integrate health information from other treating providers outside of their practice or system?

4. What CMS and ONC policies and programs would most impact post acute, long term care providers (institutional and HCBS) and behavioral health providers' (for example, mental health and substance use disorders) exchange of health information, including electronic HIE, with other treating providers? How should these programs and policies be developed and/or implemented to maximize the impact on care coordination and quality improvement?

5. How could CMS and states use existing authorities to better support electronic and interoperable HIE among Medicare and Medicaid providers, including post acute, long-term care, and behavioral health providers?

6. How can CMS leverage regulatory requirements for acceptable quality in the operation of health care entities, such as conditions of participation for hospitals or requirements for SNFs, NFs, and home health to support and accelerate electronic, interoperable health information exchange? How could requirements for acceptable quality that involve health information exchange be phased in overtime? How might compliance with any such regulatory requirements be best assessed and enforced, especially since specialized HIT knowledge may be required to make such assessments?

7. How could the EHR Incentives Program advance provider directories that would support exchange of health information between Eligible Professionals participating in the program. For example, could the attestation process capture provider identifiers that could be accessed to enable exchange among participating EPs?

8. How can the new authorities under the Affordable Care Act for CMS test, evaluate, and scale innovative payment and service delivery models best accelerate standards- based electronic HIE across treating providers?

9. What CMS and ONC policies and programs would most impact patient access and use of their electronic health information in the management of their care and health? How should CMS and ONC develop, refine and/or implement policies and program to maximize beneficiary access to their health information and engagement in their care?

What specific HHS policy changes would significantly increase standards based electronic exchange of laboratory results?

Dated: February 22, 2013.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: February 27, 2013.

Farzad Mostashari,

National Coordinator.

[FR Doc. 2013–05266 Filed 3–6–13; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI)

has taken final action in the following case:

Adam C. Savine, Washington University in St. Louis: Based on the report from Washington University in St. Louis (WUSTL) and Respondent's admission, ORI found that Mr. Adam C. Savine, former doctoral student, Department of Psychology, WUSTL, engaged in research misconduct in research supported by National Institute of Mental Health (NIMH), National Institutes of Health (NIH), grant R56 MH066078, National Institute on Drug Abuse (NIDA), NIH, grants F31 DA032152 and R21 DA027821, and National Institute on Aging (NIA), NIH, grant T32 AG00030.

ORI found that the Respondent engaged in research misconduct by falsifying data that were included in the following three publications and six conference abstracts:

Publications

1. Savine, A.C., & Braver, T.S. ''Local and global effects of motivation on cognitive control.'' *Cogn Affect Behav Neurosci.* 12(4):692–718, 2012 Dec. (hereafter referred to as *Cogn Affect Behav Neurosci.* 2012).
2. Savine, A.C., McDaniel, M.A., Shelton, J.T., Scullin, M.K. ''A characterization of individual differences in prospective memory monitoring using the Complex Ongoing Serial Task.'' *J Exp Psychol Gen.* 141(2):337–62, 2012 May (hereafter referred to as *J Exp Psychol Gen.* 2012).
3. Savine, A.C., & Braver, T.S. ''Motivated cognitive control: Reward incentives modulate preparatory neural activity during task-switching.'' *J Neurosci.* 30(31):10294–305, 2010 Aug 4 (hereafter referred to as *J Neurosci.* 2010).

Conference Abstracts

1. Savine, A.C., & Braver, T.S. (November 2010) ''The contextual and local effects of motivation on cognitive control.'' Psychonomics Society, St. Louis, MO.
2. Savine, A.C., & Braver, T.S. (November 2010) ''A model-based characterization of the individual differences in prospective memory monitoring.'' Psychonomics Society, St. Louis, MO.
3. Savine, A.C., & Braver, T.S. (November 2010) ''Motivated cognitive control: Reward incentives modulate preparatory neural activity during task-switching.'' Society for Neuroscience, San Diego, CA.
4. Savine, A.C., & Braver, T.S. (June 2010) ''Motivated cognitive control: Reward incentives modulate preparatory neural activity during task-switching.'' Motivation and Cognitive Control Conference, Oxford, England.
5. Savine, A.C., & Braver, T.S. (January 2010) ''Neural correlates of the motivation/cognitive control interaction: Activation dynamics and Performance prediction during task-switching.'' Genetic and Experiential Influences on Executive Function, Boulder, CO.
6. Savine, A.C., & Braver, T.S. (June 2009) ''Incentive Induced Changes in Neural Patterns During Task-Switching.'' Organization for Human Brain Mapping, San Francisco, CA.

As a result of the Respondent's admission, the senior authors will request that the published papers be retracted or corrected.

ORI finds that Respondent falsified data and related text in *Cogn Affect Behav Neurosci.* 2012, *J Exp Psychol Gen.* 2012, *J Neurosci.* 2010, and in six (6) meeting abstracts, by altering the experimental data to improve the statistical results. Specifically, Respondent:

1. Falsified data in *Cogn Affect Behav Neurosci.* 2012 to show an unambiguous dissociation between local and global motivational effects. Specifically, Respondent exaggerated (1) the effect of incentive context on response times and error rates in Table 1 and Figures 1 and 3 for experiment 1 and (2) the effect of incentive cue timing on response times and error rates in Table 2 and in Figures 6, 9, and S2 for experiment 2.
2. Falsified data in *J Exp Psychol Gen.* 2012 to show that prospective memory is influenced by three dissociable underlying monitoring patterns (attentional focus, secondary memory retrieval, information thresholding), which are stable within individuals over time and are influenced by personality and cognitive differences. Specifically, Respondent modified the data to support the three category model and to show (1) that individuals fitting into each of the three categories exhibited differential patterns of prospective memory performance and ongoing task performance in Tables 1–3; Figures 5–8, and (2) that certain cognitive and personality differences were predictive of distinct monitoring approaches within the three categories in Figure 9.
3. Falsified data in *J Neurosci.* 2010 and mislabeled brain images to show that motivational incentives enhance task-switching performance and are associated with activation of reward-related brain regions, behavioral performance, and trial outcomes. Specifically, Respondent modified the data so that he could show a stronger relationship between brain activity and behavior in Table 2 and Figure 4 and used brain images that fit the data rather than the images that corresponded to the actual Talairach coordinates in Figure 3.

Mr. Savine has entered into a Voluntary Settlement Agreement and has voluntarily agreed for a period of three (3) years, beginning on February 22, 2013:

(1) To have his research supervised; Respondent agreed that prior to the submission of an application for U.S. Public Health Service (PHS) support for a research project on which his participation is proposed and prior to his participation in any capacity on PHS-supported research, Respondent shall ensure that a plan for supervision of his duties is submitted to ORI for approval; the supervision plan must be designed to ensure the scientific integrity of his research contribution; he agreed that he shall not participate in any PHS-supported research until such a supervision plan is submitted to and approved by ORI; Respondent agreed to maintain responsibility for compliance with the agreed upon supervision plan;

(2) That any institution employing him shall submit, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application, report, manuscript, or abstract;

(3) To exclude himself voluntarily from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(4) That the senior authors will request that the following papers be retracted or corrected: *Cogn Affect Behav Neurosci.* 2012, *J Exp Psychol Gen.* 2012, and *J Neurosci.* 2010.

FOR FURTHER INFORMATION CONTACT: Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8200.

David E. Wright,

Director, Office of Research Integrity.

[FR Doc. 2013–05301 Filed 3–6–13; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Group on Prevention, Health Promotion, and Integrative and Public Health

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health, Office of the Surgeon General of the United States Public Health Service.

ACTION: Notice.

SUMMARY: In accordance with Section 10(a) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App.), notice is hereby given that a meeting is scheduled to be held for the

Advisory Group on Prevention, Health Promotion, and Integrative and Public Health (the ''Advisory Group''). The meeting will be open to the public. Information about the Advisory Group and the agenda for this meeting can be obtained by accessing the following Web site: *http://www.surgeongeneral.gov/initiatives/prevention/advisorygrp/index.html*

DATES: The meeting will be held on March 28–29, 2013. Exact start and end times will be published closer to the meeting date at: *http://www.surgeongeneral.gov/initiatives/prevention/advisorygrp/index.html.*

ADDRESSES: 200 Independence Ave., SW., Room 505A, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Office of the Surgeon General, 200 Independence Ave., SW.; Hubert H. Humphrey Building, Room 701H; Washington, DC 20201; 202–205–9517; *prevention.council@hhs.gov*.

SUPPLEMENTARY INFORMATION: On June 10, 2010, the President issued Executive Order 13544 to comply with the statutes under Section 4001 of the Patient Protection and Affordable Care Act, Public Law 111–148. This legislation mandated that the Advisory Group was to be established within the Department of Health and Human Services. The charter for the Advisory Group was approved by the Secretary of Health and Human Services on June 23, 2010; the charter was filed with the appropriate Congressional committees and the Library of Congress on June 24, 2010. The Advisory Group was established as a non-discretionary federal advisory committee. The Advisory Group was authorized to operate until June 10, 2012. Because the Advisory Group had been established by Presidential directive, it was necessary for appropriate action to be taken by the President or agency head to give authorization for the Advisory Group to be continued. The President issued Executive Order 13591, dated November 23, 2011, to give authorization for the Advisory Group to continue to operate until September 30, 2012. No action was taken to continue the Advisory Group after the designated date. Therefore, the Advisory Group was terminated on September 30, 2012. On December 7, 2012, the President issued Executive Order 13631 to re-establish the Advisory Group. A charter was developed for this purpose. The charter was approved by the Secretary of Health and Human Services and filed with the appropriate Congressional committees, the Library of Congress, and the Committee Management Secretariat under the General Services Administration on February 6, 2013. The Advisory Group has been re-established as a non-discretionary federal advisory committee.

Under Executive Order 13631, authorization is given for the Advisory Group to continue to operate as if the Committee had not been terminated on September 30, 2012. The Advisory Group will continue to provide recommendations and advice to the National Prevention, Health Promotion and Public Health Council (the ''Council''). The Advisory Group will continue to provide assistance to the Council in carrying out its mission. Under the existing directive, the Advisory Group is authorized to continue to operate until September 30, 2013.

The Advisory Group membership shall consist of not more than 25 non-federal members to be appointed by the President. The membership shall include a diverse group of licensed health professionals, including integrative health practitioners who have expertise in (1) Worksite health promotion; (2) community services, including community health centers; (3) preventive medicine; (4) health coaching; (5) public health education; (6) geriatrics; and (7) rehabilitation medicine. There are currently 22 members of the Advisory Group appointed by the President. This will be the seventh meeting of the Advisory Group.

Public attendance at the meeting is limited to the space available. Members of the public who wish to attend must register by 12:00 p.m. EST on March 18, 2013. Individuals should register for public attendance at *prevention.council@hhs.gov* by providing your full name and affiliation. Individuals who plan to attend the meeting and need special assistance and/or accommodations, i.e., sign language interpretation or other reasonable accommodations, should indicate so when they register. The public will have the opportunity to provide comments to the Advisory Group on March 29, 2013; public comment will be limited to 3 minutes per speaker. Registration through the designated contact for the public comment session is also required. Any member of the public who wishes to have printed materials distributed to the Advisory Group for this scheduled meeting should submit material to the designed point of contact no later than 12:00 p.m. EST on March 18, 2013.

Dated: February 20, 2013.

Corinne M. Graffunder,

Designated Federal Officer, Advisory Group on Prevention, Health Promotion, and Integrative and Public Health, Office of the Surgeon General.

[FR Doc. 2013–05212 Filed 3–6–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Nominations to the Presidential Advisory Council on HIV/AIDS

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

AUTHORITY: Executive Order 12963, dated June 14, 1995, as amended by Executive Order 13009, dated June 14, 1996; and Section 222 of the Public Health Service Act (42 U.S.C. 217a. The Presidential Advisory Council on HIV/AIDS (referred to as PACHA and/or the Council) is governed by provisions of Public Law 92–463, as amended (5 U.S.C. App.), which sets forth standards for the formation and use of advisory committees.

SUMMARY: The Office of the Assistant Secretary for Health (OASH) is seeking nominations of qualified individuals to be considered for appointment as members of the Presidential Advisory Council on HIV/AIDS (PACHA). The PACHA is a federal advisory committee within the Department of Health and Human Services (HHS). Management support for the activities of the Council is the responsibility of the OASH. The qualified individuals will be nominated to the Secretary of Health and Human Services for consideration for appointment as members of the PACHA. Members of the Council, including the Chair, are appointed by the Secretary. Members are invited to serve on the Council for up to four-year terms. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies intended to promote effective prevention of HIV disease and AIDS. The functions of the Council are solely advisory in nature.

DATES: All nominations must be received no later than 5:00 p.m. EDT on April 1, 2013 at the address listed below.

ADDRESSES: All nominations should be mailed or delivered to Ms. B. Kaye Hayes, Executive Director, PACHA,

Department of Health and Human Services, Office of HIV/AIDS and Infectious Disease Policy, 200 Independence Avenue SW, Room 443–H, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Ms. Caroline Talev, Public Health Assistant, PACHA, Department of Health and Human Services, 200 Independence Avenue SW, Room 443–H, Washington, DC 20201; (202) 205–1178. More detailed information about PACHA can be obtained by accessing the Council's Web site *www.aids.gov/pacha.*

SUPPLEMENTARY INFORMATION: The PACHA was established to provide advice, information, and recommendations to the Secretary regarding programs and policies intended to promote effective prevention of HIV disease and AIDS. The functions of the Council are solely advisory in nature.

The Council consists of not more than 25 members. Council members are selected from prominent community leaders with particular expertise in, or knowledge of, matters concerning HIV and AIDS, public health, global health, philanthropy, marketing or business, as well as other national leaders held in high esteem from other sectors of society. Council members are appointed by the Secretary or designee, in consultation with the White House Office on National AIDS Policy. Pursuant to advance written agreement, Council members shall receive no stipend for the advisory service they render as members of PACHA. However, as authorized by law and in accordance with federal travel regulations, PACHA members may receive per diem and reimbursement for travel expenses incurred in relation to performing duties for the Council.

This announcement is to solicit nominations of qualified candidates to fill current vacancies on the PACHA.

Nominations

In accordance with the PACHA charter, persons nominated for appointment as members of the PACHA should be among prominent community leaders and authorities with particular expertise in, or knowledge of, matters concerning HIV and AIDS, public health, global health, philanthropy, marketing or business, as well as other national leaders held in high esteem from other sectors of society. The following information should be included in the package of material submitted for each individual being nominated for consideration of appointment:

a. The name, return address, daytime telephone number, and affiliation(s) of the individual being nominated, the basis for the individual's nomination, and a statement bearing an original signature of the nominated individual that, if appointed, he or she is willing to serve as a member of the Council;

b. the name, return address, and daytime telephone number at which the nominator may be contacted. Organizational nominators must identify a principal contact person; and

c. a copy of a current resume or curriculum vitae for the nominated individual.

Individuals can nominate themselves for consideration of appointment to the Council. All nominations must include the required information. Incomplete nominations will not be processed for consideration. The letter from the nominator and certification of the nominated individual must bear original signatures; reproduced copies of these signatures are not acceptable.

The Department is legally required to ensure that the membership of HHS federal advisory committees is fairly balanced in terms of points of view represented and the functions to be performed by the advisory committee. Every effort is made to ensure that the views of women, all ethnic and racial groups, and people with disabilities are represented on HHS federal advisory committees and, therefore, the Department encourages nominations of qualified candidates from these groups. The Department also encourages geographic diversity in the composition of the Council. Appointment to the Council shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status. The Standards of Ethical Conduct for Employees of the Executive Branch are applicable to individuals who are appointed as members of the Council.

Dated: February 22, 2013.

B. Kaye Hayes,

Executive Director, Presidential Advisory Council on HIV/AIDS.

[FR Doc. 2013–05218 Filed 3–6–13; 8:45 am]

BILLING CODE 4150–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Community Services Block Grant (CSBG) Program Model Plan Application.

OMB No.: 0970–0382.

Description: Sections 676 and 677 of the Community Services Block Grant Act require States, including the District of Columbia and the Commonwealth of Puerto Rico, Tribes, Tribal organizations and U.S. territories applying for Community Services Block Grant (CSBG) funds to submit an application and plan (Model Application Plan). The application plan must meet statutory requirements prior to being funded with CSBG funds. Applicants have the option to submit a detailed application annually or biannually. Entities that submit a biannual application must provide an abbreviated application the following year if substantial changes to the initial application will occur. OMB approval is being sought.

Respondents: State Governments, including the District of Columbia and the Commonwealth of Puerto Rico, Tribal Governments, Tribal Organizations, and U.S. territories.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Model State CSBG Application	56	1	10	560
Model Indian Tribes & Tribal Organizations CSBG Application	30	1	10	300

Estimated Total Annual Burden Hours: 860.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington,

DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2013–05331 Filed 3–6–13; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–1046]

Veterinary Oversight of Antimicrobial Use in Livestock: Impact on Stakeholders; Public Meetings; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meetings; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing plans for five meetings to provide an opportunity for public dialogue and feedback on challenges faced by the animal agriculture industry and practicing veterinarians as FDA implements its initiative for the judicious use of medically important antimicrobials in medicated feed or drinking water of food-producing animals. Particular emphasis will be placed on challenges faced by animal producers in areas that may lack access to adequate veterinary services. The meetings are jointly sponsored by FDA and the U.S. Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service (APHIS).

DATES: See the **SUPPLEMENTARY INFORMATION** section for meeting dates.

FOR FURTHER INFORMATION CONTACT: Patricia Arnwine, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855; 240–276–9724; FAX: 240–276–9101, *patricia.arnwine@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Dates, Times, and Locations

- April 9, 2013, from 8:30 a.m. to 12:30 p.m., Western Kentucky University–Carroll Knicely Conference Center (Auditorium rm. 138), 2355 Nashville Rd., Bowling Green, KY 42101; 270–745–1908; FAX: 270–745–1911; *http://www.wku.edu/.*
- April 23, 2013, from 8:30 a.m. to 12:30 p.m., Evergreen State College (Library 4300), 2700 Evergreen Pkwy. NW., Olympia WA 98505; 360–867–6192 or 6000; *http://www.evergreen.edu/home.htm.*
- May 8, 2013, from 8:30 a.m. to 12:30 p.m., The Natural Resource Research Center, USDA Animal and Plant Health & Inspection Service, Veterinary Services, Centers for Epidemiology & Animal Health, 2150 Centre Ave. (Building B, Gray's Peak Conference Rooms A & B), Fort Collins, CO 80526–8117; 970–494–7200; FAX: 970–472–2668; *http://www.aphis.usda.gov/about_aphis/programs_offices/veterinary_services/ceah.shtml.*
- May 21, 2013, from 8:30 a.m. to 12:30 p.m., Best Western Ramkota Hotel & Conference Center (Amphitheater II), 920 West Sioux Ave., Pierre, SD 57501; 605–224–6877; FAX: 605–224–1042; *http://pierre.bwramkota.com/.*
- June 4, 2013, from 8:30 a.m. to 12:30 p.m., Texas A&M University (Memorial Student Center, rm. 2406A), Joe Routt Boulevard and Houston Street, College Station, TX 77840; 979–845–8904; FAX: 979–845–2519; *http://www.tamu.edu/.*

Oral Presentations: Interested persons may make oral presentations on the topic of the discussion of the meeting. Oral presentations from the public during the open public comment period will be scheduled approximately:

- April 9, 2013, from 9:45 a.m. to 11 a.m. on the day of the meeting in Bowling Green, KY;
- April 23, 2013, from 9:45 a.m. to 11 a.m. on the day of the meeting in Olympia, WA;
- May 8, 2013, from 9:45 a.m. to 11 a.m. on the day of the meeting in Fort Collins, CO;
- May 21, 2013, from 9:45 a.m. to 11 a.m. on the day of the meeting in Pierre, SD; and
- June 4, 2013, from 9:45 a.m. to 11 a.m. on the day of the meeting in College Station, TX.

Although prior notification is not required, it is recommended that those desiring to make oral presentations notify the contact person before the meeting. In an effort to accommodate all who desire to speak, time allotted for each presentation may be limited.

Registration is not required for these meetings; however, early arrival is recommended because seating may be limited. If you need special accommodations due to a disability, please contact FDA (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance.

Comments: Regardless of attendance at the public meetings, interested persons may submit either electronic or written comments regarding the topics to be discussed at these meetings. Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. The docket will remain open for written or electronic comments for 60 days following the last of these five meetings.

FDA is concerned about the risk that antimicrobial resistance poses to public health from the use of medically important antimicrobial drugs in food-producing animals. Over the past several years, FDA's Center for Veterinary Medicine has developed a policy framework for decreasing this public health risk through the application of concepts of judicious use. Among these concepts, FDA believes that it is important to include veterinary oversight in the use of medically important antimicrobial drugs in the feed or water of food-producing animals to assure the drugs' appropriate and judicious use.

Until the early 1990s, most antimicrobial drugs were approved for over-the-counter (OTC) use in food-producing animals. However, since that time increasing concerns about antimicrobial resistance and evolving understanding of the science related to the issue have resulted in greater scrutiny of the conditions under which these drugs are approved. As a result, since the early 1990s all new approvals for antimicrobial drug products for use in food-producing animals have been

labeled with veterinary prescription (Rx) or veterinary feed directive (VFD) marketing status, with the exception of approvals of generic copies of existing OTC products and approvals of combination medicated feeds using existing OTC antimicrobial Type A medicated articles. This shift to a marketing status requiring veterinary oversight has been viewed as an important step to mitigate the microbial food safety risks of antimicrobial new animal drugs, particularly for those drugs considered to be medically important.

FDA believes that the judicious use of medically important antimicrobial drugs intended for use in food-producing animals requires the scientific and clinical training of a licensed veterinarian. In the **Federal Register** of April 13, 2012 (77 FR 22328), FDA announced the availability of a Guidance for Industry (GFI) #209 entitled ''The Judicious Use of Medically Important Antimicrobial Drugs in Food-Producing Animals'' that outlines several recommendations regarding the judicious use of medically important antimicrobials, including the need for veterinary oversight or consultation when these antimicrobials are used in medicated feed or medicated drinking water of food-producing animals (*http://www.fda.gov/downloads/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/UCM216936.pdf*).

Accordingly, in the same issue of the **Federal Register** (77 FR 22327, April 13, 2012), FDA published a notice announcing the availability of a draft guidance for industry (GFI #213) entitled ''New Animal Drugs and New Animal Drug Combination Products Administered in or on Medicated Feed or Drinking Water of Food-Producing Animals; Recommendations for Aligning Product Use Conditions With GFI #209.'' In draft GFI #213 (*http://www.fda.gov/downloads/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/UCM299624.pdf*), FDA is recommending that affected drug sponsors revise the conditions of use of their medically important antimicrobial new animal drugs and combination new animal drug products from OTC to VFD status for medicated feed products and from OTC to Rx status for medicated drinking water products. Also, the draft guidance proposes timelines for stakeholders wishing to comply voluntarily with the guidance.

The following antimicrobial drugs, in products administered in the feed or water of food-producing animals, are covered under draft GFI #213: Chlortetracycline, erythromycin, lincomycin, neomycin, oxytetracycline, penicillin, spectinomycin, sulfamethazine, tylosin, and virginiamycin.[1] Ionophore drugs are not included under draft GFI #213. FDA is currently reviewing the comments it received on draft GFI #213.

After the FDA has completed its review of comments, the Agency will draft and publish final GFI #213. FDA anticipates that sponsors of affected products should be able to complete implementation of the changes discussed in this draft guidance within 3 years from the date of publication of the final version of this guidance.

Also in that same issue of the **Federal Register** (77 FR 22247, April 13, 2012), FDA provided the draft text of a proposed regulation (*http://www.gpo.gov/fdsys/pkg/FR–2012–04–13/pdf/2012–8844.pdf*) to streamline and modernize the current VFD regulation (21 CFR 558.6) which governs veterinary oversight and authorization of the use of certain animal drugs in medicated feed. The public comment period for that document remained open until July 12, 2012. FDA is currently reviewing the comments it received on the draft proposed regulation. After completion of this review, the Agency will draft and publish the proposed VFD regulation.

FDA acknowledges that changing the marketing status of certain antimicrobial drugs to require the involvement of a licensed veterinarian has practical implications for animal producers and practicing veterinarians. Once the status is changed from OTC to Rx or VFD, producers will no longer be able to purchase the animal drug or medicated feed product directly from suppliers, unless the producer has a valid prescription or order from a licensed veterinarian. The impact of this change on producers may vary depending on the extent to which a given producer already has access to and utilizes veterinary services. This change also has potential impact on practicing veterinarians depending on their practice (business) model.

FDA is seeking additional input as it moves forward to further develop and implement its judicious-use policy, including the plan to phase in veterinary oversight or consultation in the use of medically important antimicrobial drugs. As part of this input gathering effort, FDA is partnering with APHIS to conduct a series of five meetings (see **DATES** and **ADDRESSES**) to provide the public with opportunities to discuss and provide critical feedback on the challenges faced by stakeholders generally, and livestock producers and practicing veterinarians in particular, as FDA phases in veterinary oversight of the therapeutic use of medically important antimicrobials. During these meetings, particular emphasis will be placed on discussing the potential challenges faced by producers in areas of the country that may lack access to adequate veterinary services and on exploring possible options for minimizing such impacts. FDA also will seek public input through other forums, for example, Webinars, as it works collaboratively with the USDA, along with veterinary and producer organizations, to help address this important issue. Comments also may be made to the FDA docket at any time (see *Comments*).

Agenda: The meeting will allow for public comment and discussion regarding the judicious use of antimicrobial drugs in food-producing animals. The following specific questions will be discussed at the upcoming meetings:

(1) What is the current availability of veterinary services for your facility and how do you utilize this care?;

(2) How would the proposed changes in marketing status for medically important antimicrobials to VFD/Rx and proposed revisions to the VFD regulations affect your operation or practice?; and

(3) What are some possible solutions or models for access of veterinary services that would benefit your operation in light of these changes?

The agenda for the public meeting will be made available on the Agency's Web site at *http://www.fda.gov/AnimalVeterinary/NewsEvents/WorkshopsConferencesMeetings/default.htm* and will be posted to the docket at *http://www.regulations.gov.*

Dated: March 4, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–05339 Filed 3–6–13; 8:45 am]

BILLING CODE 4160–01–P

[1] For additional information related to animal drugs in the classes of medically important antimicrobials, see Appendix A of GFI #152 entitled ''Evaluating the Safety of Antimicrobial New Animal Drugs with Regard to Their Microbiological Effects on Bacteria of Human Health Concern'' (*http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/ucm042450.htm*).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–1167]

Ag-Mark, Inc., et al.; Withdrawal of Approval of New Animal Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 19 new animal drug applications (NADAs) and 1 abbreviated new animal drug application (ANADA) from multiple holders of these applications. The basis for the withdrawals is that the holders of these applications have repeatedly failed to file required annual reports for the applications.

DATES: Withdrawal of approval is effective March 18, 2013.

FOR FURTHER INFORMATION CONTACT: David Alterman, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6843, *david.alterman@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The holders of approved applications to market new animal drugs are required to submit annual reports to FDA concerning each of their approved applications in accordance with § 514.80 (21 CFR 514.80).

In the **Federal Register** of December, 17, 2012 (77 FR 74672), FDA published a notice offering an opportunity for a hearing (NOOH) on a proposal to withdraw approval of 19 NADAs and 1 ANADA because the sponsors had failed to submit the required annual reports for these applications. The holders of these applications did not respond to the NOOH. Failure to file a written notice of participation and request for a hearing as required by § 514.200(b) (21 CFR 514.200(b)) constitutes an election by the applicant not to make use of the opportunity for a hearing concerning the proposal to withdraw approval of the applications and a waiver of any contentions concerning the legal status of the drug products. Therefore, the Director, Center for Veterinary Medicine, is withdrawing approval of the 20 applications listed in Table 1 of this document.

TABLE 1—NADAS AND ANADA FOR WHICH APPROVAL IS WITHDRAWN

Application No.	Trade Name (drug)	Applicant
NADA 009–252	FUMIDIL B (bicyclohexylammonium fumagillin)	Mid-Continent Agrimarketing, Inc., 8833 Quivira Rd., Overland Park, KS 66214.
NADA 034–601	SYNCHRO–MATE (flurogestone acetate)	G. D. Searle LLC, Pharmacia Corp., 4901 Searle Pkwy., Skokie, IL 60077.
NADA 039–284	Swisher Super Broiler 300–108 (amprolium, ethopabate, bacitracin zinc, and roxarsone).	Swisher Feed Division, William Davies Co., Inc., P.O. Box 578, Danville, IL 61832.
NADA 040–920	Chick Grower-Developer Fortified (amprolium)	Honeggers and Co., Inc., 201 W. Locust St., Fairbury, IL 61739.
NADA 094–223	Canine Worm Caps (*n*-butyl chloride)	K. C. Pharmacal, Inc., 8345 Melrose Dr., Lenexa, KS 66214.
NADA 098–429	Medic-Meal-T Premix (tylosin phosphate)	J. C. Feed Mills, 1050 Sheffield, P.O. Box 224, Waterloo, IA 50704.
NADA 098–639	TYLAN Sulfa-G (tylosin phosphate and sulfamethazine)	Bioproducts, Inc., 320 Springside Dr., suite 300, Fairlawn, OH 44333–2435.
NADA 106–507	TYLAN 10 (tylosin phosphate)	Custom Feed Blenders Corp., 540 Hawkeye Ave., Fort Dodge, IA 50501.
NADA 110–044	PRO–TONE Plus Pak GF T–1 (tylosin phosphate)	Peavey Co., 730 Second Ave. South, Minneapolis, MN 55402.
NADA 117–688	Dichlorophene and Toluene Capsules	Texas Vitamin Co., P.O. Box 18417, 10695 Aledo St., Dallas, TX 57218.
NADA 120–614	TYLAN Sulfa-G (tylosin phosphate and sulfamethazine)	Webel Feeds, Inc., R.R. 3, Pittsfield, IL 62363.
NADA 120–671	Pet-Worm-Caps (dichlorophene and toluene)	K. C. Pharmacal, Inc., 8345 Melrose Dr., Lenexa, KS 66214.
NADA 121–147	Nutra-Mix TYLAN (tylosin phosphate)	Ag-Mark, Inc., P.O. Box 127, Teachey, NC 28464.
NADA 122–522	TYLAN Sulfa-G (tylosin phosphate and sulfamethazine)	Custom Feed Blenders Corp., 540 Hawkeye Ave., Fort Dodge, IA 50501.
NADA 124–391	Nutra-Mix TYLAN-Sulfa Premixes (tylosin phosphate and sulfamethazine).	Ag-Mark, Inc., P.O. Box 127, Teachey, NC 28464.
NADA 127–195	TYLAN 10 (tylosin phosphate)	I.M.S. Inc., 13619 Industrial Rd., Omaha, NE 68137.
NADA 129–415	Custom Ban Wormer 9.6 BANMINTH (pyrantel tartrate)	Custom Feed Blenders Corp., 540 Hawkeye Ave., Fort Dodge, IA 50501.
NADA 130–092	ALFAVET (alfaprostol)	Vetem, S.p.A., Viale E. Bezzi 24, 20146 Milano, Italy.
NADA 141–101	PREEMPT (competitive exclusion culture)	Bioscience Division, of Milk Specialties Co., 1902 Tennyson Lane, Madison, WI 53704.
ANADA 200–187	Isoflurane, USP	Marsam Pharmaceuticals, LLC, Bldg. 31, 24 Olney Ave., Cherry Hill, NJ 08034.

The Director, Center for Veterinary Medicine, under section 512(e)(2)(A) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(e)(2)(A)), and under authority delegated by the Commissioner, finds that the holders of the applications listed in this document have repeatedly failed to submit reports required by § 514.80. In addition, under § 514.200(b), we find that the holders of the applications have waived any contentions concerning the legal status of the drug products. Therefore, under these findings, approval of the applications listed in this document, and all amendments and supplements thereto, is hereby withdrawn, effective March 18, 2013.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to reflect the withdrawal of approval of these applications.

Dated: February 27, 2013.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2013–04998 Filed 3–6–13; 8:45 am]

BILLING CODE 4160–01–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: Rural Health Information Technology Network Development Performance Improvement and Measurement System Database (OMB No. 0915–0354)—[Revision]

The purpose of the Rural Health Information Technology Network Development (RHITND) Program, authorized under the Public Health Service Act, Section 330A(f) (42 U.S.C. 254c(f)) as amended by Section 201, Public Law 107–251 of the Health Care Safety Net Amendments of 2002, is to improve health care and support the adoption of Health Information Technology (HIT) in rural America by providing targeted HIT support to rural health networks. HIT plays a significant role in the advancement of Health and Human Services' (HHS) priority policies to improve health care delivery. Some of these priorities include: improving health care quality, safety, and efficiency; reducing disparities; engaging patients and families in managing their health; enhancing care coordination; improving population and public health; and ensuring adequate privacy and security of health information.

The intent of RHITND is to support the adoption and use of electronic health records (EHR) in coordination with the ongoing HHS activities related to the Health Information Technology for Economic and Clinical Health (HITECH) Act (Pub. L. 111–5). This legislation provides HHS with the authority to establish programs to improve health care quality, safety, and efficiency through the promotion of health information technology, including EHR.

For this program, performance measures were drafted to provide data useful to the program and to enable HRSA to provide aggregate program data required by Congress under the Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62). These measures cover the principal topic areas of interest to the Office of Rural Health Policy, including: (a) Access to care; (b) the underinsured and uninsured; (c) workforce recruitment and retention; (d) sustainability; (e) health information technology; (f) network development; and (g) health related clinical measures. Several measures will be used for this program. These measures will speak to the Office of Rural Health Policy's progress toward meeting the goals set.

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
Performance Improvement and Measurement System (PIMS) Database	41	1	41	6.33	259.53
Total	41	1	41	6.33	259.53

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: February 28, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–05303 Filed 3–6–13; 8:45 am]

BILLING CODE 4165–15–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 specifically 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: The Stem Cell Therapeutic Outcomes Database (OMB No. 0915–0310)—[Revision]

Abstract: The Stem Cell Therapeutic and Research Act of 2005, Public Law (Pub. L.) 109–129, as amended by the Stem Cell Therapeutic and Research Reauthorization Act of 2010, Public Law 111–264 (the Act), provides for the collection and maintenance of human blood stem cells for the treatment of patients and research. HRSA's Healthcare Systems Bureau has established the Stem Cell Therapeutic Outcomes Database. Operation of this database necessitates certain record keeping and reporting requirements in order to perform the functions related to hematopoietic stem cell transplantation under contract to the U.S. Department of Health and Human Services (HHS). The Act requires the Secretary to contract for the establishment and maintenance of information related to patients who have received stem cell therapeutic products and to do so using a standardized, electronic format. Data is collected from transplant centers by the Center for International Blood and Marrow Transplant Research and is used for ongoing analysis of transplant outcomes. HRSA uses the information in order to carry out its statutory responsibilities. Information is needed to monitor the clinical status of transplantation and to provide the Secretary of HHS with an annual report of transplant center-specific survival data. The increase in burden is due to an increase in the annual number of transplants and increasing survivorship after transplantation.

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:

2013—ESTIMATED

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Baseline Pre-TED (Transplant Essential Data)	200	38	7,600	0.9	6,840
Product Form (includes Infusion, HLA, and Infectious Disease Marker inserts)	200	29	5,800	1.5	8,700
100-Day Post-TED	200	38	7,600	0.85	6,460
6-Month Post-TED	200	31	6,200	1	6,200
12-Month Post-TED	200	27	5,400	1	5,400
Annual Post-TED	200	104	20,800	1	20,800
Total	200		53,400		54,400

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: February 28, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–05302 Filed 3–6–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority; Correction

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice; correction.

SUMMARY: HRSA published a document in the **Federal Register** of January 7, 2013 (FR Doc. 2013–00032), regarding organizational changes that update the functional statements for the Office of Management. The administrative code for the Division of Information Technology (IT) Security and Records Management was incorrectly written as RBR at four occasions, on pages 956 and 957.

Correction

In the **Federal Register** of January 7, 2013, in FR Doc. 2013–00032, on pages 956 and 957, at four occasions, correct the administrative code for the Division of Information Technology (IT) Security and Records Management to read RB5R.

Dated: February 28, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–05304 Filed 3–6–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel: Clinically Relevant Variation Resource RFA.

Date: March 14, 2013.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, 4th Floor Conference Room, 5635 Fishers Lane, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, NHGRI, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20814, 301–594–4280, *mckenneyk@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: March 1, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–05240 Filed 3–6–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel: Translational Research.

Date: April 22, 2013.

Time: 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 1, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–05239 Filed 3–6–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4102–DR; Docket ID FEMA–2013–0001]

Louisiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–4102–DR), dated February 22, 2013, and related determinations.

DATES: *Effective Date:* February 22, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 22, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Louisiana

resulting from severe storms and flooding during the period of January 8–17, 2013, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gerard M. Stolar, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Louisiana have been designated as adversely affected by this major disaster:

Acadia, Catahoula, Concordia, East Carroll, Evangeline, Franklin, Jefferson Davis, Livingston, Madison, St. Landry and Vermilion Parishes.

All parishes within the State of Louisiana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–05297 Filed 3–6–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

United States Secret Service

Notice of Proposed Information Collection

ACTION: Notice of Proposed Information Collection.

SUMMARY: The U.S. Department of Homeland Security, Office of the Chief Information Officer, invites comments on the proposed information collection request as required by the Paperwork Reduction Act of 1995. Currently, the U.S. Secret Service, within the U.S. Department of Homeland Security, is soliciting comments concerning the SSF 3237, U.S. Secret Service Facility Access Request (formerly titled Contractor Personnel Access Application Form).

DATES: Interested persons are invited to submit comments on or before May 6, 2013.

ADDRESSES: Direct all written comments to: Communications Center (SCD), Attn: ASAIC Michael Smith, 245 Murray Lane SW., Building T5, Washington, DC 20223, 202–406–6658. Individuals who use a telecommunications device for the deaf (TDD) may either call the Federal Information Relay Service (FIRS) at 1–800–877–8339 or call directly (TTY) 202–406–5390.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to: Communications Center (SCD), Attn: ASAIC Michael Smith, 245 Murray Lane SW., Building T5, Washington, DC 20223. Telephone number: 202–406–6658.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires each Federal agency to provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The notice for this proposed information collection contains the following: (1) The name of the component of the U.S. Department of Homeland Security; (2) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (3) OMB Control Number, if applicable; (4) Title; (5) Summary of the collection; (6) Description of the need for, and proposed use of, the information; (7) Respondents and frequency of collection; and (8) Reporting and/or Recordkeeping burden.

The Department of Homeland Security invites public comment.

The Department of Homeland Security is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, including whether the information will have practical utility; (2) Is the estimate of burden for this information collection accurate; (3) How might the Department enhance the quality, utility, and clarity of the information to be collected; and (4) How might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Abstract: Respondents are primarily Secret Service contractor personnel or non-Secret Service Government employees on official business that require access to Secret Service controlled facilities in performance of official duties. These individuals, if approved for access, will require escorted, unescorted, and staff-like access to Secret Service-controlled facilities. Responses to questions on the SSF 3237 yield information necessary for the adjudication of eligibility for facility access.

United States Secret Service

Title: U.S. Secret Service Facility Access Request.

OMB Number: 1620–0002.

Form Number: SSF 3237.

Frequency: Occasionally.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or Households/Business.

Estimated Number of Respondents: 5000.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 1250 hours.

Estimated Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): None.

Comments submitted in response to this comment request 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: March 1, 2013.

Sharon Johnson,

Chief—Policy Analysis and Organizational Development Branch, U.S. Secret Service, U.S. Department of Homeland Security.

[FR Doc. 2013–05289 Filed 3–6–13; 8:45 am]

BILLING CODE 4810–42–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5639–N–04]

Notice of Regulatory Waiver Requests Granted for the Fourth Quarter of Calendar Year 2012

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on October 1, 2012, and ending on December 31, 2012.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Department of Housing and Urban Development, 451 7th Street SW., Room 10282, Washington, DC 20410–0500, telephone 202–708–1793 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the fourth quarter of calendar year 2012.

SUPPLEMENTARY INFORMATION:

Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). In accordance with those procedures and with the requirements of section 106 of the HUD Reform Act, waivers of regulations are granted by the Assistant Secretary with jurisdiction over the regulations for which a waiver was requested. In those cases in which a General Deputy Assistant Secretary granted the waiver, the General Deputy Assistant Secretary was serving in the absence of the Assistant Secretary in accordance with the office's Order of Succession.

This notice covers waivers of regulations granted by HUD from October 1, 2012 through December 31, 2012. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report (the fourth quarter of calendar year 2012) before the next report is published (the first quarter of calendar year 2013), HUD will include any additional waivers granted for the fourth quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: March 4, 2013.

Helen R. Kanovsky,

General Counsel.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development October 1, 2012 Through December 31, 2012

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.

II. Regulatory waivers granted by the Office of Housing.

III. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 58.22(a).

Project/Activity: The City of Grafton, IL requested a waiver of 24 CFR 58.22(a), entitled ''Limitations on Activities Pending Clearance,'' to permit the purchase of equipment and facility upgrades for a fish processing plant. A waiver was requested because American Heartland Fish Products, LLC., committed non-HUD funds to the project prior to the approval of the environmental review as well as prior to the submission and HUD approval of the Request for Release of Funds (RROF).

Nature of Requirement: The HUD environmental regulation at 24 CFR 58.22(a) requires: ''Neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in 24 CFR 58.1(b) on an activity or project until HUD or the state has approved the recipient's RROF and the related certification from the responsible entity. In addition, until the RROF and the related certification have been approved, neither a recipient nor any participant in the

development process may commit non-HUD funds on or undertake an activity or project under a program listed in 24 CFR 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.''

Granted By: Mark Johnston, Acting Assistant Secretary for Community Planning and Development.

Date Granted: October 19, 2012.

Reason Waived: HUD determined that granting the waiver for the project would further the HUD mission and advance HUD program goals to develop viable, quality communities. American Heartland Fish Products, LLC., did not have prior experience administering HUD grants and the City of Grafton states that it did not intend to violate HUD's environmental requirements. HUD further determined that no HUD funds were committed and, based on the environmental assessments and the HUD field inspection, granting the waiver would not result in any unmitigated, adverse environmental impact.

Contact: Nelson Rivera, Office of Environment and Energy, Office of Community Planning Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7248, Washington, DC 20410, telephone (202) 708–4225.

• *Regulation:* 24 CFR 58.22 (a).

Project/Activity: Suffolk County, NY requested a waiver of 24 CFR 58.22(a), entitled ''Limitations on Activities Pending Clearance,'' for renovations to Sag Harbor Hall in order to the bathrooms in order to make them handicap accessible. A waiver was requested because the grantee committed non-HUD funds to the project prior to the approval of the environmental review as well as prior to the submission and HUD approval of the Request for Release of Funds (RROF).

Nature of Requirement: The HUD environmental regulation at 24 CFR 58.22(a) requires: ''Neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in 24 CFR 58.1(b) on an activity or project until HUD or the state has approved the recipient's RROF and the related certification from the responsible entity. In addition, until the RROF and the related certification have been approved, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a program listed in 24 CFR 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.''

Granted By: Mark Johnston, Assistant Secretary for Community Planning and Development.

Date Granted: October 31, 2012.

Reason Waived: HUD determined that granting the waiver for the project would further the HUD mission and would advance HUD program goals to develop viable, quality communities. The grantee unknowingly violated the regulation. HUD determined that no HUD funds were committed and, based on the environmental assessments and the HUD field inspection, granting the waiver would not result in any unmitigated, adverse environmental impact.

Contact: Kathryn Au, Office of Environment and Energy, Office of Community Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7248, Washington, DC 20410, telephone (202) 708–4225.

• *Regulation:* 24 CFR 91.105(c)(2).

Project/Activity: Numerous communities throughout the Mid-Atlantic and New England experienced substantial property damage resulting from Superstorm Sandy in late October 2012. Starting in later October, 2012, the Federal Emergency Management Agency (FEMA) issued disaster declarations covering multiple cities and counties in New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Maryland, Virginia, West Virginia and Ohio, plus the District of Columbia and the entire state of New Jersey. Grantees affected by Superstorm Sandy requested the ability to shorten their citizen comment periods to seven days so that they may quickly reallocate Community Development Block Grant (CDBG) and HOME Investment Partnerships Program (HOME) funds for activities to assist their residents and businesses affected by the storm.

Nature of Requirement: HUD's regulation at 24 CFR 91.105(c)(2) requires that citizens be provided with reasonable notice and an opportunity to comment on substantial amendments to its consolidated plan. The citizen participation plan regulations require that citizens be given no less than 30 days to comment on substantial amendments before they are implemented. Changes in the use of CDBG funds from one activity to another constitute a substantial amendment.

Granted By: Mark Johnston, Acting Assistant Secretary for Community Planning and Development.

Date Granted: November 5–6, 2012.

Reason Waived: HUD granted the requested waivers. Communities located in areas which received major disaster declarations by FEMA as a result of Superstorm Sandy were allowed to shorten their citizen comment periods from 30 days to 7 days so that they may quickly reallocate CDBG funds for activities to provide assistance to residents and businesses and facilitate recovery efforts from extensive damage caused by Superstorm Sandy.

Contact: Steve Johnson, Director Entitlement Communities Division, Office of Block Grant Assistance, Office of Community Planning Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7282, Washington, DC 20410, telephone (202) 708–1577.

• *Regulation:* 24 CFR 92.503(b)(3).

Project/Activity: The following state and cities requested a waiver of 24 CFR 92.503(b)(3), which requires funds to be repaid to the account from which they were disbursed: State of Colorado, City of Augusta, GA, the City of Atlanta, GA, the City of Knoxville, TN, the City of San Mateo, CA, and the City of Rochester, NY.

Nature of Requirement: HUD's regulation at 24 CFR 92.503(b)(3) provides as follows: ''If the HOME funds were disbursed from the participating jurisdiction's HOME Investment Trust Fund Treasury account, they must be repaid to the Treasury account. If the HOME funds were disbursed from the participating jurisdiction's HOME Investment Trust Fund local account, they must be repaid to the local account. If the jurisdiction is not a participating jurisdiction when the repayment is made, the funds must be remitted to HUD and reallocated in accordance with § 92.454.''

Granted By: Mark Johnston, Acting Assistant Secretary for Community Planning and Development.

Date Granted: October—December, 2012.

Reasons Waived: HUD granted the waivers to permit the state and cities to repay their HOME Investment Trust Fund local account in order to make the funds available for eligible affordable housing activities. The state and cities were obligated to repay HOME funds for projects that were terminated before completion to the HOME grant from which they were expended. If all or a portion of the total repayment was repaid to an expired account, the repayment would have been received by HUD but retained by the US Treasury. As a result, the repaid funds would have no longer been available for the state and cities to use in eligible affordable housing activities. The waivers permitted the state and cities to repay their HOME Investment Trust Fund accounts instead of their HOME Investment Trust Treasury accounts and make the repaid funds available for investment in additional HOME-eligible activities.

Contact: Virginia Sardone, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–2684.

II. Regulatory Waivers Granted by the Office of Housing—Federal Housing Administration (FHA)

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR part 5, subparts G and H, and 24 CFR part 200, subpart A and subpart P.

Project/Activity: Co-op City is a large cooperative housing community in the Bronx, NY, which is home to more than 57,000 residents. The cooperative sought to refinance its $621 million mortgage with an FHA-insured mortgage. FHA has statutory authority to refinance cooperatives and FHA has commenced but not yet completed promulgation of regulations that will provide the generally applicable requirements by which cooperatives will be refinanced. The FHA refinanced mortgage has a 35-year term.

Nature of Requirement: To achieve the refinancing, several regulations needed to be waived. HUD's regulations in 24 CFR part 5, subpart G establishes uniform physical condition standards for housing that includes housing with mortgages insured or held by HUD. These requirements include an annual inspection requirement. HUD's regulations in 24 CFR part 5, subpart H set out uniform financial reporting requirements. These requirements include the submission of

project financial statements within 90-days of the end of the borrower's fiscal year. As noted earlier, although FHA has statutory authority under section 207 of the National Housing Act (NHA) to refinance the existing debt of cooperatives, HUD's regulation at 24 CFR 200.24 in part 200, subpart A, currently limits FHA refinancing of existing debt under section 207 of the National Housing Act to the existing debt of multifamily rental projects, nursing homes, immediate care facilities, assisted living facilities and board and care homes. HUD's regulations at 24 CFR part 200, subpart P also impose annual inspection requirements for FHA-insured multifamily housing. HUD's regulation at 24 CFR 200.855 provides that the responsible entity for conducting the physical inspection is HUD, the lender, or the owner.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 3, 2012, November 7, 2012.

Reason Waived: On November 28, 2012, the transaction for completing the refinancing of Co-op City's mortgage was completed. The described regulations were waived based on the determination that refinancing the existing debt of the project on more favorable terms would preserve needed affordable housing that is strongly supported by both the State of New York, and New York City. As noted above, although HUD has statutory authority to refinance the debt of existing cooperatives, HUD waived the regulatory limitation at 24 CFR 200.24 so that HUD could proceed to refinance the existing debt of Co-Op city. With respect to waiver, of the Uniform Physical Condition Standard (UPCS) inspections requirements at 24 CFR part 5, subpart G, and 24 CFR part 200, subpart P, the waiver provides for the physical inspections on the residential and commercial components of the project to be conducted by the borrower rather than the responsible entity pursuant to 24 CFR Part 200, subpart P. With respect to the financial reporting requirements of 24 CFR part 5, subpart H, given the size of the project, HUD recognized that it is unlikely that the borrower would be able to submit the financial report within the regulatory 90-day timeframe, and allowed the borrower additional time, 120 days after fiscal year end to submit the financial statement.

Contact: Mark B. Van Kirk, Director, Office of Multifamily Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6160, Washington, DC 20410, telephone (202) 708–3730.

• *Regulation:* 24 CFR 200.24.

Project/Activity: Coronado Gardens Cooperative of Lansing, MI, seeking refinancing of its existing debt under section 207 pursuant to provisions of section 223(f) of the National Housing Act.

Nature of Requirement: FHA has statutory authority under section 207 of the National Housing Act (NHA) to refinance the existing debt of cooperatives. However, HUD's regulation at 24 CFR 200.24 in part 200, subpart A, currently limits FHA refinancing of existing debt under section 207 of the National Housing Act to the existing debt of multifamily rental projects, nursing homes, immediate care facilities, assisted living facilities and board and care homes. The regulation does not include the refinancing of existing debts of cooperatives. Although FHA commenced rulemaking to include cooperatives, FHA has not yet completed promulgation of regulations that will provide the generally applicable requirements by which cooperatives will be refinanced.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 23, 2012.

Reason Waived: The regulation was waived based on the determination that refinancing the debt at more favorable terms would preserve needed affordable housing.

Contact: Barbara Chiapella, Director, Detroit Multifamily HUB, Office of Housing, Department of Housing and Urban Development, 477 Michigan Avenue, Room 1620 Detroit, MI 48226, telephone (313) 226–7900, extension 8207.

• *Regulation:* 24 CFR 203.37a(b)(2).

Project/Activity: The waiver applies to individuals nationwide seeking FHA-insured single family forward mortgage financing (unless specifically exempt) to purchase properties within 90 days after acquisition by the seller.

Nature of Requirement: The eligibility of a property for an FHA-insured mortgage depends on the time that has elapsed between the date the seller acquired the property and the date of execution of the sales contract that will result in the FHA mortgage insurance (the re-sale date). If the re-sale date is 90 days or less following the date of acquisition by the seller, the property is not eligible for an FHA-insured mortgage.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 26, 2012.

Reason Waived: The waiver, which was published in the **Federal Register** on November 29, 2012, at 77 FR 71099, is an extension of a waiver first granted in January 2010. Through the waiver, FHA encourages investors who specialize in acquiring and renovating properties to renovate foreclosed and abandoned homes, with the objective of increasing the availability of affordable homes for first-time and other purchasers, helping to stabilize real estate prices as well as neighborhoods and communities where foreclosure activity has been high. The waiver is applicable to all single family properties being resold within the 90-day period after prior acquisition, and is not limited to foreclosed properties. Additionally, the waiver is subject to certain conditions, and mortgages must meet these conditions to be eligible for the waiver.

Contact: Karin B. Hill, Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9278, Washington, DC 20410, telephone (202) 708–2121.

• *Regulation:* 24 CFR 232.3.

Project/Activity: Cambria Care Center of Cambria Township, PA, will convert 40 beds to assisted living facility that will be in 29 units. The converted units will serve memory care residents. Currently, the facility is a skilled nursing facility.

Nature of Requirement: HUD's regulation at 24 CFR 232.3 mandates that in a board and care home or assisted living facility not less than one full bathroom must be provided for every four residents. The regulation also requires that the bathroom cannot be accessed from a public corridor or area.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 31, 2012.

Reason Waived: The Center requested and was granted a waiver of the requirement to have one full bathroom for every four residents. The Center advised that the memory care residents of Cambria Care Center will be assisted and supervised, while bathing, and that the bathing/shower rooms are specifically designed to provide enough space for staff to safety assist the residents. Cambria Care Center advised that this arrangement will be safer for the residents.

Contact: Vance T. Morris, Special Assistant, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 2337, Washington, DC 20410, telephone (202) 402–2419.

• *Regulation:* 24 CFR 232.3.

Project/Activity: Chandler House of Yakima, WA, has a license for 36 dementia care beds operating in two separate buildings.

Nature of Requirement: HUD's regulation at 24 CFR 232.3 mandates that in a board and care home or assisted living facility the bathroom cannot be accessed from a public corridor or area.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 21, 2012.

Reason Waived: Chandler House requested and was granted a waiver of the requirement to have one full bathroom for every four residents. Chandler House advised that the residents of Chandler House need assistance and supervision while bathing, and that the bathing/shower rooms are specifically designed to provide enough space for staff to safety assist the residents. Chandler House advised that this arrangement is safer for the residents.

