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Rules and Regulations

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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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2012–0308]

RIN 3150–AJ22

List of Approved Spent Fuel Storage Casks: MAGNASTOR® System

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the NAC International, Inc. (NAC) Modular Advanced Generation Nuclear All-purpose Storage (MAGNASTOR®) System listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 3 to Certificate of Compliance (CoC) No. 1031. Amendment No. 3 revises authorized contents to include: Pressurized water reactor (PWR) damaged fuel contained in damaged fuel (DF) cans that are placed in a damaged fuel basket assembly; PWR fuel assemblies with nonfuel hardware per the expanded definition in the Amendment No. 3 application; and PWR fuel assemblies with up to five activated stainless steel fuel replacement rods at a maximum burnup/exposure of 32.5 gigawatt days per metric ton of uranium (GWd/MTU). Additionally, Amendment No. 3 revises paragraph 4.3.1(i) in appendix A of the CoC Technical Specifications (TS) to clarify that the maximum design basis earthquake accelerations of 0.37g in the horizontal direction (without cask sliding) and 0.25g in the vertical direction at the independent spent fuel storage installation (ISFSI) pad top surface do not result in cask tip-over. Amendment No. 3 also makes additional changes to appendix A, Technical Specifications and Design Features for the MAGNASTOR® System, and appendix B, Approved Contents for the MAGNASTOR® System, of the CoC.

DATES: The final rule is effective June 3, 2013, unless significant adverse comments are received by April 17, 2013. If the rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Please refer to Docket ID NRC–2012–0308 when contacting the NRC about the availability of information for this final rule. You may access information and comment submittals related to this final rulemaking, 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–2012–0308.
- *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.* An electronic copy of the proposed CoC, including appendices A and B of the TS, and preliminary safety evaluation report (SER) can be found in ADAMS under Package Accession No. ML12227A900. The ADAMS Accession No. for the MAGNASTOR® Cask System Amendment No. 3 application dated August 26, 2010, is ML102420569.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Naiem S. Tanious, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6103, email: *Naiem.Tanious@nrc.gov.*

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I. Procedural Background

This rule is limited to the changes contained in Amendment No. 3 to CoC No. 1031 and does not include other aspects of the MAGNASTOR® Cask System design. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on June 3, 2013. However, if the NRC receives significant adverse comments on this direct final rule by April 17, 2013, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the Proposed Rule section of this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or TS.

For detailed instructions on filing comments, please see the companion proposed rule published in the Proposed Rule section of this issue of the **Federal Register**.

II. Background

Section 218(a) of the Nuclear Waste Policy Act (NWPA) of 1982, as amended, requires that ''the Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[the Commission] shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in part 72 of Title 10 of the *Code of Federal Regulations* (10 CFR), which added a new subpart K within 10 CFR part 72 entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L within 10 CFR part 72 entitled, ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on November 21, 2008 (73 FR 70587), that approved the MAGNASTOR® Cask System design and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No. 1031.

III. Discussion of Changes

On August 26, 2010 NAC submitted a request to the NRC to amend CoC No. 1031 (ML102420569). NAC supplemented its request on the following dates: February 4, 2011 (ML11138A224), February 16, 2011 (ML110480498), August 15, 2011 (ML11229A701), October 3, 2011 (ML11287A020), March 21, 2012 (ML120820463), March 30, 2012 (ML12094A056), and April 6, 2012 (ML12104A025). The amendment revises authorized contents to include: (1) PWR damaged fuel contained in damaged fuel cans that are placed in a damaged fuel basket assembly; (2) PWR fuel assemblies with nonfuel hardware per the expanded definition in the Amendment No. 3 application; and (3) PWR fuel assemblies with up to five activated stainless steel fuel replacement rods at a maximum burnup/exposure of 32.5 GWd/MTU.

This amendment also revises paragraph 4.3.1(i) in appendix A of the CoC to clarify that the maximum design basis earthquake accelerations of 0.37g in the horizontal direction (without cask sliding) and 0.25g in the vertical direction at the ISFSI pad top surface do not result in cask tip-over. Furthermore, this amendment makes additional changes to appendix A (ML12227A913) and appendix B (ML12227A912) of the CoC. The changes to the aforementioned documents are identified with revisions bars in the margin of each document.

As documented in the SER (ML12227A914), the NRC staff performed a detailed safety evaluation of the proposed CoC amendment request. There are no significant changes to cask design requirements in the proposed CoC amendment. Considering the specific design requirements for each accident condition, the design of the cask would prevent loss of containment, shielding, and criticality control. If there is no loss of containment, shielding, or criticality control, the environmental impacts would be insignificant. This amendment does not reflect a significant change in design or fabrication of the cask. In addition, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 3 would remain well within the 10 CFR part 20 limits. Thus, the proposed CoC changes will not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the November 21, 2008, final rule. There will be no significant change in the types or significant revisions in the amounts of any effluent released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for or consequences from radiological accidents.

This direct final rule revises the MAGNASTOR® System listing in 10 CFR 72.214 by adding Amendment No. 3 to CoC No.1031. The amendment consists of the changes previously described, as set forth in the revised CoC and TS. The revised TS are identified in the SER.

The amended MAGNASTOR® cask design, when used under the conditions specified in the CoC, the TS, and the NRC's regulations, will meet the requirements of 10 CFR part 72; thus, adequate protection of public health and safety will continue to be ensured. When this direct final rule becomes effective, persons who hold a general license under 10 CFR 72.210 may load spent nuclear fuel into MAGNASTOR® Systems that meet the criteria of Amendment No. 3 to CoC No. 1031 under 10 CFR 72.212.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the MAGNASTOR® Cask System design listed in § 72.214 (List of Approved Spent Fuel Storage Casks). This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR. Although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

VI. 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 that also follows other best practices appropriate to the subject or field and the intended audience. The NRC has attempted to use plain language in promulgating this rule consistent with the Federal Plain Writing Act guidelines.

VII. Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in subpart A of 10 CFR part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has prepared an environmental assessment (ML13043A147) and, on the basis of this environmental assessment, has made a finding of no significant impact. This rule amends the CoC for the MAGNASTOR® System cask design within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. Specifically, NAC requested changes to revise authorized contents to include: (1) PWR damaged fuel contained in damaged fuel cans that are placed in a damaged fuel basket assembly; (2) PWR fuel assemblies with nonfuel hardware per the expanded definition in the Amendment No. 3 application; and (3) PWR fuel assemblies with up to five activated stainless steel fuel replacement rods at a maximum burnup/exposure of 32.5 GWd/MTU.

This amendment revises paragraph 4.3.1(i) in appendix A of the CoC to clarify that the maximum design basis earthquake accelerations of 0.37g in the horizontal direction (without cask sliding) and 0.25g in the vertical direction at the ISFSI pad top surface do not result in cask tip-over. Furthermore, this amendment makes additional changes to appendix A (ML12227A913) and appendix B (ML12227A912) of the CoC. The changes to the aforementioned documents are identified with revisions bars in the margin of each document.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC PDR, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Single copies of the environmental assessment and finding of no significant impact are available from Naiem Tanious, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6103, email: *Naiem.Tanious@nrc.gov.*

VIII. Paperwork Reduction Act Statement

This rule does not contain any information collection requirements and, therefore, is not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget (OMB), Approval Number 3150–0132.

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.

IX. Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in 10 CFR 72.214. On November 21, 2008 (73 FR 70587), the NRC issued an amendment to 10 CFR part 72 that approved the MAGNASTOR® Cask System design by adding it to the list of NRC-approved cask designs in 10 CFR 72.214.

On August 26, 2010 (ML102420569), and as supplemented on February 4, 2011 (ML11138A224), February 16, 2011 (ML110480498), August 15, 2011 (ML11229A701), October 3, 2011 (ML11287A020), March 21, 2012 (ML120820463), March 30, 2012 (ADAMS ML12094A056), and April 6, 2012 (ML12104A025), NAC submitted an application to amend the MAGNASTOR® Cask System. The amendment revises authorized contents to include: (1) PWR damaged fuel contained in damaged fuel cans that are placed in a damaged fuel basket assembly; (2) PWR fuel assemblies with nonfuel hardware per the expanded definition in the application; and (3) PWR fuel assemblies with up to five activated stainless steel fuel replacement rods at a maximum burnup/exposure of 32.5 GWd/MTU.

This amendment also revises paragraph 4.3.1(i) in appendix A of the CoC to clarify that the maximum design basis earthquake accelerations of 0.37g in the horizontal direction (without cask sliding) and 0.25g in the vertical direction at the ISFSI pad top surface do not result in cask tip-over. Furthermore, this amendment makes additional changes to appendix A (ML12227A913) and appendix B (ML12227A912) of the CoC. The changes to the aforementioned documents are identified with revisions bars in the margin of each document.

The alternative to this action is to withhold approval of Amendment No. 3 and to require any 10 CFR part 72 general licensee seeking to load spent nuclear fuel into MAGNASTOR® Systems under the changes described in Amendment No. 3 to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, each interested 10 CFR part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of the direct final rule is consistent with previous NRC actions. Further, as documented in the SER and the environmental assessment, the direct final rule will have no adverse effect on public health and safety or the environment. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

X. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and NAC International, Inc. These entities do not fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XI. Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 72.62) does not apply to this direct final rule because

this amendment does not involve any provisions that would impose backfits as defined in 10 CFR 72.62 Therefore, a backfit analysis is not required.

XII. Congressional Review Act

Under 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 Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

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; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act sec. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act sec. 102 (42 U.S.C. 4332); Nuclear Waste Policy Act secs. 131, 132, 133, 135, 137, 141 148 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 549 (2005).

Section 72.44(g) also issued under secs. Nuclear Waste Policy Act 142(b) and 148(c), (d) (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear Waste Policy Act sec. 134 (42 U.S.C. 10154). Section 72.96(d) also issued under Nuclear Waste Policy Act sec. 145(g) (42 U.S.C. 10165(g)). Subpart J also issued under Nuclear Waste Policy Act secs. 117(a), 141(h) (42 U.S.C. 10137(a), 10161(h)). Subpart K is also issued under sec. 218(a) (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1031 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1031.

Initial Certificate Effective Date: February 4, 2009.

Amendment Number 1 Effective Date: August 30, 2010.

Amendment Number 2 Effective Date: January 30, 2012.

Amendment Number 3 Effective Date: June 3, 2013.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the MAGNASTOR® System.

Docket Number: 72–1031.

Certificate Expiration Date: February 4, 2024.

Model Number: MAGNASTOR®.

* * * * *

Dated at Rockville, Maryland, this 2nd day of March 2013.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. 2013–06015 Filed 3–15–13; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0247; Directorate Identifier 2013–CE–001–AD; Amendment 39–17397; AD 2013–06–02]

RIN 2120–AA64

Airworthiness Directives; Diamond Aircraft Industries GmbH Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Diamond Aircraft Industries GmbH Models DA 42 M–NG and DA 42 NG airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as the engine air inlet filter is subject to icing. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective April 8, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of April 8, 2013.

We must receive comments on this AD by May 2, 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 AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Straße 5, A–2700 Wiener Neustadt, Austria, telephone: +43 2622 26700; fax: +43 2622 26780; email: *office@diamond-air.at;* Internet: *http://www.diamond-air.at.* 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 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: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No.: 2012–0269, dated December 19, 2012 (referred to after this as ''the MCAI''), to correct

an unsafe condition for the specified products. The MCAI states:

Three occurrences of in-flight engine control unit (ECU) A/B caution initiation were reported which were followed by an un-commanded power reduction. All of these events happened in snow or moist conditions and resolved themselves in warmer air conditions. The subsequent investigation identified that the engine air inlet filter is subject to icing under certain, currently not fully identified, icing conditions.

The DA 42 NG is equipped with a manually controlled alternate air valve which bypasses the inlet air filter and provides sufficient air to the engine. The aeroplane flight manual (AFM) procedures include procedure for activation of the alternate air valve in case of power loss but these procedures were not applied by the pilots in these events.

The DA 42 NG is certified for flights in known icing conditions during which engine inlet filter icing may occur, therefore it is expected that flights into suspected icing conditions, where inlet filter icing may occur, is more likely.

Additional occurrence of dual ECU A/B caution initiation was reported followed by loss of power and loss of flight altitude. Again, the alternate air valve was not opened, which would have immediately resolved the situation.

It has been recognized that the engine control ECU A/B caution triggers the pilot to focus on engine electrical or fuel supply problem and thus causes a misinterpretation of the situation. It has also been identified that the conditions during which air filter icing may occur could include the critical take-off and climb phase.

This condition, if not corrected, could lead to a loss of engine power and reduced controllability of the aeroplane.

To address this unsafe condition, DAI revised Supplement S03 ''Ice Protection System'' to the aeroplane AFM and issued Service Information SI 42NG–039 to advise the owners and pilots of the proper use of the engine alternate air.

For the reasons described above, this AD requires revision of the aeroplane AFM to incorporate updated Normal and Abnormal Operating procedures for alternate air valve operation during suspected rain, snow or visible moisture conditions.

The requirement of this AD is considered as an interim action. DAI is currently developing a modification that addresses the unsafe condition identified in this AD.

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

Relevant Service Information

Diamond Aircraft Industries GmbH has issued the following service information:

- Service Information No. SI 42NG–039, dated November 14, 2012;
- DA 42 NG AFM Temporary Revision TR–MÄM 42–701, Doc. 7.01.15–E, dated November 20, 2012;
- DA 42 NG AFM Temporary Revision TR–MÄM 42–701, Doc. 7.01.16–E, dated November 20, 2012; and
- DA 42 NG AFM Temporary Revision TR–OÄM–42–200/a, Doc. #7.01.15–E, dated November 30, 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 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 issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Interim Action

We consider this AD interim action. The type certificate holder is looking at developing a modification that addresses the unsafe condition identified in this AD. When this modification is established, we may take additional rulemaking action to mandate the modification.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because this condition, if not corrected, could lead to a loss of engine power and reduced controllability of the airplane. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0247; Directorate Identifier 2013–CE–001–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this 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 AD.

Costs of Compliance

We estimate that this AD will affect 26 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $2,210, or $85 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.

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:

2013–06–02 Diamond Aircraft Industries GmbH: Amendment 39–17397; Docket No. FAA–2013–0247; Directorate Identifier 2013–CE–001–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective April 8, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Diamond Aircraft Industries GmbH Models DA 42 M–NG and DA 42 NG airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 71: Power Plant.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as the engine air inlet filter is subject to icing. We are issuing this AD to address the unsafe condition on these products.

(f) Actions and Compliance

Unless already done, do the following actions within 30 days after April 8, 2013 (the effective date of this AD).

(1) *For Model DA 42 NG airplanes:* Incorporate the following into the applicable pilot's operating handbook (POH)/FAA-approved airplane flight manual (AFM) into the applicable sections:

(i) Diamond Aircraft DA 42 NG AFM Temporary Revision TR–MÄM 42–701, Doc. 7.01.15–E, dated November 20, 2012;

(ii) Diamond Aircraft DA 42 NG AFM Temporary Revision TR–MÄM 42–701, Doc. 7.01.16–E, dated November 20, 2012; and

(iii) Diamond Aircraft DA 42 NG AFM Temporary Revision TR–OÄM–42–200/a, Doc. #7.01.15–E, dated November 30, 2012.

(2) *For Model DA 42 M–NG airplanes:* Incorporate the following into the applicable POH/FAA-approved AFM into the applicable sections:

(i) Diamond Aircraft DA 42 NG AFM Temporary Revision TR–MÄM 42–701, Doc. 7.01.15–E, dated November 20, 2012;

(ii) Diamond Aircraft DA 42 NG AFM Temporary Revision TR–OÄM–42–200/a, Doc. #7.01.15–E, dated November 30, 2012.

(3) The actions required by paragraphs (f)(1) and (f)(2) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9 (a)(1)–(4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(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: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@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 European Aviation Safety Agency (EASA) AD No.: 2012–0269, dated December 19, 2012; and Diamond Aircraft Industries GmbH Service Information No. SI 42NG–039, dated November 14, 2012, for related information.

(i) 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) Diamond Aircraft DA 42 NG AFM Temporary Revision TR–MÄM 42–701, Doc. 7.01.15–E, dated November 20, 2012;

(ii) Diamond Aircraft DA 42 NG AFM Temporary Revision TR–MÄM 42–701, Doc. 7.01.16–E, dated November 20, 2012; and

(iii) Diamond Aircraft DA 42 NG AFM Temporary Revision TR–OÄM–42–200/a, Doc. #7.01.15–E, dated November 30, 2012.

(3) For Diamond Aircraft Industries GmbH service information identified in this AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Straße 5, A–2700 Wiener Neustadt, Austria, telephone: +43 2622 26700; fax: +43 2622 26780; email: *office@diamond-air.at;* Internet: *http://www.diamond-air.at.*

(4) You may view this service information at 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.

(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/index.html.*

Issued in Kansas City, Missouri, on March 7, 2013.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–05989 Filed 3–15–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30889; Amdt. No. 3524]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective March 18, 2013. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 18, 2013.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the, associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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. 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on March 1, 2013.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 4 April 2013

Kansas City, MO, Kansas City Intl, RNAV (RNP) Z RWY 1L, Amdt 1A
Kansas City, MO, Kansas City Intl, RNAV (RNP) Z RWY 1R, Amdt 1A
Seattle, WA, Seattle-Tacoma Intl, RNAV (RNP) Z RWY 16C, Orig–A
Seattle, WA, Seattle-Tacoma Intl, RNAV (RNP) Z RWY 34L, Orig–A
Newcastle, WY, Mondell Field, RNAV (GPS) RWY 13, Orig–A
Newcastle, WY, Mondell Field, RNAV (GPS) RWY 31, Orig–A

Effective 2 May 2013

Dunnellon, FL, Marion County, VOR/DME RWY 23, Amdt 1B, CANCELED
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, ILS OR LOC RWY 10L, Amdt 22
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, ILS OR LOC RWY 28R, Amdt 10
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, VOR RWY 28R, Amdt 13
Albany, GA, Southwest Georgia Rgnl, RNAV (GPS) RWY 34, Amdt 2
Camilla, GA, Camilla-Mitchell County, NDB RWY 8, Amdt 3
Camilla, GA, Camilla-Mitchell County, RNAV (GPS) RWY 8, Amdt 1
Camilla, GA, Camilla-Mitchell County, RNAV (GPS) RWY 26, Amdt 1
Savannah, GA, Savannah/Hilton Head Intl, RNAV (RNP) Y RWY 28, Amdt 1
Le Mars, IA, Le Mars Muni, RNAV (GPS) RWY 18, Amdt 1
Le Mars, IA, Le Mars Muni, RNAV (GPS) RWY 36, Amdt 1
Le Mars, IA, Le Mars Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Le Mars, IA, Le Mars Muni, VOR/DME RWY 36, Amdt 4
Salem, IL, Salem-Leckrone, RNAV (GPS) RWY 18, Amdt 1
Salem, IL, Salem-Leckrone, RNAV (GPS) RWY 36, Amdt 1
St Jacob, IL, St Louis Metro-East/Shafer Field, RNAV (GPS)–A, Orig
St Jacob, IL, St Louis Metro-East/Shafer Field, VOR–A, Amdt 4
Frankfort, KY, Capital City, LOC RWY 25, Amdt 3
Frankfort, KY, Capital City, Takeoff Minimums and Obstacle DP, Amdt 3
Frankfort, KY, Capital City, VOR RWY 25, Amdt 3
Manistee, MI, Manistee CO.-Blacker, ILS OR LOC RWY 27, Amdt 1
Manistee, MI, Manistee CO.-Blacker, RNAV (GPS) RWY 9, Orig
Manistee, MI, Manistee CO.-Blacker, RNAV (GPS) RWY 27, Orig
Manistee, MI, Manistee CO.-Blacker, VOR RWY 9, Amdt 1
Manistee, MI, Manistee CO.-Blacker, VOR RWY 27, Amdt 1
Marshall, MI, Brooks Field, RNAV (GPS) RWY 28, Orig
Marshall, MI, Brooks Field, Takeoff Minimums and Obstacle DP, Orig
Marshall, MI, Brooks Field, VOR/DME–A, Orig
Marshall, MI, Brooks Field, VOR OR GPS RWY 28, Amdt 14, CANCELED
Glenwood, MN, Glenwood Muni, RNAV (GPS) RWY 15, Orig
Glenwood, MN, Glenwood Muni, RNAV (GPS) RWY 33, Amdt 1
Willmar, MN, Willmar Muni-John L Rice Field, RNAV (GPS) RWY 31, Amdt 1
Charlotte, NC, Charlotte/Douglas Intl, Takeoff Minimums and Obstacle DP, Amdt 6
Trenton, NJ, Trenton Mercer, Takeoff Minimums and Obstacle DP, Amdt 5
Saratoga Springs, NY, Saratoga County, Takeoff Minimums and Obstacle DP, Amdt 4
Portland, OR, Portland Intl, LOC/DME RWY 21, Amdt 8B
Portland, OR, Portland Intl, VOR RWY 28R, Amdt 3, CANCELED
Portland, OR, Portland Intl, VOR/DME RWY 21, Amdt 1, CANCELED
Houston, TX, Weiser Air Park, NDB–F, Orig, CANCELED
Houston, TX, Weiser Air Park, RNAV (GPS)–G, Amdt 1, CANCELED
Houston, TX, Weiser Air Park, Takeoff Minimums and Obstacle DP, Amdt 2, CANCELED
Suffolk, VA, Suffolk Executive, LOC RWY 4, Amdt 4
Suffolk, VA, Suffolk Executive, RNAV (GPS) RWY 4, Amdt 3
Suffolk, VA, Suffolk Executive, RNAV (GPS) RWY 22, Amdt 1
Suffolk, VA, Suffolk Executive, RNAV (GPS) RWY 25, Amdt 1
Suffolk, VA, Suffolk Executive, Takeoff Minimums and Obstacle DP, Amdt 5
Ellensburg, WA, Bowers Field, RNAV (GPS)–C, Orig
Tacoma, WA, Tacoma Narrows, NDB RWY 35, Amdt 8
Cody, WY, Yellowstone Rgnl, GPS–B, Orig, CANCELED
Cody, WY, Yellowstone Rgnl, RNAV (GPS)–B, Orig
Cody, WY, Yellowstone Rgnl, VOR–A, Amdt 8

[FR Doc. 2013–05809 Filed 3–15–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30890; Amdt. No. 3525]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective March 18, 2013. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 18, 2013.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420) Flight

Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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. 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on March 1, 2013.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
4-Apr-13	CA	Santa Maria	Santa Maria Pub/Capt G Allan Hancock Fld.	3/3135	2/21/2013	LOC/DME BC A, Amdt 10C
4-Apr-13	FL	West Palm Beach	Palm Beach Intl	3/3894	2/21/2013	RNAV (RNP) Z RWY 28R, Orig-B
4-Apr-13	TX	Rockport	Aransas Co	3/5472	2/21/2013	RNAV (GPS) RWY 14, Amdt 3
4-Apr-13	TX	Rockport	Aransas Co	3/5474	2/21/2013	RNAV (GPS) RWY 18, Orig
4-Apr-13	TX	Rockport	Aransas Co	3/5481	2/21/2013	RNAV (GPS) RWY 32, Orig
4-Apr-13	MO	Trenton	Trenton Muni	3/5484	2/21/2013	NDB RWY 18, Amdt 7A
4-Apr-13	AL	Greenville	Mac Crenshaw Memorial	3/5686	2/21/2013	RNAV (GPS) RWY 14, Orig
4-Apr-13	AL	Greenville	Mac Crenshaw Memorial	3/5687	2/21/2013	RNAV (GPS) RWY 32, Orig
4-Apr-13	IA	Decorah	Decorah Muni	3/6267	2/21/2013	RNAV (GPS) RWY 11, Orig
4-Apr-13	MO	St Louis	Lambert-St Louis Intl	3/6831	2/21/2013	ILS PRM RWY 30R (CAT III) (SIMULTANEOUS CLOSE PARALLEL), Amdt 1B
4-Apr-13	MO	St Louis	Lambert-St Louis Intl	3/6832	2/21/2013	ILS PRM RWY 30R (SIMULTANEOUS CLOSE PARALLEL), Amdt 1B
4-Apr-13	MO	St Louis	Lambert-St Louis Intl	3/6833	2/21/2013	ILS PRM RWY 30R (CAT II) (SIMULTANEOUS CLOSE PARALLEL), Amdt 1B

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
4-Apr-13	TX	Harlingen	Valley Intl	3/7123	2/21/2013	VOR/DME OR TACAN Y RWY 31, Amdt 1
4-Apr-13	NJ	Atlantic City	Atlantic City Intl	3/7184	2/21/2013	ILS OR LOC/DME RWY 31, Orig-A
4-Apr-13	NJ	Atlantic City	Atlantic City Intl	3/7185	2/21/2013	VOR RWY 31, Amdt 1
4-Apr-13	NE	Grant	Grant Muni	3/7192	2/21/2013	NDB RWY 33, Amdt 3A
4-Apr-13	NE	Grant	Grant Muni	3/7193	2/21/2013	NDB RWY 15, Amdt 3A
4-Apr-13	KY	Covington	Cincinnati/Northern Kentucky Intl.	3/7248	2/21/2013	ILS OR LOC RWY 18C, Amdt 22A
4-Apr-13	KY	Covington	Cincinnati/Northern Kentucky Intl.	3/7249	2/21/2013	ILS OR LOC RWY 36C, Amdt 41B
4-Apr-13	KY	Covington	Cincinnati/Northern Kentucky Intl.	3/7250	2/21/2013	ILS RWY 36C (CAT III), Amdt 41B
4-Apr-13	KY	Covington	Cincinnati/Northern Kentucky Intl.	3/7251	2/21/2013	RNAV (GPS) Y RWY 36C, Amdt 1A
4-Apr-13	KY	Covington	Cincinnati/Northern Kentucky Intl.	3/7252	2/21/2013	RNAV (RNP) Z RWY 36C, Orig-B
4-Apr-13	KY	Covington	Cincinnati/Northern Kentucky Intl.	3/7253	2/21/2013	RNAV (GPS) Y RWY 18R, Amdt 1A
4-Apr-13	KY	Covington	Cincinnati/Northern Kentucky Intl.	3/7254	2/21/2013	RNAV (GPS) Y RWY 18L, Amdt 1A
4-Apr-13	KY	Covington	Cincinnati/Northern Kentucky Intl.	3/7255	2/21/2013	RNAV (RNP) Z RWY 18R, Orig-B
4-Apr-13	KY	Covington	Cincinnati/Northern Kentucky Intl.	3/7256	2/21/2013	RNAV (GPS) Y RWY 36L, Amdt 1A
4-Apr-13	KY	Covington	Cincinnati/Northern Kentucky Intl.	3/7257	2/21/2013	RNAV (GPS) Y RWY 18C, Amdt 1A
4-Apr-13	KY	Covington	Cincinnati/Northern Kentucky Intl.	3/7258	2/21/2013	RNAV (RNP) Z RWY 18C, Orig-B
4-Apr-13	KY	Covington	Cincinnati/Northern Kentucky Intl.	3/7259	2/21/2013	RNAV (GPS) Y RWY 36R, Amdt 1A
4-Apr-13	KY	Covington	Cincinnati/Northern Kentucky Intl.	3/7260	2/21/2013	RNAV (RNP) Z RWY 36R, Orig-B
4-Apr-13	KY	Covington	Cincinnati/Northern Kentucky Intl.	3/7261	2/21/2013	RNAV (RNP) Z RWY 18L, Orig-B
4-Apr-13	KY	Covington	Cincinnati/Northern Kentucky Intl.	3/7262	2/21/2013	ILS RWY 36C (CAT II), Amdt 41B
4-Apr-13	KY	Covington	Cincinnati/Northern Kentucky Intl.	3/7263	2/21/2013	RNAV (RNP) Z RWY 36L, Orig-B
4-Apr-13	WI	Chetek	Chetek Muni-Southworth	3/7751	2/21/2013	VOR/DME A, Orig-A
4-Apr-13	WI	Chetek	Chetek Muni-Southworth	3/7752	2/21/2013	RNAV (GPS) RWY 35, Orig-A
4-Apr-13	WI	Chetek	Chetek Muni-Southworth	3/7753	2/21/2013	RNAV (GPS) RWY 17, Orig-B
4-Apr-13	WI	Rhinelander	Rhinelander-Oneida County.	3/8188	2/21/2013	ILS OR LOC RWY 9, Amdt 8
4-Apr-13	WI	Rhinelander	Rhinelander-Oneida County.	3/8189	2/21/2013	RNAV (GPS) RWY 9, Amdt 1
4-Apr-13	WI	Rhinelander	Rhinelander-Oneida County.	3/8190	2/21/2013	RNAV (GPS) RWY 15, Amdt 1
4-Apr-13	WI	Rhinelander	Rhinelander-Oneida County.	3/8191	2/21/2013	RNAV (GPS) RWY 27, Amdt 1
4-Apr-13	TX	Rockwall	Ralph M Hall/Rockwall Muni.	3/8243	2/21/2013	RNAV (GPS) RWY 35, Orig-A
4-Apr-13	TX	Rockwall	Ralph M Hall/Rockwall Muni.	3/8246	2/21/2013	RNAV (GPS) RWY 17, Orig-A
4-Apr-13	SD	Winner	Winner Rgnl	3/8316	2/21/2013	RNAV (GPS) RWY 31, Orig
4-Apr-13	SD	Winner	Winner Rgnl	3/8317	2/21/2013	RNAV (GPS) RWY 13, Orig
4-Apr-13	SD	Winner	Winner Rgnl	3/8318	2/21/2013	VOR A, Amdt 7
4-Apr-13	MT	Miles City	Frank Wiley Field	3/8406	2/15/2013	RNAV (GPS) RWY 22, Orig
4-Apr-13	CA	Santa Ana	John Wayne Airport-Orange County.	3/8408	2/15/2013	RNAV (GPS) RWY 1L, Orig
4-Apr-13	ID	Idaho Falls	Idaho Falls Rgnl	3/8410	2/15/2013	ILS OR LOC RWY 20, Amdt 11F
4-Apr-13	TN	Selmer	Robert Sibley	3/8719	2/20/2013	RNAV (GPS) RWY 35, Orig
4-Apr-13	TN	Selmer	Robert Sibley	3/8720	2/20/2013	RNAV (GPS) RWY 17, Orig
4-Apr-13	NJ	Berlin	Camden County	3/8743	2/21/2013	RNAV (GPS) RWY 5, Orig-B
4-Apr-13	CA	Arcata/Eureka	Arcata	3/8744	2/20/2013	RNAV (GPS) RWY 32, Amdt 1A
4-Apr-13	CA	Arcata/Eureka	Arcata	3/8745	2/20/2013	ILS Y OR LOC/DME RWY 32, Amdt 2A
4-Apr-13	CA	Arcata/Eureka	Arcata	3/8746	2/20/2013	ILS Z RWY 32, Amdt 30
4-Apr-13	AZ	Coolidge	Coolidge Muni	3/8808	2/21/2013	VOR/DME RWY 5, Orig
4-Apr-13	ME	Bar Harbor	Hancock County-Bar Harbor.	3/9017	2/21/2013	RNAV (GPS) RWY 22, Amdt 1
4-Apr-13	GA	Greensboro	Greene County Rgnl	3/9018	2/21/2013	RNAV (GPS) RWY 7, Amdt 1
4-Apr-13	GA	Greensboro	Greene County Rgnl	3/9019	2/21/2013	VOR/DME B, Amdt 2

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
4-Apr-13	ME	Bar Harbor	Hancock County-Bar Harbor.	3/9020	2/21/2013	RNAV (GPS) RWY 4, Amdt 1
4-Apr-13	ME	Bar Harbor	Hancock County-Bar Harbor.	3/9021	2/21/2013	ILS OR LOC RWY 22, Amdt 6A
4-Apr-13	GA	Greensboro	Greene County Rgnl	3/9022	2/21/2013	RNAV (GPS) RWY 25, Amdt 1A
4-Apr-13	GA	Greensboro	Greene County Rgnl	3/9023	2/21/2013	LOC RWY 25, Amdt 3A
4-Apr-13	NJ	Teterboro	Teterboro	3/9039	2/21/2013	VOR/DME A, Amdt 2B
4-Apr-13	NJ	Teterboro	Teterboro	3/9040	2/21/2013	ILS RWY 19, Orig
4-Apr-13	NJ	Teterboro	Teterboro	3/9041	2/21/2013	VOR/DME RWY 6, Orig-C
4-Apr-13	NJ	Teterboro	Teterboro	3/9042	2/21/2013	VOR/DME B, Amdt 2C
4-Apr-13	NJ	Teterboro	Teterboro	3/9043	2/21/2013	VOR RWY 24, Orig-A
4-Apr-13	MD	Baltimore	Baltimore/Washington Intl Thurgood Marshall.	3/9061	2/20/2013	ILS OR LOC RWY 33R, Amdt 2A
4-Apr-13	PA	Somerset	Somerset County	3/9137	2/21/2013	NDB RWY 25, Amdt 7
4-Apr-13	NY	New York	La Guardia	3/9163	2/20/2013	ILS OR LOC RWY 22, Amdt 20A
4-Apr-13	NY	New York	La Guardia	3/9164	2/20/2013	LDA A, Amdt 2B
4-Apr-13	NY	New York	La Guardia	3/9165	2/20/2013	COPTER ILS OR LOC/DME RWY 22, Amdt 2
4-Apr-13	NY	New York	La Guardia	3/9166	2/20/2013	VOR F, Amdt 3
4-Apr-13	NY	New York	La Guardia	3/9167	2/20/2013	VOR RWY 4, Amdt 3
4-Apr-13	NY	New York	La Guardia	3/9168	2/20/2013	VOR/DME H, Amdt 3
4-Apr-13	NY	New York	La Guardia	3/9169	2/20/2013	VOR/DME G, Amdt 2A
4-Apr-13	NY	New York	La Guardia	3/9170	2/20/2013	COPTER ILS OR LOC RWY 13, Orig
4-Apr-13	NY	New York	La Guardia	3/9171	2/20/2013	LOC RWY 31, Amdt 3
4-Apr-13	MD	Elkton	Cecil County	3/9258	2/20/2013	RNAV (GPS) RWY 31, Orig-B
4-Apr-13	MD	Elkton	Cecil County	3/9259	2/20/2013	VOR/DME RWY 31, Orig-B
4-Apr-13	NY	New York	La Guardia	3/9411	2/20/2013	ILS OR LOC RWY 4, Amdt 35A
2-May-13	AK	Kalskag	Kalskag	3/8404	2/25/2013	RNAV (GPS) RWY 6, Orig
2-May-13	AK	Bethel	Bethel	3/8478	2/25/2013	RNAV (GPS) RWY 1L, Amdt 1
2-May-13	AK	Bethel	Bethel	3/8479	2/25/2013	RNAV (GPS) RWY 1R, Orig-A
2-May-13	AK	Bethel	Bethel	3/8480	2/25/2013	RNAV (GPS) RWY 19L, Orig
2-May-13	AK	Bethel	Bethel	3/8481	2/25/2013	ILS OR LOC/DME Y, RWY 19R, Orig
2-May-13	AK	Bethel	Bethel	3/8482	2/25/2013	VOR/DME RWY 1L, Amdt 2
2-May-13	AK	Bethel	Bethel	3/8483	2/25/2013	RNAV (GPS) RWY 19R, Amdt 2
2-May-13	AK	Bethel	Bethel	3/8484	2/25/2013	VOR/DME RWY 19R, Amdt 2
2-May-13	AK	Bethel	Bethel	3/8485	2/25/2013	ILS OR LOC/DME Z RWY 19R, Amdt 7A
2-May-13	IL	Decatur	Decatur	3/8955	2/25/2013	RNAV (GPS) RWY 24, Orig
2-May-13	IL	Decatur	Decatur	3/8961	2/25/2013	ILS OR LOC RWY 6, Amdt 13E
2-May-13	IL	Decatur	Decatur	3/8966	2/25/2013	VOR RWY 18, Orig-B
2-May-13	IL	Decatur	Decatur	3/8967	2/25/2013	LOC BC RWY 24, Amdt 10B
2-May-13	IL	Decatur	Decatur	3/8968	2/25/2013	VOR RWY 36, Amdt 16
2-May-13	IL	Decatur	Decatur	3/8969	2/25/2013	RNAV (GPS) RWY 36, Orig-A
2-May-13	IL	Decatur	Decatur	3/8970	2/25/2013	RNAV (GPS) RWY 6, Orig-A
2-May-13	IL	Decatur	Decatur	3/8971	2/25/2013	RNAV (GPS) RWY 18, Orig
2-May-13	CA	Redlands	Redlands Muni	3/9102	2/25/2013	Takeoff Minimums and (Obstacle) Departure Procedures, Orig
2-May-13	DC	Washington	Manassas Rgnl/Harry P. Davis Field.	3/9819	2/25/2013	RNAV (GPS) RWY 16L, Orig-C
2-May-13	DC	Washington	Manassas Rgnl/Harry P. Davis Field.	3/9820	2/25/2013	RNAV (GPS) RWY 16R, Orig-C
2-May-13	DC	Washington	Manassas Rgnl/Harry P. Davis Field.	3/9821	2/25/2013	RNAV (GPS) RWY 34R, Amdt 1
2-May-13	NY	Penn Yan	Penn Yan	3/9822	2/25/2013	NDB RWY 28, Amdt 6B
2-May-13	NY	Penn Yan	Penn Yan	3/9823	2/25/2013	RNAV (GPS) RWY 1, Amdt 3
2-May-13	NY	Penn Yan	Penn Yan	3/9824	2/25/2013	RNAV (GPS) RWY 19, Orig-A

[FR Doc. 2013–05807 Filed 3–15–13; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 4

Freedom of Information Act; Correction

AGENCY: Federal Trade Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Trade Commission published a final rule on February 28, 2013 revising its Rules of Practice governing access to agency records. In one of its amendatory instructions, the final rule mentioned a paragraph that was not being affected. This document makes a technical correction to the amendatory instruction

so that it accurately reflects the amendments carried out.

DATES: Effective March 18, 2013.

FOR FURTHER INFORMATION CONTACT: G. Richard Gold, Attorney, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–3355.

SUPPLEMENTARY INFORMATION: An amendatory instruction in our final rule entitled ''Freedom of Information Act'' published February 28, 2013 (78 FR 13472) erroneously included a paragraph that was not affected. In the amendments to § 4.9 of the Commission's Rules of Practice, instruction 2 included paragraph (b)(9) in its revisions. That paragraph was not revised by the rule. Therefore, we issue the following correction to the February 28 final rule:

■ 1. In the **Federal Register** of Thursday, February 28, 2013, in FR Doc. 2013–04479, on page 13474, in the first column, amendatory instruction 2 is correctly revised to read as follows: ''2. Amend § 4.9 by revising paragraphs (a)(3), (a)(4)(i), (a)(4)(iii), (b)(3)(iii), (b)(10)(xiv) and (xv), and by adding (b)(10)(xvi) to read as follows:''

Richard C. Donohue,

Acting Secretary.

[FR Doc. 2013–05619 Filed 3–15–13; 8:45 am]

BILLING CODE 6750–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2012–0738; FRL–9791–4]

National Oil and Hazardous Substances Pollution Contingency Plan; Revision To Increase Public Availability of the Administrative Record File

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking final action on an amendment that was withdrawn in a January 22, 2013, **Federal Register** withdrawal notice. The amendment that is the subject of today's final rule adds language to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) to broaden the technology, to include computer telecommunications or other electronic means, that the lead agency is permitted to use to make the administrative record file available to the public.

DATES: This final rule is effective on April 17, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–SFUND–2012–0738. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Superfund Docket (Docket ID No. EPA–HQ–SFUND–2012–0738). This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Superfund Docket telephone number is (202) 566–0276. EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Melissa Dreyfus at (703) 603–8792 (*dreyfus.melissa@epa.gov*), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460–0002, Mail Code 5204P.

SUPPLEMENTARY INFORMATION:

I. Why is EPA publishing this final rule?

On November 7, 2012, EPA published in the **Federal Register** a Direct Final rule entitled *National Oil and Hazardous Substances Pollution Contingency Plan; Revision to Increase Public Availability of the Administrative Record File* (77 FR 66729) (hereafter the Direct Final rule). This Direct Final rule added language to 40 CFR 300.805(c) of the NCP to broaden the technology, to include computer telecommunications or other electronic means, that the lead agency is permitted to use to make the administrative record file available to the public. At the same time, EPA also published a parallel Proposed rule (77 FR 66783) that requested comment on the same change to the NCP. We stated in that Direct Final rule that if we received adverse comment on the amendment by December 7, 2012, the affected amendment would not take effect and we would publish a timely withdrawal in the **Federal Register** of the amendment. We received one adverse comment and as a result withdrew the amendment on January 22, 2013 (78 FR 4333). EPA is publishing today's Final rule to address the adverse comment received on the amendment listed above and to finalize this amendment.

II. Background

A. What does this amendment do?

In the November 7, 2012, Direct Final rule, 40 CFR 300.805(c)—''Location of the Administrative Record File'' in Subpart I—''Administrative Record for Selection of Response Action'' of the National Oil and Hazardous Substances Pollution Contingency Plan, was revised to acknowledge advancements in technologies used to manage and convey information to the public. Specifically, this revision to the NCP added language to broaden the technology, to include computer telecommunications or other electronic means, that the lead agency is permitted to use to make the administrative record file available to the public regarding documents that form the basis for the selection of a response action. This amendment to the NCP does not limit the lead agency's ability to make the administrative record file available to the public in traditional forms such as paper and microform. Based on the preferences of the community and the lead agency's assessment of the site-specific situation, the lead agency will determine whether to provide: (1) Traditional forms (e.g. paper copies; microform) (2) electronic resources, or (3) both traditional forms and electronic resources. The lead agency should assess the capacity and resources of the public to utilize and maintain an electronic- or computer telecommunications-based repository to make a decision on which approach suits a specific site.

B. What comment did EPA receive and how is it addressed?

While three comments were submitted in a timely manner, only one of them is considered to be substantive. This comment, submitted anonymously, stated that ''This modification to the current methods of conveying information to the general public is prudent and likely to increase public awareness of activities relating to the National Contingency Plan.'' However, the commenter was ''* * * curious as to how the 'preferences of the community and the lead agency's assessment of the site-specific situation' will be determined.'', as ''Within any single community, there is probably going to be a range of capabilities and preferences regarding the delivery of a record file.'' The commenter went on to explain ''In determining community preference, the Agency should be cautious, again, of allowing the

overrepresentation of special interests, for these interests may attempt to project a community preference for traditional microform files so that public participation does not increase. But, as the Proposed rule explains, the lead agency will be free to determine that both electronic and traditional microform information be available, which, when faced with competing views, is best for effectuating the purpose of this necessary and wise amendment.''

In response to this comment, EPA agrees that the amendment being promulgated today is a useful and important change that will give the lead agency the ability to serve the information needs of a broader population. In the Direct Final rule (and parallel Proposed rule), EPA explained that the lead agency should assess the capacity and resources of the public to utilize and maintain an electronic- or computer telecommunications-based repository to make a decision on which approach suits a specific site. Based on the preferences of the community and the lead agency's assessment of the site-specific situation, the lead agency will determine whether to provide: (1) Traditional forms (e.g. paper copies; microform) (2) electronic resources, or (3) both traditional forms and electronic resources.

Further, EPA agrees with the commenter's remark that ''In determining community preference, the Agency should be cautious, again, of allowing the overrepresentation of special interests, for these interests may attempt to project a community preference for traditional microform files so that public participation does not increase.'' Community preferences and access to technological resources may be gleaned through community interviews conducted as part of the planning for the Community Involvement Plan (CIP) at a site.[1] A CIP is a site-specific strategy to enable meaningful community involvement throughout the Superfund cleanup process. Consistent with the NCP [300.415(n)(3)(ii); 300.415(n)(4)(i); and 300.430(c)(2)(ii)(A–C)], the lead agency prepares a Community Involvement Plan (formerly called a Community Relations Plan) ''* * * based on the community interviews and other relevant information, specifying the community relations activities that the lead agency expects to undertake during the remedial response.'' In addition, consistent with the NCP [40 CFR 300.415(n)(3)(i); 40 CFR 300.415(n)(4)(i); and 300.430(c)(2)(i)] the lead agency conducts ''interviews with local officials, community residents, public interest groups, or other interested or affected parties, as appropriate, to solicit their concerns and information needs, and to learn how and when citizens would like to be involved in the Superfund process.''

EPA generally recommends that interviews be conducted with at least 25 community members, though a complex site may warrant 100 or more interviewees, and a small or remote site might warrant less than 25 interviewees.[2] Conducting community interviews typically is a particularly effective way to gather information about community needs, questions, and concerns, as well as expectations and unique needs or cultural behaviors, customs, and values. Community interviews also give the lead agency the opportunity to hear the preferences of community members that may have otherwise hesitated to share during a public meeting or availability session. The information and insights gained from community interviews will help the lead agency to assess the capacity and resources of the community to utilize and maintain an electronic- or computer telecommunications-based repository, and to make a decision on which approach suits a specific site and best encourages the community's participation.

In addition, in accordance with Section 508 of the Rehabilitation Act of 1973, as amended, the lead agency is responsible for ensuring that all electronic and information technology is accessible to persons with disabilities. This typically involves procuring, creating, maintaining and using electronic and information technology, including, Web sites, software, hardware, video and multimedia, and telecommunications, that is Section 508 compliant,[3] as well as incorporating other techniques to ensure accessibility.

Thus, the amendment being promulgated today is a useful and important change that will give the lead agency the ability to serve the information needs of a broader population, while maintaining the ability to provide the administrative record file to the public as: (1) Traditional forms (e.g. paper copies; microform) (2) electronic resources, or (3) both traditional forms and electronic resources. EPA is today promulgating the change to add language to 40 CFR 300.805(c) as was proposed.

III. Statutory and Executive Order Reviews

As explained above, this rule takes final action on an amendment for which we received adverse comment in response to our November 7, 2012, *National Oil and Hazardous Substances Pollution Contingency Plan; Revision to Increase Public Availability of the Administrative Record File* Direct Final rule (and parallel Proposed rule).

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011), this action is not a ''significant regulatory action'' and is therefore not subject to OMB review. This action merely adds language to 40 CFR 300.805(c) of the NCP to broaden the technology, to include computer telecommunications or other electronic means, that the lead agency is permitted to use to make the administrative record file available to the public. This action will enable the lead agency to serve the information needs of a broader population while maintaining the ability to provide traditional means of public access, such as paper copies and microform, to the administrative record file. This action does not impose any requirements on any entity, including small entities. Therefore, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), after considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not contain any unfunded mandates or significantly or uniquely affect small governments as described in Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4). This action does not create new binding legal requirements that substantially and directly affect Tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). This action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). Because this action has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885,

[1] U.S. Environmental Protection Agency. 2011. Superfund Community Involvement Toolkit. Community Involvement Plans. Available online: *http://www.epa.gov/superfund/community/pdfs/toolkit/ciplans.pdf.*

[2] U.S. Environmental Protection Agency. 2011. Superfund Community Involvement Toolkit. Community Interviews. Available online at *http://www.epa.gov/superfund/community/pdfs/toolkit/5cominterv.pdf.*

[3] Further information on Section 508 is available online: *http://www.section508.gov.*

April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., nor does it require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Because this action does not contain legally binding requirements, it is not subject to the Congressional Review Act.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: March 11, 2013.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out above, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

■ 2. Section 300.805 is amended by revising paragraph (c) to read as follows:

§ 300.805 Location of the administrative record file.

* * * * *

(c) The lead agency may make the administrative record file available to the public in microform, computer telecommunications, or other electronic means.

[FR Doc. 2013–06189 Filed 3–15–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 411, 412, 419, 424, and 489

[CMS–1455–NR]

Medicare Program; Medicare Hospital Insurance (Part A) and Medicare Supplementary Medical Insurance (Part B)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of CMS ruling.