Contact: Vance T. Morris, Special Assistant, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 2337, Washington, DC 20410, telephone (202) 402–2419.

• *Regulation:* 24 CFR 232.3.

Project/Activity: The Marquis at Autumn Hills (Autumn Hills) of Portland, OR, has a license for 22 beds in 15 units. Currently, Autumn Hills serves 22 residents affected by Alzheimer/memory care.

Nature of Requirement: HUD's regulation at 24 CFR 232.3 mandates that in a board and care home or assisted living facility, not less than one full bathroom must be provided for every four residents. The regulation also requires that the bathroom cannot be accessed from a public corridor or area.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 21, 2012.

Reason Waived: Autumn Hills requested and was granted a waiver of the requirement to have one full bathroom for every four residents. HUD granted the waiver on the basis that the facility advised the Alzheimer/memory care residents of Autumn Hills are fully assisted and supervised while bathing, and that this allows for staff to provide assistance to the residents. Autumn Hills advised that this arrangement is safer for the residents.

Contact: Vance T. Morris, Special Assistant, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 2337, Washington, DC 20410, telephone (202) 402–2419.

• *Regulation:* 24 CFR 232.3.

Project/Activity: Countryside Living of Canby (Canby) of Canby, OR, is an assisted living facility and has a license for 35 beds in 21 units. Currently, Canby serves Alzheimer care residents.

Nature of Requirement: HUD's regulation at 24 CFR 232.3 mandates that in a board and care home or assisted living facility, not less than one full bathroom must be provided for every four residents.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 21, 2012.

Reason Waived: The assisted living facility requested and was granted a waiver of the requirement to have one full bathroom for every four residents. HUD granted the waiver on the basis that the facility advised that the Alzheimer care residents of Canby all need assistance with bathing, and that the bathing/shower rooms provide enough space for staff to safely assist the residents. Canby advised that this arrangement is safer for the residents.

Contact: Vance T. Morris, Special Assistant, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 2337, Washington, DC 20410, telephone number (202) 402–2419.

• *Regulation:* 24 CFR part 234, as revised and implemented by Mortgagee Letters (ML) 2009–46a and 2009 46b, as authorized by the Housing and Economic Recovery Act of 2008 (HERA), and more recently M L 2011–22, Condominium Project Approval and Processing Guide, Insurance Requirements issued June 30, 2011 (the requirements of this Guide serve as the current condominium regulations until the rule has been promulgated).

Project/Activity: Anchorage Borough, State of Alaska.

Nature of Requirement: Condominium projects not meeting FHA's definition of site condominiums require full project review and approval. The homeowners' association is required to maintain adequate ''master or blanket'' property insurance in an amount equal to 100 percent of current replacement costs of the condominium exclusive of land, foundation, excavation and other items normally exclude from coverage and other insurances.

Granted By: Carol Galante, Assistant Secretary of Housing—Federal Housing Commissioner.

Date Granted: December 14, 2012.

Reason Waived: It was determined that the granting of the waiver would serve to retain the availability of over 1,100 affordable housing units in the Alaska housing market. The waiver would allow for the individual unit owners to obtain and maintain individual hazard, flood, liability and other insurance required by state or local condominium laws while the individual homeownership association takes the necessary time to amend their legal documents and transition their project's property insurance coverage and other insurances to a blanket/master policy while continuing to provide an affordable housing opportunity to FHA-qualified buyers.

Contact: Joanne B. Kuczma, Housing Program Officer, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9278, Washington, DC 20410, telephone (202)708–2121.

• *Regulation:* 24 CFR part 234, as revised and implemented by Mortgagee Letters (ML) 2009–46a and 2009 46b, as authorized by the Housing and Economic Recovery Act of 2008 (HERA), and more recently M L 2011–22, Condominium Project Approval and Processing Guide, Insurance Requirements issued June 30, 2011 (the requirements of this Guide serve as the current condominium regulations until the rule has been promulgated).

Project/Activity: Anchorage Borough, State of Alaska.

Nature of Requirement: HUD's insurance requirements are cited in Section 2.1.9 of the Guide, which require the homeowner association (HOA) to carry master/blanket hazard, flood, liability and any other insurance required by state or local condominiums laws.

Granted By: Carol J. Galante, Assistant Secretary of Housing-Federal Housing Commissioner.

Date Granted: December 14, 2012.

Reason Waived: Certain condominium projects in Alaska were developed as common interest developments and classified as Site Condominiums as defined by Alaska zoning and building codes. These buildings are typically constructed as attached duplex structures within the project boundaries. The Covenants, Conditions and Restrictions (CC&R's) of the project, define specific responsibilities of the HOA and the unit owners. Pursuant to provisions contained in the CC&R's of these projects, the structure, unit, and any personal property within the unit, must be insured by the individual unit owner, these are not considered as common area, and it is not the responsibility of the HOA to maintain the insurance.

Although these developments are classified as Site Condominiums by Alaska zoning and building codes, these improvements conflict with HUD's definition of a site condominium cited in Section 1.8.1 of the Guide. Therefore, these projects require full project approval and compliance with all HUD's requirements cited in the Guide including the requirement that the HOA maintains a master/blanket hazard, flood, liability and any other insurance required by state or local condominium laws.

Granting of a one year waiver does not violate any statutory requirements and will serve to retain the availability of over 1,100 affordable housing units in the Anchorage housing market. The granting of the waiver also provides the individual HOA time to amend their legal documents and transition their project's property insurance coverage to a blanket/master policy, while continuing to provide an affordable housing opportunity to FHA qualified buyers.

Contact: Bill Schuler, Chief, Technical Branch 2, Department of Housing and Urban Development, Santa Ana Homeownership Center, 34 Civic Center Plaza, Santa Ana, CA. 92701, telephone (714) 796–1200, extension 3449.

• *Regulation:* 24 CFR 266.410(d) and 266.505(b)(9).

Project/Activity: Risk Sharing program administered by the California Housing Finance Agency (CalHFA).

Nature of Requirement: The applicable regulations for the Risk Sharing program are 24 CFR 266.410(d) and 266.505 (b)(9), and the regulations require that the mortgagor must be a single asset mortgagor and operate as a single asset mortgagor.

Granted By: Carol J. Galante, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 29, 2012.

Reason Waived: The waiver will facilitate the acquisition/rehabilitation of the subject projects as affordable housing. These two properties have been awarded funding under the State of California Department of Treasury's New Issue Bond Program (NIBP). The NIBP application was submitted as a single scattered site development and as such received a single bond allocation. The time constraints of the bond program do not allow for formation of a separate single asset mortgagor entity for each property.

Contact: Robert Arbios, Director of Policy Division, Office of Multifamily Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–8000, telephone (202)402–2913.

• *Regulation:* 24 CFR 401.460(b).

Project/Activity: New Horizon Village, Kalamazoo, MI.

Nature of Requirement: The regulation prohibits a difference between the amortization and the term of the loan. The project has a Fannie Mae first mortgage loan that would have a 30 year amortization, but a 16 year term.

Granted By: Carol J. Galante, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 21, 2012.

Reason Waived: The waiver was granted for the following reasons. The Fannie Mae first mortgage would not be FHA insured and the second (MRN) and third (CRN) mortgages would be assigned to a Qualified Non Profit (QNP). As a result the discrepancy between the amortization period and the term of the loan would present no risk to the FHA Insurance Fund. Secondly, real estate loans are often refinanced well in advance of the long-term maturity date of the loan due to

changing capital needs, so the 16 year term was not considered a significant risk factor by the Office of Affordable Housing Preservation (OAHP).

Contact: Claude Dickson, Bonds and Appeals Manager, Office of Affordable Housing Preservation, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–8000, telephone (202) 402–8372.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Thomas Patrick Maroney Unity Apartments, Inc., Charleston, WV.

Project Number: 045–HD046/WV15–Q101–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Carol J. Galante, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 21, 2012.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Newbury Senior Housing, Newbury, NH, Project Number: 024–EE120/NH36–S081–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Carol J. Galante, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 21, 2012.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. Also, additional time was needed for HUD to issue the firm commitment and for the project to achieve an initial closing.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Walnut Housing, West Seneca, NY, Project Number: 014–EE269/NY06–S081–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Carol J. Galante, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 28, 2012.

Reason Waived: Additional time was needed because of significant delays due to local opposition and a new site had to be secured twice.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: The Woods of Crooked Creek Apartments, Indianapolis, IN, Project Number: 073–HD087/IN36–Q091–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Carol J. Galante, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 28, 2012.

Reason Waived: Additional time was needed for the project to get to an initial closing.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Kenyon Terrace Apartments, South Kingstown, RI, Project Number: 016–HD063/RI43–Q091–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Carol J. Galante, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 28, 2012.

Reason Waived: Additional time was needed to submit the firm commitment application and achieve an initial closing.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Westcliff Heights Senior Apartments, Las Vegas, NV, Project Number: 125–EE131/NV25–S081–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Carol J. Galante, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 5, 2012.

Reason Waived: Additional time was needed for the firm commitment application to be processed and for the project to get to an initial closing.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Villa Davis, Phoenix, AZ, Project Number: 123–HD044/AZ20–Q081–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Carol J. Galante, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 5, 2012.

Reason Waived: Additional time was needed for the firm commitment application to be processed and for the project to get to an initial closing.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Acorn Walk (Franklin Foundation), Kettering, OH, Project Number: 046–EE101/OH10–S091–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Carol J. Galante, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 19, 2012.

Reason Waived: Additional time was needed for the sponsor/owner to resolve budget issues as a result of the flood insurance requirement and increases by the contractor.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Bella Vista Apartments, Tucson, AZ, Project Number: 123–HD045/AZ20–Q091–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Carol J. Galante, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 31, 2012.

Reason Waived: Additional time was needed for the project to reach initial closing and start of construction.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: CPNJ Livingston Residence, Livingston, NJ, Project Number: 031–HD157/NJ39–Q081–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Carol J. Galante, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 31, 2012.

Reason Waived: Additional time was needed for the project to reach an initial closing.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Teaneck Senior Housing, Teaneck, NJ, Project Number: 031–EE077/NJ39–S091–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Carol J. Galante, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 8, 2012.

Reason Waived: Additional time was needed for the firm commitment application to be completed, submitted and reviewed and for the project to reach an initial closing.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Barringer Gardens, Charlotte, NC, Project Number: 053–EE199/NC19–S091–012.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Carol J. Galante, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 21, 2012.

Reason Waived: Additional time was needed for the sponsor/owner to redesign the proposed development based on a reduction in the number of mixed-finance units and for the North Carolina Housing Finance Agency's review redesign.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Spencer House II, Boston, MA, Project Number: 023–EE235/MA06–S091–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Carol J. Galante, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 21, 2012.

Reason Waived: Additional time was needed for the project to achieve an initial closing.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Villa Davis, Phoenix, AZ, Project Number: 123–HD044/AZ20–Q081–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Carol J. Galante, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 5, 2012.

Reason Waived: Additional time was needed for the project to achieve an initial closing.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165, 891.830(b), 891.830(c)(4), and 891.830(c)(5).

Project/Activity: Kellgren Senior Apartments, Petaluma, CA, Project Number: 121–EE232/CA39–S101–009.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis. Section 891.830(b) requires that capital advance funds be drawn down only in an approved ratio to other funds, in accordance with a drawdown schedule approved by HUD. Section 891.830(c)(4) prohibits the capital advance funds from paying off bridge or construction financing, or repaying or collateralizing bonds. Section 891.830(c)(5) requires the capital advance drawdown to be consistent with the ratio of the 202 supportive housing units to other units.

Granted by: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 1, 2012.

Reason Waived: Additional time was needed for the firm commitment to be issued and the start of construction to occur. Also, HUD in its response to the public comments in the final rule published September 23, 2005, stated ''while HUD generally expects the capital advance funds to be drawn down in a one-to-one ratio for eligible costs actually incurred, HUD may permit on a case-by-case basis, some variance from the drawdown requirements as needed for the success of the project.'' Therefore, waivers were granted to permit capital advance funds to be drawn down in one requisition, to pay off that portion of construction financing that strictly relate to capital advance eligible costs after completion of construction at initial/final closing. Also, a waiver was granted to permit capital advance funds to be used to collateralize the tax exempt bonds issued to finance the construction of the project and to pay off a portion of the tax-exempt bonds that strictly relate to capital advance eligible costs.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Omaha Housing Authority (NE001), Omaha, NE.

Nature of Requirement: HUD's regulation at 24 CFR 5.801(d)(1) establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) Fiscal Year End (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: November 12, 2012.

Reason Waived: On March 22, 2012, a contract to perform the Omaha Housing Authority (OHA) audit was awarded to the Reznick Group. However, on May 15, 2012, the Reznick Group withdrew from the project. OHA worked quickly and on June 1, 2012, awarded a new contract to Hayes and Associates. On June 20, 2012, HUD began a forensic audit and review of OHA's operations dating back to 2006. As a result of these two issues, additional time was

granted to complete the audit and submit the data to REAC.

Contact: Johnson Abraham, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW., Suite 100, Washington, DC 20410, telephone (202) 475–8583.

• *Regulation:* 24 CFR 85.6(c), 24 CFR 85.31.

Project/Activity: Alaska Housing Finance Corporation, Anchorage, Alaska (Agency).

Nature of Requirement: HUD's regulations at 24 85.6(c) and 85.31 provide that real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests. When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee is to request disposition instructions from the awarding agency affected. The instructions will provide for one of the following alternatives: (1) Retain the title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property. (2) Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures are to be followed that provide for competition to the extent practicable and result in the highest possible return. (3) Transfer title to the awarding agency or to a third party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public & Indian Housing.

Date Granted: December 11, 2012.

Reason Waived: The Agency requested to release the Declaration of Trust (DOT) and reassign the property to its Central Office Cost Center (COCC) pursuant to 24 CFR 85.31 and PIH Notice 2008–17, Guidance on Disposition of Excess Equipment and Non-Dwelling Real Property Under Asset Management. The agency found that the non-dwelling property, used to support public housing functions, to be excess to the needs of its public housing projects as a result of the conversion to asset management. Due to various physical limitations the agency constructed a new facility, which now houses all the functions that had been located at the property. Additionally, the agency requested an exemption in accordance with 24 CFR 85.6(c) to reimburse the federal government for its equity in the project. HUD found that the agency presented good cause and approved a conditional release of the DOT and reassignment of the property to the agency's COCC. HUD further found that the Agency presented good cause for an exemption under 24 CFR 85.31 and therefore agreed to waive the requirements to reimburse HUD for its participation in the property, with the following conditions: (1) The action is approved by the Board of the Agency; (2) the reassignment is included in the Agency's PHA plan; and (3) in the event that the property is sold within ten years from the date of the approval, proceeds from the sale must be used for low income housing purposes as defined in the United States Housing Act of 1937.

Contact: Claudia J. Yarus, Department of Housing and Urban Development, Office of Public and Indian Housing, Real Estate Assessment Center (REAC), 550 12th Street SW., Suite 100, Washington, DC 20410, telephone (202) 475–8830.

• *Regulation:* 24 CFR 902.20.

Project/Activity: Hackleburg Housing Authority (AL076), Guin, AL.

Nature of Requirement: The purpose of HUD's regulation at 24 CFR 902.20 is to determine whether a housing authority (HA) is meeting the standard of decent, safe, sanitary, and in good repair. The Real Estate Assessment Center (REAC) provides for an independent physical inspection of a HA's property of properties that includes a statistically valid sample of the units.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: December 04, 2012.

Reason Waived: Due to severe property damage as a result of a tornado on April 27, 2011, the Housing Authority (HA) lost a total of 24 units, saw extensive damage to another 16 units, and suffered damage to the main office and maintenance buildings. The HA anticipated restoration of 20 units and the buildings by the end of year. The HA was previously granted a waiver from the PASS physical inspections for the FYE March 31, 2011. The waiver was granted because circumstances surrounding the waiver request were unusual and beyond the HA's control.

Contact: Johnson Abraham, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW., Suite 100, Washington, DC 20410, telephone (202) 475–8583.

• *Regulation:* 24 CFR 982.201(e).

Project/Activity: Houston Housing Authority (HHA), Houston, TX.

Nature of Requirement: HUD's regulation at 982.201(e) states that the public housing agency (PHA) must receive information verifying that an applicant is eligible within the period of 60 days before the PHA issues a voucher to the applicant.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: November 21, 2012.

Reason Waived: This waiver was granted to allow the HHA to issue vouchers to HUD-Veterans Affairs Supportive Housing (VASH) families before verifying eligibility. However, eligibility must be verified before the effective date of the housing assistance payments (HAP) contract.

Contact: Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(4).

Project/Activity: Fairfield Housing Authority (FHA), Fairfield, CT.

Nature of Requirement: HUD's regulation at 982.505©(4) states that, if the payment standard amount is increased during the term of the housing assistance payments (HAP) contract, the increased payment standard shall be used to calculate the monthly HAP for the family beginning at the effective date of the family's first regular reexamination on or after the effective date of the increase in the payment standard amount.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: November 1, 2012.

Reason Waived: This waiver was granted to alleviate any rent burden that may have resulted through the implementation of a previous waiver that allowed FHA to lower payment standards before a family's second regular reexamination after the increase.

Contact: Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: San Diego Housing Commission (SDHC), San Diego, CA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: November 1, 2012.

Reason Waived: SDHC advised that the client is disabled and required an exception payment standard to move to a new unit that accommodates her needs. To provide this reasonable accommodation so the client could be assisted in this new unit and pay no more than 40 percent of her adjusted income toward the family share, the SDHC requested and was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and

Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Sioux Falls Housing and Redevelopment Commission (SFHRD), Sioux Falls, SD.

Nature of Requirement: HUD's regulation at 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent for the unit size.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: November 21, 2012.

Reason Waived: SFHRD advised that the client is disabled and required an exception payment standard to continue her occupancy in her current unit that meets her health needs. To provide this reasonable accommodation so the client could be assisted in this unit and pay no more than 40 percent of her adjusted income toward the family share, the SFHRD requested and was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Parma Public Housing Agency (PPHA), Parma, OH.

Nature of Requirement: HUD's 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent for the unit size.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: October 5, 2012.

Reason Waived: PPHA advised that the participant, who is disabled, required an exception payment standard to move to a new unit that met her needs. The PPHA requested and was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.6(a).

Project/Activity: San Francisco Housing Authority (SFHA), San Francisco, CA.

Nature of Requirement: HUD's regulation at 24 CFR 983.6(a) states that a public housing agency (PHA) may select owner proposals to provide project-based voucher (PBV) assistance for up to 20 percent of the amount of budget authority allocated to the PHA by HUD in the PHA voucher program. Although this regulation reflects a statutory, statutory authority allows for statutory waivers to be granted for the HUD-Veterans Affairs Supportive Housing (VASH) program.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: December 6, 2012.

Reason Waived: The city's campaign, ''San Francisco homes for Heroes,'' was unsuccessful and veterans were unable to access affordable housing. The waiver was therefore granted to allow SFHA to attach PBV to all of its HUD–VASH vouchers to meet the needs of chronically homeless veterans.

Contact: Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.55(b).

Project/Activity: Housing Authority of Baltimore City (HABC), Baltimore, MD.

Nature of Requirement: HUD's regulation at 24 CFR 983.55(b) states that a public housing agency may not enter into an Agreement to enter into a Housing Assistance Payments contract (AHAP) until HUD or an independent entity approved by HUD has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: October 24, 2012.

Reason Waived: This waiver was granted to meet a low-income housing tax credit deadline with assurances that no vertical construction will begin before the execution of the AHAP.

Contact: Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.55(b).

Project/Activity: Brownsville Housing Authority (BHA), Brownsville, TX.

Nature of Requirement: HUD's regulation at 24 CFR 983.55(b) states that a public housing agency may not enter into an Agreement to enter into a Housing Assistance Payments contract until HUD or an independent entity approved by HUD has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: December 4, 2012.

Reason Waived: This waiver was granted based on the critical role this affordable housing plays in Brownsville's community revitalization plan, the risk to the viability of the housing without the PBV investment as well as the owner's commitment to affirmatively market the units to veterans.

Contact: Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

Regulation: 24 CFR 983.152(b).

Project/Activity: Fayetteville Metropolitan Housing Authority (FMHA), Fayetteville, NC.

Nature of Requirement: HUD's regulation at 24 CFR 983.152(b) states that a public housing agency (PHA) must enter into an Agreement to enter into a Housing Assistance Payments contract (AHAP). In the AHAP the owner agrees to develop the contract units to comply with housing quality standards and the PHA agrees that, upon timely completion of such development in accordance with the terms of the AHAP, the PHA will enter into a HAP contract with the owner for the contract units.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: November 6, 2012.

Reason Waived: This waiver was granted because FMHA acted in accordance with previous guidance regarding the start of construction which may not begin before the AHAP is executed.

Contact: Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.206(b).

Project/Activity: Franklin County Regional Housing and Redevelopment Authority (FCRHRA), Franklin County, MA.

Nature of Requirement: HUD's regulation at 24 CFR 983.206(b) states that, at the discretion of the public housing agency (PHA) and provided that the total number of units in a project that will receive PBV assistance or other project-based assistance will not exceed 25 percent of the number of dwelling units (assisted or unassisted) in the project or the 20 percent of authorized budget authority, a housing assistance payments (HAP) contract may be amended during the three-year period immediately following the execution date of the HAP contract to add additional PBV contract units in the same project.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: December 29, 2012.

Reason Waived: This waiver was granted since the 14 added units could have been included as excepted units under the original PBV HAP contract and the action to add these units was delayed beyond three years due to processing.

Contact: Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 984.303(d).

Project/Activity: Ithica Housing Authority (IHA), Ithica, NY.

Nature of Requirement: HUD's regulation at 24 CFR 984.303(d) limits the extension of a family self-sufficiency (FSS) contract by a public housing agency to two years beyond the initial five-year term.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: October 1, 2012.

Reason Waived: This waiver was granted due to allow the FSS participant, a person with disabilities who had a series of physical injuries during the term of her FSS contract, to complete her education and employment goals. An additional year was granted.

Contact: Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 985.105(d).

Project/Activity: Mid-Iowa Regional Housing Authority (MIRHA), Fort Dodge, IA.

Nature of Requirement: HUD's regulation at 24 CFR 985.105(d) states that HUD must conduct an on-site confirmatory review of a public housing authority's performance before changing any annual overall performance rating from troubled to standard or high performer under the Section Eight Management Assessment Program.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: November 6, 2012.

Reason Waived: HUD granted the waiver because, pursuant to the on-site assessment, a corrective action plan was submitted and approved. Documentation regarding a quality control policy procedure and the use and provision of such logs verified to the HUD field office the correction of the failed indicators and, therefore, an additional review was not warranted.

Contact: Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

[FR Doc. 2013–05329 Filed 3–6–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2013–N056; FXES11130400000EA–123–FF04EF1000]

Endangered and Threatened Wildlife and Plants; Receipt of Application for Incidental Take Permit; Availability of Proposed Low-Effect Habitat Conservation Plan; Volusia County Council—Engineering, Volusia County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), have received an application from Volusia County Council—Engineering (applicant), for a 2-year incidental take permit (ITP; # TE98767A–0) under the Endangered Species Act of 1973, as amended (Act). We request public comment on the permit application and accompanying proposed habitat conservation plan (HCP), as well as on our preliminary determination that the plan qualifies as low-effect under the National Environmental Policy Act (NEPA). To make this determination, we used our environmental action statement and low-effect screening form, which are also available for review.

DATES: To ensure consideration, please send your written comments by April 8, 2013.

ADDRESSES: If you wish to review the application and HCP, you may request documents by email, U.S. mail, or phone (see below). These documents are also available for public inspection by appointment during normal business hours at the office below. Send your comments or requests by any one of the following methods.

Email: northflorida@fws.gov. Use ''Attn: Permit number TE98767A–0'' as your message subject line.

Fax: Dawn Jennings, Acting Field Supervisor, (904) 731–3045, Attn.: Permit number TE98767A–0.

U.S. mail: Dawn Jennings, Acting Field Supervisor, Jacksonville Ecological Services Field Office, Attn: Permit number TE98767A–0, U.S. Fish and Wildlife Service, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256.

In-person drop-off: You may drop off information during regular business hours at the above office address.

FOR FURTHER INFORMATION CONTACT: Erin M. Gawera, telephone: (904) 731–3121; email: *erin_gawera@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the Act (16 U.S.C. 1531 et seq.) and our implementing Federal regulations in the Code of Federal Regulations (CFR) at 50 CFR 17 prohibit the ''take'' of fish or wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Act as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532). However, under limited circumstances, we issue permits to authorize incidental take—i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

Regulations governing incidental take permits for threatened and endangered species are at 50 CFR 17.32 and 17.22, respectively. The Act's take prohibitions do not apply to federally listed plants on private lands unless such take would violate State law. In addition to meeting other criteria, an incidental take permit's proposed actions must not jeopardize the existence of federally listed fish, wildlife, or plants.

Applicant's Proposal

The applicant is requesting take of approximately 0.87 acres (ac) of Florida scrub-jay (*Aphelocoma coerulescens*)-occupied habitat incidental to construction of a pedestrian trail. The 1.96-ac project is located on the Blue Springs State Park property (parcel #08–18–30–00–00–0010), within Sections 4, 5, 8, 9, 16, and 17, Township 18 South, Range 30 East, Volusia County, Florida. The applicant's HCP describes the mitigation and minimization measures the applicant proposes to address the effects of the project to the Florida scrub-jay.

Our Preliminary Determination

We have determined that the applicant's proposal, including the proposed mitigation and minimization measures, would have minor or negligible effects on the species covered in the HCP. Therefore, we determined that the ITP is a low-effect project and qualifies for categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1). A low-effect HCP is one involving (1) minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

Next Steps

We will evaluate the HCP and comments we receive to determine

whether the ITP application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If we determine that the application meets these requirements, we will issue the ITP. We will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue the ITP. If the requirements are met, we will issue the permit to the applicant.

Public Comments

If you wish to comment on the permit application, HCP, and associated documents, you may submit comments by any one of the methods in **ADDRESSES**.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

Dated: March 1, 2013.

Dawn Jennings,

Acting Field Supervisor, Jacksonville Field Office, Southeast Region.

[FR Doc. 2013–05291 Filed 3–6–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2013–N055; FXIA16710900000P5–123–FF09A30000]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before April 8, 2013.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

III. Permit Applications

A. Endangered Species

Applicant: Montana State University, Department of Ecology, Bozeman, MT; PRT–94913A

The applicant requests a permit to collect samples from wild populations of cheetah, (*Acinonyx jubatus*) and African wild dog (*Lycaon pictus*), for the purpose of enhancement of the survival of the species/scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Adam Hunt, Centerville, UT; PRT–97815A

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the radiated tortoise (*Astrochelys radiata*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Blue Diablo LLC, Blanco, TX; PRT–97758A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*), addax (*Addax*

nasomaculatus), dama gazelle (*Nanger dama*), and red lechwe (*Kobus leche*), to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Blue Diablo LLC, Blanco, TX; PRT–97746A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*), from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: North Texas Outfitters, Chico, TX; PRT–97223A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the barasingha (*Rucervus duvaucelii*), Eld's deer (*Rucervus eldii*), scimitar-horned oryx (*Oryx dammah*), Arabian oryx (*Oryx leucoryx*), addax (*Addax nasomaculatus*), dama gazelle (*Nanger dama*), and red lechwe (*Kobus leche*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: North Texas Outfitters, Chico, TX; PRT–97677A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess barasingha (*Rucervus duvaucelii*), scimitar-horned oryx (*Oryx dammah*), and addax (*Addax nasomaculatus*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Rock Head Properties, LLC, Mason, TX; PRT–97898A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*) and addax (*Addax nasomaculatus*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Rock Head Properties, LLC, Mason, TX; PRT–97899A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*), and addax (*Addax nasomaculatus*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Tiger World Inc., Rockwell, NC; PRT–97961A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the ring-tailed lemur (*Lemur catta*), red ruffed lemur (*Varecia rubra*), mandrill (*Mandrillus sphinx*), lar gibbon (*Hylobates lar*), leopard (*Panthera pardus*), snow leopard (*Uncia uncia*), golden parakeet (*Guarouba guarouba*), Galapagos tortoise (*Chelonoidis nigra*), and radiated tortoise (*Astrochelys radiata*), to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: CDUB, Quincy, FL; PRT–93424A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Nanger dama*), to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Parrot Mountain and Gardens, Sevierville, TN; PRT–057232

The applicant requests amendment and renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for golden parakeet (*Guarouba guarouba*), Cuban parrot (*Amazona leucocephala*), and vinaceous parrot (*Amazona vinacea*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: BAI, Limestone, TN; PRT–189400

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families:
- Bovidae
- Lemuridae
- Tapiridae
- Gruidae

Species:
- Grevy's zebra (*Equus grevyi*)
- White-handed gibbon (*Hylobates lar*)
- Radiated tortoise (*Astrochelys radiata*)
- Galapagos tortoise (*Chelonoides nigra*)

Applicant: Cape Fear Serpentarium, Wilmington, NC; PRT–203395

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Species:
- Chinese alligator (*Alligator sinensis*)
- Nile crocodile (*Crocodylus niloticus*)
- Cuban crocodile (*Crocodylus rhombifer*)
- Siamese crocodile (*Crocodylus siamensis*)
- Saltwater crocodile (*Crocodylus porosus*)
- Dwarf crocodile (*Osteolaemus tetraspis*)
- Galapagos tortoise (*Chelonoidis nigra*)
- Radiated tortoise (*Astrochelys radiata*)

Applicant: Wildlife World Zoo, Inc., Litchfield Park, AZ; PRT–227389

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families:
- Bovidae
- Equidae
- Hylobatidae
- Lemuridae
- Cracidae
- Gruidae

Species:
- Woylie (*Bettongia penicillata*)
- Pygmy slow loris (*Nycticebus pygmaeus*)
- Cottontop tamarin (*Saguinus oedipus*)
- Diana monkey (*Cercopithecus diana*)
- Northern plains grey langur (*Semnopithecus entellus*)
- Mandrill (*Mandrillus sphinx*)
- African wild dog (*Lycaon pictus*)
- Snow leopard (*Uncia uncia*)
- Leopard (*Panthera pardus*)
- Cheetah (*Acinonyx jubatus*)
- South American tapir (*Tapirus terrestris*)
- Malayan tapir (*Tapirus indicus*)
- Babirusa (*Babyrousa babyrussa*)
- Barasingha (*Rucervus duvaucelii*)
- Andean condor (*Vultur gryphus*)
- Golden parakeet (*Guarouba guarouba*)
- Bali starling (*Leucopsar rothschildi*)
- Tartaruga (*Podocnemis expansa*)
- Yellow-spotted river turtle

(*Podocnemis unifilis*)
Galapagos tortoise (*Chelonoidis nigra*)
Radiated tortoise (*Astrochelys radiata*)
Chinese alligator (*Alligator sinensis*)
African dwarf crocodile (*Osteolaemus tetraspis*)
Nile crocodile (*Crocodylus niloticus*)
Saltwater crocodile (*Crocodylus porosus*)
Indian python (*Python molurus molurus*)
Cuban ground iguana (*Cyclura nubila*)
Grand Cayman blue iguana (*Cyclura lewisi*

Applicant: Gladys Porter Zoo, Brownsville, TX; PRT–687643

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families:
Bovidae
Cebidae
Cercopithecidae
Equidae
Felidae (*does not* include jaguar, margay or ocelot)
Hominidae
Hylobatidae
Lemuridae
Macropodidae
Gruidae
Psittacidae (*does not* include thick-billed parrots)
Sturnidae (*does not* include *Aplonis pelzelni*)
Alligatoridae
Boidae (*does not* include Mona or Puerto Rican boa)
Emydidae
Testudinidae
Species:
Asian elephant (*Elephas maximus*)
African wild dog (*Lycaon pictus*)
Philippine crocodile (*Crocodylus mindorensis*)
Cuban crocodile (*Crocodylus rhombifer*)
Komodo Island monitor (*Varanus komodoensis*)
Grand Cayman ground iguana (Cyclura nubila lewisi)

Applicant: Omaha's Henry Doorly Zoo, Omaha, NE; PRT–692689

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families:
Bovidae
Cebidae
Cercopithecidae
Felidae
Gruidae
Hylobatidae
Lemuridae
Hominidae
Tapiridae
Species:
Grevy's zebra (*Equus grevyi*)

Applicant: Carson Springs Wildlife Foundation, Gainesville, FL; PRT–56870A

The applicant requests amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) to include leopard (*Panthera pardus*), snow leopard (*Uncia uncia*), and cheetah (*Acinonyx jubatus*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Oregon Zoo, Portland, Oregon; PRT–96624A

The applicant requests a permit for interstate commerce of an Asian elephant (*Elephas maximus*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: SeaWorld California, San Diego, CA; PRT–011708

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the hooded crane (*Grus mocha*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Nicholas White, Ephrata, WA; PRT–93473A

Applicant: Rodney McCallen, Greenwood Village, CO; PRT–96124A

Applicant: Thomas Miranda, Englewood, FL; PRT–93902A

Applicant: Linda Donaho, Houston, TX; PRT–95408A

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2013–05320 Filed 3–6–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2013–N054; FXIA16710900000P5–123–FF09A30000]

Endangered Species; Marine Mammal; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA).

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION: On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 *et seq.*), as amended, and/or the MMPA, as amended (16 U.S.C. 1361 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) the application was filed in good faith, (2) The granted permit would not operate to the disadvantage of the endangered species, and (3) The granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application FEDERAL REGISTER notice	Permit issuance date
88568A	The Living Desert	77 FR 66476; November 5, 2012	February 12, 2013.
77706A	LBMI, L.P. doing business as El Coyote Ranch	77 FR 72882; December 6, 2012	February 19, 2013.
75897A	American Museum of Natural History	77 FR 72882; December 6, 2012	February 22, 2013.
93939A	Joseph Herold	78 FR 4162; January 18, 2013	February 22, 2013.
93485A	Charles Collins	78 FR 4162; January 18, 2013	February 22, 2013.

MARINE MAMMALS

Permit No.	Applicant	Receipt of application FEDERAL REGISTER notice	Permit issuance date
690038	U.S. Geological Service, Alaska Science Center	77 FR 46514; August 3, 2012	February 21, 2012.

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2013–05322 Filed 3–6–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proclaiming Certain Lands as Reservation for the Tohono O'odham Nation of Arizona

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Reservation Proclamation.

SUMMARY: This notice informs the public that the Assistant Secretary—Indian Affairs proclaimed approximately 642.27 acres, more or less, as the Tohono O'odham Nation Indian Reservation for the Tohono O'odham Nation Tribe of Indians of Arizona on February 28, 2013.

DATE: The proclamation is effective on February 28, 2013.

FOR FURTHER INFORMATION CONTACT: Matthew Kirkland, Bureau of Indian Affairs, Division of Real Estate Services, MS–4639–MIB, 1849 C Street NW., Washington, DC 20240, telephone (202) 208–3615.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), for the land described below. The land was proclaimed to be the Tohono O'odham Nation Indian Reservation for the exclusive use of Indians on that reservation who are entitled to reside at the Reservation by enrollment or tribal membership.

Tohono O'odham Nation Indian Reservation

Pima County, Arizona

Parcel 1:

Lots 3 and 4; the Southeast Quarter of the Northwest Quarter; the Northeast Quarter of the Southwest Quarter and the north half of the Southeast Quarter all in Section 1, Township 14 South, Range 5 West, Gila and Salt River Meridian, Pima County, Arizona.

Parcel 2:

The Southwest Quarter of the Northwest Quarter of Section 1, Township 14 South, Range 5 West, Gila and Salt River Meridian, Pima County, Arizona.

Parcel 3:

The west half of the Southwest Quarter, the Southeast Quarter of the Southwest Quarter and the South Half of the Southeast Quarter of Section 1, Township 14 South, Range 4 West, Gila and Salt River Meridian, Pima County, Arizona.

Parcel 4:

The Northeast Quarter of Section 1, Township 14 South, Range 5 West, Gila and Salt River Meridian, Pima County, Arizona.

And those portions of the Northeast Quarter of Section 1, Township 14 South, Range 5 West, Gila and Salt River Meridian, Pima County, Arizona, more particularly described as follows:

All those dedications to Pima County described in Docket 10617, Page 226, Records of Pima County, Arizona; further excepting any portion thereof lying within State Route 86.

The above-described lands contain a total of 642.27 acres, more or less, which is subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the land described above, nor does it affect any valid existing easements for public roads and highways, public utilities and for railroads and pipelines and any other rights-of-way or reservations of record.

Dated: February, 28, 2013.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2013–05333 Filed 3–6–13; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM940000. L1420000.BJ0000]

Notice of Filing of Plats of Survey, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, thirty (30) calendar days from the date of this publication.

FOR FURTHER CONTACT INFORMATION: These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, 301 Dinosaur Trail, Santa Fe, New

Mexico. Copies may be obtained from this office upon payment. Contact Marcella Montoya at 505–954–2097, or by email at *mmontoya@blm.gov,* for assistance. 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.

SUPPLEMENTARY INFORMATION:

Indian Meridian, Oklahoma (OK)

The plat, representing the dependent resurvey and survey in Township 13 North, Range 8 East, of the Indian Meridian, accepted January 31, 2013, for Group 217 OK. The plat, in three sheets, representing the dependent resurvey and survey in Township 26 North, Range 24 East, of the Indian Meridian, accepted January 31, 2013, for Group 214 OK.

New Mexico Principal Meridian, New Mexico (NM)

The supplemental plat, in Township 15 South, Range 6 West, of the New Mexico Principal Meridian NM, accepted January 11, 2013.

The supplemental plat, in Township 22 South, Range 8 East, of the New Mexico Principal Meridian NM, accepted February 28, 2013.

These plats are scheduled for official filing 30 days from the notice of publication in the **Federal Register**, as provided for in the BLM Manual Section 2097—Opening Orders. Notice from this office will be provided as to the date of said publication. If a protest against a survey, in accordance with 43 CFR 4.450–2, of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest.

A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the Bureau of Land Management New Mexico State Director stating that they wish to protest.

A statement of reasons for a protest may be filed with the Notice of Protest to the State Director or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

Stephen W. Beyerlein,

Acting, Deputy State Director, Cadastral Survey/GeoSciences.

[FR Doc. 2013–05288 Filed 3–6–13; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

Fee Rate

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to 25 CFR 514.2, that the National Indian Gaming Commission has adopted its 2013 preliminary annual fee rates of 0.00% for tier 1 and 0.074% (.00074) for tier 2. These rates shall apply to all assessable gross revenues from each gaming operation under the jurisdiction of the Commission. If a tribe has a certificate of self-regulation under 25 CFR part 518, the 2013 preliminary fee rate on Class II revenues shall be one-half of the annual fee rate, which is 0.037% (.00037).

FOR FURTHER INFORMATION CONTACT: Yvonne Lee, National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005; telephone (202) 632–7003; fax (202) 632–7066.

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) established the National Indian Gaming Commission which is charged with, among other things, regulating gaming on Indian lands.

The regulations of the Commission (25 CFR part 514), as amended, provide for a system of fee assessment and payment that is self-administered by gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates; the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission.

The preliminary rate being adopted here is effective March 1st, 2013 and will remain in effect until a new fee rate is adopted. Therefore, all gaming operations within the jurisdiction of the Commission are required to self administer the provisions of these regulations, and report and pay any fees that are due to the Commission.

Dated: March 4, 3013.

Tracie Stevens,

Chairwoman.

Dated: March 4, 2013.

Daniel Little,

Associate Commissioner.

[FR Doc. 2013–05334 Filed 3–6–13; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–PCE–COR–12237; PPWOPCADD0, PNA00RT14.GT0000]

60-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. To comply with the Paperwork Reduction Act of 1995 and as a part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to comment on this IC. We may not conduct or sponsor and a person is not required to respond to a collection unless it displays a currently valid OMB control number.

DATES: Please submit your comment on or before May 6, 2013.

ADDRESSES: Please send your comments on the proposed IC to Madonna Baucum, Information Collection Clearance Officer, National Park Service, 1201 Eye St. NW., Rm. 1237, Washington, DC 20005 (mail); via fax at 202/371–6741, or via email to *madonna_baucum@nps.gov.* Please reference IC ''1024-New: Rivers, Trails, and Conservation Assistance Program'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Stephan Nofield, Rivers, Trails, and Conservation Assistance Program Manager, National Park Service, Department of the Interior, 1201 Eye St. NW., Washington, DC 20005. You may send an email to *stephan_nofield@nps.gov* or contact him by telephone at (202/354–6922) or via fax at (202/371–5179).

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this information collection is to enable members of the general public to apply for technical assistance from the National Park Service (NPS). The technical assistance would be provided by the Rivers, Trails, and Conservation Assistance (RTCA) Program. The information collected will be used by the NPS to evaluate the applications for technical assistance.

The RTCA Program draws its authority from three important pieces of legislation, the Wild and Scenic Rivers Act (16 U.S.C. 1271 through 1287), the National Trails System Act (16 U.S.C.

1241 through 1249), and the Outdoor Recreation Act of 1963 (16 U.S.C. 4601–1 through 4601–3).

The RTCA program is the community assistance arm of the National Park Service. RTCA supports community-led natural resource conservation and outdoor recreation projects. Additionally, RTCA staff provide technical assistance to communities so they can conserve rivers, preserve open space, and develop trails and greenways.

II. Data

OMB Control Number: 1024-New.

Title: Rivers, Trails, and Conservation Assistance Program.

Form(s): Online application form for technical assistance and a .pdf application form for technical assistance.

Type of Request: Existing collection in use without approval.

Automated Data Collection: No.

Will the Information Be Collected Electronically? Yes.

Description of Respondents: Private individuals; state, tribal, and local governments; businesses; educational institutions; and nonprofit organizations.

Respondent's Obligation: Required to obtain benefits.

Frequency of Collection: Annually.

Estimated Number of Responses: 500.

Estimated Annual Burden Hours: 375. We estimate the public reporting burden will average 45 minutes per response for the RTCA application.

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'': None

Description of Need: The purpose of this information collection is to provide sufficient data for a community based project to be considered for technical assistance by the Rivers, Trails, and Conservation Assistance program.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, et seq.) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number and current expiration date.

III. Comments

We invite comments concerning this IC on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can request in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: February 27, 2013.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2013–05273 Filed 3–6–13; 8:45 am]

BILLING CODE 4310–EH–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–BSD–CONC–12098; PPWOBSADC0, PPMVSCS1Y.Y00000]

Proposed Information Collection; National Park Service Concessions

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service, NPS) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on September 30, 2013. We 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.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by May 6, 2013.

ADDRESSES: Send your comments on the IC to Madonna L. Baucum, Information Collection Clearance Officer, National Park Service, 1201 I Street NW., MS 1237, Washington, DC 20005 (mail); or *madonna_baucum@nps.gov* (email). Please include ''1024–0029'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Deborah Harvey, Acting Chief, Commercial Services Program, National Park Service, 1201 I Street, NW., Washington, DC 20005 (mail), (202) 513–7150 (phone), or *deborah_harvey@nps.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Abstract

Private businesses under contract to the National Park Service manage food, lodging, tours, whitewater rafting, boating, and many other recreational activities and amenities in more than 100 national parks. These services gross more than $1 billion every year and provide jobs for more than 25,000 people during peak season.

The regulations at 36 CFR part 51 primarily implement Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105–391), which provides legislative authority, policies, and requirements for the solicitation, award, and administration of NPS concession contracts. The information collection requirements associated with NPS concessions are currently approved under four OMB control numbers. During our review for this renewal, we discovered some additional requirements that need OMB approval. In this revision of 1024–0029, we are including all of the information collection requirements associated with applying for and operating NPS concessions. If OMB approves this revision, we will discontinue OMB Control Numbers 1024–0125, 1024–0126, and 1024–0231. Following are the information collection requirements associated with soliciting, awarding, and administering NPS concessions:

(1) Proposals (partially approved under OMB Control Number 1024–0125). The public solicitation process begins with the issuance of a prospectus to invite the general public to submit proposals for the contract. The prospectus describes the terms and conditions of the concession contract to be awarded, the procedures to be followed in the selection of the best proposal, and the information that must be provided. Information that we collect includes, but is not limited to:

- Description of how respondent will conduct operations to minimize disturbance to wildlife; protect park resources; and provide visitors with a high quality, safe, and enjoyable visitor experience.
- Organizational structure and history and experience with similar operations.
- Details on violations or infractions and how they were handled.
- Financial information and demonstration that respondent has credible, proven track record of meeting obligations.

We collect this information in narrative and form format. While the information we collect is currently approved under OMB Control No. 1024–0125, OMB has not approved the following forms:

- Business Organization and Credit Information (Form 1 or 2).
- Business History Information Form.
- Investment Expenses.
- Investment Assumptions.
- Initial Investments and Start-up Expenses Form.
- Initial Investments and Start-up Expenses Assumptions.
- Income Statement Form.
- Income Statement Assumptions.
- Operating Assumptions.
- Cash Flow Statement Form.
- Cash Flow Statement Assumptions.

(2) Amendments. Amendments to proposals may be submitted in accordance with 36 CFR 51.15 and 51.32.

(3) Appeals (currently approved under OMB Control Number 1024–0231). Regulations at 36 CFR 51.47 state that any person may appeal to the Director, NPS a determination that a concessioner is not a preferred offeror for the purposes of a right of preference in renewal and that the appeal must specify the grounds for the appeal.

(4) Request to Construct a Capital Improvement (currently approved under OMB Control Number 1024–0231). In accordance with 36 CFR 51.54, a request for approval to construct a capital improvement must include appropriate plans and specifications for the capital improvement. The request must also include an estimate of the total construction cost of the capital improvement. The estimate of the total construction cost must specify all elements of the cost in such detail as is necessary to permit the Director, NPS to determine that they are elements of construction cost. The approval requirements of this and other sections of 36 CFR part 51 also apply to any change orders to a capital improvement project and to any additions to a structure or replacement of fixtures.

(5) Construction Report (currently approved under OMB Control Number 1024–0231). In accordance with 36 CFR 51.55, a concessioner obtaining a leasehold surrender interest must submit a construction report to the NPS. The construction report must be supported by actual invoices of the capital improvement's construction cost together with, if requested by the NPS, a written certification from a certified public accountant (CPA).

(6) Application to Sell or Transfer Concession Operation (currently approved under OMB Control Number 1024–0126). 36 CFR part 51, Subpart J, provides that a concessioner must obtain NPS approval to assign, sell, convey, grant, contract for, or otherwise transfer: any concession contract; any rights to operate under or manage the performance of a concession contract as a subconcessioner or otherwise; any controlling interest in a concessioner or concession contract; or any leasehold surrender interest or possessory interest obtained under a concession contract. The amount and type of information to be submitted varies with the type and complexity of the proposed transaction. Information includes, but is not limited to:

- Instruments proposed to implement the transaction.
- Opinion of counsel that the proposed transaction is lawful under all applicable Federal and State laws.
- Narrative description of the proposed transaction.
- Statement as to the existence and nature of any litigation relating to the proposed transaction.
- Description of the management qualifications, financial background, and financing and operational plans of any proposed transferee.
- Description of all financial aspects of the proposed transaction.
- Prospective financial statements (proformas).
- Schedule that allocates in detail the purchase price (or, in the case of a transaction other than an asset purchase, the valuation) of all assets assigned or encumbered. In addition, the applicant must provide a description of the basis for all allocations and ownership of all assets.

(7) Annual Financial Statements (currently approved under OMB Control No. 1024–0029). We use Forms 10–356 and 10–356A to collect annual financial reports. These forms are an accumulation of various financial statements commonly used by industry for reporting in conformance with generally accepted accounting principles. The information provides a comprehensive view of the concessioner's financial situation at the end of its fiscal year and the concessioner's activity over the preceding year.

(8) Recordkeeping. In accordance with 36 CFR 51.98, a concessioner (and any subconcessioner) must keep and make available to NPS, records for the term of the concession contract and for 5 years after the termination or expiration of the concession contract.

II. Data

OMB Control Number: 1024–0029.

Title: National Park Service Concessions, 36 CFR 51.

Service Form Numbers: 10–356, 10–356A.

Type of Request: Revision of a currently approved collection.

Description of Respondents: Individuals, businesses, and nonprofit organizations.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for proposals, amendments, and appeals; annually for financial reports; and ongoing for recordkeeping.

Activity	Number of respondents	Number of annual responses	Completion time per response (hours)	Total annual burden hours*	Estimated nonhour burden cost
Proposals:					
Large Concessions	30	30	240	7,200	$240,000
Small Concessions	60	60	80	4,800	180,000
Appeals	1	1	1	1	0
Amendments	1	1	.5	1	0
Request to Construct Capital Improvement					
Large Projects	31	31	16	496	0
Small Projects	89	89	8	712	0
Construction Report					
Large Projects	31	31	56	1,736	0
Small Projects	89	89	24	2,136	0
Application to Sell/Transfer Concession Operation	20	20	80	1,600	5,000
Annual Financial Statements					
Form 10–356 (long)	150	150	16	2,400	0

Activity	Number of respondents	Number of annual responses	Completion time per response (hours)	Total annual burden hours*	Estimated nonhour burden cost
Form 10–356A (short)	350	350	4	1,400	0
Recordkeeping					
Large Concessions	150	150	800	120,000	0
Small Concessions	350	350	50	17,500	0
Totals	1,352	1,352	1,376	159,982	$425,000

* Rounded.

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. 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: March 1, 2013.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2013–05276 Filed 3–6–13; 8:45 am]

BILLING CODE 4312–EH–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2012–0006]

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

AGENCY: Office of the Secretary, Office of Natural Resources Revenue (ONRR), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1012–0005).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information requests that we will submit to the Office of Management and Budget (OMB) for review and approval. OMB formerly approved this information collection request (ICR) under OMB Control Number 1010–0136. Subsequently, on March 6, 2012, OMB approved a new series number for ONRR and renumbered our ICRs. This ICR covers the paperwork requirements in the regulations under title 30, *Code of Federal Regulations* (CFR), parts 1202, 1204, and 1206 (previously 30 CFR parts 202, 204, and 206). Also, this ICR pertains to (1) Federal oil and gas valuation regulations, which include transportation and processing regulatory allowance limits; and (2) accounting and auditing relief for marginal properties. This ICR includes Form MMS–4393, Request to Exceed Regulatory Allowance Limitation. Effective January 1, 2014, ONRR will discontinue the information collection requirements of the Stripper Oil royalty rate reductions in this ICR. The revised title of this ICR is ''30 CFR Parts 1202, 1204, and 1206, Federal Oil and Gas Valuation.''

DATES: Submit written comments on or before May 6, 2013.

ADDRESSES: Submit written comments on this ICR to ONRR by any of the following methods (please use ''ICR 1012–0005'' as an identifier in your comment):

- Electronically, go to *http://www.regulations.gov.* In the entry titled ''Enter Keyword or ID,'' enter ''ONRR–2012–0006'' and then click ''Search.'' Follow the instructions to submit public comments. ONRR will review all comments.
- Mail comments to Armand Southall, Regulatory Specialist, Office of Natural Resources Revenue, P.O. Box 25165, MS 61030A, Denver, Colorado 80225.
- Hand-carry comments, or use an overnight courier service, to ONRR. Our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Armand Southall, telephone (303) 231–3221, or email *armand.southall@onrr.gov.* You may also contact Mr. Southall to obtain copies, at no cost, of (1) The ICR, (2) any associated forms, and (3) the regulations that require the subject collection of information. You may also review the information collection online at *http://www.reginfo.gov/public/PRAMain.*

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Parts 1202, 1204, and 1206, Federal Oil and Gas Valuation.

OMB Control Number: 1012–0005.

Bureau Form Number: Form MMS–4393.

Note: ONRR will publish a rule updating our form numbers to Form ONRR–4393.

Abstract: The Secretary of the United States Department of the Interior is responsible for mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary is required, by various laws, to manage mineral resource production from Federal and Indian lands and the OCS, collect the royalties and other mineral revenues due, and distribute the funds collected under those laws. We have posted those laws pertaining to mineral leases on Federal and Indian lands and the OCS at *http://www.onrr.gov/Laws_R_D/PublicLawsAMR.htm.*

Effective October 1, 2010, ONRR reorganized and transferred our regulations from chapter II to chapter XII in 30 CFR, resulting in a change to our citations. You can find the information collections covered in this ICR at 30 CFR part 1202, subparts C and D, which pertain to Federal oil and gas royalties; part 1204, subpart C, which pertains to accounting and auditing relief for marginal properties; and part

1206, subparts C and D, which pertain to Federal oil and gas product valuation.

I. General Information

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share in an amount or value of production from the leased lands. The mineral lease laws require the lessee, or his designee, to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals.

II. Information Collections

ONRR uses the information that we collect in this ICR to ensure that lessees accurately value and appropriately pay royalties on oil and gas produced from Federal onshore and offshore leases. Please refer to the chart for all reporting requirements and associated burden hours. All data submitted is subject to subsequent audit and adjustment.

A. Federal Oil and Gas Valuation Regulations

The valuation regulations at 30 CFR part 1206, subparts C and D, mandate that companies collect and/or submit information used to value their Federal oil and gas, including (1) transportation and processing allowances and (2) regulatory allowance limit information. Companies report certain data on Form MMS–2014, Report of Sales and Royalty Remittance (OMB Control Number 1012–0004, formerly 1010–0139). The information that we request is the minimum necessary to carry out our mission and places the least possible burden on respondents. If ONRR does not collect this information, both Federal and State governments may incur a loss of royalties.

Transportation and Processing Regulatory Allowance Limits: Lessees may deduct the reasonable, actual costs of transportation and processing from Federal royalties. The lessees report these allowances on Form MMS–2014. For oil and gas, regulations establish the allowable limit on transportation allowance deductions at 50 percent of the value of the oil or gas. For gas only, regulations establish the allowable limit on processing allowance deductions at 66⅔ percent of the value of each gas plant product.

Request to Exceed Regulatory Allowance Limitation, Form MMS–4393: Lessees may request to exceed regulatory limitations. Upon proper application from the lessee, ONRR may approve oil or gas transportation allowance in excess of 50 percent or gas processing allowance in excess of 66⅔ percent on Federal leases. Lessees use Form MMS–4393 for both Federal and Indian leases to request to exceed allowance limitations. This ICR covers only Federal leases; therefore, we have not included burden hours of Form MMS–4393 for Indian leases in this ICR. We include burden hours for Form MMS–4393 for Indian leases in OMB Control Number 1012–0002.

B. Accounting and Auditing Relief for Marginal Properties

In 2004, we amended our regulations to comply with section 7 of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996. The regulations provide guidance for lessees and designees seeking accounting and auditing relief for qualifying Federal marginal properties. Under the regulations, both ONRR and the State concerned must approve any relief granted for a marginal property.

C. Stripper Oil Royalty Rate Reduction Program

Under 43 CFR 3103.4–2, the Bureau of Land Management (BLM), the surface management agency for Federal onshore leases, established the Stripper Oil Royalty Rate Reduction Program (Stripper Oil Program). ONRR, who administered the Stripper Oil Program for BLM, approved royalty rate reductions for operators of stripper oil properties for applicable sales periods from October 1, 1992, through January 31, 2006. Effective February 1, 2006, BLM terminated the reduced royalty rates under this program. This change is not currently reflected in title 30 CFR, chapter XII; however, on October 6, 2010, BLM published a final rule (75 FR 61624) that removed this citation from their regulations.

For production through January 31, 2006, reporters used Form MMS–4377, Stripper Royalty Rate Reduction Notification, to notify ONRR of royalty rate changes. Although BLM terminated the royalty rate reductions, ONRR continues to verify previously submitted notifications and may require the operator to submit an amended Form MMS–4377 through December 31, 2013. Effective January 1, 2014, ONRR will discontinue the Stripper Oil Program; therefore, ONRR will not request OMB approval for the Stripper Oil information collection requirements.

III. OMB Approval

We will request OMB approval to continue to collect, from companies and/or lessees and designees, information used (1) to value their Federal oil and gas, including (a) transportation and processing allowances and (b) regulatory allowance limit information and (2) to request accounting and auditing relief approval for qualifying Federal marginal properties. If ONRR does not collect this information, this would limit the Secretary's ability to discharge fiduciary duties and may also result in loss of royalty payments. ONRR protects the proprietary information that we receive, and we do not collect items of a sensitive nature.

ONRR requires lessees to respond to information collections relating to valuation requirements.

Frequency: Annually and on occasion.

Estimated Number and Description of Respondents: 120 Federal lessees/designees and 7 States for Federal oil and gas.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 9,198 hours.

We have not included in our estimates certain requirements performed in the normal course of business and considered as usual and customary. We display the estimated annual burden hours by CFR section and paragraph in the following chart:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

30 CFR 1202, 1204, 1206, and 1210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
PART 1202—ROYALTIES				
Subpart C—Federal and Indian Oil				
1202.101	Standards for reporting and paying royalties. Oil volumes are to be reported in barrels of clean oil of 42 standard U.S. gallons (231 cubic inches each) at 60 °F.	Burden covered under OMB Control Number 1012–0004.		
Subpart D—Federal Gas				
1202.152(a) and (b)	Standards for reporting and paying royalties on gas. (a)(1) If you are responsible for reporting production or royalties you must: (i) Report gas volumes and British thermal unit (Btu) heating values, if applicable, under the same degree of water saturation; (ii) Report gas volumes in units of 1,000 cubic feet (mcf); and (iii) Report gas volumes and Btu heating value at a standard pressure base of 14.73 pounds per square inch absolute (psia) and a standard temperature base of 60 °F. (b) Residue gas and gas plant product volumes shall be reported as specified in this paragraph.	Burden covered under OMB Control Number 1012–0004.		
PART 1204—ALTERNATIVES FOR MARGINAL PROPERTIES				
Subpart C—Accounting and Auditing Relief				
1204.202(b)(1)	What is the cumulative royalty reports and payments relief option? (b) To use the cumulative royalty reports and payments relief option, you must do all of the following: (1) Notify ONRR in writing by January 31 of the calendar year for which you begin taking your relief.	40	1	40
1204.202(b)(2) and (b)(3).	(b)(2) Submit your royalty report and payment by the end of February of the year following the calendar year for which you reported annually. If you have an estimated payment on file, you must submit your royalty report and payment by the end of March of the year following the calendar year for which you reported annually; (3) Use the sales month prior to the month that you submit your annual report and payment for the entire previous calendar year's production for which you are paying annually.	Burden covered under OMB Control Number 1012–0004.		
1204.202(b)(4), (b)(5), (c), (d)(1), (d)(2), (e)(1), and (e)(2).	(b)(4) Report one line of cumulative royalty information on Form MMS–2014 for the calendar year; and (5) Report allowances on Form MMS–2014 on the same annual basis as the royalties for your marginal property production. (c) If you do not pay your royalty by the date due in paragraph (b) of this section, you will owe late payment interest from the date your payment was due under this section until the date ONRR receives it. (d) If you take relief you are not qualified for, you may be liable for civil penalties. Also you must: (1) Pay ONRR late payment interest determined under 30 CFR 1218.54 (2) Amend your Form MMS–2014. (e) If you dispose of your ownership interest in a marginal property for which you have taken relief you must: (1) Report and pay royalties for the portion of the calendar year for which you had an ownership interest; and (2) Make the report and payment by the end of the month after you dispose of the ownership interest in the marginal property. If you do not report and pay timely, you will owe interest from the date the payment was due.	Burden covered under OMB Control Number 1012–0004.		
1204.203(b), 1204.205(a) and (b), and 1204.206(a)(3)(i) and (b)(1).	What is the other relief option? (b) You must request approval from ONRR before taking relief under this option.	200	1	200

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR 1202, 1204, 1206, and 1210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1204.208 (c)(1), (d)(1), and (e).	May a State decide that it will or will not allow one or both of the relief options under this subpart? (c) If a State decides that it will or will not allow one or both of the relief options within 30 days the State must: (1) Notify the Director for Office of Natural Resources Revenue, in writing, of its intent to allow or not allow one or both of the relief options. (d) If a State decides in advance that it will not allow one or both of the relief options the State must: (1) Notify the Director for Office of Natural Resources Revenue, in writing, of its intent to allow one or both of the relief options. (e) If a State does not notify ONRR the State will be deemed to have decided not to allow either of the relief options.	40	7	280
1204.209(b)	What if a property ceases to qualify for relief obtained under this subpart? (b) If a property is no longer eligible for relief the relief for the property terminates as of December 31 of that calendar year. You must notify ONRR in writing by December 31 that the relief for the property has terminated.	6	1	6
1204.210(c) and (d)	What if a property is approved as part of a nonqualifying agreement? (c) the volumes on which you report and pay royalty must be amended to reflect all volumes produced on or allocated to your lease under the nonqualifying agreement as modified by BLM. Report and pay royalties for your production using the procedures in § 1204.202(b). (d) If you owe additional royalties based on the retroactive agreement approval and do not pay your royalty by the date due in § 1204.202(b), you will owe late payment interest determined under § 1218.54 from the date your payment was due under § 1204.202(b)(2) until the date ONRR receives it.	Burden covered under OMB Control Number 1012–0004.		
1204.214(b)(1) and (b)(2).	Is minimum royalty due on a property for which I took relief? (b) If you pay minimum royalty on production from a marginal property during a calendar year for which you are taking cumulative royalty reports and payment relief, and: (1) The annual payment you owe under this subpart is greater than the minimum royalty you paid, you must pay the difference between the minimum royalty you paid and your annual payment due under this subpart; or (2) The annual payment you owe under this subpart is less than the minimum royalty you paid, you are not entitled to a credit because you must pay at least the minimum royalty amount on your lease each year.	Burden covered under OMB Control Number 1012–0004.		
Accounting and Auditing Relief Subtotal			10	526
Part 1206—Product Valuation				
Subpart C—Federal Oil				
1206.102(e)(1)	How do I calculate royalty value for oil that I or my affiliate sell(s) under an arm's-length contract? (e) If you value oil under paragraph (a) of this section: (1) ONRR may require you to certify that your or your affiliate's arm's-length contract provisions include all of the consideration the buyer must pay, either directly or indirectly, for the oil.	AUDIT PROCESS. See note.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR 1202, 1204, 1206, and 1210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1206.103(a)(1), (a)(2), and (a)(3).	How do I value oil that is not sold under an arm's-length contract? This section explains how to value oil that you may not value under § 1206.102 or that you elect under § 1206.102(d) to value under this section. First determine whether paragraph (a), (b), or (c) of this section applies to production from your lease, or whether you may apply paragraph (d) or (e) with ONRR approval. (a) Production from leases in California or Alaska. Value is the average of the daily mean ANS spot prices published in any ONRR-approved publication during the trading month most concurrent with the production month. (1) To calculate the daily mean spot price. (2) Use only the days. (3) You must adjust the value.	45	5	225
1206.103(a)(4)	(a)(4) After you select an ONRR-approved publication, you may not select a different publication more often than once every 2 years,	8	2	16
1206.103(b)(1)	(b) *Production from leases in the Rocky Mountain Region.* (1) If you have an ONRR-approved tendering program, you must value oil.	400	2	800
1206.103(b)(1)(ii)	(b)(1)(ii) If you do not have an ONRR-approved tendering program, you may elect to value your oil under either paragraph (b)(2) or (b)(3) of this section.	400	2	800
1206.103(b)(4)	(4) If you demonstrate to ONRR's satisfaction that paragraphs (b)(1) through (b)(3) of this section result in an unreasonable value for your production as a result of circumstances regarding that production, the ONRR Director may establish an alternative valuation method.	400	2	800
1206.103(c)(1)	(c) *Production from leases not located in California, Alaska or the Rocky Mountain Region.* (1) Value is the NYMEX price, plus the roll, adjusted for applicable location and quality differentials and transportation costs under § 1206.112.	50	10	500
1206.103(e)(1) and (e)(2).	(e) *Production delivered to your refinery and the NYMEX price or ANS spot price is an unreasonable value.* (1) . . . you may apply to the ONRR Director to establish a value (2) You must provide adequate documentation and evidence demonstrating the market value at the refinery. representing the market at the refinery if:	330	2	660
1206.105	What records must I keep to support my calculations of value under this subpart? If you determine the value of your oil under this subpart, you must retain all data relevant to the determination of royalty value.	Burden covered under OMB Control Number 1012–0004.		
1206.107(a)	How do I request a value determination? (a) You may request a value determination from ONRR.	40	10	400
1206.109(c)(2)	When may I take a transportation allowance in determining value? (c) Limits on transportation allowances. (2) You may ask ONRR to approve a transportation allowance in excess of the limitation in paragraph (c)(1) of this section. . . . Your application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for ONRR to make a determination.	8	2	16
1206.110(a)	How do I determine a transportation allowance under an arm's-length transportation contract? (a) . . . You must be able to demonstrate that your or your affiliate's contract is at arm's length.	AUDIT PROCESS. See note.		
1206.110(d)(3)	(d) If your arm's-length transportation contract includes more than one liquid product, and the transportation costs attributable to each product cannot be determined. (3) You may propose to ONRR a cost allocation method.	20	2	40

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR 1202, 1204, 1206, and 1210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1206.110(e)	(e) If your arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, then you must propose an allocation procedure to ONRR.	20	1	20
1206.110(e)(1) and (e)(2).	(e)(1) . . . If ONRR rejects your cost allocation, you must amend your Form MMS–2014. (2) You must submit your initial proposal, including all available data, within 3 months after first claiming the allocated deductions on Form MMS–2014.	Burden covered under OMB Control Number 1012–0004.		
1206.110(g)(2)	(g) If your arm's-length sales contract includes a provision reducing the contract price by a transportation factor, (2) You must obtain ONRR approval before claiming a transportation factor in excess of 50 percent of the base price of the product.	5	1	5
1206.111(g)	How do I determine a transportation allowance if I do not have an arm's-length transportation contract or arm's-length tariff? (g) To compute depreciation, you may elect to use either . . . After you make an election, you may not change methods without ONRR approval.	30	1	30
1206.111(k)(2)	(k)(2) You may propose to ONRR a cost allocation method on the basis of the values.	30	1	30
1206.111(l)(1) and (l)(3).	(l)(1) Where you transport both gaseous and liquid products through the same transportation system, you must propose a cost allocation procedure to ONRR. . . . (3) You must submit your initial proposal, including all available data, within 3 months after first claiming the allocated deductions on Form MMS–2014.	20	1	20
1206.111(l)(2)	(l)(2) . . . If ONRR rejects your cost allocation, you must amend your Form MMS–2104 for the months that you used the rejected method and pay any additional royalty and interest due.	Burden covered under OMB Control Number 1012–0004.		
1206.112(a)(1)(ii)	What adjustments and transportation allowances apply when I value oil production from my lease using NYMEX prices or ANS spot prices? (a)(1)(ii) . . . under an exchange agreement that is not at arm's length, you must obtain approval from ONRR for a location and quality differential.	80	1	80
1206.112(a)(1)(ii)	(a)(1)(ii) . . . If ONRR prescribes a different differential, you must apply. . . . You must pay any additional royalties owed . . . plus the late payment interest from the original royalty due date, or you may report a credit.	20	2	40
1206.112(a)(3) and (a)(4).	(a)(3) If you transport or exchange at arm's length (or both transport and exchange) at least 20 percent, but not all, of your oil produced from the lease to a market center, determine the adjustment between the lease and the market center for the oil that is not transported or exchanged (or both transported and exchanged) to or through a market center as follows: (4) If you transport or exchange (or both transport and exchange) less than 20 percent of your crude oil produced from the lease between the lease and a market center, you must propose to ONRR an adjustment between the lease and the market center for the portion of the oil that you do not transport or exchange (or both transport and exchange) to a market center. . . . If ONRR prescribes a different adjustment. . . . You must pay any additional royalties owed . . . plus the late payment interest from the original royalty due date, or you may report a credit.	80	4	320

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR 1202, 1204, 1206, and 1210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1206.112(b)(3)	(b)(3) . . . you may propose an alternative differential to ONRR. . . . If ONRR prescribes a different differential. . . . You must pay any additional royalties owed . . . plus the late payment interest from the original royalty due date, or you may report a credit.	80	4	320
1206.112(c)(2)	(c)(2) . . . If quality bank adjustments do not incorporate or provide for adjustments for sulfur content, you may make sulfur adjustments, based on the quality of the representative crude oil at the market center, of 5.0 cents per one-tenth percent difference in sulfur content, unless ONRR approves a higher adjustment.	80	2	160
1206.114	What are my reporting requirements under an arm's-length transportation contract?			
	You or your affiliate must use a separate entry on Form MMS–2014 to notify ONRR of an allowance based on transportation costs you or your affiliate incur.	Burden covered under OMB Control Number 1012–0004.		
	ONRR may require you or your affiliate to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents.	AUDIT PROCESS. See note.		
1206.115(a)	What are my reporting requirements under a non-arm's-length transportation arrangement? (a) You or your affiliate must use a separate entry on Form MMS–2014 to notify ONRR of an allowance based on transportation costs you or your affiliate incur.	Burden covered under OMB Control Number 1012–0004.		
1206.115(c)	(c) ONRR may require you or your affiliate to submit all data used to calculate the allowance deduction.	AUDIT PROCESS. See note.		
	Subpart D—Federal Gas			
1206.152(b)(1)(i) and (b)(1)(iii).	Valuation standards—unprocessed gas. (b)(1)(i) . . . The lessee shall have the burden of demonstrating that its contract is arm's-length. . . . (iii) . . . When ONRR determines that the value may be unreasonable, ONRR will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value.	AUDIT PROCESS. See note.		
1206.152(b)(2)	(b)(2) . . . The lessee must request a value determination in accordance with paragraph (g) of this section for gas sold pursuant to a warranty contract;	80	1	80
1206.152(b)(3)	(b)(3) ONRR may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the gas.	AUDIT PROCESS. See note.		
1206.152(e)(1)	(e)(1) Where the value is determined pursuant to paragraph (c) of this section, the lessee shall retain all data relevant to the determination of royalty value.	Burden covered under OMB Control Number 1012–0004.		
1206.152(e)(2)	206.152(e)(2) Any Federal lessee will make available upon request to the authorized ONRR or State representatives, to the Office of the Inspector General of the department of the Interior, or other person authorized to receive such information, arm's-length sales and volume data for like-quality production sold, purchased or otherwise obtained by the lessee from the field or area or from nearby fields or areas.	AUDIT PROCESS. See note.		
1206.152(e)(3)	(e)(3) A lessee shall notify ONRR if it has determined value pursuant to paragraph (c)(2) or (c)(3) of this section.	10	10	100
1206.152(g)	(g) The lessee may request a value determination from ONRR. . . . The lessee shall submit all available data relevant to its proposal.	40	5	200

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR 1202, 1204, 1206, and 1210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1206.153(b)(1)(i) and (b)(1)(iii).	Valuation standards—processed gas. (b)(1)(i) . . . The lessee shall have the burden of demonstrating that its contract is arm's-length. (iii) . . . When ONRR determines that the value may be unreasonable, ONRR will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value.	AUDIT PROCESS. See note.		
1206.153(b)(2)	(b)(2) . . . The lessee must request a value determination in accordance with paragraph (g) of this section for gas sold pursuant to a warranty contract;	80	1	80
1206.153(b)(3)	(b)(3) ONRR may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the residue gas or gas plant product.	AUDIT PROCESS. See note.		
1206.153(e)(1)	(e)(1) Where the value is determined pursuant to paragraph (c) of this section, the lessee shall retain all data relevant to the determination of royalty value.	Burden covered under OMB Control Number 1012–0004.		
1206.153(e)(2)	(e)(2) Any Federal lessee will make available upon request to the authorized ONRR or State representatives, to the Office of the Inspector General of the Department of the Interior, or other persons authorized to receive such information, arm's-length sales and volume data for like-quality residue gas and gas plant products sold, purchased or otherwise obtained by the lessee from the same processing plant or from nearby processing plants.	AUDIT PROCESS. See note.		
1206.153(e)(3)	(e)(2) A lessee shall notify ONRR if it has determined any value pursuant to paragraph (c)(2) or (c)(3) of this section.	10	2	20
1206.153(g)	206.153(g) The lessee may request a value determination from ONRR. . . . The lessee shall submit all available data relevant to its proposal.	80	15	1,200
1206.154(c)(4)	Determination of quantities and qualities for computing royalties. (c)(4) . . . A lessee may request ONRR approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease.	40	1	40
1206.156(c)(3)	Transportation allowances—general. (c)(3) Upon request of a lessee, ONRR may approve a transportation allowance deduction in excess of the limitation prescribed by paragraphs (c)(1) and (c)(2) of this section. . . . An application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for ONRR to make a determination.	40	3	120
1206.157(a)(1)(i)	Determination of transportation allowances.			
	(a) *Arm's-length transportation contracts.* (1)(i) . . . The lessee shall have the burden of demonstrating that its contract is arm's-length.	AUDIT PROCESS. See note.		
	The lessee must claim a transportation allowance by reporting it on a separate line entry on the Form MMS–2014.	Burden covered under OMB Control Number 1012–0004.		
1206.157(a)(1)(iii)	(a)(1)(iii) . . . When ONRR determines that the value of the transportation may be unreasonable, ONRR will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs.	AUDIT PROCESS. See note.		
1206.157(a)(2)(ii)	(a)(2)(ii) . . . the lessee may propose to ONRR a cost allocation method on the basis of the values of the products transported.	40	1	40

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR 1202, 1204, 1206, and 1210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1206.157(a)(3)	(a)(3) If an arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract, the lessee shall propose an allocation procedure to ONRR. . . . The lessee shall submit all relevant data to support its proposal.	40	1	40
1206.157(a)(5)	(a)(5) . . . The transportation factor may not exceed 50 percent of the base price of the product without ONRR approval.	10	3	30
1206.157(b)(1)	(b) *Non-arm's-length or no contract.* (1) The lessee must claim a transportation allowance by reporting it on a separate line entry on the Form MMS–2014.	Burden covered under OMB Control Number 1012–0004.		
1206.157(b)(2)(iv) and (b)(2)(iv)(A).	(b)(2)(iv) . . . After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of the ONRR. (A) . . . After an election is made, the lessee may not change methods without ONRR approval.	100	1	100
1206.157(b)(3)(i)	(b)(3)(i) . . . Except as provided in this paragraph, the lessee may not take an allowance for transporting a product which is not royalty bearing without ONRR approval.	100	1	100
1206.157(b)(3)(ii)	(b)(3)(ii) . . . the lessee may propose to the ONRR a cost allocation method on the basis of the values of the products transported.	100	1	100
1206.157(b)(4)	(b)(4) Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to ONRR. . . . The lessee shall submit all relevant data to support its proposal.	100	1	100
1206.157(b)(5)	(b)(5) You may apply for an exception from the requirement to compute actual costs under paragraphs (b)(1) through (b)(4) of this section.	100	1	100
1206.157(c)(1)(i)	(c) *Reporting Requirements.* (1) *Arm's-length contracts.* (i) You must use a separate entry on Form MMS–2014 to notify ONRR of a transportation allowance.	Burden covered under OMB Control Number 1012–0004.		
1206.157(c)(1)(ii)	(c)(1)(ii) ONRR may require you to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents.	AUDIT PROCESS. See note.		
1206.157(c)(2)(i)	(c)(2) *Non-arm's-length or no contract.* (i) You must use a separate entry on Form MMS–2014 to notify ONRR of a transportation allowance.	Burden covered under OMB Control Number 1012–0004.		
1206.157(c)(2)(iii)	(c)(2)(iii) ONRR may require you to submit all data used to calculate the allowance deduction.	AUDIT PROCESS. See note.		
1206.157(e)(2), (e)(3), and (f)(1).	(e) *Adjustments.* (2) For lessees transporting production from onshore Federal leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by ONRR. (3) For lessees transporting gas production from leases on the OCS, if the lessee's estimated transportation allowance exceeds the allowance based on actual costs, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with its payments, in accordance with instructions provided by ONRR. (f) Allowable costs in determining transportation allowances. . . . (1) Firm demand charges paid to pipelines. . . . if you receive a payment or credit from the pipeline for penalty refunds, rate case refunds, or other reasons, you must reduce the firm demand charge claimed on the Form MMS–2014 by the amount of that payment. You must modify Form MMS–2014 by the amount received or credited for the affected reporting period and pay any resulting royalty and late payment interest due;	Burden covered under OMB Control Number 1012–0004.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR 1202, 1204, 1206, and 1210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1206.158(c)(3)	Processing allowances—general. (c)(3) Upon request of a lessee, ONRR may approve a processing allowance in excess of the limitation prescribed by paragraph (c)(2) of this section. . . . An application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) shall contain all relevant and supporting documentation for ONRR to make a determination.	80	8	640
1206.158(d)(2)(i)	(d)(2)(i) If the lessee incurs extraordinary costs for processing gas production from a gas production operation, it may apply to ONRR for an allowance for those costs.	80	1	80
1206.158(d)(2)(ii)	(d)(2)(ii) . . . to retain the authority to deduct the allowance the lessee must report the deduction to ONRR in a form and manner prescribed by ONRR.	Burden covered under OMB Control Number 1012–0004.		
1206.159(a)(1)(i)	Determination of processing allowances.			
	(a) *Arm's-length processing contracts.* (1)(i). . .The lessee shall have the burden of demonstrating that its contract is arm's-length.	AUDIT PROCESS. See note.		
	The lessee must claim a processing allowance by reporting it on a separate line entry on the Form MMS–2014.	Burden covered under OMB Control Number 1012–0004.		
1206.159(a)(1)(iii)	(a)(1)(iii) . . . When ONRR determines that the value of the processing may be unreasonable, ONRR will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's processing costs.	AUDIT PROCESS. See note.		
1206.159(a)(3)	(a)(3) If an arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to ONRR. . . . The lessee shall submit all relevant data to support its proposal.	20	1	20
1206.159(b)(1)	(b) *Non-arm's-length or no contract.* (1). . . The lessee must claim a processing allowance by reflecting it as a separate line entry on the Form MMS–2014.	Burden covered under OMB Control Number 1012–0004.		
1206.159(b)(2)(iv) and (b)(2)(iv)(A).	(b)(2)(iv) . . . When a lessee has elected to use either method for a processing plant, the lessee may not later elect to change to the alternative without approval of the ONRR. (A) . . . After an election is made, the lessee may not change methods without ONRR approval.	100	1	100
1206.159(b)(4)	(b)(4) A lessee may apply to ONRR for an exception from the requirements that it compute actual costs in accordance with paragraphs (b)(1) through (b)(3) of this section.	100	1	100
1206.159(c)(1)(i)	(c) *Reporting requirements*—(1) *Arm's-length contracts.* (i) The lessee must notify ONRR of an allowance based on incurred costs by using a separate line entry on the Form MMS–2014.	Burden covered under OMB Control Number 1012–0004.		
1206.159(c)(1)(ii)	(c)(1)(ii) ONRR may require that a lessee submit arm's-length processing contracts and related documents.	AUDIT PROCESS. See note.		
1206.159(c)(2)(i)	(c)(2) *Non-arm's-length or no contract.* (i) The lessee must notify ONRR of an allowance based on incurred costs by using a separate line entry on the Form MMS–2014.	Burden covered under OMB Control Number 1012–0004.		
1206.159(c)(2)(iii)	(c)(2)(iii) Upon request by ONRR, the lessee shall submit all data used to prepare the allowance deduction.	AUDIT PROCESS. See note.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR 1202, 1204, 1206, and 1210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1206.159(e)(2) and (e)(3).	(e) *Adjustments* . . . (2) For lessees processing production from onshore Federal leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by ONRR. (3) For lessees processing gas production from leases on the OCS, if the lessee's estimated processing allowance exceeds the allowance based on actual costs, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with its payment, in accordance with instructions provided by ONRR.	Burden covered under OMB Control Number 1012–0004.		
Oil and Gas Valuation Subtotal			117	8,672
TOTAL			127	9,198

Note: AUDIT PROCESS—The Office of Regulatory Affairs determined that the audit process is exempt from the Paperwork Reduction Act of 1995 because ONRR staff asks non-standard questions to resolve exceptions.

Estimated Annual Reporting and Recordkeeping ''Non-hour'' Cost Burden: We have not identified a ''non-hour'' cost burden associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that an agency may not conduct or sponsor, and a person does not have to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency to ''* * * provide 60-day notice in the **Federal Register** * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information that ONRR collects; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods that you use to estimate (1) Major cost factors, including system and technology acquisition, (2) expected useful life of capital equipment, (3) discount rate(s), and (4) the period over which you incur costs. Capital and startup costs include, among other items, computers and software that you purchase to prepare for collecting information and monitoring, sampling, and testing equipment, and record storage facilities. Generally, your estimates should not include equipment or services purchased (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Federal Government; or (iv) as part of customary and usual business, or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you, without charge, upon request. We also will post the ICR at *http://www.onrr.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

Public Comment Policy: We will post all comments, including names and addresses of respondents, at *http://www.regulations.gov.* 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 view, we cannot guarantee that we will be able to do so.

Office of the Secretary, Information Collection Clearance Officer: David Alspach (202) 219–8526.

Dated: February 26, 2013.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2013–05286 Filed 3–6–13; 8:45 am]

BILLING CODE 4310–T2–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0012]

Major Portion Prices and Due Date for Additional Royalty Payments on Indian Gas Production in Designated Areas Not Associated With an Index Zone

AGENCY: Office of the Secretary, Office of Natural Resources Revenue (ONRR), Interior.

ACTION: Notice.

SUMMARY: Final regulations for valuing gas produced from Indian leases, published August 10, 1999, require the Office of Natural Resources Revenue (ONRR) to determine major portion prices and notify industry by publishing the prices in the **Federal Register**. The regulations also require ONRR to publish a due date for industry to pay additional royalties based on the major portion prices. This notice provides major portion prices for the 12 months of calendar year 2011.

DATES: The due date to pay additional royalties based on the major portion prices is May 6, 2013.

FOR FURTHER INFORMATION CONTACT: John Barder, Supervisory Manager, Team B, Western Audit and Compliance, ONRR; telephone (303) 231–3702; email *John.Barder@onrr.gov;* or Mike Curry,

Supervisory Auditor, Team B, Western Audit and Compliance, ONRR, telephone (303) 231–3741; email *Michael.Curry@onrr.gov.* Team B's fax number is (303) 231–3473. Team B's mailing address is Office of Natural Resources Revenue, Western Audit and Compliance Management, Team B, P.O. Box 25165, MS 62520B, Denver, Colorado 80225–0165.

SUPPLEMENTARY INFORMATION: On August 10, 1999, ONRR published a final rule titled ''Amendments to Gas Valuation Regulations for Indian Leases'' effective January 1, 2000 (64 FR 43506). The Indian gas valuation regulations apply to all gas production from Indian (tribal and allotted) oil and gas leases, except leases on the Osage Indian Reservation.

The regulations require ONRR to publish major portion prices for each designated area not associated with an index zone for each production month beginning January 2000, as well as a due date for additional royalty payments. See 30 CFR 1206.174(a)(4)(ii). If you owe additional royalties based on a published major portion price, you must submit to ONRR, by the due date, an amended Form MMS–2014, Report of Sales and Royalty Remittance (which is valid while we update our form number to ONRR–2014 due to the reorganization). If you do not pay the additional royalties by the due date, ONRR will bill you late payment interest under 30 CFR 1218.54. ONRR will accrue the interest from the due date until we receive your payment and an amended Form MMS–2014. The table below lists the major portion prices for all designated areas not associated with an index zone. The due date is 60 days after the publication date of this notice.

GAS MAJOR PORTION PRICES ($/MMBTU) FOR DESIGNATED AREAS NOT ASSOCIATED WITH AN INDEX ZONE

ONRR-Designated areas	Jan 2011	Feb 2011	Mar 2011	Apr 2011
Blackfeet Reservation	3.45	3.20	3.29	3.46
Fort Belknap	5.09	5.13	4.96	5.12
Fort Berthold	4.34	4.03	4.12	4.21
Fort Peck Reservation	6.58	7.06	6.39	6.47
Navajo Allotted Leases in the Navajo Reservation	4.16	4.05	3.70	3.98
Rocky Boys Reservation	3.84	3.64	3.63	3.72

ONRR-Designated areas	May 2011	Jun 2011	Jul 2011	Aug 2011
Blackfeet Reservation	3.55	3.57	3.36	3.22
Fort Belknap	5.11	5.09	5.13	5.10
Fort Berthold	3.68	3.80	4.38	4.29
Fort Peck Reservation	6.22	6.23	6.59	5.64
Navajo Allotted Leases in the Navajo Reservation	4.04	4.07	4.11	4.14
Rocky Boys Reservation	3.82	3.95	3.78	3.58

ONRR-Designated areas	Sep 2011	Oct 2011	Nov 2011	Dec 2011
Blackfeet Reservation	3.17	2.82	2.68	2.54
Fort Belknap	4.99	4.93	4.81	4.78
Fort Berthold	4.48	5.00	4.87	3.95
Fort Peck Reservation	6.27	6.11	6.42	5.67
Navajo Allotted Leases in the Navajo Reservation	3.78	3.57	3.38	3.29
Rocky Boys Reservation	3.54	3.13	3.00	2.82

For information on how to report additional royalties associated with major portion prices, please refer to our Dear Payor letter dated December 1, 1999, on our Web site at *http://www.onrr.gov/FM/PDFDocs/991201.pdf.*

Dated: February 26, 2013.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2013–05284 Filed 3–6–13; 8:45 am]

BILLING CODE 4310–T2–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–836]

Investigations: Terminations, Modifications and Rulings: Certain Consumer Electronics and Display Devices and Products Containing Same

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 30) granting a joint motion to terminate the above-captioned investigation based on settlement agreements. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Clark S. Cheney, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2661. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by

contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 10, 2012, based on a complaint filed by Graphics Properties Holdings, Inc. of New Rochelle, New York (''GPH''). 77 FR 21584 (April 10, 2012). 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 consumer electronics devices and display devices and products containing same, by reason of infringement of various claims of U.S. Patent No. 6,650,327; U.S. Patent No. 6,816,145; and U.S. Patent No. 5,717,881. The notice of investigation named numerous respondents, including HTC Corporation of Taoyuan, Taiwan; HTC America, Inc. of Bellevue, Washington; LG Electronics, Inc. of Seoul, South Korea; LG Electronics, Mobilecomm U.S.A., Inc. of San Diego, California; LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey; Research in Motion Ltd. of Ontario, Canada; Research In Motion Corp. of Irving, Texas; Samsung Electronics Co., Ltd., of Seoul, South Korea; Samsung Electronics America, Inc. of Ridgefield Park, New Jersey; Samsung Telecommunications America, LLC of Richardson, Texas; Sony Corporation of Tokyo, Japan; Sony Corporation of America of New York, New York; Sony Electronics Inc. of San Diego, California; Sony Mobile Communications AB of Lund, Sweden; Sony Mobile Communications (USA) Inc. of Atlanta, Georgia (collectively ''the remaining respondents''); and Apple Inc. of Cupertino, California (previously terminated).

On January 15, 2013, GPH and the remaining respondents filed joint a motion to terminate the investigation on the basis of settlement agreements. On January 25, 2013, the Commission investigative attorney filed a response in support of the motion. No party opposed the motion.

On January 28, 2013, the ALJ issued the subject ID (Order No. 30) granting the motion pursuant to section 210.21(b) of the Commission's Rules of Practice and Procedure (19 CFR 21.21(b)). The ALJ found no indication that termination of the investigation based on the settlement agreements would have an adverse impact on the public interest. No petitions for review of the ID were filed.

The Commission has determined not to review the ID. The investigation is 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 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: March 1, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–05267 Filed 3–6–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International Standards

Notice is hereby given that, on February 11, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ASTM International (''ASTM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM standards activities originating between December 2012 and February 2013 designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification was filed with the Department on December 12, 2012. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 9, 2013 (78 FR 1884).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–05308 Filed 3–6–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Members of SGIP 2.0, Inc.

Notice is hereby given that, on February 5, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Members of SGIP 2.0, Inc. (''MSGIP 2.0'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: American Association for Laboratory Accreditation (A2LA), Frederick, MD; American Electric Power, Columbus, OH; Arizona Public Service Company, Phoenix, AZ; Association of Home Appliance Manufacturers, Washington, DC; Battelle Pacific Northwest Lab, Richland, WA; California Public Utilities Commission, San Francisco, CA; Clevest Solutions, Inc., Richmond, British Columbia, CANADA; Climate Talk Alliance, San Ramon, CA; Florida Power & Light Company, Juno Beach, FL; Utilities Telecom Council, Inc., Washington, DC; WiMAX Forum, Solana Beach, CA; Hydro-Quebec, Montreal, Quebec, CANADA; SunSpec Alliance, Scotts Valley, CA; Tendril, Boulder, CO; Ameren Services, St. Louis, MO; CenterPoint Energy Houston Electric, Houston, TX; New York Independent System Operator, Inc., Rensselaer, NY; American Council of Independent Laboratories, Washington, DC; Lakeview Consulting Group, Morgan Hill, CA; Grid2Home, Inc., San Diego, CA; Homegrid Forum, Beaverton, OR; Japan Smart Community Alliance, Kawasaki City, Kanagawa, JAPAN; Southern Company Services, Inc., Birmingham, AL; Systems Integration Specialists Company, Inc. (SISCO), Sterling Heights, MI; National Rural Electric Cooperative Association (NRECA), Arlington, VA; PJM Interconnection, Norristown, PA; Landis+Gyr Technology, Inc., Alpharetta, GA; DTE Energy, Detroit, MI; Eaton Corporation, Arden, NC; Buford Goff & Associates, Inc., Columbia, SC; FirstEnergy Service

Company, Akron, OH; Home, Building & Utility Systems, Stoneham, MA; Kottage Industries LLC, Worthington, OH; National Institute of Standards and Technology (NIST), Gaithersburg, MD; New York State Department of Public Service, Albany, NY; PPL Corporation, Allentown, PA; Southern California Edison, Westminster, CA; Wedin Communications, Plymouth, MN; Zigbee Alliance, Inc., San Ramon, CA; ZIV USA INC., Rolling Meadows, IL; Portland General Electric Company, Portland, OR; Electric Power Research Institute (EPRI), Palo Alto, CA; Schneider Electric, Norcross, GA; Bonneville Power Administration, Portland, OR; Sacramento Municipal Utility District, Sacramento, CA; Edison Electric Institute (EEI), Washington, DC; ISO New England, Holyoke, MA; Cooper Power Systems, LLC, Waukesha, WI; Drummond Group, Inc., Maumelle, AR; Electric Reliability Council of Texas (ERCOT), Austin, TX; Helikon.net, Washington, DC; Honeywell Automation and Control Solutions, Golden Valley, MN; National Electrical Manufacturers Association (NEMA), Rosslyn, VA; Alliant Energy, Madison, WI; Michigan Public Service Commission, Lansing, MI; Navigant Consulting, Boulder, CO; Coordinated Science Laboratory—University of Illinois, Urbana, IL; EnerNex LLC, Knoxville, TN; Itron, Inc., Liberty Lake, WA; MobiComm Communications, The Hague, THE NETHERLANDS; Power Systems Engineering Research Center (PSERC), Tempe, AZ; Samsung Telecommunications America, Richardson, TX; EnerNOC, Inc., Boston, MA; Exelon Corporation, Chicago, IL; Kalki Communications Technologies Private Limited (KALKITECH), HSR Layout, Bangalore, INDIA; Energy Information Standards Alliance (EIS Alliance), Morgan Hill, CA; India Smart Grid Forum (ISGF), Chanakyapuri, New Dehli, INDIA; Oncor Electric Delivery, Dallas, TX; Pepco Holdings, Inc., Washington, DC; California Independent System Operator Corporation, Folsom, CA; Qualcomm Technologies, Inc., San Diego, CA; EnerTech, Inc., Conshohocken, PA; Calm Sunrise Consulting, LLC, Woodbury, MN; CNT Energy, Chicago, IL; HomePlug Powerline Alliance, Inc., Lake Oswego, OR; Hypertek, Inc., North Potomac, MD; Milenthal-DelGrosso, Columbus, OH; ThinkSmartGrid, Chicago, IL; UPnP Forum, Beaverton, OR; Valley View Corporation, Rockville, MD; ASHRAE, Atlanta, GA; Consumer Electronics Association, Arlington, VA; Cornice Engineering, Inc., Grand Canyon, AZ; General Electric Company, Atlanta, GA; iWire365, Garland, TX; Sustainable Resources Management, Toronto, Ontario, CANADA; American Public Power Association (APPA), Washington, DC; Newport Consulting Group, Newport Beach, CA; Silver Spring Networks, Redwood City, CA; Mitsubishi Electric Research Labs, Cambridge, MA; Johnson Controls, Inc., Milwaukee, WI; and NXEGEN LLC, Middletown, CT. The general area of MSGIP 2.0's planned activity is to continue the work of the unincorporated SmartGrid Interoperability Panel, by supporting the National Institute of Standards and Technology in fulfilling its responsibilities pursuant to the Energy Independence and Security Act of 2007, including but not limited to by (a) Providing technical guidance and coordination to help facilitate standards development for smart grid interoperability; (b) identifying and specifying testing and certification requirements, including provision of the underlying rationale to assess achievement of interoperability using smart grid standards; (c) informing and educating smart grid industry stakeholders regarding smart grid interoperability and related benefits; (d) liaising with similar organizations in other countries to help establish global smart grid interoperability alignment; and (e) undertaking such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–05310 Filed 3–6–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Health Product Declaration Collaborative, Inc.

Notice is hereby given that, on February 12, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Health Product Declaration Collaborative, Inc. (''HPDC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Crystal Frost (individual member), Salt Lake City, UT; Lisa Britton (individual member), Minneapolis, MN; Aaron Smith (individual member), New Haven, CT; Mike Manzi (individual member), Portland, OR; Amy Running (individual member), Portland, OR; Nadav Malin (individual member), Brattleboro, VT; Rand Ekman (individual member), Chicago, IL; Dennis Wilson (individual member), Valley Forge, PA; Aman Desouza (individual member), Valley Forge, PA; Gail Vittori (individual member), Austin, TX; Ted van der Linden (individual member), Falls Church, VA; Scott Day (individual member), Hazleton, PA; Erica Godun (individual member), New York, NY; Martin Grohman (individual member), Wayne, NJ; Kristen Ritchie (individual member), San Francisco, CA; Anthony Brower (individual member), Los Angeles, CA; Anthony Ravitz (individual member), Mountain View, CA; Sharon Refvem (individual member), Mountain View, CA; Steven Kooy (individual member), Holland, MI; Jean Hansen (individual member), San Francisco, CA; Bill Walsh (individual member), Washington, DC; Nancy Hulsey (individual member), Dallas, TX; Susan Kaplan (individual member), New York, NY; Mary Ann Lazarus (individual member), St. Louis, MO; Evan Bane (individual member), Muskego, WI; Mikhail Davis (individual member), San Francisco, CA; Julie Hendricks (individual member), Houston, TX; Megan Koehler (individual member), San Francisco, CA; Mary Davidge (individual member), Los Gatos, CA; Thomas J. Nelson (individual member), Seattle, WA; Sophia Cavalli (individual member), Portland, OR; Margaret Montgomery (individual member), Seattle, WA; Peter Syrett (individual member), New York, NY; Dwayne Fuhlhage (individual member), Lawrence, KS; Lance Hosey (individual member), Washington, DC; Kelly Farrell (individual member), Los Angeles, CA; Priya Premchandran (individual member), Portland, OR; Troy Virgo (individual member), Calhoun, GA; Elizabeth Heider (individual member), Washington, DC; Luke Leung (individual member), Chicago, IL; Martin Flaherty (individual member), Atlanta, GA; Russell Perry (individual member), Washington, DC; Matt McMonagle (individual member), San Clemente, CA; Lynn Preston

(individual member), Dalton, GA; Tracy Backus (individual member), Mount Laurel, NJ; Amanda Kaminsky (individual member), New York, NY; Michael Deane (individual member), New York, NY; N'Nekka Butler (individual member), Washington, DC; Pauline Souza (individual member), San Francisco, CA; Eric Raff (individual member), Milpitas, CA; Doug Sams (individual member), Portland, OR; Beth Stroshane (individual member), Seattle, WA; Christopher R Schaffner (individual member), Concord, MA; Holly Debrodt (individual member), Portland, OR; Justin M. Hardy (individual member), New York, NY; Marion J. White (individual member), San Jose, CA; Anna Bevan (individual member), Royersford, PA; and Michel Couvreux (individual member), Petaluma, CA.

The Joint Venture was formed as a Delaware non-stock member corporation. The general area of HPDC's planned activities are to develop, maintain and evolve the Healthy Product Declaration format (the ''HPD Standard'') as an open standard that meets the needs of building product consumers for reporting of product content and associated health information relating to individual building products and materials. In pursuit of this purpose, the Joint Venture may engage in all or some of the following activities: (a) Develop, maintain and support the HPD Standard and related standards (the ''Specifications''); (b) promote such Specifications and solutions worldwide; (c) provide for testing and conformity assessment of implementations in order to ensure and/or facilitate compliance with Specifications; (d) operate a branding program based upon distinctive trademarks to create high customer awareness of, demand for, and confidence in products designed in compliance with Specifications; and (e) undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above.

Membership in the Joint Venture remains open and the Joint Venture intends to file additional written notifications disclosing all changes in membership.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–05312 Filed 3–6–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act Of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on February 5, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Center for Manufacturing Sciences, Inc. (''NCMS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following members have been added as parties to this venture: Anglicotech, LLC, Washington, DC; Applied Technology Integration, Inc. (ATI), Maumee, OH; BDM Associates, Long Beach, CA; Equipois, Inc., Los Angeles, CA; General Motors LLC, Pontiac, MI; KALO, LLC, Arlington, VA; Industrial Technology Institute, dba Michigan Manufacturing Technology Center (MMTC), Plymouth, MI; Macro USA Corporation, McClellan, CA; Michigan Department of Environmental Quality (MDEQ), Lansing, MI; Onodi Tool and Engineering Company, Melvindale, MI; One Network Enterprises, Inc., Dallas, TX; PARC, a Xerox Company, Palo Alto, CA; The Procter & Gamble Company, Cincinnati, OH; QinetiQ North America, Waltham, MA; Russells Technical Products, Inc., Holland, MI; Siemens Product Lifecycle Management Software, Inc., Plano, TX; Tactical Edge, LLC, San Diego, CA; Terascala, Inc., Avon, MA; Tracen Technologies, Inc., Manassas, VA; Troika Solutions, LLC, Bloomington, MN; University of Alabama, Tuscaloosa, AL; University of Dayton Research Institute, Dayton, OH; University of Michigan, Ann Arbor, MI; Whitney, Bradley & Brown, Inc., Reston, VA; and Workforce Intelligence Network of Southeast Michigan (WIN), Detroit, MI.

Also, the following members have withdrawn as parties to this venture: Albright Strategy Group, LLC, Morristown, NJ; Automated Precision, Inc., Rockville, MD; Battelle, Centerville, OH; Betis Group, Inc., Arlington, VA; CIMS at Rochester Institute of Technology, Rochester, NY; Climax Portable Machine Tools, Inc., Newberg, OR; Clockwork Solutions, Inc., Austin, TX; Diamond Nets Inc., Everson, WA; Eastern Michigan University, Ypsilanti, MI; Edison Welding Institute, Columbus, OH; Emerson Process Management, Billerica, MA; Henry Ford Healthcare, Detroit, MI; Honeywell Process Solutions, Phoenix, AZ; InTheWorks, Bainbridge Island, WA; Knovalent, Ann Arbor, MI; The Marlin Group, Inc., Arlington, VA; OBD Solutions, Phoenix, AZ; Picometrix, LLC, Ann Arbor, MI; Plasan Carbon Composites, Bennington, VT; Osterhout Group, Inc., San Francisco, CA; The POM Group, Auburn Hills, MI; QinetiQ, Reston, VA; SenGenuity, Westbrook, ME; SpaceForm Welding Solutions, Inc., Madison Heights, MI; Toyota Motor Engineering & Manufacturing NA, Erlanger, KY; University of Texas–Austin, Austin, TX; and Wend Associates, Inc., Marine City, MI.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notifications disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on February April 30, 2012. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 8, 2012 (77 FR 34068).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–05305 Filed 3–6–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request of the Resource Justification Model (RJM); Comment Request

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance 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 required data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm.*

DATES: Written comments must be submitted to the office listed in the addressee section below on or before May 6, 2013.

ADDRESSES: Send comments to John Ake, U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW., Frances Perkins Bldg. Room S–4524, Washington, DC 20210, telephone number (202) 693–2865 (this is not a toll-free number). Email address is *Ake.John@dol.gov* and fax number is (202) 693–2874 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The collection of actual Unemployment Insurance (UI) administrative cost data from states' accounting records and projected expenditures for upcoming years is accomplished through the Resource Justification Model (RJM) data collection instrument. The data collected consists of program expenditures and hours worked by state staff, broken out by functional activity, for the most recent two years of expenditures. This actual cost data informs ETA's administrative funding allocation model so that state UI program administration funds are allocated in proportion to the level of state activities.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the information collection on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension without change.

Title: Resource Justification Model.

OMB Number: 1205–0430.

Affected Public: State Workforce Agencies.

Total Respondents: 53 State Workforce Agencies.

Frequency: Annually.

Total Responses: 53 respondents x 4 annual reports submitted = 212 responses

Average Estimated Response Time: 123 hours.

Total Estimated Burden Hours: 6,519.

Form Activity	Total respondents	Frequency	Total responses	Average time per response	Total estimated burden
Crosswalk	53	Annually	53	108 hrs.	5,724 hrs.
ACCT SUM	53	Annually	53	4 hours	212 hrs.
RJM 1–6	53	Annually	53	3 hours	159 hours.
Narrative	53	Annually	53	8 hours	424 hours.
TOTALS			212		6,519 hrs

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Dated: Signed in Washington, DC, on this 25th day of February, 2013.

Jane Oates,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2013–05264 Filed 3–6–13; 8:45 am]

BILLING CODE 4510–FW–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

DATE AND TIME: The Legal Services Corporation's Institutional Advancement Committee will meet telephonically on March 12, 2013 and March 26, 2013. Each meeting will commence at 4:00 p.m., Eastern Standard Time (EST), and will continue until the conclusion of the Committee's agenda.

LOCATION: F. William McCalpin Conference Center, Legal Services Corporation Headquarters, 3333 K Street NW, Washington DC 20007.

STATUS OF MEETING: Closed. Upon a vote of the Board of Directors, the meetings may be closed to the public to discuss prospective funders for LSC's development activities and 40th anniversary celebration.

A verbatim written transcript will be made of each closed session meeting of the Institutional Advancement Committee. The transcript of any portion of the closed sessions falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9) will not be available for public inspection. A copy of the General Counsel's Certification that, in his opinion, the closings are authorized by law will be available upon request.

MATTERS TO BE CONSIDERED: 1. Discussion of prospective funders for LSC's development activities and 40th anniversary celebration

2. Consider and act on adjournment of meeting

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

ACCESSIBILITY: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in

order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov*, at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: March 5, 2013.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. 2013–05476 Filed 3–5–13; 4:15 pm]

BILLING CODE 7050–01–P

OFFICE OF MANAGEMENT AND BUDGET

U.S.-EU High Level Regulatory Cooperation Forum—Stakeholder Session

AGENCY: Office of Management and Budget.

ACTION: Notice of Public Meeting.

SUMMARY: On September 28, 2012, the Office of the United States Trade Representative (USTR) and the Office of Management and Budget (OMB), together with the European Commission's Enterprise and Trade Directorates-General, published a joint request for comments on ''Promoting US EC Regulatory Compatibility'' (see *http://www.regulations.gov/#!documentDetail;D=USTR-2012-0028-0001*). The notice was part of a joint effort by the United States and the European Union (EU) to obtain input from the public on how to promote greater transatlantic regulatory compatibility generally as well as in specific economic sectors. See also *http://www.whitehouse.gov/blog/2012/09/07/eliminating-red-tape-boost-trade-economic-growth.* On April 10th and 11th, OMB and the European Commission will hold a public meeting of the U.S.-EU High Level Regulatory Cooperation Forum (the ''Forum'') in Washington, DC, to provide interested persons with an opportunity to provide an oral statement.

DATES: Public meeting: April 10, 2013, starting at 9:00 a.m. and ending at 5:30 p.m., and April 11, 2013, starting at 9:00 a.m. and ending by 12:00 p.m.

ADDRESSES: *Public Meeting:* As with previous Forum meetings, the public sessions will be hosted by the U.S. Chamber of Commerce at 1615 H Street NW., Washington, DC 20062. Any person wishing to attend should RSVP at *www.uschamber.com/grc/us-eu-high-level-regulatory-cooperation-forum.*

Oral Presentations: Any persons wishing to present an oral statement at the public meeting should notify OMB in writing via *International-OIRA@omb.eop.gov* no later than March 20, 2013, and provide, in advance or at the meeting, written copies of their presentations. When considering requests to present an oral statement, given the limited amount of time available for the meeting, and to take advantage of the work already done by members of the public, preference will be given to those who submitted comments in response to the September 28th notice. Those persons who have been selected to present at the public meeting will be informed no later than April 5, 2013.

Instructions: OMB invites those persons who are selected to present oral statements at the public meeting to email or fax such statements, as well as any supporting information, to:

- *Email: International-OIRA@omb.eop.gov*
- *Fax:* 1–202–395–2410.

Please note that this Forum meeting is an initial step in a much longer process of public engagement to identify possible areas of transatlantic regulatory cooperation in the future. Time constraints may prevent some stakeholders from making presentations on April 10th or 11th, 2013. However, there will be future opportunities to submit suggestions and ideas, and the stakeholder session agenda will in no way prejudge the specific elements of a future transatlantic regulatory cooperation agenda.

Docket: For access to the docket and to read background documents or comments received by the U.S., go to *http://www.regulations.gov* and search for docket USTR–2012–0028.

Privacy Act: Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.).

FOR FURTHER INFORMATION CONTACT: Wendy Liberante, Office of Information and Regulatory Affairs, telephone (202) 395–3785, Office of Management and Budget, Washington, DC 20503.

Background: Transatlantic trade and investment among and between the United States and the EU represent the largest economic relationship in the world, accounting for half of global economic output and nearly one trillion dollars in goods and services trade, as well as supporting millions of jobs on both sides of the Atlantic. The United States and the EU are committed to identifying new ways to strengthen this vibrant economic partnership by reducing unnecessary regulatory differences and cutting red tape, while respecting each other's right to protect our environment and safeguard the health, safety, and welfare of our citizens. By promoting these goals, we will help businesses to grow, create jobs, and succeed in an increasingly competitive global market. Enhanced cooperation will also help the United States and the EU to achieve their respective domestic regulatory objectives in a more effective and efficient manner.

In recent years, the Forum, and the Transatlantic Economic Council (TEC) have sought to increase cooperation on future regulations affecting new and innovative growth markets and technologies. We seek to continue to make progress through the Forum and the TEC with the help of additional input from the public.

Purpose of Public Meeting: The April 10–12, 2013 meeting of the Forum is intended to provide an additional opportunity for interested parties to help the United States and EU define our priorities and explore next steps. The public input will help us to identify both immediate and longer-term goals, as well as potential mechanisms to accomplish them.

Boris Bershteyn,

Acting Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 2013–05252 Filed 3–6–13; 8:45 am]

BILLING CODE P

MISSISSIPPI RIVER COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Mississippi River Commission.

TIME AND DATE: 9:00 a.m., April 8, 2013.