SUMMARY: This notice announces a CMS Ruling that establishes a policy that revises the current policy on Part B billing following the denial of a Part A inpatient hospital claim by a Medicare review contractor on the basis that the inpatient admission was determined not reasonable and necessary. This revised policy is intended as an interim measure until CMS can finalize a policy to address the issues raised by the Administrative Law Judge and Medicare Appeals Council decisions going forward. To that end, elsewhere in this issue of the **Federal Register**, we published a proposed rule entitled, ''Medicare Program; Part B Inpatient Billing in Hospitals,'' to propose a permanent policy that would apply on a prospective basis.

DATES: The CMS ruling announced in this notice is effective on March 13, 2013.

FOR FURTHER INFORMATION CONTACT: Ann Marshall, (410) 786–3059, for issues related to payment of Part B inpatient and Part B outpatient services.

David Danek, (617) 565–2682, for issues related to general appeals policy.

If you have a question about a pending appeal, please contact the entity (that is, Medicare contractor, Qualified Independent Contractor (QIC), Administrative Law Judge (ALJ) or the Appeals Council) where your appeal is pending. For those cases that were remanded from an ALJ to a QIC, HHS' Office of Medicare Hearings and Appeals (OMHA) will post further information on its public Web site at www.hhs.gov/omha. The contact names listed will not have any information about specific, pending appeals.

SUPPLEMENTARY INFORMATION: The CMS Administrator signed Ruling CMS–1455–R on March 13, 2013. This CMS Ruling, as well as other CMS Rulings are available at *http://www.cms.gov/Regulations-and-Guidance/Guidance/Rulings/index.html*. For the readers' convenience, the text of the CMS Ruling 1455–R is set forth in the Appendix to this notice of CMS ruling:

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 13, 2013.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

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

Appendix

CMS Rulings

Department of Health and Human Services

Centers for Medicare & Medicaid Services

Ruling No.: CMS–1455–R.
Date: March 13, 2013.

Centers for Medicare & Medicaid Services (CMS) Rulings are decisions of the Administrator of CMS that serve as precedential final opinions, orders and statements of policy and interpretation. They provide clarification and interpretation of complex provisions of the law or regulations relating to Medicare, Medicaid, Utilization and Quality Control Peer Review, private health insurance, and related matters. They are published under the authority of the Administrator.

CMS Rulings are binding on all CMS components, Part A and Part B Medicare Administrative Contractors (MACs), Qualified Independent Contractors (QICs), the Provider Reimbursement Review Board, the Medicare Geographic Classification Review Board, and on the Medicare Appeals Council and Administrative Law Judges (ALJs) who hear Medicare appeals. Rulings promote consistency in interpretation of policy and adjudication of disputes.

In light of numerous recent Medicare Appeals Council and ALJ decisions on a recurrent Medicare payment issue and in association with this Ruling, CMS is concurrently issuing a proposed rule, entitled ''Medicare Program; Part B Billing in Hospitals'' addressing the policy of billing under Medicare Part B following a denial of a Medicare Part A hospital inpatient claim by a Medicare review contractor for the reason that an inpatient admission was not reasonable and necessary under section 1862(a)(1)(A) of the Social Security Act (the Act). This Ruling is effective as of the issuance date, and addresses the treatment of such claims and associated appeals until the effective date of the final regulations for the proposed rule entitled, ''Medicare Program; Part B Billing in Hospitals''.

Medicare Program

Medicare Hospital Insurance (Part A) and Medicare Supplementary Medical Insurance (Part B).

Clarification of Billing Under Medicare Parts A and B

Citations: Sections 1814, 1833, 1835, 1842, 1862, 1866, 1870, 1879 and 1886 of the Social Security Act; 42 CFR Part 405 Subpart I, 411.402, Part 412, 419.21, 424.44, and 489.21.

Background

When a Medicare beneficiary arrives at a hospital in need of medical or surgical care, the physician or other qualified practitioner may admit the beneficiary for inpatient care or treat him or her as an outpatient. In some cases, when the physician or other qualified practitioner admits the beneficiary and the hospital provides inpatient care, a Medicare claims review contractor, such as a Medicare Administrative Contractor (MAC), a Recovery Audit Contractor (RAC), or the Comprehensive Error Rate Testing (CERT) Contractor, subsequently determines that the inpatient admission was not reasonable and necessary under section 1862(a)(1)(A) of the Act, and therefore denies the associated Part A claim for payment. Under such circumstances, Medicare payment policy has permitted hospitals to bill a subsequent ''Part B Inpatient'' claim for only a limited set of medical and other health services referred to as ''Part B Inpatient'' or ''Part B Only'' services. (For more information, see, Internet Only Manual (IOM) Pub. 100–02, Medicare Benefit Policy Manual (MBPM), Chapter 6, Section 10; Prospective Payment System for Hospital Outpatient Services, Proposed Rule, 63 FR 47560 (September 8, 1998) and Final Rule, 65 FR 18444 (April 7, 2000); Changes to the Hospital Outpatient Prospective Payment System for Calendar Year 2002, Proposed Rule, 66 FR 44698 through 44699 (August 24, 2001) and Final Rule, 66 FR 59891 through 59893, and 59915 (November 30, 2001).)

In an increasing number of cases, hospitals that have appealed these Part A inpatient claim denials to the ALJs and the Medicare Appeals Council have received decisions upholding the Medicare review contractor's determination that the inpatient admission was not reasonable and necessary, but ordering payment of the services as if they were rendered at an outpatient or ''observation level'' of care. These decisions effectively require Medicare to issue payment for all Part B services that would have been payable had the beneficiary been treated as an outpatient (rather than an inpatient), instead of limiting payment to only the set of Part B inpatient services that are designated in the MBPM. Moreover, the decisions have required payment regardless of whether the subsequent hospital claim for payment under Part B is submitted within the otherwise applicable time limit for filing Part B claims.

The ALJ and Medicare Appeals Council decisions providing for payment of all reasonable and necessary Part B services under the circumstances previously described are contrary to CMS' longstanding policies that permit billing for only a limited list of Part B inpatient services and require that the services be billed within the usual timely filing restrictions (MBPM, Chapter 6, Section 10); Prospective Payment System for Hospital Outpatient Services, Proposed Rule 63 FR 47560 (September 8, 1998) and Final Rule, 65 FR 18444 (April 7, 2000); Changes to the Hospital Outpatient Prospective Payment System for Calendar Year 2002, Proposed Rule, 66 FR 44698 through 44699 (August 24, 2001) and Final Rule, 66 FR 59891 through 59893, and 59915, (November 30 2001); Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2011; Final Rule (75 FR 73449 and 73627, November 29, 2010). While decisions issued by the ALJs and the Medicare Appeals Council do not establish Medicare payment policy, we are bound to effectuate each individual decision. The increasing number of these types of decisions has created numerous operational difficulties. This Ruling establishes a standard process for effectuating these decisions and handling pending claims and appeals in the interim while CMS considers how to best address this issue going forward. The Ruling also addresses the scope of administrative review in these and other, similar cases. Until the final regulations entitled, ''Medicare Program; Part B Inpatient Billing in Hospitals'' are promulgated, CMS, through this Ruling, acquiesces to the approach taken in the aforementioned ALJ and Appeals Council decisions on the issue of subsequent Part B billing following the denial of a Part A hospital inpatient claim on the basis that the admission was not reasonable and necessary. The policy announced in this Ruling supersedes any other statements of policy on this issue and remains in effect until the effective date of the regulations that finalize the proposed rule entitled, ''Medicare Program; Part B Inpatient Billing in Hospitals'', which we are issuing concurrently with this Ruling.

Ruling

Part B Hospital Inpatient Billing

In light of the numerous recent ALJ and Medicare Appeals Council decisions previously described, this Ruling establishes a policy that revises the current policy on Part B billing following the denial of a Part A inpatient hospital claim by a Medicare review contractor on the basis that the inpatient admission was determined not reasonable and necessary. This revised policy is intended as an interim measure until CMS can finalize a policy to address the issues raised by the ALJ and Medicare Appeals Council decisions going forward. To that end, we issued a proposed rule entitled, ''Medicare Program; Part B Inpatient Billing in Hospitals,'' today, to propose a permanent policy on a prospective basis once the proposed rule is finalized. Accordingly, this Ruling is effective only until such time as the aforementioned proposed rule is finalized.

To date, under MBPM, Chapter 6, Section 10, a limited set of Part B inpatient services may be paid in the following circumstances:

- No Part A prospective payment is made at all for the hospital stay because of patient exhaustion of benefit days before admission.
- The admission was disapproved as not reasonable and necessary (and waiver of liability payment was not made).
- The day or days of the otherwise covered stay during which the services were provided were not reasonable and necessary (and no payment was made under waiver of liability).
- The patient was not otherwise eligible for or entitled to coverage under Part A.

This Ruling applies only in the second circumstance listed previously, that is, when the admission was disapproved as not reasonable and necessary by a Medicare review contractor, and payment for the denied services was not made pursuant to section 1879 of the Act (and provided the hospital's responsibility for repayment of an overpayment was not waived under section 1870 of the Act). Because the other circumstances for Part B inpatient billing listed in the MBPM are not the subject of the administrative appeals that this Ruling is designed to address (for example, when a beneficiary has no coverage under Part A because he or she exhausts Part A benefits), the existing policy applies in all other applicable circumstances, and a hospital may continue to bill for only the limited set of Part B inpatient services and must do so within the timely filing requirements.

Pursuant to this Ruling, when a Part A inpatient claim for a hospital inpatient admission is denied by a Medicare review contractor because the inpatient admission was not reasonable and necessary, the hospital may submit a Part B inpatient claim for more services than just those listed in the MBPM, Chapter 6, Section 10, to the extent additional reasonable and necessary services were furnished. In this case, the hospital may submit a Part B inpatient claim for payment for the Part B services that would have been payable to the hospital had the beneficiary originally been treated as an outpatient rather than admitted as an inpatient, except when those services specifically require an outpatient status, for example, outpatient visits, emergency department visits, and observation services. Such services that require an outpatient status cannot be billed for the time period the beneficiary spent in the hospital as an inpatient and cannot be included on the Part B inpatient claim (see the following discussion of patient status).

Three-Day Payment Window Prior to the Inpatient Admission

Current Medicare policy requires payment for certain outpatient services furnished on the date of an inpatient admission or during the 3-calendar days (or 1-calendar day for hospitals not paid under the hospital inpatient prospective payment systems (IPPS)) prior to the date of the inpatient admission (collectively, ''the 3-day (or 1-day for non-IPPS hospitals) payment window prior to the inpatient admission'') to be bundled with the payment for the inpatient stay. See IOM Pub. 100–04, Medicare Claims Processing Manual (MCPM), Chapter 3, Section 40.3 and Chapter 4, Section 10.12.

Under this Ruling, in cases for which no Part A payment is made because the Part A inpatient claim is denied on the basis that the inpatient admission was not reasonable and necessary, hospitals may bill separately for the outpatient services furnished during the 3-day (or 1-day for non-IPPS hospitals) payment window prior to the inpatient admission as the outpatient services that they were, including observation and other

services that were furnished in accordance with Medicare's requirements. Because services provided during the 3-day (or 1-day for non-IPPS hospitals) payment window prior to the denied inpatient admission are outpatient services, these services may not be included on the Part B inpatient claim. Instead, hospitals may bill for these services on a Part B outpatient claim, which, in accordance with the policy announced in this Ruling, will not be subject to the usual timely filing restrictions discussed later in this Ruling. Hospitals may only submit claims for Part B inpatient and Part B outpatient services that are reasonable and necessary in accordance with Medicare coverage and payment rules. Hospitals must maintain documentation to support the services billed on a Part B inpatient claim for services rendered during the inpatient stay, in addition to those billed on a Part B outpatient claim for services rendered in the 3-day (or 1-day for non-IPPS hospitals) payment window prior to the inpatient admission.

Applicability

This Ruling is effective on the date of issuance. It applies to Part A hospital inpatient claims that were denied by a Medicare review contractor because the inpatient admission was determined not reasonable and necessary, as long as the denial was made: (1) While this Ruling is in effect; (2) prior to the effective date of this Ruling, but for which the timeframe to file an appeal has not expired; or (3) prior to the effective date of this Ruling, but for which an appeal is pending. This Ruling does not apply to Part A hospital inpatient claim denials for which the timeframe to appeal expired prior to the effective date of this Ruling, and it does not apply to inpatient admissions deemed by the hospital to be not reasonable and necessary (for example, through utilization review or other self-audit).

Treatment of Pending Appeals and Appeal Rights

We are aware that there are currently thousands of appeals pending that are subject to this Ruling. In determining the least burdensome approach for both hospitals and CMS, we are publishing this Ruling to provide hospitals with notice of their right to withdraw pending appeals of Part A claim denials that are subject to this Ruling, and instead submit Part B claims for payment. Requests for withdrawal of pending Part A claim appeals must be sent to the adjudicator with whom the appeal is currently pending, except where the appeal has been remanded from an ALJ to a QIC. Under this Ruling, appeals of Part A claim denials that were remanded from the ALJ level to the QIC level will be returned to the ALJ level for adjudication of the Part A claim appeal consistent with the scope of review explained later in this Ruling. QICs will send affected hospitals notice regarding this action. The Office of Medicare Hearings and Appeals (OMHA) will provide instructions for submitting requests for withdrawal of ALJ hearings, including cases that were remanded from an ALJ to a QIC. OMHA will post the instructions on its public Web site at *www.hhs.gov/omha*, or appellants may call any OMHA Field Office (included in the Notice of Hearing sent by an ALJ and on the OMHA Web site) to request a copy of the instructions by mail or facsimile. Until and unless adjudicators receive a request for withdrawal, they will continue processing all pending Part A appeals that are subject to this Ruling.

In order to prevent duplicate billing and payment, a hospital may not have simultaneous requests for payment under both Parts A and B for the same services provided to a single beneficiary on the same dates of service. Thus, if a hospital chooses to submit a Part B claim for payment following the denial of a Part A inpatient admission, the hospital cannot also maintain its request for payment for the same services on the Part A claim. In this situation, the hospital must either choose to no longer pursue an appeal of the Part A claim denial (and thus, as a practical matter, any determination or appeal decision becomes final or binding, allowing the hospital to submit its Part B claim) or must withdraw any pending appeal request on the Part A claim denial prior to the submission of the Part B claim. The request to withdraw the pending Part A claim appeal must be sent to the entity currently processing such appeal, and the entity will issue a dismissal notice. If a hospital submits a Part B claim for payment without withdrawing its appeal request, the Part B claim for payment may be denied as a duplicate. Once the hospital submits a Part B claim, parties will no longer be able to appeal the Part A claim. However, parties will be able to exercise their appeal rights for the subsequent Part B claim under existing procedures in 42 CFR part 405 subpart I.

If the hospital elects to withdraw its Part A appeal and submit a Part B claim, the hospital will have 180 days from the date of receipt of the appeal dismissal notice to submit the claim. If the appeal of the Part A claim remains pending, the hospital may submit a Part B claim if the Part A appeal is later withdrawn, or an unfavorable Part A appeal decision becomes final or binding, in which case, as explained later in this Ruling, the hospital will have 180 days from the date of receipt of the final or binding decision, or the date of receipt of the dismissal notice to submit the Part B claim.

Time Period Within Which a Provider Must Bill

Consistent with longstanding policy, the filing of Part B inpatient and Part B outpatient claims would be considered new claims subject to the time limits for filing claims described in sections 1814(a)(1), 1835(a), and 1842(b)(3)(B) of the Act, and 42 CFR 424.44. However, as an interim measure until the final rule entitled, ''Medicare Program; Part B Inpatient Billing in Hospitals'' can be issued, we are adopting (although not endorsing) the decisions of the ALJs and the Medicare Appeals Council that subsequent Part B rebilling by a hospital in situations covered by this Ruling is supported by concepts of adjustment billing. Under this approach, Part B inpatient and Part B outpatient claims that are filed later than 1-calendar year after the date of service are not to be rejected as untimely by Medicare's claims processing system as long as the corresponding denied Part A inpatient claim was filed timely in accordance with 42 CFR 424.44.

If a hospital with a pending appeal for a Part A claim denial subject to this Ruling withdraws its appeal, it will have 180 days from the date of receipt of the dismissal notice to file its Part B claim(s). If a hospital with a pending appeal for a Part A claim denial subject to this Ruling does not withdraw its appeal, the hospital has 180 days from the date of receipt of the final or binding unfavorable appeal decision (or subsequent dismissal notice) to submit its Part B claim(s). For example, if an appellant receives an unfavorable reconsideration decision but decides not to request a hearing before an ALJ, or the time to request a hearing expires, the reconsideration decision becomes binding, and the Part B claim(s) may be filed within 180 days of the date of receipt of the reconsideration decision. If a hospital receives a denial of a Part A inpatient claim subject to this Ruling for which there is no pending appeal, and the denial is not subsequently appealed, the hospital will have 180 days from the date of receipt of the initial or revised determination on the Part A inpatient claim (that is, the date of the remittance advice) to submit its Part B claim(s). The date of receipt of an initial or revised determination, or an appeal decision or dismissal notice is presumed to be 5 days after the date of such notice or decision, unless there is evidence to the contrary.

Scope of Review for Part A Inpatient Claim Denials

As noted earlier in this Ruling, a number of recent appeal decisions for Part A inpatient claim denials by a Medicare review contractor have affirmed the denial of the Part A inpatient admission, but ordered that payment be issued as if services were provided at an outpatient or ''observation level'' of care under Part B of the Medicare Program. These decisions ordered payment under Part B (or consideration of payment for services furnished that the contractor determined to be covered and payable under Part B), even though a Part B claim had not been submitted for payment. We note that these decisions are in conflict with existing policy. Thus, we are clarifying in this Ruling that hospitals are solely responsible both for submitting claims for items and services furnished to beneficiaries and determining whether submission of a Part A or Part B claim is appropriate. As specified in 42 CFR 405.904(a)(2), once a hospital submits a claim, the Medicare contractor can make an initial determination and determine any payable amount. Under existing Medicare policy, if such a determination is appealed, an appeals adjudicator's scope of review is limited to the claim(s) that are before them on appeal, and such adjudicators may not order payment for items or services that have not yet been billed or have not yet received an initial determination. (See 42 CFR 405.920, 405.940, 405.948, 405.954, 405.960, 405.968, 405.974, 405.1000, 405.1032,

405.1100, and 405.1128.) If a hospital submits an appeal of a determination that a Part A inpatient admission was not reasonable and necessary, the only issue before the adjudicator is the propriety of the Part A claim, not any issue regarding any potential Part B claim the provider has not yet submitted.

Patient Status Under the Ruling

For the Part B claims billed under this Ruling, the beneficiary's patient status remains inpatient as of the time of inpatient admission and is not changed to outpatient, because the beneficiary was formally admitted as an inpatient and there is no provision to change a beneficiary's status after she/he is discharged from the hospital. The beneficiary is considered an outpatient for services billed on the Part B outpatient claim, and is considered an inpatient for services billed on the Part B inpatient claim.

Part A to Part B Rebilling Demonstration

The Part A to Part B Rebilling Demonstration is being terminated. We will communicate to hospitals and contractors the details regarding termination of this Demonstration.

Operational Considerations

We will issue operational and any other applicable regulatory guidance that is necessary to implement this Ruling, including the mechanics of how hospitals should bill for Part B inpatient and Part B outpatient services under this Ruling.

Instructions to Contractors

All Medicare contractors including MACs and QICs must implement and follow this Ruling until such time as CMS addresses these issues further.

Held: Pursuant to this Ruling, when a Part A claim for a hospital inpatient admission is denied by a Medicare review contractor because the inpatient admission was not reasonable and necessary, the hospital may submit a Part B inpatient claim for more services than just those listed in the MBPM, Chapter 6, Section 10, to the extent additional reasonable and necessary services were furnished. In this case, the hospital may submit a Part B inpatient claim for payment for the Part B services that would have been payable to the hospital had the beneficiary originally been treated as an outpatient rather than admitted as an inpatient, except when those services specifically require an outpatient status, for example, outpatient visits, emergency department visits, and observation services. Hospitals must submit their Part B claim within the timeframes specified in this Ruling. Further, where no Part A payment is made because the Part A inpatient claim is denied on the basis that the inpatient admission was not reasonable and necessary, hospitals may continue to bill separately for the outpatient services furnished during the 3-day (or 1-day for non-IPPS hospitals) payment window prior to the inpatient admission, including observation and other services that were furnished in accordance with Medicare's requirements. In order to prevent duplicate billing and payment, a hospital may not have simultaneous requests for payment under both Parts A and B for the same services provided to a single beneficiary on the same dates of service. Thus, if a hospital chooses to submit a Part B claim for payment following the denial of a Part A inpatient admission, the hospital cannot also maintain its request for payment for the same services on the Part A claim. This Ruling applies to Part A hospital inpatient claims that were denied by a Medicare review contractor because the inpatient admission was determined not reasonable and necessary, as long as the denial was made: (1) While this Ruling is in effect; (2) prior to the effective date of this Ruling, but for which the timeframe to file an appeal has not expired; or (3) prior to the effective date of this Ruling, but for which an appeal is pending. This Ruling does not apply to Part A hospital inpatient claim denials for which the timeframe to appeal expired prior to the effective date of this Ruling, and it does not apply to inpatient admissions deemed by the hospital to be not reasonable and necessary (for example, through utilization review or other self-audit). For the Part B claims billed under this Ruling, the beneficiary's patient status remains inpatient as of the time of inpatient admission and is not changed to outpatient, because the beneficiary was formally admitted as an inpatient and there is no provision to change a beneficiary's status after she/he is discharged from the hospital. The beneficiary is considered an outpatient for services billed on the Part B outpatient claim, and is considered an inpatient for services billed on the Part B inpatient claim.

Effective Date

This Ruling is effective March 13, 2013.

Dated: _____

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2013–06159 Filed 3–13–13; 4:15 pm]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111207737–2141–02 and 1112113751–2102–02]

RIN 0648–XC569

Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish Managed Under the Individual Fishing Quota Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; opening.

SUMMARY: NMFS is opening directed fishing for sablefish with fixed gear managed under the Individual Fishing Quota (IFQ) Program and the Community Development Quota (CDQ) Program. The season will open 1200 hours, Alaska local time (A.l.t.), March 23, 2013, and will close 1200 hours, A.l.t., November 7, 2013. This period is the same as the 2013 commercial halibut fishery opening dates adopted by the International Pacific Halibut Commission. The IFQ and CDQ halibut season is specified by a separate publication in the **Federal Register** of annual management measures.

DATES: Effective 1200 hours, A.l.t., March 23, 2013, until 1200 hours, A.l.t., November 7, 2013.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: Beginning in 1995, fishing for Pacific halibut and sablefish with fixed gear in the IFQ regulatory areas defined in 50 CFR 679.2 has been managed under the IFQ Program. The IFQ Program is a regulatory regime designed to promote the conservation and management of these fisheries and to further the objectives of the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act. Persons holding quota share receive an annual allocation of IFQ. Persons receiving an annual allocation of IFQ are authorized to harvest IFQ species within specified limitations. Further information on the implementation of the IFQ Program, and the rationale supporting it, are contained in the preamble to the final rule implementing the IFQ Program published in the **Federal Register**, November 9, 1993 (58 FR 59375) and subsequent amendments.

This announcement is consistent with § 679.23(g)(1), which requires that the directed fishing season for sablefish managed under the IFQ Program be specified by the Administrator, Alaska Region, and announced by publication in the **Federal Register**. This method of season announcement was selected to facilitate coordination between the sablefish season, chosen by the Administrator, Alaska Region, and the halibut season, adopted by the International Pacific Halibut Commission (IPHC). The directed fishing season for sablefish with fixed gear managed under the IFQ Program will open 1200 hours, A.l.t., March 23, 2013, and will close 1200 hours, A.l.t., November 7, 2013. This period runs concurrently with the IFQ season for Pacific halibut announced by the IPHC. The IFQ halibut season will be specified by a separate publication in the **Federal Register** of annual management measures pursuant to 50 CFR 300.62.

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the sablefish fishery thereby increasing bycatch and regulatory discards between the sablefish fishery and the halibut fishery, and preventing the accomplishment of the management objective for simultaneous opening of these two fisheries. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 14, 2013.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.23 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 13, 2013.

Kara Meckley,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–06168 Filed 3–15–13; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 52
Monday, March 18, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2012–0308]

RIN 3150–AJ22

List of Approved Spent Fuel Storage Casks: MAGNASTOR® System

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel storage regulations by revising the NAC International, Inc., Modular Advanced Generation Nuclear All-purpose Storage (MAGNASTOR®) Cask System listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 3 to Certificate of Compliance (CoC) No. 1031. Amendment No. 3 includes changes that would revise authorized contents to include: pressurized water reactor (PWR) damaged fuel contained in damaged fuel cans that are placed in a damaged fuel basket assembly; PWR fuel assemblies with nonfuel hardware per the expanded definition in the Amendment No. 3 application; and PWR fuel assemblies with up to five activated stainless steel fuel replacement rods at a maximum burnup/exposure of 32.5 gigawatt days per metric ton of uranium (GWd/MTU). Additionally, Amendment No. 3 would revise paragraph 4.3.1(i) in appendix A of the CoC Technical Specifications (TS), to clarify that the maximum design basis earthquake accelerations of 0.37g in the horizontal direction (without cask sliding) and 0.25g in the vertical direction at the independent spent fuel storage installation pad top surface do not result in cask tip-over. Amendment No. 3 would make additional changes to appendix A, Technical Specifications and Design Features for the MAGNASTOR® System, and appendix B, Approved Contents for the MAGNASTOR® System, of the CoC TS.

DATES: Submit comments by April 17, 2013. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this proposed rulemaking, which the NRC possesses and is publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0308. You may submit comments by any one of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0308. 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.

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: Naiem S. Tanious, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6103, email: *Naiem.Tanious@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0308 when contacting the NRC about the availability of information for this proposed rule. You may access information related to this proposed rulemaking, 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–2012–0308.
- *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.* An electronic copy of the proposed CoC, including appendices A and B of the TS, and the preliminary Safety Evaluation Report can be found in ADAMS under Package Accession No. ML12227A900. The ADAMS Accession No. for the MAGNASTOR® Cask System Amendment No. 3 dated August 26, 2012, is ML102420569.
- *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–2012–0308 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, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Procedural Background

This rule is limited to the changes contained in Amendment No. 3 to CoC No. 1031 and does not include other aspects of the MAGNASTOR® Cask System design. Because the NRC considers this action noncontroversial and routine, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. Adequate protection of public health and safety continues to be ensured. The direct final rule will become effective on June 3, 2013. However, if the NRC receives significant adverse comments on this proposed rule by April 17, 2013, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to these proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or TS.

For additional procedural information and the regulatory analysis, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

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; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH–LEVEL RADIOACTIVE WASTE AND REACTOR–RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for Part 72 continues to read as follows:

Authority: Atomic Energy Act secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act sec. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act sec. 102 (42 U.S.C. 4332); Nuclear Waste Policy Act secs. 131, 132, 133, 135, 137, 141 148 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 549 (2005).

Section 72.44(g) also issued under secs. Nuclear Waste Policy Act 142(b) and 148(c), (d) (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear Waste Policy Act sec. 134 (42 U.S.C. 10154). Section 72.96(d) also issued under Nuclear Waste Policy Act sec. 145(g) (42 U.S.C. 10165(g)). Subpart J also issued under Nuclear Waste Policy Act secs. 117(a), 141(h) (42 U.S.C. 10137(a), 10161(h)). Subpart K is also issued under sec. 218(a) (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1031 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1031.

Initial Certificate Effective Date: February 4, 2009.

Amendment Number 1 Effective Date: August 30, 2010.

Amendment Number 2 Effective Date: January 30, 2012.

Amendment Number 3 Effective Date: June 3, 2013.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the MAGNASTOR® System.

Docket Number: 72–1031.

Certificate Expiration Date: February 4, 2024.

Model Number: MAGNASTOR®.

* * * * *

Dated at Rockville, Maryland, this 2nd day of March 2013.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. 2013–06016 Filed 3–15–13; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0072; Directorate Identifier 2013–NE–04–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Division Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Pratt & Whitney Division (PW) turbofan engine models PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3 with a certain 2nd-stage high-pressure turbine (HPT) air seal part number (P/N) installed. This proposed AD was prompted by discovery of cracks in the 2nd-stage HPT air seals. This proposed AD would require, for those air seals that meet certain cycles since new (CSN) criteria, inspection and removal from service of HPT air seals that fail inspection. We are proposing this AD to prevent failure of the 2nd-stage HPT air seal, which could lead to an uncontained engine failure and damage to the airplane.

DATES: We must receive comments on this proposed AD by May 17, 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 AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: 860–565–8770; fax: 860–565–4503. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7178; fax: 781–238–7199; email: *ian.dargin@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–2013–0072; Directorate Identifier 2013–NE–04–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 propose to adopt a new AD for all PW turbofan engine models PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3 with 2nd-stage HPT air seal, P/N 54L041, installed. This proposed AD was prompted by cracks in 2nd-stage HPT air seals discovered during fluorescent-penetrant inspection (FPI). This proposed AD would require, for HPT air seals that meet certain CSN criteria, either on-wing eddy current inspection (ECI) or in-shop FPI, and removal from service of any HPT air seal that fails inspection. We are proposing this AD to prevent failure of the 2nd-stage HPT air seal. This condition, if not corrected, could lead to an uncontained engine failure, and damage to the airplane.

Relevant Service Information

We reviewed PW Alert Service Bulletin (ASB) PW4G–112–A72–330, Revision 1, dated February 26, 2013. The ASB describes procedures for inspecting the integrity of 2nd-stage HPT air seals and criteria for their removal from service and replacement.

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.

Interim Action

We consider this proposed AD interim action. PW has not determined the root cause of the cracks discovered in 2nd-stage HPT air seals.

Costs of Compliance

We estimate that this AD will affect 83 engines installed on airplanes of U.S. registry. We also estimate that it would take about 5 hours to perform the inspection required by this proposed AD. The costs of an ECI and an FPI are assumed to be equal. The average labor rate is $85 per hour. Based on these figures, we estimate the total cost of the AD to U.S. operators will be $35,275.

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 to the extent that it justifies making a regulatory distinction, 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):

Pratt & Whitney Division: Docket No. FAA–2013–0072; Directorate Identifier 2013–NE–04–AD.

(a) Comments Due Date

We must receive comments by May 17, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Pratt & Whitney Division (PW) turbofan engine models PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3 with 2nd-stage high-pressure turbine (HPT) air seal, part number 54L041, installed.

(d) Unsafe Condition

This AD was prompted by discovery of cracks in the 2nd-stage HPT air seals. We are issuing this AD to prevent failure of the 2nd-stage HPT air seal, which could lead to uncontained engine failure and damage to the airplane.

(e) Compliance

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

(1) For 2nd-stage HPT air seals that have 1,200 or fewer cycles since new (CSN) on the effective date of this AD, perform an on-wing eddy current inspection (ECI) or in-shop fluorescent-penetrant inspection (FPI) for cracks within 2,200 CSN.

(2) For 2nd-stage HPT air seals that have more than 1,200 CSN on the effective date of this AD, perform an on-wing ECI or in-shop FPI for cracks within 1,000 cycles after the effective date of this AD.

(3) Thereafter, reinspect with either an on-wing ECI or in-shop FPI every 1,200 cycles since last inspection.

(4) If you find a crack, remove the air seal from service before further flight.

(5) Use paragraph 7 of the Accomplishment Instructions of PW Alert Service Bulletin (ASB) PW4G–112–A72–330, Revision 1, dated February 26, 2013, to do the on-wing ECI, except the reporting requirement of that step.

(f) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(g) Related Information

(1) For more information about this AD, contact Ian Dargin, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7178; fax: 781–238–7199; email: *ian.dargin@faa.gov.*

(2) Refer to PW ASB PW4G–112–A72–330, Revision 1, dated February 26, 2013, for related information.

(3) For service information identified in this AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: 860–565–8770; fax: 860–565–4503. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on March 4, 2013.

Colleen M. D'Alessandro,

Assistant Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2013–06118 Filed 3–15–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 120809321–2321–01]

RIN 0648–BC26

Gulf of the Farallones and Monterey Bay National Marine Sanctuaries Regulations on Introduced Species

AGENCY: Office of National Marine Sanctuaries (ONMS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: NOAA proposes to amend the terms of designation and regulations regarding the introduction of introduced species into Gulf of the Farallones and Monterey Bay national marine sanctuaries (GFNMS and MBNMS, respectively). NOAA proposes to apply the regulations to the entirety of both sanctuaries and provide exceptions for) striped bass; and mariculture activities in Tomales Bay. This action would make the regulation of introduced species consistent in all four of the national marine sanctuaries off of California.

DATES: Comments on this proposed rule will be accepted on or before midnight on May 17, 2013.

ADDRESSES: You may submit comments on this document, identified by NOAA–NOS–2012–0113, by any 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–NOS–2012–0113,* click the ''Comment Now!'' icon, complete the required fields and enter or attach your comments.

• *Mail:* Dave Lott, Regional Operations Coordinator, West Coast Region, Office of National Marine Sanctuaries, 99 Pacific Street, STE200K, Monterey, CA 93940.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by ONMS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. ONMS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

You may obtain copies of the original final environmental impact statement, record of decision, or other related documents through the following Web site: *http://sanctuaries.noaa.gov/jointplan.*

FOR FURTHER INFORMATION CONTACT: Dave Lott, Regional Operations Coordinator, West Coast Region, Office of National Marine Sanctuaries, 99 Pacific Street, STE 100F, Monterey, CA 93940. (831) 647–1920.

SUPPLEMENTARY INFORMATION:

I. Background

A. GFNMS and MBNMS Background

The National Oceanic and Atmospheric Administration (NOAA) established Gulf of the Farallones National Marine Sanctuary (GFNMS) in 1981 to protect and preserve a unique, productive and fragile ecological community, including the largest seabird colony in the contiguous United States and diverse and abundant marine mammals. GFNMS lies off the coast of California, to the west and north of San Francisco, and is composed of 1,279 square statute miles (966 square nautical miles) of offshore waters and submerged lands thereunder. The sanctuary boundary extends out to and around the Farallon Islands and nearshore waters (up to the mean high water line) from Bodega Head to Rocky Point in Marin County. For more information about GFNMS, see *http://farallones.noaa.gov.*

NOAA established Monterey Bay National Marine Sanctuary (MBNMS) in 1992 for the purposes of protecting and managing the conservation, ecological, recreational, research, educational, historical, and esthetic resources and qualities of the area. MBNMS is located offshore of California's central coast,

adjacent to and south of GFNMS. It spans a shoreline length of approximately 276 statute miles (240 nautical miles) between Rocky Point in Marin County and Cambria in San Luis Obispo County. The sanctuary encompasses approximately 6,094 square statute miles (4,602 square nautical miles) of ocean and coastal waters, and the submerged lands thereunder, extending an average distance of 30 statute miles (26 nautical miles) from shore. The Davidson Seamount is also part of the sanctuary, though it does not share a contiguous boundary. Supporting some of the world's most diverse and productive marine ecosystems, MBNMS is home to numerous mammals, seabirds, fishes, invertebrates, sea turtles and plants in a remarkably productive coastal environment. For more information about MBNMS, please see *http://montereybay.noaa.gov.*

B. Inconsistencies Among Terms of Designation and Regulations Due to the Governor's Objection

Pursuant to section 304(e) of the National Marine Sanctuaries Act (16 U.S.C. 1434 *et seq.;* NMSA), NOAA conducted a joint review of the management plans for Gulf of the Farallones, Monterey Bay and Cordell Bank national marine sanctuaries (referred to here as the ''Joint Management Plan Review (JMPR)''). This multi-year process updated the management plans and regulations for these sanctuaries and enabled NOAA to ensure consistency across the region. On November 20, 2008, NOAA published the final rule and terms of designations for the JMPR (73 FR 70488) and published the revised management plans.

One of the key issues that came up during this process was the threat posed by introduced species. As a result, NOAA changed the terms of designation for GFNMS and MBNMS to clearly allow regulation of introduced species. NOAA's regulations prohibited the introduction of introduced species into the sanctuaries with exceptions for striped bass caught and released during fishing and current state-permitted mariculture activities that cultivate introduced species in GFNMS's Tomales Bay. The regulations define introduced species as non-native species or any organism that has been genetically modified (15 CFR 922.81). This final rule, combined with a similar management plan and regulatory review for the Channel Islands National Marine Sanctuary (CINMS), resulted in the same, uniform regulation of introduced species in all four of the national marine sanctuaries off of California.

The proposed and final regulations for the JMPR were drafted with a significant level of input from State agency staff and commissions. For example, during consultations with the State of California, concern was expressed that striped bass would be defined as an introduced species and that an angler who catches and then releases a striped bass to comply with State-imposed size restrictions would be in violation of the proposed regulation. Because prohibiting such activity was not NOAA's intent, NOAA drafted the regulation to except striped bass, the only introduced species for which there is an active fishery.

During the comment period on the proposed rule for the JMPR, NOAA received comments from the California Department of Fish and Game (CDFG), the California Department of Boating and Waterways (CDBW), the California Coastal Commission (CCC), and the California State Lands Commission (CSLC). The CDFG and CDBW both expressed concerns with NOAA's proposed prohibition on the introduction of introduced species but the CCC was explicitly supportive of it. The CCC—exercising its authority under the Federal consistency provisions of the Coastal Zone Management Act (CZMA; 16 U.S.C. 1451 *et seq.*)—specifically rejected the position taken by CDFG and advised that NOAA must maintain the prohibition on introduced species as it was published in the proposed rule. If NOAA revised the regulations to address CDFG's concerns, the CCC indicated that the final regulations would not be consistent with the enforceable policies of the California Coastal Management Program. Under the CZMA and implementing regulations, federal agency actions (such as NOAA's proposed regulations) that affect any land or water use or natural resource of the coastal zone must be consistent to the maximum extent practicable with the enforceable policies of a state's coastal management program. 16 U.S.C. 1456(c). Therefore, NOAA concluded that its final action needed to retain the prohibition as set forth in the proposed rule in order to be consistent with the California Coastal Management Program. The position of the State of California overall on this regulation was inconsistent and not clear to NOAA until the Governor's objection letter was received after the final rule was issued.

Pursuant to section 304(b) of the NMSA, changes to a sanctuary's terms of designation and the associated regulations do not become effective until after forty-five days of continuous session of Congress. After forty-five days, in this case on March 9, 2009, the regulations would become final and take effect, except that any term of designation the Governor certified as unacceptable (*i.e.,* objected to) would not take effect in the area of a sanctuary lying within the seaward boundary of the state (''state waters''). If exercised, the effect of a gubernatorial objection is that the term(s) of designation does not become effective in state waters. Regulations that are based on the terms of designation that are certified as unacceptable by the governor also do not become effective in state waters.

On December 23, 2008, during the review period for the final rule, Governor Schwarzenegger objected to the terms of designation for MBNMS and GFNMS that would have allowed NOAA to regulate the ''introduction of introduced species'' in those sanctuaries. The governor's objection was conditional: it would not apply if NOAA were willing and able to modify its regulations to except (*i.e.,* allow) all state-permitted aquaculture activities in the two sanctuaries and research involving the introduction of introduced species in MBNMS. During that same time period, however, the Governor did not object to the term of designation for CINMS regarding introduced species, which remained applicable in the State waters of that sanctuary.

After receiving the Governor's objection, NOAA worked with staff from the California Natural Resources Agency and the California Department of Fish and Game to find solutions to the Governor's concerns that would also meet NOAA's goals. For GFNMS, NOAA proposed to modify the regulations on introduced species to except state-permitted aquaculture in all state waters of the sanctuary and also agreed to not enforce the introduced species provisions in the state waters of GFNMS until such new rulemaking could be conducted and public comment on the matter could be considered.

For MBNMS, NOAA was willing to amend the regulations to include the same exception for state-permitted aquaculture in state waters. NOAA could not agree, however, to also establish an exception for state-permitted research involving the introduction of introduced species in the MBNMS, as the Governor requested. Neither the Governor nor the state agencies with which NOAA worked provided any description of how this exception would be used, what types of research activities would qualify, or what its effect would be on sanctuary resources. Because no compromise was

attained, the Governor's objection applied to the term of designation for the regulation of introduced species in the state waters of MBNMS. As indicated in the notice of effective date (March 23, 2009; 74 FR 12088), the regulation of the introduction of introduced species from within or into MBNMS does not apply in state waters of the sanctuary; it is valid and in effect only in the federal waters of the sanctuary (*i.e.,* the area lying beyond the seaward boundary of the state).

In response to the Governor's objection and based upon discussions with the state, on October 1, 2009, NOAA issued a proposed rule (74 FR 50740) to modify the introduced species regulations to allow all state-permitted aquaculture activities in the state waters of GFNMS, and to clarify that the prohibition against release of introduced species did not apply in state waters of MBNMS.

NOAA took this action because, as previously noted, the then-Governor's objection to the new terms of designation for GFNMS and MBNMS prevented the introduced species regulations from applying within state waters of the two sanctuaries. For GFNMS, the October 2009 proposed rule was NOAA's effort to meet the Governor's concerns while still meeting NOAA's goals. As also previously noted, NOAA was not able to reach an acceptable basis that would meet the Governor's demand for an exception to the prohibition that would allow research involving these species within state waters of MBNMS. As a result, the proposed rule restricted the application of the introduced species prohibition to the federal waters of the MBNMS.

No further information was provided to NOAA during the comment period for this rule making to address concerns over the introduction of introduced species into state waters or to specifically address research involving introduced species in MBNMS. For this and other reasons described in a related notice published elsewhere in today's **Federal Register**, NOAA has withdrawn the October 2009 proposed rule described above. The legal effect of this withdrawal action is that the Governor's letter of December 23, 2008, certifies as unacceptable the terms of designation for GFNMS and MBNMS regarding the regulation of introduced species in the two sanctuaries and modifies the terms of designation for each sanctuary by limiting the application of terms regarding introduced species to federal waters. By operation of law under the National Marine Sanctuaries Act, the Governor's certification as unacceptable revised the terms of these designations to read as, ''Introducing or otherwise releasing from within or into the Federal waters of the sanctuary an introduced species.'' As a result, the regulations implementing these terms do not apply in state waters in either GFNMS or MBNMS (15 CFR 922.82(a)(10) and 922.132(a)(12), respectively).

The net result of the Governor's objections to terms of designation for GFNMS and MBNMS is that the four national marine sanctuaries offshore of California have an inconsistent patchwork of regulations controlling the introduction of introduced species. The natural resources of the two sanctuaries lacking such prohibitions in state waters—GFNMS and MBNMS—remain at risk. The original premise behind the regulatory controls on the introduction of introduced species remains valid and such regulations necessary.

NOAA now proposes to amend the terms of designations for both sanctuaries regarding introduced species and the associated regulations prohibiting the introduction of such species within or into both the federal and state waters of the sanctuaries. This action would reinstate the terms of designations and regulations as they were promulgated for both sanctuaries in the final rule published on November 20, 2008, with a minor adjustment to the spatial exception for GFNMS. The re-proposed GFNMS regulation on the introduction of introduced species would extend the geographic exception to allow introduced species mariculture projects in all of Tomales Bay, rather than restricting the geographic exception to leases for introduced species mariculture projects in Tomales Bay existing at the time the regulation takes effect. NOAA and the State of California have also agreed to develop a Memorandum of Agreement (MOA) to describe how the state will consult with GFNMS in the future should it consider any permit or lease agreement for a new or expanded introduced species mariculture project in Tomales Bay.

This action is supported by the administrative record and NEPA documentation compiled for the previous final rule. NOAA would amend the record of decision to address the minor change proposed in the action for GFNMS. (See discussion in section IV below)

II. Need for an Introduced Species Regulation in State Waters of Both Sanctuaries

The term ''introduced species'' is defined as: (1) Any species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystems of the Sanctuary; or (2) any organism into which altered genetic matter, or genetic matter from another species, has been transferred in order that the host organism acquires the genetic traits of the transferred genes. 15 CFR 922.81 (GFNMS) and 922.131 (MBNMS). These definitions would not be affected by this proposed action.

NOAA promulgated the restriction against introduced species due to the threats introduced species pose to endangered species, native species diversity and the composition and resilience of natural biological communities. For example, a number of non-native species now found in the Gulf of the Farallones and Monterey Bay regions were introduced elsewhere on the West Coast but have spread through vectors such as vessel hull-fouling, ballast water discharge, and accidental introductions. NOAA also believes that introduced species are a major economic and environmental threat to the living resources and habitats of a sanctuary as well as the commercial and recreational uses that depend on these resources. Once established, introduced species can be extremely difficult, if not impossible, to eradicate. Introduced species have become increasingly common in recent decades, and the rate of invasions continues at a rapid pace. Introduced species pose a significant threat to the natural biological communities and ecological processes of GFNMS and MBNMS and may have a particularly large impact on threatened and endangered species found in these sanctuaries.

The introduced species regulations were developed with considerable public review, as well as input from the Sanctuary Advisory Councils and an introduced species working group of the Sanctuary Advisory Council for MBNMS. NOAA has also worked closely with agencies of the State of California in controlling introduced species introductions. For example, the definition of an introduced species is modeled on regulations enforced by the California Department of Fish and Game (14 CA A.D.C. § 236.1). Additionally, NOAA originally crafted the regulation to be consistent with other state restrictions on introduced species. These include California State Lands Commission rules limiting ballast water exchange to reduce the risk of introducing non-native species in state waters.

The California Coastal Commission has consistently supported NOAA's regulations on introduced species as they were promulgated in 2008. The Coastal Commission concluded that the introduced species regulations, to which

the Governor expressed opposition, were consistent with the California Coastal Management Plan. Therefore, NOAA believes that this proposed action would be more consistent with the implementation of the Coastal Management Plan by the California Coastal Commission than limiting the regulations to only the federal waters of the sanctuaries.

This action would make regulations regarding introduced species consistent in the four national marine sanctuaries off of California (Cordell Bank, Gulf of the Farallones, Monterey Bay, and Channel Islands) and would avoid a result in which release of introduced species would be allowed in California state waters of some sanctuaries but entirely prohibited throughout other sanctuaries. NOAA believes that this would improve public understanding and compliance with this restriction and that it would also facilitate enforcement efforts. Creating consistent regulatory language was one of the goals of the JMPR and this proposed rule would advance that important regulatory goal. After careful consideration and review, NOAA has determined that it is appropriate in this instance to modify the terms of designations for these sites and re-propose the regulations that would implement them.

III. Summary of the Revisions to MBNMS Terms of Designation and Regulations

As modified by Governor Schwarzenegger's objection, the terms of designation for MBNMS currently authorize the regulation of ''introducing or otherwise releasing from within or into the federal waters of the Sanctuary an introduced species.'' NOAA proposes to change the terms of designation of MBNMS to remove the geographic restriction, thereby including the state waters of the sanctuary. The revised term of designation under Article IV Scope of Regulations, Section 1 Activities Subject to Regulation, Activity (a)(1) would read as follows:

Article IV. Scope of Regulations
Section 1. Activities Subject to Regulation

(a) * * *

(i) Introducing or otherwise releasing from within or into the Sanctuary an introduced species.

NOAA also re-proposes the regulation that would implement this revised term of designation for MBNMS. Because the Governor's objection revised and limited the geographic scope of the term of designation regarding introduced species, as explained above, the introduced species regulation for MBNMS prohibits releasing only from within or into the federal waters of the Sanctuary an introduced species, except striped bass (*Morone saxatilis*) released during catch and release fishing activity. By re-proposing the original regulation (issued in 2008), NOAA is ensuring that the regulation would apply throughout the entire Sanctuary, including the State waters in MBNMS.

The re-proposed regulatory language for MBNMS is identical to that published in the final rule of November 20, 2008 (74 FR 70488), and would read as follows:

''(12) Introducing or otherwise releasing from within or into the Sanctuary an introduced species except striped bass (Morone saxatilis) released during catch and release activity;''

IV. Summary of the Revisions to GFNMS Terms of Designation and Regulations

For the same reasons explained above regarding the proposed changes to the MBNMS terms of designation and regulations, NOAA proposes to similarly amend the terms of designation and regulations for GFNMS regarding introduced species. Because the October 1, 2009 proposed rule was never made final and has now been withdrawn, the Governor's conditional objection to the term of designation regarding introduced species also applies to GFNMS. As a result of his objection, this term of designation for GFNMS currently reads, ''introducing or otherwise releasing from within or into the federal waters of the Sanctuary an introduced species.'' NOAA proposes to change the terms of designation of GFNMS to remove the geographic restriction and to include the state waters of the sanctuary. The revised term of designation under Article IV Scope of Regulations, Section 1 Activities Subject to Regulation, Activity (a)(1) would read as follows:

Article IV. Scope of Regulations
Section l. Activities Subject to Regulation

(a) * * *

(i) Introducing or otherwise releasing from within or into the Sanctuary an introduced species.