PLACE: On board MISSISSIPPI V at City Front, Cape Girardeau, MO.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9:00 a.m., April 9, 2013.
PLACE: On board MISSISSIPPI V at Beale Street Landing, Memphis, TN
STATUS: Open to the public.
MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.
TIME AND DATE: 9:00 a.m., April 11, 2013.
PLACE: On board MISSISSIPPI V at City Front, Natchez, MS
STATUS: Open to the public.
MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Vicksburg District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.
TIME AND DATE: 9:00 a.m., April 12, 2013.
PLACE: On board MISSISSIPPI V at (Baton Rouge, LA) Ingram Capitol Fleet, Port Allen, LA.
STATUS: Open to the public.
MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the New Orleans District, and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.
TIME AND DATE: 11:15 a.m., April 12, 2013.
PLACE: On board MISSISSIPPI V at (Baton Rouge, LA) Ingram Capitol Fleet, Port Allen, LA.
STATUS: Open to the public.
MATTERS TO BE CONSIDERED: The Commission will consider the Morganza to the Gulf Project.
CONTACT PERSON FOR MORE INFORMATION: Mr. Stephen Gambrell, telephone 601–634–5766.

John C. Dvoracek,
Colonel, EN, Secretary, Mississippi River Commission.

[FR Doc. 2013–05411 Filed 3–5–13; 4:15 pm]
BILLING CODE 3720–58–P

NATIONAL MEDIATION BOARD

Notice of Proposed Information Collection Requests

AGENCY: National Mediation Board.
ACTION: Notice.

SUMMARY: The Director, Office of Administration, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 3, 2013.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Office of Administration, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection contains the following: (1) Type of review requested, e.g. new, revision extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Record keeping burden. OMB invites public comment.

Currently, the National Mediation Board is soliciting comments concerning the proposed extension of the Application for Investigation of Representation Dispute and is interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 4, 2013.

June D. W. King,
Director, Office of Administration, National Mediation Board.

Application for Investigation of Representation Dispute

Type of Review: Extension.
Title: Application for Investigation of Representation Dispute.
OMB Number: 3140–0001.
Frequency: On occasion.
Affected Public: Carrier and Union Officials, and employees of railroads and airlines.

Reporting and Recordkeeping Hour Burden

Responses: 68 annually.
Burden Hours: 17.00.

1. *Abstract:* When a dispute arises among a carrier's employees as to who will be their bargaining representative, the National Mediation Board (NMB) is required by Section 2, Ninth, to investigate the dispute, to determine who is the authorized representative, if any, and to certify such representative. The NMB's duties do not arise until its services have been invoked by a party to the dispute. The Railway Labor Act is silent as to how the invocation of a representation dispute is to be accomplished and the NMB has not promulgated regulations requiring any specific vehicle. Nonetheless, 29 *CFR* 1203.2, provides that applications for the services of the NMB under Section 2, Ninth, to investigate representation disputes may be made on printed forms secured from the NMB's Office of Legal Affairs or on the Internet at *http://www.nmb.gov/representation/rapply.html.* The application requires the following information: the name of the carrier involved; the name or description of the craft or class involved; the name of the petitioning organization or individual; the name of the organization currently representing the employees, if any; the names of any other organizations or representatives involved in the dispute; and the estimated number of employees in the craft or class involved. This basic information is essential in providing the NMB with the details of the dispute so that it can determine what resources

will be required to conduct an investigation.

2. The application form provides necessary information to the NMB so that it can determine the amount of staff and resources required to conduct an investigation and fulfill its statutory responsibilities. Without this information, the NMB would have to delay the commencement of the investigation, which is contrary to the intent of the Railway Labor Act.

3. There is no improved technological method for obtaining this information. The burden on the parties is minimal in completing the ''Application for Investigation of Representation Dispute.''

4. There is no duplication in obtaining this information.

5. Rarely are representation elections conducted for small businesses. Carriers/employers are not permitted to request our services regarding representation investigations. The labor organizations, which are the typical requesters, are national in scope and would not qualify as small businesses. Even in situations where the invocation comes from a small labor organization, we believe the burden in completing the application form is minimal and that no reduction in burden could be made.

6. The NMB is required by Section 2, Ninth, to investigate the dispute, to determine who is the authorized representative, if any, and to certify such representative. The NMB has no ability to control the frequency, technical, or legal obstacles, which would reduce the burden.

7. The information requested by the NMB is consistent with the general information collection guidelines of CFR 1320.6. The NMB has no ability to control the data provided or timing of the invocation. The burden on the parties is minimal in completing the ''Application for Investigation of Representation Dispute.''

8. No payments or gifts have been provided by the NMB to any respondents of the form.

9. There are no questions of a sensitive nature on the form.

10. The total time burden on respondents is 17.00 hours annually—this is the time required to collect information. After consulting with a sample of people involved with the collection of this information, the time to complete this information collection is estimated to average 15 minutes per response, including gathering the data needed and completion and review of the information.

Number of respondents per year: 68
Estimated time per respondent: 15 minutes
Total Burden hours per year: 17 (68 × .25)

11. The total collection and mail cost burden on respondents is estimated at $494.36 annually ($463.08 time cost burden + $31.28 mail cost burden.)

a. The respondents will not incur any capital costs or start up costs for this collection.

b. Cost burden on respondents—detail:

The total time burden annual cost is $463.08
Time Burden Basis: The total hourly burden per year, upon respondents, is 17
Staff cost = $463.08
$27.24 per hour—based on mid level clerical salary
$27.24 × 17 hours per year = $463.08

We are estimating that a mid-level clerical person, with an average salary of $27.24 per hour, will be completing the ''Application for Investigation of Representation Dispute'' form. The total burden is estimated at 17 hours, therefore, the total time burden cost is estimated at $463.08 per year.

The total annual mailing cost to respondents is $31.28
Number of applications mailed by Respondents per year: 68
Total estimated cost: $31.28 (68 × .46 stamp)

The collection of this information is not mandatory; it is a voluntary request from airline and railroad carrier employees seeking to invoke an investigation of a representation dispute. After consulting with a sample of people involved with the collection of this information, the time to complete this information collection is estimated to average 15 minutes per response, including gathering the data needed and completion and review of the information. However, the estimated hour burden costs of the respondents may vary due to the complexity of the specific question in dispute. The application form is available from the NMB's Office of Legal Affairs and is also available on the Internet at *http://www.nmb.gov/representation/rapply.html*.

12. The total annualized Federal cost is $551.21. This includes the costs of printing and mailing the forms upon request of the parties. The completed applications are maintained by the Office of Legal Affairs.

a. Printing cost: $ 80.00.

b. Mailing costs: $ 8.13.

Basis (mail cost): Forms are requested approximately 3 times per year and it takes 5 minutes to prepare the form for mail.

Postage cost = $1.38
3 (times per year) × .46 (cost of postage)
Staff cost = $6.75
$.45 per minute (GS 9/10 $56,857 = $27.24 per hr. ÷ 60)
$.45 × 5 minutes per mailing = $2.25
$2.25 × 3 times per year = $6.75
Total Mailing Costs = $8.13

13. Item 13—no change in annual reporting and recordkeeping hour burden.

14. The information collected by the application will not be published.

15. The NMB will display the OMB expiration date on the form.

16(a)—the form does not reduce the burden on small entities; however, the burden is minimized and voluntary.

16 (b)—the form does not indicate the retention period for record keeping requirements.

16 (c)—the form is not part of a statistical survey.

Requests for copies of the proposed information collection request may be accessed from *www.nmb.gov* or should be addressed to Denise Murdock, NMB, 1301 K Street NW., Suite 250 E, Washington, DC 20005 or addressed to the email address *murdock@nmb.gov* or faxed to 202–692–5081. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to June D. W. King at 202–692–5010 or via internet address *king@nmb.gov* Individuals who use a telecommunications device for the deaf (TDD/TDY) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2013–05337 Filed 3–6–13; 8:45 am]

BILLING CODE 7550–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302; NRC–2009–0039]

Crystal River Nuclear Generating Plant, Unit 3; Application for Renewal of License to Facility; Withdrawal

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license renewal application; withdrawal.

ADDRESSES: Please refer to Docket ID NRC–2009–0039 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search

for Docket ID NRC–2009–0039. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.

• *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: John Daily, Senior Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3873; email: *John.Daily@nrc.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) grants the Florida Power Corporation request to withdraw its application for the renewal of operating license DPR–72, which authorizes Florida Power Corporaton (FPC) to operate the Crystal River Nuclear Generating Plant, Unit 3 (CR3), at 2609 megawatts thermal. The FPC stated its decision to withdraw the application is based upon a determination to retire CR3. The CR3 is located near Crystal River, FL; the current operating license for the CR3 expires on December 3, 2016.

The FPC submitted the license renewal application (LRA) by letter dated December 16, 2008, pursuant to Part 54 of Title 10 of the *Code of Federal Regulations* (10 CFR), to renew operating license DPR–72 for CR3 (ADAMS Accession No. ML090080053). The Commission had previously noticed the acceptance of the application in the **Federal Register** on March 9, 2009 (74 FR 10099). The FPC requested withdrawal of the application by letter dated February 6, 2013, based on its determination to retire CR3 (ADAMS Accession No. ML13043A028).

The NRC staff completed its ''Safety Evaluation Report With Open Items Related to the License Renewal of Crystal River Unit 3 Nuclear Generating Plant'' (hereinafter known as the SER) in December 2010 (ADAMS Accession No. ML103490568). Consistent with 10 CFR 54.13(a), ''[I]nformation provided to the Commission by an applicant for a renewed license * * * must be complete and accurate in all material respects.'' The staff noted that the SER contains nine open items and two confirmatory items; these items are incomplete in regards to 10 CFR 54.13(a). Since the staff's review to date has identified that FPC's application did not provide technical information in sufficient detail to enable the staff to complete its reviews, if FPC decides to re-submit the application, it must include this technical information in sufficient detail to allow the staff to continue its evaluations.

The staff also issued a Notice of Issuance for the draft supplemental environmental impact statement (DSEIS) related to the proposed license renewal, which was published in the **Federal Register** on June 3, 2011 (76 FR 32237). However, since the licensee has withdrawn its application, all comments received on the DSEIS and all of the above **Federal Register** Notices need not be and will not be resolved.

For further details with respect to this action, see the LRA dated December 16, 2008, and the licensee's letter of withdrawal dated February 6, 2013.

Dated at Rockville, Maryland, this 28th day of February, 2013.

For the Nuclear Regulatory Commission.

John W. Lubinski,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–05317 Filed 3–6–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0046]

Temporary Scope Expansion of the Post-Investigation Alternative Dispute Resolution Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of temporary scope expansion.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is expanding the scope of the post-investigation Alternative Dispute Resolution (ADR) Program for a 1-year pilot period. The NRC and its licensees are the parties to this form of ADR. Currently, post-investigation ADR is used in the NRC's Enforcement Program for cases involving discrimination and other wrongdoing after the NRC's Office of Investigations has completed an investigation substantiating the allegation. The pilot ADR Program will expand post-investigation ADR to include all escalated non-willful (traditional) enforcement cases with proposed civil penalties (this will not include violations associated with findings assessed through the Reactor Oversight Process (ROP) [1]).

ADDRESSES: Please refer to Docket ID NRC–2013–0046 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0046. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: Carol.Gallagher@nrc.gov.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (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: Russell Arrighi, telephone: 301–415–0205, email *Russell.Arrighi@nrc.gov;* or Maria Schwartz, telephone: 301–415–1888, email *Maria.Schwartz@nrc.gov.* Both of these individuals can also be contacted by mail at the U.S. Nuclear Regulatory Commission, Office of Enforcement, Concerns Resolution Branch, Washington, DC 20555–0001.

Background

The term ''ADR'' refers to a number of voluntary processes, such as mediation and facilitated dialogues that can be used to assist parties in resolving disputes and potential conflicts. These techniques involve the use of a neutral

[1] Reference to the ROP includes the construction ROP.

third party, either from within the agency or from outside the agency, and are voluntary processes in terms of the decision to participate, the type of process used, and the content of the final agreement. Federal agency experience with ADR has demonstrated that the use of these techniques can result in more efficient resolution of issues, more effective outcomes, and improved relationships between the agency and the other party.

On August 14, 1992 (57 FR 36678), the NRC issued a general policy statement which supports and encourages the use of ADR in NRC activities. On September 8, 2003, the Commission approved an NRC staff proposal to develop and implement a pilot ADR Program to evaluate the use of ADR in handling allegations or findings of discrimination and other wrongdoing. (see the staff requirements memorandum (SRM) for SECY–03–0115, ''Alternative Dispute Resolution Review Team (ART) Pilot Program Recommendations for Using Alternative Dispute Resolution (ADR) Techniques in the Handling of Discrimination and Other External Wrongdoing Issues'' (ADAMS Accession No. ML030170277). In response to the SRM, the NRC staff proposed a pilot ADR Program to evaluate the use of ADR in the Enforcement Program in SECY–04–0044, ''Proposed Pilot Program for the Use of Alternative Dispute Resolution in the Enforcement Program,'' dated March 12, 2004 (ADAMS Accession No. ML040550473). The Commission approved the pilot ADR Program (August 13, 2004; 69 FR 50219), and the NRC staff began implementing it in September 2004.

In SECY–06–0102, ''Evaluation of the Pilot Program on the Use of Alternative Dispute Resolution in the Allegation and Enforcement Programs,'' dated May 5, 2006 (ADAMS Accession No. ML061110254), the NRC staff provided the Commission with the results of the evaluation of the pilot ADR Program. The NRC staff concluded that implementation of the pilot ADR Program was successful. The Program was effective, timely, and generally viewed positively by both internal and external stakeholders. Accordingly, the staff indicated its intent to continue to use ADR in both the Allegation and Enforcement Programs while obtaining Commission approval for the changes necessary to formalize the use of ADR in the Allegation and Enforcement Policy documents. Since ADR program implementation, the NRC has reached settlement agreements with licensees (or contractors) and individuals, and has issued subsequent ADR confirmatory orders in more than 90 enforcement cases.

On December 16, 2010, the NRC Chairman issued a memorandum, ''ADR Implementation and Assessment'' (ADAMS Accession No. ML12030A228) tasking the NRC staff to conduct a comprehensive review of the ADR program, including determining if it should be expanded. On September 6, 2011 (76 FR 55136), the NRC solicited nominations of individuals to participate on a panel to discuss ADR program implementation and whether changes could be made to make it more effective, transparent, and efficient. On October 17, 2011 (76 FR 64124), the NRC announced its intention to hold a public meeting to solicit feedback from its stakeholders on the ADR Program. During the November 8, 2011 public meeting, the NRC external stakeholders expressed support for the expansion of the ADR Program to the extent possible.

For purposes of discussing the expansion of the ADR program, it is necessary to distinguish between the two types of programs, early ADR and post-investigation ADR. These programs differ because of the parties involved. In early ADR, a licensee or contractor engages in mediation with its employee; where as in post-investigation ADR, the NRC engages in mediation with the subject of a potential enforcement action.

In SECY–12–0161, ''Status Update, Tasks Related to Alternative Dispute Resolution in the Allegation and Enforcement Programs,'' dated November 28, 2012 (ADAMS Accession No. ML12321A145), the NRC staff notified the Commission of its intent to expand the scope of post-investigation ADR and offer it as an option for escalated non-willful (traditional) enforcement cases with proposed civil penalties for a 1-year pilot period. The expansion of the Program does not include violations associated with findings assessed through the ROP. The current program for post-investigation ADR is limited to discrimination and other wrongdoing cases.

At the completion of the 1-year period, the NRC staff will evaluate the results of the pilot ADR Program and seek Commission approval for the permanent inclusion in the Enforcement Policy if the expanded scope is deemed beneficial to the advancement of the agency's mission.

Paperwork Reduction Act Statement

This Notification does not contain any information collections and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the OMB Office of Information and Regulatory Affairs.

Dated at Rockville, Maryland, this 25th day of February 2013.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Director, Office of Enforcement.

[FR Doc. 2013–05306 Filed 3–6–13; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69011]

Topaz Exchange, LLC; Order Granting Application for a Conditional Exemption Pursuant to Section 36(a) of the Exchange Act From Certain Requirements of Rules 6a–1 and 6a–2 Under the Exchange Act

March 1, 2013.

I. Introduction

On July 3, 2012, Topaz Exchange, LLC (''Applicant'') submitted to the Securities and Exchange Commission (''Commission'') an application on Form 1 under the Securities Exchange Act of 1934 (''Exchange Act''), to register as a national securities exchange.[1] In

[1] On December 19, 2012, the Applicant submitted Amendment No. 1 to its Form 1 application. Amendment No. 1, among other things, includes changes to the Limited Liability Company Agreement and the Constitution of Topaz Exchange concerning board composition and size, the initial director election process, and the use of regulatory funds. Amendment No. 1 also includes revisions to proposed rules of Topaz Exchange to remove rules relating to complex orders; to respond to comments on the Form 1 application from Commission staff; and to reflect recent changes to comparable rules of International Securities Exchange, LLC (''ISE''). Amendment No. 1 further provides additional descriptions in the Form 1 application regarding proposed allocation procedures, auction mechanisms, execution of qualified contingent crosses, and the initial director election process, and removes references to complex orders. On December 31, 2012, the Applicant submitted Amendment No. 2 to its Form 1 application. Amendment No. 2, among other things, provides updated information regarding the board of directors of ISE and the Corporate Governance Committee of ISE and includes information

addition, the Applicant, pursuant to Rule 0–12 [2] under the Exchange Act, has requested an exemption under Section 36(a)(1) of the Exchange Act [3] from certain requirements of Rules 6a–1(a) and 6a–2 under the Exchange Act (''Exemption Request'').[4] This order grants the Applicant's request for exemptive relief, subject to the satisfaction of certain conditions, which are outlined below.

II. Application for Conditional Exemption From Certain Requirements of Exchange Act Rules 6a–1 and 6a–2

A. Filing Requirements Under Exchange Act Rule 6a–1(a)

Exchange Act Rule 6a–1(a) requires an applicant for registration as a national securities exchange to file an application with the Commission on Form 1. Exhibit C to Form 1 requires the applicant to provide certain information with respect to each of its subsidiaries and affiliates.[5] For purposes of Form 1, an ''affiliate'' is ''[a]ny person that, directly or indirectly, controls, is under common control with, or is controlled by, the national securities exchange * * * including any employees.'' [6] Form 1 defines ''control'' as ''[t]he power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise * * *'' [7] Form 1 provides, further, that any person that directly or indirectly has the right to vote 25% or more of a class of voting securities, or has the power to sell or direct the sale of 25% or more of a class of voting securities, is presumed to control the entity.[8]

Exhibit D to Form 1 requires an applicant for exchange registration to provide unconsolidated financial statements for the latest fiscal year for each subsidiary or affiliate. Exhibit D requires the financial statements to include, at a minimum, a balance sheet and an income statement with such footnotes and other disclosures as are necessary to avoid rendering the financial statements misleading. Exhibit D provides, in addition, that if any affiliate or subsidiary of the applicant is required by another Commission rule to submit annual financial statements, a statement to that effect, with a citation to the other Commission rule, may be provided in lieu of the financial statements required in Exhibit D.

A Form 1 application is not considered filed until all necessary information, including financial statements and other required documents, have been furnished in the proper form.[9]

B. Filing Requirements Under Exchange Act Rule 6a–2

Exchange Act Rule 6a–2(a)(2) requires a national securities exchange to update the information provided in Exhibit C within 10 days of any action that causes the information provided in Exhibit C to become inaccurate or incomplete. In addition, Exchange Act Rule 6a–2(b)(1) requires a national securities exchange to file Exhibit D on or before June 30 of each year, and Exchange Act Rule 6a–2(c) requires a national securities exchange to file Exhibit C every three years.

C. Exemption Request

On December 14, 2012, the Applicant requested that the Commission grant an exemption under Section 36 of the Exchange Act, subject to the conditions set forth below, from the requirement under Exchange Act Rule 6a–1 to file the information requested in Exhibits C and D to Form 1 for the ''Foreign Indirect Affiliates,'' as defined below, of the Applicant.[10] In addition, the Applicant requested an exemption, subject to certain conditions, with respect to the Foreign Indirect Affiliates from the requirements under: (1) Exchange Act Rule 6a–2(a)(2) to amend Exhibit C within 10 days if the information in Exhibit C becomes inaccurate or incomplete; and (2) Exchange Act Rules 6a–2(b)(1) and (c) to file periodic updates to Exhibits C and D.

The Applicant is a wholly-owned subsidiary of International Securities Exchange Holdings, Inc. (''ISE Holdings'').[11] ISE Holdings is a wholly-owned subsidiary of U.S. Exchange Holdings, Inc., which is wholly-owned by a German stock corporation, Eurex Frankfurt AG (''Eurex Frankfurt''). Eurex Frankfurt is wholly-owned by a Swiss stock corporation, Eurex Zurich AG (''Eurex Zurich''), which, in turn, is fifty percent (50%) owned by Deutsche Börse AG (''Deutsche Börse'') and fifty percent (50%) owned by Eurex Global Derivatives AG (''EGD''). Deutsche Börse has one hundred percent (100%) direct ownership interest in EGD. According to the Applicant, the parent ownership structure of U.S. Exchange Holdings, Inc. is comprised entirely of foreign entities, Eurex Frankfurt, Eurex Zurich, Deutsche Börse and EGD (collectively, the ''Foreign Direct Affiliates''), which in turn hold ownership interests, either directly or indirectly, in excess of 25 percent (25%) in a large number of other foreign entities, some of which also own interests in other entities in excess of 25 percent (25%) as well (such Foreign Direct Affiliate-owned entities are referred to, collectively, as the ''Foreign Indirect Affiliates'').[12]

Because of the limited and indirect nature of its connection to the Foreign Indirect Affiliates, the Applicant believes that the corporate and financial information of the Foreign Indirect Affiliates required by Exhibits C and D of Form 1 would have little relevance to the Commission's review of the Applicant's Form 1 application or to the Commission's ongoing oversight of the Applicant as a national securities exchange if the Commission were to approve the Applicant's Form 1 application, as amended.[13] In this regard, the Exemption Request states that the Foreign Indirect Affiliates have no ability to influence the management, policies, or finances of the Applicant and no obligation to provide funding to, or ability to materially affect the funding

regarding Longitude S.A., a newly incorporated affiliate of Topaz Exchange, which information includes the Articles of Incorporation of Longitude S.A. Amendment No. 2 also provides financial information for Longitude S.A. Finally, Amendment No. 2 provides an updated organizational chart that reflects the affiliates of Topaz Exchange.

[2] 17 CFR 240.0–12.

[3] 15 U.S.C. 78mm(a)(1).

[4] 17 CFR 240.6a–1(a) and 6a–2. *See* letter from Michael Simon, General Counsel, Secretary and Chief Regulatory Officer, Topaz Exchange, LLC, to Elizabeth Murphy, Secretary, Commission, dated December 14, 2012.

[5] Specifically, Exhibit C requires the applicant to provide, for each subsidiary or affiliate, and for any entity that operates an electronic trading system used to effect transactions on the exchange: (1) The name and address of the organization; (2) the form of organization; (3) the name of the state and statute citation under which it is organized, and the date of its incorporation in its present form; (4) a brief description of the nature and extent of the affiliation; (5) a brief description of the organization's business or function; (6) a copy of the organization's constitution; (7) a copy of the organization's articles of incorporation or association, including all amendments; (8) a copy of the organization's by-laws or corresponding rules or instruments; (9) the name and title of the organization's present officers, governors, members of all standing committees, or persons performing similar functions; and (10) an indication of whether the business or organization ceased to be associated with the applicant during the previous year, and a brief statement of the reasons for termination of the association.

[6] Form 1 Instructions, Explanation of Terms, 17 CFR 249.1.

[7] *Id.*

[8] *Id.*

[9] 17 CFR 202.3(b)(2). *See also* 17 CFR 240.0–3(a). Defective Form 1 applications ''may be returned with a request for correction or held until corrected before being accepted as a filing.'' *See* 17 CFR 202.3(b)(2). *See also* Securities Exchange Act Release No. 40760 (Dec. 8, 1998), 63 FR 70844, 70881 (Dec. 22, 1998) (''Regulation ATS Adopting Release'') at note 329 and accompanying text.

[10] *See* Exemption Request, *supra* note 4.

[11] *See* Exemption Request, *supra* note 4, at 2.

[12] *See id.*

[13] *See id.*

of, the Applicant.[14] The Exemption Request also states that: (1) The Foreign Indirect Affiliates have no ownership interest in the Applicant or in any of the controlling shareholders of the Applicant; and (2) there are no commercial dealings between the Applicant and the Foreign Indirect Affiliates.[15] Further, the Exemption Request states that obtaining detailed corporate and financial information with respect to the Foreign Indirect Affiliates (1) is unnecessary for the protection of investors and the public interest and (2) would be unduly burdensome and inefficient because these affiliates are located in foreign jurisdictions and the disclosure of such information could implicate foreign information sharing restrictions in such jurisdictions.[16]

As a condition to the granting of exemptive relief, the Applicant has agreed to provide: (i) A listing of the names of the Foreign Indirect Affiliates; (ii) an organizational chart setting forth the affiliation of the Foreign Indirect Affiliates and the Foreign Direct Affiliates and the Applicant; and (iii) in Exhibit C of the Applicant's Form 1 application, a description of the nature of the Foreign Indirect Affiliates' affiliation with the Foreign Direct Affiliates and the Applicant. In addition, as a condition to the granting of exemptive relief from the requirements of Exchange Act Rule 6a–2(a)(2), 6a–2(b)(1), and 6a–2(c), as described above, the Applicant has agreed to provide amendments to the information required under conditions (i) through (iii) above on or before June 30th of each year. Further, the Applicant notes that it will provide the information required by Exhibits C and D for all of its affiliates other than the Foreign Indirect Affiliates, including the Foreign Direct Affiliates.[17]

III. Order Granting Conditional Section 36 Exemption

Section 6 of the Exchange Act[18] sets forth a procedure for an exchange to register as a national securities exchange.[19] Exchange Act Rule 6a–1(a)[20] requires an application for registration as a national securities exchange to be filed on Form 1 in accordance with the instructions in Form 1. A Form 1 application is not considered filed until all necessary information, including financial statements and other required documents, has been furnished in the proper form.[21] Exchange Act Rule 6a–2 establishes ongoing requirements to file certain amendments to Form 1.

Section 36(a)(1) of the Exchange Act provides that ''the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.'' [22]

For the reasons discussed below, the Commission believes that it is appropriate in the public interest and consistent with the protection of investors to exempt the Applicant from the requirement under Exchange Act Rule 6a–1 to provide the information required in Exhibits C and D to Form 1 with respect to the Foreign Indirect Affiliates, subject to the following conditions:

(1) The Applicant must provide a list of the names of the Foreign Indirect Affiliates;

(2) the Applicant must provide an organizational chart setting forth the affiliation of the Foreign Indirect Affiliates and the Foreign Direct Affiliates and the Applicant; and

(3) as part of Exhibit C to the Applicant's Form 1 Application, the Applicant must provide a description of the nature of the affiliation between the Foreign Indirect Affiliates and the Foreign Direct Affiliates and the Applicant.

The Commission believes, further, that it is appropriate in the public interest and consistent with the protection of investors to exempt the Applicant, with respect to the Foreign Indirect Affiliates, from the requirements under: (a) Exchange Act Rule 6a–2(a)(2) to amend Exhibit C within 10 days of any action that renders the information in Exhibit C inaccurate or incomplete; (b) Exchange Act Rules 6a–2(c) to provide periodic updates of Exhibit C; and (c) Exchange Act Rules 6a–2(b)(1) to provide periodic updates of Exhibit D, subject to the condition that the Applicant provide amendments to the information required under conditions (1) through (3) above on or before June 30th of each year.

As part of an application for exchange registration, the information included in Exhibits C and D is designed to help the Commission make the determinations required under Sections 6(b) and 19(a) of the Exchange Act[23] with respect to the application. The updated Exhibit C and D information required under Exchange Act Rule 6a–2 is designed to help the Commission exercise its oversight responsibilities with respect to national securities exchanges.

Specifically, Exhibit D is designed to provide the Commission with information concerning the financial status of an exchange and its affiliates and subsidiaries,[24] and Exhibit C provides the Commission with the names and organizational documents of these affiliates and subsidiaries.[25] Such information is designed to help the Commission determine whether an applicant for exchange registration would have the ability to carry out its obligations under the Exchange Act, and whether a national securities exchange continues to have the ability to carry out its obligations under the Exchange Act.

Since the most recent amendments to Form 1 in 1998,[26] many national securities exchanges that previously were member-owned organizations with few affiliated entities have demutualized. Some of these demutualized exchanges have been consolidated under holding companies with numerous affiliates that, in some cases, have only a limited and indirect connection to the national securities exchange, with no ability to influence the management or policies of the registered exchange and no obligation to fund, or to materially affect the funding of, the registered exchange. The Commission believes that, for these affiliated entities, the information required under Exhibits C and D would have limited relevance to the Commission's review of an application

[14] *See* Exemption Request, *supra* note 4, at 2–3.

[15] *See* Exemption Request, *supra* note 4, at 3.

[16] *See id.* The Applicant also believes that providing the information required by Exhibits C and D with respect to the Foreign Indirect Affiliates could raise confidentiality concerns because many of the Foreign Indirect Affiliates are not public companies. *Id.*

[17] *See* Exemption Request, *supra* note 4, at 3.

[18] 15 U.S.C. 78f.

[19] Specifically, Section 6(a) of the Exchange Act states that ''[a]n exchange may be registered as a national securities exchange * * * by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the exchange and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.'' Section 6 of the Exchange Act also sets forth various requirements to which a national securities exchange is subject.

[20] 17 CFR 240.6a–1(a).

[21] 17 CFR 202.3(b)(2). *See also supra* note 9.

[22] 15 U.S.C. 78mm(a)(1).

[23] 15 U.S.C. 78f(b) and 78s(a).

[24] *See* Securities Exchange Act Release No. 18843 (June 25, 1982), 47 FR 29259 (July 6, 1982) (proposing amendments to Form 1); *see also* Form 1, 17 CFR 249.1, and *supra* Section II.A.

[25] Form 1, 17 CFR 249.1. *See also supra* note 5.

[26] *See* Regulation ATS Adopting Release, *supra* note 9.

for exchange registration or to its oversight of a registered exchange.

Based on the Applicant's representations, the indirect nature of the relationship between the Applicant and the Foreign Indirect Affiliates, and the information that the Applicant will provide with respect to the Foreign Direct Affiliates and the Foreign Indirect Affiliates, the Commission believes that it will have sufficient information to review the Applicant's Form 1 application and to make the determinations required under Sections 6(b) and 19(a) of the Exchange Act with respect to its application for registration as a national securities exchange.[27] The Commission believes, further, that it will have the information necessary to oversee the Applicant's activities as a national securities exchange if the Commission were to approve the Applicant's Form 1 application. In particular, the Commission notes that the Applicant has represented that it would have no direct connection to the Foreign Indirect Affiliates, that the Foreign Indirect Affiliates would have no ability to influence the management or policies of the Applicant, and that the Foreign Indirect Affiliates would have no obligation to fund, or ability to materially affect the funding of, the Applicant. In addition, the Commission notes that the Applicant represented that: (1) The Foreign Indirect Affiliates have no ownership interest in the Applicant or in any of the controlling equity holders of the Applicant; and (2) there are no commercial dealings between the Applicant and the Foreign Indirect Affiliates.[28]

Given the limited and indirect relationship between the Applicant and the Foreign Indirect Affiliates, as described above, the Commission believes that the detailed corporate and financial information required in Exhibits C and D with respect to the Foreign Indirect Affiliates is unnecessary for the Commission's review of the Applicant's Form 1 application and would be unnecessary for the Commission's oversight of the Applicant as a registered national securities exchange following any Commission approval of its Form 1 application.

For the reasons discussed above, the Commission finds that the conditional exemptive relief requested by the Applicant is appropriate in the public interest and is consistent with the protection of investors.

It is ordered, pursuant to Section 36 of the Exchange Act,[29] that the Applicant is exempt from the requirements to: (1) Include in its Form 1 application the information required in Exhibits C and D to Form 1 with respect to the Foreign Indirect Affiliates; and (2) with respect to the Foreign Indirect Affiliates, update the information in Exhibits C and D to Form 1 as required by Exchange Act Rules 6a–2(a)(2), 6a–2(b)(1), and 6a–2(c) subject to the following conditions:

(i) The Applicant must provide a list of the names of the Foreign Indirect Affiliates;

(ii) the Applicant must provide an organizational chart setting forth the affiliation of the Foreign Indirect Affiliates and the Foreign Direct Affiliates and the Applicant; and

(iii) as part of Exhibit C to the Applicant's Form 1 Application, the Applicant must provide a description of the nature of the affiliation between the Foreign Indirect Affiliates and the Foreign Direct Affiliates and the Applicant.

In addition, the Applicant must provide amendments to the information required under conditions (i) through (iii) above on or before June 30th of each year.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

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[27] 15 U.S.C. 78f(b) and 78s(a). Section 6(b) of the Exchange Act enumerates certain determinations that the Commission must make with respect to an exchange before granting the registration of the exchange as a national securities exchange. The Commission will not grant an exchange registration as a national securities exchange unless the Commission determines that the exchange meets these requirements. *See* Regulation ATS Adopting Release, *supra* note 9, at IV.B.

[28] See Exemption Request, *supra* note 4, at 3.

[29] 15 U.S.C. 78mm.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69012; File No. 10–209]

Topaz Exchange, LLC; Notice of Filing of Application for Registration as a National Securities Exchange Under Section 6 of the Securities Exchange Act of 1934

March 1, 2013.

On July 3, 2012, Topaz Exchange, LLC (''Topaz Exchange'' or ''Applicant'') submitted to the Securities and Exchange Commission (''Commission'') a Form 1 application under the Securities Exchange Act of 1934 (''Exchange Act''), seeking registration as a national securities exchange under Section 6 of the Exchange Act.[1] On December 19, 2012, Topaz Exchange submitted Amendment No. 1 to its Form 1 application.[2] On December 31, 2012, Topaz Exchange submitted Amendment No. 2 to its Form 1 application.[3]

The Commission is publishing this notice to solicit comments on Topaz Exchange's Form 1 application, as amended. The Commission will take any comments it receives into consideration in making its determination about whether to grant Topaz Exchange's request to be registered as a national securities exchange. The Commission will grant the registration if it finds that the requirements of the Exchange Act and the rules and regulations thereunder with respect to Topaz Exchange are satisfied.[4]

The Applicant's Form 1 application, as amended, provides detailed information on how Topaz Exchange proposes to satisfy the requirements of the Exchange Act. Topaz Exchange would be wholly-owned by its parent company, International Securities Exchange Holdings, Inc. (''ISE Holdings''), which also is the parent company of an existing national securities exchange, ISE. Topaz Exchange would operate a fully automated electronic trading platform for the trading of listed options and would not maintain a physical trading floor. Liquidity would be derived from orders to buy and orders to sell

[1] On March 1, 2013, the Commission issued an order granting Topaz Exchange exemptive relief, subject to certain conditions, in connection with the filing of its Form 1 application. *See* Securities Exchange Act Release No. 69011. Because the Applicant's Form 1 application was incomplete without the exemptive relief, the date of filing of such application is March 1, 2013.

[2] Amendment No. 1, among other things, includes changes to the Limited Liability Company Agreement and the Constitution of Topaz Exchange concerning board composition and size, the initial director election process, and the use of regulatory funds. Amendment No. 1 also includes revisions to proposed rules of Topaz Exchange to remove rules relating to complex orders; to respond to comments on the Form 1 application from Commission staff; and to reflect recent changes to comparable rules of International Securities Exchange, LLC (''ISE''). Amendment No. 1 further provides additional descriptions in the Form 1 application regarding proposed allocation procedures, auction mechanisms, execution of qualified contingent crosses, and the initial director election process, and removes references to complex orders.

[3] Amendment No. 2, among other things, provides updated information regarding the board of directors of ISE and the Corporate Governance Committee of ISE and includes information regarding Longitude S.A., a newly incorporated affiliate of Topaz Exchange, which information includes the Articles of Incorporation of Longitude S.A. Amendment No. 2 also provides financial information for Longitude S.A. Finally, Amendment No. 2 provides an updated organizational chart that reflects the affiliates of Topaz Exchange.

[4] 15 U.S.C. 78s(a).

submitted to Topaz Exchange electronically by its registered broker-dealer members, as well as from quotes submitted electronically by market makers.

A more detailed description of the manner of operation of Topaz Exchange's proposed system can be found in Exhibit E to Topaz Exchange's Form 1 application. The proposed rulebook for the proposed exchange can be found in Exhibit B to Topaz Exchange's Form 1 application, and the governing documents for both Topaz Exchange and ISE Holdings can be found in Exhibit A and Exhibit C to Topaz Exchange's Form 1 application, respectively. A listing of the officers and directors of Topaz Exchange can be found in Exhibit J to Topaz Exchange's Form 1 application.

Topaz Exchange's Form 1 application, including all of the Exhibits referenced above, is available online at *www.sec.gov/rules/other.shtml* as well as in the Commission's Public Reference Room. Interested persons are invited to submit written data, views, and arguments concerning Topaz Exchange's Form 1, including whether the application is consistent with the Exchange 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 10–209 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 10–209. 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/other.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to Topaz Exchange's Form 1 filed with the Commission, and all written communications relating to the application 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. 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 publicly available. All submissions should refer to File Number 10–209 and should be submitted on or before April 22, 2013.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

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BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69013; IA–3558; File No. 4–606]

Duties of Brokers, Dealers, and Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Request for data and other information.

SUMMARY: The Securities and Exchange Commission is requesting data and other information, in particular quantitative data and economic analysis, relating to the benefits and costs that could result from various alternative approaches regarding the standards of conduct and other obligations of broker-dealers and investment advisers. We intend to use the comments and data we receive to inform our consideration of alternative standards of conduct for broker-dealers and investment advisers when providing personalized investment advice about securities to retail customers. We also will use this information to inform our consideration of potential harmonization of certain other aspects of the regulation of broker-dealers and investment advisers.

DATES: Comments should be received on or before July 5, 2013.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Submission:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number 4–606 in the subject line.

Paper Submission:

- Send paper submissions 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 4–606. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all submissions of data on the Commission's Internet Web site (*http://www.sec.gov*). Comments are also 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. Please refer to the Appendix at the end of this release for instructions on submitting data and other information.

FOR FURTHER INFORMATION CONTACT: Jennifer Marietta-Westberg, Assistant Director, Matthew Kozora, Financial Economist, Division of Risk, Strategy and Financial Innovation, at (202) 551–6655; David W. Blass, Chief Counsel, Lourdes Gonzalez, Assistant Chief Counsel—Sales Practices, Emily Westerberg Russell, Senior Special Counsel, Daniel Fisher, Branch Chief, Leila Bham, Special Counsel, Division of Trading and Markets, at (202) 551–5550; Office of Chief Counsel, at (202) 551–6825 and Office of Investment Adviser Regulation, at (202) 551–6787, Division of Investment Management; Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

Discussion

I. Introduction

A. Background

Today, broker-dealers and investment advisers routinely provide to retail customers [1] many of the same services, and engage in many similar activities related to providing personalized investment advice about securities to

[1] For the purposes of this request for comment, and as noted in Part III below, the term ''retail customer'' has the same meaning as in Section 913 of the Dodd–Frank Wall Street Reform and Consumer Protection Act. Public Law 111–203, 124 Stat. 1376 (2010). Specifically, it means ''a natural person, or the legal representative of such natural person, who (A) receives personalized investment advice about securities from a broker, dealer or investment adviser; and (B) uses such advice primarily for personal, family, or household purposes.'' 15 U.S.C. 80b–11(g)(2).

retail customers.[2] While both investment advisers and broker-dealers are subject to regulation and oversight designed to protect retail and other customers, the two regulatory schemes do so through different approaches notwithstanding the similarity of certain services and activities.

Investment advisers are fiduciaries to their clients, and their regulation under the Investment Advisers Act of 1940 (''Advisers Act'') is largely principles-based. In contrast, a broker-dealer is not uniformly considered a fiduciary to its customers.[3] Broker-dealer conduct is subject to comprehensive regulation under the Securities Exchange Act of 1934 (''Exchange Act'') and the rules of each self-regulatory organization (''SRO'') to which the broker-dealer belongs. Both broker-dealers and investment advisers also are subject to applicable antifraud provisions and rules under the federal securities laws.

Studies suggest that many retail customers who use the services of broker-dealers and investment advisers are not aware of the differences in regulatory approaches for these entities and the differing duties that flow from them.[4] Some of these regulatory differences primarily reflect the different functions and business activities of investment advisers and broker-dealers (for example, rules regarding underwriting or market making). Other differences reflect statutory differences,[5] particularly when broker-dealers and investment advisers engage in the same or substantially similar activity (for example, providing personalized investment advice, including recommendations, about securities to retail customers).

Over the decades since the Advisers Act and Exchange Act were enacted, we have observed that the lines between full-service broker-dealers and investment advisers have blurred.[6] Investment advisers and broker-dealers, for example, provide investment advice both on an episodic and on an ongoing basis.[7] We have expressed concern when specific regulatory obligations depend on the statute under which a financial intermediary is registered instead of the services provided.[8]

In a staff study (the ''Study'') required by Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the ''Dodd-Frank Act''),[9] our staff made recommendations to us that the staff believed would enhance retail customer protections and decrease retail customers' confusion about the standard of conduct owed to them when their financial professional provides them personalized investment advice.[10] The staff made two primary recommendations in the Study. The first recommendation was that we engage in rulemaking to implement a uniform fiduciary standard of conduct for broker-dealers and investment advisers when providing personalized investment advice about securities to retail customers. The second recommendation was that we consider harmonizing certain regulatory requirements of broker-dealers and investment advisers where such harmonization appears likely to enhance meaningful investor protection, taking into account the best elements of each regime.[11]

[2] In 2006, the SEC retained the RANDCorporation's Institute for Civil Justice (''RAND'') to conduct a survey, which concluded that the distinctions between investment advisers and broker-dealers have become blurred, and that market participants had difficulty determining whether a financial professional was an investment adviser or a broker-dealer and instead believed that investment advisers and broker-dealers offered the same services and were subject to the same duties. RAND noted, however, that generally investors they surveyed as part of the study were satisfied with their financial professional, be it a representative of a broker-dealer or an investment adviser. Angela A. Hung, *et al., RAND Institute for Civil Justice, Investor and Industry Perspectives on Investment Advisers and Broker-Dealers* (2008) (''RAND Study'').

[3] A broker-dealer may have a fiduciary duty under certain circumstances. This duty may arise under state common law, which varies by state. Generally, courts have found that broker-dealers that exercise discretion or control over customer assets, or have a relationship of trust and confidence with their customers, are found to owe customers a fiduciary duty similar to that of investment advisers. *See, e.g., United States* v. *Skelly,* 442 F.3d 94, 98 (2d Cir. 2006); *United States* v. *Szur,* 289 F.3d 200, 211 (2d Cir. 2002); *Associated Randall Bank* v. *Griffin, Kubik, Stephens & Thompson, Inc.,* 3 F.3d 208, 212 (7th Cir. 1993); *MidAmerica Fed. Savings & Loan Ass'n* v. *Shearson/American Express Inc.,* 886 F.2d 1249, 1257 (10th Cir. 1989); *Leib* v. *Merrill Lynch, Pierce, Fenner & Smith, Inc.,* 461 F. Supp. 951, 953–954 (E.D. Mich. 1978), *aff'd,* 647 F.2d 165 (6th Cir. 1981). For the staff's discussion of relevant case law see Study, *infra* note 10, at 54–55. *See also A Joint Report of the SEC and the CFTC on Harmonization of Regulation* (Oct. 2009), *available at http://www.sec.gov/news/press/2009/cftcjointreport101609.pdf* at 8–9 and 67.

[4] *See, e.g.,* RAND Study.

[5] Advisers Act Section 202(a)(11) defines ''investment adviser'' to mean ''any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities.'' Advisers Act Section 202(a)(11)(C) excludes from the investment adviser definition any broker or dealer (i) whose performance of its investment advisory services is ''solely incidental'' to the conduct of its business as a broker or dealer; and (ii) who receives no ''special compensation'' for its advisory services. Broker-dealers providing investment advice in accordance with this exclusion are not subject to the fiduciary duty under the Advisers Act.

[6] *See Certain Broker-Dealers Deemed Not to be Investment Advisers,* Exchange Act Release No. 51523 at 3 and 37 (Apr. 12, 2005) (''Release 51523''). Many financial services firms may offer both investment advisory and broker-dealer services. According to data from the Investment Adviser Registration Depository as of November 1, 2012, approximately 5% of Commission-registered investment advisers reported that they also were registered as a broker-dealer, and 22% of Commission-registered investment advisers reported that they had a related person that was a broker-dealer. As of October 31, 2012, 755 firms registered with FINRA as a broker-dealer, or approximately 17.4% of broker-dealers registered with FINRA, were also registered as an investment adviser with either the Commission or a state. *See* Letter from Angela Goelzer, FINRA, to Lourdes Gonzalez, Assistant Chief Counsel, Securities and Exchange Commission (Nov. 16, 2012). Further, as of mid-November 2012, approximately 41% of FINRA-registered broker-dealers had an affiliate engaged in investment advisory activities. *Id.* Many of these financial services firms' personnel may also be dually registered as investment adviser representatives and registered representatives of broker-dealers. As of October 31, 2012, approximately 86% of investment adviser representatives were also registered representatives of a FINRA-registered broker-dealer. *Id.*

[7] A broker-dealer that receives special compensation for the provision of investment advice would not be excluded from the definition of investment adviser. *See supra* note 5.

[8] In Release 51523, we engaged in an analysis and discussion of the history of the Exchange Act and Advisers Act. We explained that the Advisers Act was intended to regulate what, at the time that Act was enacted, was a largely unregulated community of persons engaged in the business of providing investment advice for compensation. *See* Release 51523 at 22.

[9] Publci Law 111–203, 124 Stat. 1376. Section 913 of the Dodd-Frank Act, among other things, required a study of the effectiveness of the existing legal or regulatory standards of care that apply when broker-dealers and investment advisers (and persons associated with them) provide personalized investment advice and recommendations about securities to retail customers. It also required the identification of any legal or regulatory gaps, shortcomings, or overlaps in legal or regulatory standards in the protection of retail customers relating to the standards of care for providing personalized investment advice about securities to retail customers that should be addressed by rule or statute.

[10] Staff of the U.S. Securities and Exchange Commission, *Study on Investment Advisers and Broker-Dealers As Required by Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act* (Jan. 2011) (''Study''), *available at* www.sec.gov/news/studies/2011/913studyfinal.pdf. The views expressed in the Study were those of the staff and do not necessarily reflect the views of the Commission or the individual Commissioners. *See also* Statement by SEC Commissioners Kathleen L. Casey and Troy A. Paredes (Jan. 21, 2011) (''Statement'') (opposing the Study's findings and, among other things, stating that ''stronger analytical and empirical foundation than provided by the Study is required before regulatory steps are taken that would revamp how broker-dealers and investment advisers are regulated'').

[11] As discussed in more detail below, we have a variety of options relating to the staff's recommendations; we could take no action with regard to either, or could take action to implement one or both recommendations, either partially or wholly. The choice of whether and how to take an action with respect to the recommendations would consider the facts and circumstances of the marketplace at the time of the potential action, as well as the regulatory landscape existing at such

Continued

The staff explained that its recommendations were intended to address, among other things, retail customer confusion about the obligations broker-dealers and investment advisers owe to those customers, and to preserve retail customer choice without decreasing retail customers' access to existing products, services, service providers or compensation structures.[12] The staff stated in the Study that retail customers should not have to parse legal distinctions to determine whether the advice they receive from their financial professional is provided in their best interests, and stated that retail customers should receive the same or substantially similar protections when obtaining the same or substantially similar services from financial professionals.[13] The staff further noted that the Commission could consider harmonization as part of the implementation of the uniform fiduciary standard or as separate initiatives.[14]

In preparing the Study's discussion of the benefits and costs of aspects of the staff's recommendations, the staff, among other things, considered comment letters that we received in response to an earlier request, and reiterated this request when meeting with interested parties, in order to better inform the Study.[15] Few commenters, however, provided data regarding the benefits and costs of the current regulatory regime or the benefits and costs likely to be realized if we were to exercise the authority granted in Section 913. This may be because most comments were made in advance of the Study's publication and could not be informed by the staff's specific recommendations.[16] Of the relatively few comments received after publication of the Study, one commenter expressed support for further economic analysis of the Study's recommendations and other approaches for Commission rulemaking, and offered to provide data and other information relating to implementing a uniform fiduciary standard of conduct.[17]

The Study recommended that we engage in rulemaking using the authority provided to us in Section 913 of the Dodd-Frank Act. The section grants us discretionary rulemaking authority under the Exchange Act and Advisers Act to adopt rules establishing a uniform fiduciary standard of conduct for all broker-dealers and investment advisers when providing personalized investment advice about securities to retail customers.[18] That section further provides that such standard of conduct ''shall be to act in the best interest of the customer without regard to the financial or other interest of the broker, dealer, or investment adviser providing the advice'' and that the standard ''shall be no less stringent than the standard applicable to investment advisers under Sections 206(1) and 206(2) of the Advisers Act when providing personalized investment advice about securities.''

The Commission recognizes that Section 913 of the Dodd-Frank Act does not mandate that we undertake any such rulemaking, and the Commission has not yet determined whether to commence a rulemaking. We expect that the data and other information provided to us in connection with this request will assist us in determining whether to engage in rulemaking, and if so, what the nature of that rulemaking ought to be. Among other considerations, we are sensitive to the fact that changes in existing legal or regulatory standards could result in economic costs and benefits and believe that such costs and benefits must be considered in the economic analysis that would be part of any rulemaking under the discretionary authority provided by Section 913 of the Dodd-Frank Act. In considering the options for a potential standard of conduct applicable to broker-dealers and investment advisers providing personalized investment advice to retail customers, we will take into account existing regulatory obligations that apply today to broker-dealers and investment advisers.

If we determine to engage in rulemaking, furthermore, the rulemaking process would provide us the opportunity to request further data and other information on the range of complex considerations associated with any proposal implementing such a standard, including any potential costs and benefits associated with the rulemaking. The rulemaking process would also allow commenters to address the extent to which any proposal would further the goals highlighted by Section 913, including (1) preserving retail customer choice with respect to, among other things, the availability of accounts, products, services, and relationships with investment advisers and broker-dealers, and (2) not inadvertently eliminating or otherwise impeding retail customer access to such accounts, products, services and relationships (for example, through higher costs). We may also consider reassessing and potentially harmonizing certain of the other regulatory obligations that apply to broker-dealers and investment advisers where such harmonization is consistent with the mission of the Commission.

B. Overview of the Request for Additional Data and Other Information

We are requesting below additional public input to assist us in evaluating whether and how to address certain of the standards of conduct for, and regulatory obligations of, broker-dealers and investment advisers. Since publishing the Study, the staff has continued to review current information and available data about the current marketplace for personalized investment advice and the potential economic impact of the staff's recommendations to inform its consideration of any potential rulemaking with respect to the Study's recommendations. While we and our staff have extensive experience in the regulation of broker-dealers and investment advisers, the public can provide further data and other information to assist us in determining whether or not to use the authority

time (including, if applicable, any prior or contemporaneous actions which would impact the recommendations).

[12] Study at viii, x, 101, 109, and 166.

[13] Study at viii and 101.

[14] Study at 129.

[15] *Study Regarding Obligations of Brokers, Dealers, and Investment Advisers,* Exchange Act Release No. 62577 (July 27, 2010) (requesting comment from the public to inform the preparation of the Study). The Commission received over 3,500 comment letters before and after publication of the Study. The comment letters are available at www.sec.gov/comments/4–606/4–606.shtml.

[16] Before the Study was published, we received a comment describing results of a survey that had been conducted based on certain assumptions about a potential change in the standard of conduct, which differ from those set out in this request for information and data. The survey, for example, assumed that under a new standard of conduct, broker-dealer firms would no longer charge commissions and instead would only maintain fee-based accounts. *See* Oliver Wyman and Securities Industry and Financial Markets Association, *Standard of Care Harmonization Impact Assessment for SEC* (Oct. 27, 2010).

[17] Comment Letter from Ira D. Hammerman, Senior Managing Director and General Counsel, Securities Industry and Financial Markets Association (July 14, 2011) (''SIFMA Letter'') at 2. *But see,* Comment Letter from Barbara Roper, Director of Investor Protection, Consumer Federation of America, *et al.,* (Mar. 28, 2012) (''Roper Letter'') (asserting adoption of a uniform standard could be implemented in a way that does not lead to reduced investor choice or product access).

[18] *See* Section 15(k) of the Exchange Act and Section 211(g) of the Advisers Act, each as added by Section 913 of the Dodd-Frank Act. Section 913 of the Dodd-Frank Act also added Section 15(l) of the Exchange Act and Section 211(h) of the Advisers Act to add discretionary authority to promulgate rules prohibiting or restricting certain broker-dealer and investment adviser sales practices, conflicts of interests, and compensation schemes that the Commission deems contrary to the public interest and the protection of investors. *See* Exchange Act each as added by Section 913 of the Dodd-Frank Act.

provided under Section 913 of the Dodd-Frank Act.

Data and other information from market intermediaries and others about the potential economic impact of the staff's recommendations, including information about the potential impact on competition, capital formation, and efficiency, may particularly help inform any action we may or may not take in this area. We also especially welcome the input of retail customers.

We are specifically requesting quantitative and qualitative data and other information and economic analysis (herein ''data and other information'') about the benefits and costs of the current standards of conduct of broker-dealers and investment advisers when providing advice to retail customers, as well as alternative approaches to the standards of conduct, including a uniform fiduciary standard of conduct applicable to all investment advisers and broker-dealers when providing personalized investment advice to retail customers. We recognize that retail customers are unlikely to have significant empirical and quantitative information. We welcome any information they can provide.