NOAA also re-proposes the regulation that would implement this revised term of designation for GFNMS. As in MBNMS, the Governor's objection limited the geographic scope of the term of designation regarding introduced species and the introduced species regulation for GFNMS prohibits releasing only from within or into the federal waters of the Sanctuary an introduced species, except striped bass (*Morone saxatilis*) released during catch and release fishing activity. The exception regarding mariculture activities in Tomales Bay currently has no application because the regulation does not apply in State waters. Through this action, NOAA is proposing that the regulation regarding introduced species would apply throughout the entire Sanctuary, including the State waters in GFNMS. The only modification NOAA proposes from the original (2008) regulation would be to provide an exception for introduced species cultivated by mariculture activities in Tomales Bay pursuant to a valid lease, permit, license or other authorization issued by the State of California.

Beyond the catch and release of striped bass, NOAA has always intended to have an exception in GFNMS for the continuation of mariculture projects within Tomales Bay, where presently triploid, non-native oysters are farmed on 12 leases that are held by 6 companies. NOAA believes that continuation of these operations, consistent with existing permits issued by the State of California, is acceptable and will not adversely harm sanctuary resources. NOAA is also proposing that other introduced species aquaculture projects approved by the State of California be allowed in Tomales Bay. The State has agreed to consult with NOAA about those projects in advance of any decision. This would allow small businesses to continue operations and grow oysters for sale, and to have this area within the sanctuary available for future related projects, with state approval. NOAA is developing a Memorandum of Agreement with the State of California to formalize the consultation requirement for any new permit decision in Tomales Bay related to introduced species mariculture. This will provide significant protection to Tomales Bay from the introduction of introduced species while minimizing economic impacts to local mariculture businesses.

NOAA does not believe the change in the proposed action—to provide a geographic exemption for introduced species mariculture within Tomales Bay—is substantial or relevant to environmental concerns for purposes of NEPA regulations at 40 CFR1502.9. NOAA notes that this change is within the range of alternatives considered in the September 2008 final environmental impact statement (FEIS) associated with the previous version of the regulation. Currently, there is no regulatory protection from the introduction of introduced species in the state waters of

the sanctuary, including in Tomales Bay. This is discussed in the no-action alternative in the FEIS (Sections 3.3.6 (p. 3–54), 3.5.4 (p. 3–92), and 3.7.5 (p. 3–131)).

Presently 23.6 percent of GFNMS—all of the state waters (301.5 square statute miles)—is at risk from the introduction of an introduced species in GFNMS. With this new regulation, all of that area and hence all of the sanctuary would be protected from such introductions, except for less than 1 percent (10.3 square statute miles) in Tomales Bay where introduced species mariculture, approved by the state after consulting with GFNMS, would be allowed. However, under this proposed rule Tomales Bay would receive significant protection from all other vectors of introduction of introduced species.

In addition, the March 23, 2009, notice of effective date expresses NOAA's belief that the ''state's existing review process for aquaculture projects provides NOAA with some level of assurance that NOAA has an opportunity to provide input and can minimize the potential for harm to sanctuary resources from an introduced species aquaculture project.'' (74 FR 12089). The MOA that will be developed with the state requiring consultation with NOAA will ensure NOAA concerns within this portion of the GFNMS are properly addressed.

The proportion of activities involving introduction of introduced species through state-issued mariculture permits in Tomales Bay is only a small fraction of the activities that could potentially harm the resources in the sanctuary. The additional, suitable habitat in Tomales Bay that would be available for development under the proposed exception is limited; much of the shore is owned by Point Reyes National Seashore, and thus unavailable for development.

As discussed in the final rule and FEIS, broadening the exception beyond just the area of existing permits would allow the existing operations to expand their usable footprints if the need is warranted and permitted by the state (73 FR 70518–70519, and Chapter 7, Response to comments (p. 7–33, respectively). Those previous discussions acknowledged that the sanctuary prohibition could restrict business plans for expansion in Tomales Bay and potentially limit future operations, and the proposed exemption for that area would remedy that concern.

Therefore, the re-proposed regulatory language for GFNMS would be similar to that published in the final rule of November 20, 2008 (74 FR 70488), and would read as follows:

''(10) Introducing or otherwise releasing from within or into the Sanctuary an introduced species except:

(i) Striped bass (Morone saxatilis) released during catch and release activity; or

(ii) species cultivated by mariculture activities in Tomales Bay pursuant to a valid lease, permit, license or other authorization issued by the State of California. Tomales Bay is defined in § 922.80. The coordinates for the northern terminus of Tomales Bay are listed in appendix D to this subpart. Pursuant to the memorandum of agreement executed between the State of California and NOAA, the State will consult with the Director before issuing any permit, lease or other authorization for mariculture in Tomales Bay involving the cultivation of introduced species.''

In addition, NOAA proposes to codify the geographical extent of Tomales Bay for the purposes of this regulation, with the addition of an Appendix D to Subpart H of Part 922. NOAA proposes to use the same demarcation line for Tomales Bay that is already used in the International Regulations for Preventing Collision at Sea 1972 (COLREGS): the line would intersect the GFNMS boundary near Avila Beach (west) end at approximately 39.23165 N, 12.97545 W and intersect the GFNMS boundary at the mean high water line at the Sand Point (east) end at approximately 38.23165 N, 122.96955 W. Tomales Bay constitutes the approximately 10.3 square statutory miles of state waters, and submerged lands thereunder, that lie landward (south and east) of this demarcation line.

Last, NOAA will enter into a Memorandum of Agreement (MOA) with the State of California to implement the Department of Fish and Game's commitment to consult with NOAA whenever a future introduced species mariculture permit application within Tomales Bay is received and being considered by the State.

V. Miscellaneous Rulemaking Requirements

A. National Marine Sanctuaries Act

Section 301 of the NMSA (16 U.S.C. 1434) provides authority for comprehensive and coordinated conservation and management of national marine sanctuaries in coordination with other resource management authorities. When changing a term of designation of a National Marine Sanctuary, section 304 of the NMSA requires the preparation of a draft environmental impact statement (DEIS), as provided by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and that the DEIS be made available to the public. NOAA prepared a Draft and Final Management Plan and a draft and final EIS on the initial proposal and final rule. Copies are available at the address and Web site listed in the Address section of this proposed rule. Responses to comments received on this proposed rule will be published in the preamble to the final rule, and discussed in the record of decision that will accompany this rulemaking, and supplement the original final EIS. NOAA will make available the 2008 final environmental impact statement (FEIS) for the JMPR that was previously made available to the public and which analyzes the environmental effects of the introduced species regulations as are re-proposed in this action.

Section 304 requires that the Secretary of Commerce submit to the Committee on Resources of the United States House of Representatives and the Committee on Commerce, Science, and Transportation of the United States Senate, no later than the same day as this notice is published, documents including a copy of this notice, the terms of the proposed designation (or, in this case, the proposed changes thereto), the proposed regulations, a draft management plan detailing the proposed goals and objectives, management responsibilities, research activities for the area, and a draft environmental impact statement. NOAA submitted all of these documents to the Committees when the changes to the terms of designations and the implementing regulations were originally proposed in 2008. These documents have not changed and NOAA continues to rely on them for this proposed action.

B. National Environmental Policy Act

In the 2008 FEIS for the JMPR, NOAA identified a preferred action which was to modify the terms of designation and regulations for GFNMS and MBNMS to, among other things, prohibit the introduction of introduced species (with a few exceptions) throughout the sanctuaries, and NOAA fully endorses that action as re-proposed, with minor modification, in this notice of proposed rulemaking. NOAA proposes a geographic exemption to allow ongoing and newly-permitted introduced species mariculture projects in Tomales Bay pursuant to a valid lease, permit, license or other authorization issued by the State of California. Pursuant to a memorandum of agreement, the state

would consult with GFNMS prior to any new permit action. NOAA believes this is within the range of alternatives considered in the FEIS, and therefore, NOAA has determined that a supplement to the FEIS is not required for this action, as the proposed action/preferred alternative has not changed for MBNMS, nor has there been a significant change in the environmental conditions or the potential environmental effects of the preferred alternative in the GFNMS.

Copies of the FEIS other related materials that are specific to this action are available at *http://sanctuaries.noaa.gov/jointplan/feis/feis.html*, or by contacting NOAA at the address listed in the Addresses section of this proposed rule. Comments regarding the introduction of introduced species portion of the original FEIS are reopened for comment.

C. Executive Order 12866: Regulatory Impact

This rule has been determined to be not significant for purposes of Executive Order 12866.

D. Executive Order 13132: Federalism Assessment

NOAA has concluded that this regulatory action falls within the definition of ''policies that have federalism implications'' within the meaning of Executive Order 13132. NOAA's previous proposed rule and subsequent withdrawal were conducted in cooperation with the State of California, and pursuant to Section 304(b) of the NMSA. It is NOAA's view that, because no new information has been provided regarding the regulation of introduced species, the state will not object to the re-proposed changes in this action, which would not preempt state law, but would simply update and re-establish sanctuary regulations to comport with previously issued NOAA regulations. In keeping with the intent of the Executive Order, NOAA consulted with a number of entities within the state which participated in development of the initial rule, including but not limited to, the Governor of the State of California, the California Coastal Commission, the California Department of Fish and Game, and the California Natural Resources Agency.

E. Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows:

Using the SBA's Small Business Size Standards, NOAA determined that the small business concerns operating within both of the sanctuaries include: Commercial fishermen who vary in number seasonally and annually from approximately 300 to 500 boats; twelve mariculture leaseholders in Tomales Bay (in GFNMS); approximately 25 recreational charterfishing businesses; and approximately 7 recreational charter businesses engaged in wildlife viewing. The small organizations, as defined under 5 U.S.C. 601(4), that would be impacted by this rule include approximately 3 small organizations operating within the waters of GFNMS, which include nongovernmental organizations (NGOs) or non-profit organizations (NPOs) dedicated to environmental education, research, restoration, and conservation concerning marine and maritime heritage resources. The small governmental jurisdictions, as defined under 5 U.S.C. 601(5), that would be impacted by this rule are the Tomales Bay settlements that are directly adjacent to GFNMS.

The prohibition on releasing or otherwise introducing from within or into GFNMS and MBNMS an introduced species is not expected to significantly adversely impact small entities because this activity is generally not part of their business or operational practices. As NOAA analyzed in more detail in 2008, small entities whose operational practices may include catch and release of striped bass (*Morone saxatilis*) (*i.e.,* consumptive recreational charter businesses), would not be affected because the prohibition would not apply to the catch and release of this fish species already present in the sanctuaries. In fact, the prohibition against introduced species may result in indirect benefits for certain small entities since their activities could potentially be negatively impacted by the spread of introduced species, which can severely affect populations of endangered species, native species diversity, and the composition and resilience of natural biological communities. Introduced species pose a major economic and environmental threat to the living resources and habitats of a sanctuary as well as the commercial and recreational uses that depend on these resources. Preventing their introduction will therefore help small entities by preventing such detrimental impacts.

The proposed prohibition is not expected to impact aquaculture leaseholders located adjacent to GFNMS. Existing leaseholders operating in Tomales Bay are excepted from the introduced species prohibition if they have active lease agreements from the State of California for cultivation of introduced species. Under the re-adoption of the 2008 final rule, as described in this proposed rule, in the GFNMS the exemption would now apply to all of Tomales Bay. Pursuant to a memorandum of agreement, the State of California would consult with NOAA prior to issuing any new leases or permits for mariculture operations in Tomales Bay involving the cultivation of introduced species. This prohibition would not put any current operations out of business, because they would not need to change anything about their current procedures to continue in their operations.

Comments received on the economic impacts of this proposed rule will be summarized and responded to in the final rule. As a result of this assessment, a regulatory flexibility analysis was not required and none was prepared.

F. Paperwork Reduction Act

This proposed rule does not contain information collections that are subject to the requirements of the Paperwork Reduction Act. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

VI. Request for Comments

NOAA requests comments on this proposed rule for sixty (60) days after publication of this notice.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Environmental protection, Fish, Harbors, Introduced species, Marine pollution, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Research, Water pollution control, Water resources, Wildlife.

Dated: March 11, 2013.

Holly A. Bamford,

Assistant Administrator, National Ocean Service, National Oceanic and Atmospheric Administration.

Accordingly, for the reasons set forth above, 15 CFR part 922 is proposed to be amended as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

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

Authority: 16 U.S.C. 1431 *et seq.*

■ 2. In § 922.82, revise paragraph (a)(10) to read as follows:

§ 922.82 Prohibited or otherwise regulated activities.

(a) * * *

(10) Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except:

(i) Striped bass (*Morone saxatilis*) released during catch and release fishing activity; or

(ii) Species cultivated by mariculture activities in Tomales Bay pursuant to a valid lease, permit, license or other authorization issued by the State of California. Tomales Bay is defined in § 922.80. The coordinates for the northern terminus of Tomales Bay are listed in appendix D to this subpart. Pursuant to the memorandum of agreement executed between the State of California and NOAA, the State will consult with the Director before issuing any permit, lease or other authorization for mariculture in Tomales Bay involving the cultivation of introduced species.

* * * * *

■ 3. Add Appendix D to subpart H of part 922, to read as follows:

Appendix D to Subpart H—Gulf of the Farallones National Marine Sanctuary Tomales Bay Coordinates

Tomales Bay is an area of approximately 10.3 square statutory miles, constituting the state waters and submerged lands thereunder lying landward (south and east) of the line connecting the following points from near Avila Beach (west) and Sand Point (east). Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.

Point ID No. Tomales Bay Boundary	Latitude	Longitude
1	38.23165	-122.97545
2	38.23165	-122.96955

■ 4. In § 922.132, revise paragraph (a)(12) to read as follows:

§ 922.132 Prohibited or otherwise regulated activities.

(a) * * *

(12) Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except striped bass (*Morone saxatilis*) released during catch and release fishing activity.

* * * * *

[FR Doc. 2013–05994 Filed 3–15–13; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 0907301210–3071–03]

RIN 0648–AX83

Gulf of the Farallones and Monterey Bay National Marine Sanctuaries Regulations on Introduced Species

AGENCY: Office of National Marine Sanctuaries (ONMS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) published in the **Federal Register** on October 1, 2009 (74 FR 50740) concerning regulations on the introduction of introduced species into Gulf of the Farallones and Monterey Bay national marine sanctuaries. The proposed rule was issued in response to an objection received from the then-Governor of California, pursuant to section 304(b)(1) of the National Marine Sanctuaries Act (16 U.S.C. 1434(b)(1)), regarding changes to terms of designations and corresponding regulations for the two national marine sanctuaries that had been published as final on November 28, 2008 (73 FR 70488). Consistent with the administrative records for the 2008 changes to the terms of designations and the associated regulations for the two national marine sanctuaries, as well as comments received during the public comment period for the NPRM following the then-Governor's objection, NOAA has determined that withdrawal of the NPRM is warranted.

ADDRESSES: For copies of related documents, you may obtain these through either of the following methods:

- Copies of the final environmental impact statement described in this document and the previous proposed rule may be viewed and downloaded at *http://sanctuaries.noaa.gov/jointplan.*
- *Mail:* David Lott, Regional Operations Coordinator, West Coast Region, Office of National Marine Sanctuaries, 99 Pacific Street, STE 200K, Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: David Lott, Regional Operations Coordinator, West Coast Region, Office of National Marine Sanctuaries, 99 Pacific Street, STE 200K, Monterey, CA 93940; 831–647–1920.

SUPPLEMENTARY INFORMATION:

I. Background

A. Regulatory Background

Pursuant to section 304(e) of the National Marine Sanctuaries Act (16 U.S.C. 1434 et seq.; NMSA), the Office of National Marine Sanctuaries (ONMS) conducted a joint review of the management plans for Gulf of the Farallones, Monterey Bay and Cordell Bank national marine sanctuaries (hereafter referred to as the ''Joint Management Plan Review (JMPR)''). This process updated the existing regulations for these sanctuaries and allowed ONMS to ensure consistency across the region. The range of alternatives NOAA considered was evaluated and made available to the public through the development of a draft and final environmental impact statement pursuant to the National Environmental Policy Act (NEPA). This review resulted in revised management plans, regulations, and terms of designations for all three sanctuaries. On November 20, 2008, NOAA published the associated final rule and terms of designation for the JMPR (73 FR 70488) and released the revised management plans. In the final rule, NOAA changed the terms of designation for GFNMS and MBNMS to clearly allow regulation of introduced species. NOAA's regulations prohibited the introduction of introduced species into the sanctuaries with exceptions for striped bass caught and released during fishing and current state-permitted mariculture activities in GFNMS's Tomales Bay.

Pursuant to section 304(b) of the NMSA, changes to a sanctuary's terms of designation and the associated regulations only become effective after forty-five days of continuous session of Congress. After forty-five days, in this case on March 9, 2009, the regulations were to become final and take effect, except that any term of designation the Governor certified as unacceptable (i.e., objected to) would not take effect in the area of a sanctuary lying within the seaward boundary of the state (''state waters''). If exercised, the effect of a gubernatorial objection is that the term(s) of designation does not become effective in state waters. Any regulations that rely on the change in terms of designation also do not become effective in state waters.

On December 23, 2008, Governor Schwarzenegger objected to certain terms of designation for MBNMS and GFNMS that would have allowed NOAA to regulate the ''introduction of introduced species'' into those sanctuaries. The Governor's objection was conditional: it would not apply if NOAA were willing and able to modify its regulations to except (i.e., allow) all state-permitted introduced species aquaculture activities in the two sanctuaries and also allow research involving the introduction of introduced species in MBNMS.

After receiving the Governor's objection, NOAA worked with staff from the California Natural Resources Agency and the California Department of Fish and Game to find solutions to the Governor's concerns that would also meet NOAA's goals. For GFNMS, NOAA proposed to conduct a process to modify the regulations on introduced species to except (allow) state-permitted aquaculture in state waters of that sanctuary and also agreed to not enforce the introduced species provisions in the state waters of GFNMS until such new rulemaking could be conducted and public comment on the matter could be considered.

For MBNMS, NOAA was willing and able to amend the regulations to include the same exception for state-permitted aquaculture in state waters. NOAA could not agree, however, to also create an exception for research involving the introduction of introduced species in the MBNMS, as the Governor requested. Despite discussions with the state, state officials never provided NOAA with a reason or scientific justification why such an exemption for research would be needed. Neither the Governor nor the state agencies with which NOAA worked provided any description of how this exception would be used, what types of research activities would qualify, or what the effect of it would be on sanctuary resources. Because no compromise was attained, the Governor's objection applied to the term of designation for the regulation of introduced species in the state waters of MBNMS. As indicated in the notice of effective date (March 23, 2009; 74 FR 12088), the regulation of the introduction of introduced species from within or into MBNMS does not apply in state waters of the sanctuary; it is valid and in effect only in the federal waters of the sanctuary, i.e., the area lying beyond the seaward boundary of the state.

II. Basis for Withdrawing the Proposed Rule

In response to Governor Schwarzenegger's objection and based upon discussions with the state, on October 1, 2009, NOAA issued a proposed rule (74 FR 50740) to modify the introduced species regulations to allow all state-permitted aquaculture activities in the state waters of GFNMS, and to clarify that the prohibition against release of introduced species did not apply in state waters of MBNMS.

NOAA took this action because, as previously noted, the Governor's certification as unacceptable of the new terms of designation for GFNMS and MBNMS prevented the introduced species regulations from applying within state waters of the two sanctuaries. For GFNMS, the proposed rule was NOAA's effort to meet the Governor's concerns while still keeping most of the protections that would be realized by prohibiting the introduction or release of invasive or genetically altered species anywhere in the sanctuary. As also previously noted, NOAA was not able to reach an acceptable basis that would meet the Governor's demand for an exception to the prohibition that allows state-permitted research involving these species within state waters of MBNMS. In NOAA's view, the state was unable to provide necessary information to justify the exception. For MBNMS, the proposed rule restricted the application of the introduced species prohibition to the federal waters of the sanctuary.

No new information was received by NOAA during the public comment period from members of the public or the state that would support modifying the introduced species prohibitions as originally promulgated. NOAA received and considered five public comments in response to the NPRM. Several distinct issues were raised in these comments: (1) Support for the original regulations as promulgated for both sanctuaries; (2) support for the authority of the state regarding management of resources within state waters; (3) concern regarding the lack of protection to sanctuary resources that the then-Governor's objection would cause; and (4) concern over communication between the federal and state governments leading to the impasse on this issue.

Because there was never any valid reason or basis provided by the then-Governor, or received during the public comment period, for conducting research involving the introduction or release of introduced species, and because neither the state nor the public review process has identified why a patchwork of regulations and exemptions across the sanctuaries offshore California is beneficial, NOAA does not believe the resources of the sanctuaries would be adequately protected by the proposed rulemaking and notes the possibility of confusion among members of the public regarding different prohibitions in geographically close sanctuaries.

For these reasons, NOAA has concluded that the proposed rule is no longer warranted and is therefore withdrawing it. The legal effect of this action is that the Governor Schwarzenegger's letter of December 23, 2008, certifies as unacceptable the terms of designation for GFNMS and MBNMS regarding the regulation of introduced species in the two sanctuaries and modifies the terms of designation for each sanctuary by limiting the application of terms regarding introduced species to federal waters. As a result, the regulations implementing these terms do not apply in state waters in either GFNMS or MBNMS (15 CFR 922.82(a)(10) and 922.132(a)(12), respectively). NOAA will be publishing in the **Federal Register** a notice of proposed rulemaking to revise the terms of designation for these two sanctuaries regarding introduced species and regulations that would apply in both state and federal waters.

III. Withdrawal

In consideration of the foregoing, NOAA has determined that the NPRM for NOAA Docket No. NOAA–NOS–2009–0105, as published in the **Federal Register** on October 1, 2009 (74 FR 50740), is hereby withdrawn.

Dated: March 11, 2013.

Holly A. Bamford,

Assistant Administrator, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2013–06295 Filed 3–15–13; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 226

Osage Negotiated Rulemaking Committee

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Meetings.

SUMMARY: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. Appendix 2,

the U.S. Department of the Interior, Bureau of Indian Affairs, Osage Negotiated Rulemaking Committee will meet as indicated below.

DATES: *Meeting:* The meeting will be held on Tuesday, April 2, 2013, from 9 a.m. to 5 p.m.

ADDRESSES: Wah Zha Zhi Cultural Center, 1449 W. Main, Pawhuska, Oklahoma 74056.

FOR FURTHER INFORMATION CONTACT: Mr. Eddie Streater, Designated Federal Officer, Bureau of Indian Affairs, Wewoka Agency, P.O. Box 1540, Seminole, OK 74818; telephone (405) 257–6250; fax (405) 257–3875; or email *osageregneg@bia.gov.* Additional Committee information can be found at: *http://www.bia.gov/osageregneg.*

SUPPLEMENTARY INFORMATION: On October 14, 2011, the United States and the Osage Nation (formerly known as the Osage Tribe) signed a Settlement Agreement to resolve litigation regarding alleged mismanagement of the Osage Nation's oil and gas mineral estate, among other claims. As part of the Settlement Agreement, the parties agreed that it would be mutually beneficial ''to address means of improving the trust management of the Osage Mineral Estate, the Osage Tribal Trust Account, and Other Osage Accounts.'' Settlement Agreement, Paragraph 1.i. The parties agreed that a review and revision of the existing regulations is warranted to better assist the Bureau of Indian Affairs (BIA) in managing the Osage Mineral Estate. The parties agreed to engage in a negotiated rulemaking for this purpose. Settlement Agreement, Paragraph 9.b. After the Committee submits its report, BIA will develop a proposed rule to be published in the **Federal Register**.

Meeting Agenda: The morning session will include: Final Committee thoughts on proposed final revised regulations and public comment on final proposed revised regulations. The afternoon session will include: Responses by the Committee on public comments and final vote by Committee on final proposed revised regulations. The final agenda will be posted on *www.bia.gov/osagenegreg* prior to each meeting.

Public Input: Committee meetings are open to the public. Interested members of the public may present, either orally or through written comments, information for the Committee to consider during the public meeting. Written comments should be submitted, prior to, during, or after the meeting, to Mr. Eddie Streater, Designated Federal Officer, preferably via email, at *osagenegneg@bia.gov,* or by U.S. mail to: Mr. Eddie Streater, Designated Federal Officer, Bureau of Indian Affairs, Wewoka Agency, P.O. Box 1540, Seminole, OK 74818. Due to time constraints during the meeting, the Committee is not able to read written public comments submitted into the record.

Individuals or groups requesting to make oral comments at the public Committee meeting will be limited to 5 minutes per speaker. Speakers who wish to expand their oral statements, or those who had wished to speak, but could not be accommodated during the public comment period, are encouraged to submit their comments in written form to the Committee after the meeting at the address provided above. There will be a sign-up sheet at the meeting for those wishing to speak during the public comment period.

The meeting location is open to the public. Space is limited, however, so we strongly encourage all interested in attending to preregister by submitting your name and contact information via email to Mr. Eddie Streater at *osageregneg@bia.gov.* Persons with disabilities requiring special services, such as an interpreter for the hearing impaired, should contact Mr. Streater at (405) 257–6250 at least seven calendar days prior to the meeting. We will do our best to accommodate those who are unable to meet this deadline.

Dated: March 8, 2013.

Michael S. Black,

Director, Bureau of Indian Affairs.

[FR Doc. 2013–06175 Filed 3–15–13; 8:45 am]

BILLING CODE 4310–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[EPA–R09–0AR–2013–0052; FRL–9788–5]

Clean Air Act Grant: South Coast Air Quality Management District; Opportunity for Pubic Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed action; determination with request for comments and notice of opportunity for public hearing.

SUMMARY: The U.S. EPA has made a proposed determination that the reduction in expenditures of non-Federal funds for the South Coast Air Quality Management District (SCAQMD) in support of its continuing air program under section 105 of the Clean Air Act (CAA), for the calendar year 2012 is a result of non-selective reductions in expenditures. This determination, when final, will permit the SCAQMD to receive grant funding for FY 2013 from the EPA, under section 105 of the Clean Air Act.

DATES: Comments and/or requests for a public hearing must be received by EPA at the address stated below by April 17, 2013.

ADDRESSES: Submit comments, identified by docket ID No. EPA–R09–OAR–2013–0052, by one of the following methods:

1. *Federal Portal: www.regulations.gov.* Follow the online instructions.
2. *Email: lance.gary@epa.gov* or
3. *Mail:* Gary Lance (Air–8), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

FOR FURTHER INFORMATION CONTACT: Gary Lance, EPA Region IX, Grants & Program Integration Office, Air Division, 75 Hawthorne Street, San Francisco, CA 94105; phone: (415) 972–3992,fax: (415) 947–3579 or email address at *lance.gary@epa.gov.*

SUPPLEMENTARY INFORMATION: Section 105 of the Clean Air Act (CAA) provides grant support for the continuing air programs of eligible state, local, and tribal agencies. In accordance with 40 CFR 35.145(a), the Regional Administrator may provide air pollution control agencies up to three-fifths of the approved costs of implementing programs for the prevention and control of air pollution. Section 105 contains two cost-sharing provisions which recipients must meet to qualify for a CAA section 105 grant. An eligible entity must meet a minimum 40% match. In addition, to remain eligible for section 105 funds, an eligible entity must continue to meet the minimum match requirement as well as meet a maintenance of effort (MOE) requirement under section 105(c)(1) of the CAA, 42 U.S.C. 7405.

Program activities relevant to the match consist of both recurring and non-recurring (unique,one-time only) expenses. The MOE provision requires that a state or local agency spend at least the same dollar level of funds as it did in the previous grant year, but only for the costs of recurring activities. Specifically, section 105(c)(1), 42 U.S.C. 7405(c)(1), provides that ''No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year.'' Pursuant to CAA section 105(c)(2), however, EPA may still award a grant to

an agency not meeting the requirements of section 105(c)(1), ''if the Administrator, after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government.'' These statutory requirements are repeated in EPA's implementing regulations at 40 CFR 35.140–35.148. EPA issued additional guidance to recipients on what constitutes a nonselective reduction on September 30, 2011. In consideration of legislative history, the guidance clarified that a non-selective reduction does not necessarily mean that each Executive branch agency need be reduced in equal proportion. However, it must be clear to EPA, from the weight of evidence, that a recipient's CAA-related air program is not being disproportionately impacted or singled out for a reduction.

A section 105 recipient must submit a final financial status report no later than 90 days from the close of its grant period that documents all of its federal and non-federal expenditures for the completed period. The recipient seeking an adjustment to its MOE for that period must provide the rationale and the documentation necessary to enable EPA to make a determination that a nonselective reduction has occurred. In order to expedite that determination, the recipient must provide details of the budget action and the comparative fiscal impacts on all the jurisdiction's executive branch agencies, the recipient agency itself, and the agency's air program. The recipient should identify any executive branch agencies or programs that should be excepted from comparison and explain why. The recipient must provide evidence that the air program is not being singled out for a reduction or being disproportionately reduced. Documentation in two key areas will be needed: Budget data specific to the recipient's air program and comparative budget data between the recipient's air program, the agency containing the air program, and the other executive branch agencies. EPA may also request information from the recipient about how impacts on its program operations will affect its ability to meet its CAA obligations and requirements; and documentation which explains the cause of the reduction, such as legislative changes or the issuance of a new executive order.

In FY2012, EPA awarded the SCAQMD $5,234,193, which represented approximately 5% of the SCAQMD budget. In FY–2013, EPA will award the SCAQMD an estimate of $4,538,613, which represents approximately 4% of the SCAQMD budget.

SCAQMD's final Federal Financial Report for FY–2011 indicated that SCAQMD's maintenance of effort (MOE) level was $113,142,559. SCAQMD's final Federal Financial Report for FY–2012 indicates that SCAQMD's maintenance of effort (MOE) level is at $108,291,832.

The projected MOE is not sufficient to meet the MOE requirements under the CAA section 105 because it is not equal to or greater than the MOE for the previous fiscal year. In order for the SCAQMD to be eligible to receive its FY2013 CAA section 105 grant, EPA must make a determination (after notice and an opportunity for a public hearing) that the reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of the South Coast Air Quality Management District. The shortfall stems from a decline of 12.4% in stationary sources revenue from FY2008–09 to FY–2011–12 as reflected in the table below:

Comparison of Stationary Source Revenues

Description	Actual FY 2008-09	Actual FY 2011-12	Difference
Stationary Source Revenues	$91,472,243	$79,815,562	($11,656,681)

The SCAQMD is a single-purpose agency whose primary source of funding is emission fee revenue. It is the ''unit of government for section 105(c)(2) purposes.''

The decline in stationary source revenues would have been even more pronounced had it not been for the SCAQMD Governing Board-adopted fee increases totaling 5.9% over the last three years. The net loss of stationary revenues has given SCAQMD no choice but to reduce its budget and find less costly ways to meet its mandate. Over the past several years actions were undertaken by SCAQMD to balance its budget by reducing overall expenditures, including deleting or not funding vacant positions, implementing a hiring freeze, enacting pension reform, reducing services and supplies expenditures, and utilizing reserves.

Since FY2009–10, SCAQMD has supplemented revenues with $18.5 million in reserves to balance the budget and meet program requirements.

In addition to the conditions described above, an increase in expenditures relating to permitting activities under Title V of CAA, 42 U.S.C. 7661–7661–f and an increase in non-recurrent capital expenditures in the amount of $1,406,240 have resulted in a reduction in the non-federal share which also contributed to a decrease in the FY12 MOE level.

Based on: (1) SCAQMD's inability to levy taxes, (2) regulated and voluntary emissions reductions, (3) the general economic downturn, (4) voter approval of Proposition 26, (5) an overall decline in stationary source revenue, (6) expenditure cuts, (7) use of financial reserves to balance the budget, (8)increased Title V permitting activities, and (9) an increase in non-recurrent capital expenditures, the request for a reset of SCAQMD's MOE meets the criteria for a non-selective reduction determination.

Although SCAQMD receives less than 5 percent of its support from the section 105 grant, the loss of that funding would seriously impact SCAQMD's ability to carry out its clean air program. The revenue generated from Stationary Sources over the last 10 years is detailed below.

Year	Stationary sources (1)
2003	62,835,710
2004	61,461,482
2005	64,613,635
2006	68,483,189
2007	75,200,253
2008	82,800,004
2009	91,472,243

Year	Stationary sources (1)
2010	81,097,647
2011	78,787,371
2012	79,815,562

The SCAQMD's MOE reduction resulted from a loss of revenues due to circumstances beyond its control. EPA proposes to determine that the SCAQMD lower the FY2012 MOE level to $108,291,832 to meet the CAA section 105(c)(2) criteria as resulting from a non-selective reduction of expenditures.

This notice constitutes a request for public comment and an opportunity for public hearing as required by the Clean Air Act. All written comments received by April 17, 2013 on this proposal will be considered. EPA will conduct a public hearing on this proposal only if a written request for such is received by EPA at the address above by April 17, 2013. If no written request for a hearing is received, EPA will proceed to the final determination. While notice of the final determination will not be published in the **Federal Register**, copies of the determination can be obtained by sending a written request to Gary Lance at the above address.

Dated: March 6, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2013–05923 Filed 3–15–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 414 and 419

[CMS–1455–P]

RIN 0938–AR73

Medicare Program; Part B Inpatient Billing in Hospitals

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: The proposed rule would revise Medicare Part B billing policies when a Part A claim for an hospital inpatient admission is denied as not medically reasonable and necessary.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on May 17, 2013.

ADDRESSES: In commenting, please refer to file code CMS–1455–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this document to *http://www.regulations.gov*. Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1455–P, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1455–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Ann Marshall, (410) 786–3059, for issues related to payment of Part B inpatient and Part B outpatient services.

David Danek, (617) 565–2682, for issues related to hospital or beneficiary appeals.

Fred Grabau, (410) 786–0206, for issues related to time limits for filing claims.

Twi Jackson, (410) 786–1159, for information on all other issues.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Summary and Background

A. Executive Summary

1. Purpose

In the Calendar Year (CY) 2013 Hospital Outpatient Prospective Payment System (OPPS)/Ambulatory Surgical Center (ASC) proposed rule (July 30, 2012, 77 FR 45155 through 45157) and final rule with comment period (November 15, 2012, 77 FR 68426 through 68433), we expressed our ongoing concern about recent increases in the length of time that Medicare beneficiaries spend as hospital outpatients receiving observation services. (In this proposed rule, ''hospital'' means hospital as defined at section 1861(e) of the Social Security Act (the Act), but includes critical access hospitals (CAHs) unless otherwise specified. Although the term ''hospital'' does not generally include CAHs, section 1861(e) of the Act provides that the term ''hospital''

includes CAHs if the context otherwise requires. In this case, we believe it is appropriate to propose to apply the same policies regarding payment for inpatient services under Part B in CAHs as apply in hospitals).

Observation services include short-term ongoing treatment and assessment for the purpose of determining whether a beneficiary can be discharged from the hospital or will require further treatment as an inpatient (Section 20.6, Chapter 6 of the Medicare Benefit Policy Manual (Pub. 100–02)). Beneficiaries who are treated for extended periods of time as outpatients receiving observation services may incur greater financial liability than if they were admitted as inpatients. They may incur financial liability for Medicare Part B copayments; the cost of self-administered drugs that are not covered under Part B; and the cost of post-hospital Skilled Nursing Facility (SNF) care, because section 1861(i) of the Act requires a prior 3-day hospital inpatient stay (toward which time spent receiving outpatient observation services does not count) for coverage of post-hospital SNF care under Medicare Part A. In the CY 2013 OPPS/ASC proposed and final rules, we discussed how the trend towards the provision of extended observation services may be attributable in part to hospitals' concerns about Medicare Part A to Part B billing policies when a hospital inpatient claim is denied because the inpatient admission was deemed not medically necessary. Under longstanding Medicare policy, in these situations hospitals can only receive payment for a limited set of largely ancillary inpatient services under Part B.

In the CY 2013 OPPS/ASC proposed rule (77 FR 45155 through 45157) and final rule with comment period (77 FR 68426 through 68433), we solicited and described the public comments received on potential clarifications or changes to our policies regarding patient status that may be appropriate to provide more clarity and consensus among providers, beneficiaries, and other stakeholders regarding the relationship between inpatient admission decisions and appropriate Medicare payment. We also provided an update on the Part A to Part B Rebilling (Part A/B) Demonstration that was slated to be in effect for CYs 2012 through 2014 and was designed to assist us in evaluating these issues. Having further considered the concerns raised in these comments as well as our experience with the Part A/B Demonstration, we are proposing to revise our Part B inpatient billing policy.

2. Summary of the Major Proposed Provisions

We propose that when a Medicare Part A claim for inpatient hospital services is denied because the inpatient admission was deemed not to be reasonable and necessary, or when a hospital determines under § 482.30(d) or § 485.641 after a beneficiary is discharged that his or her inpatient admission was not reasonable and necessary, the hospital may be paid for all the Part B services (except for services that specifically require an outpatient status) that would have been reasonable and necessary had the beneficiary been treated as a hospital outpatient rather than admitted as an inpatient, if the beneficiary is enrolled in Medicare Part B. We propose to continue applying the timely filing restriction to the billing of all Part B inpatient services, under which claims for Part B services must be filed within 1 year from the date of service. In this proposed rule, we also describe the beneficiary liability and other impacts of our proposals.

3. Summary of Costs and Benefits—Proposed Part B Inpatient Payment Policy

We estimate that the proposals in this proposed rule would result in an approximately $4.8 billion decrease in Medicare program expenditures over 5 years. In section V. of this proposed rule we set forth a detailed analysis of the regulatory and federalism impacts that the proposed changes would have on affected entities and beneficiaries.

B. Legislative and Regulatory Authority/ Prior Rulemaking

Under section 1832 of the Act, when Part A payment cannot be made for a hospital inpatient claim because the inpatient admission is determined not reasonable and necessary under section 1862(a)(1)(A) of the Act, we believe Medicare should pay all for Part B services (except for services that specifically require an outpatient status) that would have been reasonable and necessary if the hospital had treated the beneficiary as a hospital outpatient rather than treating the beneficiary as an inpatient. We have previously addressed this issue in prior rulemaking through the proposed and final rules titled Prospective Payment System for Hospital Outpatient Services, (September 8, 1998, 63 FR 47560; and April 7, 2000, 65 FR 18444; respectively); the proposed and final rule titled, Changes to the Hospital Outpatient Prospective Payment System for Calendar Year 2002, (August 24, 2001, 66 FR 44698 through 44699) and (November 30, 2001, 66 FR 59891 through 59893 and 59915); and the final rule, titled Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2011; (November 29, 2010, 75 FR 73449 and 73627).

II. Proposed Payment of Medicare Part B Inpatient Services

A. Background

In the CY 2013 OPPS/ASC proposed rule and final rule with comment period (77 FR 45155 through 45157 and 77 FR 68426 through 68433, respectively), we discussed that when a Medicare beneficiary arrives at a hospital in need of medical or surgical care, the physician or other qualified practitioner may admit the beneficiary for inpatient care or treat him or her as an outpatient. In some cases, when the physician or other qualified practitioner admits the beneficiary and the hospital provides inpatient care, a Medicare claims review contractor, such as a Medicare Administrative Contractor (MAC), a Recovery Audit Contractor (RAC), or a Comprehensive Error Rate Testing (CERT) Contractor, subsequently determines that the inpatient admission was not reasonable and necessary under section 1862(a)(1)(A) of the Act, and therefore denies the associated hospital Part A claim for payment. To date, under Medicare's longstanding policy, in these cases hospitals may bill a subsequent Part B inpatient claim for only a limited set of medical and other health services, referred to as ''Part B inpatient'' or ''Part B only'' services, even if additional services furnished would have been medically necessary had the beneficiary been treated as an outpatient. Under current Medicare policy, these Part B inpatient claims are considered new claims subject to the time limits for filing claims described at sections 1814(a)(1), 1835(a), and 1842(b)(3)(B) of the Act and 42 CFR 424.44 (see section II.G. of this proposed rule). We do not consider these claims to be adjustments to the originally submitted Part A claim.

Medicare's policy to pay only a limited set of medical and other health services as inpatient services under Part B when payment cannot be made under Part A has been in place for many years. As early as 1968, the Medicare manuals provided for payment under Part B of only a limited list of ancillary medical and other health services furnished to inpatients of participating hospitals (see Section 3110 of the Medicare Intermediary Manual and Section 2255C of the Medicare Carriers Manual,

replaced by Section 10, Chapter 6 of the Medicare Benefit Policy Manual (MBPM) (Pub. 100–02)), and under current policy, we continue to provide that the payable Part B inpatient services include only a limited set of ancillary services (66 FR 44698 through 44699; 66 FR 59891 through 59893, and 59915). Hospitals are required to submit a Part B inpatient claim (Type of Bill (TOB) 12x, or 85x for CAHs) within the usual timely filing requirements in order to be paid for these Part B inpatient services (75 FR 73449 and 73627).

We have provided in manual guidance that the limited set of Part B inpatient services could be paid if there was no Part A coverage for the following reasons:

• In prospective payment system (PPS) hospitals—

++ No Part A prospective payment is made at all for the hospital stay because of patient exhaustion of benefit days before admission;

++ The admission was disapproved as not reasonable and necessary (and waiver of liability payment was not made);

++ The day or days of the otherwise covered stay during which the services were provided were not reasonable and necessary (and no payment was made under waiver of liability);

++ The patient was not otherwise eligible for or entitled to coverage under Part A; or

++ For discharges before October 1997;

—No Part A day outlier payment is made for one or more outlier days due to patient exhaustion of benefit days after admission but before the case's arrival at outlier status, or because outlier days are otherwise not covered and waiver of liability payment is not made; or

—If only day outlier payment is denied under Part A, Part B payment may be made for only the services covered under Part B and furnished on the denied outlier days.

• In non-PPS hospitals, Part B payment may be made for services on any day for which Part A payment is denied (that is, benefit days are exhausted; services are not at the hospital level of care; or patient is not otherwise eligible or entitled to payment under Part A) (Section 10, Chapter 6 of the MBPM).

The services payable are as follows:

• Diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests.

• X-ray, radium, and radioactive isotope therapy, including materials and services of technicians.

• Surgical dressings, and splints, casts, and other devices used for reduction of fractures and dislocations.

• Prosthetic devices (other than dental) which replace all or part of an internal body organ (including contiguous tissue), or all or part of the function of a permanently inoperative or malfunctioning internal body organ, including replacement or repairs of such devices.

• Leg, arm, back, and neck braces, trusses, and artificial legs, arms, and eyes including adjustments, repairs, and replacements required because of breakage, wear, loss, or a change in the patient's physical condition.

• Outpatient physical therapy, outpatient speech-language pathology services, and outpatient occupational therapy (see the Medicare Benefit Policy Manual, Chapter 15, ''Covered Medical and Other Health Services,'' § 220 and § 230).

• Screening mammography services.

• Screening pap smears.

• Influenza, pneumococcal pneumonia, and hepatitis B vaccines.

• Colorectal screening.

• Bone mass measurements.

• Diabetes self-management.

• Prostate screening.

• Ambulance services.

• Hemophilia clotting factors for hemophilia patients competent to use these factors without supervision).

• Immunosuppressive drugs.

• Oral anti-cancer drugs.

• Oral drug prescribed for use as an acute anti-emetic used as part of an anti-cancer chemotherapeutic regimen.

• Epoetin Alfa (EPO).

To enable beneficiaries to make informed financial and other decisions prior to hospital discharge, Medicare allows the hospital to change a beneficiary's inpatient status to outpatient (using condition code 44 on a Part B outpatient claim) and bill all reasonable and necessary services that it provided to Part B as outpatient services, but only if these conditions are met: (1) The change in patient status is made prior to discharge; (2) the hospital has not submitted a Medicare claim for the admission; (3) both the practitioner responsible for the care of the patient and the utilization review committee concur with the decision; and (4) the concurrence is documented in the medical record (See Section 50.3, Chapter 1 of the Medicare Claims Processing Manual (MCPM) (Pub. 100–04); MLN Matters article SE0622, Clarification of Medicare Payment Policy When Inpatient Admission Is Determined Not To Be Medically Necessary, Including the Use of Condition Code 44: ''Inpatient Admission Changed to Outpatient,'' September 2004). The hospital conditions of participation (CoPs) provide similar patient protections. For example, in accordance with 42 CFR 482.13(b), patients have the right to participate in the development and implementation of their plan of care and treatment, to make informed decisions, and to accept or refuse treatment. Informed discharge planning between the patient and the physician is important for patient autonomy and for achieving efficient outcomes.

Hospitals have expressed concern that the policy allowing only limited billing for Part B inpatient services provides inadequate payment for resources they expended to take care of beneficiaries in need of medically necessary hospital care, although not necessarily inpatient care. Also, hospitals have indicated that often they do not have the necessary staff (for example, utilization review staff or case managers) available after normal business hours to confirm physicians' decisions to admit beneficiaries. Thus, for short-stay admissions, the hospitals may be unable to complete a timely review and change beneficiaries' status from inpatient to outpatient prior to discharge in accordance with the condition code 44 requirements.

In the CY 2013 OPPS/ASC proposed rule (77 FR 45156), we discussed that we have heard from various stakeholders that hospitals appear to be responding to the financial risk of admitting Medicare beneficiaries for inpatient stays that may later be determined not reasonable and necessary and denied upon contractor review by electing to treat beneficiaries as outpatients receiving observation services, often for longer periods of time, rather than admitting them as inpatients. In recent years, the number of cases of Medicare beneficiaries receiving observation services for more than 48 hours, while still small, has increased from approximately 3 percent in 2006 to approximately 8 percent in 2011. This trend is concerning because of its effect on Medicare beneficiaries. There could be significant financial implications for Medicare beneficiaries of being treated as outpatients rather than being admitted as inpatients, and we have published educational materials for beneficiaries to inform them of their respective liabilities.[1] As

[1] CMS Pamphlets: ''Are You a Hospital Inpatient or Outpatient? If You Have Medicare—Ask!'', CMS Product No. 11435, Revised, February 2011; ''How

we discuss later in this proposed rule, the statute provides different cost sharing responsibilities for beneficiaries for Part A and Part B services. In addition, section 1861(i) of the Act requires a 3-day hospital inpatient stay (towards which any time spent receiving outpatient observation services prior to the calendar day of admission does not count) in order for a beneficiary to qualify for coverage of subsequent post-hospital care in a SNF. Therefore, treating beneficiaries as outpatients rather than inpatients or expanding the number of payable Part B inpatient services could impact the financial liability of some beneficiaries.

In light of concerns related to the impact of extended time as an outpatient on Medicare beneficiaries and the impact on hospitals of denials of hospital inpatient claims, we implemented a demonstration, the Part A to Part B (A/B) Rebilling Demonstration, for hospitals. The demonstration was initially slated to last for 3 years, from CYs 2012 through 2014. The demonstration allows a limited number of hospitals to rebill for additional Part B inpatient services outside the usual timely filing requirement, when Part A inpatient short-stay claims are denied because the inpatient admissions were determined not reasonable and necessary. Under the demonstration, hospitals may be eligible to receive 90 percent of payment for all Part B services that would have been reasonable and necessary had the beneficiaries been treated as outpatients rather than admitted as inpatients. We also solicited public comments in the CY 2013 OPPS/ASC proposed rule on various policy clarifications or changes that have been suggested by stakeholders to address these issues, including revising our Part B inpatient billing policy (77 FR 45155 through 45157).