In this release, we discuss a potential uniform fiduciary standard of conduct and alternatives to that standard of conduct. A uniform fiduciary standard of conduct can be understood quite differently by various parties. In fact, public comments on such a standard have made widely varying assumptions about what a fiduciary duty would require. Comments have assumed, for example, that a uniform fiduciary duty would require all firms to, among other things: provide the lowest cost alternative; stop offering proprietary products; charge only asset-based fees, and not commissions; and continuously monitor all accounts.[19] These outcomes would not necessarily be the case. By contrast, many of the rules or other obligations discussed over the years for potential regulatory harmonization, such as recordkeeping, advertising, pay to play, and other obligations that currently apply to broker-dealers and investment advisers, are more specific. Accordingly, we believe that consideration of a uniform fiduciary standard of conduct would benefit from a set of assumptions and other parameters that commenters can use and critique in order to generate meaningful data and other information. The identification of particular assumptions or parameters, however, does not suggest our policy view or the ultimate direction of any action proposed by us.

We also request comment in this release on whether or to what extent we should consider making other adjustments to the regulatory obligations of broker-dealers and investment advisers, including regulatory harmonization. While this release addresses both a potential uniform fiduciary standard of conduct and regulatory harmonization more generally, and at times, discusses and requests comment relating to the potential interrelationship of the two, harmonization beyond a uniform fiduciary standard of conduct could be considered separately. As noted below, there are a variety of options relating to whether and how to act with respect to a potential uniform fiduciary standard of conduct or potential regulatory harmonization, including taking no action, taking action to implement one (either partially or wholly) and not the other, or taking action to implement both (again, either partially or wholly). In order to inform our consideration of all of these options, this release discusses both a potential uniform fiduciary standard of conduct and regulatory harmonization and encourages comment on the potential practical, regulatory, and economic effects that action or inaction with respect to one or both may have. For example, we request comment on the extent to which regulatory harmonization might address customer confusion about the obligations owed to them by broker-dealers and not investment advisers (or by investment advisers and not broker-dealers) even if a uniform fiduciary standard of conduct is implemented. We also request comment on the extent to which regulatory harmonization might result in additional investor confusion or otherwise negatively impact investors.

We request data and other information relating to the provision of personalized investment advice about securities to retail customers to better understand the relationship between standards of conduct and the experiences of retail customers. In particular, we seek data and other information regarding: (a) Investor returns generated under the existing regulatory regimes; (b) security selections of broker-dealers and investment advisers as a function of their respective regulatory regimes; (c) characteristics of investors who invest on the basis of advice from broker-dealers, invest on the basis of advice from an investment adviser, or invest utilizing both channels; (d) investor perceptions of the costs and benefits under each regime; and (e) investors' ability, and the associated cost to investors, to bring claims against their broker-dealer or investment adviser under their respective regulatory regimes.[20] We are also particularly interested in the activities, conflicts of interest[21] and disclosure practices of investment advisers and broker-dealers, as well as the economics of the investment advice industry and characteristics of the current marketplace. We also are asking for data and other information about the benefits and costs of the current set of regulatory obligations that apply to broker-dealers and investment advisers, and the benefits and costs of different approaches to harmonizing particular areas of broker-dealer and investment adviser regulation.

C. Suggested Guidelines and Considerations for Submissions of Data and Other Information

The data and other information requested in this document have the potential to be instructive in our determination of which, if any, new approach or approaches to consider implementing with respect to the regulatory obligations of investment advisers and broker-dealers. We welcome any relevant data and other information, as well as comment, in response to our inquiries below. Responsive data and other information would be more useful to us, however, if they are prepared and submitted in a consistent fashion. We set forth suggested guidelines (''Guidelines'') in the Appendix to this request for commenters to follow, where possible, in submitting data and other information. In particular, through the Guidelines, we request broker-dealers, investment advisers, and dually registered investment adviser/broker-dealers submitting comments to provide specific data and other information describing their businesses, retail customers, and retail customer

[19] *See also* SIFMA Letter, *supra* note 17, at 7 and 10 (recommending, among other things, that the Commission articulate a new uniform standard of conduct, applicable to both broker-dealers and investment advisers, to ''act in the best interest of the customer,'' while applying existing case law, guidance, and other legal precedent developed under Section 206 of the Advisers Act only to investment advisers, not broker-dealers) *compared with* the Roper Letter at 2 (recommending, among other things, that rather than replacing the current Advisers Act standard with something new and different, the Commission should extend the existing Advisers Act standard (currently applicable to investment advisers) to broker-dealers, while clarifying its applicability in the context of broker-dealer conduct).

[20] *See* Statement.

[21] In this request for information and data, we use the term ''conflict of interest'' to mean a material conflict of interest.

accounts. We also request that other commenters (*e.g.,* retail customers, academics, trade associations, and consumer groups) provide the information requested in the Guidelines to the extent applicable or appropriate. We especially welcome the input of retail customers.[22]

We are particularly interested in receiving data and other information that are empirical and quantitative in nature. We encourage all interested parties, however, to submit their comments, including qualitative and descriptive analysis of the benefits and costs of potential approaches and guidance. As stated above, we recognize that retail customers are unlikely to have significant empirical and quantitative information. We welcome any information they can provide. In addition, if commenters prefer to respond to only some of the requests for comment, they are welcome to do so.

We describe throughout this request for data and other information a series of assumptions that commenters may use in order to facilitate our ability to compare, reproduce, and otherwise analyze responses to our questions in a robust fashion. The discussion of these assumptions does not suggest our policy view or the ultimate direction of any proposed action proposed by us. If commenters believe that we should make additional or different assumptions as a further analytical step we invite them to do so and explain clearly the additional or different assumptions made, address why such assumptions are appropriate, and compare and contrast results obtained under such assumptions with results obtained under the assumptions specified in this request. If commenters wish to submit multiple sets of comments resting on different sets of assumptions, they may do so. Although we seek to obtain responses that we can compare, reproduce, and otherwise analyze in a robust fashion, we also wish to emphasize that commenters have flexibility to provide whatever data and other information they believe is important to provide.

Examples of data and other information sought include empirical data, detailed datasets on a particular topic, economic analysis, legal analysis, statistical data such as survey and focus group results, and any other observational or descriptive data and other information. Such data and other information can be quantitative, qualitative, or descriptive. Again, commenters are invited to provide any other information that they believe would be useful to us as we consider our options in this area.

Commenters should only submit data and other information that they wish to make publicly available. Commenters concerned about making public proprietary or other highly sensitive data and other information may wish to pool their data with others (*e.g.,* through a trade association, law firm, consulting firm or other group) and submit aggregated data in response to this request. While we request that commenters provide enough data and other information to allow us to compare, replicate, and otherwise analyze findings, commenters should remove any personally identifiable information (*e.g.,* of their customers) before submitting data and other information in response to this request.[23]

II. Request for Data and Other Information Relating to the Current Market for Personalized Investment Advice

We are requesting data and other information about the specific costs and benefits associated with the current regulatory regimes for broker-dealers and investment advisers[24] as applied to particular activities as a baseline for comparison, as described below. Accordingly, and in addition to the request for data and other information which follows in Parts III and IV below, we request data and other information relating to the economics and characteristics of the current regulatory regime, and other data and other information relating to investment adviser and broker-dealer conflicts of interest and the cost and effectiveness of disclosure. Many of the requests ask commenters to provide data and other information describing retail customer demographics and accounts; broker-dealer or investment adviser services offered to retail customers; security selections by or for retail customers; and the claims of retail customers in dispute resolution. We request commenters refer to the Appendix for the specific characteristics of each of these topics that are important to include when submitting data and other information. We also request commenters refer to other guidelines in the Appendix, particularly the request to provide background information and documentation to support any economic analysis.

To assist us in our analysis, we request that commenters provide the following:

1. Data and other information, including surveys of retail customers, describing the characteristics of retail customers who invest through a broker-dealer as compared to those who invest on the basis of advice from an investment adviser as well as retail customer perceptions of the cost/benefit tradeoffs of each regulatory regime.[25] Provide information describing retail customer accounts at broker-dealers and investment advisers, and the manner in which broker-dealers and investment advisers provide investment advice (*e.g.,* frequency, coverage (*i.e.,* account-by-account or relationship), and solicited or unsolicited). How do firms that offer both brokerage and advisory accounts advise retail customers about which type of account they should open? What are the main characteristics of each type of account? If possible, associate retail customer demographic information with account descriptions.

2. Data and other information describing the types and availability of services (including advice) broker-dealers or investment advisers offer to retail customers, as well as any observed recent changes in the types of services offered. Provide information as to why services offered may differ or have changed. Have differences in the standards of conduct under the two regulatory regimes contributed to differences in services offered or any observed changes in services offered? If possible, differentiate by retail customer demographic information.

3. Data and other information describing the extent to which different rules apply to similar activities of broker-dealers and investment advisers, and whether this difference is beneficial, harmful or neutral from the perspectives of retail customers and firms. Also, provide data and other information describing the facts and circumstances under which broker-dealers have fiduciary obligations to retail customers under applicable law, and how frequently such fiduciary

[22] This includes, where possible, information and data focusing on accounts that receive non-discretionary advice because they are most likely to be impacted by changes in the standard of conduct. *See* Guidelines in the Appendix.

[23] *Cf.* 17 CFR 248.3(u)(1) (defining for purposes of Regulation S–P, ''personally identifiable financial information'' as ''any information: (i) A consumer provides to you to obtain a financial product or service from you; (ii) About a consumer resulting from any transaction involving a financial product or service between you and a consumer; or (iii) You otherwise obtain about a consumer in connection with providing a financial product or service to that consumer.'').

[24] Please see our staff's discussion in the Study about the existing regulatory structures for investment advisers and broker-dealers, and the general differences and similarities between the regulatory regimes. *See* Study at 14–46 (discussing investment adviser obligations) and 46–83 (discussing broker-dealer obligations).

[25] *See* Statement.

obligations arise. If possible, differentiate by retail customer demographic information.

4. Data and other information describing the types of securities broker-dealers or investment advisers offer or recommend to retail customers. To the extent commenters believe that differences in the standards of conduct under the two regulatory regimes contribute to differences in the types of securities offered or recommended, provide data and other information as to why the types of securities offered or recommended may differ. If possible, differentiate by retail customer demographic information.

5. Data and other information describing the cost to broker-dealers and investment advisers of providing personalized investment advice about securities to retail customers, as well as the cost to retail customers themselves of receiving personalized investment advice about securities. Describe costs in terms of dollars paid and/or time spent. Do differences in the standards of conduct under the two regulatory regimes contribute to differences in the cost of providing or receiving services? If possible, separate costs by service type, and differentiate by retail customer demographic and account information.

6. Data and other information describing and comparing the security selections of retail customers who are served by financial professionals subject to the two existing regulatory regimes.[26] If possible, associate retail customer demographic and account information with security selections, and identify whether initial retail customer ownership took place prior to opening the account and whether security selections were solicited or unsolicited.

7. Data and other information describing the extent to which broker-dealers and investment advisers engage in principal trading with retail customers, including data and other information regarding the types of securities bought and sold on a principal basis, the volume, and other relevant data points. For each type of security, compare volume and percentage of trades made on a principal basis against the volume and percentage of trades made on a riskless principal basis. Also, provide data and other information on the benefits and costs to broker-dealers and investment advisers of trading securities on a principal basis with retail customers, as well as the benefits and costs to retail customers to buying securities from or selling securities to a broker-dealer or an investment adviser acting in a principal capacity. To the extent possible, describe costs and benefits in terms of dollars paid and/or time spent (*e.g.,* any difference in price for a customer between a principal trade and a trade executed on an agency basis). Do differences in the two regulatory regimes contribute to any differences in the cost of trading securities on a principal basis? If possible, differentiate by retail customer demographic and account information.

8. Data and other information describing and analyzing retail customer returns (net and gross of fees, commissions, or other charges paid to a broker-dealer or investment adviser) generated under the two existing regulatory regimes.[27] If possible, provide security returns, associate retail customer demographic and account information with security positions, and identify whether the retail customer held these security positions prior to account opening and identify whether security selections were solicited or unsolicited. If security returns are not available, describe the type of securities held in the account and total account returns, including changes in account value and account inflows/outflows.

9. Data and other information related to the ability of retail customers to bring claims against their financial professional under each regulatory regime, with a particular focus on dollar costs to both firms and retail customers and the results when claims are brought.[28] We especially welcome the input of persons who have arbitrated, litigated, or mediated claims (as a retail customer, broker-dealer or investment adviser), their counsel, and any persons who presided over such actions. In particular, describe the differences between claims brought against broker-dealers and investment advisers with respect to each of the following:

a. The differences experienced by retail customers, in general, between bringing a claim against a broker-dealer as compared to bringing a claim against an investment adviser;

b. any legal or practical barriers to retail customers bringing claims against broker-dealers or investment advisers;

c. the disposition of claims;

d. the amount of awards, if any;

e. costs related to the claim forum, as it affects retail customers, firms, and associated persons of such firms;

f. time to resolution of claims;

g. the types of claims brought against broker-dealers (we welcome examples of mediation, arbitration and litigation claims);

h. the types of claims brought against investment advisers (we welcome examples of mediation, arbitration and litigation claims);

i. the nature of claims brought against broker-dealers as compared to the nature of claims brought against investment advisers (*e.g.,* breach of fiduciary duty, suitability, breach of contract, tort); and

j. the types of defenses raised by broker-dealers and investment advisers under each regime.

If possible, differentiate by retail customer demographic and account information.

10. Data and other information describing the nature and magnitude of broker-dealer or investment adviser conflicts of interest and the benefits and costs of these conflicts to retail customers. Also provide data and other information describing broker-dealer or investment adviser actions to eliminate, mitigate, or disclose conflicts of interest. Describe the nature and magnitude of broker-dealer or investment adviser conflicts of interest with the type and frequency of activities where conflicts are present, and describe the effect actions to mitigate conflicts of interest have on firm business and on the provision of personalized investment advice to retail customers.

11. Data and other information describing broker-dealer or investment adviser costs from providing mandatory disclosure to retail customers about products and securities. Describe costs in terms of dollars and, where cost estimates are not available, estimate time spent. If possible, differentiate by the form of disclosure (oral or written) and the amount of information the disclosure presents. Also, if possible, separate disclosure costs by associated activity.

12. Data and other information describing the effectiveness of disclosure to inform and protect retail customers from broker-dealer or investment adviser conflicts of interest. Describe the effectiveness of disclosure in terms of retail customer comprehension, retail customer use of disclosure information when making investment decisions, and retail customer perception of the integrity of the information. Please provide specific examples. If possible, differentiate by the form of disclosure (oral or written), the amount of information the disclosure presents, and retail customer demographic and account information. Also, if possible, measure disclosure effectiveness by associated activity.

[26] *Id.*

[27] *Id.*

[28] *Id.*

13. Identification of differences in state law contributing to differences in the provision of personalized investment advice to retail customers. Provide data and other information describing differences across states with respect to retail customer brokerage or advisory account characteristics, broker-dealer or investment adviser services offered and the types of securities they offer or recommend, and the cost of providing services to retail customers. Do differences in state law contribute to differences in the recovery of claimants? Do differences in state law contribute to differences in the mitigation or elimination of conflicts of interest? Provide information describing why. If possible, associate retail customer demographic information with account descriptions.

14. Data and other information describing the extent to which retail customers are confused about the regulatory status of the person from whom they receive financial services (*i.e.,* whether the party is a broker-dealer or an investment adviser). Provide data and other information describing whether retail customers are confused about the standard of conduct the person providing them those services owes to them. Describe the types of services and/or situations that increase or decrease retail customers' confusion and provide information describing why. Describe the types of obligations about which retail customers are confused and provide information describing why.

Provide explanations describing why responses to particular questions are not possible. Are there operational or cost constraints that make the data and other information unavailable? If so, please explain what they are. Also provide data and other information on other factors important in describing the current market for personalized investment advice that may aid or guide us in future analysis.

III. Request for Data and Other Information Relating to a Uniform Fiduciary Standard of Conduct and Alternative Approaches

We discuss below potential alternative approaches to establishing a uniform fiduciary standard of conduct for broker-dealers and investment advisers and request data and other information with respect to those approaches and their potential implications for the marketplace.[29] To be clear, the discussion of these potential approaches—including the identification of particular assumptions or alternatives—does not suggest our policy view or the ultimate direction of any proposed action by us. Furthermore, the approaches presented here are non-exclusive. As discussed above, this description of potential approaches is instead intended to (1) assist commenters in providing more concrete empirical data and other information and more precise comment in response to this request and (2) assist us in more readily comparing, reproducing, and otherwise analyzing data and other information provided by commenters.

We recognize that commenters may be able to provide additional data and other information that may be helpful to us under assumptions and alternatives that are different from, or in addition to, those presented under the various approaches described below. We invite commenters to explain clearly the different or additional assumptions and alternatives they provide, address why such assumptions and alternatives are appropriate, and compare and contrast results obtained under such assumptions and alternatives with results obtained under the assumptions or alternatives specified in this request.

We intend to use the data and other information provided to inform us about the current market for personalized investment advice about securities and how different approaches to establishing a uniform fiduciary standard of conduct on broker-dealers and investment advisers may impact retail customers, investment advisers and broker-dealers.

A. Initial Clarification and Assumptions

As an initial matter, to provide clarity to commenters and establish a common baseline of assumptions, we indicate that commenters should make the assumptions set forth below in considering our subsequent description of a possible uniform fiduciary standard of conduct when a broker-dealer or investment adviser provides personalized investment advice to a retail customer. However, as described above in the introduction to this Part III, the identification of particular assumptions does not suggest our policy view or the ultimate direction of any proposed action by us. We invite comment based on other assumptions chosen by commenters, and we invite comparisons between analyses made under assumptions chosen by commenters and analyses made under the assumptions—particularly alternatives to Assumption 1 and Assumption 8 below—we have set forth below.

1. Assume that the term ''personalized investment advice about securities'' would include a ''recommendation,'' as interpreted under existing broker-dealer regulation,[30] and would include any other actions or communications that would be considered investment advice about securities under the Advisers Act (such as comparisons of securities or asset allocation strategies). It would not include ''impersonal investment advice'' as that term is used for purposes of the Advisers Act.[31] The term ''personalized investment advice'' would also not include general investor educational tools, provided those tools do not constitute a recommendation under current law.[32]

2. Assume that the term ''retail customer'' would have the same meaning as in Section 913 of the Dodd-Frank Act, which is ''a natural person, or the legal representative of such natural person, who (1) receives personalized investment advice about securities from a broker or dealer or investment adviser; and (2) uses such advice primarily for personal, family, or household purposes.''[33]

3. Assume that any action would apply to all SEC-registered broker-dealers and SEC-registered investment advisers. To the extent commenters are of the view that the duty should be limited to a particular subset of SEC-registered broker-dealers or SEC-registered investment advisers or expanded to include all broker-dealers or investment advisers, commenters should explain how and why it should be limited or expanded, and include any relevant data and other information to support such an application.

4. Assume that the uniform fiduciary standard of conduct would be designed to accommodate different business models and fee structures of firms, and would permit broker-dealers to continue to receive commissions; firms would not be required to charge an asset-based fee. As provided in Section 913, ''[t]he receipt of compensation based on commissions, fees or other standard

[29] In Part IV, we discuss certain possible approaches for harmonizing certain other aspects of the regulation of broker-dealers and investment advisers.

[30] *See* Study at 124–125 (staff's discussion of what constitutes a ''recommendation'' under the broker-dealer regulatory regime).

[31] We have defined ''impersonal investment advice'' for certain purposes under the Advisers Act to mean ''investment advisory services provided by means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts.'' 17 CFR 275.203A–3(a)(3)(ii). *See also* 17 CFR 275.206(3)–1; Study at 123 (staff's discussion of what constitutes ''impersonal investment advice'').

[32] *See* Study at 125 (staff's discussion of communications that generally would not constitute a ''recommendation'' under existing broker-dealer regulation).

[33] Sec. 913, Public Law 111–203, 124 Stat. 1376; 15 U.S.C. 80b–11(g)(2). *See also supra* note 1.

compensation for the sale of securities, for example, would not, in and of itself, be considered a violation'' of the uniform fiduciary standard of conduct.[34] Broker-dealers also would continue to be permitted to engaged in, and receive compensation from, principal trades. To satisfy the uniform fiduciary standard of conduct, however, assume that at a minimum a broker-dealer or investment adviser would need to disclose material conflicts of interest, if any, presented by its compensation structure.[35]

5. Assume that the uniform fiduciary standard of conduct would not generally require a broker-dealer or investment adviser to either (i) have a continuing duty of care or loyalty to a retail customer after providing him or her personalized investment advice about securities, [36] or (ii) provide services to a retail customer beyond those agreed to between the retail customer and the broker-dealer or investment adviser. Assume that the question of whether a broker-dealer or investment adviser might have a continuing duty, as well as the nature and scope of such duty, would depend on the contractual or other arrangement or understanding between the retail customer and the broker-dealer or investment adviser, including the totality of the circumstances of the relationship and course of dealing between the customer and the firm, including but not limited to contractual provisions, disclosure and marketing documents, and reasonable customer expectations arising from the firm's course of conduct.[37] Similarly, the uniform fiduciary standard of conduct would apply within the context of the scope of services agreed to between the customer and the broker-dealer or investment adviser, and would not generally require the broker-dealer or investment adviser to provide services beyond those agreed to through a contractual or other arrangement or understanding with the retail customer.

6. As discussed below, assume that the offering or recommending of only proprietary or a limited range of products would not, in and of itself, be considered a violation of the uniform fiduciary standard of conduct.[38]

7. Assume that Section 206(3) and Section 206(4) of the Advisers Act and the rules thereunder would continue to apply to investment advisers, and would not apply to broker-dealers.[39] Assume that to satisfy its obligations under the uniform fiduciary standard of conduct, however, a broker-dealer would need to disclose any material conflicts of interest associated with its principal trading practices.

8. Assume that existing applicable law and guidance governing broker-dealers, including SRO rules and guidance, would continue to apply to broker-dealers.

B. Discussion of a Possible Uniform Fiduciary Standard

Pursuant to Section 913 of the Dodd-Frank Act, ''[t]he Commission may promulgate rules to provide that the standard of conduct for all brokers, dealers, and investment advisers, when providing personalized investment advice about securities to retail customers * * * shall be to act in the best interest of the customer without regard to the financial or other interest of the broker, dealer, or investment adviser providing the advice.'' [40] We have not yet determined whether to exercise this authority. Section 913 also provides that any standard of conduct we adopt shall be no less stringent than the standard applicable to investment advisers under Sections 206(1) and 206(2) of the Advisers Act.[41] The Supreme Court has construed Advisers Act Sections 206(1) and 206(2) as requiring an investment adviser to fully disclose to its clients all material information that is intended ''to eliminate, or at least expose, all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested.'' [42]

The Study recommended that we should engage in rulemaking to implement the uniform fiduciary standard described in Section 913 of the Dodd-Frank Act. The staff recommended that, in implementing the uniform fiduciary standard, we should address both components of the uniform fiduciary standard: a duty of loyalty and a duty of care. The staff also supported extending the existing guidance and precedent under the Advisers Act regarding fiduciary duty, which has developed primarily through Commission and staff interpretive pronouncements under the antifraud provisions of the Advisers Act, as well as through case law and numerous enforcement actions, to broker-dealers, where similar facts and circumstances would make the guidance and precedent relevant and justify a similar outcome.[43]

[34] *See* 15 U.S.C. 78o(k)(1); 15 U.S.C. 80b–11(g)(1).

We also note that nothing in Section 206(1) and 206(2) of the Advisers Act prohibits the receipt of transaction-based compensation, such as commissions. A person engaged in the business of effecting transactions in securities for the account of others, would however, absent an available exemption, be required to register as a broker-dealer. *See* Exchange Act Sections 3(a)(4) and 15(a); 15 U.S.C. 78c(a)(4) and 78o(a). *See also SEC* v. *Hansen,* [1984 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 91,426 (S.D.N.Y. 1984) (stating that receiving transaction-based compensation is among the activities that indicate a person may be acting as a broker); *Mutual Fund Distribution Fees; Confirmations,* Exchange Act Release No. 62544 (July 21, 2010) (proposing rules governing ongoing mutual fund asset-based sales charges), n. 168 (''As a form of deferred sales load, all payments of ongoing sales charges to intermediaries would constitute transaction-based compensation. Intermediaries receiving those payments thus would need to register as broker-dealers under Section 15 of the Exchange Act unless they can avail themselves of an exception or exemption from registration. Marketing and service fees paid to an intermediary may similarly require the intermediary to register under the Exchange Act.'').

[35] *See* discussion *infra* Part III.B.1.

[36] *See* 15 U.S.C. 78o(k)(1) (''Nothing in this section [authorizing a uniform standard of conduct for the provision of personalized investment advice] shall require a broker or dealer or registered representative to have a continuing duty of care or loyalty to the customer after providing personalized investment advice about securities.'').

[37] We understand that market participants generally have taken the view that the extent to which a continuing duty of loyalty or care exists under the Advisers Act depends on the scope of the relationship with the customer. They believe, for example, that investment advisers who act as financial planners generally would not have a continuing duty to a customer after providing the financial plan.

[38] *See* 15 U.S.C. 78o(k)(2) (''The sale of only proprietary or other limited range of products by a broker or dealer shall not, in and of itself, be considered a violation of the [uniform standard of conduct for the provision of personalized investment advice.]'').

[39] Section 206(4) of the Advisers Act makes it unlawful for an investment adviser to ''engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative'' and authorizes the Commission ''by rules and regulations [to] define, and prescribe means reasonably designed to prevent, such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative.'' *See also infra* the discussion of principal trading and the inapplicability of Section 206(3) of the Advisers Act in Part III.B.1.

We have authority to adopt rules for broker-dealers that are substantially similar to those adopted under Sections 206(3) and 206(4) of the Advisers Act. For purposes of our request for information and data about a uniform fiduciary standard of conduct, we request that commenters assume that such rules will not be incorporated into such a standard of conduct. However, commenters may wish to express their views on whether the Commission should engage in rulemaking to impose such rules on broker-dealers as part of harmonization of the regulatory obligations of broker-dealers and investment advisers. *See* discussion *infra* Part IV.

[40] 15 U.S.C. 80b–11(g)(1); 15 U.S.C. 78o(k)(1).

[41] *Id.*

[42] *SEC* v. *Capital Gains Research Bureau, Inc.,* 375 U.S. 180, 194 (1963).

[43] As discussed in more detail below, the Commission acknowledges that existing guidance and precedent under the Advisers Act regarding fiduciary duty turn on the specific facts and circumstances, including the types of services provided and disclosures made. Accordingly, the existing guidance and precedent may not directly apply to broker-dealers depending on the facts and circumstances.

We request data and other information on the benefits and costs of implementing the uniform fiduciary standard (as described below), entailing two key elements: a duty of loyalty and a duty of care. Our description below of a potential uniform fiduciary standard is only one example of how we could implement a uniform fiduciary standard designed to require broker-dealers and investment advisers to provide advice that is in the best interest of the customer. The discussion of the uniform fiduciary standard described below and the potential alternative approaches does not suggest our policy view or the ultimate direction of any proposed action by us. To obtain the most comparable and useful data and other information on a uniform fiduciary standard, however, we ask commenters to consider the uniform fiduciary standard as described below. We also discuss certain potential alternative approaches in the discussion below and request comment on those alternatives.

We recognize, among other things, that the list of potential options discussed below—including the uniform fiduciary standard of conduct, potential alternative approaches to the uniform fiduciary standard of conduct, and taking no action at this time—is not exhaustive, and that commenters may formulate additional alternative approaches. To the extent commenters are of the view that we should consider additional alternative approaches, we request they explain those approaches, address their reasons for recommending such approaches, and compare such approaches to the ones specified in detail below.

1. Uniform Fiduciary Standard of Conduct—the Duty of Loyalty

The duty of loyalty is a critical component of a fiduciary duty. As noted above, Dodd-Frank Section 913(g) addresses the duty of loyalty by providing: ''[i]n accordance with such rules [that the Commission may promulgate with respect to the uniform fiduciary standard] * * * any material conflicts of interest shall be disclosed and may be consented to by the customer.'' [44] The uniform fiduciary standard would be designed to promote advice that is in the best interest of a retail customer by, at a minimum, requiring an investment adviser or a broker-dealer providing personalized investment advice to the customer to fulfill its duty of loyalty. This would be accomplished by eliminating its material conflicts of interest, or providing full and fair disclosure to retail customers about those conflict of interest.[45] Commenters should assume that we would provide specific detail or guidance, summarized below, about complying with the duty of loyalty component of the uniform fiduciary duty. As described above in the introduction to this Part III, the identification of particular assumptions does not suggest our policy view or the ultimate direction of any proposed action by us. We invite comment on other assumptions and comparisons between analyses made under such other assumptions and analyses made under the assumptions set forth below.

1. *Assume that any rule under consideration would expressly impose certain disclosure requirements.* Assume that each broker-dealer and investment adviser that provides personalized investment advice about securities to a retail customer would be required to provide the following to that retail customer:

a. Disclosure of all material conflicts of interest the broker-dealer or investment adviser has with that retail customer. This requirement would reflect an overarching, general obligation to disclose all such conflicts of interest. Depending on the nature of the conflict and unless otherwise provided, this disclosure largely could be made through the general relationship guide described below.

b. Disclosure in the form of a general relationship guide similar to Form ADV Part 2A, to be delivered at the time of entry into a retail customer relationship.[46] The relationship guide would contain a description of, among other things, the firm's services, fees, and the scope of its services with the retail customer, including: (i) Whether advice and related duties are limited in time or are ongoing, or are otherwise limited in scope (*e.g.,* limited to certain accounts or transactions); (ii) whether the broker-dealer or investment adviser only offers or recommends proprietary or other limited ranges of products; (iii) whether, and if so the circumstances in which, the broker-dealer or investment adviser will seek to engage in principal trades with a retail customer. It also could include disclosure of other material conflicts of interest, such as conflicts of interest presented by compensation structures.[47]

c. Oral or written disclosure at the time personalized investment advice is provided of any new material conflicts of interest or any material change of an existing conflict.

2. *Assume that any rule under consideration would treat conflicts of interest arising from principal trades the same as other conflicts of interest.* Assume that such a rule would make clear that it would not incorporate the transaction-by-transaction disclosure and consent requirements of Section 206(3) of the Advisers Act for principal trading.[48] At a minimum, as with other conflicts of interest, the broker-dealer would be required to disclose material conflicts of interest arising from principal trades with retail customers.[49]

[44] 15 U.S.C. 80b–11(g)(1); 15 U.S.C. 78o(k)(1).

[45] The staff made a number of recommendations in the Study for the Commission to consider in implementing a duty of loyalty. First, the Study recommended that we should facilitate the provision of uniform, simple and clear disclosures to retail customers about the terms of their relationships with broker-dealers and investment advisers, including any material conflicts of interests. The Study identified a number of potential disclosures that the Commission should consider (*e.g.,* a general relationship guide akin to the new Part 2A of Form ADV, the form investment advisers use to register with the Commission and states, which is provided to advisory clients). *See* Study at 114–117. Second, the Study recommended that we should consider whether rulemaking would be appropriate to prohibit certain conflicts, to require firms to mitigate conflicts through specific action, or to impose specific disclosure and consent requirements. *Id.* Third, the Study recommended that we should address through guidance and/or rulemaking how broker-dealers should fulfill the uniform fiduciary standard when engaging in principal trading. *Id.* at 118–120.

[46] We note that FINRA has requested comment on a concept proposal to require the provision of a disclosure statement for retail customers at or before commencing a business relationship that would include many items of information analogous to what is required in Form ADV Part 2. FINRA Regulatory Notice 10–54, ''Disclosure of Services, Conflicts and Duties'' (Oct. 2010). Nothing in this request for information and data suggests that FINRA or any other regulatory body could or could not, or should or should not adopt rules or requirements that it determines are appropriate and that meet applicable legal standards.

[47] A general relationship guide could also include other disclosures, such as a firm's disciplinary history.

[48] Assume that the rule would not relieve an investment adviser from its obligations under Advisers Act Section 206(3). We note that we have the authority to apply similar requirements to broker-dealers. Also assume that the rule would not relieve an investment adviser who is also registered as a broker-dealer from its obligations to comply with Advisers Act Section 206(3) or the rules thereunder. *See* 17 CFR 275.206(3)–3T.

As stated above, we request that, for purposes of our request for information and data about a uniform fiduciary standard of conduct, commenters assume that we will not incorporate these obligations into the uniform fiduciary standard of conduct. However, commenters may wish to express their views, on whether the Commission should engage in rulemaking to impose such rules on broker-dealers as part of harmonization of the regulatory obligations of broker-dealers and investment advisers. *See* discussion *infra* Part IV.

[49] SRO rules currently impose requirements on broker-dealers when broker-dealers engage in principal trading. *See, e.g.,* NASD Rule 2440 (Fair Prices and Commissions); IM–2440–1 (Mark-Up Policy); IM–2440–2 (Mark-Up Policy for Debt Securities); NASD Rule 2310 (Suitability) (effective until July 9, 2012, when replaced by FINRA Rule 2111); NASD Rule 3010 (Supervision); NASD Rule 3012 (Supervisory Control System). As noted above,

3. *Assume that the rule would prohibit certain sales contests.* The rule would prohibit the receipt or payment of non-cash compensation (*e.g.,* trips and prizes) in connection with the provision of personalized investment advice about the purchase of securities.

2. Uniform Fiduciary Standard of Conduct—the Duty of Care

The duty of care is another critical component of the uniform fiduciary standard. We would specify, through the duty of care, certain minimum professional obligations of broker-dealers and investment advisers,[50] which would be designed to promote advice that is in the best interests of the retail customer. Commenters should assume, for purposes of this request for data and other information, that we would implement the duty of care by imposing on a broker-dealer or investment adviser, when providing personalized advice to a retail customer about securities, the uniform obligations described below. As described above in the introduction to this Part III, the identification of particular assumptions does not suggest our policy view or the ultimate direction of any proposed action by us. We invite comment based on other assumptions chosen by commenters, and we invite comparisons between analyses made under assumptions chosen by commenters and analyses made under the assumptions we have set forth below.

1. *Suitability obligations:* A duty to have a reasonable basis to believe that its securities and investment strategy recommendations are suitable for at least some customer(s) as well as for the specific retail customer to whom it makes the recommendation in light of the retail customer's financial needs, objectives and circumstances; [51]

2. *Product-specific requirements:* Specific disclosure, due diligence, or suitability requirements for certain securities products recommended (such as penny stocks, options, debt securities and bond funds, municipal securities, mutual fund share classes, interests in hedge funds and structured products);[52]

3. *Duty of best execution:* A duty on a broker-dealer and an investment adviser (where the investment adviser has the responsibility to select broker-dealers to execute client trades) to seek to execute customer trades on the most favorable terms reasonably available under the circumstances; [53] and

4. *Fair and reasonable compensation:* A requirement that broker-dealers and investment advisers receive compensation for services that is fair and reasonable, taking into consideration all relevant circumstances.[54]

3. Uniform Fiduciary Standard of Conduct—Application of Prior Guidance and Precedent Regarding Investment Adviser Fiduciary Duty

In the interests of increasing investor protection and reducing investor confusion, the staff recommended in the Study that the uniform fiduciary standard be no less stringent than the existing fiduciary standard for investment advisers under Advisers Act Sections 206(1) and 206(2).[55] Accordingly, the staff recommended that existing guidance and precedent under the Advisers Act regarding fiduciary duty should continue to apply to investment advisers and be extended to broker-dealers, as applicable, under a uniform fiduciary standard of conduct.

Application of this guidance and precedent turns on the specific facts and circumstances, including the types of services provided and disclosures made. We understand, accordingly, that existing guidance and precedent may not directly apply to broker-dealers depending on the facts and circumstances. Therefore, to aid commenters, we have identified below certain fiduciary principles that commenters should assume would continue to apply to investment advisers and be extended to broker-dealers. We also request commenters to identify specific citations to any case law and enforcement actions and other guidance under the Advisers Act regarding the fiduciary duty that they believe should or should not apply to broker-dealers when providing personalized investment advice about securities to retail customers.

For purposes of this request for data and other information, commenters should make the assumptions below regarding the application of prior guidance and precedent under a uniform fiduciary standard of conduct. As described above in the introduction to this Part III, the identification of particular assumptions does not suggest our policy view or the ultimate direction of any proposed action by us. We invite comment based on other assumptions chosen by commenters, and we invite comparisons between analyses made under assumptions chosen by commenters and analyses made under the assumptions we have set forth below.

1. *Allocation of investment opportunities:* A fiduciary's duty of loyalty generally would require a firm to disclose to a retail customer how it would allocate investment opportunities among its customers,[56] and between customers and the firm's own account; [57] for example, this disclosure could include, among other things, the firm's method of allocating shares of initial public offerings, as well as its method (*e.g., pro rata,* ''first in, first out'') of allocating out of its principal account to its customers when agency orders are placed on a riskless principal basis.

2. *Aggregation of orders:* A firm may aggregate or ''bunch'' orders on behalf of two or more of its retail customers, so long as the firm does not favor one

these requirements would continue to apply to a broker-dealer under a uniform fiduciary standard of conduct.

[50] The staff stated in the Study that the Commission could articulate and harmonize such professional standards by referring to, and expanding upon, as appropriate, the explicit minimum standards of conduct relating to the duty of care currently applicable to broker-dealers (*e.g.,* suitability (including product-specific suitability), best execution, and fair pricing and compensation requirements) under applicable rules. *See* Study at 50–53.

[51] *See* Study at 27–28 and 61–64 (discussing investment adviser and broker-dealer suitability obligations, respectively).

[52] *See id.* at 65–66 (discussing relevant rules imposing specific disclosure, diligence and suitability requirements for certain securities products).

[53] *See id.* at 28–29 and 69–70 (describing investment adviser and broker-dealer duties of best execution).

[54] *See id.* at 66–69 (describing broker-dealer obligations to charge fair prices, commissions, and other charges and fees).

[55] As explained above, guidance and precedent under Sections 206(3) and 206(4) of the Advisers Act, and the rules adopted under those sections, would not be part of the uniform fiduciary standard of conduct.

[56] The Commission has brought numerous enforcement actions alleging that investment advisers unfairly allocated client trades to preferred clients without making adequate disclosure. *See, e.g., Alpine Woods Capital Investors, LLC* and *Samuel A. Lieber,* Admin. Proc. File No. 3–14233 (Feb. 7, 2011) (finding the investment adviser violated Advisers Act Section 206(2) when it disproportionately allocated shares from an initial public offering to the advantage of the firm's two smallest mutual funds); *Nevis Capital Mgmt., LLC,* Investment Advisers Act Release No. 2214 (Feb. 9, 2004) (settled order); *The Dreyfus Corp., et al.,* Investment Advisers Act Release No. 1870 (May 10, 2000) (settled order); *Account Mgmt. Corp.,* Investment Advisers Act Release No. 1529 (Sept. 29, 1995) (settled order).

[57] The Commission has brought numerous enforcement actions alleging that investment advisers unfairly allocated trades to their own accounts and allocated less favorable or unprofitable trades to their clients' accounts. *See, e.g., Nicholas-Applegate Capital Mgmt.,* Investment Advisers Act Release No. 1741 (Aug. 12, 1998) (settled order); *Timothy J. Lyons,* Investment Advisers Act Release No. 1882 (June 20, 2000) (settled order); *SEC* v. *Lyons,* 57 SE.C. 99 (2003); *SEC* v. *Alan Brian Bond, et al.,* Litigation Release No. 18923 (Civil Action No. 99–12092 (S.D.N.Y.) (Oct. 7, 2004).

customer over another.[58] A firm would need to disclose whether and under what conditions it aggregates orders;[59] if the firm does not aggregate orders when it has the opportunity to do so, the firm would need to explain its practice and describe the costs to customers of not aggregating.[60]

C. Alternative Approaches to the Uniform Fiduciary Standard of Conduct

We identify below alternative approaches to the uniform fiduciary standard discussed above. In considering the alternatives, it would be helpful to obtain information about whether and, if so, how each alternative meets the goals of enhancing retail customer protections and decreasing retail customers' confusion about the standard of conduct owed to them when their financial professional provides them personalized investment advice. It would also be helpful to obtain information about the relative costs and benefits of these alternatives, including the extent to which one alternative may provide (1) greater benefits for the same or lower cost than other alternatives or (2) lower benefits for the same or higher cost than other alternatives. The identification of particular alternatives does not suggest our policy view or the ultimate direction of any proposed action by us.

Keeping in mind these goals, we request comment on the following alternative approaches, including the costs and benefits of each approach, as well as other approaches. We could:

1. Apply a uniform requirement for broker-dealers and investment advisers to provide disclosure about (a) key facets of the services they offer and the types of products or services they offer or have available to recommend; and (b) material conflicts they may have with retail customers, without imposing a uniform fiduciary standard of conduct.

2. Apply the uniform fiduciary standard of conduct discussed above on broker-dealers and investment advisers, but without extending to broker-dealers the existing guidance and precedent under the Advisers Act regarding fiduciary duty.[61] The existing guidance and precedent under the Advisers Act regarding fiduciary duty would continue to apply to investment advisers.

3. Without modifying the regulation of investment advisers, apply the uniform fiduciary standard discussed above, or parts thereof, to broker-dealers. This ''broker-dealer-only'' standard could involve establishing a ''best interest'' standard of conduct for broker-dealers, which would be no less stringent than that currently applied to investment advisers under Advisers Act Sections 206(1) and 206(2), when they provide personalized investment advice about securities to retail customers.

4. Without modifying the regulation of broker-dealers, specify certain minimum professional obligations under an investment adviser's duty of care (which are currently not specified by rule). As discussed above, any rules or guidance would take into account Advisers Act fiduciary principles, such as the duty to provide suitable investment advice (*e.g.,* with respect to specific recommendations and the client's portfolio as a whole) and to seek best execution where the adviser has the responsibility to select broker-dealers to execute client trades. These requirements could be similar to those rules currently applicable to broker-dealers, as described further in the Study.[62]

5. Consider following models set by regulators in other countries. For instance, the United Kingdom's Financial Services Authority (FSA) requires persons providing personalized investment advice to a retail client to act in the client's best interests, and has set limits on how investment advisers charge for their services, including prohibiting (a) the receipt of ongoing charges unless there are ongoing services, and (b) the receipt of commissions from those providing the investment advice.[63] Similarly, the Treasury of Australia imposed a best interest obligation on persons providing personal advice that would (a) require the provider of the advice to place a retail client's interests before its own,[64] and (b) prohibit the receipt of ''conflicted'' remuneration, such as commission payments relating to the provision of advice.[65] Further, the European Securities and Markets Authority (ESMA) published guidelines to clarify the application of certain aspects of its current Markets in Financial Instruments Directive (MiFID) suitability requirements (arising from both MiFID and the MiFID Implementing Directive).[66]

As described above in Part III.B, we invite comment on other potential alternative approaches not specified in this request for data and other information and comparisons between those alternative approaches and the potential uniform fiduciary standard of conduct and alternatives we describe above.

D. Preserving Current Standard of Conduct Obligations

Consistent with our discretionary authority under Section 913, we could also determine to take no further action at this time with respect to the standards of conduct applicable to broker-dealers and investment advisers; existing regulatory requirements would continue to apply. We request data and other information relating to the current market for personalized investment advice in Part II above. It generally would be helpful to obtain information about how taking no action would compare to a uniform fiduciary standard

[58] The staff takes the position that an investment adviser, when directing orders for the purchase or sale of securities, may aggregate or ''bunch'' those orders on behalf of two or more of its accounts, so long as the bunching is done for the purpose of achieving best execution, and no customer is disadvantaged or advantaged by the bundling. *See* SMC Capital, Inc., SEC No-Action Letter (Sept. 5, 1995).

[59] The staff understands that, consistent with applicable law, broker-dealers currently only aggregate orders in limited circumstances, such as when orders are received outside of normal trading hours and aggregated in anticipation of execution when the market re-opens, or when the broker-dealer has discretion over the trade. Similarly, the staff recognizes that aggregation of orders may not occur frequently with regard to non-discretionary advisory accounts.

[60] *See* Item 12 of Form ADV Part 2A.

[61] The Securities Industry and Financial Markets Association suggested this approach. *See* SIFMA Letter, *supra* note 17.

[62] For a more detailed description of such requirements, see the Study at 61–70.

[63] *See* Financial Services Authority Handbook, Conduct of Business Sourcebook (''COBS''), 2.1.1, *available at http://fsahandbook.info/FSA/html/handbook/COBS/2/1* (FSA's ''client best interest rule''). *See also* COBS, 9.2.1(1), (2); COBS, 9.2.2 (requiring that a firm's recommendations be suitable and reasonable based on the client's risk profile). Effective in 2012, the FSA will require firms to disclose to retail clients the type (either ''independent'' or ''restricted'') and breadth of advice being offered (*e.g.,* limited to certain products or a comprehensive, fair and unbiased analysis of the relevant market). *See* COBS, 6.2A.5R, 6.2A.6R, *available at http://fsahandbook.info/FSA/html/handbook/COBS.* The Adviser Charging rules, also going into effect in 2012, will prohibit receipt of any remuneration for advice that is not disclosed and agreed upon in advance of the recommendation. *See* COBS, 6.1A.

[64] *See* The Corporations Amendment (Further Future of Financial Advice Measures) Act 2012, (''Financial Advice Measures''), *available at http://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r4739_aspassed/toc_pdf/11270b01.pdf;fileType=application%2Fpdf. See also* Australian Securities & Investments Commission, *Regulatory Guide 175: Licensing: Financial Product Advisers—Conduct and Disclosure 15* (2011), *available at http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg175-010411.pdf/$file/rg175-010411.pdf* (discussing the implied warranty, under the Australian Securities and Investments Commission Act 2001, to render advice through ''due care and skill'').

[65] *See* Financial Advice Measures.

[66] *See* Guidelines on certain aspects of the MiFID suitability requirements, ESMA, 2012, 387 (July 6, 2012), *available at http://www.esma.europa.eu/system/files/2012-387.pdf.*

of conduct and the alternative approaches described above. In particular, it would be helpful to obtain information about the costs and benefits of the current regulatory regime as compared to the uniform fiduciary standard of conduct and the alternative approaches described above. Such comparisons would be particularly helpful as commenters consider providing data and other information in connection with the requests specified in Part III.E below.

E. Request for Data and Other Information Relating to Changes in the Marketplace for Personalized Investment Advice Resulting from the Uniform Fiduciary Standard of Conduct and Alternative Approaches

The Commission requests the following data and other information relating to changes in the marketplace for personalized investment advice for retail customers that might occur as a result of implementing the uniform fiduciary standard of conduct and the alternative approaches described above. As noted above, in providing this data and other information, the Commission believes it would be useful to also obtain information about the benefits and costs of continuing the current regulatory regime, as requested in Part II above, as a baseline for comparing the uniform fiduciary standard of conduct and the alternative approaches. Accordingly, to the extent applicable, the Commission requests commenters to provide such comparisons. As in Part II, many of the requests ask commenters to provide data and other information describing retail customer demographics and accounts; broker-dealer or investment adviser services offered; financial securities; and the claims of retail customers in dispute resolution. We request commenters to refer to the Appendix for the specific characteristics of each of these topics that are important to include when submitting data and other information. We also request commenters refer to other guidelines in the Appendix, particularly the request to provide background information and documentation to support any economic analysis.

1. Commenters have highlighted several activities of broker-dealers and investment advisers that are most likely to be impacted by a uniform fiduciary standard for the provision of personalized investment advice about securities to retail customers: [67]

- Recommending proprietary products and products of affiliates;
- Engaging in principal trades with respect to a recommended security (*e.g.,* fixed income products);
- Recommending a limited range of products and/or services;
- Recommending a security underwritten by the firm or a broker-dealer affiliate, including initial public offerings;
- Allocating investment opportunities among retail customers (*e.g.,* IPO allocation);
- Advising on a trading strategy involving concentrated positions;
- Receiving third-party compensation in connection with securities transactions or distributions (*e.g.,* sales loads, ongoing asset-based fees, or revenue sharing); and
- Providing ongoing, episodic or one-time advice.

a. Provide comment on this list of activities. Does this list capture the activities of broker-dealers and investment advisers that would be most impacted by a uniform fiduciary standard of conduct when providing personalized investment advice about securities to retail customers?

b. Provide data and other information describing the likely benefits and costs for firms and retail customers from firms engaging in these activities under the uniform fiduciary standard of conduct and each of the alternative approaches discussed above. In particular, describe the cost to broker-dealers and investment advisers in terms of dollars and time spent from providing these activities to retail customers under the uniform fiduciary standard and each of the alternative approaches. Also provide data and other information describing the benefits and costs to firms and retail customers likely to result from voluntary actions firms may take that are not necessarily mandated by the relevant standard. If possible, separate costs by service type, and differentiate by retail customer demographic and account information.

c. Provide data and other information related to the nature and magnitude of conflicts of interest when firms engage in these activities under the uniform fiduciary standard and each of the alternative approaches discussed above. How would the uniform fiduciary standard or each of the alternative approaches increase or decrease broker-dealer or investment adviser conflicts of interest?

2. Provide data and other information describing the types and availability of services (including advice) and securities that broker-dealers or investment advisers would offer or recommend to retail customers under the uniform fiduciary standard and each of the alternative approaches discussed above. Would the application of a particular approach discussed above require a firm, or give a firm an incentive, to modify or eliminate current business practices? What would be the impact or potential impact of each approach discussed above on retail customer cost and access to personalized investment advice and to security offerings? How could such impact or costs be mitigated? Provide data and other information describing why the business practices would be so modified or eliminated, and whether retail customer access would change. Indicate whether business practices are transaction-specific, account-specific, customer-specific, or firm-wide. If possible, separate costs by service type and differentiate by retail customer demographic and account information.

3. Provide data and other information describing the security selections of retail customers under the uniform fiduciary standard and each of the alternative approaches discussed above. If possible, associate retail customer demographic and account information with security selections.

4. Provide data and other information related to the ability of retail customers to bring claims against their financial professional under the uniform fiduciary standard and each of the alternative approaches discussed above, with a particular focus on alternative forums and dollar costs to both firms and retail customers and the results when claims are brought. Describe disposition of claims, costs related to claim forum, time to resolution, and awards if any. If possible, differentiate by retail customer demographic and account information.[68]

5. Provide information, data and comment on the extent to which the uniform fiduciary standard and each of the alternative approaches discussed above affect investor protection and confusion investors have about the standard of conduct applicable to their financial professionals when providing personalized investment advice about securities.[69]

6. Provide information, data and comment on the costs and benefits to investment advisers and broker-dealers associated with implementing the uniform fiduciary standard and each of

[67] The inclusion of activities in this list does not necessarily reflect the Commission's belief that these activities will be impacted by a uniform fiduciary standard, see the discussion of clarifications and assumptions in the introductions to Part III and Part III.A.

[68] *See supra* Item 9(a)–(j) in Part II of this request for information and data.

[69] *See supra* note 2.

the alternative approaches discussed above. Discuss any changes investment advisers and broker-dealers would need to make to, among others, their customer documentation, internal controls, and training programs, as well as other changes they would need to make, and why.

7. Provide data and other information describing to what extent firms would rely on disclosure to comply with the uniform fiduciary standard and each of the alternative approaches detailed above. How would retail customers be expected to react to changes in practice and changes in disclosure? How do retail customers choose between a firm with disclosed conflicts and a firm whose business model does not involve the same conflict(s)?

8. Provide data and other information on how other aspects of the market for personalized investment advice would change if we adopt any of the alternative approaches discussed above. In particular, provide data about how the alternatives described above would impact the costs to retail customers and any associated effect on access to products and services. As stated above, specific information about the potential economic impact of the staff's recommendations, including information about the potential impact on competition, capital formation and efficiency, may particularly help inform any action we may take in this area.

9. Provide data and other information describing the benefits and costs related to alternative approaches to the standards of conduct other than those specified in this request for data and other information. Additional approaches and standards of conduct for persons providing personalized investment advice include but are not limited to those standards established under the laws of other countries.

10. Provide explanations describing why responses to particular questions are not possible.

F. Request for Data and Other Information Relating to Account Conversions

In 2007, as a result of the court decision in *Financial Planning Association* v. *SEC*[70] (''*FPA*''), broker-dealers offering fee-based brokerage accounts (*i.e.,* brokerage accounts in which the broker-dealer charged a single asset-based fee, instead of commissions, for its services) became subject to the Advisers Act with respect to those accounts; as such, those client relationships, which had previously been primarily subject to Exchange Act and SRO rules, became subject to the Advisers Act and the fiduciary duty thereunder. Business practices since *FPA* present an example from which to draw comparative costs and benefits differences between retail brokerage and advisory accounts, as well as the cost and benefit and potential consequences of imposing a fiduciary standard on broker-dealers. In 2007, our staff had estimated that there were over one million fee-based brokerage accounts, representing approximately $300 billion, many of which were converted to advisory accounts[71] or otherwise were transitioned back to traditional commission-based brokerage accounts. Broker-dealers that converted fee-based brokerage accounts to advisory accounts (especially those that converted to non-discretionary advisory accounts) and retail customers whose accounts were converted as a result of *FPA* are in a position to provide comparative cost and benefit data for retail brokerage and advisory accounts (for the firm and/or the retail customer), and therefore to provide cost and benefit data on the imposition of a fiduciary standard generally.

In addition, we are aware that some firms have made the decision to convert their retail brokerage accounts to advisory accounts outside of the specific context of *FPA.* We understand such account conversions may have occurred for a variety of reasons, including a firm's decision to change its business model. We similarly believe that firms that have engaged in such account conversions and retail customers whose accounts were converted are in a position to provide comparative cost and benefit data for retail brokerage and advisory accounts (for the firm and/or the retail customer), and therefore to provide cost and benefit data on the imposition of a fiduciary standard generally.

We recognize that any such data and other information relating to the conversion of brokerage accounts to advisory accounts, and the imposition of a fiduciary standard will only be an approximation of the costs and benefits of the uniform fiduciary standard described above. Specifically, the uniform fiduciary standard described above does not incorporate the entirety of the Advisers Act, whereas any brokerage accounts converted to advisory accounts would be subject to the Advisers Act as a whole. Accordingly, to the extent possible, we request that any such data and other information exclude costs and benefits associated with complying with aspects of the Advisers Act not included within the uniform fiduciary standard (such as sections 206(3) and 206(4) and the rules thereunder) or, if commenters are unable to exclude such costs, we request that they indicate that the data and other information include costs of complying with such sections and rules. Similarly, with respect to broker-dealers that converted fee-based brokerage accounts to advisory accounts as a result of *FPA,* we request that the data provided exclude to the extent possible, or at a minimum identify that, such data include costs (*e.g.,* legal and consulting fees, other costs) related to the uncertainty regarding the treatment of such accounts immediately following *FPA.*

We generally request data and other information on costs and benefits from or relating to: (1) Broker-dealers that converted fee-based brokerage accounts to advisory accounts as a result of *FPA;* (2) firms that independently determined to convert retail brokerage accounts to advisory accounts outside of the context of *FPA;* and (3) retail customers whose accounts were converted under either of these scenarios.[72] We also request certain data and other information on costs and benefits from firms and retail customers who did not convert brokerage to advisory accounts as a result of the *FPA* decision. In addition to the specific requests below, when providing this data and other information, we request commenters' responses be made, where possible, in compliance with the guidelines set forth in the Appendix, and also request commenters provide background information and documentation to support any economic analysis. We request commenters separate, if possible, all data and other information (including associated retail customer demographic information on the accounts) based on whether the account conversions resulted from *FPA* or whether the account conversions were voluntary.

1. Provide data and other information describing whether account conversions were in response to *FPA,* or to an independent determination by firms or

[70] *Financial Planning Association* v. *SEC,* 482 F.3d 481 (DC Cir. 2007). The court vacated Rule 202(a)(11)–1 under the Advisers Act which excepted broker-dealers from being classified as investment advisers based solely on their receipt of asset-based fees and in effect, exempted broker-dealers that offered these fee-based accounts from regulation as investment advisers.

[71] *Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 2653 at 4 (Sept. 24, 2007).

[72] We reiterate that the uniform fiduciary standard of conduct would not prohibit the receipt of commissions, or require conversion of accounts from brokerage to advisory.

retail customers. If the latter, provide data and other information describing factors contributing to the conversion of brokerage accounts to advisory accounts. Also provide data and other information about administrative costs and customer notifications arising from the transition from brokerage accounts to advisory accounts.

2. Provide data and other information describing retail customer accounts transitioning from brokerage accounts to advisory accounts including the amount of assets and securities held. Also, provide data and other information describing factors contributing to retail customers' decisions to convert to advisory accounts, including perceived costs and benefits of brokerage accounts and advisory accounts. If possible, associate retail customer demographic information with account descriptions.

3. Provide data and other information describing the factors contributing to broker-dealers' decision not to offer fee-based accounts, which would be advisory accounts, in response to *FPA.* In addition, provide data and other information describing retail customer accounts that were not transitioned from a brokerage account to an advisory account in response to *FPA* when the firm provided the customer the opportunity to transition, including the amount of assets and securities held. Also, provide data and other information describing factors contributing to retail customers' decisions not to convert to advisory accounts, including perceived costs and benefits of brokerage accounts and advisory accounts. If possible, associate retail customer demographic information with account descriptions.

4. Provide data and other information describing the impact of the account conversion on the types of services and securities dual registrants offer to retail customers transitioning from brokerage accounts to advisory accounts. Did the application of the Advisers Act require a firm, or give a firm an incentive, to modify or eliminate then-current business practices? Provide data and other information describing why the business practices were so modified or eliminated. Indicate whether business practices are transaction-specific, account-specific, customer specific, or firm-wide, and differentiate by retail customer demographic and account information.

5. Provide data and other information describing changes, if any, in the benefits and costs of providing services to retail customers transitioning from brokerage accounts to advisory accounts. Did retail customers transitioning accounts experience a change in costs? If possible, separate costs by service type, and differentiate by retail customer demographic and account information.

6. Provide data and other information describing changes, if any, to the security selections of dual registrants and the types of securities held by retail customers transitioning from brokerage accounts to advisory accounts. Also provide quantitative data and other information describing changes, if any, to the security returns (net and gross of fees) of retail customers transitioning accounts. If security returns are not available, describe total account returns, including changes in account value and the amount of account inflows/outflows. If possible, identify whether initial security ownership took place before the account transition and whether account selections were solicited or unsolicited, and differentiate by retail customer demographic and account information.

7. Provide data and other information describing changes, if any, to the ability of retail customers that transitioned from brokerage to advisory accounts to bring claims against their financial professional with a particular focus on dollar costs to the retail customer and the results when claims are brought. We especially welcome the input of persons who have arbitrated, litigated, or mediated claims (as a retail customer, broker-dealer or investment adviser), their counsel, and any persons who presided over such actions. In particular, describe changes for claims brought against broker-dealers and investment advisers with respect to each of the following:

a. the experience of retail customers, in general, between bringing a claim against a broker-dealer as compared to bringing a claim against an investment adviser;

b. any legal or practical barriers to retail customers bringing claims against broker-dealers or investment advisers;

c. the disposition of claims;

d. the amount of awards;

e. costs related to the claim forum, as it affects retail customers, firms, and associated persons of such firms;

f. time to resolution of claims;

g. the types of claims brought against broker-dealers (we welcome examples of mediation, arbitration and litigation claims);

h. the types of claims brought against investment advisers (we welcome examples of mediation, arbitration and litigation claims);

i. the nature of claims brought against broker-dealers as compared to the nature of claims brought against investment advisers (*e.g.,* breach of fiduciary duty, suitability, breach of contract, tort); and

j. the types of defenses raised by broker-dealers and investment advisers under each regime.

If possible, differentiate by retail customer demographic and account information.

8. Provide data and other information describing changes, if any, to the experiences of retail customers that were transitioned from brokerage to advisory accounts. Among other things, did retail customer satisfaction with their account change? If possible, control for retail customer demographic and account information.

9. Provide other data and other information describing the benefits and costs, if any, of transitioning retail customer brokerage accounts to advisory accounts. If possible, differentiate by retail customer demographic and account information. Also, provide data and other information describing the benefits and costs to firms or retail customers from the regulations prior to account conversion. Lastly, provide explanations describing why responses to particular questions are not possible.

IV. Request for Data and Other Information Relating to Potential Areas for Further Regulatory Harmonization

We seek data and other information on the nature and extent to which we should consider harmonizing the regulatory obligations of broker-dealers and investment advisers other than their standard of conduct. As stated above, in the Study the staff recommended that the Commission consider harmonizing certain regulatory requirements of broker-dealers and investment advisers where such harmonization appears likely to add meaningful investor protection, taking into account the best elements of each regime. We request that commenters, in particular, provide such data and other information regarding harmonizing some or all such obligations in situations where a broker-dealer and an investment adviser perform the same or substantially similar function, such as the provision of personalized investment advice about securities to retail customers where harmonization is consistent with the mission of the Commission.[73] We also are mindful that we should consider changes to the standard of conduct of broker-dealers and investment advisers within the context of the overall set of regulatory obligations that apply to those firms and the potential costs and benefits that may be associated with such changes. The extent to which the

[73] *See* Study at 129–139.

standard of conduct changes, for example, could result in certain other regulatory requirements no longer being workable in practice, or becoming unnecessarily duplicative of current requirements in whole or in part. Similarly, if we were to adopt a uniform fiduciary standard of conduct for broker-dealers and investment advisers, we should consider whether regulatory obligations that apply today to only one registrant class or the other would meaningfully enhance investor protections if applied uniformly to both.

In the Study, the areas the staff suggested the Commission consider for harmonization included advertising and other communications, supervision, licensing and registration of firms, licensing and continuing education requirements for persons associated with firms, books and records, and the use of finders and solicitors. The staff stated that this listing was not intended to be a comprehensive or exclusive listing of potential areas of harmonization.

We seek data and other information on these areas of potential harmonization, including with respect to the advantages and disadvantages of engaging in such harmonization. As we explained in Part I.B above, many of the areas the staff identified for potential harmonization are more specific than a uniform fiduciary standard of conduct. Accordingly, we do not provide an extensive discussion of the various options available for considering regulatory harmonization, which could generally include:

- Applying certain broker-dealer obligations to investment advisers, or vice versa;
- Eliminating certain obligations that apply to broker-dealers but not investment advisers, or vice versa;
- Creating new obligations that would apply to both broker-dealers and investment advisers; or
- Taking no further action at this time with respect to regulatory harmonization.

As discussed above, we believe that a broad consideration of harmonization of regulatory obligations is important in helping us assess whether and to what extent we should consider making adjustments to the other regulatory obligations of broker-dealers and investment advisers. We invite commenters to provide us with their views on the benefits and costs for different approaches for potential harmonization. For example, we request comment on the extent to which regulatory harmonization might address customer confusion about the obligations owed to them by broker-dealers and not investment advisers (or by investment advisers and not broker-dealers) even if a uniform fiduciary standard of conduct is implemented. We also request comment on the extent to which regulatory harmonization might result in additional investor confusion or otherwise negatively impact investors.

A. Potential Areas for Harmonization

In the Study, the staff recommended that the Commission consider whether to pursue various options for harmonizing investment adviser and broker-dealer regulation. As a preliminary matter, and in order to continue to evaluate the potential impact of harmonization, we are requesting data and other information on the potential harmonization of the non-exhaustive areas set forth below. These specific areas of potential harmonization largely reflect the areas of harmonization recommended by the staff in the Study. The staff's recommendations generally focused on adopting the existing elements of each regulatory regime that the staff believed are most effective in protecting retail customers, and the discussion below largely reflects these recommendations. We request comment on which of these areas, if any, the Commission should consider for harmonization, what harmonization in such areas should entail in practice, and the benefits and costs associated with such harmonization, including the extent to which such harmonization would increase or reduce retail customer confusion about the regulatory obligations of broker-dealer and investment advisers. We may consider harmonization of other areas not addressed below. Accordingly, we request comment on which areas, if any, the Commission should consider for harmonization, and what such harmonization should entail.

The identification of these areas below and the description of how harmonization may be accomplished are not intended to suggest a policy view of the Commission or the ultimate direction of any proposed action by the Commission. Indeed, the description of each area of potential harmonization below is but one example of many ways in which the Commission may harmonize regulation, should the Commission determine such harmonization is appropriate. We are cognizant that the Commission may decide not to pursue harmonization, may pursue harmonization in different areas, or pursue a different approach to harmonization in the areas identified by the Study, and we seek comment on such areas and approaches, including the associated benefits and costs.

We also seek comment as to whether harmonization in each area identified below or by a commenter as appropriate for such action should involve changing the existing standards of one regime to accomplish harmonization, or whether an entirely different requirement should be adopted for both investment advisers and broker-dealers.

We request data and other information, including whether meaningful investor protection would be enhanced, on the following potential areas of harmonization where existing investment adviser and broker-dealer obligations differ: [74]

1. *Advertising and Other Communications:* Advertising and other firm communications can have a significant impact on retail customers, as they can persuade customers to enter into relationships or engage in transactions. As noted in the Study, both investment advisers and broker-dealers are subject to general prohibitions on misleading communications, but specific content restrictions differ. The Study concludes that a significant difference between investment adviser and broker-dealer regulation regarding advertisements and other communications is that, under certain circumstances, a registered principal of the broker-dealer must approve a communication before distributing it to the public, and certain communications must be filed for review with the applicable regulatory body.[75]

While the Advisers Act does not specifically prescribe that a communication must be approved before distribution to the public, the Commission has stated that an adviser's compliance policies and procedures, at a minimum, should address, among others, the accuracy of disclosures made to investors, clients, and regulators, including account statements and advertisements.[76] We request data and

[74] For more information about the potential harmonization areas, see Study at 129–139.

[75] For the staff's discussion regarding potential harmonization of requirements related to advertising and other communications, see Study at 130–132.

[76] *See Compliance Programs of Investment Advisers and Investment Companies,* Investment Advisers Act Release No. 2204 (Dec. 17, 2003) (adopting Advisers Act Rule 206(4)–7) (''Compliance Rule'') (stating that ''[w]e expect that an adviser's policies and procedures, at a minimum, should address the following issues to the extent that they are relevant to that adviser: [* * *] [t]he accuracy of disclosures made to investors, clients, and regulators, including account statements and advertisements; [* * * and] [m]arketing advisory services, including the use of solicitors * * *''). For

other information on the enhancement to meaningful investor protection as well as the benefits and costs of harmonizing requirements relating to:

a. Advertisements and other customer communications, generally.

b. Developing similar substantive advertising and customer communications rules and/or guidance for broker-dealers and investment advisers regarding the content of advertisements and other customer communications for similar services? Please identify any particular rules that could be applied to both broker-dealers and investment advisers, and any rules that would not be appropriate to apply to both. If a particular rule would not be appropriate for both, why not?

c. Establishing consistent internal pre-use review requirements for investment adviser and broker-dealer advertisements, such as by requiring investment advisers to designate employees to review and approve communications and advertisements?

d. Imposing consistent pre- and post-use filing requirements for similar investment adviser and broker-dealer advertisements?

2. *Use of Finders and Solicitors:* The term ''finder'' is generally understood (for purposes of broker-dealer regulation) to mean an intermediary who receives a fee for ''finding'' potential investors for issuers seeking to sell securities. Similarly, a ''solicitor' is an intermediary used by advisers to ''solicit'' clients and prospective clients for advisory services. Intermediaries who ''find'' investors can have a significant impact on retail customers, as they can persuade investors to enter into relationships or engage in transactions. The regulation of these intermediaries differs. One who receives transaction-based compensation in connection with the sale of securities, including a finder, must register as a broker-dealer unless an exemption from registration is available. By contrast, while solicitors may fall within the definition of ''investment adviser'' under the Advisers Act, the Commission has taken the position that a solicitor who engages in solicitation activities in accordance with Rule 206(4)–3(a)(2)(iii) is an associated person of an investment adviser and is not required to register with the Commission as an investment adviser solely as a result of those activities.[77] An investment adviser that uses a solicitor's services must treat the solicitor as an associated person to the extent the solicitor acts as such for the adviser, and the adviser has a responsibility to supervise the solicitation activities.[78] In addition, the Advisers Act regulation focuses on disclosure to clients of the solicitor's material conflicts of interest.[79] We request data and other information on the enhancement to meaningful investor protection as well as the benefits and costs of harmonizing requirements relating to:

a. Harmonizing the existing regulatory requirements applicable to finders and solicitors, generally.

b. Establishing similar disclosure requirements regarding any conflict associated with the solicitor's and finder's receipt of compensation for referring a retail customer to an investment adviser or broker-dealer?

3. *Supervision:* Effective supervisory systems and control procedures are important investor protection tools, as they can help firms identify and prevent abusive practices. As the Study notes, while both broker-dealers and investment advisers are required to supervise persons that act on their behalf, broker-dealers are subject to more specific supervisory requirements, including rules that expressly require broker-dealers to, among other things, establish a supervisory system, conduct periodic inspections of branch offices and supervise outside business activities and private securities transactions of associated persons.[80] As discussed above, investment advisers are also required to adopt compliance policies and procedures, which generally would include policies and procedures for the supervision of persons associated with an adviser.[81] Further, the Advisers Act code of ethics rules (Advisers Act Rule 204A–1) specifically requires, among other things, that an investment adviser pre-approve acquisitions of securities in any initial public offerings or in limited offerings by certain of its investment advisory personnel. Investment advisers are also required to disclose to clients certain material outside business activities of their supervised persons.[82] We request data and other information on the enhancement to meaningful investor protection as well as the benefits and costs of harmonizing requirements relating to:

a. Harmonizing supervisory requirements of investment advisers and broker-dealers, generally.

b. Establishing a single set of universally applicable requirements versus scaling requirements based on the size (*e.g.,* number of employees or a different metric) and nature of a broker-dealer or an investment adviser? Please identify any particular requirements that should apply to both broker-dealers and investment advisers, and any requirements that should not apply to both, and why or why not. If requirements were scaled, what would be appropriate metrics and thresholds?[83]

4. *Licensing and Registration of Firms:* Broker-dealers and investment advisers register with the Commission and/or states using forms that are similar but separate. In addition, broker-dealers must, prior to commencing business, satisfy FINRA's membership application process, which aims to fully evaluate relevant aspects of applicants and to identify potential weaknesses in their internal systems, thereby helping to ensure that successful applicants would be capable of conducting their business in compliance with applicable regulation. Investment advisers are not subject to this type of review by the Commission. As stated in the Study, substantive review of investment adviser applications could improve investor protection as it could help prevent firms that are unprepared to engage in the advisory business or to meet the obligations they will be assuming under the federal securities laws from entering the advisory business. We request data and other information on the enhancement to meaningful investor protection as well as the benefits and costs of harmonizing requirements relating to:

this purpose, the Advisers Act requires an adviser to designate a chief compliance officer (''CCO''). The Commission has stated in the Compliance Rule that the CCO should be knowledgeable about the Advisers Act and have the authority to develop and enforce appropriate compliance policies and procedures for the adviser.

[77] *Requirements Governing Payments of Cash Referral Fees by Investment Advisers,* Investment Advisers Act Release No. 688 (July 12, 1979).

[78] *Id.* An investment adviser's supervision obligations are discussed below.

[79] For the staff's discussion regarding potential harmonization of requirements related to the use of finders and solicitors, see Study at 132–133.

[80] Existing broker-dealer supervisory obligations generally require firms to, among other things, establish and maintain a supervisory system for their business activities and to supervise the activities of their registered representatives, principals and other associated persons for purposes of achieving compliance with applicable securities regulations, including the rules relating to principal trades. *See* NASD Rule 3010. Moreover, broker-dealers are required to ''establish procedures for the review and endorsement by a registered principal in writing * * * of all transactions * * * of its registered representatives with the public relating to the investment banking or securities business of such member.'' NASD Rule 3010(d)(1).

[81] *See supra* note 77.

[82] *See* Part 2A of Form ADV.

[83] For the staff's discussion regarding potential harmonization of requirements related to supervision, see Study at 135–136.

a. Harmonizing the licensing and registration requirements applicable to firms, generally.

b. Harmonizing the disclosure requirements in Form ADV and Form BD to the extent they address similar issues.

c. Imposing a substantive review of investment advisers prior to registration similar to, or distinct from, the review applicable to broker-dealers.[84]

5. *Continuing Education Requirements for Persons Associated with Broker-Dealers and Investment Advisers:* Associated persons of broker-dealers are required to fulfill continuing education requirements. No such requirement exists for investment adviser personnel at the federal level, who instead must disclose to clients their education and business background. As noted in the Study, continuing education can help to further a regulatory goal that investors are served by professionals that are knowledgeable in current industry trends, practices and regulations.[85] We request data and other information on the enhancement to meaningful investor protection as well as the benefits and costs of harmonizing requirements relating to:

a. Harmonizing the continuing education requirements applicable to the associated persons of investment advisers and broker-dealers, generally.

b. Requiring associated persons of investment advisers to be subject to federal qualification examinations and continuing education requirements?

6. *Books and Records:* Books and records are important for firms to facilitate effective supervision and compliance, and for regulators to access information and verify the entity's compliance with applicable requirements. Broker-dealers are required to retain all communications received and sent, as well as all written agreements (or copies thereof), relating to a firm's ''business as such,'' [86] whereas advisers are required to retain a more limited set of records falling into specific enumerated categories. As noted in the Study, ''[t]hese differences limit the effectiveness of internal supervision and compliance structures and the ability of regulators to access information and verify the entity's compliance with applicable requirements.'' [87] We request data and other information on the enhancement to meaningful investor protection as well as the benefits and costs of harmonizing requirements relating to:

a. Harmonizing the recordkeeping requirements applicable to investment advisers and broker-dealers, generally.

b. Applying the ''business as such'' record retention standard to investment advisers?

7. *Other Potential Areas for Harmonization:* We request information and comment on whether there are other potential areas of harmonization where the nature of existing investment adviser and broker-dealer obligations differ and investor protection would be meaningfully enhanced. In particular, we request data and other information on the enhancement to meaningful investor protection as well as the benefits and costs of harmonizing requirements relating to:

a. Harmonizing a set of business conduct rules for both broker-dealers and investment advisers, where relevant to investment advisers' businesses.

b. Harmonizing other requirements for broker-dealers and investment advisers.

c. Establishing a single set of universally applicable requirements versus scaling requirements based on the size (*e.g.,* number of employees or a different metric) and nature of a broker-dealer or an investment adviser.

For each other potential area of harmonization addressed, please identify any particular requirements that should apply to both broker-dealers and investment advisers, and any requirements that should not apply to both, and why or why not.

B. Request for Data and Other Information Relating to Changes in the Marketplace for Personalized Investment Advice Resulting from Harmonization

The Commission requests the following data and other information relating to changes in the marketplace for personalized investment advice about securities for retail customers as a result of implementing each area of harmonization described above. In providing such data and other information, we request commenters follow the Guidelines found in the Appendix to this request for data and other information including the request therein for background information.

1. Provide data and other information on the benefits and costs to firms and retail customers, including synergies (*i.e.,* enhanced cost efficiencies for firms), specific examples of effects on investor protection, and potential barriers to entry (*i.e.,* cost prohibitions), which would result from harmonization of each of the areas identified above.

2. Provide data and other information about alternative approaches to harmonization that the Commission should consider, including options for reducing costs on broker-dealers and investment advisers while increasing the effective protection of retail customers.

3. Provide data and other information describing the impact or potential impact the implementation of the uniform fiduciary standard of conduct, or any of the alternative approaches discussed in Part III of this request for data and other information, would have on the benefits and costs to firms and to retail customers of each area of harmonization. Indicate, for example, whether harmonization of a particular area of regulation would impact the costs or benefits associated with complying with the uniform fiduciary standard and each of the alternative approaches discussed above. Also provide comment and data on whether the harmonization of one or more of the areas described above has any impact (*i.e.,* whether it enhances, detracts, or has no impact) on the implementation of the uniform fiduciary standard of conduct or any of the other approaches described in Part III of this request for data and other information.

4. For dual registrants, provide data and other information on any cost savings and potential retail customer benefit of having a consistent set of standards.

5. Provide data and other information describing the extent to which harmonization would increase or reduce retail customers' confusion about the regulatory status of the person from whom they receive financial services (*i.e.,* whether the party is a broker-dealer or an investment adviser) and provide information describing why. Provide data and other information describing the extent to which harmonization would increase or reduce retail customers' confusion about the types of obligations owed to them and provide information describing why.

By the Commission.

Dated: March 1, 2013.

Elizabeth M. Murphy,

Secretary.

APPENDIX: Suggested Submission Guidelines for Comments

This Appendix outlines the background and particular data and other information we request commenters to provide and the general guidelines we request commenters to follow when submitting data and other

[84] For the staff's discussion regarding potential harmonization of requirements related to licensing and registration of firms, see Study at 136–137.

[85] For the staff's discussion regarding potential harmonization of requirements related to continuing education requirements, see Study at 138.

[86] *See* Exchange Act Rules 17a–4(b)(4) and (b)(7); 17 CFR 240.17a–4(b)(4) and (b)(7).

[87] *See* Study at 139.

information. While we are particularly interested in receiving data and other information that is empirical and quantitative in nature, we welcome and encourage all interested parties to submit their comments, including qualitative and descriptive analysis of the benefits and costs of potential approaches and guidance. We ask that commenters provide only data and other information that they wish to make publicly available, and that commenters who may be concerned about making proprietary or other highly sensitive data and other information public may wish to pool their data with that of others (*e.g.,* through a trade association, law firm, consulting firm or other group) and submit aggregated data in response to this request for data and other information. While we request commenters to provide enough data and other information to allow the Commission to replicate findings, commenters should remove any personally identifiable information (*e.g.,* of their customers) before submitting data and other information in response to this request.[88] Commenters can submit data and other information using a sample of retail customers. We ask commenters to sample in a manner which is independent of retail customer characteristics, and to describe the sampling methodology including sample identification, data collection, and any other important factor in sample construction. Also, if possible, provide a description of the population of retail customers not included in the sample. We also ask commenters to provide a variable to allow the Commission to distinguish among accounts. The variable should not incorporate personally identifiable information, and can be as simple as a random number.

We ask commenters to provide a cover letter when submitting data files to the Commission. As part of the cover letter, we ask commenters to include documentation describing each field in the data files including the units of measurement (*e.g.,* percent, thousands, thousands of dollars, millions, millions of dollars), variable name, general and specific formats (*e.g.,* number, character, date, length of character field, format of date), and value if missing (*e.g.,* ''.'' or '' ''). Other important documentation includes an overall description of the dataset, the source of the information, and the time period of observations. We ask commenters to send the data on a physical storage medium such as a CD ROM or DVD, either in plain text or comma-separated values (csv) files. We also ask commenters to clearly label the physical storage medium, providing commenter name, date, and a short description of the data files. Commenters can submit more than one dataset if, for instance, the data is available on different systems or in different locations. In this case, we ask commenters to provide a variable in each dataset that links account information and that allows the Commission to distinguish among accounts. We also ask commenters to submit only one copy of the data files.

[88] *See supra* note 23.

A. Commenter Identification and Background

We request commenters to provide background information to add context to submissions and improve our understanding of the current marketplace:

1. Indicate your status (or the status of your organization if you are writing on behalf of an organization), as applicable, as a Commission-registered broker-dealer, Commission-registered investment adviser, associated person of a Commission-registered broker dealer or Commission-registered investment adviser, dually registered entity or individual, retail customer, or other (if other, please describe).

2. If you are (or are writing on behalf of) a broker-dealer, investment adviser, or dually registered investment adviser/broker-dealer, or associated person thereof, describe the firm's business, including number and type of business segments, sources and total amount of firm revenue, and the proportion of firm revenue attributable to retail customers.

3. If you are (or are writing on behalf of) a broker-dealer, investment adviser, or dually registered investment adviser/broker-dealer, describe the retail customer segment of the firm's business, including the number and type of accounts (brokerage or advisory), total asset value within each account type, and the proportion of retail customers to whom the firm provides personalized investment advice. If the firm is dually registered, also indicate the proportion of accounts (based on the number of accounts and total assets under management) that are advisory accounts and the proportion that are brokerage accounts, and of the advisory accounts, the proportion that are non-discretionary accounts. Also, if the firm is dually registered, indicate the proportion of retail customer advisory accounts and the proportion of brokerage accounts receiving personalized investment advice.

B. Requests for Specific Characteristic Information

We ask commenters to provide the following specific characteristics when providing data and other information describing retail customer demographics and accounts; broker-dealer or investment adviser services offered; securities; and the claims of retail customers in dispute resolution:

1. Retail customer demographic information—age, wealth, income, education, and risk profile.

2. Retail customer account information—general type (brokerage or advisory), specific type (*e.g.,* clearing, execution-only, full-service), amount of assets held, compensation arrangement (*e.g.,* fees, commissions) and amount, investment strategy, the date of account opening, and the state in which the account is held.

3. Broker-dealer or investment adviser services offered—type (*e.g.,* include trade execution; product, transaction, and asset allocation recommendations; and provision of customer-specific research and analysis).

4. Securities—type (*e.g.,* stocks, bonds, funds, options, structured products), CUSIP number or other standard identifier, investment rating (if any), and date of initial retail customer ownership.

5. Security Positions—long or short position, number of shares/units held, position value, and the currency of valuation.

6. Retail customer claims evidence—nature of claim, forum for claim, time to resolution, and outcome.

If providing aggregate data and other information, we ask that commenters fully describe the sample population, including the number of retail customers and total assets under management, retail customer demographics, account characteristics, and security characteristics.

C. Submission Guidelines for Economic Analysis

The market for personalized investment advice is difficult to analyze because of the number of factors that empirical tests must address in order to achieve definitive conclusions. While some reports and studies address the market for personalized investment advice, the difficulty to control for certain factors and/or insufficient documentation of the empirical sample and methodology results in interpretive difficulties. When submitting qualitative and quantitative economic analysis, we request commenters adhere to the following guidelines:

1. The analysis should focus on non-discretionary retail customer brokerage and advisory accounts. To the extent the analysis focuses on institutional investor accounts or discretionary accounts, if possible please specify this.

2. Identify and discuss all underlying assumptions, including actions that may be taken in response to a change in regulation. If providing quantitative analysis also clearly articulate empirical methodologies leading to analytical conclusions and provide tests statistics to validate claims. Isolate the additional benefits and costs from any additional assumptions made. If providing qualitative economic analysis also identify and discuss all supporting evidence.

3. Identify and distinguish initial benefits and costs (including those associated with transitioning from existing standards to potential new standards of conduct), and on-going benefits and costs. Also identify whether certain benefits and costs may decrease or increase over time. Indicate whether benefits and costs are transaction-specific, account-specific, business segment specific, or firm-wide. If possible, separate the benefits from the costs and isolate by activity and by account type. When describing transition costs, describe and explain any relevant actions that may be taken in response to a change in regulation, including possible ways to mitigate costs or increase benefits.

4. Describe the sample population, including the number of retail customers and total assets under management, retail customer demographics, and account characteristics. And, if possible, provide a description of the population of retail customers not included in the sample.

5. Submit data that would allow the Commission to replicate findings.

6. Identify which requested quantitative data, if any, is not possible, or would be

prohibitively costly, to provide, and explain why.

[FR Doc. 2013–05222 Filed 3–6–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69017; File No. SR–CME–2013–01]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Regarding an Increase of CME Corporate Contribution to Interest Rate Swaps Financial Safeguards Package

March 1, 2013.

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 March 1, 2013, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II 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 and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CME proposes to amend rules related to its business as a derivatives clearing organization offering interest rate swap (''IRS'') clearing services. More specifically, CME proposes to increase CME's corporate contribution to the financial safeguards for IRS to $150,000,000.

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 statutory 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 III below. CME 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

CME is registered as a derivatives clearing organization with the Commodity Futures Trading Commission (''CFTC'') and currently offers clearing services for IRS. With this filing, CME proposes to increase CME's corporate contribution to the financial safeguards for IRS to $150,000,000. CME proposes to implement such amendments on March 1, 2013.

CME periodically assesses the structure of its financial safeguards packages. In assessing the financial safeguards available for IRS products, CME determined that an increase to the CME corporate contribution is appropriate. An amendment to CME Rule 8G802.B.1 is proposed which would reflect the increase in such contribution and an amendment to Rule 8G802.H is proposed which would reflect a conforming change to the CME contribution during an IRS Cooling Off Period.

CME notes that it has also submitted the proposed rule change that is the subject of this filing to its primary regulator, the CFTC, in CME Submission 13–045.

CME believes the proposed rule change is consistent with the requirements of the Act, including Section 17A of the Act. The proposed rule change involves improvements to CME's IRS product offering for investors because it increases the amount of financial resources available to support the default of an IRS Clearing member at CME and as such is designed to promote the prompt and accurate clearance and settlement of securities transactions and derivatives agreements, contracts and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency and, in general, help to protect investors and the public interest. Furthermore, the proposed rule change is limited to the clearing of IRS (that is, swaps) and thus relate solely to the CME's swaps clearing activities pursuant to its registration as a derivatives clearing organization under the Commodity Exchange Act (''CEA'') and do not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service.

CME further notes that the policies of the CEA with respect to clearing are comparable to a number of the policies underlying the Exchange Act, such as promoting market transparency for over-the-counter derivatives markets, promoting the prompt and accurate clearance of transactions and protecting investors and the public interest.

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, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. 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–2013–01 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–2013–01. 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4 .

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/rule-filings.html.*

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–2013–01 and should be submitted on or before March 28, 2013.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Section 19(b) of the Act [3] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. The Commission finds that the proposed rule change is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act,[4] and the rules and regulations thereunder applicable to CME. Specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[5] which requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and to protect investors and the public interest, because the proposed rule change would allow CME to enhance the financial safeguards package that applies to its IRS clearing business.

In its filing, CME requested that the Commission approve the proposed rule change on an accelerated basis for good cause shown. The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[6] for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing in the **Federal Register** because (i) the proposed rule changes relate solely to IRS and therefore relate solely to CME's swaps clearing activities and do not significantly relate to CME's functions as a clearing agency for security-based swaps; and (ii) the proposed rules change would increase the amount of financial resources available to support the default of an IRS Clearing member at CME and therefore will protect investors and the public interest.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–CME–2013–01) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05283 Filed 3–6–13; 8:45 am]

BILLING CODE 8011–01–P

[3] 15 U.S.C. 78s(b).

[4] 15 U.S.C. 78q–1. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78s(b)(2).

[7] *Id.*

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69009; File No. SR–NSX–2013–07]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Order Type Called the Midpoint-Seeker Order and Amend Rule 11.3(c) Regarding Rounding of Sub-Penny Midpoint Executions

February 28, 2013.

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 February 27, 2013, National Stock Exchange, Inc. (''NSX®'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend: (1) NSX Rule 11.3(c) to clarify how the NSX System may execute certain types of undisplayed orders that are pegged to the midpoint between the Protected BBO in subpennies; and (2) NSX Rule 11.11(c), entitled ''Orders and Modifiers'' to adopt a new order type called a Midpoint-Seeker Order. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend: (1) NSX Rule 11.3(c) to clarify how the NSX System may execute certain types of undisplayed orders that are pegged to the midpoint between the Protected Best Bid or Offer (''BBO'') [3] in subpennies; and (2) NSX Rule 11.11(c), entitled ''Orders and Modifiers'' to adopt a new order type called a Midpoint-Seeker Order.

Rounding of Midpoint Orders

The Exchange proposes to amend NSX Rule 11.3(c) to clarify how the NSX System may execute certain types of Zero Display Reserve Orders [4] that are pegged to the midpoint between the Protected BBO in subpennies. NSX Rule 11.3(c) provides that a Zero Display Reserve Order that is pegged at the midpoint of the Protected BBO may be executed in subpennies, if necessary, to obtain a midpoint price. The Exchange is proposing to amend Rule 11.3(c) in order to clarify how the System rounds executions in securities priced less than $1.00 per share resulting from a Zero Display Reserve Order pegged at the midpoint to the nearest permissible

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Rule 1.5. ''Protected BBO'' is defined as ''the better of the following: (a) [t]he Protected NBBO or (b) [t]he displayed Top of Book.''

[4] Under Exchange Rule 11.11(c)(2)(A), a ''Zero Display Reserve Order'' is a ''Reserve Order with zero display quantity.''

trading increment.[5] The System rounds the execution price up when the Zero Display Reserve Order pegged at the midpoint posted to the NSX Book is on the buy-side, and rounds the execution price down when the Zero Display Reserve Order pegged at the midpoint posted on the NSX Book is on the sell-side. For example, the Protected BBO is 0.8731 by 0.9998, and there is a buy order on the NSX Book which is a Zero Display Reserve Order pegged at the midpoint, which is 0.93645, an impermissible trading increment. An incoming order to sell will execute against the Zero Display Reserve Order at 0.9365 because the System will round the execution price from 0.93645 up to nearest permissible trading increment.

This clarifying amendment will provide ETP Holders with additional information on how the System rounds the execution price for Zero Display Reserve Orders that are pegged to the midpoint between the Protected BBO.

Proposed Midpoint-Seeker Order

The proposed Midpoint-Seeker Order is an Immediate-or-Cancel (''IOC'')[6] order that would allow Equity Trading Permit (''ETP'')[7] Holders the ability to execute against undisplayed orders that are posted on the NSX Book[8] at a price equal to or better than the midpoint between the Protected BBO. A Midpoint-Seeker Order will only execute through the Exchange's automatic execution mode (''Auto-Ex'')[9] against undisplayed orders posted on the NSX Book priced equal to or better than the midpoint between the Protected BBO. The undisplayed orders against which the Midpoint-Seeker Order will execute include the: (i) Zero Display Reserve Order[10] entered with a limit price, (ii) Market Peg Zero Display Reserve Order;[11] and (iii) Midpoint Peg Zero Display Reserve Order.[12] A Midpoint Seeker order may include an optional limit price cap beyond which the order shall not execute (i.e., an execution at a price lower for an order to sell or higher for an order to buy than a specified price). Under no circumstances will a Midpoint-Seeker Order execute against a displayed order or an order that is at a price which is inferior to the midpoint between the Protected BBO.

The System will execute a Midpoint-Seeker Order at the midpoint between the Protected BBO in $0.005 increments if the security is priced at or above $1[13] and $0.0001 increments if the security is priced below $1.[14] As explained above under the proposed changes to Rule 11.3(c), if interest resting on the NSX Book at the midpoint between the Protected BBO is not at a tradable increment, the Exchange will either round up for a Midpoint-Seeker Order to sell or round down for a Midpoint-Seeker Order to buy to the nearest tradable increment. The Midpoint-Seeker Order will execute against undisplayed posted orders on the NSX Book that are priced at or better than the midpoint between the Protected BBO. As an IOC order, the Midpoint-Seeker Order will execute only against the number of shares of undisplayed liquidity available on the NSX Book. Shares of an undisplayed posted order that remain after interacting with a Midpoint-Seeker Order will remain on the NSX Book. As an IOC order, any unexecuted portion of a Midpoint-Seeker Order will be treated as cancelled (i) after interacting with available undisplayed posted orders or (ii) when there are no undisplayed posted orders priced equal to or better than the midpoint between the Protected BBO.

Like other IOC orders, a Midpoint-Seeker Order will never be routed to an away market. A Midpoint-Seeker Order will also be treated as cancelled when the Protected BBO is locked or crossed. A Midpoint-Seeker Order cannot be combined with any other order type or order type modifier offered by the Exchange.

The below examples illustrate the functionality of the Midpoint-Seeker Order. All orders posted on the NSX Book are undisplayed.

Example 1

The Protected NBBO[15] is 10.00 by 11.00 and the Exchange has received a Midpoint- Seeker Order to sell 300 shares. NSX Book contains no undisplayed orders.

Result: The System will cancel the incoming Midpoint-Seeker Order to sell 300 shares in its entirety because there are no undisplayed posted orders on the NSX Book priced equal to or better than the midpoint between the Protected BBO.

Example 2

The Protected BBO is 10.00 by 11.00 and the Exchange has received a Midpoint-Seeker Order to sell 300 shares.

Buy orders resting on NSX book	Order type
11.00 (100 shares)	Market Peg Zero Display Reserve Order
10.70 (100 shares)	Zero Display Reserve Order with Limit Price
10.50 (100 shares)	Midpoint Peg Zero Display Reserve Order

There are no sell orders posted to the NSX Book priced at the Protected BBO or better that could execute against the Market Peg Zero Display Reserve Order at 11.00.

[5] Under Exchange Rule 11.3(a), the minimum pricing increments are to be no smaller than $0.01 if priced equal to or greater than $1.00 per share or $0.0001 if priced less than $1.00 per share.

[6] Under Exchange Rule 11.11(b)(1), an ''Immediate-or-Cancel Order'' is a ''limit order that is to be executed in whole or in part as soon as such order is received, and the portion not so executed'' is to be cancelled.

[7] In sum, Exchange Rule 1.5 defines the term ''ETP'' as an Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's Trading Facilities.

[8] Exchange Rule 1.5. ''NSX Book'' is defined as ''System's electronic file of orders.''

[9] NSX trading rules provide for a price-time priority market with two modes of order interaction: (1) Auto-Ex, and (2) Order Delivery. The Exchange's two modes of order interaction are described in NSX Rule 11.13(b).

[10] Under Exchange Rule 11.11(c)(2), a ''Reserve Order'' is a limit order with a portion of the quantity displayed with a reserve portion of the quantity that is not displayed.'' Exchange Rule 11.11(c)(2)(A), defines a ''Zero Display Reserve Order'' as a Reserve Order with zero display quantity.

[11] Under Exchange Rule 11.11(c)(2)(A), a ''Market Peg Zero Display Reserve Order'' is a ''pegged Zero Display Reserve Order which tracks the opposite side of the market'' (e.g., the buy-side of the Protected BBO for a sell order or the sell-side of the Protected BBO for a buy order).

[12] Under Exchange Rule 11.11(c)(2)(A), a ''Midpoint Peg Zero Display Reserve Order'' is a ''pegged Zero Display Reserve Order that tracks the midpoint'' of the Protected BBO.''

[13] *See* Exchange Rule 11.3(a)(i) which prohibits, in sum, minimum pricing increments smaller than $0.01 for bids, offers, orders, or indications of interest priced equal to or greater than $1.00 per share. Under 11.3(c), an undisplayed order that is pegged to the midpoint of the Protected BBO in accordance with Rule 11.11(c)(2) may be executed in sub-pennies if necessary to obtain a midpoint price.

[14] *See Exchange Rule 11.3(a)(ii)* which prohibits, in sum, minimum pricing increments smaller than $0.0001 for bids, offers, orders, or indications of interest priced less than $1.00 per share.

[15] Exchange Rule 1.5. ''Protected NBBO'' is defined as ''the national best bid or offer that is a protected quotation.''

Result: The incoming Midpoint-Seeker Order to sell 300 shares will execute against the Market Peg Zero Display Order at 11.00, the Zero Display Reserve Order at 10.70 and the Midpoint Peg Zero Display Order at 10.50. These executions are subject to the Exchange Rule 11.14(a) regarding price/time priority.

Example 3

The Protected BBO is 10.00 by 11.00 and the Exchange has received a Midpoint-Seeker Order to sell 300 shares.

Buy orders resting on NSX book	Order type
11.00 (100 shares)	Market Peg Zero Display Reserve Order
10.50 (100 shares)	Midpoint Peg Zero Display Reserve Order
10.40 (100 shares)	Zero Display Reserve Order with Limit Price

There are no sell orders posted to the NSX Book priced at the Protected BBO or better that could execute against the Market Peg Zero Display Reserve Order at 11.00.

Result: The incoming Midpoint-Seeker Order to sell 300 shares will execute against the Market Peg Zero Display Order at 11.00 and the Midpoint Peg Zero Display Order at 10.50. The System will cancel the remaining 100 shares of the Midpoint-Seeker because the Zero Display Reserve order at 10.40 is at a price inferior to the midpoint between the Protected BBO and last in price priority pursuant to Exchange Rule 11.14(a).

Example 4: Sub-Dollar Security

The Protected BBO is 0.8731 by 0.9998. The midpoint between the Protected BBO is 0.93645. For purposes of this example, the only interest posted to the NSX Book is a Midpoint Peg Zero Display Order to buy. A Midpoint-Seeker Order to sell is submitted. As discussed above under the proposed changes to Exchange Rule 11.3(c), the System rounds the price of the Midpoint Peg Zero Display Order to buy up to the nearest permissible trading increment of 0.9365. The Midpoint-Seeker Order will execute against the Midpoint Peg Zero Display order at 0.9365.

Example 5: Sub-Dollar Security

The Protected BBO is 0.8731 by 0.9998. The midpoint between the Protected BBO is 0.93645. For purposes of this example, the only interest posted to the NSX Book is a Midpoint Peg Zero Display Order to sell. A Midpoint-Seeker Order to buy is submitted. As discussed above under the proposed changes to Exchange Rule 11.3(c), the System rounds the Midpoint Peg Zero Display Order to sell down to the nearest permissible trading increment of 0.9364. The Midpoint-Seeker Order executes against the Midpoint Peg Zero Display Order at 0.9364.

2. Statutory Basis

The Exchange believes that the proposed clarification to Exchange Rule 11.3(c) is consistent with the provisions of Section 6(b) of the Act,[16] in general, and Section 6(b)(5) of the Act,[17] in particular, in that it is designed to 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 amendments to NSX Rule 11.3(c) do not alter the Exchange's current rounding methodology. They simply clarify for ETP Holders how the Exchange's System may round an execution price resulting from a Zero Display Reserve Order that is pegged to the midpoint between the Protected BBO that results in an impermissible trading increment, thereby enhancing market transparency thereby promoting just and equitable principles of trade, removing impediments to, and perfecting the mechanism of, a free and open market and a national market system.

The Exchange also believes the proposed Midpoint-Seeker Order is consistent with Section 6(b) of the Exchange Act [18] and furthers the objective of Section 6(b)(5) of the Exchange Act [19] because it is to designed promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Midpoint-Seeker Order will enable ETP Holders to enter an order that is not displayed publicly but is to be executed at the midpoint between the Protected BBO or better and only take liquidity. The Exchange believes this order type will enhance order execution opportunities on the NSX and help provide ETP Holders with flexibility in executing transactions that meet the specific requirements of the order type. The Midpoint-Seeker Order will allow for additional opportunities for investors to interact with orders priced at or better than the midpoint between the BBO which promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and national market system.

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 Exchange Act. The Exchange believes the proposed Midpoint-Seeker Order will enhance order execution opportunities for ETP Holders on the NSX. The Exchange does not believe the proposed rule change will impose a burden on competition amongst ETP Holders that use Auto-Ex and those that use the Exchange's Order Delivery mode of interaction (''Order Delivery Users'').[20] ETP Holders may use the Midpoint-Seeker Order to remove liquidity on the NSX Book at the midpoint of the Protected BBO or better. Orders entered via Auto-Ex that are posted to the NSX Book execute immediately when matched against a marketable incoming contra-side Midpoint-Seeker Orders entered via Auto-Ex. Conversely, Order Delivery Users only add liquidity to the NSX Book though the use of ''Post Only'' orders, which is not a liquidity taker. The NSX System rejects marketable ''Post Only'' orders, and will not route them away. Therefore, an Order Delivery User would not utilize the proposed Midpoint Seeker Order. In addition, an Order Delivery User is prohibited from posting an undisplayed midpoint order on the NSX Book, and, as a result, could not be matched against an incoming contra-side Midpoint-Seeker Order entered via Auto-Ex. Nonetheless, an Order Deliver User is able to submit orders via Auto-Ex, including the proposed Midpoint-Seeker, but not in their capacity as an Order Delivery User. Furthermore, the Exchange believes the Midpoint Seeker order should enhance competition

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C 78f(b)(5).

[20] *See* NSX Rule 11.13(b).

between it and other exchanges that currently offer similar order types by offer investors another option to access liquidity at the Midpoint between the Protected BBO or better. Therefore, 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 Exchange Act.

Lastly, the amendments to Exchange Rule 11.3(c) merely clarify for ETP Holder the Exchange's current rounding methodology. Therefore, the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or in furtherance of the Exchange Act.

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 neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [21] and Rule 19b–4(f)(6)(iii) thereunder.[22]

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. Such waiver would allow the Exchange to offer an order type that is similar to other exchanges without delay. The Commission notes that the rule change to adopt the Midpoint-Seeker is based on and similar to CBSX Rule 51.8(g)(13).[23] For this reason, the Commission waives the operative delay and designates the proposed rule change to be operative upon filing.[24]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [25] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSX–2013–07 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–NSX–2013–07. 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 website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2013–07, and should be submitted on or before March 28, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05238 Filed 3–6–13; 8:45 am]

BILLING CODE 8011–01–P

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its 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.

[23] *See* SR–NSX–2013–07, Item 7.

[24] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78s(b)(2)(B).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69016; File No. SR–CME–2013–14]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Regarding Acceptance of Additional Interest Rate Swaps for Clearing

March 1, 2013.

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 March 1, 2013, Chicago Mercantile Exchange Inc. (''CME'') 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 primarily by CME. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CME proposes to amend rules related to its business as a derivatives clearing organization offering interest rate swap (''IRS'') clearing services. More specifically, CME proposes to accept the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

following swaps for clearing beginning March 4, 2013:

- IRS denominated in Swedish Krona (''SEK''), Danish Krone (''DKK'') and Norwegian Krone (''NOK'') with Termination Dates up to 31 years and referencing the respective rate options set forth in amended Rule 90102.E;
- Overnight Index Swaps (''OIS'') with Termination Dates up to 5 years; and
- IRS denominated in EUR, GBP and JPY with a 1-month Designated Maturity.

Additionally, CME is proposing to amend Rule 90102.E to add the following rate options: SEK–STIBOR–SIDE; DKK–CIBOR–DKNA13; DKK–CIBOR2–DKNA13; and NOK–NIBOR–NIBR.

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 statutory 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 III below. CME 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

CME is registered as a derivatives clearing organization with the Commodity Futures Trading Commission (''CFTC'') and currently offers clearing services for IRS. With this filing, CME proposes to accept the following swaps for clearing beginning March 4, 2013:

- IRS denominated in Swedish Krona (''SEK''), Danish Krone (''DKK'') and Norwegian Krone (''NOK'') with Termination Dates up to 31 years and referencing the respective rate options set forth in the amended Rule 90102.E described below;
- Overnight Index Swaps (''OIS'') with Termination Dates up to 5 years; and
- IRS denominated in EUR, GBP and JPY with a 1-month Designated Maturity.

Additionally, CME is proposing to amend Rule 90102.E to add the following rate options: SEK–STIBOR–SIDE; DKK–CIBOR–DKNA13; DKK–CIBOR2–DKNA13; and NOK–NIBOR–NIBR. The Manual of Operations for CME Cleared Interest Rate Swaps (''IRS Manual'') is also being updated in connection with these proposed changes to reflect the acceptance of the above IRS and to make certain other operational updates.

CME notes that it has also submitted the proposed rule changes that are the subject of this filing to its primary regulator, the CFTC, in CME Submission 13–047.

CME believes the proposed rule change is consistent with the requirements of the Act, including Section 17A of the Act.[3] The proposed rule change involves improvements to CME's IRS product offering for investors and as such are designed to promote the prompt and accurate clearance and settlement of securities transactions and derivatives agreements, contracts and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency and, in general, help to protect investors and the public interest. Furthermore, the proposed rule changes are limited to the clearing of swaps and thus relate solely to the CME's swaps clearing activities pursuant to its registration as a derivatives clearing organization under the Commodity Exchange Act (''CEA'') and do not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service.

CME further notes that the policies of the CEA with respect to clearing are comparable to a number of the policies underlying the Exchange Act, such as promoting market transparency for over-the-counter derivatives markets, promoting the prompt and accurate clearance of transactions, and protecting investors and the public interest.

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, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. 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–2013–14 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–2013–14. 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/rule-filings.html.*

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–2013–14 and should be submitted on or before March 28, 2013.

[3] 15 U.S.C. 78q–1.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Section 19(b) of the Act[4] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. The Commission finds that the proposed rule change is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act,[5] and the rules and regulations thereunder applicable to CME. Specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[6] which 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, because it will permit CME to promptly and accurately clear additional IRS transactions.

In its filing, CME requested that the Commission approve the proposed rule change on an accelerated basis for good cause shown. The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[7] for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing in the **Federal Register** because (i) The proposed rule change would provide for the clearing of additional IRS products, which are swaps subject to regulation by the CFTC under the CEA; (ii) the proposed rule change relates solely to CME's IRS clearing activities and do not significantly relate to CME's functions as a clearing agency for security-based swaps; and (iii) CME has indicated that not providing accelerated approval would have a significant impact on its swaps clearing business as a designated clearing organization.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CME–2013–14) be, and hereby is, approved on an accelerated basis.

[4] 15 U.S.C. 78s(b).

[5] 15 U.S.C. 78q–1. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78s(b)(2).

[8] *Id.*

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05282 Filed 3–6–13; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69006 ; File No. SR–NASDAQ–2013–034]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Pricing Clarification

February 28, 2013.

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 February 21, 2013, 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 NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to clarify the billing of port fees in Chapter XV, entitled ''Options Pricing,'' which governs pricing for NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.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. 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 clarify the manner in which the Exchange assesses certain port fees which are noted in Chapter XV, Section 3 entitled ''NASDAQ Options Market—Access Services.'' Specifically, the Exchange assesses a fee of $550 per port, per month for the following port fees: Order Entry Ports,[3] CTI Ports,[4] OTTO Ports,[5] ITTO Ports,[6] BONO Ports,[7] Order Entry

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4 .

[3] The Order Entry Port Fee is a connectivity fee in connection with routing orders to the Exchange via an external order entry port. NOM Participants access the Exchange's network through order entry ports. A NOM Participant may have more than one order entry port.

[4] CTI offers real-time clearing trade updates. A real-time clearing trade update is a message that is sent to a member after an execution has occurred and contains trade details. The message containing the trade details is also simultaneously sent to The Options Clearing Corporation. The trade messages are routed to a member's connection containing certain information. The administrative and market event messages include, but are not limited to: system event messages to communicate operational-related events; options directory messages to relay basic option symbol and contract information for options traded on the Exchange; complex strategy messages to relay information for those strategies traded on the Exchange; trading action messages to inform market participants when a specific option or strategy is halted or released for trading on the Exchange; and an indicator which distinguishes electronic and non-electronically delivered orders.

[5] OTTO provides a method for subscribers to send orders and receive status updates on those orders. OTTO accepts limit orders from system subscribers, and if there is a matching order, the orders will execute. Non-matching orders are added to the limit order book, a database of available limit orders, where they are matched in price-time priority.

[6] ITTO is a data feed that provides quotation information for individual orders on the NOM book, last sale information for trades executed on NOM, and Order Imbalance Information as set forth in NOM Rules Chapter VI, Section 8. ITTO is the options equivalent of the NASDAQ TotalView/ITCH data feed that NASDAQ offers under NASDAQ Rule 7023 with respect to equities traded on NASDAQ. As with TotalView, members use ITTO to ''build'' their view of the NOM book by adding individual orders that appear on the feed, and subtracting individual orders that are executed. *See* Chapter VI, Section 1 at subsection (a)(3)(A).

[7] BONO[SM] is a data feed that provides the NOM Best Bid and Offer (''NOM NBBO'') and last sale information for trades executed on NOM. The NOM NBBO and last sale information are identical to the information that NOM sends to the Options Price Regulatory Authority (''OPRA'') and which OPRA disseminates via the consolidated data feed for options. BONO is the options equivalent of the NASDAQ Basic data feed offered for equities under NASDAQ Rule 7047. *See* Chapter VI, Section 1 at subsection (a)(3)(B).

DROP Ports,[8] OTTO Drop Ports [9] and SQF Ports.[10] Each NOM Participant is assigned a Market Participant Identifier or ''mnemonic'' [11] and in some cases, certain Participants request multiple mnemonics for purposes of accounting for trading activity. The Exchange bills per port and in the case of Participants that hold multiple mnemonics the Exchange bills for each port assigned to that Participant, taking into account the total number of ports by mnemonic. For example, if a Participant, ABC, with two mnemonics, EFGH and IJKL, requested 3 ports under the EFGH mnemonic and four ports under the IJKL mnemonic, the Participant would be billed for a total of 7 ports per month. All billing is captured at the Participant level.