In an increasing number of cases, hospitals that have appealed Part A inpatient claims that were denied because the inpatient admission was not reasonable and necessary have received partially favorable decisions from the Medicare Appeals Council or Administrative Law Judges (ALJs). While upholding the Medicare review contractor's determination that the inpatient admission was not reasonable and necessary, the Medicare Appeals Council and ALJ decisions have ordered payment of the services as if they were rendered at an outpatient or ''observation level'' of care. These decisions effectively require Medicare to issue payment for all Part B services that would have been payable had the beneficiary originally been treated as an outpatient (rather than an inpatient), instead of payment for only the limited set of Part B inpatient services that are designated in the MBPM. Moreover, these decisions have required such payment regardless of whether the subsequent hospital claim for payment under Part B is submitted within the otherwise applicable time limit for filing Part B claims. These Medicare Appeals Council and ALJ decisions providing for payment of all reasonable and necessary Part B services under the circumstances described previously are contrary to our longstanding policies that permit billing for only a limited list of Part B inpatient services and require that the services be billed within the usual timely filing restrictions (See Section 10, Chapter 6 of the MBPM (Pub. 100–02); 63 FR 47560; 65 FR 18444; 66 FR 44698 through 44699; 66 FR 59891 through 59893, and 59915; and 75 FR 73449, 73627). While decisions issued by the Medicare Appeals Council and ALJs do not establish Medicare payment policy, we are bound to effectuate each individual decision. The increasing number of these types of decisions has created numerous operational difficulties.

After reviewing the public comments we received in response to the CY 2013 OPPS/ASC proposed rule, considering the most efficient way to effectuate the Medicare Appeals Council and ALJ decisions referenced earlier in this section, and further assessing our Part B inpatient payment policy, we are concurrently issuing this proposed rule and CMS Ruling 1455–R (hereinafter referred to as the Ruling). The Ruling establishes a standard process for effectuating these Medicare Appeals Council and ALJ decisions and handling claims and appeals while CMS considers how to best address this issue going forward. The Ruling also addresses the scope of administrative review in these and other, similar cases. Until this proposed rule is finalized, CMS, through the Ruling, acquiesces in the approach taken in the aforementioned Medicare Appeals Council and ALJ decisions on the issue of subsequent Part B billing following the denial of a Part A hospital inpatient claim on the basis that the inpatient admission was not reasonable and necessary. The Ruling is intended as an interim measure until we can finalize a policy to address the issues raised by these decisions going forward.

Specifically, the Ruling provides that when a Part A claim for a hospital inpatient admission is denied by a Medicare review contractor because the inpatient admission was determined not reasonable and necessary, the hospital may submit a subsequent Part B inpatient claim for more services than just those listed in section 10, Chapter 6 of the MBPM, to the extent the services furnished were reasonable and necessary. The hospital may submit a Part B inpatient claim for payment for the Part B services that would have been payable to the hospital had the beneficiary originally been treated as an outpatient rather than admitted as an inpatient, except when those services specifically require an outpatient status. The Ruling only applies to denials of claims for inpatient admissions that were not reasonable and necessary; it does not apply to any other circumstances in which there is no payment under Part A, such as when a beneficiary exhausts Part A benefits for hospital services or is not entitled to Part A. Under the Ruling, Part B inpatient and Part B outpatient claims that are filed later than 1 calendar year after the date of service will not be rejected as untimely by Medicare's claims processing system as long as the corresponding denied Part A inpatient claim was filed timely in accordance with 42 CFR 424.44, consistent with the directives of the Medicare Appeals Council and ALJ decisions to which we are acquiescing.

The Ruling also provides that the A/B Rebilling Demonstration will be discontinued. We will communicate to hospitals and contractors the details regarding termination of the demonstration and implementation of Part B billing under the Ruling in future transmittals. As described in the Ruling, the Ruling is effective on its date of issuance. It applies to Part A hospital inpatient claims that were denied by a Medicare review contractor because the inpatient admission was determined not reasonable and necessary, as long as the denial was made: (1) While the Ruling is in effect; (2) prior to the effective date of the Ruling, but for which the timeframe to file an appeal has not expired; or (3) prior to the effective date of the Ruling, but for which an appeal is pending. The Ruling does not apply to Part A hospital inpatient claim denials for which the timeframe to appeal expired, and it does not apply to inpatient admissions determined by the hospital to be not reasonable and necessary (for example, through utilization review or other self-audit). The policy announced in the Ruling supersedes any other statements of policy on the issue of Part B inpatient billing following the denial by a

Medicare Covers Self-Administered Drugs Given in Hospital Outpatient Settings,'' CMS Product No. 11333, Revised, February 2011.

Medicare review contractor of a Part A inpatient hospital claim because the inpatient admission was not reasonable and necessary (although hospital outpatient services would have been reasonable and necessary), and it remains in effect until the effective date of the regulations that finalize this proposed rule. This proposed rule proposes revisions to our Part B payment policy that would apply prospectively from the effective date of the final regulations and would differ in some respects from the provisions of the Ruling, the purpose of which is to effectuate the Medicare Appeals Council and ALJ decisions.

B. Proposed Payable Part B Inpatient Services

Having reviewed the statutory and regulatory basis of our current Part B inpatient payment policy, we believe that, under section 1832 of the Act, Medicare should pay all Part B services that would have been reasonable and necessary (except for services that require an outpatient status) if the hospital had treated the beneficiary as a hospital outpatient rather than treating the beneficiary as an inpatient, when Part A payment cannot be made for a hospital inpatient claim because the inpatient admission is determined not reasonable and necessary under section 1862(a)(1)(A) of the Act. Therefore, in this section, we propose to revise our current policy to allow payment for additional Part B inpatient services than Medicare currently allows when CMS, a Medicare review contractor, or a hospital determines after discharge that payment cannot be made under Part A because a hospital inpatient admission was not reasonable and necessary, provided the statutorily required timeframe for submitting claims is not expired, as discussed in section II.G. of this proposed rule. The hospital could re-code the reasonable and necessary services that were furnished as Part B services, and bill them on a Part B inpatient claim. This proposed policy would only apply to denials of claims for inpatient admissions that are not reasonable and necessary, and would not apply to any other circumstances in which there is no payment under Part A, such as when a beneficiary exhausts Part A benefits for hospital services or is not entitled to Part A.

Specifically, we propose to revise our Part B inpatient billing policy to allow payment of all hospital services that were furnished and would have been reasonable and necessary if the beneficiary had been treated as an outpatient, rather than admitted to the hospital as an inpatient, except for those services specifically requiring an outpatient status. We would exclude services that by statute, Medicare definition, or standard Healthcare Common Procedure Coding System (HCPCS) code are defined as outpatient services, including outpatient diabetes self-management training services (DSMT) defined in section 1861(qq) of the Act; outpatient physical therapy services, outpatient speech-language pathology services, and outpatient occupational therapy services (PT/SLP/OT or ''therapy'' services) defined in section 1833(a)(8) of the Act; and outpatient visits, emergency department visits, and observation services (G0378, Hospital observation service, per hour; and G0379, Direct referral for hospital observation care). These services are, by definition, provided to hospital outpatients and not inpatients. Hospitals could only submit claims for Part B inpatient services that were furnished to an inpatient in accordance with their Medicare and standard Healthcare Common Procedure Coding System (HCPCS) code definitions, and in accordance with Medicare coverage and payment rules.

In accordance with section 1833(e) of the Act, hospitals would be required to furnish information as may be necessary in order to determine the amounts due for the services billed on a Part B inpatient claim for services rendered during the inpatient stay. We would implement this provision in proposed new 42 CFR 414.5, entitled, ''Hospital inpatient services paid under Medicare Part B when a Part A hospital inpatient claim is denied because the inpatient admission was not reasonable and necessary, but hospital outpatient services would have been reasonable and necessary in treating the beneficiary.'' The claim for inpatient Part B services would have to be submitted within the timely filing period (we discuss the time limits for filing claims in section II.G. of this proposed rule). To ensure the accuracy and appropriateness of payment under Part A, we propose that this policy would apply when CMS or a Medicare review contractor determines that the hospital inpatient admission was not reasonable and necessary, and also when a hospital determines under Medicare's utilization review requirements in sections 1861(e)(6)(1) and 1861(k) of the Act and 42 CFR 482.30 (42 CFR 485.641 for CAHs) that a beneficiary should have received hospital outpatient rather than hospital inpatient services, but the beneficiary has already been discharged from the hospital (hereinafter referred to as hospital ''self-audit'' for purposes of this preamble). In this circumstance, we would continue requiring the hospital to submit a ''no pay/provider liable'' Part A claim indicating that the provider is liable under section 1879 of the Act for the cost of the Part A services (see section 40.2.2(E), Chapter 3 of the MCPM). Submission of this Part A claim indicates that the provider is assuming financial liability for the denied items or services on the Part A claim consistent with section 1879 of the Act (and acknowledging that the beneficiary is not financially liable under section 1879 of the Act) for the cost of the Part A items and services. The claim also ensures accurate cost reporting, reporting of utilization of inpatient days, and triggers refund requirements of the Part A cost sharing under sections 1866(a) and 1879(b) of the Act and 42 CFR 411.402 of the regulations (see sections II.E. and F. of this proposed rule). Submitting the provider-liable Part A claim also cancels any claim that may have already been submitted by the hospital for payment under Part A. The hospital could then submit an inpatient claim for payment under Part B for all services that would have been reasonable and necessary if the beneficiary had been treated as a hospital outpatient rather than admitted as a hospital inpatient, except for those services specifically requiring an outpatient status. This claim would have to be submitted within the timely filing period (we discuss the time limits for filing claims in section II.G. of this proposed rule). We believe that providing for additional payment under Part B when a hospital determines itself that an inpatient admission was not reasonable and necessary but hospital outpatient services would have been reasonable and necessary would reduce improper payments under Part A, and would reduce the administrative costs of appeals for both hospitals and the Medicare program.

1. Part B Inpatient Services Paid Under the Hospital OPPS

We propose payment of services that are paid under the OPPS (except those requiring an outpatient status) under proposed new § 414.5(a)(1), ''If a Medicare Part A claim for inpatient hospital services is denied because the inpatient admission was not reasonable and necessary, or if a hospital determines under § 482.30(d) or § 485.641 after a beneficiary is discharged that the beneficiary's inpatient admission was not reasonable and necessary, the hospital may be paid for the following Part B inpatient services that would have been

reasonable and necessary if the beneficiary had been treated as a hospital outpatient rather than admitted as an inpatient, provided the beneficiary is enrolled in Medicare Part B: (1) Services described in § 419.21(a) that do not require an outpatient status.'' We would exclude payment of services under the OPPS such as observation services and clinic visits that, by definition, require an outpatient status.

2. Services Excluded From Payment Under the OPPS

For the proposed Part B inpatient services furnished by the hospital that are not paid under the OPPS, but rather under some other Part B payment methodology, we propose that when the inpatient admission is determined not reasonable and necessary, Part B payment would be made pursuant to the respective Part B fee schedules or prospectively determined rates for which payment is made for these services when provided to hospital outpatients (see 65 FR 18442 and 18443). As provided in 42 CFR 419.22, the services for which payment is made under other payment methodologies are as follows:

- Ambulance services, as described in section 1861(v)(1)(U) of the Act, or, if applicable, the fee schedule established under section 1834(l) of the Act;
- Except as provided in 42 CFR 419.2(b)(11), prosthetic devices, prosthetics, prosthetic supplies, and orthotic devices;
- Except as provided in 42 CFR 419.2(b)(10), durable medical equipment supplied by the hospital for the patient to take home;
- Clinical diagnostic laboratory services;
- Effective December 8, 2003, screening mammography services and effective January 1, 2005, diagnostic mammography services (which would become paragraph (r) under our proposed redesignation, discussed in section II.C. of this proposed rule); and
- Effective January 1, 2011, annual wellness visit providing personalized prevention plan services as defined in 42 CFR 410.15 (which would become subparagraph (s) under our proposed re-designation, discussed in section II.C. of this proposed rule).

We propose to provide payment of these OPPS-excluded services in 42 CFR 414.5(a)(2) through (a)(7) as follows:

- Ambulance services, as described in section 1861(v)(1)(U) of the Act, or, if applicable, the fee schedule established under section 1834(l) of Act.
- Except as provided in § 419.2(b)(11), prosthetic devices, prosthetics, prosthetic supplies, and orthotic devices.
- Except as provided in § 419.2(b)(10), durable medical equipment supplied by the hospital for the patient to take home.
- Clinical diagnostic laboratory services.
- Effective December 8, 2003, screening mammography services and effective January 1, 2005, diagnostic mammography services.
- Effective January 1, 2011, annual wellness visit providing personalized prevention plan services as defined in § 410.15 of this chapter.

In our review of the current regulations governing payment of Part B inpatient services, we noted an oversight in 42 CFR 419.22 that outpatient DSMT services which are described in section 1861(qq) of the Act and 42 CFR 414.63 and are paid under the Medicare Physician Fee Schedule (MPFS), were never excluded from OPPS payment along with all other physician services. Since the statute defines these services as outpatient services, § 414.63(e)(2) stipulates that outpatient DSMT services can be paid only if the beneficiary ''[i]s not receiving services as an inpatient in a hospital, SNF, hospice, or nursing home.'' Therefore, under our proposal these services would not be payable Part B inpatient services. However, pursuant to our review of the regulations, we propose a technical correction to clarify that outpatient DSMT services are excluded from OPPS payment. This correction would appear in § 419.22(u).

In addition, we noted a typographical error in paragraph (j), which should cross reference § 419.2(b)(11) rather than § 419.22(b)(11). We propose a technical correction to delete the erroneous ''§ 419.22(b)(11)'' and replace with ''§ 419.2(b)(11)''. Also we noted that § 419.22(h) excludes ''outpatient'' therapy services from coverage under the OPPS. Section 1833(t)(1)(B)(iv) of the Act specifically states that ''the term 'covered OPD services'* * *(iv) does not include any therapy services described in subsection (a)(8)'' and section 1833(a)(8) describes outpatient therapy services furnished by a hospital to a hospital outpatient or a hospital inpatient who is entitled to benefits under Part A but has either exhausted or is not so entitled to such benefits. In order to more clearly follow the statutory language defining covered OPD services, we propose to replace the words ''outpatient therapy'' with ''therapy'' in § 419.22(h) so that it reads, ''Therapy services described in section 1833(a)(8) of the Act.''

We further noted that the headings of § 419.21 and § 419.22 describe the ''hospital outpatient'' services that are subject to (in § 419.21) or excluded from payment under (in § 419.22) the OPPS. To more appropriately describe the services that are payable under these regulations under the OPPS, we propose to amend the titles of these sections by removing the term ''outpatient.'' The title of § 419.21 would then read, ''Hospital services subject to the outpatient prospective payment system.'' The title of § 419.22 would then read, ''Hospital services excluded from payment under the hospital outpatient prospective payment system.''

C. Billing for Part B Outpatient Services in the Three-Day Payment Window

The proposals in this proposed rule would not change the 3-day payment window policy, which requires payment for certain outpatient services provided to a beneficiary on the date of an inpatient admission or during the 3 calendar days (or 1 calendar day for a hospital that is not paid under the Inpatient Prospective Payment System (non-IPPS)) prior to the date of an inpatient admission to be bundled (that is, included) with the payment for the beneficiary's inpatient admission, if those outpatient services are provided by the admitting hospital or an entity that is wholly owned or wholly operated by the admitting hospital (Section 40.3, Chapter 3 and Section 10.12, Chapter 4 of the Medicare Claims Processing Manual (Pub. 100.04)). The current policy applies to all diagnostic outpatient services and non-diagnostic (that is, therapeutic) services that are related to the inpatient stay. As stated in Section 10.12, Chapter 4 of the Medicare Claims Processing Manual, in the event that there is no Part A coverage for the inpatient stay, services provided to the beneficiary prior to the point of admission may be separately billed to Part B as the outpatient services that they were. This policy would continue to apply where Part A payment is not available. The Part B outpatient claims for the outpatient services provided in the 3-day (or 1-day for a non-IPPS hospital) payment window would be subject to the usual timely filing restrictions and not be considered adjustment claims (see section II.G. in this proposed rule).

Hospitals may only submit claims for Part B outpatient services that are reasonable and necessary in accordance with Medicare coverage and payment rules. In accordance with section 1833(e) of the Act, hospitals must furnish information as may be necessary

in order to determine the amounts due for the services billed on a Part B outpatient claim for services rendered in the 3-day payment window prior to the inpatient admission.

D. Applicability—Types of Hospitals

We propose that all hospitals billing Part A services be eligible to bill the proposed Part B inpatient services, including short-term acute care hospitals paid under the IPPS, hospitals paid under the OPPS, long-term care hospitals (LTCHs), inpatient psychiatric facilities (IPFs), inpatient rehabilitation facilities (IRFs), CAHs, children's hospitals, cancer hospitals, and Maryland waiver hospitals. We propose that hospitals paid under the OPPS would continue billing the OPPS for Part B inpatient services. Hospitals that are excluded from payment under the OPPS in 42 CFR 419.20(b) would be eligible to bill Part B inpatient services under their non-OPPS Part B payment methodologies.

In the CY 2002 OPPS proposed rule (66 FR 44698 through 44699) and final rule (66 FR 59891 through 59893), we recognized that certain hospitals do not submit claims for outpatient services under Medicare Part B, either because they do not have outpatient departments or because they have outpatient departments but submit no claims to Medicare Part B (for example, state psychiatric hospitals). When the OPPS was implemented, the only claims these hospitals would ever have submitted for Part B payment would have been for the ancillary services designated as 'Part B Only' services. These hospitals were concerned about the administrative burden and prohibitive costs they would incur if they were to change their billing systems to accommodate OPPS requirements solely to receive payment for Part B Only (Part B inpatient) services. Under our current policy of limited Part B inpatient billing following a reasonable and necessary Part A claim denial, the cost to these hospitals of implementing claims systems to bill Part B inpatient services to the OPPS would have been greater than the payments they would have received for the services. In response to this concern, we revised 42 CFR 419.22 by adding paragraph (r), which provides that services defined in 42 CFR 419.21(b) that are furnished to inpatients of hospitals that do not submit claims for outpatient services under Medicare Part B are excluded from payment under the OPPS. We provided an exception under which, rather than billing Part B inpatient services under the OPPS, hospitals would bill these services under the hospital's pre-OPPS payment methodology, for example at reasonable cost or the per diem payment rate, unless the services were subject to a payment methodology that was established prior to the OPPS. As described in section II.B. of this proposed rule, services subject to pre-OPPS payment methodologies include PT/SLP/OT services; ambulance services; devices and supplies paid under the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) fee schedule; clinical diagnostic laboratory services; screening and diagnostic mammography services; and the annual wellness visit providing personalized plan prevention services.

We are soliciting public comments from these hospitals regarding the types of Part B inpatient services they anticipate billing Medicare under our proposal for payment of additional Part B services. If under our proposed policies, the Part B inpatient services payable to these hospitals would largely be limited to the ancillary services they currently bill Medicare, these hospitals would continue billing Part B inpatient services under the current exception. However, if we receive public comments indicating that hospitals subject to the exception in 42 CFR 419.22(r) would be eligible and seek payment for additional Part B inpatient services under this proposed rule, we would consider finalizing a policy to require these hospitals to bill the OPPS since unlike under existing policy, their eligible payments would likely outweigh the cost of implementing billing systems specific to the OPPS. To reflect such a policy, we would delete 42 CFR 419.22(r) and redesignate § 419.22(s) and § 419.22(t) as § 419.22(r) and § 419.22(s), respectively.

E. Beneficiary Liability Under Section 1879 of the Act

As discussed earlier in this proposed rule, our policy previously allowed for billing of only a limited set of Part B inpatient services rather than all Part B services following the reasonable and necessary denial of a Part A inpatient claim. We recognize the proposal would allow billing for additional Part B inpatient services, which could create a unique liability issue for Medicare beneficiaries that did not previously exist.

When a Part A inpatient admission is denied as not reasonable and necessary under section 1862(a)(1)(A) of the Act, or a hospital submits a ''provider liable/no-pay'' claim (following a self-audit as described in section II.B. of this proposed rule) indicating that the hospital has determined that an inpatient admission is not reasonable and necessary, a determination of financial liability for the non-covered inpatient admission is made in accordance with section 1879 of the Act. The Medicare contractor determines whether the hospital and the beneficiary knew, or could have reasonably been expected to know, that the services were not covered. If neither the hospital nor the beneficiary knew, or could reasonably have been expected to know, that the services were not covered, then Medicare makes payment for the denied services. However, because hospitals are expected to have knowledge of our coverage and payment rules, hospitals are often determined liable under section 1879 of the Act for the cost of the non-covered items and services furnished. In addition, unless the beneficiary had knowledge of non-coverage in advance of the provision of services (typically through a Hospital Issued Notice of Non-Coverage (HINN)), the beneficiary will not be financially liable for the denied Part A services in accordance with section 1879 of the Act.

Following a denial of a Part A inpatient admission as not reasonable and necessary and a determination that the beneficiary was not financially liable in accordance with section 1879 of the Act, the hospital is required to refund any amounts paid by the beneficiary (such as deductible and copayment amounts) for the services billed under Part A. (See, 42 CFR 411.402.) The beneficiary would have no out-of-pocket cost in this scenario. However, under the Part B inpatient billing policy proposed in this rule, if the hospital subsequently submits a timely Part B claim after the Part A claim is denied, the financial protections afforded under section 1879 of the Act to limit liability for the denied Part A claim cannot also be applied to limit liability for the covered services filed on the Part B claim. The beneficiary (who may previously have had no out-of-pocket costs for the denied Part A claim) is responsible for applicable deductible and copayment amounts for Medicare covered services, and for the cost of items or services never covered (or always excluded from coverage) under Part B of the program. (The beneficiary's responsibility for payment of deductible, cost-sharing, and items excluded from coverage under Part B is discussed further in section II.F. of this proposed rule.) If, however, a hospital does not bill under Part B in a timely manner, in accordance with section 1866(a)(1)(A)(i) of the Act, the hospital may not charge the beneficiary for any costs related to

the Part B items and services furnished, if the beneficiary would otherwise be entitled to have Part B payment made on his/her behalf. Finally, in instances where the beneficiary is not enrolled in Medicare Part B, we encourage hospitals and beneficiaries to recognize the importance of billing supplemental insurers and pursuing an appeal of the Part A inpatient claim denial, as appropriate.

We do not believe that the existing beneficiary liability notices used in the Medicare fee-for-service program (the HINN and Advance Beneficiary Notice of Noncoverage (ABN)) are applicable or relevant for the Part B inpatient billing process described in this proposed rule to alert beneficiaries to the possible change in deductible and cost-sharing if a Part A inpatient claim is denied and a Part B claim is subsequently submitted. These notices must be given prior to the provision of an item or service that is expected to be denied, and cannot be issued retroactively (that is, after the receipt of the post-payment Part A inpatient claim denial). We would conduct an educational campaign and issue materials that address various aspects of this rulemaking, including raising beneficiary awareness that certain denied Part A inpatient hospital services may be covered under Part B of the program. We welcome public comment on recommendations for notification to beneficiaries in these situations, consistent with our current notice policies. (For additional information on beneficiary notices, see the CMS Web site at *http://www.cms.gov/Medicare/Medicare-General-Information/BNI/index.html).*

F. Applicable Beneficiary Liability: Hospital Services

As we note in section II.E. and section V. of this proposed rule, increasing the number of billable Part B inpatient services could affect beneficiary liability. In accordance with statute, beneficiary cost-sharing under Part A is different (and, in some cases, may be less) than under Part B. The CY 2013 Part A inpatient deductible and coinsurance amounts, which are set in accordance with statute, were recently announced in a notice published in the November 21, 2012 **Federal Register** (77 FR 69848 through 69850). Under Part A, a beneficiary pays a one-time deductible for all hospital inpatient services provided during the first 60 days in the hospital of the benefit period; therefore, an inpatient deductible does not necessarily apply to all hospitalizations. Part A coinsurance only applies after the 60th day in the hospital. A beneficiary would be entitled to refunds of any amounts he or she paid to the hospital for the Part A claim if the hospital, but not the beneficiary, is held financially responsible for denied services under section 1879 of the Act (42 CFR 411.402.) However, under our proposed policy, beneficiaries would continue to be liable for their usual Part B financial liability.

Beneficiaries would be liable for Part B copayments for each hospital Part B outpatient or Part B inpatient service and for the full cost of drugs that are usually self-administered, which section 1861(s)(2)(B) of the Act does not include. We note that self-administered drugs are typically covered under Medicare Part D, and beneficiaries who have Part D coverage may submit a claim to their Part D plan for reimbursement of these costs. If a beneficiary must receive the self-administered drug from a hospital, rather than a community pharmacy, he or she would likely be subject to higher out-of-pocket costs due to the hospital pharmacy's status as a non-network pharmacy. Hospital billing systems, Part D reimbursement rates, and drug utilization review requirements make it difficult for hospitals to participate as a Part D network provider for these drugs. Therefore, if coverage is available, consistent with 42 CFR 423.124(b), beneficiaries would be responsible for the difference between the Part D plan's plan allowance and the hospitals' charges, and the difference may be significant. Thus under our proposed Part B billing policy, some beneficiaries who are entitled to coverage under both Part A and Part B may have a greater financial liability for hospital services compared to current policy, as they would be liable for additional Part B services billed when the inpatient admission is determined not reasonable and necessary. We are soliciting comment on whether we should consider additional policies to mitigate or prevent this potential additional liability for beneficiaries.

Most supplemental insurers or benefit programs (this includes but is not limited to Medigap plans that market Medicare supplemental insurance policies, employer retiree plans, FEHBP, TRICARE, and Medicaid) participate in Medicare's coordination of benefits (COB) or claims crossover process. Such payers sign national agreements with Medicare to facilitate the automatic transfer of Medicare-adjudicated professional as well as facility claims to them. Most, if not all of these supplemental insurers elect to receive Medicare crossover claims if there is cost-sharing (that is, deductible or co-insurance amounts remains for the beneficiary to pay). The vast majority of insurers that pay after Medicare currently accept Part B physician claims as well as outpatient-oriented hospital claims as part of the Medicare crossover process. Therefore, if we finalize our proposal to allow for hospital billing of additional Part B services using claims whose National Uniform Billing Committee (NUBC) approved type of bill (TOB) designation is 12x (Hospital-Inpatient Part B), the vast majority of providers will find that their patients' claims will be automatically transferred to their supplemental insurance programs for further payment consideration. Additionally, to ensure that supplemental payers would coordinate benefits with Medicare successfully and pay benefits appropriately, Medicare would communicate with all supplemental payers to ensure they know: (1) What additional services beyond those traditionally termed ''ancillary'' would now be included under the TOB 12x designation; and (2) what new cost sharing this change in billing and payment methodology will impose. The Medicare crossover process currently in place will ensure that, for the most part, providers are not inconvenienced by having to bill their patients' supplemental insurance plans or programs for balances owed following Medicare's payment.

G. Time Limits for Filing Claims

Sections 1814(a)(1), 1835(a), and 1842(b)(3)(B) of the Act establish time limits for filing Medicare Part A and B claims. Section 424.44 of the regulations implements those sections of the Act and requires that all claims for services furnished on or after January 1, 2010 be filed within 1 calendar year after the date of service unless an exception applies. In the November 29, 2010 final rule with comment period (75 FR 73627) titled, ''Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2011'' modifying § 424.44, commenters requested that we create an exception to the time limits for filing claims so that hospitals are permitted to file inpatient Part B only claims for any inpatient cases that are retrospectively reviewed by a Medicare Recovery Audit Contractor (RAC) or other review entity and determined not to be medically necessary in an inpatient setting. Commenters requested that an exception be created at § 424.44(b) to allow for the billing of Part B inpatient and Part B outpatient claims when there is no coverage under Part A for a hospital stay. For the reasons discussed

in the November 29, 2010 final rule, we declined to create such an exception and we continue to believe that was the correct decision.

Under CMS Ruling 1455–R (published concurrently elsewhere in this issue of the **Federal Register**), we adopted (although we did not endorse) the views of the Medicare Appeals Council and many ALJs that subsequent Part B rebilling is allowed after the timely filing period has expired. The Ruling states that subsequent Part B inpatient and Part B outpatient claims that are filed later than 1 calendar year after the date of service are not to be rejected as untimely by Medicare's claims processing system as long as the original corresponding Part A inpatient claim was filed timely pursuant to 42 CFR 424.44. The Ruling remains in effect until the effective date of final regulations that result from this proposed rule. At that time, the final rule would supersede the Ruling's treatment of claims that providers file later than 1-calendar year after the date of service.

Accordingly, we propose a new § 414.5(b) that would require that claims for billed Part B inpatient services be rejected as untimely when those Part B claims are filed later than 1 calendar year after the date of service. Our proposal treats these Part B claims as new claims subject to the timely filing requirements, instead of as adjustment claims. This is consistent with longstanding Medicare policy because an adjustment claim supplements information on a claim that was previously submitted without changing the fundamental nature of that original claim. In these Part B claim situations, however, the fundamental nature of the originally filed claim is changed completely (from a Part A claim to a Part B claim).

Therefore, in order to remove any ambiguity, if this rule is finalized as proposed, billed Part B inpatient claims would be rejected as untimely when those Part B claims are filed later than 1-calendar year after the date of service. Moreover, because it is the responsibility of providers to correctly submit claims to Medicare by coding services appropriately, it is important to note that the exception located at § 424.44(b)(1), which extends the time for filing a claim if failure to meet the deadline was caused by error or misrepresentation of an employee, contractor or agent of HHS (commonly referred to as the ''administrative error'' exception), would not apply in situations where a provider bills the originally submitted Part A claim incorrectly. Finally, we remind providers that in accordance with 42 CFR 405.926(n), determinations that a provider failed to submit a claim timely are not appealable.

H. Appeals Procedures

If a hospital is dissatisfied with an initial or revised determination by a Medicare contractor to deny a Part A claim for an inpatient admission as not reasonable and necessary, the hospital may either submit Part B inpatient or outpatient claims (consistent with this proposed rule) or file a request for appeal of the denied Part A claim in accordance with the procedures in 42 CFR Part 405 subpart I. In order to prevent duplicate billing and payment, a hospital may not have simultaneous requests for payment for the same services provided to a single beneficiary on the same dates of service. (See IOM Pub. 100–4, Chapter 1, section 120.) This includes requests for payment under both Part A and Part B. Thus, if a hospital chooses to submit a Part B claim for payment following the denial of an inpatient admission on a Part A claim, then the hospital cannot also maintain its request for payment for the same services on the Part A claim (including an appeal of the Part A claim). In this situation, before the hospital submits a Part B claim, it must ensure that there is no pending appeal request on the Part A claim. (A pending appeal means an appeal for which there is no final or binding decision or dismissal.) If the hospital has filed a Part A appeal, the appeal must be withdrawn, or the decision must be final or binding, before the Part B claim can be processed. If a hospital submits a Part B claim for payment without withdrawing its appeal request, the Part B claim would be denied as a duplicate. In addition, once a Part B claim is filed, there would be no further appeal rights available with respect to the Part A claim. However, the hospital and beneficiary would have appeal rights with respect to an initial determination made on the Part B claim under existing policies set forth at 42 CFR part 405 subpart I.

Additionally, if a beneficiary files an appeal of a Part A inpatient admission denial, a hospital cannot utilize the Part B billing process proposed in this rule to extinguish a beneficiary's appeal rights. Therefore, the hospital's submission of a Part B claim would not affect a beneficiary's pending appeal or right to appeal the Part A claim. If a beneficiary has a pending Part A appeal for an inpatient admission denial, then any claims rebilled under Part B by the hospital would be denied as duplicates by the Medicare contractor. As explained previously, in order for the Part B claim(s) to be processed, the Part A appeal must be final or binding or dismissed. For example, if a beneficiary receives an unfavorable reconsideration on a Part A inpatient claim and does not file a timely request for hearing before an ALJ, the reconsideration decision becomes binding. At that point, the hospital could submit a Part B claim, provided it is filed within 12 months from the date of service. (See proposed 42 CFR 414.5(b) and 42 CFR 424.44).

As discussed in sections II.E and F. of this proposed rule, beneficiaries who are not enrolled in Medicare Part B may be liable for the cost of items and services associated with a hospital stay when billed under the Part B billing process proposed in this rule. We believe that some beneficiaries who are not enrolled in Medicare Part B may have other health insurance that might pay for some or all of the Part B items and services. If a beneficiary is not enrolled in Part B of the program, we strongly encourage the hospital to submit a Part B claim to Medicare before billing the beneficiary so that, when appropriate, the beneficiary's supplemental insurer receives the claim.

We are also clarifying in this proposed rule the scope of review with respect to appeals of Part A inpatient admission denials in the context of the Part B billing policy. As explained in CMS Ruling 1455–R, a large number of recent appeal decisions for Part A inpatient admission claim denials by Medicare review contractors have affirmed the Part A inpatient admission denial, but ordered that payment be issued as if services were provided at the outpatient or ''observation'' level of care under Part B of the Medicare program. These decisions ordered payment under Part B (or consideration of payment for services furnished that the contractor determined to be covered and payable under Part B) even though a Part B claim had not been submitted for payment. Hospitals are solely responsible for submitting claims for items and services provided to beneficiaries and determining whether submission of a Part A or Part B claim is appropriate. Once a hospital submits a claim, the Medicare contractor can make an initial determination and determine any payable amount (42 CFR 405.904(a)(2)). Under existing Medicare policy, if such a determination is appealed, an appeals adjudicator's scope of review is limited to the claim(s) that are before them on appeal, and such adjudicators may not order payment for items or services that have not yet been billed or have not yet received an initial determination. (See 42 CFR 405.920,

405.940, 405.948, 405.954, 405.960, 405.968, 405.974, 405.1000, 405.1032, 405.1100, and 405.1128.) For example, if a hospital submits an appeal of a determination that a Part A inpatient admission was not reasonable and necessary, the only issue before the adjudicator is the propriety of the Part A claim, not an issue involving any potential Part B claim the hospital has not yet filed. In making a decision on that Part A claim, an appeals adjudicator may not develop information, or make a finding, with respect to a Part B claim that does not exist.

Thus, under the billing processes described in this proposed rule, if a hospital appeals a Part A inpatient admission denial and receives a decision indicating that payment may not be made under Part A, appeals adjudicators may not order payment for items and services not yet billed under Part B. Rather, payment for items and services that may be covered under Part B may only be made in response to a Part B claim submitted by the hospital that is timely filed under proposed 42 CFR 414.5(b) and 42 CFR 424.44.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

With regard to the proposed payment of Medicare Part B inpatient services as discussed in section II.B. of this proposed rule, the medical recordkeeping requirement associated with the services billed on Part B inpatient claims during the inpatient stay is exempt from the PRA in accordance with 5 CFR 1320.3(b)(2). The same holds for recordkeeping associated with the services billed on a Part B outpatient claim for services rendered in the 3-day payment window prior to the inpatient admission. We believe that the time, effort, and financial resources necessary to comply with the aforementioned recordkeeping requirements would be incurred by persons in the normal course of their activities; and therefore, considered to be usual and customary business practices.

With regard to the appeals of proposed payment of Medicare Part B inpatient services, the appeals information collection activity discussed in section II.H. of this proposed rule is exempt from the requirements of the Paperwork Reduction Act since it is associated with an administrative action (5 CFR 1320.4(a)(2) and (c)).

The aforementioned provisions would not impose any new or revised reporting or recordkeeping requirements and would not impose any new or revised burden estimates.

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: CMS Desk Officer, [CMS–1455–P], Fax: (202) 395–6974; or Email: *OIRA_submission@omb.eop.gov.*

IV. Response to Comment

Because of the large number of public comments we normally receive on Federal Register documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Analysis

A. Statement of Need

This proposed rule is needed to address Medicare Part A to Part B billing policies when a hospital inpatient claim is denied because the inpatient admission was not reasonable and necessary.

B. Overall Impact

We have examined the impacts of this proposed rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (March 22, 1995, Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Contract with America Advancement Act of 1996 (Pub. L. 104–121) (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. This rule has been designated as an ''economically'' significant rule under section 3(f)(1) of Executive Order 12866 and a major rule under the Contract with America Advancement Act of 1996 (Pub. L. 104 121). Accordingly, the proposed rule has been reviewed by the Office of Management and Budget. We have prepared a regulatory impact analysis that, to the best of our ability, presents the costs and benefits of this proposed rule. In this proposed rule, we are soliciting public comments on the regulatory impact analysis provided. The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, we estimate that most hospitals are small entities as that term is used in the RFA. For purposes of the RFA, most hospitals are considered small businesses according to the Small Business Administration's size standards with total revenues of $34.5 million or less in any single year. We estimate that this proposed rule may have a significant impact on approximately 2,053 hospitals with voluntary ownership. For details, see the Small Business Administration's ''Table of Small Business Size Standards'' at *http://www.sba.gov/content/table-small-business-size-standards.*

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. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has 100 or fewer beds. We estimate that this proposed rule may have a significant impact on approximately 708 small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2013, that threshold level is currently approximately $141 million. This proposed rule does mandate requirements for the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and a subsequent final rule) that imposes substantial direct costs on state and local governments, preempts state law, or otherwise has federalism implications. We have examined the provisions included in this proposed rule in accordance with Executive Order 13132, federalism, and have determined that they will not have a substantial direct effect on state, local or tribal governments, preempt state law, or otherwise have a federalism implication. As reflected in Table 1 of this proposed rule, we estimate that Medicare expenditures will increase for services furnished in governmental hospitals (including state and local governmental hospitals). The analyses we have provided in this section of the proposed rule, in conjunction with the remainder of this document, demonstrate that this proposed rule is consistent with the regulatory philosophy and principles identified in Executive Order 12866, the RFA, and section 1102(b) of the Act.

C. Estimated Impacts of the Proposed Part B Inpatient Payment Policy

1. Estimated Impact on Medicare Program Expenditures

In this section, we provide the estimated impact of our proposal to provide payment for additional Part B inpatient services on Medicare benefit expenditures over the next 5 years. Column (3) of Table 1 shows the estimated impacts of this proposal, relative to an estimated increase in baseline expenditures that will result from the effectuation of recent decisions by the Medicare Appeals Council and ALJs on Medicare Part A to Part B ''rebilling'' (in this section referred to as the ''appeal decisions'').

In section II.A. of this proposed rule, we discuss that in an increasing number of cases, hospitals that have appealed Part A inpatient claim denials to the ALJs and the Medicare Appeals Council have received decisions upholding the Medicare review contractor's determination that the inpatient admission was not reasonable and necessary, but ordering payment of the services as if they were rendered at an outpatient or ''observation level'' of care. These decisions effectively require Medicare to issue payment for all Part B services that would have been payable had the beneficiary originally been treated as an outpatient instead of limiting payment to only the set of Part B inpatient services designated in the Medicare Benefit Policy Manual. Further, the decisions have required payment regardless of whether the subsequent hospital bill for payment under Part B is submitted within the otherwise applicable time limit for filing Part B claims. The ALJ and Medicare Appeals Council decisions providing for payment of all reasonable and necessary Part B services under these circumstances are contrary to CMS' longstanding policies that permit billing for only a limited list of Part B inpatient services and require that the services be billed within the usual timely filing restrictions. While these appeal decisions do not establish Medicare payment policy, CMS' contractors are bound to effectuate each individual decision. Column (1) shows the estimated impacts of CMS' instructions to contractors for effectuating the decisions that have been issued. To resolve the discrepancy between current Medicare policy and the decisions being made by the Medicare Appeals Council and ALJs, we are issuing CMS Ruling 1455–R concurrent with this proposed rule. As we describe in section II.A. of this proposed rule, the Ruling provides a standard process for effectuation of these appeal decisions through payment of additional Part B inpatient (rather than Part B outpatient or ''observation'') services than current policy allows, in order to address the approach taken by ALJs and the Medicare Appeals Council for Part A hospital claims denied because an inpatient admission was not reasonable and necessary, but ordering payment of services as if they were rendered at an outpatient or ''observation level'' of care. Under the Ruling, we will not apply the timely filing limitations in 42 CFR 424.44 to the subsequent claims for Part B services, but rather will afford the hospital 180 days from the date of receipt of a final or binding appeal decision, or 180 days from the date of receipt of the Part A initial determination or revised determination if there is no pending appeal, to file its Part B claim(s). Under the Ruling, hospitals are not required to appeal a claim denial prior to billing Part B; therefore, there is an added cost for the Ruling (shown in Column (2)) in addition to the cost of effectuating the appeal decisions (Column (1)).

The Ruling is in effect until this proposed rule titled, ''Medicare Program; Part B Inpatient Billing in Hospitals''—is finalized, which will supersede the Ruling. The Ruling permits Part B inpatient billing as described previously for Part A hospital inpatient claims that were denied by a Medicare review contractor because the inpatient admission was determined not reasonable and necessary, as long as the denial was made: (1) While the Ruling is in effect; (2) prior to the effective date of the Ruling, but for which the timeframe to file an appeal has not expired; or (3) prior to the effective date of the Ruling, but for which an appeal is pending. In this proposed rule, we propose revisions to our Part B inpatient payment policy which would apply prospectively from the effective date of the finalized regulation for this proposed rule, and would differ in some respects from provisions of the Ruling, the purpose of which is to effectuate the appeal decisions. The key differences between the Ruling and the proposed policy are: (1) The proposed policy would apply the current timely filing restriction to the subsequent Part B inpatient claims rebilled after the Part A claim denial (that is, covered the Part B inpatient claims would only be paid if they are billed within 12 months of the date of service, which, as described previously, is not the case for the subsequent Part B inpatient claims rebilled under the Ruling); and (2) the proposed policy would apply when hospitals determine through self-audit that an inpatient admission is not reasonable and necessary (also subject to the timely filing limits).

The estimates for each column of Table 1 assume that the policy in the preceding column is already in place. Specifically, the estimated cost for the Ruling is relative to a baseline that includes the effect of the appeal decisions. Similarly, the estimated costs under this proposed rule are in relation to a baseline that includes both the

appeal decisions and the Ruling in place. We assumed short-stay inpatient utilization would increase by 1 percent as a result of the appeal decisions because hospitals would be able to rebill after an appeal. (There are currently no controls in place to monitor hospitals for changes in their inpatient growth trend and/or error rate.) In addition, we assumed short-stay inpatient utilization would increase by an additional 3 percent under the Ruling, since hospitals could rebill under Part B without the expense of an appeal. Due to the timely filing restrictions and lower Part B payment rate for rebilling, we assumed there would be no increase in any inpatient utilization resulting from the proposed regulatory change to restrict inpatient Part B billing to the timely filing requirement of 12 months from the date of service, relative to circumstances prior to the appeal decisions. The 12-month timely filing restriction imposed by the proposed regulation would greatly limit the capacity in which a hospital could rebill and thereby substantially reduces the number of Part B inpatient claims rebilled by hospitals, largely offsetting the higher costs arising from the appeal decisions and the Ruling. The amounts are shown in millions for CYs 2013 through 2017.

TABLE 1—ESTIMATED IMPACT ON MEDICARE PROGRAM EXPENDITURES FOR HOSPITAL SERVICES

[Current year dollars (in millions)]

Calendar year	Appeal decisions (1)	CMS ruling 1455-R (2)	Part B inpatient billing with 12-month timely filing restriction proposed policy (3)	Total impact (4)
2013	$290	$560	$0	$850
2014	410	770	−1,140	40
2015	410	780	−1,160	40
2016	430	830	−1,210	50
2017	460	870	−1,280	50

We note the following caveats relating to these cost estimates. First, the estimated financial effects are very sensitive to certain specifications of the proposed policy. For example, if the 12-month timely filing restriction on rebilling were to apply from the ''date of denial'', rather than from the ''date of service'', then the savings under the proposed policy would be much smaller than shown here. Second, the actual costs or savings would depend substantially on possible changes in behavior by hospitals, and such behavioral changes cannot be anticipated with certainty. The estimates are especially sensitive to the assumed utilization changes in inpatient and outpatient utilization. While we believe that these assumptions are reasonable, relatively small changes would have a disproportionate effect on the estimated net costs.

2. Estimated Impact on Beneficiaries

Table 2 contains the aggregate impacts on beneficiary out-of-pocket expenses for Parts A and B, as a result of the appeal decisions, the Ruling, and this proposed rule. These changes are mainly the result of the changes in beneficiary cost-sharing when inpatient services are paid under Part B rather than under Part A. The amounts are shown in millions for CYs 2013 through 2017.

TABLE 2—ESTIMATED IMPACT ON BENEFICIARIES' OUT-OF-POCKET EXPENSES FOR PART A AND PART B SERVICES

[Current year dollars (in millions)]

Calendar year	Part A	Part B	Total
Appeal Decisions			
2013	$20	$20	$40
2014	30	30	60
2015	30	30	60
2016	30	30	60
2017	30	30	60
CMS Ruling #1455-R			
2013	50	−40	10
2014	80	−60	20
2015	80	−60	20
2016	80	−60	20
2017	90	−70	20
Proposed Part B Inpatient Billing With 12-Month Timely Filing Restriction Policy			
2013	0	0	0
2014	−100	40	−60
2015	−100	40	−60
2016	−110	50	−60

TABLE 2—ESTIMATED IMPACT ON BENEFICIARIES' OUT-OF-POCKET EXPENSES FOR PART A AND PART B SERVICES—Continued

[Current year dollars (in millions)]

Calendar year	Part A	Part B	Total
2017	−110	50	−60
Total			
2013	70	−20	50
2014	0	20	20
2015	0	20	20
2016	0	20	20
2017	0	20	20

Note: Totals do not necessarily equal the sums of rounded components.

3. Effects on Other Providers

This proposed rule would not affect providers other than hospitals.

4. Effects on the Medicaid Program

This proposed rule will not affect expenditures under the Medicaid program.

D. Effects of Other Policy Changes

We are not proposing to make other changes in this proposed rule.

1. Anticipated Effects on the Medicare Program—Part B Claims and Appeals

Under this proposed rule, hospitals would be able to file Part B inpatient claims when payment cannot be made for an inpatient admission under Part A. As discussed in section II.G of this proposed rule, hospitals must submit the Part B inpatient claim to the appropriate contractor within the timely filing limits set forth in 42 CFR 424.44. Based on recent data related to claim denials, we anticipate some situations where the reasonable and necessary denial of the Part A inpatient admission is issued within 1 calendar year from the dates of service, and therefore hospitals would be able to file the Part B claim timely. Based on the level of billing under Part B as a result of recent ALJ and Medicare Appeals Council decisions, we estimate that approximately 25 percent of the Part A inpatient admissions denied by contractors would result in the submission of a Part B inpatient claim within the timely filing limits.

In addition, we anticipate that hospitals would likely increase their efforts to proactively identify admissions that should be billed under Part B through self-audit, which would decrease the number of Part A inpatient claims submitted, while increasing the number of Part B inpatient claims submitted. Since we do not have data to estimate the number of Part A admissions that hospitals are likely to self-audit in order to determine if they should be billed under Part B, we are soliciting comments from hospitals regarding the frequency with which self-audits are currently done and the anticipated frequency with which they would self-audit their inpatient admissions to submit Part B claims in a timely manner.

For those cases in which hospitals would not be able to submit a timely Part B claim when the Part A inpatient claim is denied by a Medicare contractor on a post-payment basis, hospitals and beneficiaries may continue to file appeals of the Part A claim denial per 42 CFR part 405 subpart I. We believe the Part B billing provisions proposed in this rule have the potential to lower Part A appeals volume due to the expanded opportunities for billing under Part B. Consequently, we are not anticipating any additional appeals as a result of this proposal. There would be some administrative costs incurred by MACs in verifying there is no pending Part A appeal prior to processing a Part B inpatient claim, but we believe that this would be similar to the existing administrative burden MACs incur with receiving and effectuating the appeal decisions that would have to be processed had the hospitals pursued their Part A appeal.

2. Anticipated Effects on Hospitals

The timely filing restrictions proposed on filing Part B claims will require hospitals to closely monitor the status of Part A claim denials so that they may submit Part B inpatient claims, when appropriate. While the timely filing limits would not always afford hospitals the opportunity to submit Part B claims, hospitals would still have the opportunity to appeal the Part A claim determination if they disagree with the contractor's decision. Also, since a Part B claim can only be processed if there is no pending Part A appeal, hospitals would be required to request withdrawal of pending appeals if they wish to submit any Part B claims. Hospitals are parties to claim appeals, and will be able to track pending appeals, including beneficiary appeals. They receive copies of decision letters when appeals have been completed, and receive copies of notices of hearing when an appeal gets to the ALJ level. Hospitals may also access the status of a claim appeal at the reconsideration level and hearing level through *www.q2a.com* by using the Medicare appeal number for the claim.