The Exchange has consistently billed ports in this manner. For purposes of clarity, the Exchange proposes to add the words ''per mnemonic'' to Chapter XV, Section 3(b). Participants may choose to have multiple mnemonics for the convenience of conducting their business, however only one mnemonic is required to conduct business on NOM. Participants that desire to have multiple mnemonics and utilize various ports under multiple mnemonics are and will continue to be billed for each port that is assigned to that Participant. Each Participant may select the manner in which they choose to designate their ports for billing by mnemonic. The ports are differentiated by the mnemonic and port number.

The Exchange does not believe that there is confusion among market participants regarding port billing. The Exchange proposes this clarification to make clear that the term ''per port'' includes multiple mnemonics for each Participant.

2. Statutory Basis

NASDAQ believes that its proposal to amend Chapter XV of the Rules to specify that each mnemonic's ports will be billed is consistent with Section 6(b) of the Act [12] in general, and furthers the objectives of Section 6(b)(5) of the Act [13] in particular. The Exchange's proposal to clarify its pricing is intended to provide greater clarity to market participants with respect to the application of port fees in Chapter XV, Section 3. The Exchange believes the addition of the reference to mnemonics will provide additional transparency to Chapter XV, Section 3(b) of the Exchange's Rules.

The Exchange does not believe that there is confusion among market participants with respect to port billing, but rather that the addition of the words ''per mnemonic'' to Chapter XV, Section 3(b) would serve to provide transparency and guidance to the benefit of all market participants. The Exchange believes that the proposal is consistent with Section 6(b)(5) in that 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 a national market system, and, in general to protect investors and the public interest, by clarifying the manner in which ports are billed.

The Exchange is not amending the manner in which it applies pricing for ports today. This proposal merely codifies the manner in which the Exchange assesses ports today.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is merely clarifying its port billing to specify that ''per port'' includes all ports assigned to a particular Participant regardless of whether they are broken down by mnemonic. The Exchange believes that this clarification will provide greater transparency to market participants. The Exchange does not believe that this amendment creates intramarket competition among Participants as it is applied uniformly to all Participants. The Exchange believes that clarifying port billing provides market participants clear guidance.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [14] and subparagraph (f)(6) of Rule 19b–4 thereunder.[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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved. The Exchange has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

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–2013–034 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–2013–034. 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

[8] The DROP interface provides real time information regarding orders sent to NOM and executions that occurred on NOM. The DROP interface is not a trading interface and does not accept order messages.

[9] The OTTO DROP data feed provides real-time information regarding orders entered through OTTO and the execution of those orders. The OTTO DROP data feed is not a trading interface and does not accept order messages.

[10] SQF ports are ports that receive inbound quotes at any time within that month. The SQF Port allows a NOM Participant to access information such as execution reports and other relevant data through a single feed. For example, this data would show which symbols are trading on NOM and the current state of an options symbol (*i.e.,* open for trading, trading, halted or closed). Auction notifications and execution reports are also available.

[11] A mnemonic is a unique identifier consisting of a four character alpha code.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(a)(ii).

[15] 17 CFR 240.19b–4 (f)(6).

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 NASDAQ. 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–2013–034, and should be submitted on or before March 28, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05247 Filed 3–6–13; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2013–0017]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with Part 235 of Title 49 Code of Federal Regulations and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated February 6, 2013, Norfolk Southern Corporation (NS) has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA–2013–0017.

Applicant: Norfolk Southern Corporation, Mr. Brian Sykes, Chief Engineer, C&S Engineering, 1200 Peachtree Street NE., Atlanta, Georgia 30309.

NS seeks approval of the proposed temporary discontinuance of the signal system at the Randolph Street Control Point on the Virginia Division in Roanoke, VA, during a major track and signal rationalization project. The Randolph Street Control Point uses Microlok for the control of switches and signals. This Control Point connects NS's H-Line, N-Line, and W-Line with its Roanoke Yard and locations to the west.

NS will be required to temporarily discontinue the use of the signal system while performing a major part of the track work. The Randolph Street Tower, where the Microlok system is currently housed, will be removed to make room for a new track through that area. NS estimates the discontinuance of signals for 90 to 120 days at the Randolph Street Control Point during its construction efforts. During that period, trains will operate through the area at restricted speed on permission from the dispatcher, as well as a switch tender on the ground. NS seeks to have all of the work completed with its signals tested and placed back in service in the November/December 2013 timeframe. NS seeks to make the proposed changes to replace the older Microlok system with newer technology solid-state equipment, to increase train speeds through the area, and to facilitate the installation of Positive Train Control.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov/.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received by April 22, 2013 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Issued in Washington, DC, on March 4, 2013.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2013–05319 Filed 3–6–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0005]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated January 30, 2013, NJ Transit (NJT) has petitioned the Federal Railroad Administration (FRA) for an extension of temporary emergency relief from compliance with certain provisions of the Federal railroad safety regulations contained at 49 CFR parts 229—Railroad Locomotive Safety Standards; 236—Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices and Appliances; and 238—Passenger Equipment Safety Standards due to severe weather related to Hurricane Sandy. Specifically, NJT petitions for an additional 60-day extension of the waiver from compliance with the provisions of the following sections of the CFR: 49 CFR 229.9—*Movement of*

non-complying locomotives, 49 CFR 229.23–*Periodic inspection: general,* 49 CFR 27—*Annual tests,* 49 CFR 236.11–*Adjustment, repair, or replacement of component,* 49 CFR 236.101–*Purpose of inspection and tests; removal from service of relay or device failing to meet test requirements,* 49 CFR 236.588–*Periodic test,* 49 CFR 238.307–*Periodic mechanical inspection of passenger cars and unpowered vehicles used in passenger trains,* and 49 CFR 238.309, *Periodic brake equipment maintenance.* FRA assigned the petition Docket Number FRA–2012–0005.

NJT states that its primary maintenance facility for rail vehicles is the Meadows Maintenance Complex. This facility was heavily damaged by flood waters as a result of the October 29, 2012, hurricane. NJT's original estimates of damage to the facility and restoration to full operating capacity were made during the week immediately following the event.

NJT has made recovery efforts in order to achieve full compliance with the requirements of the above-cited CFR regulations. Since the beginning of the original waiver period, NJT has performed periodic inspections on 98 locomotives and 27 self-propelled Arrow vehicles. NJT has also completed the 180-day inspection for 145 railcars as part of the unscheduled repair. Nonetheless, NJT has reviewed its capabilities and has determined that it will not be possible to complete all required inspections, which will be overdue on the expiration date of this waiver: February 25, 2013. NJT also states that removing all overdue vehicles from service on that date will severely affect NJT's ability to provide sufficient passenger service on all of its operating lines. FRA conditionally granted NJT's extension request on February 19, 2013.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except on Federal holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number, and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Communications received by March 27, 2013 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as is practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice for regulations.gov; interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Issued in Washington, DC, on March 4, 2013.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2013–05340 Filed 3–6–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0092]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated November 28, 2012, the BNSF Railway Company (BNSF) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 232—Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment, End-of-Train Devices. FRA assigned the petition Docket Number FRA–2012–0092.

Specifically, BNSF seeks relief with respect to 49 CFR 232.207(a) for certain Bakken-oil unit trains that originate at refineries in North Dakota. These trains, when headed east out of the refineries, presently fall marginally short of major inspection terminals under the 1,000-mile inspection requirements pursuant to 49 CFR 232.207. Under BNSF's current operating practice, these trains are stopping short of terminals that have qualified mechanical inspectors (QMI), the train crews are conducting the Class 1A inspections, and then the trains are continuing on into the terminals. BNSF believes that the risk of the mileage addition allowance under the Class 1A inspections (between 24–198 miles for the requested trains) will be more than offset by the QMI inspections that the trains would receive, if relief is granted.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov/.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received by April 8, 2013 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Issued in Washington, DC, on March 4, 2013.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2013–05338 Filed 3–6–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2013–0012]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated December 10, 2012, the Temple and Central Texas Railway (TC) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal hours of service laws contained at 49 U.S.C. 21103(a)(4). FRA assigned the petition Docket Number FRA–2013–0012.

In its petition, TC seeks relief from 49 U.S.C. 21103(a)(4), which, in part, requires a train employee to receive 48 hours off duty after initiating an on-duty period for 6 consecutive days. Specifically, TC seeks a waiver to allow a train employee to initiate an on-duty period for 6 consecutive days followed by 24 hours off duty. In support of its request, TC submitted documents demonstrating employee support for the waiver and a description of its employee work schedules. Additionally, TC states that the total time on duty per month for its train service employees would be well below the 276 hours maximum time on duty that is permitted by law.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov/.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received by April 22, 2013 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Issued in Washington, DC, on March 4, 2013.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2013–05321 Filed 3–6–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2009–0078]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated February 5, 2013, the American Short Line and Regional Railroad Association (ASLRRA), on behalf of the Garden City Western Railway Company, the Georgia Southern Railway Company, the Great Smoky Mountains Railroad, the Mississippi Central Railroad Company, the Port Bienville Railroad, and Railserve, has petitioned the Federal Railroad Administration (FRA) for an amended waiver of compliance from certain provisions of the Federal hours of service laws contained at 49 U.S.C. 21103(a)(4), which require a train employee to receive 48 hours off duty after initiating an on-duty period for 6 consecutive days. FRA assigned the petition Docket Number FRA–2009–0078.

In its petition, ASLRRA seeks to amend Exhibit A of its previously filed petition for extension of the waiver to add the six railroads referenced above, which did not participate in ASLRRA's original petition for a waiver extension. FRA had granted ASLRRA's petition for a waiver extension in a letter dated February 27, 2012. The waiver allows a train employee to initiate an on-duty period each day for 6 consecutive days followed by 24 hours, rather than 48 hours, off duty.

Each railroad that seeks to be added to the waiver has executed a compliance letter, which attests that the railroad has complied with all of the employee consent requirements that FRA had originally set forth in its initial decision letter dated March 5, 2010. Additionally, each railroad will maintain in its files for FRA inspection the underlying employee consent or employee representative consent documents.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov/.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received by April 22, 2013 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Issued in Washington, DC, on March 4, 2013.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2013–05323 Filed 3–6–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket ID PHMSA–2013–0028]

Pipeline Safety: Incident and Accident Reports

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of online availability of revised incident and accident report forms and request for supplemental reports.

SUMMARY: In December 2012, PHMSA revised forms PHMSA F 7100.2—Incident Report—Natural and Other Gas Transmission and Gathering Pipeline Systems and PHMSA F 7000–1—Accident Report—Hazardous Liquid Pipeline Systems. These revised forms are now available for electronic submittal in the PHMSA Portal. As described in this notice, PHMSA requests supplemental reports to improve the quality of the incident and accident data.

FOR FURTHER INFORMATION CONTACT: Blaine Keener by telephone at 202–366–0970 or by email at *blaine.keener@dot.gov.*

SUPPLEMENTARY INFORMATION:

The Pipeline and Hazardous Materials Safety Administration (PHMSA) requires that an operator of a covered pipeline facility file a written report within 30 days of certain adverse events, defined by regulation as either an incident or accident, 49 CFR part 191 and part 195, subpart B.[1] PHMSA further requires that gas transmission and gathering pipeline operators and hazardous liquid pipeline operators file those reports on the following forms respectively: (1) PHMSA Form F 7100.2, Incident Report—Natural and Other Gas Transmission and Gathering Pipeline Systems; and (2) PHMSA Form F 7000–1—Accident Report—Hazardous Liquid Pipeline Systems. PHMSA uses the information collected from these forms to identify trends in the occurrence of safety-related problems, to appropriately target its performance of risk-based inspections, and to assess the overall effectiveness of its regulatory program.

PHMSA published a **Federal Register** notice on April 13, 2012, (77 FR 22387) inviting public comment on a proposal to make several minor revisions to the ''Accident Report—Hazardous Liquid Pipeline Systems'' and the ''Incident Report—Natural and Other Gas Transmission and Gathering Pipeline Systems'' forms. On September 21, 2012, PHMSA published a subsequent **Federal Register** notice (77 FR 58616) to respond to comments requested by (77 FR 22387), provide the public with an additional 30 days to comment on the proposed revisions to the forms and instructions, and announce that the revised Information Collections would be submitted to the Office of Management and Budget (OMB) for approval. On December 5, 2012, OMB approved revisions to the gas transmission and gathering incident report form under OMB control number 2137–0522 and the hazardous liquid accident report form under OMB control number 2137–0047.

The revised forms and instructions are available at *http://www.phmsa.dot.gov/pipeline/library/forms,* and should be used for all incidents/accidents that have occurred on or after January 1, 2010.

Form PHMSA F 7100.2—Incident Report—Natural and Other Gas Transmission and Gathering Pipeline Systems

PHMSA requests supplemental reports from operators who submitted reports for incidents occurring after January 1, 2010, with any of the following:

(1) ''Pipe girth weld'' was selected as the ''item involved in incident'' in Part C3 of the report. The revised report collects data about the pipe adjacent to the girth weld.

(2) ''Function of pipeline system'' is null in Part E5f of the report. The revised report collects the function of the pipeline system for all incidents.

Form PHMSA F 7000–1—Accident Report—Hazardous Liquid Pipeline Systems

PHMSA requests supplemental reports from operators who submitted reports for accidents occurring after January 1, 2010, with any of the following:

(1) The commodity value in Part A8 is crude oil, refined and/or petroleum product, or biofuel and the ''estimated volume of intentional and/or controlled release/blowdown'' is greater than zero. Volume of intentional release is not reported for these commodities. The revised instructions include guidance for reporting release volumes.

(2) Volume of commodity consumed by fire was included in the ''estimated volume of commodity released unintentionally'' in Part A9 of the report. The revised instructions include guidance for reporting release volumes.

(3) ''Pipe girth weld'' was selected as the ''item involved in incident'' in Part C3 of the report. The revised report collects data about the pipe adjacent to the girth weld.

(4) ''Function of pipeline system'' is null in Part E5f of the report. The revised report collects the function of the pipeline system for all accidents.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2013–05336 Filed 3–6–13; 8:45 am]

BILLING CODE 4910–60–P

[1] Reportable events are referred to as ''incidents'' for gas pipelines, 49 CFR 191.3, and ''accidents'' for hazardous liquid pipelines, 49 CFR 195.50. An operator may also be required to file a supplemental report in certain circumstances.

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Part II

Nuclear Regulatory Commission

10 CFR Parts 170 and 171

Revision of Fee Schedules; Fee Recovery for Fiscal Year 2013; Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AJ19

[NRC–2012–0211]

Revision of Fee Schedules; Fee Recovery for Fiscal Year 2013

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, which requires the NRC to recover through fees approximately 90 percent of its budget authority in Fiscal Year (FY) 2013, not including amounts appropriated for Waste Incidental to Reprocessing (WIR) and amounts appropriated for generic homeland security activities. The NRC is currently operating under a Continuing Resolution (CR) which is set to expire on March 27, 2013. Based on the FY 2013 budget submitted to the Congress, the NRC is proposing fees in this rulemaking based on the FY 2013 budget which is estimated to be $1,053.2 million. After accounting for billing adjustments, the total amount to be billed as fees is approximately $924.8 million. These fees are subject to change pending congressional action which may include sequestration, full-year CR or issuance of an FY 2013 appropriation which differs from the FY 2013 budget submitted to Congress which could result in higher or lower fees than those proposed in this rulemaking.

DATES: Submit comments by April 8, 2013. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Because OBRA–90 requires that the NRC collect the FY 2013 fees by September 30, 2013, requests for extension of the comment period will not be granted.

ADDRESSES: You may access information and comment submissions related to this proposed rule, which the NRC possesses and are publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0211. 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–2012–0211. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

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: Arlette Howard, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1481, email: *Arlette.Howard@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments
II. Background
III. Proposed Action
A. Amendments to Part 170 of Title 10 of the *Code of Federal Regulations* (10 CFR): Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended
B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC
IV. Plain Writing
V. Availability of Documents
VI. Voluntary Consensus Standards.
VII. Environmental Impact: Categorical Exclusion.
VIII. Paperwork Reduction Act Statement.
IX. Regulatory Analysis.
X. Regulatory Flexibility Analysis.
XI. Backfit Analysis.

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0211 when contacting the NRC about the availability of information for this proposed rule. You may access information related to this proposed rule, 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–2012–0211.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in Section V, Availability of Documents, of this document.
- *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–2012–0211 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

Over the past 40 years the NRC (and earlier as the Atomic Energy Commission (AEC), the NRC's predecessor agency), has assessed and continues to assess fees to applicants and licensees to recover the cost of its regulatory program. The NRC's cost recovery principles for fee regulation are governed by two major laws, the Independent Offices Appropriations Act of 1952 (IOAA) (31 U.S.C. 483(a)) and OBRA–90 (42 U.S.C. 2214), as amended. The NRC is required each year, under OBRA–90, as amended, to recover approximately 90 percent of its budget authority, not including amounts appropriated for WIR, and amounts appropriated for generic homeland security activities (non-fee items), through fees to NRC licensees and applicants. The following discussion explains the various court decisions, congressional mandates and Commission policy which form the basis for the NRC's current fee policy and cost recovery methodology, which in turn form the basis for this rulemaking.

Establishment of Fee Policy and Cost Recovery Methodology

In 1968, the AEC adopted its first license fee schedule in response to Title V of the IOAA. This statute authorized and encouraged Federal regulatory agencies to recover to the fullest extent possible costs attributable to services provided to identifiable recipients. The AEC established fees under 10 CFR part 170 in two sections, §§ 170.21 and 170.31. Section 170.21 established a flat application fee for filing applications for nuclear power plant construction permits. Fees were set by a sliding scale depending on plant size; for construction permits and operating license fees, and annual fees were levied on holders of Commission operating licenses under 10 CFR part 50. Section 170.31 established application fees and annual fees for materials licenses. Between 1971 and 1973, the 10 CFR part 170 fee schedules were adjusted to account for increased costs resulting from expanded services which included health and safety inspection services and manufacturing licenses and environmental and antitrust reviews. The annual fees assessed by the Commission began to include inspection costs and the material fee schedule expanded from 16 to 28 categories for fee assessment. During this period, the schedules continued to be modified based on the Commission's policy to recover costs attributable to identifiable beneficiaries for the processing of applications, permits and licenses, amendments to existing licenses, and health and safety inspections relating to the licensing process.

On March 4, 1974, the U.S. Supreme Court rendered major decisions in two cases, *National Cable Television Association, Inc.* v. *United States,* 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company,* 415 U.S. 345 (1974), regarding the charging of fees by Federal agencies. The Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the ''value to the recipient'' of the agency service. The Court, thus, invalidated the Federal Power Commission's annual fee rule because its fee structure assessed annual fees against the regulated industry at large without considering whether anyone had received benefits from any Commission services during the year in question. As a result of these decisions, the AEC promptly eliminated annual licensing fees and issued refunds to licensees, but left the remainder of the fee schedule unchanged.

In November 1974, the AEC published proposed revisions to its license fee schedule (39 FR 39734; November 11, 1974). The Commission reviewed public comments while simultaneously considering alternative approaches for the proper evaluation of expanding services and proper assessment based upon increasing costs of Commission services.

While this effort was under way, the Court of Appeals for the District of Columbia issued four opinions in fee cases—*National Cable Television Assoc.* v. *FCC,* 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *FCC,* 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *FCC,* 554 F.2d 1109 (D.C. Cir. 1976); and *Capital Cities Communication, Inc.* v. *FCC,* 554 F.2d 1135 (D.C. Cir. 1976). These decisions invalidated the license fee schedules promulgated by the Federal Communications Commission, and they provided the AEC with additional guidance for the prompt adoption and promulgation of an updated licensee fee schedule.

On January 19, 1975, under the Energy Reorganization Act of 1974, the licensing and related regulatory functions of the AEC were transferred to the NRC. The NRC, prompted by recent court decisions concerning fee policy, developed new guidelines for use in fee development and the establishment of a new proposed fee schedule.

The NRC published a summary of guidelines as a proposed rule (42 FR 22149; May 2, 1977), and the Commission held a public meeting to discuss the summary of guidelines on May 12, 1977. A summary of the comments on the guidelines and the NRC's responses were published in the **Federal Register** (43 FR 7211; February 21, 1978).

The U.S. Court of Appeals for the Fifth Circuit upheld the Commission's fee guidelines on August 24, 1979, in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission,* 601 F.2d 223 (5th Cir. 1979), *cert. denied,* 444 U.S. 1102 (1980). This court held that—

1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act of 1954, as amended, and with applicable regulations;

3) The NRC could charge for costs incurred in conducting environmental reviews required by the National Environmental Policy Act (42 U.S.C. 4321);

4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

6) The NRC's fees were not arbitrary or capricious.

The NRC's Current Statutory Requirement for Cost Recovery Through Fees

In 1986, Congress passed the Consolidated Omnibus Budget Reconciliation Act (COBRA) (H.R. 3128), which required the NRC to assess and collect annual charges from persons licensed by the Commission. These charges, when added to other amounts collected by the NRC, totaled about 33 percent of the NRC's estimated budget. In response to this mandate and separate congressional inquiry on NRC fees, the NRC prepared a report on alternative approaches to annual fees and published the decision on annual fees for power reactor operating licenses in 10 CFR part 171 for public comment (51 FR 24078; July 1, 1986). The final rule (51 FR 33224; September 18, 1986) included a summary of the comments and the NRC's related responses. The decision was challenged in the D.C. Circuit Court of Appeals and upheld in its entirety in *Florida Power and Light Company* v. *United States,* 846 F.2d 765 (D.C. Cir. 1988), *cert. denied,* 490 U.S. 1045 (1989).

In 1987, the NRC retained the established annual and 10 CFR part 170 fee schedules in the **Federal Register** (51 FR 33224; September 18, 1986).

In 1988, the NRC was required to collect 45 percent of its budget authority through fees. The NRC published a proposed rule that included an hourly increase recommendation for public comment in the **Federal Register** (53 FR 24077; June 27, 1988). The NRC staff could not properly consider all comments received on the proposed rule. Therefore, on August 12, 1988, the NRC published an interim final rule in the **Federal Register** (53 FR 30423). The interim final rule was limited to changing the 10 CFR part 171 annual fees.

In 1989, the Commission was required to collect 45 percent of its budget authority through fees. The NRC published a proposed fee rule in the **Federal Register** (53 FR 24077; June 25, 1988). A summary of the comments and the NRC's related responses were published in the **Federal Register** (53 FR 52632; December 28, 1988).

On November 5, 1990, with respect to 10 CFR part 171, the Congress passed OBRA–90, requiring that the NRC collect 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund (NWF), through the assessment of fees. The OBRA–90 allowed the NRC to collect user fees for the recovery of the costs of providing special benefits to identifiable applicants and licensees in compliance with 10 CFR part 170 and under the authority of the IOAA (31 U.S.C. 9701). These fees recovered the cost of inspections, applications for new licenses and license renewals, and requests for license amendments. The OBRA–90 also allowed the NRC to recover annual fees under 10 CFR part 171 for generic regulatory costs not otherwise recovered through 10 CFR part 170 fees. In compliance with OBRA–90, the NRC adjusted its fee regulations in 10 CFR parts 170 and 171 to be more comprehensive without changing their underlying basis. The NRC published these regulations in a proposed rule for public comment in the **Federal Register** (54 FR 49763; December 1, 1989). The NRC held three public meetings to discuss the proposed changes and questions. A summary of comments and the NRC's related responses were published in the **Federal Register** (55 FR 21173; May 23, 1990).

In FYs 1991—2000, the NRC continued to comply with OBRA–90 requirements in its proposed and final rules. In 1991, the NRC's annual fee rule methodology was challenged and upheld by the D.C. Circuit Court of Appeals in *Allied Signal* v. *NRC,* 988 F.2d 146 (D.C. Cir. 1993).

The FY 2001 Energy and Water Development Appropriation Act amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount was 90 percent in FY 2005.

The FY 2006 Energy and Water Development Appropriation Act extended this 90 percent fee recovery requirement for FY 2006. Section 637 of the Energy Policy Act of 2005 made the 90 percent fee recovery requirement permanent in FY 2007.

In addition to the requirements of OBRA–90, as amended, the NRC was also required to comply with the requirements of the Small Business Regulatory Enforcement Fairness Act of 1996. This Act encouraged small businesses to participate in the regulatory process, and required agencies to develop more accessible sources of information on regulatory and reporting requirements for small businesses and create a small entity compliance guide. The NRC, in order to ensure equitable fee distribution among all licensees, developed a fee methodology specifically for small entities that consisted of a small entity definition and the Small Business Administration's most common receipts-based size standards as described under the North American Industry Classification System (NAICS) identifying industry codes. The NAICS is the standard used by Federal statistical agencies to classify business establishments for the purposes of collecting, analyzing, and publishing statistical data related to the U.S. business economy. The purpose of this fee methodology was to lessen the financial impact on small entities through the establishment of a maximum fee at a reduced rate for qualifying licensees.

In FY 2009, the NRC computed the small entity fee based on a biennial adjustment of 39 percent, a fixed percent applied to the prior 2-year weighted average for all fee categories that have small entity licensees. The NRC also used 39 percent to compute the small entity annual fee for FY 2005, the same year the agency was required to recover only 90 percent of its budget authority. The methodology allowed small entity licensees to be able to predict changes in their fees in the biennial year based on the materials users' fees for the previous 2 years. Using a 2-year weighted average lessened the fluctuations caused by programmatic and budget variables within the fee categories for the majority of small entities.

The agency also determined that there should be a lower-tier annual fee based on 22 percent of the maximum small entity annual fee to further reduce the impact of fees. In FY 2011, the NRC applied this methodology which would have resulted in an upper-tier small entity fee of $3,300, an increase of 74 percent or $1,400 from FY 2009, and a lower-tier small entity fee of $700, an increase of 75 percent or $300 from FY 2009. The NRC determined that implementing this increase would have a disproportionate impact upon small licensees and performed a trend analysis to calculate the appropriate fee tier levels. From FY 2000 to FY 2008, $2,300 was the maximum upper-tier small entity fee and $500 was the maximum lower-tier small entity fee. Therefore, in order to lessen financial hardship for small entity licensees, the NRC concluded that for FY 2011, $2,300 should be the maximum upper-tier small entity fee and $500 should be the lower-tier small entity fee.

III. Proposed Action

The NRC assesses two types of fees to meet the requirements of OBRA–90. First, user fees, presented in 10 CFR part 170 under the authority of the IOAA, recover the NRC's costs of providing special benefits to identifiable applicants and licensees. For example, the NRC assesses these fees to cover the costs of inspections, applications for new licenses and license renewals, and requests for license amendments. Second, annual fees, presented in 10 CFR part 171 under the authority of OBRA–90, recover generic regulatory costs not otherwise recovered through 10 CFR part 170 fees. Under this rulemaking, the NRC continues the fee cost recovery principles through the adjustment of fees without changing the underlying principles of the NRC fee policy in order to ensure that the NRC continues to comply with the statutory requirements of OBRA–90, the AEA, and the IOAA.

FY 2013 Continuing Resolution

The NRC is currently operating under a CR for FY 2013 (Pub. L. 112–175) that is effective through March 27, 2013. This means that the FY 2013 funds currently available are similar to the NRC's funding in FY 2012. Although the NRC has not received an appropriation for FY 2013, the NRC must proceed with the FY 2013 proposed fee rulemaking in order to collect the required fee amounts by September 30, 2013. The NRC is proposing fees in this rulemaking based on the FY 2013 NRC budget sent to the

Congress in February 2012. If the Congress enacts an appropriation that differs from the FY 2013 NRC budget request, the fees in the NRC's FY 2013 final fee rule will be adjusted to reflect the enacted budget without seeking further public comment.

FY 2013 Fee Collection

Accordingly, in compliance with the AEA and OBRA–90, the NRC proposes to amend its licensing, inspection, and annual fees to recover approximately 90 percent of its FY 2013 budget authority less the appropriations for non-fee items. The amount of the NRC's required fee collections is set by law, and is, therefore, outside the scope of this rulemaking. The NRC's total budget authority for FY 2013 is $1,053.2 million. The non-fee items excluded outside of the fee base includes $1.4 million for WIR activities and $24.3 million for generic homeland security activities. Based on the 90 percent fee-recovery requirement, the NRC is required to recover $924.8 million in FY 2013 through 10 CFR part 170 licensing and inspection fees and through 10 CFR part 171 annual fees. This amount is $15.3 million more than the amount estimated for recovery in FY 2012, an increase of 1.7 percent. The FY 2013 fee recovery amount increases by $200 thousand as a result of billing adjustments (sum of unpaid current year invoices (estimated) minus payments for prior year invoices) and reduces by $20.9 million for unbilled prior year invoices under 10 CFR part 170.

Table I summarizes the budget and fee recovery amounts for FY 2013. The FY 2012 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE I—BUDGET AND FEE RECOVERY AMOUNTS

[Dollars in millions]

	FY 2012 final rule	FY 2013 proposed rule
Total Budget Authority	$1,038.1	$1,053.2
Less Non-Fee Items	−27.5	−25.7
Balance	$1,010.6	$1,027.5
Fee Recovery Rate for FY 2013	90%	90%
Total Amount to be Recovered for FY 2013	$909.5	$924.8
10 CFR Part 171 Billing Adjustments:		
Unpaid Current Year Invoices (estimated)	2.3	2.2
Less Payments Received in Current Year for Previous Year Invoices (estimated)	−10.8	−2.0
Subtotal	−8.5	0.2
Amount to be Recovered through 10 CFR Parts 170 and 171 Fees	$901.0	$925.0
Less Estimated 10 CFR Part 170 Fees	−345.2	−342.4
Less Prior Year Unbilled 10 CFR Part 170 Fees	.....	−20.9
10 CFR Part 171 Fee Collections Required	$555.8	$561.7

Based on the 90 percent estimated recovery amount of $924.8 million, the NRC estimates that $363.3 million will be recovered from 10 CFR part 170 fees in FY 2013, which represents a 5.2 percent increase as compared to 10 CFR part 170 collections of $345.2 million for FY 2012. The NRC derived the FY 2013 estimate of 10 CFR part 170 fee collections based on the latest billing data available which includes the collection of prior year 10 CFR part 170 unbilled invoices which occurred as result of the adoption of a new accounting system in October 2010. In October 2012, the NRC became aware that certain project managers' and resident inspectors' (including senior resident inspectors) hours were not being billed for services rendered by the NRC. This error resulted in the NRC under billing some of its licensees for a total of $20.9 million for the past eight quarters under 10 CFR part 170. The NRC is statutorily obligated to collect the appropriate fees for services provided; therefore, the NRC proposes the collection of these fees be applied to the FY 2013 10 CFR part 170 billings and the FY 2013 annual fees will be adjusted to account for this additional revenue collection. The FY 2013 billing adjustments also include estimated unpaid current year invoices totaling $2.2 million and estimated receipt of payments totaling $2 million for previous year invoices.

The remaining $561.7 million is to be recovered through the 10 CFR part 171 annual fees in FY 2013, which is a 1.1 percent increase compared to the estimated 10 CFR part 171 collections of $555.8 million for FY 2012. The change for each class of licensees affected is discussed in Section III.B.3 of this document.

FY 2013 Billing

The NRC plans to publish the final fee rule no later than June 2013. The FY 2013 final fee rule will be a major rule as defined by the Congressional Review Act of 1996 (5 U.S.C. 801–808). Therefore, the NRC's fee schedules for FY 2013 will become effective 60 days after publication of the final rule in the **Federal Register**. Upon publication of the final rule, the NRC will send an invoice for the amount of the annual fees to reactor licensees, 10 CFR part 72 licensees, major fuel cycle facilities, and other licensees with annual fees of $100,000 or more. For these licensees, payment is due on the effective date of the FY 2013 final rule. Because these licensees are billed quarterly, the payment amount due is the total FY 2013 annual fee less payments made in the first three quarters of the fiscal year.

Materials licensees with annual fees of less than $100,000 are billed annually. Those materials licensees whose license anniversary date during FY 2013 falls before the effective date of the FY 2013 final rule will be billed for the annual fee during the anniversary month of the license at the FY 2012 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the FY 2013 final rule will be billed for the annual fee at the FY 2013 annual fee rate during the anniversary month of

the license, and payment will be due on the date of the invoice.

FY 2013 Amendment Changes

The NRC is proposing to amend 10 CFR parts 170 and 171 as discussed in Section III.A and III.B of this document.

A. Amendments to Part 170 of Title 10 of the Code of Federal Regulations (10 CFR): Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended

For FY 2013, the NRC is proposing to increase the hourly rate to recover the full cost of activities under 10 CFR part 170 and has used this rate to calculate ''flat'' application fees.

The NRC is proposing to make the following changes:

1. Hourly Rate

The NRC's hourly rate is used in assessing full cost fees for specific services provided, as well as flat fees for certain application reviews. The NRC is proposing to change the current hourly rate of $274 to $277 in FY 2013. This rate would be applicable to all activities for which fees are assessed under §§ 170.21 and 170.31.

The FY 2013 hourly rate is 1.1 percent higher than the FY 2012 hourly rate of $274. The increase in the hourly rate is due primarily to higher agency budgeted resources, partially offset by a small increase in the number of direct full time equivalents (FTE). The following paragraphs described the hourly rate calculation in further detail.

The NRC's hourly rate is derived by dividing the sum of recoverable budgeted resources for (1) Mission direct program salaries and benefits; (2) mission indirect program support; and (3) agency corporate support and the Inspector General (IG), by mission direct FTE hours. The mission direct FTE hours are the product of the mission direct FTE multiplied by the hours per direct FTE. The only budgeted resources excluded from the hourly rate are those for contract activities related to mission direct and fee-relief activities.

In FY 2013, the NRC used 1,371 hours per direct FTE, the same amount as FY 2012, to calculate the hourly fees. The NRC has reviewed data from its time and labor system to determine if the annual direct hours worked per direct FTE estimate requires updating for the FY 2013 fee rule. Based on this review of the most recent data available, the NRC determined that 1,371 hours is the best estimate of direct hours worked annually per direct FTE. This estimate excludes all indirect activities such as training, general administration, and leave.

Table II shows the results of the hourly rate calculation methodology. The FY 2012 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE II—HOURLY RATE CALCULATION

	FY 2012 final rule	FY 2013 proposed rule
Mission Direct Program Salaries & Benefits	$349.9	$348.8
Mission Indirect Program Support	$25.9	$20.0
Agency Corporate Support, and the IG	$472.3	$499.2
Subtotal	$848.0	$868.0
Less Offsetting Receipts	$−0.0	$0.0
Total Budget Included in Hourly Rate (Millions of Dollars)	$848.0	$868.0
Mission Direct FTE (Whole numbers)	2,258	2,285
Professional Hourly Rate (Total Budget Included in Hourly Rate divided by Mission Direct FTE Hours) (Whole Numbers)	$274	$277

As shown in Table II, dividing the FY 2013 $868 million budget amount included in the hourly rate by total mission direct FTE hours (2,285 FTE times 1,371 hours) results in an hourly rate of $277. The hourly rate is rounded to the nearest whole dollar.

2. Flat Application Fee Changes

The NRC is proposing to adjust the current flat application fees in §§ 170.21 and 170.31 to reflect the revised hourly rate of $277. These flat fees are calculated by multiplying the average professional staff hours needed to process the licensing actions by the proposed professional hourly rate for FY 2013.

Biennially, the NRC evaluates historical professional staff hours used to process a new license application for materials users fee categories subject to flat application fees. This is in accordance with the requirements of the Chief Financial Officer's Act. The NRC conducted this biennial review for the FY 2013 fee rule which also included license and amendment applications for import and export licenses.

Evaluation of the historical data in FY 2013 shows that the average number of professional staff hours required to complete licensing actions in the materials program should be increased in some fee categories and decreased in others to more accurately reflect current data for completing these licensing actions. The average number of professional staff hours needed to complete new licensing actions was last updated for the FY 2011 final fee rule. Thus, the revised proposed average professional staff hours in this fee rule reflect the changes in the NRC licensing review program that have occurred since that time.

The higher hourly rate of $277 is the main reason for the increases in the application fees. Application fees for 10 fee categories (2.B., 3.H., 3.M., 3.N., 3.P., 3.R.2., 3S., 5.A., 7.C., and 10.B. under § 170.31) also increase because of the results of the biennial review, which showed an increase in average time to process these types of license applications. The decrease in fees for 9 fee categories (2.C., 3.B., 3.C., 3.I., 3.Q., 4.B., 9.A., 9.C., and 16 under § 170.31) is due to a decrease in average time to process these types of applications. Also, the application fees increase for three import and export fee categories (K.4., 15.D., and 15.H. under § 170.31).

The amounts of the materials licensing flat fees are rounded so that the fees would be convenient to the user and the effects of rounding would be minimal. Fees under $1,000 are rounded to the nearest $10, fees that are greater than $1,000 but less than $100,000 are rounded to the nearest $100, and fees that are greater than $100,000 are rounded to the nearest $1,000.

The proposed licensing flat fees are applicable for fee categories K.1. through K.5. of § 170.21, and fee

categories 1.C., 1.D., 2.B., 2.C., 3.A. through 3.S., 4.B. through 9.D., 10.B., 15.A. through 15.L., 15.R., and 16 of § 170.31. Applications filed on or after the effective date of the FY 2013 final fee rule would be subject to the revised fees in the final rule.

3. Administrative Amendments

This proposed rule would make the following administrative changes for clarity:

a. § 170.21: Footnote 2 would be revised to reflect there are no more applications pending review prior to 1991. The following language would be deleted, ''For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.''

b. § 170.21: Footnote 4 would be revised to include ''in 10 CFR part 110.27,'' for clarity.

c. § 170.31: The fee category name for 2.A.(1) would be changed to include ''deconversion,'' to reflect the new description and the description for fee category 2.A.(1) would be changed to include ''or for deconverting uranium hexafluoride in the production of uranium oxides for disposal,'' to capture the deconversion of uranium hexafluoride (UF_6) into uranium oxides for disposal and commercial sale of the fluoride byproducts from uranium deconversion facilities.

d. § 170.31: The descriptions for fee categories 1.C., 1.D., and Footnote 4 would be changed and a new fee category 1.F. would be created to address licenses authorizing greater than critical mass as defined by § 70.4, ''Critical Mass.'' Under 10 CFR part 170, the fee category 1.C. description would include ''of less than a critical mass as defined in § 70.4 of this chapter.'' [4] The fee category 1.D. description would change to, ''All other special nuclear material licenses, except licenses authorizing special nuclear material in sealed or unsealed form in combination that would constitute a critical mass as defined in § 70.4 of this, for which the licensee shall pay the same fees as those under Category 1.A.'' [4] A new fee category 1.F. would read, ''For special nuclear materials licenses in sealed or unsealed form of greater than a critical mass as defined in § 70.4 of this chapter.'' [4] The Footnote 4 would include fee category 1.F. along with fee categories 1.C. and 1.D. for sealed sources authorized in the same license.

e. § 170.31: The description for fee category 15.D. would be revised to exclude language regarding import and export of radioactive waste. The new description would read, ''Application for export or import of nuclear material not requiring Commission or Executive Branch review, or obtaining foreign government assurances.''

f. § 170.31: Footnote 3 would be revised for clarity because there are no more applications on file prior to 1991 and would delete the following language, ''For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports for which costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.''

In summary, the NRC is proposing to make the following changes to 10 CFR part 170:

1. Establish a revised professional hourly rate to use in assessing fees for specific services;

2. Revise the license application fees to reflect the FY 2013 hourly rate; and

3. Make administrative changes to §§ 170.21 and 170.31.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC

The NRC proposes to use its fee-relief surplus to decrease all licensees' annual fees based on their percentage share of the fee recoverable budget authority. This rulemaking would also make changes to the number of NRC licensees and establishes rebaselined annual fees based on Public Law 112–10. The proposed amendments are described as follows:

1. Application of Fee-Relief and Low-Level Waste (LLW) Surcharge

The NRC will use its fee-relief surplus to decrease all licensees' annual fees, based on their percentage share of the budget. The NRC will apply the 10 percent of its budget that is excluded from fee recovery under OBRA–90, as amended (fee relief), to offset the total budget allocated for activities that do not directly benefit current NRC licensees. The budget for these fee-relief activities is totaled and then reduced by the amount of the NRC's fee relief. Any difference between the fee-relief and the budgeted amount of these activities results in a fee-relief adjustment (increase or decrease) to all licensees' annual fees, based on their percentage share of the budget, which is consistent with the existing fee methodology.

The FY 2013 budgetary resources for the NRC's fee-relief activities are $85.6 million. The NRC's 10 percent fee-relief amount in FY 2013 is $102.8 million, leaving a $17.1 million fee-relief surplus that will reduce all licensees' annual fees based on their percentage share of the budget. The FY 2013 budget for fee-relief activities decreased from FY 2012 mainly due to a decline in grants by approximately $9.1 million with an offset of a $1.7 million increase in the small entity subsidy. The FY 2012 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

Table III shows the budgeted costs for fee-relief activities and the fee-relief adjusted amount to be allocated to annual fees. The FY 2012 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE III—FEE-RELIEF ACTIVITIES

[Dollars in millions]

Fee-relief activities	FY 2012 budgeted costs	FY 2013 budgeted costs
1. Activities not attributable to an existing NRC licensee or class of licensee:		
a. International activities	$9.0	$10.6
b. Agreement State oversight	11.0	10.6
c. Scholarships and Fellowships	16.8	7.7
d. Medical Isotope Production	3.4	4.3
2. Activities not assessed under 10 CFR part 170 licensing and inspection fees or 10 CFR part 171 annual fees based on existing law or Commission policy:		
a. Fee exemption for nonprofit educational institutions	11.2	10.8
b. Costs not recovered from small entities under 10 CFR 171.16(c)	6.5	8.1
c. Regulatory support to Agreement States	17.5	17.4
d. Generic decommissioning/reclamation (not related to the power reactor and spent fuel storage fee classes)	14.0	14.7
e. *In Situ* leach rulemaking and unregistered general licensees	1.7	1.4
Total fee-relief activities	91.1	85.6
Less 10 percent of NRC's FY 2012 total budget (less non-fee items)	−101.1	−102.8
Fee-Relief Adjustment to be Allocated to All Licensees' Annual Fees	−10.0	−17.1

Table IV shows how the NRC is allocating the $17.1 million fee-relief surplus adjustment to each license fee class. As explained previously, the NRC is allocating this fee-relief adjustment to each license fee class based on the percent of the budget for that fee class compared to the NRC's total budget. The fee-relief surplus adjustment is subtracted from the required annual fee recovery for each fee class.

Separately, the NRC has continued to allocate the LLW surcharge based on the volume of LLW disposal of three classes of licenses: Operating reactors, fuel facilities, and materials users. Because LLW activities support NRC licensees, the costs of these activities are recovered through annual fees. In FY 2013, this allocation percentage was updated based on review of recent data which reflects the change in the support to the various fee classes. The allocation percentage of LLW surcharge decreased for operating reactors and increased for fuel facilities and materials users compared to FY 2012.

Table IV also shows the allocation of the LLW surcharge activity. For FY 2013, the total budget allocated for LLW activity is $3.7 million. (Individual values may not sum to totals due to rounding.)

TABLE IV—ALLOCATION OF FEE-RELIEF ADJUSTMENT AND LLW SURCHARGE, FY 2013

[Dollars in millions]

	LLW surcharge		Fee-relief adjustment		Total $
	Percent	$	Percent	$	
Operating Power Reactors	53.0	2.0	85.7	−14.7	−12.7
Spent Fuel Storage/Reactor Decommissioning	.....	.....	3.9	−0.7	−0.7
Research and Test Reactors	.....	.....	0.2	0.0	0.0
Fuel Facilities	37.0	1.4	5.8	−1.0	0.4
Materials Users	10.0	0.3	2.7	−0.4	−0.1
Transportation	.....	.....	0.4	−0.1	−0.1
Uranium Recovery	.....	.....	1.3	−0.2	−0.2
Total	100.0	3.7	100.0	−17.1	−13.4

2. Revised Annual Fees

The NRC is proposing to revise its annual fees in §§ 171.15 and 171.16 for FY 2013 to recover approximately 90 percent of the NRC's FY 2013 budget authority, after subtracting the non-fee amounts and the estimated amount to be recovered through 10 CFR part 170 fees. The 10 CFR part 170 collections estimated for this proposed rule is $363.3 million, an increase of $18 million from the FY 2012 fee rule. The total amount to be recovered through annual fees for this proposed rule is $561.7 million, an increase of $5.9 million from the FY 2012 final rule. The required annual fee collection in FY 2012 was $555.8 million.

The Commission has determined (71 FR 30721; May 30, 2006) that the agency should proceed with a presumption in favor of rebaselining when calculating annual fees each year. Under this method, the NRC's budget is analyzed in detail, and budgeted resources are allocated to fee classes and categories of licensees. The Commission expects that for most years there will be budgetary and other changes that warrant the use of the rebaselining method.

As compared with the FY 2012 annual fees, the FY 2013 proposed rebaselined fees decrease for two classes of licensees, operating reactors and U.S. Department of Energy (DOE) Transportation Activities. The annual fees increase for five classes of licensees, spent fuel storage/reactor and decommissioning, research and test reactors, fuel facilities and most materials' and uranium recovery licensees.

The NRC's total fee recoverable budget, as mandated by law, increases by $15.1 for FY 2013 compared to FY 2012. The FY 2013 budget was allocated to the fee classes that the budgeted activities support. The annual fees increase for spent fuel storage/reactor and decommissioning, research and test reactors, fuel facilities and most materials' and uranium recovery licensees while annual fees for operating reactors and DOE Transportation Activities decrease.

The factors affecting all annual fees include the distribution of budgeted costs to the different classes of licenses (based on the specific activities the NRC will perform in FY 2013), the estimated 10 CFR part 170 collections for the various classes of licenses, and allocation of the fee-relief surplus adjustment to all fee classes. The percentage of the NRC's budget not subject to fee recovery remained at 10 percent from FY 2012 to FY 2013.

Table V shows the rebaselined fees for FY 2013 for a representative list of categories of licensees. The FY 2012 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE V—REBASELINED ANNUAL FEES

Class/Category of licenses	FY 2012 annual fee	FY 2013 proposed annual fee
Operating Power Reactors (Including Spent Fuel Storage/Reactor Decommissioning Annual Fee)	$4,766,000	$4,780,000
Spent Fuel Storage/Reactor Decommissioning	211,000	250,000
Research and Test Reactors (Nonpower Reactors)	34,700	84,500
High Enriched Uranium Fuel Facility	6,329,000	7,147,000
Low Enriched Uranium Fuel Facility	2,382,000	2,690,000
UF_6 Conversion and Deconversion Facility	1,293,000	1,460,000
Conventional Mills	23,600	28,600
Typical Materials Users:		
Radiographers (Category 3O)	25,900	28,300
Well Loggers (Category 5A)	10,200	13,100
Gauge Users (Category 3P)	4,900	6,600
Broad Scope Medical (Category 7B)	46,100	34,300

The work papers (ADAMS Accession No. ML13042A007) that support this proposed rule show in detail the allocation of the NRC's budgeted resources for each class of licenses and how the fees are calculated. The work papers are available as indicated in Section V, Availability of Documents, of this document.

Paragraphs a. through h. of this section describes budgetary resources allocated to each class of licenses and the calculations of the rebaselined fees. Individual values in the tables presented in this section may not sum to totals due to rounding.

a. Fuel Facilities

The FY 2013 budgeted costs to be recovered in the annual fees assessment to the fuel facility class of licenses (which includes licensees in fee categories 1.A.(1)(a), 1.A.(1)(b), 1.A.(2)(a), 1.A.(2)(b), 1.A.(2)(c), 1.E., and 2.A.(1) under § 171.16) are approximately $33.6 million. This value is based on the full cost of budgeted resources associated with all activities that support this fee class, which is reduced by estimated 10 CFR part 170 collections and adjusted for allocated generic transportation resources and fee-relief. In FY 2013, the LLW surcharge for fuel facilities is added to the allocated fee-relief adjustment (see Table IV in Section III.B.1, ''Application of Fee-Relief and Low-Level Waste Surcharge,'' of this document). The summary calculations used to derive this value are presented in Table VI for FY 2013, with FY 2012 values shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE VI—ANNUAL FEE SUMMARY CALCULATIONS FOR FUEL FACILITIES

[Dollars in millions]

Summary fee calculations	FY 2012 final	FY 2013 proposed
Total budgeted resources	$54.4	$53.6
Less estimated 10 CFR part 170 receipts	−25.6	−21.3
Net 10 CFR part 171 resources	28.8	32.3
Allocated generic transportation	+0.9	+0.9
Fee-relief adjustment/LLW surcharge	+ 0.6	+0.4
Billing adjustments	*−0.5*	−0.0
Total required annual fee recovery	29.7	33.6

The decrease in total budgeted resources for the fuel facilities fee class from FY 2012 to FY 2013 is primarily due to reduced licensing actions. Although fuel facilities received an adjustment of approximately $68,000 for prior year unbilled 10 CFR part 170 adjustments, the annual fee for fuel facilities increases from FY 2012 to FY 2013 primarily due to estimated decreased 10 CFR part 170 billings. The NRC allocates the total required annual fee recovery amount to the individual fuel facility licensees, based on the effort/fee determination matrix developed for the FY 1999 final fee rule (64 FR 31447; June 10, 1999). In the matrix included in the publicly available NRC work papers, licensees are grouped into categories according to their licensed activities (i.e., nuclear

material enrichment, processing operations, and material form) and the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from a safety and safeguards perspective. This methodology can be applied to determine fees for new licensees, current licensees, licensees in unique license situations, and certificate holders.

This methodology is adaptable to changes in the number of licensees or certificate holders, licensed or certified material and/or activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, it may result in a change of category for a particular fuel facility licensee, as a result of the methodology used in the fuel facility effort/fee matrix. Consequently, this change may also have an effect on the fees assessed to other fuel facility licensees and certificate holders. For example, if a fuel facility licensee amends its license/certificate (e.g., decommissioning or license termination) that results in it not being subject to 10 CFR part 171 costs applicable to the fee class, then the budgeted costs for the safety and/or safeguards components will be spread among the remaining fuel facility licensees/certificate holders.

The methodology is applied as follows. First, a fee category is assigned, based on the nuclear material and activity authorized by license or certificate. Although a licensee/certificate holder may elect not to fully use a license/certificate, the license/certificate is still used as the source for determining authorized nuclear material possession and use/activity. Second, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensees/certificate holders by authorized material types and use/activities.

Each year, the NRC's fuel facility project managers and regulatory analysts determine the level of effort associated with regulating each of these facilities. This is done by assigning, for each fuel facility, separate effort factors for the safety and safeguards activities associated with each type of regulatory activity. The matrix includes 10 types of regulatory activities, including enrichment and scrap/waste-related activities (see the work papers for the complete list). Effort factors are assigned as follows: One (low regulatory effort), five (moderate regulatory effort), and 10 (high regulatory effort). The NRC then totals separate effort factors for safety and safeguard activities for each fee category.

The effort factors for the various fuel facility fee categories are summarized in Table VII. The value of the effort factors shown, as well as the percent of the total effort factor for all fuel facilities, reflects the total regulatory effort for each fee category (not per facility). This results in spreading of costs to other fee categories. The Uranium Enrichment fee category factors have shifted with minimal increases and decreases between safety and safeguards factors compared to FY 2012.

TABLE VII—EFFORT FACTORS FOR FUEL FACILITIES, FY 2013

Facility Type (fee category)	Number of facilities	Effort factors (percent of total)	
		Safety	Safeguards
High Enriched Uranium Fuel (1.A.(1)(a))	2	89 (38.5)	97 (47.0)
Low Enriched Uranium Fuel (1.A.(1)(b))	3	70 (30.3)	35 (17.0)
Gas Centrifuge Enrichment Demonstration (1.A.(2)(b))	1	3 (1.3)	15 (7.3)
Hot Cell (1.A.(2)(c))	1	6 (2.6)	3 (1.5)
Uranium Enrichment (1.E)	2	51 (22.1)	49 (23.8)
UF_6 Conversion and Deconversion (2.A.(1))	1	12 (5.2)	7 (3.4)

For FY 2013, the total budgeted resources for safety activities, before the fee-relief adjustment is made, are $17.6 million. This amount is allocated to each fee category based on its percent of the total regulatory effort for safety activities. For example, if the total effort factor for safety activities for all fuel facilities is 100, and the total effort factor for safety activities for a given fee category is 10, that fee category will be allocated 10 percent of the total budgeted resources for safety activities. Similarly, the budgeted resources amount of $15.6 million for safeguards activities is allocated to each fee category based on its percent of the total regulatory effort for safeguards activities. The fuel facility fee class' portion of the fee-relief adjustment $0.4 million is allocated to each fee category based on its percent of the total regulatory effort for both safety and safeguards activities. The annual fee per licensee is then calculated by dividing the total allocated budgeted resources for the fee category by the number of licensees in that fee category. The fee (rounded) for each fuel facility is summarized in Table VIII.

TABLE VIII—ANNUAL FEES FOR FUEL FACILITIES

Facility type (fee category)	FY 2013 proposed annual fee
High Enriched Uranium Fuel (1.A.(1)(a))	$7,147,000
Low Enriched Uranium Fuel (1.A.(1)(b))	2,690,000
Gas Centrifuge Enrichment Demonstration (1.A.(2)(b))	1,383,000
Hot Cell (and others) (1.A.(2)(c))	692,000
Uranium Enrichment (1.E.)	3,842,000
UF_6 Conversion and Deconversion (2.A.(1))	1,460,000

b. Uranium Recovery Facilities

The total FY 2013 budgeted costs to be recovered through annual fees assessed to the uranium recovery class (which includes licensees in fee categories 2.A.(2)(a), 2.A.(2)(b), 2.A.(2)(c), 2.A.(2)(d), 2.A.(2)(e), 2.A.(3), 2.A.(4), 2.A.(5), and 18.B. under § 171.16) are approximately $1 million. The derivation of this value is shown in Table IX, with FY 2012 values shown for comparison purposes.