In addition, hospitals would have to refund amounts collected from the beneficiary (or third party insurer) for denied Part A claims if the hospital is determined to be liable under section 1879 of the Act for the denied items and services furnished to a beneficiary. This is not a new burden, as hospitals are required to make that refund absent any of the proposals in this rule. Hospitals that choose to submit Part B inpatient claims under the proposed process may also need to collect from the beneficiary the applicable deductible and copayment related to covered Part B items and services, and the cost of items excluded from Part B coverage. We believe that the burden to bill a Part B claim and collect any Part B copayments and deductibles is likely similar to or less than the burden hospitals currently face when appealing the denial of the Part A inpatient admission.

E. Alternatives Considered

We proposed that all hospitals and CAHs would be eligible to bill additional Part B inpatient services when a Part A claim is denied because the admission was not reasonable and necessary but hospital outpatient services would have been reasonable and necessary. In section II.D. of this proposed rule, we proposed to require that hospitals currently not billing the OPPS for Part B inpatient services (those

with no outpatient departments, or that have outpatient departments but submit no claims to Medicare Part B) would now bill the OPPS for these services. We considered allowing these hospitals to continue to bill Part B inpatient services for payment under their pre-OPPS payment methodology consistent with existing policy. We did not propose this policy because we believe their likely payments under the proposed Part B inpatient policy would outweigh their costs of implementing billing systems specific to the OPPS.

F. Accounting Statement and Table

Whenever a rule is considered a significant rule under Executive Order 12866, we are required to develop an Accounting Statement. This statement must state that we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed rule. We present this information in Table 3 as follows:

TABLE 3—ACCOUNTING STATEMENT TABLE: CLASSIFICATION OF ESTIMATED MEDICARE AND BENEFICIARES'-OUT-OF-POCKET EXPENDITURES FOR HOSPITAL SERVICES *

[In millions of 2013 dollars]

Category	Transfers		
	Units discount rate		Period covered
Annualized Monetized Transfers	7% −$877	3% −$896	CYs 2013–2017
From/To	Federal Government to Hospitals		
Annualized Monetized Transfers	7% −$44	3% −$45	CYs 2013–2017
From/To	Beneficiaries to Hospitals		

* These amounts are based on the conversion to constant year dollars of the 12-month timely filing restriction policy figures in Tables 1 and 2 of this proposed rule.

G. Conclusion

The analysis provided in this section of this proposed rule, together with the remainder of this preamble, provides a Regulatory Impact Analysis. In accordance with the provisions of Executive Order 12866, this rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 419

Hospitals, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as forth below:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

■ 1. The authority for part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(l) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr(b)(l)).

■ 2. Subpart A is amended by adding § 414.5 to read as follows:

§ 414.5 Hospital inpatient services paid under Medicare Part B when a Part A hospital inpatient claim is denied because the inpatient admission was not reasonable and necessary, but hospital outpatient services would have been reasonable and necessary in treating the beneficiary.

(a) If a Medicare Part A claim for inpatient hospital services is denied because the inpatient admission was not reasonable and necessary, or if a hospital determines under § 482.30(d) of this chapter § 485.641 of this chapter after a beneficiary is discharged that the beneficiary's inpatient admission was not reasonable and necessary, the hospital may be paid for any of the following Part B services that would have been reasonable and necessary if the beneficiary had been treated as a hospital outpatient rather than admitted as an inpatient, provided the beneficiary is enrolled in Medicare Part B:

(1) Services described in § 419.21(a) of this chapter that do not require an outpatient status.

(2) Ambulance services, as described in section 1861(v)(1)(U) of the Act, or, if applicable, the fee schedule established under section 1834(l) of Act.

(3) Except as provided in § 419.2(b)(11) of this chapter, prosthetic devices, prosthetics, prosthetic supplies, and orthotic devices.

(4) Except as provided in § 419.2(b)(10) of this chapter, durable medical equipment supplied by the hospital for the patient to take home.

(5) Clinical diagnostic laboratory services.

(6)(i) Effective December 8, 2003, screening mammography services; and

(ii) Effective January 1, 2005, diagnostic mammography services.

(7) Effective January 1, 2011, annual wellness visit providing personalized prevention plan services as defined in § 410.15 of this chapter.

(b) The claims for the Part B services filed under the circumstances described in this section must be filed in accordance with the time limits for filing claims specified in § 424.44(a) of this chapter.

PART 419—PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL OUTPATIENT DEPARTMENT SERVICES

■ 3. The authority citation for part 419 continues to read as follows:

Authority: Secs. 1102, 1833(t), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395l(t), and 1395hh).

■ 4. Section 419.21 is amended by revising the section heading to read as follows:

§ 419.21 Hospital services subject to the outpatient prospective payment system.

* * * * *

■ 5. Section 419.22 is amended as follows:

■ A. Revising the section heading.

■ B. In paragraph (h), by removing the phrase ''Outpatient therapy'' and adding in its place the term ''Therapy''.

■ C. In paragraph (j), removing the cross-reference ''§ 419.22(b)(11)'' and adding in its place ''§ 419.2(b)(11)''.

■ D. Adding paragraph (u).

The revision and addition reads as follows:

§ 419.22 Hospital services excluded from payment under the hospital outpatient prospective payment system.

* * * * *

(u) Outpatient diabetes self-management training.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 1, 2013.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: March 7, 2013.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2013–06163 Filed 3–13–13; 4:15 pm]

BILLING CODE 4120–01–P

Notices

Federal Register

Vol. 78, No. 52

Monday, March 18, 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.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 12, 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.

Comments regarding this information collection received by April 17, 2013 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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.

National Agricultural Statistics Service

Title: Generic Clearance of Survey Improvement Projects.

OMB Control Number: 0535–0248.

Summary of Collection: The primary objectives of the National Agricultural Statistics Service (NASS) are to prepare and issue State and national estimates of crop and livestock production, economic and environmental statistics related to agriculture and to conduct the Census of Agriculture under the general authority of Title 7 U.S.C. 2204. The purpose of this generic clearance is to allow NASS to respond quickly to emerging issues and data collection needs. NASS will continue to develop, test, evaluate, adopt, and use state-of-the-art techniques to cover a broad range of topics designed to improve NASS' data collection on agriculture.

Need and Use of the Information: NASS will use a number of survey improvement techniques, as appropriate to the individual project under investigation. These include focus groups, cognitive and usability laboratory and field techniques, exploratory interviews, behavior coding, respondent debriefing, pilot surveys and split-panel tests. The information gathered will be used mainly for questionnaire development and other research and evaluation. Additionally, NASS anticipates the benefit of increased response rates through improved survey design, a goal tied directly to addressing OMB requirements for higher response rates and measurement of non-response bias.

Description of Respondents: Farms.

Number of Respondents: 25,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 15,000.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–06081 Filed 3–15–13; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 12, 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.

Comments regarding this information collection received by April 15, 2013 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. 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.

Animal and Plant Health Inspection Service

Title: Importation of Mangoes from India.

OMB Control Number: 0579–0312.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701 *et seq),* the Secretary of Agriculture is authorized to carry out operations or measures to detect, eradicate, suppress, control., prevent, or retard the spread of plant pests new to the United States or not known to be widely distributed throughout the United States. The Animal and Plant Health Inspection Service (APHIS) regulates the importation of fruits and vegetables into the continental United States from certain parts of the world. In accordance with these regulations, mangoes from India may be imported into the United States only under certain conditions to prevent the introduction of plant pests into the United States.

Need and Use of the Information: APHIS amended the fruits and vegetables regulations to allow the importation into the continental United States of mangoes from India under certain conditions. As a condition of entry, the mangoes have to undergo irradiation treatment and be accompanied by a phytosanitary certificate with additional declaration statements providing specific information about treatment and orchards in which they were grown. Additional information collected by APHIS includes a preclearance workplan, trust fund agreement, monitoring and certification of treatments, and recordkeeping. Failure to collect this information would greatly hinder APHIS' ability to ensure that mangoes from India are not carrying plant pests.

Description of Respondents: Business or other for-profit; Federal Government (Foreign).

Number of Respondents: 152.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 2,685.

Title: Importation of Unshu Oranges from the Republic of Korea into the Continental United States.

OMB Control Number: 0579–0314.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701—*et seq.*), the Secretary of Agriculture is authorized to carry out operation or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests new to the United States or not known to be widely distributed throughout the United States. The Animal and Plant Health Inspection Service (APHIS) amended the regulations governing the importation of citrus fruit to allow fresh Unshu oranges from the Republic of Korea to be imported in the continental United States under certain conditions.

Need and Use of the Information: APHIS requires that some plants or plant products are accompanied by a phytosanitary inspection certificate that is completed by plant health officials in the originating or transiting country. APHIS uses the information on the certificate to determine the pest condition of the shipment at the time of inspection in the intensity of the inspection, APHIS conducts when the shipment arrives. Without this information, all shipments would need to be inspected very thoroughly, thereby requiring considerably more time. This would slow the clearance of international shipments.

Description of Respondents: Business or other for-profit; Federal Government.

Number of Respondents: 4.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 19.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–06090 Filed 3–15–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 12, 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 Nutrition Service

Title: Forms FNS–806–A, Claim for Reimbursement (National School Lunch and School Breakfast Programs), and FNS–806–B, Claim for Reimbursement (School Milk Program for Children), 7 CFR part 210, part 220, and part 215.

OMB Control Number: 0584–0284.

Summary of Collection: Section 3(a)(10) of the Child Nutrition Act of 1966, as amended, requires that State educational agencies to funds paid to the State during any fiscal year for the purposes of carrying out provisions of the Special Milk Program (SMP) in accordance with agreements approved by the Secretary. Section 4 of the Child Nutrition Act, as amended authorizes payments to the States to assist them to initiate, maintain, or expand nonprofit breakfast programs in schools, namely the School Breakfast Program (SBP). Section 3 of the Richard B. Russell National School Lunch Act (NSLA), as amended, authorizes funds for States to operate the National School Lunch Program. To fulfill the reimbursement requirements set forth in NSLP, SBP, and SMP regulations issued by the Secretary of Agriculture (& CFR 210.8, 215.10 and 220.11), the meal and milk data must be collected on forms FNS–806A and 806B respectively.

Need and Use of the Information: The information is collected electronically from school food authorities that participate in NSLP, School Breakfast Program (SBP), and SMP programs. The forms contain meal and cost data collected from authorized program participants. Also, these forms are essential part of the accounting system used by the subject programs to ensure proper reimbursement. This information is collected monthly because of the constant fluctuation in school enrollment and program participation. Program participants would not receive the monthly reimbursement earned and the Agency would lose program accountability, if this information were collect less frequently.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 210.

Frequency of Responses: Reporting: On occasion; Monthly.

Total Burden Hours: 1,260.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–06092 Filed 3–15–13; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection; Online Registration for FSA-sponsored Events and Conferences

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and organizations on an extension without revision of the information collection associated with online registration for FSA-sponsored events and conferences. The information collection is needed for FSA to obtain information from the respondents who register on the Internet to make payment and reservations to attend any FSA-sponsored conferences and events.

DATES: We will consider comments that we receive by May 17, 2013.

ADDRESSES: We invite you to submit comments on this notice. In your comments, include date, OMB control number, volume, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Farm Service Agency, USDA, Office of Chief Information Officer (OCIO), Jeff Kerby, 1400 Independence Avenue, Mail Stop 0584, SW., Washington, DC 20250.

Comments also should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be obtained from Jeff Kerby at the above address.

FOR FURTHER INFORMATION CONTACT: Jeff Kerby, Office of Chief Information Officer, (202) 720–1593. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Online Registration for FSA-sponsored Events and Conferences.

OMB Number: 0560–0226.

Expiration Date of Approval: 08/31/2013.

Type of Request: Extension with No Revision.

Abstract: The collection of information is necessary for people to register online to make payment and reservations to attend conferences and events. They can register on FSA's Online Registration site on the Internet. Respondents who do not have access to the Internet can register by mail or fax. The information is collected by the FSA employees who sponsor the conferences and events. FSA is collecting common elements from interested respondents such as name, organization, address, country, phone number, State, city or town, payment options (cash, credit card, check) and special accommodations requests. The respondents are mainly individuals who are interested in attending the FSA-sponsored conferences or events. The information is used to collect payment from the respondents and make hotel reservations and other special arrangements as necessary.

Estimate of Annual Burden: 15 minutes.

Type of Respondents: Individuals.

Estimated Number of Respondents: 900.

Estimated Average Number of Responses per Respondent: 1.

Estimated Total Annual Number of Responses: 900.

Estimated Total Annual Burden on Respondents: 225 hours.

We are requesting comments on all aspects of this information collection to help us to:

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

(2) Evaluate the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used;

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

(4) 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.

All responses to this notice, including name and addresses when provided, will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed on March 5, 2013.

Juan M. Garcia,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2013–06105 Filed 3–15–13; 8:45 am]

BILLING CODE 3410–05–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arkansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Arkansas Advisory Committee to the Commission will convene on Wednesday, April 10, 2013, at 1:00 p.m. and adjourn at approximately 4:30 p.m. (CST). The meeting will convene at University of Little Rock William H. Bowen School of Law, 1201 McMath Avenue, Little Rock, AR 72202. The purpose of the meeting is to discuss and finalize a summary report titled *''Who is Guarding Civil Rights in Arkansas? * * * The Need for a Civil Rights Agency''.*

Members of the public are entitled to submit written comments. The comments must be received in the regional office by April 26, 2013. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Persons wishing to email their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Farella E. Robinson, Regional Director, Central Regional Office, at (913) 551–1400, (or for hearing impaired TDD 913–551–1414), or by email to *frobinson@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised

to go to the Commission's Web site, *www.usccr.gov,* or to contact the Central Regional Office at the above email or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, March 13, 2013.

David Mussatt,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2013–06151 Filed 3–15–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Dan Tran Dang, 1010 W. Moore Street, Santa Ana, CA 92707; Order Denying Export Privileges

On April 17, 2012, in the U.S. District Court, Central District of California, Dan Tran Dang (''Dang'') was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2006 & Supp. IV 2010)) (''AECA''). Specifically, Dang was convicted of aiding and abetting and willfully exporting Generation 3 Night Vision Goggles, defense articles listed on the United States Munitions List, from the United States to Vietnam, without first obtaining from the U.S. Department of State a license or written authorization for such export. Dang was sentenced to one day of prison, (credit for time served), followed by three years of supervised release, and fined a special assessment of $500. Dang is also listed on the U.S. Department of State Debarred List.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act (''EAA''), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. app. § 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. app. § 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of Dang's conviction for violating the AECA, and have provided notice and an opportunity for Dang to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have not received a submission from Dang. Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Dang's export privileges under the Regulations for a period of 10 years from the date of Dang's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Dang had an interest at the time of his conviction.

Accordingly, it is hereby ordered:

I. Until April 17, 2022, Dan Tran Dang, with a last known address at: 1010 W. Moore Street, Santa Ana, CA 92707, and when acting for or on behalf of Dang, his representatives, assigns, agents or employees (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Dang by affiliation, ownership, control or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2012). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. §§ 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2012 (77 FR 49699 (August 16, 2012)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)).

V. This Order is effective immediately and shall remain in effect until April 17, 2022.

VI. In accordance with Part 756 of the Regulations, Dang may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to Dang. This Order shall be published in the **Federal Register**.

Issued this 12th day of March, 2013.

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. 2013–06135 Filed 3–15–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–909]

Certain Steel Nails From the People's Republic of China; Final Results of Third Antidumping Duty Administrative Review; 2010–2011

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') published its *Preliminary Results* of the antidumping duty order on certain steel nails from the People's Republic of China (''PRC'') on September 4, 2012.[1] The period of review (''POR'') is August 1, 2010, through July 31, 2011. We gave interested parties an opportunity to comment on the *Preliminary Results.* Based upon our analysis of the comments and information received, we made changes to the margin calculations for these final results. The final dumping margins are listed below in the ''Final Results of the Review'' section of this notice.

DATES: *Effective Date:* March 18, 2013.

FOR FURTHER INFORMATION CONTACT: Julia Hancock or Javier Barrientos, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1394 or (202) 482–2243, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 2012, the Department published the *Preliminary Results* of this administrative review.[2] The Department extended the deadline based on requests from interested parties, once for submission of case briefs and twice for rebuttal briefs.[3] On September 24, 2012, and October 2, 2012, interested parties submitted surrogate value (''SV'') comments and SV rebuttal comments.[4,5] On October 19, 2012, Petitioner, Stanley,[6] Hongli,[7] and Itochu[8] submitted case briefs.[9] On October 26, 2012, Petitioner, Stanley, Itochu, and Hongli submitted rebuttal briefs.[10]

As explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29 through October 30, 2012.[11] Thus, all deadlines in this segment of the proceeding have been extended by two days.[12] Additionally, on December 11, 2012, the Department extended the deadline in this proceeding by 60 days.[13] The revised deadline for the final results of this review is now March 5, 2013.

Scope of the Order

The merchandise covered by the order includes certain steel nails having a shaft length up to 12 inches. Certain steel nails subject to the order are currently classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 7317.00.55, 7317.00.65 and 7317.00.75. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.[14]

For a full description of the scope, *see* ''Certain Steel Nails from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the Third Antidumping Duty Administrative Review,'' dated concurrently with this notice (''Issues and Decision Memorandum'').

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties are addressed in the Issues and Decision Memorandum. A list of the issues which parties raised is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit (''CRU''), Room 7046 of the main Department of Commerce building, as well as electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the CRU. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

[1] *See Certain Steel Nails from the People's Republic of China: Preliminary Results and Partial Rescission of the Third Antidumping Duty Administrative Review,* 77 FR 53845 (September 4, 2012) (''*Preliminary Results*'').

[2] *See id.*

[3] *See* Memorandum for All Interested Parties, ''Antidumping Administrative Review of Certain Steel Nails from the People's Republic of China: Revised Case and Rebuttal Briefs Schedule,'' (September 13, 2012); *see also,* Memorandum to the File, Antidumping Administrative Review of Certain Steel Nails from the People's Republic of China: Revised Case and Rebuttal Briefs Schedule, (October 26, 2012).

[4] *See* ''Itochu Building Products Co., Inc. and Tianjin Jinghai County Hongli Industry & Business Co., Ltd., (''GDLSK Respondents'') Post-Preliminary Surrogate Value Submission: Third Antidumping Duty Administrative Review of Certain Steel Nails from the People's Republic of China,'' (September 24, 2012); ''Stanley's Certain Steel Nails from the People's Republic of China, Third Administrative Review; Post-Preliminary Results Surrogate Value Data,'' (September 24, 2012); and ''Mid-Continent Nail Corporation's (''Petitioner'')'s Post-Preliminary Surrogate Value Submission,'' (September 24, 2012).

[5] *See* ''GDLSK Respondents' Post-Preliminary Surrogate Value Rebuttal Submission: Third Antidumping Duty Administrative Review of Certain Steel Nails from the People's Republic of China,'' (October 2, 2012); ''Stanley's Certain Steel Nails from the People's Republic of China, Third Administrative Review; Post-Preliminary Results Rebuttal Surrogate Value Submission,'' (October 2, 2012); and ''Petitioner's Certain Steel Nails from the People's Republic of China: Submission of Rebuttal Surrogate Value Information'' (October 2, 2012).

[6] The Stanley Works (Langfang) Fastening Systems Co., Ltd., and Stanley Black & Decker, Inc. (collectively ''Stanley'').

[7] Tianjin Jinhai County Hongli Industry & Business Co., Ltd. (''Hongli'').

[8] Itochu Building Products Co., Ltd. (''Itochu'').

[9] *See* Stanley's Case Brief, (October 19, 2012); Itochu's and Hongli's Case Brief, (October 19, 2012); and Petitioner's Case Brief, (October 19, 2012).

[10] *See* Petitioners' Rebuttal Brief, (October 26, 2012); Stanley's Rebuttal Brief, (October 26, 2012); and Itochu's and Hongli's Rebuttal Brief, (October 26, 2012).

[11] *See* Memorandum to the Record from Paul Piquado, Assistant Secretary for Import Administration, regarding ''Tolling of Administrative Deadlines as a Result of the Government Closure During the Recent Hurricane; (October 31, 2012).

[12] *See* Memorandum to the Record from Paul Piquado, AS for Import Administration, regarding ''Tolling of Administrative Deadlines as a Result of the Government Closure During the Recent Hurricane Sandy''; (October 31, 2012).

[13] *See* Memorandum to Christian Marsh, ''Certain Steel Nails from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated December 11, 2012.

[14] *See Notice of Antidumping Duty Order: Certain Steel Nails From the People's Republic of China,* 73 FR 44961 (August 1, 2008).

Final Partial Rescission

In the *Preliminary Results,* the Department preliminarily rescinded the review with respect to 12 companies.[15] These companies reported that they had no shipments of subject merchandise to the United States during the POR. As we stated in the *Preliminary Results,* our examination of shipment data from U.S. Customs and Border Protection (''CBP'') confirmed that there were no entries of subject merchandise made by these companies during the POR.[16] Subsequent to the *Preliminary Results,* the Department did not receive any comments or information which indicated that these twelve companies made sales of subject merchandise to the United States during the POR. Therefore, pursuant to 19 CFR 351.213(d)(3), we are rescinding the administrative review with respect to these 12 companies.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we have made certain revisions to the margin calculations for Stanley and Hongli. For the reasons explained in the Issues and Decision Memorandum at Comment 1, we have now selected Thailand as the primary surrogate country.[17] [18]

Non-Market Economy Country

The PRC has been treated as a non-market economy (''NME'') in every proceeding conducted by the Department. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked by the administering authority. The Department has not revoked the PRC's status as an NME and, accordingly, applied the NME methodology.

Separate Rates

In our *Preliminary Results,* we determined that nineteen companies.[19] including Stanley and Hongli, met the criteria for separate rate status.[20] We have not received any information since the issuance of the *Preliminary Results* that provides a basis for reconsideration of these determinations. Therefore, the Department continues to find that the companies listed above meet the criteria for a separate rate.

Rate for Non-Selected Companies

In the *Preliminary Results,* and consistent with the Department's practice,[21] we assigned the separate-rate companies a rate calculated for the mandatory respondents whose rates were not zero, *de minimis,* or based entirely on facts available.[22] For the final results, we continue to find this approach to be consistent with the intent of section 735(c)(5)(A) of the Act and our use of section 735(c)(5)(A) of the Act as guidance when we establish the rate for respondents not examined individually in an administrative review.

PRC-Wide Rate and PRC-Wide Entity

For the PRC-Wide Entity, the Department used the PRC-wide rate of 118.04 percent from the most recently completed administrative review of this antidumping order.[23] Because this rate is the same as the PRC-Wide rate from previous reviews in this proceeding and nothing on the record of the instant review calls into question the reliability of the PRC-Wide rate, we find it appropriate to continue to apply the PRC-Wide rate of 118.04 percent.[24]

In the *Preliminary Results,* the Department determined that those companies which did not demonstrate eligibility for a separate rate are properly considered part of the PRC-Wide Entity. Since the *Preliminary Results,* none of the companies which did not file separate-rate applications or certifications submitted comments regarding these findings. Therefore, we continue to treat these entities as part of the PRC-Wide Entity. The following companies did not apply for separate rates and are thus considered to be part of the PRC-Wide Entity:

(1) Aironware (Shanghai) Co., Ltd.
(2) Beijing Hong Sheng Metal Products Co., Ltd.
(3) Beijing Hongsheng Metal Products Co., Ltd.
(4) Dagang Zhitong Metal Products Co., Ltd.
(5) Faithful Engineering Products Co., Ltd.
(6) Hebei Minmetals Co., Ltd.[25]
(7) Hong Kong Yu Xi Co., Ltd.
(8) Huanghua Shenghua Hardware Manufactory Factory
(9) Huanghua Xinda Nail Production Co., Ltd.
(10) Huanghua Yuftai Hardware Products Co., Ltd.
(11) Senco-Xingya Metal Products (Taicang) Co., Ltd.
(12) Shanghai Seti Enterprise International Co., Ltd.
(13) Shanghai Tengyu Hardware Tools Co., Ltd.
(14) Shanxi Tianli Enterprise Co., Ltd.
(15) Shaoxing Chengye Metal Producting Co., Ltd.
(16) Shouguang Meiqing Nail Industry Co., Ltd.
(17) Suntec Industries Co., Ltd.

[15] These companies include: (1) Jining Huarong Hardware Products Co., Ltd.; (2) Chiieh Yung Metal Ind. Corp.; (3) CYM (Nanjing) Nail Manufacture Co., Ltd.; (4) Qidong Liang Chyuan Metal Industry Co., Ltd.; (5) Certified Products International Inc. (''CPI''); (6) Besco Machinery Industry (Zhejiang) Co., Ltd.; (7) China Staple Enterprise (Tianjin) Co., Ltd.; (8) Zhejiang Gem-Chun Hardware Accessory Co., Ltd.; (9) PT Enterprise Inc.; (10) Shanxi Yuci Broad Wire Products Co., Ltd.; (11) Hengshui Mingyao Hardware & Mesh Products Co., Ltd. (''Hengshui Mingyao''); and, (12) Union Enterprise (Kunshan) Co., Ltd, collectively ''No Shipment Respondents.''

[16] *See Preliminary Results,* 77 FR at 53846.

[17] *See* Issues and Decision Memorandum and the company-specific analysis memoranda. *See* Memorandum to the File, ''Analysis for the Final Results of the Third Administrative Review of Certain Steel Nails from the People's Republic of China: Stanley'', (March 5, 2012); *See* Memorandum to the File, ''Analysis for the Final Results of the Third Administrative Review of Certain Steel Nails from the People's Republic of China: Hongli,'' (March 5, 2012).

[18] *See* Memorandum to the File, ''Certain Steel Nails from the People's Republic of China: Surrogate Values for the Final Results,'' (March 5, 2013) (''Surrogate Values Memorandum'').

[19] These companies include: Cana (Tianjin) Hardware Industrial Co., Ltd.; Shanghai Curvet Hardware Products Co., Ltd.; Huanghua Jinhai Hardware Products Co., Ltd.; Shanxi Tianli Industries Co., Ltd.; Shanghai Jade Shuttle Hardware Tools Co., Ltd.; Shandong Dinglong Import & Export Co., Ltd.; Tianjin Jinchi Metal Products Co., Ltd.; Huanghua Xionghua Hardware Products Co., Ltd.; Tianjin Zonglian Metals Ware Co., Ltd.; Shanghai Yueda Nails Industry Co., Ltd.; Hebei Cangzhou New Century Foreign Trade Co., Ltd.; Zhaoqing Harvest Nails Co., Ltd.; Mingguang Abundant Hardware Products Co., Ltd.; Nanjing Yuechang Hardware Co., Ltd.; S-Mart (Tianjin) Technology Development Co. Ltd.; SDC International Australia Pty., Ltd.; Shanxi Hairui Trade Co., Ltd.; Guangdong Foreign Trade Import & Export Corporation; and Qingdao D&L Group Ltd.

[20] *See Preliminary Results,* 77 FR at 53845.

[21] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 52273, 52275 (September 9, 2008) and accompanying Issues and Decision Memorandum at Comment 6.

[22] *See, e.g., Fourth Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results, Preliminary Partial Rescission of Antidumping Duty Administrative Review and Intent Not To Revoke, In Part,* 75 FR 11855, 11859 (March 12, 2010).

[23] *See Certain Steel Nails from the People's Republic of China: Final Results and Final Partial Rescission of Second Administrative Review,* 77 FR 12556 (March 1, 2012).

[24] *See Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 51940, 51942 (August 19, 2011) (where the Department used the PRC-wide rate from the previous review).

[25] Hebei, submitted an untimely no shipment certification that the Department has rejected. Therefore, this company is considered to be part of the PRC-Wide Entity. *See Preliminary Results,* 77 FR at 53846. *See also* letter to Hebei, ''Certain Steel Nails from the People's Republic of China (''PRC''): Rejection of Untimely Certification of No Shipments,'' dated July 16, 2012.

(18) Suzhou Xingya Nail Co., Ltd.
(19) Suzhou Yaotian Metal Products Co., Ltd.
(20) Shandex Industrial Inc.
(21) Tianjin Chentai International Trading Co., Ltd.
(22) Tianjin Jurun Metal Products Co., Ltd.
(23) Tianjin Xiantong Material & Trade Co., Ltd.
(24) Tradex Group, Inc.
(25) Wintime Import & Export Corporation Limited of Zhongshan
(26) Wuhu Shijie Hardware Co., Ltd.
(27) Wuhu Sin Lan De Industrial Co., Ltd.
(28) Wuxi Chengye Metal Products Co., Ltd.
(29) Xuzhou CIP International Group Co., Ltd.
(30) Yitian Nanjing Hardware Co., Ltd.

Final Results of the Review

The dumping margins for the POR are as follows:

Manufacturer/exporter	Weighted average margin (percent)
(1) The Stanley Works (Langfang) Fastening Systems Co., Ltd. and Stanley Black & Decker	0.00
(2) Tianjin Jinghai County Hongli Industry and Business Co., Ltd. ("Hongli")	33.40
(3) Certified Products International Inc.	33.40
(4) Cana (Tianjin) Hardware Industrial Co., Ltd.	33.40
(5) Shanghai Curvet Hardware Products Co., Ltd.	33.40
(6) Huanghua Jinhai Hardware Products Co., Ltd.	33.40
(7) Shanxi Tianli Industries Co., Ltd.	33.40
(8) Shanghai Jade Shuttle Hardware Tools Co., Ltd.	33.40
(9) Shandong Dinglong Import & Export Co., Ltd.	33.40
(10) China Staple Enterprise (Tianjin) Co., Ltd.	33.40
(11) Tianjin Jinchi Metal Products Co., Ltd.	33.40
(12) Huanghua Xionghua Hardware Products Co., Ltd.	33.40
(13) Tainjin Zhonglian Metals Ware Co., Ltd.	33.40
(14) Shanghai Yueda Nails Industry Co., Ltd.	33.40
(15) Hebie Cangzhou New Century Foreign Trade Co., Ltd.	33.40
(16) Zhaoqing Harvest Nails Co., Ltd.	33.40
(17) Mingguan Abundant Hardware Products Co., Ltd.	33.40
(18) Nanjing Yuechang Hardware Co., Ltd.	33.40
(19) S-Mart (Tianjin) Technology Development Co., Ltd.	33.40
(20) SDC International Australia Pty., Ltd.	33.40
(21) Shanxi Hairui Trade Co., Ltd.	33.40
(22) Guangdong Foreign Trade Import & Export Corporation	33.40
(23) Qingdao D&L Group Ltd.	33.40
PRC-Wide Rate	118.04

Assessment Rates

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of these final results of this review. In accordance with 19 CFR 351.212(b)(1), we are calculating importer- (or customer-) specific assessment rates for the merchandise subject to this review. In these preliminary results, the Department applied the assessment rate calculation method adopted in *Final Modification for Reviews, i.e.,* on the basis of monthly average-to-average comparisons using only the transactions associated with that importer with offsets being provided for non-dumped comparisons.[26] Where the respondent has reported reliable entered values, we calculate importer- (or customer-) specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). Where an importer- (or customer-) specific *ad valorem* rate is greater than *de minimis,* we will apply the assessment rate to the entered value of the importers'/customers' entries during the POR, pursuant to 19 CFR 351.212(b)(1).

Where we do not have entered values for all U.S. sales to a particular importer/customer, we calculate a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).[27] To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer- (or customer-) specific *ad valorem* ratios based on the estimated entered value. Where an importer- (or customer-) specific *ad valorem* rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[28]

For the companies receiving a separate rate that were not selected for individual review, we will assign an assessment rate based on the rate we calculated for the mandatory respondent whose rate was not *de minimis,* as discussed above. We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate. Finally, for those companies for which this review has been rescinded, the Department intends to assess antidumping duties at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for

[26] *See Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8103 (February 14, 2012) ("*Final Modifications for Reviews*").

[27] *See* 19 CFR 351.212(b)(1).

[28] *See* 19 CFR 351.106(c)(2).

consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate established in the final results of review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have a separate rate, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 118.04 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. The deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: March 5, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I—Issues and Decision Memorandum

General Issues

Comment 1: Selection of Surrogate Country

A. Economic Comparability
B. Significant Producer
C. Reliability of Data from Ukraine
D. Data Considerations
  a. Parties' Contentions: Surrogate Financial Ratios
  b. Parties' Contentions: Steel Plate
  c. Parties' Contentions: Steel Wire Rod
  d. Parties' Contentions: Labor

Comment 2: Calculation Adjustments to the Surrogate Financial Ratios

A. L.S. Industry
B. Bangkok Fastening

Comment 3: Miscellaneous Surrogate Values

A. Hot-Dipped Galvanized Wire
B. Metal Dies
C. Zinc Chloride
D. Sodium Chloride
E. Sodium Sulfate
F. Ammonium Citrate
G. Plastic Quick Lock Tags
H. Volatile Anti-Corrosion Paper
I. Borax Powder
J. Chemical-based Nail Coating
K. Glass Balls
L. Hydrochloric Acid
M. Sodium Bicarbonate
N. Trisodium Phosphate
O. Corrugated Cardboard Tray
P. Plastic Core
Q. Plastic Strapping
R. Brokerage and Handling

Respondent-Specific Issues

Comment 4: Valuation of Hongli's Dies

Comment 5: Application of Partial Adverse Facts Available To Hongli's Factors of Production(''Fop'')

Comment 6: Reporting of Stanley's Movement Costs

Comment 7: Stanley's Inland Freight

[FR Doc. 2013–06173 Filed 3–15–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–904]

Certain Activated Carbon From the People's Republic of China: Continuation of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (''the Department'') and the International Trade Commission (''ITC'') that revocation of the antidumping duty order on certain activated carbon from the People's Republic of China (''PRC'') would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of the antidumping duty order.

DATES: Effective Date: March 18, 2013.

FOR FURTHER INFORMATION: Bob Palmer, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–9068.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2012, the Department initiated a sunset review of the antidumping duty order on certain activated carbon from the PRC, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act'').[1] As a result of its review, the Department determined that revocation of the antidumping duty order on certain activated carbon from the PRC would likely lead to a continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins likely to prevail should the order be revoked.[2] On March 1, 2013, the ITC published its determination, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on certain activated carbon from the PRC would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

[1] *See Initiation of Five-Year (''Sunset'') Review,* 77 FR 12562 (March 1, 2012).

[2] *See Certain Activated Carbon From the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order,* 77 FR 33420 (June 6, 2012).

[3] *See Certain Activated Carbon from China: Determination,* 78 FR 13894 (March 1, 2013); *see*

Scope of the Order

The merchandise subject to the order is certain activated carbon. Certain activated carbon is a powdered, granular, or pelletized carbon product obtained by ''activating'' with heat and steam various materials containing carbon, including but not limited to coal (including bituminous, lignite, and anthracite), wood, coconut shells, olive stones, and peat. The thermal and steam treatments remove organic materials and create an internal pore structure in the carbon material. The producer can also use carbon dioxide gas (CO_2) in place of steam in this process. The vast majority of the internal porosity developed during the high temperature steam (or CO_2 gas) activated process is a direct result of oxidation of a portion of the solid carbon atoms in the raw material, converting them into a gaseous form of carbon.

The scope of the order covers all forms of activated carbon that are activated by steam or CO_2, regardless of the raw material, grade, mixture, additives, further washing or post-activation chemical treatment (chemical or water washing, chemical impregnation or other treatment), or product form. Unless specifically excluded, the scope of the order covers all physical forms of certain activated carbon, including powdered activated carbon (''PAC''), granular activated carbon (''GAC''), and pelletized activated carbon.

Excluded from the scope of the order are chemically activated carbons. The carbon-based raw material used in the chemical activation process is treated with a strong chemical agent, including but not limited to phosphoric acid, zinc chloride, sulfuric acid or potassium hydroxide, that dehydrates molecules in the raw material, and results in the formation of water that is removed from the raw material by moderate heat treatment. The activated carbon created by chemical activation has internal porosity developed primarily due to the action of the chemical dehydration agent. Chemically activated carbons are typically used to activate raw materials with a lignocellulosic component such as cellulose, including wood, sawdust, paper mill waste and peat.

To the extent that an imported activated carbon product is a blend of steam and chemically activated carbons, products containing 50 percent or more steam (or CO_2 gas) activated carbons are within the scope, and those containing more than 50 percent chemically activated carbons are outside the scope. This exclusion language regarding blended material applies *only* to mixtures of steam and chemically activated carbons.

Also excluded from the scope are reactivated carbons. Reactivated carbons are previously used activated carbons that have had adsorbed materials removed from their pore structure after use through the application of heat, steam and/or chemicals.

Also excluded from the scope is activated carbon cloth. Activated carbon cloth is a woven textile fabric made of or containing activated carbon fibers. It is used in masks and filters and clothing of various types where a woven format is required.

Any activated carbon meeting the physical description of subject merchandise provided above that is not expressly excluded from the scope is included within the scope. The products subject to the order are currently classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 3802.10.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Continuation of the Order

As a result of the determinations by the Department and the ITC that revocation of the antidumping duty order would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping order on certain activated carbon from the PRC. U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year (''sunset'') review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: March 11, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–06033 Filed 3–15–13; 8:45 am]

BILLING CODE 3510–DS–P

also Certain Activated Carbon from China: Investigation No. 731–TA–1103 USITC Publication 4381 (February 2013).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Draft Damage Assessment, Restoration Plan and Environmental Assessment for the T/B DBL 152 Oil Spill in the Gulf of Mexico

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Availability of a Draft Damage Assessment and Restoration Plan and Environmental Assessment for the T/B DBL 152 Oil Spill in the Gulf of Mexico, Request for Comments.

SUMMARY: NOAA, the Natural Resource Trustee for this incident has written a Draft Damage Assessment and Restoration Plan and Environmental Assessment (Draft DARP/EA) that describes proposed alternatives for restoring natural resource injuries resulting from the November 11, 2005, T/B DBL 152 oil spill in the Gulf of Mexico. The purpose of this notice is to inform the public of the availability of the Draft DARP/EA and to seek written comments on the proposed restoration alternative.

FOR FURTHER INFORMATION CONTACT: Chris Plaisted, NOAA/GCNR, 501 W. Ocean Blvd., Suite 4470, Long Beach, CA 90802, 562–980–4080.

Written comments on the Draft DARP/EA should be submitted to: Chris Plaisted, NOAA/GCNR, FAX: 562–980–4065. Alternatively, comments may be submitted electronically at *www.regulations.gov* (Docket I.D.: NOAA–NMFS–2013–0034). All comments received, including names and addresses will become a part of the administrative record.

The Draft DARP/EA is available at: *http://www.darrp.noaa.gov/southeast/dbl152/admin.html.* Comments on the Draft DARP/EA must be submitted in writing on or before April 15, 2013.

SUPPLEMENTARY INFORMATION: On November 11, 2005, while en route from Houston, Texas, to Tampa, Florida, the integrated tug-barge unit comprised of the tugboat ''Rebel'' and the double-hull Tank Barge (T/B) DBL 152 struck the submerged remains of a pipeline service platform in the Gulf of Mexico that collapsed during Hurricane Rita. An

estimated 45,846 barrels of oil (1,925,532 gallons) were discharged into federal waters of the Gulf of Mexico as a result of this incident, most of which sank to the ocean floor. Of this volume, an estimated 2,355 barrels (98,910 gallons) were recovered by divers. In total, an estimated 43,491 barrels (1,826,622 gallons) of oil remained unrecovered at the time submerged oil cleanup operations were discontinued in January 2006.

Government agencies responded to the incident to supervise and assist in clean-up and begin assessing the impact of the spill on natural resources. Under the federal Oil Pollution Act (OPA), the National Oceanic and Atmospheric Administration (NOAA), of the Department of Commerce, is responsible for restoring natural resources injured by the T/B DBL 152 oil spill with funding from either the responsible party (RP) or, where an RP does not exist or exceeds its limit of liability, the Oil Spill Liability Trust Fund (OSLTF) administered by the U.S. Coast Guard (USCG).

NOAA, acting as Trustee on the public's behalf, has conducted a natural resource damage assessment (NRDA) to determine the nature and extent of natural resource losses resulting from this incident and the restoration actions needed to restore these losses. The NRDA was conducted using the OPA NRDA regulations found at 15 CFR part 990. On the basis of data provided by the NRDA, NOAA prepared this Draft Damage Assessment and Restoration Plan/Environmental Assessment (Draft DARP/EA) to consider restoration alternatives. The purpose of presenting this Draft DARP/EA for comment is to inform the public about the NRDA and restoration planning efforts that were conducted following the oil spill. Further, the Trustees seek comments on the proposed restoration alternative presented in this Draft DARP/EA, and will consider written comments received during the public comment period before developing the Final Restoration Plan (Final Plan).

An injury assessment conducted by NOAA determined that the primary injury resulting from this incident was to offshore benthic habitat. This conclusion is described in greater detail in the Draft DARP/EA.

NOAA considered various restoration alternatives to compensate the public for spill-related injuries and to restore similar types of natural resource services as those that were provided by the resources injured by the spill. The preferred restoration alternative identified by NOAA is an estuarine shoreline protection and salt marsh restoration project at the Texas Chenier Plain National Wildlife Refuge Complex. The project area is located in Galveston Bay, Texas. The project is designed to protect shoreline with a protective structure consisting of rip-rap habitat. The project will be designed so that salt marsh habitat will be created behind the breakwater.

USCG has determined that the RP has exceeded its limit of liability under OPA. Therefore, the Final DARP/EA will be submitted to the Oil Spill Liability Trust Fund (OSLTF) as part of a claim for funds to implement the selected restoration project. The OSLTF is administered by the USCG and is maintained through fees paid by industry.

Administrative Record: Pursuant to the OPA NRDA regulations, the Trustees have developed an Administrative Record to support their restoration planning decisions and inform the public of the basis of their decisions. Additional information and documents, including public comments received on this Draft DARP/EA, the Final Restoration Plan, and other related restoration planning documents, will also become part of the Administrative Record. The documents comprising the public record (Administrative Record) can be viewed at *http://www.darrp.noaa.gov/southeast/dbl152/admin.html.*

Dated: February 22, 2013.

David G. Westerholm,

Director, Office of Response and Restoration, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2013–06137 Filed 3–15–13; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Draft Damage Assessment and Restoration Plan and Environmental Assessment for Natural Resource Injuries and Service Losses Associated With the 2010 Oil Spill From the Adak Petroleum Bulk Fuel Facility on Adak Island, Alaska

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Availability of the Draft Damage Assessment and Restoration Plan and Environmental Assessment for natural resource injuries and service losses associated with the 2010 oil spill from the Adak Petroleum Bulk Fuel Facility on Adak Island, located in the central Aleutian Islands of Alaska.

SUMMARY: Pursuant to the requirements of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 *et seq.* and related sections of Alaska law, including AS 46.03.760 and AS 46.03.780, notice is hereby given that a document entitled, ''Damage Assessment and Restoration Plan and Environmental Assessment for the January 11, 2010 Adak Petroleum Diesel Spill'' (Draft DARP/EA) is being made available for public review.

DARP/EA: This Draft DARP/EA has been approved by the State and Federal Natural Resource Trustee agencies (the Trustees) including: the National Oceanic and Atmospheric Administration (NOAA), acting on behalf of the Department of Commerce; United States Fish & Wildlife Service, acting on behalf of the U.S. Department of the Interior (USFWS/DOI); and the State of Alaska's Department of Environmental Conservation, Department of Fish and Game, Department of Natural Resources and Department of Law. The Trustees act on behalf of the public under OPA and State law to protect and restore natural resources injured or lost as a result of unpermitted oil discharges.

Public Review and Comment: The publication of this notice opens the period for public comment on the draft DARP/EA. All comments must be submitted no later than thirty (30) days after the publication date in this **Federal Register**. Comments may be sent electronically or in written form. Written comments may be sent to: Ian Zelo, NOAA Oil Spill Coordinator, Assessment and Restoration Division, 7600 Sand Point Way NE., Seattle, WA 98115. Electronic comments may be sent directly to: *ian.j.zelo@noaa.gov.*

Please provide a subject line, indicating that your comments relate to restoration planning for the Adak 2010 oil spill. Any comments received will become part of the administrative record and will be available to the public. Please be aware that your entire comment—including your personal identifying information—may be made publicly available.

FOR FURTHER INFORMATION CONTACT: The Draft Final DARP/EA is available for downloading at *http://www.darrp.noaa.gov* (by clicking on the document title in the Adak DARP/EA announcement on that page). Copies of the DARP/EA are also available for review at: (1) UAA Consortium Library ARLIS, Library Building, Suite 111, 3211 Providence Drive, Anchorage, AK 99508, *Reference Desk,* (907) 27–ARLIS; and 2) Z.J. Loussac Public Library, 3600

Denali Street, Anchorage, AK 99503, *Reference Desk,* (907) 343–2975. The document will also be posted at: Adak City Hall, 100 Mechanic's Way, Adak, Alaska 99546. Requests for further information can be obtained through Ian Zelo at the contact information provided above.

SUPPLEMENTARY INFORMATION: The Adak January 11, 2010 oil spill involved releases of up to 142,000 gallons of diesel fuel from the Adak Petroleum Bulk Fuel facility into Helmet Creek and related waterways. Diesel contamination was observed in streams and wetlands that provide habitat for pink salmon, Dolly Verden, juvenile fish, and marine birds. The Trustees assessed natural resource injuries and resource services losses in the spill area, while outlining potential restoration alternatives and considering the direct, indirect, and cumulative impacts of these alternatives on the human environment. The Trustees are working with Adak Petroleum to resolve its liability through the restoration and rehabilitation of natural resources injured by the oil discharge.

Proposed Restoration: The Draft DARP/EA identifies the restoration projects that the Trustees propose to restore resources and services to compensate the public for assessed losses. The Trustees' restoration objectives are: (1) Improve Helmet Creek, restore juvenile and adult fish passage, (2) Improve water quality, and (3) Allow for improved habitat for salmonid species. The Trustees considered various alternative projects to address these restoration goals, which are outlined in this DARP/EA. However, after reviewing these alternatives, the Trustees agreed that the proposed restoration alternative best met their objectives. The proposed preferred alternative includes the following projects:

(1) Remove two trash racks from culverts in Helmet Creek.

(2) Restore grade of creek for fish passage.

(3) Improve low flow passage inside the Creek's culvert and above the tank farm.

(4) Remove debris from the creek and floodplain.

(5) Revegetate banks to minimize disturbance and provide bank stability.

Adak Petroleum, as the Responsible Party for this spill, will be funding and implementing restoration at the Helmet Creek site, under Trustee supervision. This restoration work will be undertaken in accordance with the terms of a Consent Decree that will resolve the liability of the Responsible Party for natural resource damages under OPA and State law.

Dated: March 5, 2013.

Christopher C. Cartwright,

Associate Assistant Administrator for Management and CFO/CAO, Ocean Services and Coastal Zone Management.

[FR Doc. 2013–06140 Filed 3–15–13; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC558

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Tilefish Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on April 2, 2013 from 10 a.m. until noon.

ADDRESSES: The meeting will be held via webinar with a telephone-only connection option. Details on webinar registration and telephone-only connection details are available at: *http://www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for the Monitoring Committee to review and, if necessary, revise the current management measures designed to achieve the recommended Golden Tilefish catch limits for 2014.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: March 12, 2013.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–06100 Filed 3–15–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC555

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of SEDAR 32 pre-assessment and Assessment Workshop webinars for South Atlantic blueline tilefish and gray triggerfish.

SUMMARY: The SEDAR 32 assessments of the South Atlantic stocks of blueline tilefish and gray triggerfish will consist of a series of workshops and webinars: a Data Workshop; a series of Assessment webinars; and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: A SEDAR 32 pre-assessment webinar will be held on Wednesday, April 17, 2013 from 9 a.m. until 1 p.m. Additional Assessment Workshop webinars will be held from 1 p.m. until 5 p.m. on the following dates: May 8, 2013; May 23, 2013 (optional); June 5, 2013; June 19, 2013 (optional); June 26, 2013; July 10, 2013; and July 24, 2013 (optional). Optional webinar dates will be used as required by the Assessment Panel during the assessment process.

ADDRESSES: *Meeting address:* The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julia Byrd at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julia Byrd, SEDAR Coordinator; telephone: (843) 571–4366; email: *julia.byrd@safmc.net*.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the pre-assessment webinar and Assessment Workshop webinars are as follows:

1. Participants will employ assessment models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions. The assessment models will use the recommended datasets from the Data Workshop.

2. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

These meetings are accessible to people with disabilities. Requests for auxiliary aids should be directed to the SEDAR office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: March 12, 2013.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–06098 Filed 3–15–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC572

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Meeting and Workshop of the South Atlantic Fishery Management Council (SAFMC) Scientific and Statistical Committee (SSC).

SUMMARY: The SAFMC will hold a meeting of its SSC along with a workshop to consider modifications to the Acceptable Biological Catch (ABC) control rule. See **SUPPLEMENTARY INFORMATION**.

DATES: The SSC Workshop will be held from 1 p.m., Monday, April 8, 2013 until 3 p.m., Tuesday April 9, 2013. The SSC Meeting will be held from 3 p.m. Tuesday, April 9, 2013 until 3 p.m., Thursday, April 11, 2013.

ADDRESSES: *Meeting address:* The meeting and workshop will be held at the Crowne Plaza Airport Hotel, 4831 Tanger Outlet Boulevard, North Charleston, SC 29418; telephone: (800) 503–5762 or (843) 744–4422; fax: (843) 744–4472.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: The items of discussion in the individual meeting agendas are as follows:

SSC Workshop Agenda, Monday, April 8, 2013, 1 p.m. Until Tuesday, April 9, 2013, 3 p.m.

1. Discuss the ABC control rule, with emphasis on methods for deriving ABC recommendations for stocks that have reliable catch data only.

2. Review catch and biological data for unassessed stocks and recommend modifications to the ABC control rule in order to improve the use of such information when providing ABC recommendations.

SSC Meeting, Tuesday, April 9, 2013, 3 p.m. Until Thursday, April 11, 2013, 3 p.m.

1. Discuss stock assessments of black sea bass, cobia, and Spanish mackerel.

2. Discuss Fishery Management Plan (FMP) amendments that are under development for corals and snapper grouper species.

3. Review Council research priorities.

4. Discuss the SAFMC ABC control rule and ABC recommendations for unassessed stocks.

5. Discuss the stock assessment peer review processes.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

These meetings are accessible to people with disabilities. Requests for

auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: March 13, 2013.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–06180 Filed 3–15–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC571

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Council and its advisory entities will hold public meetings.

DATES: The Pacific Council and its advisory entities will meet April 5–11, 2013. The Pacific Council meeting will begin on Saturday, April 6, 2013 at 8 a.m., reconvening each day through Thursday, April 11, 2013. All meetings are open to the public, except a closed session will be held at the end of the scheduled agenda on Sunday, April 7 to address litigation and personnel matters. In addition to the formal, numbered agenda items, there will be an informal Council informational session on the morning of Saturday, April 6 to help with understanding issues and objectives associated with adopting a final Pacific Coast Fishery Ecosystem Plan. The Pacific Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: Meetings of the Pacific Council and its advisory entities will be held at the Sheraton Portland Airport Hotel, 8235 NE. Airport Way, Portland, OR 97220; telephone: (503) 281–2500.

Council address: Pacific Fishery Management Council, 7700 NE. Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: (503) 820–2280 or (866) 806–7204 toll free; or access the Pacific Council Web site, *http://www.pcouncil.org* for the current meeting location, proposed agenda, and meeting briefing materials.

SUPPLEMENTARY INFORMATION: The following items are on the Pacific Council agenda, but not necessarily in this order.

A. Call to Order
  1. Opening Remarks
  2. Roll Call
  3. Executive Director's Report
  4. Approve Agenda
B. Administrative Matters
  1. Formalize Council Action From March 2013
  2. Expansion of Gulf of the Farallones and Cordell Bank National Marine Sanctuaries
  3. Ocean Observation Initiative Report
  4. Legislative Matters
  5. Approval of Council Meeting Minutes
  6. Membership Appointments and Council Operating Procedures
  7. Future Council Meeting Agenda and Workload Planning
C. Open Comment Period
  1. Comments on Non-Agenda Items
D. Groundfish Management
  1. NMFS Report
  2. Status of Rationalized Fishery
  3. Alternatives for Stock Complex Restructuring
  4. Implementation of the 2013 Pacific Whiting Fishery Under the U.S.-Canada Pacific Whiting Agreement
  5. Consider Barotrauma Device Mortality Rates
  6. Groundfish Essential Fish Habitat Synthesis Report and Request for Proposals
  7. Trawl Rationalization Trailing Actions—Electronic Monitoring Regulatory Process
  8. Consideration of Inseason Adjustments
E. Salmon Management
  1. Tentative Adoption of 2013 Ocean Salmon Management Measures for Analysis
  2. Clarify Council Direction 2013 Management Measures
  3. Salmon Amendment 18—Essential Fish Habitat Revision
  4. Final Action on 2013 Management Measures
  5. Methodology Review Process and Preliminary Topic Selection for 2013
  6. Columbia Basin Situation Assessment
F. Habitat
  1. Current Habitat Issues
G. Pacific Halibut Management
  1. Final Incidental Catch Recommendations for Salmon Troll and Fixed Gear Sablefish Fisheries
H. Ecosystem Based Management
  1. Final Fishery Ecosystem Plan
I. Coastal Pelagic Species Management
  1. Sardine Harvest Parameters Workshop Report
  2. Sardine Fishery Start Date
J. Enforcement Issues
  1. Preliminary Vessel Monitoring System Declaration Regulations

Schedule of Ancillary Meetings

Friday, April 5, 2013

Groundfish Management Team 8 a.m.
Groundfish Advisory Subpanel 8 a.m.
Habitat Committee 8 a.m.
Model Evaluation Workgroup 8 a.m.
Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Scientific and Statistical Committee 8 a.m.
Tribal Policy Group 8 a.m.
Legislative Committee 2 p.m.

Saturday, April 6, 2013

Washington State Delegation 7 a.m.
California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Enforcement Consultants 8 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Scientific and Statistical Committee 8 a.m.
Tribal Policy Group As Needed
Tribal and Washington Technical Group As Needed
Chair's Reception 6 p.m.

Sunday, April 7, 2013

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Ecosystem Advisory Subpanel 8 a.m.
Essential Fish Habitat Review Committee 8 a.m.
Groundfish Management Team 8 a.m.
Groundfish Advisory Subpanel 8 a.m.
Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Scientific & Statistical Committee Economic Subcmte 8 a.m.
Enforcement Consultants As Needed
Tribal Policy Group As Needed
Tribal and Washington Technical Group As Needed

Monday, April 8, 2013

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Ecosystem Advisory Subpanel 8 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Enforcement Consultants As Needed
Tribal Policy Group As Needed
Tribal and Washington Technical Group As Needed

Tuesday, April 9, 2012

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Coastal Pelagic Species Advisory Subpanel 8 a.m.
Coastal Pelagic Species Management Team 8 a.m.
Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Enforcement Consultants As Needed

Tribal Policy Group As Needed

Tribal and Washington Technical Group As Needed

Wednesday, April 10, 2013

California State Delegation 7 a.m.

Oregon State Delegation 7 a.m.

Washington State Delegation 7 a.m.

Coastal Pelagic Species Advisory Subpanel 8 a.m.

Coastal Pelagic Species Management Team 8 a.m.

Salmon Advisory Subpanel 8 a.m.

Salmon Technical Team 8 a.m.

Enforcement Consultants As Needed

Tribal Policy Group As Needed

Tribal and Washington Technical Group As Needed

Thursday, April 11, 2013

California State Delegation 7 a.m.

Oregon State Delegation 7 a.m.

Washington State Delegation 7 a.m.

Tribal Policy Group As Needed

Tribal and Washington Technical Group As Needed

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: March 13, 2013.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–06179 Filed 3–15–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC537

Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT); Spring Species Working Group Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Advisory Committee (Committee) to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) announces its annual spring meeting on April 3–5, 2013. The Committee will meet with its Technical Advisors to discuss matters relating to ICCAT, including the 2012 Commission meeting results; research and management activities; global and domestic initiatives related to ICCAT; the Atlantic Tunas Convention Act-required report on any identification of countries that are diminishing the effectiveness of ICCAT; the results of meetings of the Committee's Species Working Groups; and other matters relating to the international management of ICCAT species.

DATES: The open sessions of the Committee meeting will be held on April 3, 2013, 4:30 p.m. to 7 p.m.; April 4, 2013, 8:30 a.m. to 2:30 p.m.; and April 5, 2013, 9 a.m. to 1:15 p.m. Closed sessions will be held on April 4, 2013, 2:45 p.m. to 5:30 p.m., and on April 5, 2013, 8 a.m. to 9 a.m.

ADDRESSES: The meeting will be held at the Sheraton Hotel, 8777 Georgia Ave., Silver Spring, MD 20910. The phone number is (301) 589–0800.

FOR FURTHER INFORMATION CONTACT: Rachel O'Malley at (301) 427–8373.

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet in open session to receive and discuss information on the 2012 ICCAT meeting results and U.S. implementation of ICCAT decisions; NMFS research and monitoring activities; global and domestic initiatives related to ICCAT; the Atlantic Tunas Convention Act-required consultation on any identification of countries that are diminishing the effectiveness of ICCAT; the results of the meetings of the Committee's Species Working Groups; and other matters relating to the international management of ICCAT species. The public will have access to the open sessions of the meeting, but there will be no opportunity for public comment. A copy of the agenda is available from the Committee's Executive Secretary upon request (see **FOR FURTHER INFORMTION CONTACT** above).

The Committee will meet in its Species Working Groups for part of the afternoon of April 4, 2013, and for one hour on the morning of April 5, 2013. These sessions are not open to the public, but the results of the species working group discussions will be reported to the full Advisory Committee during the Committee's open session on April 5, 2013.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Rachel O'Malley at (301) 427–8373 at least 5 days prior to the meeting date.

Dated: March 13,2013.

Elizabeth McLanahan,

Acting Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. 2013–06188 Filed 3–15–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC556

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) Observer Advisory Committee (OAC) will meet in Anchorage, AK.

DATES: The meeting will be held on April 1, 2013, from 3 p.m. to 8 p.m.

ADDRESSES: The meeting will be held at the Anchorage Hilton Hotel, Dillingham/Katmai Room, 500 West 3rd Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Diana Evans, Council staff, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The agenda items include: receive an update on the implementation of the Observer Program for the current year; receive an update on national electronic monitoring (EM) initiatives; and review an outline of the EM strategic plan that the Alaska Fishery Science Center is developing, and provide comments and recommendations to the Council.

The Agenda is subject to change, and the latest version will be posted at *http://www.alaskafisheries.noaa.gov/npfmc/*.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: March 12, 2013.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–06099 Filed 3–15–13; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination Under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (''CAFTA–DR Agreement'')

AGENCY: The Committee for the Implementation of Textile Agreements.

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA–DR Agreement.

DATES: *Effective Date:* March 18, 2013.

SUMMARY: The Committee for the Implementation of Textile Agreements (''CITA'') has determined that certain laminated composite fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA–DR countries. The product will be added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3651.

For Further Information On-Line: http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf under ''Approved Requests,'' Reference number: 176.2013.02.06.Fabric.SoriniSametforPatagonia Inc.

SUPPLEMENTARY INFORMATION:

Authority: The CAFTA–DR Agreement; Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (''CAFTA–DR Implementation Act''), Public Law 109–53; the Statement of Administrative Action, accompanying the CAFTA–DR Implementation Act; and Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

Background

The CAFTA–DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA–DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA–DR Agreement provides that this list may be modified pursuant to Article 3.25(4)–(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. *See* Annex 3.25 of the CAFTA–DR Agreement; *see also* section 203(o)(4)(C) of the CAFTA–DR Implementation Act.

The CAFTA–DR Implementation Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA–DR Implementation Act for modifying the Annex 3.25 list. Pursuant to this authority, on September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list of products determined to be not commercially available in the territory of any Party to CAFTA–DR (*Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement,* 73 FR 53200) (''CITA's procedures'').

On February 6, 2013, the Chairman of CITA received a request for a Commercial Availability determination (''Request'') from Sorini Samet & Associates on behalf of Patagonia, Inc. for certain laminated composite fabric, as specified below. On February 7, 2013, in accordance with CITA's procedures, CITA notified interested parties of the Request, which was posted on the dedicated Web site for CAFTA–DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply (''Response'') must be submitted by February 21, 2013, and any Rebuttal Comments to a Response must be submitted by February 27, 2013, in accordance with sections 6 and 7 of CITA's procedures. No interested entity submitted a Response to the Request advising CITA of its objection to the Request and its ability to supply the subject product.

In accordance with section 203(o)(4)(C) of the CAFTA–DR Implementation Act, and section 8(c)(2) of CITA's procedures, as no interested entity submitted a Response objecting to the Request and providing an offer to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA–DR Agreement.

The subject product has been added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated Web site for CAFTA–DR Commercial Availability proceedings.

SPECIFICATIONS: Laminated Composite Fabric

HTS: 6001.22.0000; 6001.92.0000

Overall Fabric Description: Laminated polyester woven/micro velour grid one-way stretch with polyurethane laminate.

Overall Fabric Construction: Woven face/polyurethane laminate/circular knit velour with grid pattern.

Overall Fiber Content: 90–96% polyester/4–10% spandex (includes both face and backer fabric).

Overall weight: 287–351 grams per square meter.

Overall width: Selvedge: 150.4–154.4 cm; Minimum cuttable: 145.3–149.3 cm.

Finishing: Bonded laminate with durable water repellency on the face fabric, and optional on back.

Performance criteria for overall fabric:

Air permeability (ASTM D737): maximum 1.5

Durable water repellency (AATCC 22): greater than or equal to 80 before wash.

Face Fabric Details:

Construction: plain weave
Fiber content: 81–87% polyester/13–19% spandex
Warp fiber content/denier: 73–77 denier polyester; 39–41 denier spandex
Filling fiber content/denier: 73–77 denier polyester; 39–41 denier spandex
Characteristics of yarns: core spun spandex (filament)
Thread count: 49–52 picks per cm × 43–45 picks per cm
Weight: 121.5–148.5 grams per square meter
Width: Selvedge: 150.4–154.4 cm; Minimum cuttable: 145.3–149.3 cm
Coloration: piece dyed
Finishing: bonded laminate with durable water repellency
Other special characteristics: 2-way stretch

Backer Fabric Details:

Construction: circular knit with a dropped stitch for the grid-brushed looped pile
Fiber content: 100% polyester
Warp fiber content/denier: 145–155 denier polyester
Filling fiber content/denier: 73–77 denier polyester
Characteristics of yarns: filament
Knitting gauge: 27–29
Weight: 140.4–171.6 grams per square meter
Width: Selvedge: 150.4–154.4 cm; Minimum cuttable: 145.3–149.3 cm
Coloration: piece dyed
Finishing: Optional bonded laminate with durable water repellency
Performance criteria:
Pilling (ASTM D3512): minimum 3
Other special characteristics: grid pattern
Laminate Description and performance: Bonded laminate with durable water repellency (air permeability maximum 1.5 per ASTM D737)
NOTE (ranges): Ranges in these specifications reflect a tolerance from the target figures of up to three percent for fiber content, yarn size, and thread count; up to ten percent for weight; and up to five centimeters (two inches) for width.
NOTE (processing variations): The yarn size designations describe a range of yarn specifications for yarn before knitting, dyeing and finishing of the fabric. They are intended as specifications to be followed by the mill in sourcing yarn used to produce the fabric. Dyeing, finishing, and knitting can alter the characteristic of the yarn as it appears in the finished fabric. These specifications therefore include yarns appearing in the finished fabric as finer or coarser than the designated yarn sizes provided that the variation occurs after processing of the greige yarn and production of the fabric. The specifications for the fabric apply to the fabric itself prior to cutting and sewing of the finished garment. Such processing may alter the measurements.

Kim Glas,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2013–06181 Filed 3–15–13; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination Under the Textile and Apparel Commercial Availability Provision of the United States-Colombia Trade Promotion Agreement (''U.S.-Colombia TPA'')

AGENCY: The Committee for the Implementation of Textile Agreements.

ACTION: Determination to add a product in unrestricted quantities to Annex 3–B of the U.S.-Colombia TPA.

DATES: *Effective Date:* March 18, 2013.

SUMMARY: The Committee for the Implementation of Textile Agreements (''CITA'') has determined that certain laminated composite fabric, as specified below, is not available in commercial quantities in a timely manner in the territory of either the United Sates or Colombia. The product will be added to the list in Annex 3–B of the U.S.-Colombia TPA in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3651.

For Further Information On-Line: http://web.ita.doc.gov/tacgi/PeruTPAReqTrack.nsf/ColombiaPetitionsApproved under ''Approved Requests,'' Reference number: 1.2013.02.11.Fabric.SoriniSametforPatagoniaInc.

SUPPLEMENTARY INFORMATION:

Authority: The U.S.-Colombia TPA; Section 203(o)(4) of the United States-Colombia Trade Promotion Agreement Implementation Act (''U.S.-Colombia TPA Implementation Act''), Public Law 112–42 (October 21, 2011); the Statement of Administrative Action, accompanying the U.S.-Colombia TPA Implementation Act; and Presidential Proclamation No. 8818, 77 FR 29519 (May 18, 2012).

Background

The U.S.-Colombia TPA provides a list in Annex 3–B for fabrics, yarns, and fibers that the Parties to the U.S.-Colombia TPA have determined are not available in commercial quantities in a timely manner in the territory of any Party. The U.S.-Colombia TPA and the U.S.-Colombia TPA Implementation Act provides that this list may be modified when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. *See* Annex 3–B of the U.S.-Colombia TPA; *see also* section 203(o)(4) of the U.S.-Colombia TPA Implementation Act.

The U.S.-Colombia TPA Implementation Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamation 8818, the President delegated to CITA the authority under section 203(o)(4) of the U.S.-Colombia TPA Implementation Act for modifying the Annex 3–B list. Pursuant to this authority, on November 6, 2012, CITA published interim procedures it would follow in considering requests to modify the Annex 3–B list of products determined to be not commercially available in the territory of either the United States or Colombia (*Interim Procedures for Considering Requests Under the Commercial Availability Provision of the United States-Colombia Trade Promotion Agreement,* 77 FR 66588) (''CITA's procedures'').

On February 11, 2013, the Chairman of CITA received a request for a Commercial Availability determination (''Request'') from Sorini Samet & Associates LLC on behalf of Patagonia, Inc. for certain laminated composite fabric, as specified below. On February 12, 2013, in accordance with CITA's procedures, CITA notified interested parties of the Request, which was posted on the dedicated Web site for CAFTA–DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply (''Response'') must be submitted by February 25, 2013, and any Rebuttal Comments to a Response must be submitted by March 1, 2013, in accordance with sections 6 and 7 of CITA's procedures. No interested entity submitted a Response to the Request

advising CITA of its objection to the Request and its ability to supply the subject product.

In accordance with section 203(o)(4) of the U.S.-Colombia TPA Implementation Act, and section 8(c)(2) of CITA's procedures, as no interested entity submitted a Response objecting to the Request and providing an offer to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3–B of the U.S.-Colombia TPA.

The subject product has been added to the list in Annex 3–B of the U.S.-Colombia TPA in unrestricted quantities. A revised list has been posted on the dedicated Web site for U.S.-Colombia TPA Commercial Availability proceedings.

SPECIFICATIONS: Laminated Composite Fabric

HTS: 6001.22.0000; 6001.92.0000

Overall Fabric Description: Laminated polyester woven/micro velour grid one-way stretch with polyurethane laminate.

Overall Fabric Construction: Woven face/polyurethane laminate/circular knit velour with grid pattern.

Overall Fiber Content: 90–96% polyester/4–10% spandex (includes both face and backer fabric).

Overall weight: 287–351 grams per square meter.

Overall width: Selvedge: 150.4–154.4 cm; Minimum cuttable: 145.3–149.3 cm.

Finishing: Bonded laminate with durable water repellency on the face fabric, and optional on back.

Performance criteria for overall fabric:

- Air permeability (ASTM D737): maximum 1.5
- Durable water repellency (AATCC 22): greater than or equal to 80 before wash.

Face Fabric Details:

- Construction: plain weave
- Fiber content: 81–87% polyester/13–19% spandex
- Warp fiber content/denier: 73–77 denier polyester; 39–41 denier spandex
- Filling fiber content/denier: 73–77 denier polyester; 39–41 denier spandex
- Characteristics of yarns: core spun spandex (filament)
- Thread count: 49–52 picks per cm x 43–45 picks per cm
- Weight: 121.5–148.5 grams per square meter
- Width: Selvedge: 150.4–154.4 cm; Minimum cuttable: 145.3–149.3 cm
- Coloration: piece dyed
- Finishing: bonded laminate with durable water repellency
- Other special characteristics: 2-way stretch

Backer Fabric Details:

- Construction: circular knit with a dropped stitch for the grid-brushed looped pile
- Fiber content: 100% polyester
- Warp fiber content/denier: 145–155 denier polyester
- Filling fiber content/denier: 73–77 denier polyester
- Characteristics of yarns: filament
- Knitting gauge: 27–29
- Weight: 140.4–171.6 grams per square meter
- Width: Selvedge: 150.4–154.4 cm; Minimum cuttable: 145.3–149.3 cm

Coloration: piece dyed

Finishing: Optional bonded laminate with durable water repellency

Performance criteria:

- Pilling (ASTM D3512): minimum 3
- Other special characteristics: grid pattern

Laminate Description and performance: Bonded laminate with durable water repellency (air permeability maximum 1.5 per ASTM D737)

NOTE (ranges): Ranges in these specifications reflect a tolerance from the target figures of up to three percent for fiber content, yarn size, and thread count; up to ten percent for weight; and up to five centimeters (two inches) for width.

NOTE (processing variations): The yarn size designations describe a range of yarn specifications for yarn before knitting, dyeing and finishing of the fabric. They are intended as specifications to be followed by the mill in sourcing yarn used to produce the fabric. Dyeing, finishing, and knitting can alter the characteristic of the yarn as it appears in the finished fabric. These specifications therefore include yarns appearing in the finished fabric as finer or coarser than the designated yarn sizes provided that the variation occurs after processing of the greige yarn and production of the fabric. The specifications for the fabric apply to the fabric itself prior to cutting and sewing of the finished garment. Such processing may alter the measurements.

Kim Glas,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2013–06176 Filed 3–15–13; 8:45 am]

BILLING CODE 3510–DS–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this Notice announces that the Information Collection Request (''ICR'') abstracted below has been forwarded to the Office of Management and Budget (''OMB'') for review and comment. The ICR describes the nature of the information collection and its expected costs and burden. It also includes the actual data collection instruments, if any.

DATES: Comments must be submitted on or before April 17, 2013.

ADDRESSES: Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses below. Please refer to OMB Control No. 3038–0012 in any correspondence. Submit comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, by the following method:

Mail: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street NW., Washington, DC 20503. And: Commodity Futures Trading Commission (''CFTC''), Attention: Gary J. Martinaitis, Division of Market Oversight, by any of the following methods:

- *Agency Web Site: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* c/o Melissa Jurgens, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same address as for ''Mail,'' above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: Please submit your comments to both OMB and CFTC (for CFTC, use only one of the methods listed above), and identify all comments as pertaining to the renewal of OMB Control No. 3038–0012.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received, without change, to *www.cftc.gov.* You should submit only information that you wish to make

available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in the Commission's regulations at 17 CFR 145.9.

FOR FURTHER INFORMATION CONTACT: Gary J. Martinaitis, Division of Market Oversight, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581; (202) 418–5209; FAX: (202) 418–5527; *gmartinaitis@cftc.gov* (refer to OMB Control No. 3038–0012).

SUPPLEMENTARY INFORMATION:

Title: Futures Volume, Open Interest, Price, Deliveries and Exchange of Futures for Physicals (OMB Control No. 3038–0012). This is a request for extension of a currently approved information collection.

Abstract: Commission Regulation 16.01, 17 CFR 16.01, requires the U.S. futures exchanges to publish daily information on the items listed in the title of the collection. The information required by this rule is in the public interest and is necessary for market surveillance. This rule was promulgated pursuant to the Commission's rulemaking authority contained in Sections 5 and 5a of the Commodity Exchange Act, 7 U.S.C. 7 and 7a (2000).

The **Federal Register** Notice for the 60-day comment period on this request for approval of an extension of a previously-approved information collection was published on December 31, 2012.[1]

Burden statement: The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR Section	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
16.01	15	On occasion	3750	0.5	1,875

Authority: 44 U.S.C. 3501 *et seq.*

Dated: March 13, 2013.

Melissa D. Jurgens,

Secretary of the Commission.

[FR Doc. 2013–06148 Filed 3–15–13; 8:45 am]

BILLING CODE 6351–01–P

[1] *See* Agency Information Collection Activities: Notice of Intent to Renew Collection, Futures Volume, Open Interest, Price, Deliveries and Exchange of Futures for Physicals, 77 FR 77038.

DEPARTMENT OF EDUCATION

List of Correspondence From October 1, 2012, Through December 31, 2012

AGENCY: Office of Special Education and Rehabilitative Services; Department of Education.

ACTION: Notice.

SUMMARY: The Secretary is publishing the following list of correspondence from the U.S. Department of Education (Department) to individuals during the previous quarter. The correspondence describes the Department's interpretations of the Individuals with Disabilities Education Act (IDEA) or the regulations that implement the IDEA. This list and the letters or other documents described in this list, with personally identifiable information redacted, as appropriate, can be found at: *http://www2.ed.gov/policy/speced/guid/idea/index.html.*

FOR FURTHER INFORMATION CONTACT: Jill Harris or Mary Louise Dirrigl. Telephone: (202) 245–7453.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), you can call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of this list and the letters or other documents described in this list in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting Jill Harris or Mary Louise Dirrigl at (202) 245–7453.

SUPPLEMENTARY INFORMATION:

The following list identifies correspondence from the Department issued from October 1, 2012, through December 31, 2012. Under section 607(f) of the IDEA, the Secretary is required to publish this list quarterly in the **Federal Register**. The list includes those letters that contain interpretations of the requirements of the IDEA and its implementing regulations, and it may also include letters and other documents that the Department believes will assist the public in understanding the requirements of the law. The list identifies the date and topic of each letter, and it provides summary information, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been redacted, as appropriate.

Part B—Assistance For Education of All Children With Disabilities

Section 612—State Eligibility

Topic Addressed: Least Restrictive Environment

○ Letter dated December 4, 2012, to Texas Education Agency General Counsel David Anderson, regarding how the least restrictive environment requirements in Part B of the IDEA apply to local educational agencies (LEAs) when children with disabilities ages 16 through 18 who have dropped out of high school choose to enroll in the National Guard Youth Challenge Program.

Topic Addressed: Children in Private Schools

○ Letter dated November 7, 2012 to Advocate's Legal Clinic attorney Michael Boswell, reiterating the Department's previous guidance regarding the requirements in Part B of the IDEA that apply to children with disabilities enrolled by their parents in private schools through a State funded scholarship program.

Section 613—Local Educational Agency Eligibility

Topic Addressed: Use Of Federal Funds

○ Letter dated November 14, 2012, to University of Maine—Farmington, Chair of the Division of Rehabilitation Services and Special Education, Dr. Rick Dale, regarding an LEA's use of funds under Part B of the IDEA for coordinated early intervening services.

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Initial Evaluations

○ Letter dated November 20, 2012, to New York State

Education Department officials, Pat Geary and James P. DeLorenzo, regarding difficulties faced by LEAs in meeting the initial evaluation and other relevant timelines in Part B of the IDEA due to the emergency situation caused by Hurricane Sandy.

Section 615—Procedural Safeguards

Topic Addressed: Impartial Due Process Hearings

○ Letter dated November 7, 2012, to Texas attorney Dorene Philpot, regarding whether certain Texas' due process procedural rules are consistent with Part B of the IDEA.

○ Letter dated November 30, 2012, to New Jersey attorneys Judith A. Gran and Catherine Merino Reisman, regarding State criteria governing the attendance of certain LEA employees at a due process hearing when the parent chooses not to open the hearing to the public.

Topic Addressed: Maintenance of Current Educational Placement

○ Letter dated October 18, 2012, to New York attorney Steven L. Goldstein, regarding the requirement to maintain a child's current educational placement during the pendency of administrative or judicial proceedings brought under Part B of the IDEA.

Part C—Infants and Toddlers With Disabilities

Section 639—Procedural Safeguards

Topic Addressed: Early Intervention Records

○ Letter dated December 7, 2012, from the Department's Family Policy Compliance Office to District of Columbia Office of the State Superintendent of Education Assistant Attorney General Carmela N. Edmunds, regarding the status of early intervention records of infants and toddlers with disabilities under Part C of the IDEA.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: March 12, 2013.

Michael Yudin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–06183 Filed 3–15–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

International Energy Agency Meetings

AGENCY: Department of Energy.

ACTION: Notice of meetings.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet on March 25 and 26, 2013, at the headquarters of the IEA in Paris, France in connection with a meeting of the IEA's Standing Group on Emergency Questions (SEQ), and on March 27, 2013, in connection with a joint meeting of the SEQ and the IEA's Standing Group on the Oil Market (SOM).

DATES: March 25–27, 2013.

ADDRESSES: 9, rue de la Fédération, Paris, France.

FOR FURTHER INFORMATION CONTACT: Diana D. Clark, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202–586–3417.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meetings is provided:

Meetings of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, on March 25, 2013, beginning at 2:00 p.m., and continuing on March 26, 2013, at 9:30 a.m.; and on March 27, 2013, commencing at 9:30 a.m. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ) commencing at 2 p.m. on March 25 and continuing on March 26 commencing at 9:30 a.m., and at a joint meeting of the SEQ and the IEA's Standing Group on the Oil Markets (SOM) on March 27 commencing at 9:30 a.m. The IAB will also hold a preparatory meeting among company representatives at the same location at 8:30 a.m. on March 26. The agenda for this preparatory meeting is to review the agenda for the SEQ meeting.

The agenda of the SEQ meeting on March 25 and 26 is under the control of the SEQ. It is expected that the SEQ will adopt the following agenda:

1. Adoption of the Agenda
2. Approval of the Summary Record of the 137th Meeting
3. Status of Compliance With IEP Stockholding Commitments
4. Emergency Response Review Program
   —Schedule of Emergency Response Reviews
   —Questionnaire Response of Estonia
   —Emergency Response Review of Turkey
   —Emergency Response Review of Austria
   —Emergency Response Review of the United States
   —Emergency Response Review of Japan
5. Electricity Security
6. Emergency Response Exercise 6
   —Evaluation of ERE6
7. Emergency Response Measures
   —Costs and Benefits of Stockholding (Final Report)
8. Model of Short-Term Energy Security (MOSES)
9. Policy and Other Developments in Member Countries
   —Mid-Term Emergency Response Review of Greece
   —Mid-Term Emergency Response Review of New Zealand
10. Report From the Industry Advisory Board
11. Activities With International Organizations and Non-Member Countries
   —China
   —India
   —Indonesia
   —Thailand
12. Documents for Information
   —Emergency Reserve and Net Import Situations of IEA Member Countries on October 1, 2012
   —Emergency Reserve and Net Import Situations of IEA Member Countries on January 1, 2013
   —Base Period Final Consumption: 3Q 2011–3Q 2012
   —Base Period Final Consumption: 1Q2012–4Q 2012
   —Updated Emergency Contacts List
   —2012 Net Imports of IEA Member Countries
12. Other Business
   —Tentative Schedule of Next Meetings:
   —June 24 (pm)–26, 2013
   —October 16–18, 2013

The agenda of the joint meeting of the SEQ and the SOM on March 27 is under

the control of the SEQ and the SOM. It is expected that the SEQ and the SOM will adopt the following agenda:

1. Adoption of the Agenda
2. Approval of the Summary Record of the October 2012 Joint Session
3. Reports on Recent Oil Market and Policy Developments in IEA Countries
4. The Current Oil Market Situation
5. The North American Supply Revolution: Challenges Ahead
6. Understanding Chinese Apparent Oil Demand
7. Potential Implications of the European Refining Crisis
8. Middle East Energy Exports and the Arab Spring
9. The Turmoil in North Africa and the Oil Industry: The Case of Libya
10. Other Business
—Tentative schedule of upcoming SEQ and SOM meetings:
June 24 (pm)–26, 2013
October 16–October 18, 2013

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), the meetings of the IAB are open to representatives of members of the IAB and their counsel; representatives of members of the IEA's Standing Group on Emergency Questions and the IEA's Standing Group on the Oil Markets; representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, the SOM, or the IEA.

Issued in Washington, DC, March 12, 2013.

Diana D. Clark,

Assistant General Counsel for International and National Security Programs.

[FR Doc. 2013–06147 Filed 3–15–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Energy Information Administration (EIA), U.S. Department of Energy (DOE).

ACTION: Agency information collection activities: Submission for OMB review; comment request.

SUMMARY: The EIA has submitted an information collection request to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.) for review and reinstatement of the Form DOE–887, ''DOE Customer Surveys,'' OMB Control Number 1901–0302, which expired on December 31, 2012. Form DOE–877 will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study.

DATES: Comments must be filed by April 17, 2013. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Written comments should be sent to Chad Whiteman, DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503, or by email at *chad_s_whiteman@omb.eop.gov.* Alternatively, Mr. Whiteman may be contacted by telephone at (202) 395–4718.

A copy of the written comments should be sent to Colleen Blessing, EI–40, U.S. Energy Information Administration, 1000 Independence Avenue SW., Washington, DC 20585, or by email at *colleen.blessing@eia.gov.* Alternatively, Ms. Blessing may be contacted by telephone at (202) 586–6482.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be made to Colleen Blessing at the contact information above.

SUPPLEMENTARY INFORMATION: This section contains:

1. *OMB Number:* 1901–0302.
2. *Information Collection Request Title:* DOE–887, ''DOE Customer Survey''.
3. *Type of Request:* Reinstatement without change of a previously approved collection.
4. *Purpose:* The feedback obtained from this collection will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.
5. *Annual Estimated Number of Respondents:* 12,500.
6. *Annual Estimated Number of Total Responses:* 50,000.
7. *Annual Estimated Number of Burden Hours:* 12,500.
8. *Annual Estimated Reporting and Recordkeeping Cost Burden:* $0. EIA estimates that there are no additional costs to respondents associated with the surveys other than the costs associated with the burden hours.

Statutory Authority: Executive Order 12862 of September 11, 1993, ''Setting Customer Service Standards,'' § 1 58 FR, 48257 (September 14, 1993).

Issued in Washington, DC, on March 8, 2013.

Renee Miller,

Acting Director, Office of Survey Development and Statistical Integration, U.S. Energy Information Administration.

[FR Doc. 2013–06149 Filed 3–15–13; 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: RP13–675–000.
Applicants: Dominion Transmission, Inc.,Dominion South Pipeline Company, LP,Dominion Cove Point LNG, LP.
Description: Dominion Transmission, Inc., et al. submits Request for Temporary Waiver of Certain NAESB Standards and Commission Regulations.
Filed Date: 3/5/13.
Accession Number: 20130305–5198.
Comments Due: 5 p.m. ET 3/13/13.

Docket Numbers: RP13–676–000.
Applicants: East Tennessee Natural Gas, LLC.
Description: Scheduling Flexibility to be effective 6/1/2013.
Filed Date: 3/7/13.
Accession Number: 20130307–5143.
Comments Due: 5 p.m. ET 3/19/13.

Docket Numbers: RP13–677–000.
Applicants: Saltville Gas Storage Company L.L.C.
Description: Scheduling Flexibility to be effective 6/1/2013.
Filed Date: 3/7/13.
Accession Number: 20130307–5144.
Comments Due: 5 p.m. ET 3/19/13.

Docket Numbers: RP13–678–000.

Applicants: Trunkline Gas Company, LLC.

Description: Trunkline Gas Company, LLC submits Precedent Agreement with Sabine Pass Liquefaction, LLC.

Filed Date: 3/7/13.

Accession Number: 20130307–5194.

Comments Due: 5 p.m. ET 3/19/13.

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: RP13–571–001.

Applicants: Columbia Gas Transmission, LLC.

Description: Non-Conforming Remediation Errata to be effective 3/18/2013.

Filed Date: 3/7/13.

Accession Number: 20130307–5182.

Comments Due: 5 p.m. ET 3/19/13.

Docket Numbers: RP12–1013–002.

Applicants: Ruby Pipeline, L.L.C.

Description: Ruby Pipeline, L.L.C. submits tariff filing per 154.203: Compliance in Docket No. RP12–1013. Proceeding (Fuel) to be effective 4/7/2013.

Filed Date: 3/8/13.

Accession Number: 20130308–5195.

Comments Due: 5 p.m. ET 3/20/13.

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 11, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–06094 Filed 3–15–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR13–42–000]

Peoples TWP LLC; Notice of Petition for Rate Approval

Take notice that on March 1, 2013, Peoples TWP LLC (Peoples TWP) filed a Rate Election pursuant to 284.123(b)(1) of the Commissions regulations proposing to utilize rates that are the same as those contained in Peoples TWP's Rate Schedule FTS—Field Transportation Service for comparable intrastate service on file with the Pennsylvania Public Utility Commission. In addition, Peoples TWP filed its initial Statement of Operating Conditions, 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 Monday, March 18, 2013.

Dated: March 11, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–06058 Filed 3–15–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9792–1]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by Preserve Pepe'ekeo Health and Environment in the United States District Court for the District of Hawaii: *Preserve Pepe'ekeo Health and Environment* v. *EPA,* No. CV 12 00520 ACK–RLP (D. HI). On September 19, 2012, Preserve Pepe'ekeo Health and Environment filed a complaint that EPA failed to perform its nondiscretionary duty pursuant to section 505(b)(2) of the Act, 42 U.S.C. 7661d(b)(2), to grant or deny, within 60 days after it was filed, a petition requesting that EPA object to a proposed title V operating permit for the Hu Honua Bioenergy Facility issued by the Hawai'i Department of Health to Hu Honua. Under the terms of the proposed consent decree, EPA would be required to sign its response to Plaintiff's petition by August 7, 2013, or within 30 days of the entry of this Consent Decree, whichever is later.

DATES: Written comments on the proposed consent decree must be received by April 17, 2013.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2012–0477, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–

ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Susan Stahle, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–1272; fax number (202) 564–5603; email address: *stahle.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree would settle Plaintiff's claims in a title V deadline suit concerning an administrative petition dated August 29, 2011, to object to a permit issued by the Hawai'i Department of Health to Hu Honua to operate a Bioenergy Facility, a power generating facility that is proposed to be built in Pepe'ekeo, Hawai'i. The proposed consent decree would require EPA to sign its response to Plaintiff's petition by August 7, 2013, or within 30 days of the entry of this Consent Decree, whichever is later. Once EPA has signed its response, EPA would be required to expeditiously deliver notice of its response to the Office of the Federal Register for publication. In addition, the proposed consent decree would require EPA to promptly transmit its determination to Preserve Pepe'ekeo Health and Environment and, if such determination contains an objection in whole or in part, to the State of Hawai'i, Department of Health. Under the proposed consent decree, once EPA has met these obligations, and any claims by Plaintiffs for costs of litigation have been resolved pursuant to the process provided in the proposed consent decree, the court would dismiss the suit with prejudice.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to the consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

Direct your comments to the official public docket for this action under Docket ID No. EPA–HQ–OGC–2012–0477 which contains a copy of the consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use the *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: March 12, 2013.

Lorie J. Schmidt,

Associate General Counsel.

[FR Doc. 2013–06194 Filed 3–15–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9791–3]

Twenty-Fifth Update of the Federal Agency Hazardous Waste Compliance Docket

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; republication.

SUMMARY: This Notice replaces the Notice published on November 6, 2012 in the **Federal Register** because that previous Notice inadvertently omitted

the last page of *Additions* in the Tables section.

Since 1988, the Environmental Protection Agency (EPA) has maintained a Federal Agency Hazardous Waste Compliance Docket (''Docket'') under Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Section 120(c) requires EPA to establish a Docket that contains certain information reported to EPA by Federal facilities that manage hazardous waste or from which a reportable quantity of hazardous substances has been released. As explained further below, the Docket is used to identify Federal facilities that should be evaluated to determine if they pose a threat to public health or welfare and the environment and to provide a mechanism to make this information available to the public.

Today's notice identifies the Federal facilities not previously listed on the Docket and reported to EPA since the last update of the Docket on October 13, 2010. In addition to the list of additions to the Docket, this notice includes a section with revisions of the previous Docket list. Thus, the revisions in this update include 66 additions and 17 deletions, as well as 19 corrections to the Docket since the previous update. At the time of publication of this notice, the new total number of Federal facilities listed on the Docket is 2348.

DATES: This list is current as of September 12, 2012.

FOR FURTHER INFORMATION CONTACT: Electronic versions of the Docket and more information on its implementation can be obtained at *http://www.epa.gov/fedfac/documents/docket.htm* by clicking on the link for *Update #25 to the Federal Agency Hazardous Waste Compliance Docket* or by contacting Tim Mott, Federal Agency Hazardous Waste Compliance Docket Coordinator, Federal Facilities Restoration and Reuse Office (Mail Code 5106P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

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1.0 Introduction
2.0 Regional Docket Coordinators
3.0 Revisions of the Previous Docket
4.0 Process for Compiling the Updated Docket
5.0 Facilities Not Included
6.0 Facility NPL Status Reporting, Including NFRAP Status
7.0 Information Contained on Docket Listing

1.0 Introduction

Section 120(c) of CERCLA, 42 United States Code (U.S.C.) 9620(c), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires EPA to establish the Federal Agency Hazardous Waste Compliance Docket. The Docket contains information on Federal facilities that is submitted by Federal agencies to EPA under Sections 3005, 3010, and 3016 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6925, 6930, and 6937, and under Section 103 of CERCLA, 42 U.S.C. § 9603. Specifically, RCRA Section 3005 establishes a permitting system for certain hazardous waste treatment, storage, and disposal (TSD) facilities; RCRA Section 3010 requires waste generators, transporters and TSD facilities to notify EPA of their hazardous waste activities; and RCRA Section 3016 requires Federal agencies to submit biennially to EPA an inventory of their Federal hazardous waste facilities. CERCLA Section 103(a) requires the owner or operator of a vessel or onshore or offshore facility to notify the National Response Center (NRC) of any spill or other release of a hazardous substance that equals or exceeds a reportable quantity (RQ), as defined by CERCLA Section 101. Additionally, CERCLA Section 103(c) requires facilities that have ''stored, treated, or disposed of'' hazardous wastes and where there is ''known, suspected, or likely releases'' of hazardous substances to report their activities to EPA.

CERCLA Section 120(d) requires EPA to take steps to assure that a Preliminary Assessment (PA) be completed for those sites identified in the Docket and that the evaluation and listing of sites with a PA be completed within a reasonable time frame. The PA is designed to provide information for EPA to consider when evaluating the site for potential response action or inclusion on the National Priorities List (NPL).

The Docket serves three major purposes: (1) to identify all Federal facilities that must be evaluated to determine whether they pose a risk to human health and the environment sufficient to warrant inclusion on the National Priorities List (NPL); (2) to compile and maintain the information submitted to EPA on such facilities under the provisions listed in Section 120(c) of CERCLA; and (3) to provide a mechanism to make the information available to the public.

The initial list of Federal facilities to be included on the Docket was published in the **Federal Register** on February 12, 1988 (53 FR 4280). Since then, updates to the Docket have been published on November 16, 1988 (54 FR 46364); December 15, 1989 (54 FR 51472); August 22, 1990 (55 FR 34492); September 27, 1991 (56 FR 49328); December 12, 1991 (56 FR 64898); July 17, 1992 (57 FR 31758); February 5, 1993 (58 FR 7298); November 10, 1993 (58 FR 59790); April 11, 1995 (60 FR 18474); June 27, 1997 (62 FR 34779); November 23, 1998 (63 FR 64806); June 12, 2000 (65 FR 36994); December 29, 2000 (65 FR 83222); October 2, 2001 (66 FR 50185); July 1, 2002 (67 FR 44200); January 2, 2003 (68 FR 107); July 11, 2003 (68 FR 41353); December 15, 2003 (68 FR 240); July 19, 2004 (69 FR 42989); December 20, 2004 (69 FR 75951); October 25, 2005 (70 FR 61616); August 17, 2007 (72 FR 46218); November 25, 2008 (73 FR 71644), and October 13, 2010 (75 FR 62810). This notice constitutes the twenty-fifth update of the Docket.

Today's notice provides some background information on the Docket. Additional information on the Docket requirements and implementation are found in the Docket Reference Manual, Federal Agency Hazardous Waste Compliance Docket found at *http://www.epa.gov/fedfac/documents/docket.htm* or obtained by calling the Regional Docket Coordinators listed below. Today's notice also provides changes to the list of sites included on the Docket in three areas: (1) Additions, (2) Deletions, and (3) Corrections. Specifically, additions are newly identified Federal facilities that have been reported to EPA since the last update and now are included on the Docket; the deletions section lists Federal facilities that EPA is deleting from the Docket; and the corrections section lists changes in the information about the Federal facilities already listed on the Docket.[1] The information submitted to EPA on each Federal facility is maintained in the Docket repository located in the EPA Regional office of the Region in which the facility is located; for a description of the information required under those provisions, *see* 53 FR 4280 (February 12, 1988). Each repository contains the documents submitted to EPA under the reporting provisions and correspondence relevant to the reporting provisions for each facility.

In prior updates, information was also provided regarding No Further Remedial Action Planned (NFRAP) status changes. However, information on NFRAP and NPL status is no longer

[1] See Section 3.2 for the criteria for being deleted from the Docket.

being provided separately in the Docket update as it is now available at: *http://www.epa.gov/fedfac/documents/docket.htm* or by contacting to the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

2.0 Regional Docket Coordinators

Contact the following Docket Coordinators for information on Regional Docket repositories:

Martha Bosworth (HBS), US EPA Region 1, 5 Post Office Square, Suite 100, Mail Code: OSRR07–2, Boston MA 02109–3912, (617) 918–1407.

Helen Shannon (ERRD), US EPA Region 2, 290 Broadway, 18th Floor, New York, NY 10007–1866, (212) 637–4260 or Alida Karas (ERRD), US EPA Region 2, 290 Broadway, New York, NY 10007–1866, (212) 637–4276.

Joseph Vitello (3HS12), US EPA Region 3, 1650 Arch Street, Philadelphia, PA 19107, (215) 814–3354.

Dawn Taylor (4SF–SRSEB), US EPA Region 4, 61 Forsyth St. SW., Atlanta, GA 30303, (404) 562–8575.

Michael Chrystof (SR–6J), US EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–3705.

Philip Ofosu (6SF–RA), US EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–3178.

Todd H. Davis (ERNB), US EPA Region 7, 901 N. Fifth Street, Kansas City, KS 66101, (913) 551–7749.

Ryan Dunham (EPR–F), US EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202, (303) 312–6627.

Debbie Schechter (SFD–6–1), US EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3093.

Monica Lindeman (ECL, ABU #1), US EPA Region 10, 1200 Sixth Avenue, Suite 900, ECL–112, Seattle, WA 98101, (206) 553–5113 or Ken Marcy (ECL, ABU #1), US EPA Region 10, 1200 Sixth Avenue, Suite 900, ECL–112, Seattle, WA 98101, (206) 463–1349.

3.0 Revisions of the Previous Docket

This section includes a discussion of the additions, deletions, and corrections to the list of Docket facilities since the previous Docket update.

3.1 Additions

Today, 66 Federal facilities are being added to the Docket, primarily because of new information obtained by EPA (for example, recent reporting of a facility pursuant to RCRA Sections 3005, 3010, or 3016 or CERCLA Section 103). CERCLA Section 120, as amended by the Defense Authorization Act of 1997, specifies that EPA take steps to assure that a Preliminary Assessment (PA) be completed within a reasonable time frame for those Federal facilities that are included on the Docket. Among other things, the PA is designed to provide information for EPA to consider when evaluating the site for potential response action or listing on the NPL.