TABLE IX—ANNUAL FEE SUMMARY CALCULATIONS FOR URANIUM RECOVERY FACILITIES

[Dollars in millions]

Summary fee calculations	FY 2012 final	FY 2013 proposed
Total budgeted resources	$9.52	$11.7
Less estimated 10 CFR part 170 receipts	−8.30	−10.4
Net 10 CFR part 171 resources	1.22	1.3
Allocated generic transportation	N/A	N/A
Fee-relief adjustment	−0.1	−0.2
Billing adjustments	−0.00	−0.00
Total required annual fee recovery	1.03	1.04

The increase in total budgeted resources allocated to this fee class in FY 2013 is primarily due to an increase in licensing board activities. The annual fees increase for uranium recovery facilities primarily due to rulemaking and licensing board activities.

Since FY 2002, the NRC has computed the annual fee for the uranium recovery fee class by allocating the total annual fee amount for this fee class between the DOE and the other licensees in this fee class. The NRC regulates DOE's Title I and Title II activities under the Uranium Mill Tailings Radiation Control Act (UMTRCA). The Congress established the two programs, Title I and Title II under UMTRCA, to protect the public and the environment from uranium milling. The UMTRCA Title I program is for remedial action at abandoned mill tailings sites where tailings resulted largely from production of uranium for the weapons program. The NRC also regulates DOE's UMTRCA Title II program, which is directed toward uranium mill sites licensed by the NRC or Agreement States in or after 1978.

In FY 2013, the annual fee assessed to DOE includes recovery of the costs specifically budgeted for the NRC's UMTRCA Title I and II activities, plus 10 percent of the remaining annual fee amount, including generic/other costs (minus 10 percent of the fee relief adjustment), for the uranium recovery class. The NRC assesses the remaining 90 percent generic/other costs minus 90 percent of the fee relief adjustment, to the other NRC licensees in this fee class that are subject to annual fees.

The costs to be recovered through annual fees assessed to the uranium recovery class are shown in Table X.

TABLE X—COSTS RECOVERED THROUGH ANNUAL FEES; URANIUM RECOVERY FEE CLASS

DOE Annual Fee Amount (UMTRCA Title I and Title II) General Licenses:	
UMTRCA Title I and Title II budgeted costs less 10 CFR part 170 receipts	$ 692,531
10 percent of generic/other uranium recovery budgeted costs	55,564
10 percent of uranium recovery fee-relief adjustment	−21,403
Total Annual Fee Amount for DOE (rounded)	727,000
Annual Fee Amount for Other Uranium Recovery Licenses:	
90 percent of generic/other uranium recovery budgeted costs less the amounts specifically budgeted for Title I and Title II activities	500,887
90 percent of uranium recovery fee-relief adjustment	−192,629
Total Annual Fee Amount for Other Uranium Recovery Licenses	308,258

The DOE fee decreases by 7 percent in FY 2013 compared to FY 2012 due to estimated increased 10 CFR part 170 receipts and fee relief. The annual fee for most uranium recovery licensees increases due to licensing board activities and rulemaking activities.

The NRC will continue to use a matrix which is included in the work papers to determine the level of effort associated with conducting the generic regulatory actions for the different (non-DOE) licensees in this fee class. The weights derived in this matrix are used to allocate the approximately $308,258 annual fee amount to these licensees. The use of this uranium recovery annual fee matrix was established in the FY 1995 final fee rule (60 FR 32217; June 20, 1995). The FY 2013 matrix is described as follows.

First, the methodology identifies the categories of licenses included in this fee class (besides DOE). These categories are conventional uranium mills and heap leach facilities, uranium *In Situ* Recovery (ISR) and resin ISR facilities mill tailings disposal facilities (11e.(2) disposal facilities), and uranium water treatment facilities.

Second, the matrix identifies the types of operating activities that support and benefit these licensees. The activities related to generic decommissioning/reclamation are not included in the matrix because they are included in the fee-relief activities. Therefore, they are not a factor in determining annual fees. The activities included in the matrix are operations, waste operations, and groundwater protection. The relative weight of each type of activity is then determined, based on the regulatory resources associated with each activity. The

operations, waste operations, and groundwater protection activities have weights of zero, five, and 10, respectively, in the matrix.

Each year, the NRC determines the level of benefit to each licensee for generic uranium recovery program activities for each type of generic activity in the matrix. This is done by assigning, for each fee category, separate benefit factors for each type of regulatory activity in the matrix. Benefit factors are assigned on a scale of zero to 10 as follows: zero (no regulatory benefit), five (moderate regulatory benefit), and 10 (high regulatory benefit). These benefit factors are first multiplied by the relative weight assigned to each activity (described previously). The NRC then calculates total and per licensee benefit factors for each fee category. These benefit factors thus reflect the relative regulatory benefit associated with each licensee and fee category.

The benefit factors per licensee and per fee category, for each of the non-DOE fee categories included in the uranium recovery fee class are shown in Table XI.

TABLE XI—BENEFIT FACTORS FOR URANIUM RECOVERY LICENSES

Fee category	Number of licensees	Benefit factor per licensee	Total value	Benefit factor percent total
Conventional and Heap Leach mills (2.A.(2)(a))	1	150	150	9
Basic *In Situ* Recovery facilities (2.A.(2)(b))	6	190	1,140	71
Expanded *In Situ* Recovery facilities (2.A.(2)(c))	1	215	215	13
11e.(2) disposal incidental to existing tailings sites (2.A.(4))	1	85	85	5
Uranium water treatment (2.A.(5))	1	25	25	2
Total	10	665	1,615	100

Applying these factors to the approximately $308,258 in budgeted costs to be recovered from non-DOE uranium recovery licensees results in the total annual fees for each fee category. The annual fee per licensee is calculated by dividing the total allocated budgeted resources for the fee category by the number of licensees in that fee category, as summarized in Table XII.

TABLE XII—ANNUAL FEES FOR URANIUM RECOVERY LICENSEES

[Other than DOE]

Facility type (fee category)	FY 2013 proposed annual fee
Conventional and Heap Leach mills (2.A.(2)(a))	$28,600
Basic *In Situ* Recovery facilities (2.A.(2)(b))	36,300
Expanded *In Situ* Recovery facilities (2.A.(2)(c))	41,000
11e.(2) disposal incidental to existing tailings sites (2.A.(4))	16,200
Uranium water treatment (2.A.(5))	4,800

c. Operating Power Reactors

The total budgeted costs to be recovered from the power reactor fee class in FY 2013 in the form of annual fees is $471.1 million as shown in Table XIII. The FY 2012 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE XIII—ANNUAL FEE SUMMARY CALCULATIONS FOR OPERATING POWER REACTORS

[Dollars in millions]

Summary fee calculations	FY 2012 final	FY 2013 proposed
Total budgeted resources	$781.4	$798.2
Less estimated 10 CFR part 170 receipts	−295.5	−315.9
Net 10 CFR part 171 resources	486.0	482.3
Allocated generic transportation	+1.3	1.4
Fee-relief adjustment/LLW surcharge	−6.3	−12.7
Billing adjustments	−7.3	0.1
Total required annual fee recovery	473.7	471.1

The increase in budgetary resources for FY 2013 is primarily due to increased workload activities focusing on Task Force recommendations regarding the Fukushima Dai-ichi accident in Japan (''Recommendations for Enhancing Reactor Safety in the 21st Century: The Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident'' (ADAMS Accession No. ML111861807), dated July 12, 2011).

The annual fees for power reactors decrease in FY 2013 due to increased 10 CFR part 170 estimates from prior year unbilled 10 CFR part 170 adjustments of approximately $20.7 million. The budgeted costs to be recovered through

annual fees to power reactors are divided equally among the 104 power reactors licensed to operate, resulting in an FY 2013 annual fee of $4,530,000 per reactor. Additionally, each power reactor licensed to operate would be assessed the FY 2013 spent fuel storage/reactor decommissioning annual fee of $250,000. The total FY 2013 annual fee is $4,780,000 for each power reactor licensed to operate. The annual fees for power reactors are presented in § 171.15.

d. Spent Fuel Storage/Reactors in Decommissioning

For FY 2013, budgeted costs of $30.5 million for spent fuel storage/reactor decommissioning are to be recovered through annual fees assessed to 10 CFR part 50 power reactors, and to 10 CFR part 72 licensees who do not hold a 10 CFR part 50 license. Those reactor licensees that have ceased operations and have no fuel onsite are not subject to these annual fees. Table XIV shows the calculation of this annual fee amount. The FY 2012 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE XIV—ANNUAL FEE SUMMARY CALCULATIONS FOR THE SPENT FUEL STORAGE/REACTOR IN DECOMMISSIONING FEE CLASS

[Dollars in millions]

Summary fee calculations	FY 2012 final	FY 2013 proposed
Total budgeted resources	$29.4	$35.6
Less estimated 10 CFR part 170 receipts	−3.6	−5.1
Net 10 CFR part 171 resources	25.8	30.5
Allocated generic transportation	+ 0.7	0.7
Fee-relief adjustment	−0.3	−0.7
Billing adjustments	−0.3	0.1
Total required annual fee recovery	22.9	30.5

The value of total budgeted resources for this fee class is higher in FY 2013 than in FY 2012 due to rulemaking activities regarding updating the Waste Confidence rule and termination of the Private Fuel Storage license in early 2013. The required annual fee recovery amount is divided equally among 122 licensees, resulting in an FY 2013 annual fee of $250,000 per licensee.

e. Research and Test Reactors (Nonpower Reactors)

Approximately $340,000 in budgeted costs is to be recovered through annual fees assessed to the test and research reactor class of licenses for FY 2013. Table XV summarizes the annual fee calculation for the research and test reactors for FY 2013. The FY 2012 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE XV—ANNUAL FEE SUMMARY CALCULATIONS FOR RESEARCH AND TEST REACTORS

[Dollars in millions]

Summary fee calculations	FY 2012 final	FY 2013 proposed
Total budgeted resources	$1.68	$1.52
Less estimated 10 CFR part 170 receipts	−1.54	−1.19
Net 10 CFR part 171 resources	0.14	0.33
Allocated generic transportation	+0.03	+0.04
Fee-relief adjustment	−0.05	−0.03
Billing adjustments	−0.02	−0.00
Total required annual fee recovery	$0.13	$0.34

Although research and test reactors received an adjustment of approximately $112,000 for prior year 10 CFR part 170 unbilled adjustments, the increase in annual fees for research and test reactors from FY 2012 to FY 2013 is primarily due to increased budget resources for cyber security assessments for FY 2013. The required annual fee recovery amount is divided equally among the four research and test reactors subject to annual fees and results in an FY 2013 annual fee of $84,500 for each licensee.

f. Rare Earth Facilities

The agency does not anticipate receiving an application for a rare earth facility this fiscal year, so no budgeted resources are allocated to this fee class, and no annual fee will be published in FY 2013.

g. Materials Users

For FY 2013, budget costs of $31.8 million for material users are to be recovered through annual fees assessed to 10 CFR part 30 licensees. Table XVI shows the calculation of the FY 2013 annual fee amount for materials users licensees. The FY 2012 values are shown for comparison. Note the following fee categories under § 171.16 are included in this fee class: 1.C., 1.D., 1.F., 2.B., 2.C., 3.A. through 3.S., 4.A. through 4.C., 5.A., 5.B., 6.A., 7.A. through 7.C., 8.A., 9.A. through 9.D., 16, and 17. (Individual values may not sum to totals due to rounding.)

TABLE XVI—ANNUAL FEE SUMMARY CALCULATIONS FOR MATERIALS USERS

[Dollars in millions]

Summary fee calculations	FY 2012 final	FY 2013 proposed
Total budgeted resources	$30.6	$31.8
Less estimated 10 CFR part 170 receipts	−1.6	−1.5
Net 10 CFR part 171 resources	29.0	30.2
Allocated generic transportation	+1.5	+1.7
Fee-relief adjustment/LLW surcharge	+0.1	−0.1
Billing adjustments	−0.2	−0.0
Total required annual fee recovery	30.4	31.8

The total required annual fees to be recovered for most materials licensees increase in FY 2013 mainly for oversight activities and changes resulting from biennial review hours and inspection priorities.

To equitably and fairly allocate the $31.8 million in FY 2013 budgeted costs to be recovered in annual fees assessed to the approximately 3,000 diverse materials users licensees, the NRC will continue to base the annual fees for each fee category within this class on the 10 CFR part 170 application fees and estimated inspection costs for each fee category. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licenses based on the NRC's cost to regulate each category. This fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licenses.

The annual fee for these categories of materials users' licenses is developed as follows: Annual fee = Constant × [Application Fee + (Average Inspection Cost divided by Inspection Priority)] + Inspection Multiplier × (Average Inspection Cost divided by Inspection Priority) + Unique Category Costs.

The constant is the multiple necessary to recover approximately $23.2 million in general costs (including allocated generic transportation costs) and is 1.57 for FY 2013. The average inspection cost is the average inspection hours for each fee category multiplied by the hourly rate of $277. The inspection priority is the interval between routine inspections, expressed in years. The inspection multiplier is the multiple necessary to recover approximately $8.5 million in inspection costs, and is 2.4 for FY 2013. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. For FY 2013, approximately $158,000 in budgeted costs for the implementation of revised 10 CFR part 35, Medical Use of Byproduct Material (unique costs), has been allocated to holders of NRC human-use licenses.

The annual fee to be assessed to each licensee also includes a share of the fee-relief surplus adjustment of approximately $471,000 allocated to the materials users fee class (see Section III.B.1, ''Application of Fee-Relief and Low-Level Waste Surcharge,'' of this document), and for certain categories of these licensees, a share of the approximately $372,000 surcharge costs allocated to the fee class. The annual fee for each fee category is shown in § 171.16(d).

h. Transportation

Table XVII shows the calculation of the FY 2013 generic transportation budgeted resources to be recovered through annual fees. The FY 2012 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE XVII—ANNUAL FEE SUMMARY CALCULATIONS FOR TRANSPORTATION

[Dollars in millions]

Summary fee calculations	FY 2012 final	FY 2013 proposed
Total budgeted resources	$9.2	$8.6
Less estimated 10 CFR part 170 receipts	−3.4	−2.6
Net 10 CFR part 171 resources	5.9	6.0

The NRC must approve any package used for shipping nuclear material before shipment. If the package meets NRC requirements, the NRC issues a Radioactive Material Package Certificate of Compliance (CoC) to the organization requesting approval of a package. Organizations are authorized to ship radioactive material in a package approved for use under the general licensing provisions of 10 CFR part 71, ''Packaging and Transportation of Radioactive Material.'' The resources associated with generic transportation activities are distributed to the license fee classes based on the number of CoCs benefitting (used by) that fee class, as a proxy for the generic transportation resources expended for each fee class.

The total FY 2013 budgetary resources for generic transportation activities including those to support DOE CoCs is $6.0 million. The decrease in 10 CFR part 171 resources in FY 2013 is primarily due to decreased 10 CFR part 170 billing activities. Generic transportation resources associated with fee-exempt entities are not included in this total. These costs are included in the appropriate fee-relief category (e.g., the fee-relief category for nonprofit educational institutions).

Consistent with the policy established in the NRC's FY 2006 final fee rule (71 FR 30721; May 30, 2006), the NRC will recover generic transportation costs

unrelated to DOE as part of existing annual fees for license fee classes. The NRC will continue to assess a separate annual fee under § 171.16, fee category 18.A., for DOE Transportation Activities. The amount of the allocated generic resources is calculated by multiplying the percentage of total CoCs used by each fee class (and DOE) by the total generic transportation resources to be recovered.

The distribution of these resources to the license fee classes and DOE is shown in Table XVIII. The distribution is adjusted to account for the licensees in each fee class that are fee-exempt. For example, if four CoCs benefit the entire research and test reactor class, but only four of 31 research and test reactors are subject to annual fees, the number of CoCs used to determine the proportion of generic transportation resources allocated to research and test reactor annual fees equals (4/31) * 4, or 0.5 CoCs.

TABLE XVIII—DISTRIBUTION OF GENERIC TRANSPORTATION RESOURCES, FY 2013

[Dollars in millions]

License fee class/DOE	Number CoCs benefiting fee class or DOE	Percentage of total CoCs	Allocated generic transportation resources
Total	87.5	100.0	$6.02
DOE	20.0	22.9	1.38
Operating Power Reactors	20.0	22.9	1.38
Spent Fuel Storage/Reactor Decommissioning	10.0	11.4	0.69
Research and Test Reactors	0.5	0.6	0.04
Fuel Facilities	13.0	14.8	0.89
Materials Users	24.0	27.4	1.65

The NRC assesses an annual fee to DOE based on the 10 CFR part 71 CoCs it holds and does not allocate these DOE-related resources to other licensees' annual fees, because these resources specifically support DOE. Note that DOE's annual fee includes a reduction for the fee-relief surplus adjustment (see Section III.B.1, Application of Fee-Relief and Low-Level Waste Surcharge, of this document), resulting in a total annual fee of $1,304,000 for FY 2013. The annual fee decreases in FY 2013 are primarily due to reduced budgeted resources for the NRC's transportation activities.

3. Small Entity Fees

Regarding small entity fees, the NRC conducted its 2013 biennial review of the small entity fees to determine if the fees should be changed. The NRC applied the fee methodology developed in FY 2009 that applies a fixed percentage of 39 percent to the prior 2-year weighted average of materials users' fees. This results in an upper tier small entity fee increase from $2,300 to $3,500 and a lower-tier fee increase from $500 to $800, which is a 52 percent and 60 percent increase, respectively. Implementing this increase would have a disproportionate impact upon the NRC's small licensees compared to other licensees. Therefore, the NRC staff is proposing to limit the increase to 21 percent for upper tier fee which is the same limit applied in the FY 2011 biennial review. The NRC staff proposes to increase the upper-tier small entity fee to $2,800 and increase the lower-tier small entity fee to $600 for FY 2013. The NRC staff believes these fees are reasonable and provide relief to small entities while at the same time recovering from those licensees some of the NRC's costs for activities that benefit them.

4. Administrative Amendments

This proposed rule would make the following administrative changes for clarity:

a. § 171.16: Footnote 1 is revised for clarity and deletes the following language, ''Licensees paying annual fees under category 1.A.(1) are not subject to the annual fees for categories 1.C. and 1.D. for sealed sources authorized in the license.''

b. § 171.16: New Footnote 15 is added for clarity and reads as follows, ''Licensees paying annual fees under category 1.A., 1.B., and 1.E. are not subject to the annual fees for categories 1.C., 1.D., and 1.F. for sealed sources authorized in the license.''

c. § 171.16: Reference to Footnote 4 would be removed and replaced with reference to Footnote 15 in fee categories 1.C. and 1.D. Fee category 1.F. would be revised to reference Footnote 15 for clarity.

d. § 171.16(c): The description for small entities would be revised to include ''10 CFR part 72 licensees,'' as eligible to apply for small entity status. The staff believes this inclusion remedies the unintended consequence of the consolidation of 10 CFR part 72 licenses under § 171.15 being excluded for treatment as a small business entity for fee purposes.

e. The NRC would change the lower-tier receipts-based threshold of $450,000 to $485,000 to reflect approximately the same percentage adjustment as the NRC's upper tier receipts-based standard adjustment from $6.5 to $7 million which was published as a final rule in the **Federal Register** (77 FR 39385) and effective on August 22, 2012.

f. § 171.16: The name for fee category 2.A.(1) would include ''deconversion,'' to reflect the new description and the description for fee category 2.A.(1) would be changed to include ''or for deconverting uranium hexafluoride in the production of uranium oxides for disposal,'' to capture the deconversion of uranium hexafluoride (UF_6) into uranium oxides for disposal and commercial sale of the fluoride byproducts from uranium deconversion facilities.

g. § 171.16: The descriptions for fee categories 1.C. and 1.D. would be changed; and a new fee category 1.F. would be created to address licenses authorizing greater than critical mass as defined by § 70.4, ''Critical Mass.'' Under 10 CFR part 170, the fee category 1.C. description would include ''of less than a critical mass as defined in § 70.4 of this chapter.'' The fee category 1.D. description would change to, ''All other special nuclear material licenses, except licenses authorizing special nuclear material in sealed or unsealed form in combination that would constitute a critical mass as defined in § 70.4 of this, for which the licensee shall pay the same fees as those under category 1.A.'' A new fee category 1.F. would read, ''For special nuclear materials licenses in sealed or unsealed form of greater than a critical mass as defined in § 70.4 of this chapter.''

h. § 171.19(d) would be revised for clarity and changes ''and 3.A. through 9.D.'' to ''3.A. through 3.F., and 3.H. through 9.D.''

i. § 171.16: Footnote 7 is revised for clarity and deletes the following language, ''they are charged an annual fee in other categories while they are licensed to operate,'' and adds the following language, ''their decommissioning fees are covered by other fees.''

In summary, the NRC is proposing to make the following changes to 10 CFR part 171:

1. Use the NRC's fee-relief surplus to reduce all licensees' annual fees, based on their percentage share of the NRC budget;

2. Establish rebaselined annual fees for FY 2013;

3. Increase the maximum small entity fee from $2,300 to $2,800, and the lower tier fee from $500 to $600; and

4. Make administrative changes to §§ 171.16 and 171.19(d).

IV. Plain Writing

The Plain Writing Act of 2010, (Pub. L. 111–274), requires Federal agencies to write documents in a clear, concise, well-organized manner. The NRC has written this document to be consistent with the Plain Writing act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883). The NRC requests comment on the proposed rule with respect to the clarity and effectiveness of the language used.

V. Availability of Documents

The NRC is making the documents identified in the following table available to interested persons through one or more of the following methods, as indicated. To access documents related to this action, see the **ADDRESSES** section of this document.

Document	PDR	Web
FY 2013 Work Papers	X	
Regulatory Flexibility Analysis	X	
Small Entity Compliance Guide	X	
NUREG–1100, Volume 28, ''Congressional Budget Justification: Fiscal Year 2013'' (February 2012).	X	*http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1100/.*
NRC Form 526	.....	*http://www.nrc.gov/reading-rm/doc-collections/forms/nrc526.pdf.*

Vl. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 3701) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies, unless using these standards is inconsistent with applicable law or is otherwise impractical. The NRC is proposing to amend the licensing, inspection, and annual fees charged to its licensees and applicants, as necessary, to recover approximately 90 percent of its budget authority in FY 2013, as required by the OBRA–90, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements.

VIl. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the proposed rule. By its very nature, this regulatory action does not affect the environment and, therefore, no environmental justice issues are raised.

VIII. Paperwork Reduction Act Statement

This proposed rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement, unless the requesting document displays a currently valid Office of Management and Budget control number.

IX. Regulatory Analysis

Under OBRA–90, as amended, and the AEA, the NRC is required to recover 90 percent of its budget authority, or $1,053.2 million in FY 2013. The NRC established fee methodology guidelines for 10 CFR part 170 in 1978, and more fee methodology guidelines through the establishment of 10 CFR part 171 in 1986. In subsequent rulemakings, the NRC has adjusted its fees without changing the underlying principles of its fee policy in order to ensure that the NRC continues to comply with the statutory requirements for cost recovery in OBRA–90 and the AEA.

In this rulemaking, the NRC proposes to continue this long-standing approach. Therefore, the NRC did not identify any alternatives to the current fee structure guidelines and did not prepare a regulatory analysis for this rulemaking.

X. Regulatory Flexibility Analysis

Section 604 of the Regulatory Flexibility Act requires agencies to perform an analysis that considers the impact of a rulemaking on small entities. The NRC's regulatory flexibility analysis for this proposed rule is available as indicated in Section V, Availability of Documents, of this document, and a summary is provided in the following paragraphs.

The NRC is required by the OBRA–90, as amended, to recover approximately 90 percent of its FY 2013 budget authority through the assessment of user fees. The OBRA–90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

The FY 2013 proposed rule establishes the schedules of fees necessary for the NRC to recover 90 percent of its budget authority for FY 2013. The proposed rule estimates some increases in annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and in decreases in those annual fees charged to others. Licensees affected by these proposed estimates include those who qualify as small entities under the NRC's size standards in § 2.810.

The NRC prepared a FY 2013 biennial regulatory analysis in accordance with the FY 2001 final rule (66 FR 32467; June 14, 2001). This rule also stated the small entity fees will be reexamined every 2 years and in the same years the NRC conducts the biennial review of fees as required by the Office of Chief Financial Officer Act.

For this proposed rule, small entity fees would increase to $2,800 for the maximum upper-tier small entity fee and increase to $600 for the lower-tier small entity as result of the biennial

review which factored in the number of increased hours for application reviews and inspections in the fee calculations. The next small entity biennial review is scheduled for FY 2015.

Additionally, the Small Business Regulatory Enforcement Fairness Act requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. The NRC, in compliance with the law, has prepared the ''Small Entity Compliance Guide,'' which is available as indicated in Section V, Availability of Documents, of this document.

XI. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and that a backfit analysis is not required. A backfit analysis is not required because these amendments do not require the modification of, or addition to, systems, structures, components, or the design of a facility, or the design approval or manufacturing license for a facility, or the procedures or organization required to design, construct, or operate a facility.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, Registrations, Approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

■ 1. The authority citation for part 170 continues to read as follows:

Authority: Independent Offices Appropriations Act sec. 501 (31 U.S.C. 9701); Atomic Energy Act sec. 161(w) (42 U.S.C. 2201(w)); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Chief Financial Officers Act sec. 205 (31 U.S.C. 901, 902); Government Paperwork Elimination Act sec. 1704, (44 U.S.C. 3504 note); Energy Policy Act secs. 623, Energy Policy Act of 2005 sec. 651(e), Pub. L. 109–58, 119 Stat.783 (42 U.S.C. 2201(w), 2014, 2021, 2021b, 2111).

■ 2. § 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, 10 CFR part 55 re-qualification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the professional staff-hour rate of $277 per hour.

■ 3. In § 170.21, the table and Footnotes are revised to read as follows:

§ 170.21 Schedule of fees for production or utilization facilities, review of standard referenced design approvals, special projects, inspections, and import and export licenses.

* * * * *

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees [1 2]
A. Nuclear Power Reactors:	
Application for Construction Permit.	
Early Site Permit, Construction Permit, Combined License, Operating License	Full Cost
Amendment, Renewal, Dismantling-Decommissioning and Termination, Other Approvals	Full Cost
Inspections [3]	Full Cost
B. Standard Reference Design Review:	
Preliminary Design Approvals, Final Design Approvals, Certification	Full Cost
Amendment, Renewal, Other Approvals	Full Cost
C. Test Facility/Research Reactor/Critical Facility:	
Application for Construction Permit	Full Cost
Construction Permit, Operating License	Full Cost
Amendment, Renewal, Dismantling-Decommissioning and Termination, Other Approvals	Full Cost
Inspections [3]	Full Cost
D. Manufacturing License:	
Application for Construction	Full Cost
Preliminary Design Approval, Final Design Approval	Full Cost
Amendment Renewal, Other Approvals	Full Cost
Inspections [3]	Full Cost
E. [Reserved]	
F. [Reserved]	
G. Other Production or Utilization Facility:	
Application for Construction Permit	Full Cost
Construction Permit, Operating License	Full Cost
Amendment, Renewal, Other Approvals	Full Cost
Inspections [3]	Full Cost
H. Production or Utilization Facility Permanently Closed Down:	
Inspections [3]	Full Cost
I. Part 55: Reviews:	
Requalification and Replacement Examinations for Reactors Operators	Full Cost
J. Special Projects:	
Approvals and preapplication/licensing activities	Full Cost

SCHEDULE OF FACILITY FEES—Continued

[See footnotes at end of table]

Facility categories and type of fees	Fees [1] [2]
Inspections [3]	Full Cost
Contested hearings on licensing actions directly related to U.S. Government national security initiatives	Full Cost
K. Import and export licenses:	
Licenses for the import and export only of production or utilization facilities or the export only of components for production or utilization facilities issued under 10 CFR part 110.	
1. Application for import or export of production or utilization facilities [4] (including reactors and other facilities) and exports of components requiring Commission and Executive Branch review, for example, actions under 10 CFR 110.40(b).	
Application—new license, or amendment; or license exemption request	$18,000
2. Application for export of reactor and other components requiring Executive Branch review, for example, those actions under 10 CFR 110.41(a).	
Application—new license, or amendment; or license exemption request	9,700
3. Application for export of components requiring the assistance of the Executive Branch to obtain foreign government assurances.	
Application—new license, or amendment; or license exemption request	4,400
4. Application for export of facility components and equipment not requiring Commission or Executive Branch review, or obtaining foreign government assurances.	
Application—new license, or amendment; or license exemption request	3,300
5. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms or conditions or to the type of facility or component authorized for export and therefore, do not require in-depth analysis or review or consultation with the Executive Branch, U.S. host state, or foreign government authorities.	
Minor amendment to license	1,400

[1] Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the *Code of Federal Regulations* (e.g., 10 CFR 50.12, 10 CFR 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect when the service was provided.

[3] Inspections covered by this schedule are both routine and non-routine safety and safeguards inspections performed by NRC for the purpose of review or follow-up of a licensed program. Inspections are performed through the full term of the license to ensure that the authorized activities are being conducted in accordance with the Atomic Energy Act of 1954, as amended, other legislation, Commission regulations or orders, and the terms and conditions of the license. Non-routine inspections that result from third-party allegations will not be subject to fees.

[4] Imports only of major components for end-use at NRC-licensed reactors are authorized under NRC general import license in 10 CFR 110.27.

■ 4. In § 170.31, the table and Footnotes are revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

* * * * *

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fees [2] [3]
1. Special nuclear material:	
A. (1) Licenses for possession and use of U–235 plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material (High Enriched Uranium) [Program Code(s): 21130]	(6)
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel [Program Code(s): 21210]	(6)
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations [Program Codes): 21310, 21320]	(6)
(b) Gas centrifuge enrichment demonstration facilities	(6)
(c) Others, including hot cell facilities	(6)
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI) [Program Code(s): 23200]	(6)
C. Licenses for possession and use of special nuclear material of less than a critical mass as defined in § 70.4 in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers.[4]	
Application [Program Code(s): 22140]	$1,300
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in sealed or unsealed form in combination that would constitute a critical mass as defined in § 70.4 of this, for which the licensee shall pay the same fees as those under Category 1.A.[4]	
Application [Program Code(s): 22110, 22111, 22120, 22131, 22136, 22150, 22151, 22161, 22170, 23100, 23300, 23310]	$2,600
E. Licenses or certificates for construction and operation of a uranium enrichment facility [Program Code(s): 21200]	(6)
F. For special nuclear materials licenses in sealed or unsealed form of greater than a critical mass as defined in § 70.4 of this chapter.[4] [Program Code(s): 22155]	(6)

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fees [2 3]
2. Source material:.	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride or for deconverting uranium hexafluoride in the production of uranium oxides for disposal. [Program Code(s): 11400]	(6)
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ recovery, heap-leaching, ore buying stations, ion-exchange facilities, and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
(a) Conventional and Heap Leach facilities [Program Code(s): 11100]	(6)
(b) Basic *In Situ* Recovery facilities [Program Code(s): 11500]	(6)
(c) Expanded *In Situ* Recovery facilities [Program Code(s): 11510]	(6)
(d) *In Situ* Recovery Resin facilities [Program Code(s): 11550]	(6)
(e) Resin Toll Milling facilities [Program Code(s): 11555]	(6)
(f) Other facilities [Program Code(s): 11700]	(6)
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4) [Program Code(s): 11600, 12000]	(6)
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2) [Program Code(s): 12010]	(6)
(5) Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water [Program Code(s): 11820]	(6)
B. Licenses which authorize the possession, use, and/or installation of source material for shielding.	
Application [Program Code(s): 11210]	$1,220
C. All other source material licenses.	
Application [Program Code(s): 11200, 11220, 11221, 11230, 11300, 11800, 11810]	$2,700
3. Byproduct material:	
A. Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.	
Application [Program Code(s): 03211, 03212, 03213]	$13,000
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.	
Application [Program Code(s): 03214, 03215, 22135, 22162]	$3,900
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4).	
Application [Program Code(s): 02500, 02511, 02513]	$4,900
D. [Reserved]	N/A
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units).	
Application [Program Code(s): 03510, 03520]	$3,200
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application [Program Code(s): 03511]	$6,500
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application [Program Code(s): 03521]	$61,800
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter.	
Application [Program Code(s): 03254, 03255]	$5,100
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter.	
Application [Program Code(s): 03250, 03251, 03252, 03253, 03256]	$11,400
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter.	
Application [Program Code(s): 03240, 03241, 03243]	$2,000
K. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter.	
Application [Program Code(s): 03242, 03244]	$1,100

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fees [2 3]
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution.	
Application [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613]	$5,500
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution.	
Application [Program Code(s): 03620]	$3,600
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3.P.; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4.A., 4.B., and 4.C.	
Application [Program Code(s): 03219, 03225, 03226]	$7,400
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations.	
Application [Program Code(s): 03310, 03320]	$4,000
P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D.	
Application [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03130, 03140, 03220, 03221, 03222, 03800, 03810, 22130]	$2,000
Q. Registration of a device(s) generally licensed under part 31 of this chapter.	
Registration	$300
R. Possession of items or products containing radium-226 identified in 10 CFR 31.12 which exceed the number of items or limits specified in that section.[5]	
1. Possession of quantities exceeding the number of items or limits in 10 CFR 31.12(a)(4), or (5) but less than or equal to 10 times the number of items or limits specified.	
Application [Program Code(s): 02700]	$2,500
2. Possession of quantities exceeding 10 times the number of items or limits specified in 10 CFR 31.12(a)(4), or (5).	
Application [Program Code(s): 02710]	$2,000
S. Licenses for production of accelerator-produced radionuclides.	
Application [Program Code(s): 03210]	$13,100
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material. [Program Code(s): 03231, 03233, 03235, 03236, 06100, 06101]	([6])
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	
Application [Program Code(s): 03234]	$5,900
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	
Application [Program Code(s): 03232]	$5,000
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies.	
Application [Program Code(s): 03110, 03111, 03112]	$3,900
B. Licenses for possession and use of byproduct material for field flooding tracer studies.	
Licensing [Program Code(s): 03113]	([6])
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material.	
Application [Program Code(s): 03218]	$22,100
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices.	
Application [Program Code(s): 02300, 02310]	$8,900
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.	
Application [Program Code(s): 02110]	$8,600
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices.	
Application [Program Code(s): 02120, 02121, 02200, 02201, 02210, 02220, 02230, 02231, 02240, 22160]	$3,400
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities.	
Application [Program Code(s): 03710]	$2,500

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fees [2 3]
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution.	
Application—each device	$5,400
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices.	
Application—each device	$9,000
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution.	
Application—each source	$5,300
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel.	
Application—each source	$1,050
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers.	
1. Spent Fuel, High-Level Waste, and plutonium air packages	(6)
2. Other Casks	(6)
B. Quality assurance program approvals issued under part 71 of this chapter.	
1. Users and Fabricators.	
Application	$4,200
Inspections	(6)
2. Users.	
Application	$4,200
Inspections	(6)
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices).	(6)
11. Review of standardized spent fuel facilities.	(6)
12. Special projects:	
Including approvals, preapplication/licensing activities, and inspections.	
Application [Program Code: 25110]	(6)
13. A. Spent fuel storage cask Certificate of Compliance.	(6)
B. Inspections related to storage of spent fuel under § 72.210 of this chapter.	(6)
14. A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter, including master materials licenses (MMLs).	
Application [Program Code(s): 3900, 11900, 21135, 21215, 21240, 21325 and 22200]	(6)
B. Site-specific decommissioning activities associated with unlicensed sites, including MMLs, regardless of whether or not the sites have been previously licensed.	(6)
15. Import and Export licenses:	
Licenses issued under part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, and the export only of heavy water, or nuclear grade graphite (fee categories 15.A. through 15.E.).	
A. Application for export or import of nuclear materials, including radioactive waste requiring Commission and Executive Branch review, for example, those actions under 10 CFR 110.40(b).	
Application—new license, or amendment; or license exemption request	$18,000
B. Application for export or import of nuclear material, including radioactive waste, requiring Executive Branch review, but not Commission review. This category includes applications for the export and import of radioactive waste and requires NRC to consult with domestic host state authorities (i.e., Low-Level Radioactive Waste Compact Commission, the U.S. Environmental Protection Agency, etc.).	
Application—new license, or amendment; or license exemption request	$9,700
C. Application for export of nuclear material, for example, routine reloads of low enriched uranium reactor fuel and/or natural uranium source material requiring the assistance of the Executive Branch to obtain foreign government assurances.	
Application—new license, or amendment; or license exemption request	$4,400
D. Application for export or import of nuclear material not requiring Commission or Executive Branch review, or obtaining foreign government assurances.	
Application—new license, or amendment; or license exemption request.	$3,300
E. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and, therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign government authorities.	
Minor amendment	$1,400
Licenses issued under part 110 of this chapter for the import and export only of Category 1 and Category 2 quantities of radioactive material listed in Appendix P to part 110 of this chapter (fee categories 15.F. through 15.R.).	
Category 1 (Appendix P, 10 CFR part 110) Exports:	
F. Application for export of Appendix P Category 1 materials requiring Commission review (e.g. exceptional circumstance review under 10 CFR 110.42(e)(4)) and to obtain government-to-government consent for this process. For additional consent see 15.I.	
Application—new license, or amendment; or license exemption request	$15,200
G. Application for export of Appendix P Category 1 materials requiring Executive Branch review and to obtain government-to-government consent for this process. For additional consents see 15.I.	
Application—new license, or amendment; or license exemption request	$8,900

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fees [2 3]
H. Application for export of Appendix P Category 1 materials and to obtain one government-to-government consent for this process. For additional consents see 15. I.	
Application—new license, or amendment; or license exemption request	$6,600
I. Requests for each additional government-to-government consent in support of an export license application or active export license.	
Application—new license, or amendment; or license exemption request	$280
Category 2 (Appendix P, 10 CFR part 110) Exports:	
J. Application for export of Appendix P Category 2 materials requiring Commission review (e.g. exceptional circumstance review under 10 CFR 110.42(e)(4)).	
Application—new license, or amendment; or license exemption request	$15,200
K. Applications for export of Appendix P Category 2 materials requiring Executive Branch review.	
Application—new license, or amendment; or license exemption request	$8,900
L. Application for the export of Category 2 materials.	
Application—new license, or amendment; or license exemption request	$5,500
M. [Reserved]	N/A
N. [Reserved]	N/A
O. [Reserved]	N/A
P. [Reserved]	N/A
Q. [Reserved]	N/A
Minor Amendments (Category 1 and 2, Appendix P, 10 CFR part 110, Export):	
R. Minor amendment of any active export license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and, therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign authorities.	
Minor amendment	$1,400
16. Reciprocity:	
Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.	
Application	$1,800
17. Master materials licenses of broad scope issued to Government agencies.	
Application [Program Code(s): 03614]	([6])
18. Department of Energy.	
A. Certificates of Compliance. Evaluation of casks, packages, and shipping containers (including spent fuel, high-level waste, and other casks, and plutonium air packages).	([6])
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities.	([6])

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for preapplication consultations and reviews; applications for new licenses, approvals, or license terminations; possession-only licenses; issuances of new licenses and approvals; certain amendments and renewals to existing licenses and approvals; safety evaluations of sealed sources and devices; generally licensed device registrations; and certain inspections. The following guidelines apply to these charges:

(a) *Application and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses, except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee category 1.C. only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses, renewals, and amendments to existing licenses, preapplication consultations and other documents submitted to the NRC for review, and project manager time for fee categories subject to full cost fees are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment fees.* Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to an export or import license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment, unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(e) *Generally licensed device registrations under 10 CFR 31.5.* Submittals of registration information must be accompanied by the prescribed fee.

[2] Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the *Code of Federal Regulations* (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in fee categories 9.A. through 9.D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect when the service is provided, and the appropriate contractual support services expended.

[4] Licensees paying fees under categories 1.A., 1.B., and 1.E. are not subject to fees under categories 1.C., 1.D. and 1.F. for sealed sources authorized in the same license, except for an application that deals only with the sealed sources authorized by the license.

[5] Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. (This exception does not apply if the radium sources are possessed for storage only.)

[6] Full cost.

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

■ 5. The authority citation for part 171 continues to read as follows:

Authority: Consolidated Omnibus Budget Reconciliation Act sec. 7601 Pub. L. 99–272, as amended by sec. 5601, Pub. L. 100–203 as amended by sec. 3201, Pub. L. 101–239, as amended by sec. 6101, Pub. L. 101–508, as amended by sec. 2903a, Pub. L. 102–486 (42 U.S.C. 2213, 2214), and as amended by Title IV, Pub. L. 109–103 (42 U.S.C. 2214); Atomic Energy Act sec. 161(w), 223, 234 (42 U.S.C. 2201(w), 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005 sec. 651(e), Pub. L. 109–58 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 6. In § 171.15, paragraph (b)(1), the introductory text of paragraph (b)(2), paragraph (c)(1), the introductory text of paragraphs (c)(2) and (d)(1), and paragraphs (d)(2), (d)(3), and (e) are revised to read as follows:

§ 171.15 Annual fees: Reactor licenses and independent spent fuel storage licenses.

* * * * *

(b)(1) The FY 2013 annual fee for each operating power reactor which must be collected by September 30, 2013, is $4,780,000.

(2) The FY 2013 annual fee is comprised of a base annual fee for power reactors licensed to operate, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (fee-relief adjustment). The activities comprising the spent storage/reactor decommissioning base annual fee are shown in paragraphs (c)(2)(i) and (ii) of this section. The activities comprising the FY 2013 fee-relief adjustment are shown in paragraph (d)(1) of this section. The activities comprising the FY 2013 base annual fee for operating power reactors are as follows:

* * * * *

(c)(1) The FY 2013 annual fee for each power reactor holding a 10 CFR part 50 license that is in a decommissioning or possession-only status and has spent fuel onsite, and for each independent spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license, is $250,000.

(2) The FY 2013 annual fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section) and an fee-relief adjustment. The activities comprising the FY 2013 fee-relief adjustment are shown in paragraph (d)(1) of this section. The activities comprising the FY 2013 spent fuel storage/reactor decommissioning rebaselined annual fee are:

* * * * *

(d)(1) The fee-relief adjustment allocated to annual fees includes a surcharge for the activities listed in paragraph (d)(1)(i) of this section, plus the amount remaining after total budgeted resources for the activities included in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section are reduced by the appropriations the NRC receives for these types of activities. If the NRC's appropriations for these types of activities are greater than the budgeted resources for the activities included in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section for a given FY, annual fees will be reduced. The activities comprising the FY 2013 fee-relief adjustment are as follows:

* * * * *

(2) The total FY 2013 fee-relief adjustment allocated to the operating power reactor class of licenses is a $12.7 million fee-relief surplus, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2013 operating power reactor fee-relief adjustment to be assessed to each operating power reactor is approximately a $122,350 fee relief surplus. This amount is calculated by dividing the total operating power reactor fee-relief surplus adjustment, $12.7 million, by the number of operating power reactors (104).

(3) The FY 2013 fee-relief adjustment allocated to the spent fuel storage/reactor decommissioning class of licenses is a $667,600 fee-relief surplus. The FY 2013 spent fuel storage/reactor decommissioning fee-relief adjustment to be assessed to each operating power reactor, each power reactor in decommissioning or possession-only status that has spent fuel onsite, and to each independent spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license, is a $5,400 fee-relief surplus. This amount is calculated by dividing the total fee-relief adjustment costs allocated to this class by the total number of power reactor licenses, except those that permanently ceased operations and have no fuel onsite, and 10 CFR part 72 licensees who do not hold a 10 CFR part 50 license.

(e) The FY 2013 annual fees for licensees authorized to operate a research and test (nonpower) reactor licensed under part 50 of this chapter, unless the reactor is exempted from fees under § 171.11(a), are as follows:

Research reactor—$84,500

Test reactor—$84,500

■ 7. In § 171.16:

■ a. Revise paragraphs (c) and (d), the Footnotes, and the introductory text of paragraph (e).

■ b. Add new Footnote 15.

■ To read as follows:

§ 171.16 Annual fees: Materials licensees, holders of certificates of compliance, holders of sealed source and device registrations, holders of quality assurance program approvals, and government agencies licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section, in addition to 10 CFR part 72 licenses, may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification along with its annual fee payment, the licensee may pay reduced annual fees as shown in the following table. Failure to file a small entity certification in a timely manner could result in the receipt of a delinquent invoice requesting the outstanding balance due and/or denial of any refund that might otherwise be due. The small entity fees are as follows:

	Maximum annual fee per licensed category
Small Businesses Not Engaged in Manufacturing (Average gross receipts over last 3 completed fiscal years):	
$485,000 to $7 million	$2,800
Less than $485,000	600
Small Not-For-Profit Organizations (Annual Gross Receipts):	
$485,000 to $7 million	2,800

	Maximum annual fee per licensed category
Less than $485,000	600
Manufacturing entities that have an average of 500 employees or fewer:	
35 to 500 employees	2,800
Fewer than 35 employees	600
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	2,800
Fewer than 20,000	600
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Fewer	
35 to 500 employees	2,800
Fewer than 35 employees	600

(d) The FY 2013 annual fees are comprised of a base annual fee and an allocation for fee-relief adjustment. The activities comprising the FY 2013 fee-relief adjustment are shown for convenience in paragraph (e) of this section. The FY 2013 annual fees for materials licensees and holders of certificates, registrations, or approvals subject to fees under this section are shown in the following table:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	Annual fees [1, 2, 3]
1. Special nuclear material:	
A. (1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material (High Enriched Uranium) [Program Code(s): 21130]	$7,147,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel [Program Code(s): 21210]	2,690,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations [Program Code(s): 21310, 21320]	[5] N/A
(b) Gas centrifuge enrichment demonstration facilities	1,383,000
(c) Others, including hot cell facilities	692,000
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI) [Program Code(s): 23200]	[11] N/A
C. Licenses for possession and use of special nuclear material of less than a critical mass as defined in § 70.4 of this chapter in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers.[15] [Program Code(s): 22140]	3,600
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in sealed or unsealed form in combination that would constitute a critical mass as defined in § 70.4 of this, for which the licensee shall pay the same fees as those under Category 1.A.[15] [Program Code(s): 22110, 22111, 22120, 22131, 22136, 22150, 22151, 22161, 22170, 23100, 23300, 23310]	7,200
E. Licenses or certificates for the operation of a uranium enrichment facility [Program Code(s): 21200]	3,842,000
F. For special nuclear materials licenses in sealed or unsealed form of greater than a critical mass as defined in § 70.4 of this chapter.[15] [Program Code: 22155]	7,400
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride or for deconverting uranium hexafluoride in the production of uranium oxides for disposal. [Program Code: 11400]	1,460,000
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ recovery, heap-leaching, ore buying stations, ion-exchange facilities and in-processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
(a) Conventional and Heap Leach facilities [Program Code(s): 11100]	28,600
(b) Basic *In Situ* Recovery facilities [Program Code(s): 11500]	36,300
(c) Expanded *In Situ* Recovery facilities [Program Code(s): 11510]	41,000
(d) *In Situ* Recovery Resin facilities [Program Code(s): 11550]	0
(e) Resin Toll Milling facilities [Program Code(s): 11555]	[5] N/A
(f) Other facilities [4] [Program Code(s): 11700]	[5] N/A
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4) [Program Code(s): 11600, 12000]	[5] N/A
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2) [Program Code(s): 12010]	16,200
(5) Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water [Program Code(s): 11820]	4,800
B. Licenses that authorize only the possession, use, and/or installation of source material for shielding [Program Code(s): 11210]	3,200
C. All other source material licenses [Program Code(s): 11200, 11220, 11221, 11230, 11300, 11800, 11810]	8,300
3. Byproduct material:	

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1, 2, 3]
A. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution [Program Code(s): 03211, 03212, 03213]	53,200
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution [Program Code(s): 03214, 03215, 22135, 22162]	13,400
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). [Program Code(s): 02500, 02511, 02513]	19,700
D. [Reserved]	[5] N/A
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units) [Program Code(s): 03510, 03520]	9,100
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes [Program Code(s): 03511]	13,400
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes [Program Code(s): 03521]	122,800
H. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter [Program Code(s): 03254, 03255]	10,300
I. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter [Program Code(s): 03250, 03251, 03252, 03253, 03256]	20,000
J. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter [Program Code(s): 03240, 03241, 03243]	4,900
K. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter [Program Code(s): 03242, 03244]	4,000
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613]	17,000
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution [Program Code(s): 03620]	9,600
N. Licenses that authorize services for other licensees, except: (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3.P.; and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee categories 4.A., 4.B., and 4.C. [Program Code(s): 03219, 03225, 03226]	17,600
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license [Program Code(s): 03310, 03320]	28,300
P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D. [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03140, 03130, 03220, 03221, 03222, 03800, 03810, 22130]	6,600
Q. Registration of devices generally licensed under part 31 of this chapter	[13] N/A
R. Possession of items or products containing radium–226 identified in 10 CFR 31.12 which exceed the number of items or limits specified in that section: [14].	
1. Possession of quantities exceeding the number of items or limits in 10 CFR 31.12(a)(4), or (5) but less than or equal to 10 times the number of items or limits specified [Program Code(s): 02700]	9,100
2. Possession of quantities exceeding 10 times the number of items or limits specified in 10 CFR 31.12(a)(4) or (5) [Program Code(s): 02710]	8,900
S. Licenses for production of accelerator-produced radionuclides [Program Code(s): 03210]	31,700
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material [Program Code(s): 03231, 03233, 03235, 03236, 06100, 06101]	[5] N/A
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material [Program Code(s): 03234]	20,500

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1, 2, 3]
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material [Program Code(s): 03232]	16,300
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies [Program Code(s): 03110, 03111, 03112]	13,100
B. Licenses for possession and use of byproduct material for field flooding tracer studies [Program Code(s): 03113]	[5] N/A
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material [Program Code(s): 03218]	42,700
7. Medical licenses:	
A. Licenses issued under 10 CFR parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [Program Code(s): 02300, 02310]	22.600
B. Licenses of broad scope issued to medical institutions or two or more physicians under 10 CFR parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9] [Program Code(s): 02110]	34,300
C. Other licenses issued under 10 CFR parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9] [Program Code(s): 02120, 02121, 02200, 02201, 02210, 02220, 02230, 02231, 02240, 22160]	9,500
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities [Program Code(s): 03710]	9,100
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	8,300
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	13,900
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	8,200
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	1,600
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
1. Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
2. Other Casks	[6] N/A
B. Quality assurance program approvals issued under 10 CFR part 71 of this chapter.	
1. Users and Fabricators	[6] N/A
2. Users	[6] N/A
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices)	[6] N/A
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects [Program Code(s): 25110]	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	[6] N/A
14. Decommissioning/Reclamation:	
A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under 10 CFR parts 30, 40, 70, 72, and 76 of this chapter, including master materials licenses (MMLs). [Program Code(s): 3900, 11900, 21135, 21215, 21240, 21325, 22200]	[7] N/A
B. Site-specific decommissioning activities associated with unlicensed sites, including MMLs, whether or not the sites have been previously licensed	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies [Program Code(s): 03614]	365,000
18. Department of Energy:	
A. Certificates of Compliance	[10] 1,304,000

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1, 2, 3]
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities	727,000

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current FY. The annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses before October 1, 2012, and permanently ceased licensed activities entirely before this date. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession-only license during the FY and for new licenses issued during the FY will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of 10 CFR parts 30, 40, 70, 71, 72, or 76 of this chapter.

[3] Each FY, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

[4] Other facilities include licenses for extraction of metals, heavy metals, and rare earths.

[5] There are no existing NRC licenses in these fee categories. If NRC issues a license for these categories, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, 10 CFR parts 71 and 72 Certificates of Compliance and related Quality Assurance program approvals, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions that also hold nuclear medicine licenses under fee categories 7.B. or 7.C.

[10] This includes Certificates of Compliance issued to the Department of Energy that are not funded from the Nuclear Waste Fund.

[11] See § 171.15(c).

[12] See § 171.15(c).

[13] No annual fee is charged for this category because the cost of the general license registration program applicable to licenses in this category will be recovered through 10 CFR part 170 fees.

[14] Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. (This exception does not apply if the radium sources are possessed for storage only.)

[15] Licensees paying annual fees under category 1.A., 1.B., and 1.E. are not subject to the annual fees for categories 1.C., 1.D., and 1.F. for sealed sources authorized in the license.

(e) The fee-relief adjustment allocated to annual fees includes the budgeted resources for the activities listed in paragraph (e)(1) of this section, plus the total budgeted resources for the activities included in paragraphs (e)(2) and (e)(3) of this section, as reduced by the appropriations NRC receives for these types of activities. If the NRC's appropriations for these types of activities are greater than the budgeted resources for the activities included in paragraphs (e)(2) and (e)(3) of this section for a given FY, a negative fee-relief adjustment (or annual fee reduction) will be allocated to annual fees. The activities comprising the FY 2013 fee-relief adjustment are as follows:

* * * * *

■ 8. In § 171.19, paragraph (d) is revised to read as follows:

§ 171.19 Payment.

* * * * *

(d) Annual Fees of less than $100,000 must be paid as billed by the NRC. Materials license annual fees that are less than $100,000 are billed on the anniversary date of the license. The materials licensees that are billed on the anniversary date of the license are those covered by fee categories 1.C., 1.D., 1.F., 2.A.(2) through 2.A.(5), 2.B.,2.C., 3.A. through 3.F., and 3.H. through 9.D.

* * * * *

Dated at Rockville, Maryland, this 22nd day of February, 2013.

For the Nuclear Regulatory Commission.

J.E. Dyer,

Chief Financial Officer.

[FR Doc. 2013–05172 Filed 3–6–13; 8:45 am]

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