3.2 Deletions

Today, 17 Federal facilities are being deleted from the Docket. There are no statutory or regulatory provisions that address deletion of a facility from the Docket. However, if a facility is incorrectly included on the Docket, it may be deleted from the Docket; this may be appropriate for a facility for which there was an incorrect report submitted for hazardous waste activity under RCRA (*e.g.,* 40 CFR § 262.44); a facility that was not Federally-owned or operated at the time of the listing; facilities included more than once (*i.e.,* redundant listings); or when multiple facilities are combined under one listing. Facilities being deleted no longer will be subject to the requirements of CERCLA Section 120(d).

3.3 Corrections

Changes necessary to correct the previous Docket are identified by both EPA and Federal agencies. The corrections section may include changes in addresses or spelling, and corrections of the recorded name and ownership of a Federal facility. In addition, changes in the names of Federal facilities may be made to establish consistency in the Docket or between CERCLIS and the Docket. For the Federal facility for which a correction is entered, the original entry (designated by an ''o''), as it appeared in previous Docket updates, is shown directly below the corrected entry (designated by a ''c'') for easy comparison. Today, information is being corrected for 19 facilities.

4.0 Process for Compiling the Updated Docket

In compiling the newly reported Federal facilities for the update being published today, EPA extracted the names, addresses, and identification numbers of facilities from four EPA databases—the Emergency Response Notification System (ERNS), the Biennial Inventory of Federal Agency Hazardous Waste Activities, the Resource Conservation and Recovery Information System (RCRAInfo), and CERCLIS—that contain information about Federal facilities submitted under the four provisions listed in CERCLA Section 120(c).

EPA assures the quality of the information on the Docket by conducting extensive evaluation of the current Docket list with the information obtained from the databases identified above to determine which Federal facilities were, in fact, newly reported and qualified for inclusion on the update. EPA is also striving to correct errors for Federal facilities that were previously reported. For example, state-owned or privately-owned facilities that are not operated by the Federal government may have been included. Such problems are sometimes caused by procedures historically used to report and track Federal facilities data. Representatives of Federal agencies are asked to write to the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice if revisions of this update information are necessary.

5.0 Facilities Not Included

Certain categories of facilities may not be included on the Docket, such as: (1) Federal facilities formerly owned by a Federal agency that at the time of consideration was not Federally-owned or operated; (2) Federal facilities that are small quantity generators (SQGs) that have never generated more than 1,000 kg of hazardous waste in any month; (3) Federal facilities that are solely hazardous waste transportation facilities, as reported under RCRA Section 3010; and (4) Federal facilities that have mixed mine or mill site ownership. An EPA policy issued in June 2003 provided guidance for a site-by-site evaluation as to whether ''mixed ownership'' mine or mill sites, typically created as a result of activities conducted pursuant to the General Mining Law of 1872 and never reported under Section 103(a), should be included on the Docket. For purposes of that policy, mixed ownership mine or mill sites are those located partially on private land and partially on public land. This policy is found at *http://www.epa.gov/fedfac/pdf/mixownrshpmine.pdf*. The policy for not including these facilities may change; facilities now not included may be added at some point if EPA determines that they should be included.

6.0 Facility NPL Status Reporting, Including NFRAP Status

EPA typically tracks the NPL status of Federal facilities listed on the Docket. An updated list of the NPL status of all Docket facilities, as well as their NFRAP status, is available at *http://www.epa.gov/fedfac/documents/docket.htm* or by contacting to the EPA

HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. In prior updates, information regarding NFRAP status changes was provided separately.

7.0 Information Contained on Docket Listing

The updated information is provided in three tables. The first table is a list of new Federal facilities that are being added to the Docket; the second table is a list of Federal facilities that are being deleted from the Docket and the third table contains corrections of information included on the Docket.

The facilities listed in each table are organized by state and then grouped alphabetically within each state by the Federal agency responsible for the facility. Under each state heading is listed the name and address of the facility, the Federal agency responsible for the facility, the statutory provision(s) under which the facility was reported to EPA, and a code.[2] The code key precedes the lists.

The statutory provisions under which a facility is reported are listed in a column titled ''Reporting Mechanism.'' Applicable mechanisms are listed for each facility: for example, Sections 3005, 3010, 3016, 103(c), or Other. ''Other'' has been added as a reporting mechanism to indicate those Federal facilities that otherwise have been identified to have releases or threat of releases of hazardous substances. The National Contingency Plan 40 CFR § 300.405 addresses discovery or notification, outlines what constitutes discovery of a hazardous substance release, and states that a release may be discovered in several ways, including: (1) A report submitted in accordance with Section 103(a) of CERCLA, *i.e.,* reportable quantities codified at 40 CFR part 302; (2) a report submitted to EPA in accordance with Section 103(c) of CERCLA; (3) investigation by government authorities conducted in accordance with Section 104(e) of CERCLA or other statutory authority; (4) notification of a release by a Federal or state permit holder when required by its permit; (5) inventory or survey efforts or random or incidental observation reported by government agencies or the public; (6) submission of a citizen petition to EPA or the appropriate Federal facility requesting a preliminary assessment, in accordance with Section 105(d) of CERCLA; (7) a report submitted in accordance with Section 311(b)(5) of the CWA; and (8) other sources. As a policy matter, EPA generally believes it is appropriate for Federal facilities identified through the CERCLA discovery and notification process to be included on the Docket.

The complete list of Federal facilities that now make up the Docket and the NPL and NFRAP status are available to interested parties and can be obtained at *http://www.epa.gov/fedfac/documents/docket.htm* by clicking on the link for *Federal Agency Hazardous Waste Compliance Docket Update #25* or by contacting the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. As of today, the total number of Federal facilities that appear on the Docket is 2348.

Dated: March 5, 2013.

Reggie Cheatham,

Director, Federal Facilities Restoration and Reuse Office, Office of Solid Waste and Emergency Response.

Docket Codes

Categories for Deletion of Facilities

(1) Small-Quantity Generator.

(2) Never Federally Owned and/or Operated.

(3) Formerly Federally Owned and/or Operated but not at time of listing.

(4) No Hazardous Waste Generated.

(5) (This code is no longer used.)

(6) Redundant Listing/Site on Facility.

(7) Combining Sites Into One Facility/Entries Combined.

(8) Does Not Fit Facility Definition.

Categories for Addition of Facilities

(15) Small-Quantity Generator With Either a RCRA 3016 or CERCLA 103 Reporting Mechanism.

(16) One Entry Being Split Into Two (or more)/Federal Agency Responsibility Being Split.

(17) New Information Obtained Showing That Facility Should Be Included.

(18) Facility Was a Site on a Facility That Was Disbanded; Now a Separate Facility.

(19) Sites Were Combined Into One Facility.

(19A) New currently Federally owned and/or operated Facility site.

Categories for Corrections of Information About Facilities

(20) Reporting Provisions Change.

(20A) Typo Correction/Name Change/Address Change.

(21) Changing Responsible Federal Agency. (If applicable, new responsible Federal agency submits proof of previously performed PA, which is subject to approval by EPA.)

(22) Changing Responsible Federal Agency and Facility Name. (If applicable, new responsible Federal agency submits proof of previously performed PA, which is subject to approval by EPA.)

(24) Reporting Mechanism Determined To Be Not Applicable After Review of Regional Files.

Facility name	Address	City	State	Zip Code	Agency	Reporting mechanism	Code
FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #25—ADDITIONS							
USDOI BLM Red Top Mine.	T10S R55W S29, Seward Meridian.	Alegnagik	AK	99555	Interior	Other	19A
Federal Correctional Complex Victorville.	1377 Air Expressway Blvd.	Victorville	CA	92394	Justice	3010	19A
Naval WPNS Station Seal Beach Det. Coron.	2300 5th St	Norco	CA	92860	Navy	3010	19A
United States Mint	155 Herman Street	San Francisco	CA	94102	Dept of State	3010	19A
USCG Ballast Point Moorings.	Navsubbase Ballast Point Drive.	San Diego	CA	92106	Homeland Security	3010	19A
U.S. Appraisers Building/GSA.	630 Sansome Street	San Francisco	CA	94111	General Services Administration.	3010	19A
US Geological Survey-Marine Facility (MARFAC).	599 Seaport Blvd	Redwood City	CA	94063	USGS	3010	19A
VACHS Veterans Admin Ct Healthcare System.	950 Campbell Ave Bldg 15.	West Haven	CT	06516	Veterans Affairs	3010	19A

[2] Each Federal facility listed in the update has been assigned a code that indicates a specific reason for the addition or deletion. The code precedes this list.

Facility name	Address	City	State	Zip Code	Agency	Reporting mechanism	Code
Smithsonian Inst—Natural History Bldg.	10th & Constitution Avenue NW.	Washington	DC	20560		3010	19A
GSA—St Elizabeth's West Campus.	2701 Martin Luther King Ave SE.	Washington	DC	20032	GSA	3010	19A
Miami VA Healthcare System.	1201 NW 16th St	Miami	FL	33125	Veterans Affairs	3010	19A
DRMO Kalaeloa	Midway Street	Kapolei	HI	96707	Navy	3010	19A
Transportation Security Administration.	300 Rogers Blvd	Honolulu	HI	96819	TSA	3010	19A
182nd Airlift Wing Air Natl Guard.	6915 W Smithville Rd	Peoria	IL	61607	Air Force	3010	19A
Port Allen Lock	2101 Ernest Wilson Dr	Port Allen	LA	70767	Army	3010	19A
Fort Howard Veterans Affairs Medical Center.	9600 Northpoint Rd	Fort Howard	MD	21052	Veterans Affairs	Other	19A
James T Rowley Training Center.	9200 Powder Mill Rd	Laurel	MD	20708	Homeland Security	3010	19A
Oxon Cove Landfill	Oxon Hill Road	Oxon Hill	MD	20745	Interior	103c	19A
Uniformed Services Univ/ Health Sciences.	4301 Jones Bridge Rd	Bethesda	MD	20814	Navy	3010	19A
Department Of Veterans Affairs.	1 V A Center	Augusta	ME	04330	Veterans Affairs	3010	19A
Beaver Island High Level Site.	South End Road	Peaine Township	MI	49782	Homeland Security	Other	17
Cheboygan Housing Vacant Lot.	900 S. Western Avenue	Cheboygan	MI	49721	Homeland Security	Other	19A
Cheboygan River Range Front Light.	606 Water Street	Cheboygan	MI	49721	Homeland Security	Other	17
Detroit Atwater Property	2660 E. Atwater Street	Detroit	MI	48207	Homeland Security	Other	19A
Menagerie Island Light Station.	Isle Royale National Park.	(unincorporated)	MI	49930	Homeland Security	Other	19A
Middle Island Light Station.	Middle Island	Alpena Township	MI	49707	Homeland Security	Other	17
Old Station Ludington	101 S. Lakeshore Drive	Ludington	MI	49431	Homeland Security	Other	17
Old Station Marquette	N. Lakeshore Blvd. & E. Ridge Street.	Marquette	MI	49855	Homeland Security	Other	19A
Old Station Portage	Coast Guard Road	Hancock Township	MI	49930	Homeland Security	Other	19A
Old Station Pt. Huron/Ft Gratiot Light.	Conger & Omar Streets	Port Huron	MI	48060	Homeland Security	Other	17
Passage Island Light Station.	Isle Royale National Park.	(unincorporated)	MI	49930	Homeland Security	Other	19A
Sturgeon Point Light	Sturgeon Point Scenic Road.	Haynes Township	MI	48740	Homeland Security	Other	17
Thunder Bay Island Light Station.	Michigan Islands Nat'l Wildlife Refuge.	Alpena Township	MI	49707	Homeland Security	Other	19A
VA Gulf Coast Veterans Health Care System.	400 Veterans Avenue	Biloxi	MS	39531	Veterans Affairs	3010	19A
Trans Security Administration (CLT).	5501 Josh Birmingham Pkwy Ste.	Charlotte	NC	28208	TSA	3010	19A
US Postal Service—GMF	5640 E Taft Rd	Syracuse	NY	13220	USPS	3010	19A
Veterans Administration Medical Center N.	79 Middleville Road	Northport	NY	11768	Veterans Affairs	3010	19A
United States Merchant Marine Academy.	300 Steamboat Road	Kings Point	NY	11024	DOT	3010	19A
US VA Hudson Valley Health Care System.	2094 Albany Post Road	Montrose	NY	10548	Veterans Affairs	3010	19A
Great Kills Landfill—Gateway National Recreation Area.	210 New York Avenue	Staten Island	NY	10305–5019	DOI	103c	19A
Youngstown Naval Reserve Center.	315 E Laclede Ave	Youngstown	OH	44507	Navy	3010	19A
Mansfield Naval Reserve Center.	170 Ashland Rd	Mansfield	OH	44902	Navy	3010	19A
Potter Stewart US Courthouse.	100 E 5th St	Cincinnati	OH	45202	DOJ	3010	19A
Navy Remediation At Teledyne Turbine Eng.	1330 Laskey Rd	Toledo	OH	43612	Navy	3010	19A
Old Station Ashtabula	1 Front Street	Ashtabula	OH	44004	Homeland Security	Other	19A
COE-Civil McNary Project	Columbia River Mile 292	Umatilla	OR	97882	Corps of Engineers	3010	19A
USVA Portland Medical Center.	3710 SW US Veterans Hospital, R.	Portland	OR	97239	Veterans Affairs	3010	19A
USVA Roseburg Healthcare System.	913 NW Garden Valley Blvd.	Roseburg	OR	97471	Veterans Affairs	3010	19A
Transportation Security Admin Phil Intl.	8500 Essington Ave	Philadelphia	PA	19153	TSA	3010	19A
VA Medical Center	1030 Jefferson Ave	Memphis	TN	38104	Veterans Affairs	3010	19A
Veterans Administration Medical Center.	1310 24th Ave S	Nashville	TN	37212	Veterans Affairs	3010	19A
Alvin C York VA Medical Center.	3400 Lebanon Rd	Murfreesboro	TN	37130	Veterans Affairs	3010	19A
Supervisor Of Shipbuilding, USN.	505 Howmet Drive	Hampton	VA	23661	Navy	3010	19A
FBI Academy	15 Hogans Alley	Quantico	VA	22135	FBI	3010, 103	19A
USAF ANG Walla Walla Military Dept.	113 S Colville St	Walla Walla	WA	99362	Air Force	3010	19A

Facility name	Address	City	State	Zip Code	Agency	Reporting mechanism	Code
USDA FS Colville NF: Kelly Camp Mine.	On 391 Spur of FSR # 2148, 11 mi N of Cy, T38N R32E Sec 9, SW ¼.	Republic	WA	98166	Agriculture	3010	19A
USDA FS Mt Baker-Snoqualmie NF: Cashman Mill/Apex Mill Site.	201 NE Lowe Creek Rd	Baring	WA	98224	Agriculture	3010	19A
USDA FS Mt Baker-Snoqualmie NF: Kromona Mine & Mill Site.	On Middle Fork of South Fork.	Sultan	WA	98294	Agriculture	Other	19A
USDA FS Mt Baker-Snoqualmie NF: Sunset Mine & Mill Site.	On Trout Creek, 5 mi NE of Cy.	Index	WA	98256	Agriculture	Other	19A
USDA FS Okanogan-Wenatchee NF: Beth Lake Prospect.	Oroville-Toroda Creek Rd/County Rd 9480, 8 mi SE of Cy, T39N R30E Sec 23, SE¼.	Chesaw	WA	98844	Agriculture	Other	19A
USDA FS Wenatchee NF: Copper City Mill.	From Bumping Lake Campground S 8 mi on NFR 1800 & 1808, 2 mi S of Granite Lake Prospect, 30 mi W of Cy, T15N R12E Sec PB40 SE & Sec PB41 NE.	Naches	WA	98929	Agriculture	Other	19A
USDA FS Wenatchee NF: Granite Lake Prospect.	From Bumping Lake Campground S 2.3 mi on NFR 1800, 4.2 mi SW on NFR 1809, 30 mi W of Cy, T15N R12E Sec 9 Ctr East.	Naches	WA	98929	Agriculture	Other	19A
USDHS CG Grays Harbor Lighthouse.	Ocean Dr & Lighthouse Drive.	Westport	WA	98595	Department of Homeland Security.	3010	19A
USDOE Office of Science PNNL Site.	3335 Q Avenue	Richland	WA	99354	Energy	3010	19A
USNAVY Transient Family Accommodation Eastpark.	90 Magnuson Way	Bremerton	WA	98310	Navy	3010	19A
USVA PSHCS Seattle Division.	1660 S Columbian Way	Seattle	WA	98108	Veterans Affairs	3010	19A
FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #25—DELETIONS							
Atlas E Missile Site #11	Six Miles North Of Nunn	Nunn	CO	80648	Air Force	103c	3
Former Lowry AFB Titan Missile Site 1 Complex 2A.	5 Miles South Of East Quincy Av And Brick Center Road.	Aurora	CO	80137	Air Force	103c	6
AFSC—Buckley East 6th Ave Site.	Buckley AFB	Aurora	CO	80011	Air Force	103c	7
Aurora-Buckley	2 Miles SE	Aurora	CO	80011	Army	3016	6
Buckley ANG Former Warehouse Area.	660 S Aspen Dr. Stop 26	Aurora	CO	80011	Defense	103c	7
US EPA Region 3 Chemical Metals Site.	2001 & 2103 Annapolis Road.	Baltimore	MD	21230	EPA	3010	2
Woodstock	2845 Hernwood Road	Woodstock	MD	21163	Army	3016	6
Cavalier Air Station	Po Box 22	Nekoma	ND	28355	Air Force	3016	6
Altoona Postal Service Vehicle Maintenance Facility.	1201 11th Ave	Altoona	PA	16603	USPS	3010	8
Warrendale Postal Center	300 Commonwealth Ave	Warrendale	PA	15086	USPS	3010	8
Pittsburgh Postal Service	1136 Western Ave	Pittsburgh	PA	15233	USPS	3010	8
PA ANG 171St Air Refueling Wing.	300 Tanker Road	Moon Township	PA	15108	Air Force	3010	6
Greater Pittsburgh International Airport.	911 Tag/De	Pittsburgh	PA	15231	Air Force	3016, 103C	6
Fort Dix Tacony Warehouse.	5100 Princeton Ave	Philadelphia	PA	19135	Army	3010	6
Richmond Organizational Maintenance Shop #4.	3100 Alcott Rd	Richmond	VA	23237	Army	3016	6
USDOI Bureau of Reclamation Site.	39307 W Kelly Rd	Benton City	WA	99320	DOI	3010	2
Beckley Medical Center	200 Veterans Ave	Beckley	WV	25801	Veterans Affairs	3010	8
FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #25—CORRECTIONS							
c—Buckley Air Force Base.	18500 East 6th Ave	Aurora	CO	80011	Air Force	3016 103c 3010	20A
o—AFSPC-Buckley Air National Guard Base.	Buckley Road And East 6th Ave.	Aurora	CO	80011	Air Force	3016 103c 3010	20A
c—Air Force Plant PJKS	12275 South Highway 75	Littleton	CO	80127	Air Force	3016 103c 3010 3005	20A
o—Plant PJKS Property	12250 S Hwy. 75	Waterton	CO	80120	Air Force	3016 103c 3010 3005	20A

Facility name	Address	City	State	Zip Code	Agency	Reporting mechanism	Code
c—Rock Flats Site (USDOE).	Hwy 93 Between Golden and Boulder.	Golden	CO	80007	Energy	3005 3010 3016 103c 103a.	20A
o—Rocky Flats Environmental Technology Site.	1808 Highway 93, Unit A	Golden	CO	80403	Energy	3005 3010 3016 103c 103a.	20A
c—BLM-Maybell Dump	6 mi East of Maybell	Maybell	CO	81640	Interior—Bureau of Land Management.	103c	20A
o—BLM-Maybell Dump		Maybell	CO		Interior—Bureau of Land Management.	103c	20A
c—BLM-Montrose County Dump.	4 mi NE Montrose T48N R19W sec22.	Montrose	CO	81401	Interior—Bureau of Land Management.	103c	20A
o—BLM-Montrose County Dump.	T48Nr19Wsec22	Montrose	CO		Interior—Bureau of Land Management.	103c	20A
c—Elkhorn Mine And Mill	610 N. Montana St	Dillon	MT	59725	Agriculture	Other	20A
o—Beaverhead National Forest.	610 N. Montana St	Dillon	MT	59725	Agriculture	Other	20A
c—Fort Detrick—Forest Glen Annex.	503 Orney Dr	Silver Spring	MD	20910	Army	None	20A
o—Walter Reed Army Medical Center—Forest Glenn Annex.	503 Orney Dr	Silver Spring	MD	20910	Army	None	20A
c—Granite-Control	2845 Hernwood Road	Woodstock	MD	21163	Army	103C, 3016	23
o—Granite-Control	2845 Hernwood Road	Woodstock	MD	21163	Army	103C	20A
c—Cavalier Air Force Station.	830 Patrol Road 26	Cavalier	ND	58220	Air Force	103c, 3010 3005	20A
o—Concrete Missile Early Warning Station.	Det 1 57 Ad/De	Concrete	ND	58221	Air Force	103c, 3010 3006	20A
c—PA ANG 171ST Air Refueling Wing.	300 Tanker Road	Pittsburgh	PA	15108	Air Force	3010	20A
o—Pittsburgh Air National Guard.	Greater Pittsburgh Intnl Arpt.	Pittsburgh	PA	15231	Air Force	3010	20A
c—911th Airlift Wing	Pittsburgh Intl Arprt ARS 2475 Defense Ave Ste 101.	Coraopolis	PA	15108	Air Force	3010	20A
o—911th Tactical Airlift Group.	Greater Pittsburgh Intl Airprt.	Pittsburgh	PA	15231	Air Force	3010	20A
c—Fort Dix Tacony Warehouse.	7071 Milnor St	Philadelphia	PA	19135	Army	3010, 103C	20A
o—Fort Dix Tacony Warehouse.	7071 Wissonoming St	Philadelphia	PA	19124	Army	3010, 103C	20A
c—Marietta Depot	1502 Depot Road	Marietta	PA	17547	Defense Logistics Agency.	103C	20A, 22
o—The Former Marietta Air Force Station.	Rt 441	Marietta	PA		General Services Administration.	103C	20A, 22
c—U.S. Forest Service Nemo Work Station Site.	Nemo T: 3N, R: 5E, Sec: 27.	Nemo	SD	57759	Agriculture	103c	20A
o—U.S. Forest Service Nemo Work Station Site.	Nemo	Nemo	SD	57754	Agriculture	103c	20A
c—Sioux Falls VA Medical Center.	2501 West 22nd Street	Sioux Falls	SD	57105	Veterans Affairs	3010	20A
o—Sioux Falls VA Medical Center.	2501 West 22nd Street	Sioux Falls	SD	57117	Veterans Affairs	3010	20A
c—American Fork Canyon/UINTA National.	American Fork Canyon	Pleasant Grove	UT	84602	Interior	103c	20A
o—American Fork Canyon/UINTA National.		Pleasant Grove	UT	84602	Interior	103c	20A
c—South Dakota Air National Guard.	P.O. Box 5044	Sioux Falls	SD	57117	Air Force	103c, 3016	20A
o—Joe Foss Field	P.O. Box 5044	Sioux Falls	SD	57117	Air Force	103c, 3017	20A
c—USFS Santaquin Mudslide.	324 25th St	Santaquin	UT	84655	Agriculture	103c, 3016	20A
o—USFS Santaquin Mudslide.	324 25th St	Santaquin	UT	84401	Agriculture	103c, 3016	20A
c—Hill Air Force Base	7274 Wardleigh Rd	Hill AFB	UT	84056	Air Force	3005 3010 3016 103c 103a.	20A
o—Hill Air Force Base	7274 Wardleigh Rd	Ogden	UT	84056	Air Force	3006 3010 3016 103c 103a.	20A

[FR Doc. 2013–06103 Filed 3–15–13; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice: 2013–0023]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP087858XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

Reference: AP087858XX.

Purpose and Use

Brief description of the purpose of the transaction:

To support the export of U.S.-manufactured aircraft to Kuwait.

Brief non-proprietary description of the anticipated use of the items being exported:

To be used for long-haul passenger service between Indonesia and destinations in Europe, Asia and the Middle East.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported are not expected to be used to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties

Principal Supplier: The Boeing Company.

Obligor: ALAFCO Aviation Lease and Finance Company KSCC.

Guarantor(s): N/A.

Description of Items Being Exported

Boeing 777 aircraft.

Information on Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://www.exim.gov/newsandevents/boardmeetings/board/*.

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

DATES: Comments must be received on or before April 12, 2013 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

ADDRESSES: Comments may be submitted through Regulations.gov at *www.regulations.gov.* To submit a comment, enter EIB–2013–0023 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2013–0023 on any attached document.

Sharon A. Whitt,

Records Clearance Officer.

[FR Doc. 2013–06052 Filed 3–15–13; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice: 2013–0021]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP085996XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

Reference: AP085996XX.

Purpose and Use

Brief description of the purpose of the transaction:

To support the export of General Electric turbines to the United Arab Emirates (UAE).

Brief non-proprietary description of the anticipated use of the items being exported:

To be used expand a power plant to support an expansion of an aluminum smelter in UAE.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported may be used to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties

Principal Supplier: General Electric.

Obligor: Emirates Aluminium Company Limited PJSC.

Guarantor(s): Mubadala Development Company PJSC, Dubai Aluminium Company PJSC.

Description of Items Being Exported

General Electric Turbines and associated equipment.

Information on Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://www.exim.gov/newsandevents/boardmeetings/board/.*

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

DATES: Comments must be received on or before April 12, 2013 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

ADDRESSES: Comments may be submitted through *Regulations.gov at www.regulations.gov.* To submit a comment, enter EIB–2013–0021 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) EIB–2013–0021 on any attached document.

Sharon A. Whitt,

Records Clearance Officer.

[FR Doc. 2013–06053 Filed 3–15–13; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 13–5; DA 13–383]

First Technology Transitions; Policy Task Force Workshop

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document the Federal Communications Commission (FCC) provides a detailed agenda for the workshop scheduled for March 18, 2013 in Washington, DC. This event is the first in a planned series of workshops to analyze technology transitions from narrowband to broadband; from time-division multiplexing (TDM) to Internet Protocol (IP); from copper to fiber; from only wireline services to greater use of wireless and their implications for modernizing Commission policy.

DATES: The workshop information is as follows:

Date: March 18, 2013.
Time: 9:30 a.m.–4:00 p.m. (EST).
Location: Commission Meeting Room, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.
9:30 a.m.–10:00 a.m. Welcome and Opening Remarks.
10:00 a.m.–11:30 a.m. Technological Capabilities—This panel will discuss the technological capabilities of wireless and wireline (copper, fiber and coax) technologies today and in the future.
11:30 a.m.–12:30 p.m. Lunch Break.
12:30 p.m.–2:00 p.m. Usage and Adoption—This panel will examine the adoption and use of various technologies across the diverse demographics of our nation.
2:00 p.m.–2:30 p.m. Break.
2:30 p.m.–4:00 p.m. Network Evolution—transition for different wireline and wireless. This panel will examine the timing of the technological networks as well as examine drivers for the timing of the technology transition.

ADDRESSES: Federal Communications Commission, Commission Meeting Room, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the meeting, please contact Rebekah Goodheart, Deputy Director, Technology Transitions Policy Task Force, at (202) 418–1438 or *rebekah.goodheart@fcc.gov.*

SUPPLEMENTARY INFORMATION: The FCC will attempt to accommodate as many attendees as possible; however, admittance will be limited to seating availability. The Commission will provide audio and/or video coverage of the meeting over the Internet from the FCC's Web page at *http://www.fcc.gov/live.* Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the FCC can contact you if it needs more information. Please allow as much advance notice as possible; last-minute requests will be accepted, but may be impossible to fill.

We also take this opportunity to remind the public that presentations to decision-making personnel that go to the merits of the Commission's pending permit-but-disclose proceeding in GN Docket No. 13–5 regarding the work of the Technology Transitions Policy Task Force, *see Ex Parte Meetings with the Technology Transitions Policy Task Force,* Public Notice, 28 FCC Rcd 105 (2013), must comply with the Commission's *ex parte* rules, *see, e.g.,* 47 CFR.1.1200 *et seq.* Interested parties are also invited to submit written comments in this public docket.

Attendance—This Workshop is open to the public. In order to ensure space availability and expedite the security check-in process, please submit name and company affiliation ahead of time by sending an email to *susan.fisenne@fcc.gov.* All attendees are advised to arrive approximately 30 minutes prior to the start of the workshop to allow time to go through our security process.

Lunch: Attendees may pre-order lunch, to be picked up by FCC staff, from the Potbelly Sandwich Shop. To place your order online, go to *http://www.potbelly.com/Shops/OrderOnline.aspx* and follow these instructions:

- Which Shop?, enter the FCC's address at 445 12th Street SW., Washington, DC, and then select the Potbelly Shop located at 1240 Maryland Ave. SW., Washington
- Carryout or Delivery?: Carryout
- Pickup Date?: March 18, 2013
- Pickup Time?: 10:30 a.m.
- Make your lunch and beverage selections
- Who is this Item for?: First and last name followed by ''FCC,'' i.e., John Smith FCC
- Contact Information: Complete your contact information and after your last name, include ''-FCC''
- Credit Card Information: Provide your credit card information and submit your order.

Federal Communications Commission.

Sean Lev,

General Counsel.

[FR Doc. 2013–06287 Filed 3–14–13; 4:15 pm]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0194]

Agency Information Collection Activities; Proposed Collection; Comment Request; Draft Guidance for Industry and FDA Staff; Total Product Life Cycle: Infusion Pump—Premarket Notification [510(k)] Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on ''Guidance for Industry and FDA Staff; Total Product Life Cycle: Infusion Pump—Premarket Notification [510(k)] Submissions.''

DATES: Submit either electronic or written comments on the collection of information by May 17, 2013.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor.

''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Draft Guidance for Industry and FDA Staff; Total Product Life Cycle: Infusion Pump—Premarket Notification [510(k)] Submissions—0910–NEW

This draft guidance is intended to assist industry in preparing premarket notification submissions for infusion pumps and to identify device features that manufactures should address throughout the total product life cycle. The draft guidance is available at (*http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm206153.htm*).

In the **Federal Register** of March 26, 2010 (75 FR 21632), FDA published a notice seeking comment on the proposed information collection activity. Given the lapse in time since its publication, FDA is reissuing this notice, responding to a single comment and providing the public and additional opportunity to comment on this proposed information collection activity, prior to the issuance of the final guidance document.

In the March 26, 2010, notice, the FDA estimated ''it will receive 31 infusion pump submissions annually. The Agency reached this estimate by averaging the number of premarket notifications for infusion pumps submitted to FDA over the past 5 years. The draft guidance identifies 56 potential hazards FDA recommends addressing if applicable to a particular device. Although there may be additional hazards identified by a manufacturer, the Agency believes these hazards may offset FDA identified hazards not applicable to a particular device. FDA estimates it will take infusion pump manufactures approximately 56 hours (approximately 1 hour per hazard) to complete the case assurance report described in section 6 of the draft guidance. FDA reached this estimate based on its expectation of the amount of information that will be contained in the report.''

However, based on a single public comment provided to FDA, related to the FDA burden estimate, we are adjusting the burden associated with this collection. The public comment is summarized as follows: It will take significantly longer than one hour to conduct assurance case reports for each of the 56 potential hazards identified * * * . For instance, due to the iterative nature of the assurance case report process, each of the applicable hazards will need to be re-evaluated at multiple stages of the development process. In addition, it will be difficult to estimate the time required to conduct an assurance case report without specific guidance on the assurance case reports.

While the commenter believes the reporting burden is greater than 1 hour, and FDA agrees, it is also important to note that the burden associated with this new recommendation to present data is the time and effort necessary to comply with submitting a new 510(k) or 510(k) supplements for legally marketed infusion pumps for which no assurance case exists. The Agency has revised the burden estimate, by averaging the number of premarket notifications for infusion pumps submitted to FDA over the past 5 years. The draft guidance identifies 56 potential hazards FDA recommends addressing if applicable to a particular device. Although there may be additional hazards identified by a manufacturer, the Agency believes the reporting of these hazards may be offset by FDA identified hazards not applicable to a particular device. FDA has revised the estimate of time it will take infusion pump manufactures from approximately 56 hours to 112 hours (approximately 2 hours per hazard) to submit the case assurance report described in section 6 of the draft guidance. FDA reached this estimate based on its expectation of the amount of information that will be contained in the report and the public comment received.

The respondents to this collection of information are infusion pump manufacturers subject to FDA's laws and regulations.

The Agency estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Guidance title: Infusion pumps—premarket notification 510(k) submissions	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Guidance Section 6—Assurance Case Report	31	1	31	112	3,472

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The premarket notification procedures discussed in the draft guidance (21 CFR 807, subpart E) have been approved under OMB control number 0910–0120. The proposed information collection seeks to add clinical or scientific data demonstrating that new or changed infusion pumps are as safe and effective as those legally marketed and do not raise different questions of safety and effectiveness than predicate devices in this generic device type. In this way manufacturers of infusion pumps may demonstrate substantial equivalence and receive premarket clearance for their devices.

This draft guidance also refers to previously approved information collections found in FDA regulations. The collections of information in 21 CFR part 803 are approved under OMB control number 0910–0437; the collections of information in 21 CFR part 801 are approved under OMB control number 0910–0485; the collections of information in 21 CFR part 812 are approved under OMB control number 0910–0078; the collections of information in 21 CFR part 814, subparts B and E are approved

under OMB control number 0910–0231; the collections of information in 21 CFR part 820 are approved under OMB control number 0910–0073; the collections of information in 21 CFR part 822 are under OMB control number 0910–0449; and the collections of information in 21 CFR 56.115 are approved under OMB control number 0910–0130.

Dated: March 12, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–06128 Filed 3–15–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0190]

Agency Information Collection Activities; Proposed Collection; Comment Request; Requirements Under the Comprehensive Smokeless Tobacco Health Education Act of 1986, as Amended by the Family Smoking Prevention and Tobacco Control Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on submission of rotational plans for health warning label statements for smokeless tobacco products.

DATES: Submit either electronic or written comments on the collection of information by May 17, 2013.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Requirements Under the Comprehensive Smokeless Tobacco Health Education Act of 1986, as Amended by the Family Smoking Prevention and Tobacco Control Act (OMB Control Number 0910–0671)—Extension

On June 22, 2009, the President signed the Family Smoking Prevention and Tobacco Control Act (the Tobacco Control Act) (Pub. L. 111–31) into law. Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (the Smokeless Tobacco Act) (15 U.S.C. 4402), as amended by section 204 of the Tobacco Control Act, requires, among other things, that all smokeless tobacco product packages and advertisements bear one of four required warning statements. Section 3(b)(3)(A) of the Smokeless Tobacco Act requires that the warnings be displayed on packaging and advertising for each brand of smokeless tobacco ''in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer'' to, and approved by, FDA.

This information collection—the submission to FDA of warning plans for smokeless tobacco products—is statutorily mandated. The warning plans will be reviewed by FDA, as required by the Smokeless Tobacco Act, to determine whether the companies' plans for the equal distribution and display of warning statements on packaging and the quarterly rotation of warning statements in advertising for each brand of smokeless tobacco products comply with section 3 of the Smokeless Tobacco Act, as amended.

Based on the Federal Trade Commission's (FTC's) previous experience with the submission of warning plans and FDA's experience with smokeless tobacco companies (e.g., correspondence associated with user fees under section 919 of the Federal Food, Drug, and Cosmetic Act, as amended by the Tobacco Control Act (21 U.S.C. 387s)), FDA estimates that there are 36 companies affected by this information collection. To account for the entry of new smokeless tobacco companies that may be affected by this information collection, FDA is estimating the total number of respondents to be 100.

When the FTC requested an extension of their approved information collection in 2007, based on over 20 years implementing the warning plan requirements and taking into account increased computerization and improvements in electronic communication, the FTC estimated submitting an initial plan would take 60 hours. Based on FDA's experience over the past several years, FDA believes the estimate of 60 hours to complete an initial rotational plan continues to be reasonable.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Numbers of respondents	Numbers of responses per respondent	Total annual responses	Average burden per response	Total hours	Total capital costs
Submission of rotational plans for health warning label statements	100	1	100	60	6,000	$1,200

[1] There are no operating and maintenance costs associated with this collection of information.

FDA estimates a total of 100 respondents at 1 response each and 60 burden hours per response for a total of 6,000 burden hours (100 respondents × 1 response × 60 burden hours = 6,000 total burden hours). In addition, capital costs are based on all 100 respondents mailing in their submission at a postage rate of $12 for a 5-pound parcel (business parcel post mail delivered from the furthest delivery zone). Therefore, FDA estimates that the total postage cost for mailing the rotational warning plans to be $1,200.

Dated: March 12, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–06127 Filed 3–15–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0206]

Center for Drug Evaluation and Research Medical Policy Council; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of docket, request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment of a docket to receive suggestions, recommendations, and comments for topics from interested parties, including academic institutions, regulated industry, patient representatives, and other interested organizations, on medical policy issues that may be considered by the CDER Medical Policy Council (Council) in FDA's Center for Drug Evaluation and Research (CDER). These comments will help the Agency identify and address medical policy issues that need clarification through guidance, notice and comment procedures, or other means.

DATES: Submit either electronic or written comments by July 16, 2013.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–301), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Sandra J. Benton, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6340, Silver Spring, MD 20993–0002, 301–796–1042, FAX: 301–847–3529, email: *cdermedicalpolicycouncil@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In January 2012, CDER established the Council to ensure better coordination of medical policy development and implementation within CDER and consistent, predictable communication of medical policy decisions to the public through guidance, notice and comment procedures, or other means.

Chaired by CDER's Associate Director for Medical Policy, the Council provides a senior-level forum through which medical policy issues can be raised, considered, developed, and implemented. Council members include the following senior clinical leaders: The Center Director, the Deputy Center Director for Clinical Science, the Director of the Office of New Drugs, and the Director of the Office of Surveillance and Epidemiology. Experts from within CDER and other FDA offices provide expertise as needed for specific policy topics under consideration. By establishing this docket, FDA encourages the public to recommend specific topics for consideration by the Council. The Agency believes that this process will also ensure additional transparency in CDER's approach to medical policy development and implementation.

II. Range of Medical Policy Issues To Be Considered

FDA envisions a variety of topics that may be relevant for consideration by the Council. Specific topics could address issues related to the following: (1) Clinical evidence of effectiveness or safety, (2) clinical study/trial design, (3) professional and patient labeling, (4) prescription drug promotion, (5) human subjects protection, (6) bioresearch monitoring, (7) good clinical practice, (8) counter-terrorism drug development (such as in the application of the Animal Rule, 21 CFR 314.600), and (9) postmarketing surveillance. To be considered by the Council, a medical policy issue typically would meet one or more of the following criteria:

- A novel medical policy issue requiring senior management input;
- An issue on which CDER seems to have taken inconsistent positions;
- An existing medical policy position that should be reconsidered in light of scientific or regulatory advances;
- A complex safety management issue requiring senior management input;
- A medical policy that may be triggered by a specific product, but that will be applicable to other products; or
- Strategies for implementation of a new policy.

III. Establishment of a Docket and Request for Comments

FDA is requesting public suggestions, recommendations, and comments for topics (including scientific, clinical, regulatory, or other topics) on existing or novel medical policy issues that may warrant consideration by the Council. Comments should describe the following: (1) The medical policy issue recommended for discussion, (2) the rationale for doing so (e.g., clarifying previous advice or precedents, reconciling apparently differing perspectives within CDER or between CDER and regulated industry), (3) recommendations on how the medical policy issue could be addressed or implemented; and (4) existing policy documents (e.g., final guidance) relevant to the medical policy issue. Note that policy issues concerning any draft guidance should be submitted to the docket for that draft guidance.

The Agency will carefully consider all comments submitted. FDA generally will not respond directly to the person or organization submitting the

comment. In general, medical policy decisions reached by the Council are communicated and implemented in accordance with FDA's good guidance practices regulation (21 CFR 10.115) or notice and comment procedures.

IV. Request for Comments

Interested persons may submit either written comments regarding this notice to the Division of Dockets Management (see **ADDRESSES**) or electronic comments to *http://www.regulations.gov.* It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: March 12, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–06142 Filed 3–15–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–1044]

Shu Bei Yuan: Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) debarring Shu Bei Yuan for a period of 5 years from importing articles of food or offering such articles for importation into the United States. FDA bases this order on a finding that Ms. Yuan was convicted of one felony count under Federal law for conduct relating to the importation into the United States of an article of food. Ms. Yuan was given notice of the proposed debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. As of December 31, 2012 (30 days after receipt of the notice), Ms. Yuan had not responded. Ms. Yuan's failure to respond constitutes a waiver of her right to a hearing concerning this action.

DATES: This order is effective March 18, 2013.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kenny Shade, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 301–796–4640.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(1)(C) of the FD&C Act (21 U.S.C. 335a(b)(1)(C)) permits FDA to debar an individual from importing an article of food or offering such an article for import into the United States if FDA finds, as required by section 306(b)(3)(A) of the FD&C Act, that the individual has been convicted of a felony for conduct relating to the importation into the United States of any food.

On June 22, 2012, Ms. Yuan was convicted, as defined in section 306(l)(1)(B) of the FD&C Act, when the U.S. District Court for the Northern District of Illinois accepted her plea of guilty and entered judgment against her for the following offense: One count of entry of goods into the United States by means of false statements, in violation of 18 U.S.C. 542.

FDA's finding that debarment is appropriate is based on the felony conviction referenced herein for conduct relating to the importation into the United States of any food. The factual basis for this conviction is as follows: In or around March 2005 and continuing until in or around November 2005, Ms. Yuan conducted a scheme to fraudulently enter goods into the United States by means of false statements and documents in violation of 18 U.S.C. 542. The purpose of Ms. Yuan's scheme was to import, enter, and sell Chinese-origin honey into the United States and avoid the payment of antidumping duties by falsely declaring to the U.S. Department of Homeland Security, Bureau of Customs and Border Protection (CBP) that the imported honey originated from countries other than China, including South Korea, when in fact Ms. Yuan knew that the honey originated from China.

Between August and November 2005, Ms. Yuan and others caused the fraudulent import and entry into the United States of approximately 26 entries of Chinese origin honey falsely declared as Korean honey, having a total declared entry value of approximately $808,287, thereby avoiding antidumping duties totaling approximately $1,485,631.

As a result of her conviction, on November 30, 2012, FDA sent Ms. Yuan a notice by certified mail proposing to debar her for a period of 5 years from importing articles of food or offering such articles for import into the United States. The proposal was based on a finding under section 306(b)(1)(C) of the FD&C Act that Ms. Yuan was convicted of a felony under Federal law for conduct relating to the importation into the United States of an article of food because she committed an offense related to the importation of Chinese honey into the United States by means of false statements.

The proposal was also based on a determination, after consideration of the factors set forth in section 306(c)(3) of the FD&C Act, that Ms. Yuan should be subject to a 5-year period of debarment. The proposal also offered Ms. Yuan an opportunity to request a hearing, providing her 30 days from the date of receipt of the letter in which to file the request, and advised her that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Ms. Yuan failed to respond within the timeframe prescribed by regulation and has, therefore, waived her opportunity for a hearing and waived any contentions concerning her debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Associate Commissioner for Regulatory Affairs, Office of Regulatory Affairs, under section 306(b)(1)(C) of the FD&C Act, and under authority delegated to the Associate Commissioner (Staff Manual Guide 1410.21), finds that Ms. Shu Bei Yuan has been convicted of a felony under Federal law for conduct relating to the importation of an article of food into the United States and that she is subject to a 5-year period of debarment.

As a result of the foregoing finding, Ms. Yuan is debarred for a period of 5 years from importing articles of food or offering such articles for import into the United States, effective (see DATES). Under section 301(cc) of the FD&C Act (21 U.S.C. 331(cc)), the importing or offering for import into the United States of an article of food by, with the assistance of, or at the direction of Ms. Yuan is a prohibited act.

Any application by Ms. Yuan for termination of debarment under section 306(d)(1) of the FD&C Act should be identified with Docket No. FDA–2012–N–1044 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 28, 2013.

Melinda K. Plaisier,

Acting Associate Commissioner for Regulatory Affairs, Office of Regulatory Affairs.

[FR Doc. 2013–06165 Filed 3–15–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0222]

International Conference on Harmonisation; Proposed Change to Rodent Carcinogenicity Testing of Pharmaceuticals; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is considering a proposed change to the International Conference on Harmonisation (ICH) Sl guidance on rodent carcinogenicity testing. The goal of this potential change is to introduce a more comprehensive and integrated approach to address the risk of human carcinogenicity of small molecule pharmaceuticals, and to define conditions under which 2-year rodent carcinogenicity studies add value to that assessment. The basis of this proposed change is the retrospective analyses of several datasets that reflect three decades of experience with such studies. The datasets suggest that knowledge of certain pharmacologic and toxicologic data can sometimes provide sufficient information to anticipate the outcome of 2-year rodent studies and their potential value in predicting the risk of human carcinogenicity of a given pharmaceutical. FDA is requesting public comment regarding a proposed change in approach to carcinogenicity assessment, on the prospective evaluation period intended to test this new approach, and on the proposed weight-of-evidence factors for carcinogenicity assessment.

DATES: Submit electronic or written comments on the proposed change by May 17, 2013.

ADDRESSES: Submit electronic comments on the proposed change to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Todd Bourcier, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 3102, Silver Spring, MD 20993–0002, 301–796–1179.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is considering a change in the current ICH S1 guidance on rodent carcinogenicity testing.[1] The goal of this potential change is to introduce a more comprehensive and integrated approach to address the risk of human carcinogenicity of small molecule pharmaceuticals, and to define conditions under which 2-year rodent carcinogenicity studies add value to that assessment.

Datasets evaluated by the ICH S1 expert working group (S1 EWG) suggest that knowledge of pharmacologic targets and pathways together with toxicological and other data can, in certain cases, provide sufficient information to anticipate the outcome of 2-year rodent studies and their potential value in predicting the risk of human carcinogenicity of a given pharmaceutical. It is hypothesized that consideration of this information can provide sufficient information to conclude that a given pharmaceutical in certain cases presents a negligible risk or, conversely, a likely risk of human carcinogenicity without conducting a 2-year rodent study. It is envisioned that sponsors of such pharmaceuticals would provide drug regulatory agencies (DRAs) a carcinogenicity assessment document (CAD) that could justify a ''waiver request'' that would seek to omit the conduct of 2-year rodent studies. The CAD would address the overall carcinogenic risk of the investigational drug as predicted by the endpoints discussed in this document and a rationale for why the conduct of 2-year rodent studies would or would not add value to that assessment.

Prospective evaluation of this proposed hypothesis is necessary to justify proceeding with revision of the ICH S1 guidance. A prospective evaluation period would be sought wherein sponsors would be requested to submit CADs to DRAs for all investigational pharmaceuticals with ongoing or planned 2-year rodent studies. DRAs from each region would independently review the submitted assessments to evaluate the degree of concordance with sponsors and between regulatory regions. During this prospective evaluation period, the waiver requests would not to be granted and rather are intended solely for gathering experience and hypothesis testing. Submitted assessments would be compared to the outcome of the 2-year rodent studies to evaluate the accuracy and relevance of the predictions to the actual experimental results. Experience from this prospective evaluation period is considered critical to informing the S1 EWG's efforts in revising the current paradigm of assessing the carcinogenicity of small molecules as described in the ICH S1 guidance. FDA is requesting public comment regarding the proposed change in approach to carcinogenicity assessment, on the prospective evaluation period intended to test this new approach, and on the weight-of-evidence (WOE) factors proposed for inclusion in CADs.

II. Past Experience With Carcinogenicity Assessment

The strategy of testing for carcinogenic potential was the first safety topic addressed by ICH. The main topics were the need to conduct a study (ICH S1A), the selection criteria for the rodent species (ICH S1B), and the criteria for selecting the maximum dose (ICH S1C). During the discussion in that period, the relevance of the lifetime carcinogenicity studies in rats and mice was already highly debated, but in the absence of an alternative, the outcome of the negotiations did not really change the basic strategy of testing pharmaceuticals for human use in two rodent species. A proposal to not use the mouse as a second species did not receive sufficient support, although it paved the way to introduce transgenic mice with a 6- to 9-month treatment as an appropriate alternative (ICH S1B).

In the following years, considerable resources have been spent to evaluate the approaches using the transgenic mice (Ref. 1). Also, other models and approaches received attention, especially the possibility to predict the outcome of carcinogenicity studies on the basis of the results of 3- to 6-month studies (Ref. 2).

[1] See the ICH S1 guidance documents, ''S1A The Need for Long-Term Rodent Carcinogenicity Studies of Pharmaceuticals'' (ICH S1A), ''S1B Testing for Carcinogenicity of Pharmaceuticals'' (ICH S1B), and ''S1C(R2) Dose Selection for Carcinogenicity Studies of Pharmaceuticals'' (ICH S1C), available on the Internet at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm or http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

In this framework, researchers from a U.S.-based company started a project with 60 company-owned and marketed compounds (Ref. 3) with the outcome that a negative histopathology result in rats (i.e., no evidence of hyperplasia in any organ) might be predictive for the absence of tumors in a 2-year study. This led to the conduct of a much broader project involving 13 companies.

A. Carcinogenicity Studies

In 2011, PhRMA published a database analysis (Ref. 4) confirming the conclusion of an earlier paper. Based on a dataset of 182 compounds, it could be concluded that negative histopathology in a chronic rat study together with a negative result in genotoxicity and negative evidence of a hormonal mechanism would be useful in predicting a negative outcome of the carcinogenicity study for these compounds. This conclusion could apply to around 30 percent to 40 percent of the compounds.

In the discussion of these results with the DRAs, a question was raised regarding the impact of the pharmacological properties of the compounds—first, for the false negative compounds, but with consequences for all compounds. The European Union (EU) delegation has conducted an analysis and concluded that a majority of the tumor-inducing compounds were found to induce these tumors in relation to their pharmacodynamic action. In addition, some compounds associated with hepatocellular hypertrophy or liver enzyme induction were prone to induce tumors not only in liver, but also in thyroid and testes.

In addition to the PhRMA dataset, FDA conducted a similar study with 50 unique compounds, and the Japanese Pharmaceutical Manufacturers' Association (JPMA) conducted a study with 64 unique compounds from the PhRMA compound set. These datasets confirmed the earlier analysis of the PhRMA dataset with respect to negative predictivity, as well as the EU analysis regarding the relation with the pharmacology. From discussions held in formulating ICH S1B guidance, both the European Union (Ref. 5) and the United States (Ref. 6) published a dataset of several hundreds of compounds with lifetime carcinogenicity studies in rats and mice. The EU delegation has used the background data of the European Union, as well as the published data from FDA relating the pharmacology of the compounds and the outcome of the rat carcinogenicity studies. This analysis fully confirmed the conclusions reached earlier on the PhRMA database.

B. Conclusions From Analyses Conducted

From the analysis of the various datasets (PhRMA, FDA, JPMA, and EU + FDA), it can be concluded that based on pharmacology, genotoxicity, and chronic toxicity data (usually present at the end of phase 2 in the development of a new pharmaceutical), the outcome of the 2-year rat carcinogenicity study can be predicted with reasonable assurance at the two extremes of the spectrum. Negative predictions can be made when predictive carcinogenic signals are absent and positive predictions can be made when such signals are present. An in-between category of compounds still remains for which the outcome of the carcinogenicity studies cannot be predicted with sufficient certainty.

III. Proposal

The processes initiated by this prospective proposal are expected to improve pharmaceutical carcinogenicity evaluations, reduce use of animals in accordance with the 3Rs (reduce/refine/replace) principle, reduce the use of other drug development resources, and reduce timelines to market authorization in some cases, all without compromise to patient safety. Analyses of the datasets described in section II suggest that a carcinogenicity assessment could be completed for certain pharmaceuticals without conducting a 2-year rat carcinogenicity study. From these databases, it can be shown that pharmacologic and toxicologic data from numerous sources, including toxicology studies of 6-month duration or shorter, can be integrated to predict with sufficient certainty that a given pharmaceutical will fall into one of three main categories:

- Category 1—so likely to be tumorigenic in humans that a product would be labeled as such, and a 2-year rat study would not add value;
- Category 2—the available sets of pharmacologic and toxicologic data indicate that tumorigenic potential for humans is uncertain, and a 2-year rat study is likely to add value to human risk assessment; and
- Category 3a—so likely to be tumorigenic in rats but not in humans through prior-established and well-recognized mechanisms known to be human irrelevant that a 2-year rat study would not add value; or
- Category 3b—so likely not to be tumorigenic in either rats or humans that no 2-year rat study is needed.

A set of proposed WOE (see Appendix 1 of this document) factors has been developed. During the prospective evaluation period sponsors would be encouraged to apply the available WOE for each pharmaceutical prior to 2-year rat study completion and to assign a pharmaceutical candidate to category 1, 2, 3a, or 3b in a CAD with respect to the expected value and need for 2-year rat carcinogenicity testing. Sponsors would submit the CAD to the DRAs explaining and justifying their position that a waiver decision is, or is not, appropriate for each pharmaceutical before knowing the outcome of carcinogenicity testing.

IV. Scope and Process for a Prospective Evaluation Period

A. Objective

The intent of the prospective evaluation period is to gain experience and generate data that would address critical aspects of proposed changes to the ICH S1 guidance that could not be answered by retrospective analysis of the existing datasets. Specifically, these critical aspects include how well the WOE will predict the outcome and value of 2-year rat carcinogenicity study results, and how often the DRAs are in accordance with sponsors and with each other regarding the need to conduct a 2-year rat study based on the arguments put forth in CADs.

Sponsors would be requested to submit CADs for *all* investigational small molecule pharmaceuticals subject to a 2-year rat carcinogenicity study under current ICH S1A guidance, as well as for those with ongoing rat carcinogenicity studies, provided that dosing has not exceeded an 18-month duration. The date that the document was authored would be specified in the CAD in relation to the start of the study and would state that the assessment was not influenced by any signal from the ongoing study. The results of the prospective evaluation period would inform future revisions to the ICH S1 guidances. CADs submitted under the prospective evaluation period would not be considered regulatory documents or a substitute for the standard carcinogenicity assessment. This request would not be applicable to investigational biologic pharmaceuticals that follow the ICH S6 and S6 Addendum guidance documents.[2]

[2] See the ICH guidance documents, ''S6 Preclinical Safety Evaluation of Biotechnology-Derived Pharmaceuticals'' and ''S6 Addendum to Preclinical Safety Evaluation on Biotechnology-Derived Pharmaceuticals,'' available at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

B. Content of Submitted CADs

Submissions would assess the carcinogenic potential for the investigational pharmaceutical under study, guided by the WOE approach described in Appendix 1 of this document. The CAD would address each factor considered pertinent to carcinogenic potential and would not provide a general summary of the nonclinical profile of the pharmaceutical. Not all factors in Appendix 1 would be expected to be applicable or available in all cases.

In addition to addressing the WOE in Appendix 1, the CAD would include the following critical elements:

1. Prediction of the actual tumor outcome from the planned or ongoing 2-year rat study (positive/tumor target organs or absence of tumors);
2. Projected value of the anticipated 2-year rat outcome to the overall carcinogenicity assessment and human risk implications; and
3. Categorical assignment with explicit statement and explanation as to whether the CAD supports: (1) Conduct of the 2-year rat study, or (2) a waiver request from conducting the 2-year study.

C. Evaluation of CADs

The intent of the prospective evaluation period is to generate data relevant to future changes to the ICH S1 guidance. As such, submitted CADs would have no impact on the drug development program in any region. Actual waivers of the 2-year rat study would not be granted, nor would CADs be used to support regulatory actions on development programs.

Each DRA would independently review submitted CADs at the time of receipt for the adequacy of the prediction and would only provide feedback to sponsors when the assessments inadequately address the three critical elements cited in section IV.B of this document. DRAs would convene to assess the concordance in predictions between DRAs and sponsors and among DRAs.

The CADs would again be evaluated, based on the following three points, after the DRAs have received results of the corresponding 2-year rat study:

1. Accuracy of the prediction compared to the 2-year rat tumor outcome using the WOE described in Appendix 1 of this document;
2. Accuracy of the sponsor's and the DRAs' original categorical assignments relative to actual overall study outcome; and
3. Regulatory impact when the predicted tumor outcome may differ from the actual tumor outcome.

The DRAs would maintain product confidentiality in conducting independent analyses of the attributes data, as well as of the type of compounds. Summary of anonymized results and the extent of sponsor participation would be periodically reviewed by the ICH S1 EWG. Concordance in interpretations between DRAs and sponsors and among the DRAs would be analyzed at study termination. Final results of the prospective evaluation period would be reviewed by the S1 EWG to inform revision of the current ICH S1 guidance. Publication in a peer-reviewed toxicological journal is planned.

The prospective evaluation period would end after approximately 50 CADs have been received by the DRAs. The goal of 50 CADs could change, depending on the diversity of compounds addressed and the number of pharmaceutical companies that would participate. For example, a narrow focus on few drug classes and/or participation by few pharmaceutical companies could introduce bias into the study and necessitate an increase in the number of CADs. Based on analysis of the number of rat study protocols and final rat study reports received by FDA since 2010, it is estimated that a 2-year data collection period would be needed to reach the goal of 50 CADs. Success of this effort hinges on the active participation by pharmaceutical companies in submitting CADs to DRAs for review.

D. Process of Submitting CADs

Sponsors would be requested to submit CADs to FDA; the EU European Medicines Agency; and the Japanese Ministry of Health, Labour and Welfare. We would request that CADs be sent to all three DRAs, whether or not development programs are established in each region. CADs would be requested for *all* investigational small molecule pharmaceuticals subject to 2-year rat carcinogenicity study under the current ICH S1 guidance, as well as for those with ongoing rat carcinogenicity studies, provided that dosing has not exceeded the 18-month duration. We would encourage that the final results of the 2-year rat study be submitted when available, irrespective of the timing of the marketing application.

V. Comments

Interested persons may submit comments regarding the proposed change in approach to carcinogenicity assessment, on the prospective evaluation period intended to test this new approach, and on the WOE factors proposed for inclusion in carcinogenicity assessment documents. Submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). 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 (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

VI. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.gov*.

1. Cohen, S.M., D. Robinson, and J. MacDonald, ''Alternative Models for Carcinogenicity Testing'', *Toxicological Sciences,* vol. 64, pp. 14–19, 2001.
2. Cohen, S.M., ''Human Carcinogenic Risk Evaluation: An Alternative Approach to the Two-Year Rodent Bioassay'', *Toxicological Sciences,* vol. 80, pp. 225–229, 2004.
3. Reddy, M.V., F.D. Sistare, J.S. Christensen, et al., ''An Evaluation of Chronic 6- and 12-Month Rat Toxicology Studies as Predictors of 2-Year Tumor Outcome'', *Veterinary Pathology,* vol. 47, pp. 614–629, 2010.
4. Sistare, F.D., D. Morton, C. Alden, et al., ''An Analysis of Pharmaceutical Experience With Decades of Rat Carcinogenicity Testing: Support for a Proposal to Modify Current Regulatory Guidelines'', *Toxicologic Pathology,* vol. 39, pp. 716–744, 2011.
5. Van Oosterhout, J.P.J., J.W. Van der Laan, E.J. De Waal, et al., ''The Utility of Two Rodent Species in Carcinogenic Risk Assessment of Pharmaceuticals in Europe'', *Regulatory Toxicology and Pharmacology,* vol. 25, pp. 6–17, 1997.
6. Contrera, J.F., A.C. Jacobs, and J.J. DeGeorge, ''Carcinogenicity Testing and the Evaluation of Regulatory Requirements for Pharmaceuticals'', *Regulatory Toxicology and Pharmacology,* vol. 25, pp. 130–145, 1997.

Appendix 1. Weight-of-Evidence Factors for Consideration in a Carcinogenicity Assessment Document

Each of the following factors should be considered in formulating a prediction in the outcome and value of conducting a 2-year rat carcinogenicity study and an overall integrated assessment of the carcinogenic risk for humans. Some factors can be appropriate for both, others more

appropriate for one or the other purpose.

• *Knowledge of Intended Drug Target and Pathway Pharmacology, Secondary and Off-Target Pharmacology, and Drug Target Distribution in Rats and Humans*

Target and pathway related mechanistic/pharmacologic and understood secondary pharmacologic characteristics can contribute to the prediction of outcomes of carcinogenicity studies and can improve prediction of potential human carcinogens. The CAD is expected to convey a thorough and critical assessment of the sponsor's knowledge of all such characteristics, including a comprehensive literature review specifically addressing carcinogenicity risk. Examples of such data sources include the following:

○ Prior experience with other molecules in the drug class

○ Experience with human genetic polymorphisms in the target or pathway

○ Clinical trial data

○ Genetically engineered rodent models

○ Unintended pharmacology

○ Hormonal perturbation

○ Targeted tissue genomic biomarker measurements

• *Genetic Toxicology Study Results*

The criteria in ICH S2(R1) [3] will be used to evaluate genetic toxicology data using a weight-of-evidence approach.

• *Histopathologic Evaluation of Repeated-Dose Rat Toxicology Studies*

Histopathologic risk factors of neoplasia should be evaluated in the 6-month chronic rat study. Findings seen only in shorter-term repeated dose rat toxicity studies are generally considered of less value for 2-year rat study outcome prediction, but should be addressed. Histopathologic findings of particular interest include cellular hypertrophy, diffuse and/or focal cellular hyperplasia, persistent tissue injury and/or chronic inflammation, preneoplastic changes, and tumors. It is important to note that liver tumors are observed at relatively high frequency in the rat, sometimes with Leydig cell and thyroid follicular cell tumors. Hepatocellular hypertrophy associated with increased liver weight often results from hepatic enzyme induction, the latter being a well-understood mechanism of rodent specific tumorigenesis at these sites with little relevance to humans (Refs. 1 and 2).

• *Exposure Margins in Chronic Rat Toxicology Studies*

A high exposure margin in a chronic rat toxicology study absent of any carcinogenic risk factors can provide additional support for a carcinogenicity study waiver. The inability to achieve high exposure margins in a chronic rat toxicology study because of limitations of tolerability, pharmacology, or absorption would not preclude a carcinogenicity study waiver.

• *Evidence of Hormonal Perturbation*

Evidence of hormonal perturbation should be considered from both repeated-dose and reproductive toxicology studies. Such evidence can come from weight, gross and/or microscopic changes in endocrine organs, or parameters from reproductive toxicology studies. Serum hormone levels can be useful to address findings but are not always essential.

• *Immune Suppression*

Immunosuppression can be a causative factor for tumorigenesis in humans. As such, immunotoxicological parameters should be examined according to the ICH S8 guidance.[4]

• *Special Studies and Endpoints*

Data from special stains, new biomarkers, emerging technologies, and alternative test systems can be submitted with scientific rationale to help explain or predict animal and/or human carcinogenic pathways and mechanisms when they would contribute meaningfully.

• *Results of Non-Rodent Chronic Study*

Assessment of carcinogenic risk factors in the non-rodent toxicology studies should be considered for human risk assessment regardless of results in the chronic rat study.

• *Transgenic Mouse Study*

A transgenic mouse carcinogenicity study (usually rasH2 or p53+/− mouse) is not required for the WOE argument. However, if conducted on a case-by-case basis, a transgenic mouse carcinogenicity study can contribute to the WOE.

References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.gov.*

1. Cook, J.C., G.R. Klinefelter, J.F. Hardisty, et al., ''Rodent Leydig Cell Tumorigenesis: A Review of the Physiology, Pathology, Mechanisms and Relevance to Humans'', *Critical Reviews in Toxicology,* vol. 29, pp. 169–261, 1999.
2. McClain, R.M., ''The Significance of Hepatic Microsomal Enzyme Induction and Altered Thyroid Function in Rats: Implications for Thyroid Gland Neoplasia'', *Toxicologic Pathology,* vol. 17, pp. 294–306, 1989.

Dated: March 12, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–06145 Filed 3–15–13; 8:45 am]

BILLING CODE 4160–01–P

[3] See the ICH guidance ''S2(R1) Genotoxicity Testing and Data Interpretation for Pharmaceuticals Intended for Human Use,'' available at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

[4] See the ICH guidance ''S8 Immunotoxicity Studies for Human Pharmaceuticals,'' available at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0001]

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 2, 2013, from 8 a.m. to 6 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B, C and D, 620 Perry Pkwy., Gaithersburg, MD 20877. The hotel's telephone number is 301–977–8900.

Contact Person: Jamie Waterhouse, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly

enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On May 2, 2013, the committee will discuss, make recommendations and vote on information related to the premarket approval application for the Juvéderm Voluma XC sponsored by Allergan, Inc. Juvéderm Voluma XC is a dermal filler comprised of hyaluronic acid with lidocaine. Juvéderm Voluma XC is indicated for deep (dermal/subcutaneous and/or submuscular/supraperiosteal) implantation to restore lost volume in the mid-face for aesthetic improvement.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before April 25, 2013. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on May 2, 2013. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 12, 2013. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by April 16, 2013.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at *AnnMarie.Williams@fda.hhs.gov,* 301–796–5966, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 12, 2013.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2013–06167 Filed 3–15–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0233]

Impax Laboratories, Inc.; Withdrawal of Approval of Bupropion Hydrochloride Extended-Release Tablets, 300 Milligrams

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of Bupropion Hydrochloride (HCl) Extended-Release Tablets, 300 Milligrams (mg) (Bupropion HCl Extended-Release Tablets 300 mg), under Abbreviated New Drug Application (ANDA) 77–415, held by Impax Laboratories, Inc. (Impax), 30831 Huntwood Ave., Hayward, CA 94544, and marketed under the name BUDEPRION XL. Impax has voluntarily requested that approval for this product be withdrawn and waived its opportunity for a hearing.

DATES: Effective March 18, 2013.

FOR FURTHER INFORMATION CONTACT: Carolina M. Wirth, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6282, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: FDA approved ANDA 77–415 for Bupropion HCl Extended-Release Tablets 300 mg (marketed under the name BUDEPRION XL) on December 15, 2006 pursuant to section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)). Bupropion HCl Extended-Release Tablets 300 mg was indicated for the treatment of major depressive disorder. On September 27, 2012, FDA requested that Impax voluntarily withdraw its Bupropion HCl Extended-Release Tablets 300 mg from the market after results of an FDA-sponsored bioequivalence study showed that Impax's Bupropion HCl Extended-Release Tablets 300 mg are not therapeutically equivalent to the 300-mg strength of the reference listed drug. In a letter dated September 30, 2012, Impax requested that FDA withdraw approval of the 300-mg strength of Bupropion HCl Extended Release Tablets, approved under ANDA 77–415, pursuant to § 314.150(d) (21 CFR 314.150(d)). In that letter, Impax also waived its opportunity for a hearing. The Agency acknowledged Impax's requests in a letter dated November 2, 2012.

Therefore, under section 505(e) of the FD&C Act (21 U.S.C. 355(e)) and § 314.150(d), and under authority delegated by the Commissioner to the Director, Center for Drug Evaluation and Research, approval of the 300-mg strength of Bupropion HCl Extended-Release Tablets under ANDA 77–415 is withdrawn (see **DATES**). Distribution of this product in interstate commerce without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the FD&C Act (21 U.S.C. 355(a) and 331(d)).

Dated: March 12, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–06144 Filed 3–15–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Indian Health Professions Preparatory, Indian Health Professions Pre-graduate, and Indian Health Professions Scholarship Programs

Announcement Type: Initial.

CFDA Numbers: 93.971, 93.123, and 93.972.

Key Dates

Application Deadline: April 14, 2013, for continuing students.

Application Deadline: April 14, 2013, for new students.

Application Review: May 13–24, 2013.

Continuation Award Notification Deadline: June 7, 2013.

New Award Notification Deadline: July 5, 2013.

Award Start Date: August 1, 2013.

Acceptance/Decline of Awards Deadline: August 16, 2013.

I. Funding Opportunity Description

The Indian Health Service (IHS) is committed to encouraging American Indians and Alaska Natives to enter the health professions and to assuring the availability of Indian health professionals to serve Indians. The IHS is committed to the recruitment of students for the following programs:

- The Indian Health Professions Preparatory Scholarship authorized by Section 103 of the Indian Health Care Improvement Act, Public Law 94–437 (1976), as amended (IHCIA), codified at 25 U.S.C. 1613(b)(1).
- The Indian Health Professions Pre-graduate Scholarship authorized by Section 103 of the IHCIA, codified at 25 U.S.C. 1613(b)(2).
- The Indian Health Professions Scholarship authorized by Section 104 of the IHCIA, codified at 25 U.S.C. 1613a.

Full-time and part-time scholarships will be funded for each of the three scholarship programs.

The scholarship award selections and funding are subject to availability of funds appropriated for the Scholarship Program.

II. Award Information

Type of Award

Scholarship.

Estimated Funds Available

An estimated $14.0 million will be available for Fiscal Year (FY) 2013 awards. The IHS Scholarship Program (IHSSP) anticipates, but cannot guarantee, due to possible funding changes, student scholarship selections from any or all of the following disciplines in the 103 and 104 Programs for the Scholarship Period 2013–2014. Due to the rising cost of education and the decreasing number of scholars who can be funded by the IHSSP, the IHSSP has changed the funding policy for Preparatory and Pre-graduate scholarship awards and reallocated a greater percentage of its funding in an effort to increase the number of Health Professions scholarships, and inherently the number of service obligated scholars, to better meet the health care needs of the IHS and its Tribal and Urban Indian health care system partners.

Anticipated Number of Awards

Approximately 60 awards will be made under the Health Professions Preparatory and Pre-graduate Scholarship Programs for Indians. The awards are for ten months in duration, with an additional two months for approved summer school requests, and will cover both tuition and fees and Other Related Costs (ORC). The average award to a full-time student is approximately $33,486.03. An estimated 300 awards will be made under the Indian Health Professions Scholarship Program. The awards are for 12 months in duration and will cover both tuition and fees and ORC. The average award to a full-time student is approximately $41,196.77. In FY 2013, an estimated $12,500,000 is available for Health Professions awards, and an estimated $1,500,000 is available for Preparatory and Pre-graduate awards.

Project Period

The project period for the IHS Health Professions Preparatory Scholarship support, tuition, fees and ORC is limited to two years for full-time students and the part-time equivalent of two years, not to exceed four years for part-time students. The project period for the Health Professions Pre-graduate Scholarship support, tuition, fees and ORC is limited to four years for full-time students and the part-time equivalent of four years, not to exceed eight years for part-time students. The IHS Indian Health Professions Scholarship provides support for tuition, fees, and ORC and is limited to four years for full-time students and the part-time equivalent of four years, not to exceed eight years for part-time students.

III. Eligibility Information

This is a limited competition announcement. New and Continuation scholarship awards are limited to ''Indians'' as defined at 25 U.S.C. Section 1603 (13). Continuation awards are non-competitive.

1. Eligibility

The Health Professions Preparatory Scholarship awards are made to American Indians (Federally recognized Tribal members, first and second degree descendants of Federally recognized Tribal members, State recognized Tribal members and first and second degree descendants of State recognized Tribal members), or Eskimo, Aleut and other Alaska Natives who:

- Have successfully completed high school education or high school equivalency; and
- Have been accepted for enrollment in a compensatory, pre-professional general education course or curriculum.

The Health Pre-graduate Scholarship awards are made to American Indians (Federally recognized Tribal members, first and second degree descendants of Tribal members, and State recognized Tribal members, first and second degree descendants of State recognized Tribal members), or Eskimo, Aleut and other Alaska Natives who:

- Have successfully completed high school education or high school equivalency; and
- Have been accepted for enrollment or are enrolled in an accredited pre-graduate program leading to a baccalaureate degree in pre-medicine, pre-dentistry, pre-optometry or pre-podiatry.

The Indian Health Professions Scholarship may be awarded only to an individual who is a member of a Federally recognized Indian Tribe, Eskimo, Aleut or other Alaska Native as provided by Section 1603 (13) and Section 1603 (14) of the IHCIA. Membership in a Tribe recognized only by a state does not meet this statutory requirement for the Indian Health Professions Scholarship. To receive an Indian Health Professions Scholarship, an otherwise eligible individual must be enrolled in an appropriately accredited school and pursuing a course of study in a health profession as defined by Section 1603 (10) of the IHCIA.

2. Cost Sharing/Matching

The Scholarship Program does not require matching funds or cost sharing to participate in the competitive award process.

3. Benefits From State, Local, Tribal and Other Federal Sources

Awardees of the Health Professions Preparatory, Health Professions Pre-Graduate scholarship Health Professions scholarship, who accept outside funding from other scholarship, grant and fee waiver programs, will have these monies applied to their student account tuition and fees charges at the college or university they are attending, before the IHS Scholarship Program will pay any of the remaining balance. These outside funding sources must be reported on the student's invoicing documents submitted by the college or university they are attending. Student loans and Veterans Administration (VA)/GI Bill

Benefits accepted by Health Professions scholarship recipients will have no effect on the IHSSP payment made to their college or university.

IV. Application Submission Information

1. Address To Request Application Package

The IHS 856 Scholarship Application (Scantron purple bubble form) forms will no longer be available for use beginning in the AY 2013–2014 application cycle. Applicants must go online to *www.ihs.gov/scholarship* to begin the application process for an IHS scholarship. Applicants are strongly encouraged to seek consultation from their Area Scholarship Coordinator (ASC) in preparing their scholarship application for award consideration. ASC's are listed on the IHS Web site at: *http://www.scholarship.ihs.gov/area_coordinators.cfm*.

This information is listed below. Please review the following list to identify the appropriate IHS Area Scholarship Coordinator for your State of residence.

IHS Area Office and States/locality served	Scholarship coordinator address
Aberdeen Area IHS: Iowa, Nebraska, North Dakota, South Dakota	Ms. Kim Annis, IHS Area Scholarship Coordinator, Aberdeen Area IHS, 115 4th Avenue SE., Aberdeen, SD 57401, Tele: (605) 226–7466.
Alaska Native Tribal Health Consortium: Alaska	Ms. Courtney Bridges, IHS Area Scholarship Coordinator, 4000 Ambassador Drive, Anchorage, AK 99508, Tele: (907) 729–1917, 1–800–684–8361 (toll free).
Albuquerque Area IHS: Colorado, New Mexico	Ms. Cora Boone, Colorado IHS Area Scholarship Coordinator, Albuquerque Area IHS, 5300 Homestead Road, NE., Albuquerque, NM 87110.
Bemidji Area IHS: Illinois, Indiana, Michigan, Minnesota, Wisconsin	Mr. Tony Buckanaga, IHS Area Scholarship Coordinator, Bemidji Area IHS, 522 Minnesota Avenue NW., Room 209, Bemidji, MN 56601, Tele: (218) 444–0486, 1–800–892–3079 (toll free).
Billings Area IHS: Montana, Wyoming	Mr. Delon Rock Above, Alternate: Ms. Bernice Hugs, IHS Area Scholarship Coordinator, Billings Area IHS, Area Personnel Office, P.O. Box 36600, 2900 4th Avenue, North, Suite 400, Billings, MT 59103, Tele: (406) 247–7215.
California Area IHS: California	Ms. Mona Celli, IHS Area Scholarship Coordinator, California Area IHS, 650 Capitol Mall, Suite 7–100, Sacramento, CA 95814, Tele: (505) 248–4418.
Nashville Area IHS: Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, District of Columbia, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia.	Ms. Marla Jones, IHS Area Scholarship Coordinator, Nashville Area IHS, 711 Stewarts Ferry Pike, Nashville, TN 37214, Tele: (615) 467–1576, Fax: (615) 467–1569.
Navajo Area IHS: Arizona, New Mexico, Utah	Ms. Aletha John, IHS Area Scholarship Coordinator, Navajo Area IHS, P.O. Box 9020, Window Rock, AZ 86515, Tele: (928) 871–1360.
Oklahoma City Area IHS: Kansas, Missouri, Oklahoma	Mr. Keith Bohanan, IHS Area Scholarship Coordinator, Oklahoma City Area IHS, 701 Market Drive, Oklahoma City, OK 73114, Tele: (405) 951–3789, 1–800–722–3357 (toll free).
Phoenix Area IHS: Arizona, Nevada, Utah	Ms. Trudy Begay, IHS Area Scholarship Coordinator, Phoenix Area IHS, Suite 510, 40 North Central Avenue, Phoenix, AZ 85004, Tele: (602) 364–5256.
Portland Area IHS: Idaho, Oregon, Washington	Mr. Wayne Teeias, IHS Area Scholarship Coordinator, Portland Area IHS, 1414 NW Northrup Street, Suite 800, Portland, OR 97209, Tele: (503) 414–5546.
Tucson Area IHS: Arizona, Texas	Ms. Trudy Begay, (See Phoenix Area).

2. Content and Form Submission

Each applicant will be responsible for creating an online account and completing the electronic version of the IHS–856 Scholarship Application form which will register the applicant into the IHS Scholarship Program database. The applicant is instructed, online, to print three copies of this electronic IHS–856 Application form, one for their records and two which must be signed, dated and submitted by mail with two sets of the required supporting documents, one original signature set and one copy set, in accordance with the IHS Scholarship Program Application Handbook instructions, to the: IHS Scholarship Program Branch Office, 801 Thompson Avenue, TMP 450A, Rockville, MD 20852. Only electronically completed and signed IHS–856 scholarship application forms mailed with their supporting documents are being accepted for the AY 2013–2014 scholarship cycle. For more information on how to access the electronic scholarship application form,

go to *www.ihs.gov/scholarship.* The on-line portal will be open on February 10, 2013. The application will be considered complete if the following documents (original and one copy) are included:

- Completed and signed online application Checklist.
- Original completed, printed, and signed IHS–856 online application form for new or continuation student.
- Current Letter of Acceptance from College/University or Proof of Application to a College/University or Health Professions Program.
- One set of Official transcripts for all colleges/universities attended (or high school transcripts or Certificate of Completion of Home School Program or General Education Diploma (G.E.D). for applicants who have not taken college courses).
- Cumulative Grade Point Average (GPA): Calculated by the applicant.
- Applicant's Documents for Indian Eligibility.

A. If you are a member of a Federally recognized Tribe or Alaska Native (recognized by the Secretary of the Interior), provide evidence of membership such as:

(1) Certification of Tribal enrollment by the Secretary of the Interior, acting through the Bureau of Indian Affairs (BIA) Certification: Form 4432-Category A or D, whichever is applicable); or

(2) In the absence of BIA certification, documentation that you meet requirements of Tribal membership as prescribed by the charter, articles of incorporation or other legal instrument of the Tribe and have been officially designated as a Tribal member as evidenced by an accompanying document signed by an authorized Tribal official, i.e., Tribal enrollment card showing enrollment number; or

(3) Other evidence of Tribal membership satisfactory to the Secretary of the Interior.

Note: If you meet the criteria for Category A you are eligible for the Preparatory, Pre-graduate or Health Professions Scholarship. If you only meet the criteria for Category B or C, you are eligible only the Preparatory or Pre-graduate Scholarships.

B. For Section 103 Scholarships Only: If you are a member of a Tribe terminated since 1940 or a State recognized Tribe and first or second degree descendant, provide official documentation that you meet the requirements of Tribal membership as prescribed by the charter, articles of incorporation or other legal instrument of the Tribe and have been officially designated as a Tribal member as evidenced by an accompanying document signed by an authorized Tribal official; or other evidence, satisfactory to the Secretary of the Interior, that you are a member of the Tribe. In addition, if the terminated or state recognized Tribe of which you are a member is not on a list of such Tribes published by the Secretary of the Interior in the **Federal Register**, you must submit an official signed document that the Tribe has been terminated since 1940 or is recognized by the state in which the Tribe is located in accordance with the law of that state.

C. For Section 103 Scholarships, only: If you are not a Tribal member, but are a natural child or grandchild of a Tribal member you must submit: (1) evidence of that fact, e.g., your birth certificate and/or your parent's/grandparent's birth/death certificate showing the name of the Tribal member; and (2) evidence of your parent's or grandparent's Tribal membership in accordance with paragraphs A and B. The relationship to the Tribal member must be clearly documented. Failure to submit the required documentation will result in the application not being accepted for review.

- Two Faculty/Employer Evaluations with original signature.
- Reasons for Requesting the Scholarship.
- Delinquent Debt Form.
- Course Curriculum Verification with original signature.
- Curriculum for Major.

3. Submission Dates

Continuation Application Receipt Date: The online Continuation Application submission deadline for *Continuation* applicants is Thursday, March 28, 2013. The hard copy Student Data Sheet form will no longer be mailed to Continuation applicants beginning in AY 2013–2014. All form are available electronically. Required application support documents must be submitted by Thursday, March 28, 2013.

New Application Receipt Date: New applicants must print two copies of their application form, sign them, and submit these with their supporting documents to be mailed by the deadline of Thursday, March 28, 2013. No supporting documents will be accepted after this date, except final Letters of Acceptance, which must be submitted no later than Friday, May 31, 2013.

Application forms and supporting documents (original and one copy) shall be considered as meeting the deadline if they are received by mail by the IHSSP Branch Office, postmarked on or before the deadline date. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing and will not be considered for funding.

New and Continuation applicants may check the status of their application receipt and processing by logging into their online account at *www.ihs.gov/scholarship.* Applications received, with postmarks after the announced deadline date, will not be considered for funding.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

No more than 5% of available funds will be used for part-time scholarships this fiscal year. Students are considered part-time if they are enrolled for a minimum of six hours of instruction and are not considered in full-time status by their college/university. Documentation must be received from part-time applicants that their school and course curriculum allows less than full-time status. Both part-time and full-time scholarship awards will be made in accordance with 42 CFR subpart J, Subdivisions J–3, J–4, and J–8 and this information will be published in all IHSSP Application and Student Handbooks as they pertain to the IHSSP.

6. Other Submissions Requirements

New and Continuation applicants are responsible for using the online application system. See section 3. Submission Dates for application deadlines.

V. Application Review Information

1. Criteria

Applications will be reviewed and scored with the following criteria.

- Academic Performance (40 points)

Applicants are rated according to their academic performance as evidenced by transcripts and faculty evaluations. In cases where a particular applicant's school has a policy not to rank students academically, faculty members are asked to provide a personal judgment of the applicant's achievement. Preparatory, Pre-graduate and Health Professions applicants with a cumulative GPA below 2.0 are not eligible for award.

- Faculty/Employer Recommendations (30 points)

Applicants are rated according to evaluations by faculty members, current and/or former employers and Tribal officials regarding the applicant's

potential in the chosen health related professions.

• Stated Reasons for Asking for the Scholarship and Stated Career Goals Related to the Needs of the IHS (30 points)

Applicants must provide a brief written explanation of reasons for asking for the scholarship and of their career goals. Applicants are considered for scholarship awards based on their desired career goals and how these goals relate to current Indian health personnel needs.

The applicant's narrative will be judged on how well it is written and its content.

Applications for each health career category are reviewed and ranked separately.

• Applicants who are closest to graduation or completion of training are awarded first. For example, senior and junior applicants under the Health Professions Pre-graduate Scholarship receive funding before freshmen and sophomores.

• Priority Categories

The following is a list of health professions that will be considered for funding in each scholarship program in FY 2013.

○ Indian Health Professions Preparatory Scholarships

A. Pre-Clinical Psychology (Jr. and Sr. undergraduate years only).

B. Pre-Nursing.

C. Pre-Pharmacy.

D. Pre-Social Work (Jr. and Sr. preparing for an MS in social work).

○ Indian Health Professions Pre-graduate Scholarships

A. Pre-Dentistry.

B. Pre-Medicine.

C. Pre-Optometry.

D. Pre-Podiatry.

○ Indian Health Professionals Scholarship

A. Bio Medical Engineering—BS. (Jr. and Sr. undergraduate years only).

B. Bio Medical Technology—AAS.

C. Chemical Dependency Counseling—Master's Degrees.

D. Clinical Psychology—Ph.D. or Psy.D.

E. Dentistry: DDS or DMD degrees

F. Diagnostic Radiology Technology: Associates and B.S.

G. Environmental Health/Sanitarian: B.S. (Jr. and Sr. undergraduate years only).

H. Health Records Administration: R.H.I.T. (A.A.S.) and R.H.I.A (B.S.).

I. Medical Technology: B.S. (Jr. and Sr. undergraduate years only).

J. Medicine: Allopathic and Osteopathic.

K. Nurse: Associate and Bachelor Degrees and advanced degrees in Psychiatry, Geriatric, Women's Health, Pediatric Nursing, Midwifery, Nurse Anesthetist, and Nurse Practitioner. (Priority consideration will be given to Registered Nurses employed by the IHS; in a program conducted under a contract or compact entered into under the Indian Self-Determination Act and Education Assistance Act (Pub. L. 93–638) and its amendments; or in a program assisted under Title V of the IHCIA).

L. Optometry: O.D.

M. Pharmacy: Pharm.D.

N. Physician Assistant: PA–C.

O. Physical Therapy: M.S. and D.P.T.

P. Podiatry: D.P.M.

Q. Public Health Nutritionist: M.S.

R. Respiratory Therapy: B.S. Degree.

S. Social Work: Masters Level only (Direct Practice and Clinical concentrations).

T. Ultrasonography (Prerequisite: Diagnostic Radiology Technology degree/certificate).

2. Review and Selection Process

The applications will be reviewed and scored by the IHS Scholarship Program's Application Review Committee appointed by the IHS. Each reviewer will not be allowed to review an application from his/her Area or his/her own Tribe. Each application will be reviewed by three reviewers. The average score of the three reviews provides the final Ranking Score for each applicant. To determine the ranking of each applicant, these scores are sorted from the highest to the lowest within each scholarship health discipline by date of graduation and score. If several students have the same date of graduation and score within the same discipline, computer ranking list will randomly sort and will not be sorted by alphabetical name. Selections are then made from the top of each ranking list to the extent that funds allocated by the IHS among the three scholarships are available for obligation.

VI. Award Administration Information

1. Award Notices

It is anticipated that continuing applicants will be notified in writing during the first week of June 2013 and new applicants will be notified in writing during the first week of July 2013. An Award Letter will be issued to successful applicants. Unsuccessful applicants will be notified in writing, which will include a brief explanation of the reason(s) the application was not successful and provide the name of the IHS official to contact if more information is desired.

2. Administrative and National Policy Requirements

Regulations at 42 CFR part 136.304 provide that the IHS shall, from time to time, publish a list of health professions eligible for consideration for the award of IHS Indian Health Professions Preparatory and Pre-graduate Scholarships and IHS Health Professions Scholarship. Section 104(b)(1) of the IHCIA, as amended by the Indian Health Care Amendment of 1988, Public Law 100–713, authorizes the IHS to determine specific health professions for which Indian Health Scholarships will be awarded.

Awards for the Indian Health Professions Scholarships will be made in accordance 42 CFR 136.330–136.334. Awardees shall incur a service obligation prescribed under the IHCIA, Section 1613a(b), which shall be met by service, through clinical practice:

(1) In the IHS;

(2) In a program conducted under a contract or compact entered into under the Indian Self-Determination Act and Education Assistance Act (Pub. L. 93–638) and its amendments;

(3) In a program assisted under Title V of the Indian Health Care Improvement Act (Pub. L. 94–437) and its amendments; or

(4) In a private practice option of his or her profession if the practice (a) is situated in a health professional shortage area, designated in regulations promulgated by the Secretary of Health and Human Services (Secretary) and (b) addresses the health care needs of a substantial number (75% of the total served) of Indians as determined by the Secretary in accordance with guidelines of the Service.

Pursuant to the IHCIA Section1613a(b)(3)(C), an awardee of an IHS Health Professions Scholarship may, at the election of the awardee, meet his/her service obligation prescribed under IHCIA Section 1613a(b) by a program specified in options (1)–(4) above that:

(i) Is located on the reservation of the Tribe in which the awardee is enrolled; or

(ii) Serves the Tribe in which the awardee is enrolled, if there is an open vacancy available in the discipline for which the awardee was funded under the IHS Health Professions Scholarship during the required 90-day placement period.

In summary, all awardees of the Indian Health Professions Scholarship are reminded that acceptance of this scholarship will result in a service obligation required by both statutes and contract, which must be performed at an

approved service payback facility. The Director reserves the right to make final decisions regarding assignment of scholarship recipients to fulfill their service obligation.

Moreover, the Director, IHS, has the authority to make the final determination, designating a facility, whether managed and operated by IHS, or one of its Tribal or Urban Indian partners, consistent with IHCIA, as approved for scholar obligated service payback.

3. Reporting

Scholarship Program Minimum Academic Requirements

It is the policy of the IHS that a scholarship awardee funded under the Health Professions Scholarship Program of the Indian Health Care Improvement Act must maintain a 2.0 cumulative GPA, remain in good academic standing each semester/trimester/quarter, maintain full-time student status (Institutional definition of 'minimum hours' constituting full-time enrollment applies) or part-time student status (Institutional definition of 'minimum and maximum' hours constituting part-time enrollment applies) for the entire academic year, as indicated on the scholarship application submitted for that academic year. The Health Professions scholarship awardee may not change his or her enrollment status between terms of enrollment, during the same academic year. In addition to these requirements, a Health Professions Scholarship awardee must be enrolled in an approved/accredited school for a Health Professions degree.

An awardee of a scholarship under the IHS Health Professions Preparatory and Health Professions Pre-Graduate Scholarship authority must maintain a minimum 2.0 cumulative GPA, remain in good standing each semester/trimester/quarter and be a full time student (Institutional definition of 'minimum hours' constituting full-time enrollment applies, typically 12 credit hours per semester) or a part-time student (Institutional definition of 'minimum and maximum' hours constituting part-time enrollment applies, typically 6–11 credit hours). The Preparatory and Pre-graduate awardee may not change from part-time status to full-time status or vice versa in the same academic year.

The following reports must be sent to the IHSSP at the identified time frame. Each scholarship awardee will have access to an online Student Handbook containing all required program forms and instructions on when, how, and to whom these must be submitted, by logging into the IHSSP Web site at *www.ihs.gov/scholarship.* If a scholarship awardee fails to submit these forms and reports as required, they will be ineligible for continuation of scholarship support and scholarship award payments will be discontinued.

A. Recipient's Enrollment and Initial Progress Report

Within thirty (30) days from the beginning of each semester/trimester/quarter, scholarship awardees must submit a Recipient's Enrollment and Initial Progress Report (Form IHS–856–8, page 69 of the Student Handbook).

B. Transcripts

Within thirty (30) days from the end of each academic period, i.e., semester/trimester/quarter, or summer session, scholarship awardees must submit an Official Transcript showing the results of the classes taken during that period.

C. Notification of Academic Problem/Change

If at any time during the semester/trimester/quarter, scholarship awardees are advised to reduce the number of credit hours for which they are enrolled below the minimum of the 12 (or the number of hours considered by their school as full-time) for a full-time student or at least six hours for part-time students; or if they experience academic problems, they must immediately submit Form IHS–856–9, on page 71 of the Student Handbook.

D. Change of Status

• Change of Academic Status

Scholarship awardees must immediately notify their Scholarship Program Analyst if they are placed on academic probation, dismissed from school, or voluntarily withdraw for any reason (personal or medical).

• Change of Health Discipline

Scholarship awardees may not change from the approved IHSSP health discipline during the school year. If an unapproved change is made, scholarship payments will be discontinued.

• Change in Graduation Date

Any time that a change occurs in a scholarship awardee's expected graduation date, they must notify their Scholarship Program Analyst immediately in writing. Justification must be attached from the school advisor.

VII. Agency Contacts

1. Questions on the application process may be directed to the appropriate IHS Area Scholarship Coordinator.

2. Questions on other programmatic matters may be addressed to: Dr. Dawn A. Kelly, Chief, Scholarship Program, 801 Thompson Avenue, TMP 450A, Rockville, Maryland 20852, Telephone: (301) 443–6197 (This is not a toll-free number).

3. Questions on payment information may be directed to: Mr. Craig Boswell, Grants Scholarship Coordinator, Division of Grants Management, Indian Health Service, 801 Thompson Avenue, TMP 360, Rockville, Maryland 20852, Telephone: (301) 443–0243 (This is not a toll-free number).

VIII. Other Information

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Health People 2020,* a PHS-led activity for setting priority areas. This program announcement is related to the priority area of Education and Community-Based Programs. Potential applicants may download a copy of *Healthy People 2020* from *http://www.healthypeople.gov.*

Interested individuals are reminded that the list of eligible health and allied professions is effective for applicants for the 2013–2014 academic year. These priorities will remain in effect until superseded. Applicants who apply for health career categories not listed as priorities during the current scholarship cycle will not be considered for a scholarship award.

Dated: March 11, 2013.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2013–06101 Filed 3–15–13; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Ketone Bodies To Protect Tissues From Damage by Ionizing Radiation

Description of Technology: The invention relates to methods of using ketogenic compounds to protect against the adverse effects of radiation exposure, including ionizing radiation tissue damage. NIH inventors have discovered that ketone esters can be used to reduce tissue damage if administered before or after exposure to radiation. Specifically, the invention relates to esters and oligomers of (R)-3-hydroxybutyrate that are capable of elevating blood levels of (R)-3-hydroxybutyrate and acetoacetate to sufficient levels to reduce cell death caused by radiation-induced damage of DNA and RNA. The development of effective radioprotectant molecules such as these is of great importance in reducing tissue damage following intentional or accidental radiation exposure. This discovery can also increase the therapeutic efficacy of radiation therapies by protecting non-target tissues from incidental radiation damage.

Potential Commercial Applications:

- Effective therapeutic agent for reducing tissue damage following radiation exposure
- Protects populations subjected to accidental, incidental, or military exposure to radiation
- Protects non-target tissue during radiation therapy

Competitive Advantages:

- Can be administered before or after radiation damage
- Stable at room temperature, allowing easy storage

Development Stage: In vitro data available.

Inventor: Richard L. Veech (NIAAA).

Intellectual Property: HHS Reference No. E–258–2012/0—US Application No. 61/722,630 filed 05 Nov 2012.

Licensing Contact: Charlene Sydnor, Ph.D.; 301–435–4689; *sydnorc@mail.nih.gov*.

Collaborative Research Opportunity: The NIAAA is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize Ketone Bodies to Protect Tissues from Damage by Ionizing Radiation. For collaboration opportunities, please contact Peter B. Silverman, Ph.D., J.D. at *psilverm@mail.nih.gov* or 301–402–6966.

mTOR Inhibition for the Prevention of Epithelial Stem Cell Loss and Mucositis

Description of Technology: The integrity of the epidermis and mucosal epithelia is highly dependent on self-renewing stem cells and, therefore, is vulnerable to physical and chemical damage from common cancer treatments, such as radiation or chemotherapy. Consequently, many cancer patients undergoing these treatments develop mucositis, a debilitating condition involving painful and deep mucosal ulcerations. Since current prevention and treatment options for mucositis are limited, providing only minor relief and no protection to stem cells, novel therapies are needed.

The NIH inventors have recently discovered that the mammalian target of rapamycin (mTOR) mediates stem cells exhaustion in the skin and leads to progressive hair loss. More importantly, they have shown that mTOR inhibition reduces oxidative stress in the epithelial stem cells and mTOR inhibitors can be used to increase the re-populative capacity of tissue resident stem cells to maintain tissue homeostasis after injury or stress. Therefore, this technology could be used to prevent epithelial stem cell loss and provide relief from radiation-induced mucositis. Likewise, it could be used to prevent mucositis and hair loss in patients undergoing chemotherapy and stem cell transplantation. For optimal delivery and effectiveness, rapamycin or other mTOR inhibitor could be administered in the form of a mouthwash or gel product to patients prior to receiving radiation (or other) treatments.

Potential Commercial Applications: Prevention and treatment of epithelial stem cell loss and mucositis.

Competitive Advantages:

- Reduces the oxidative stress in epithelial stem cells and can increase their repopulative capacity.
- Preserves the integrity of the oral mucosa and protects from radiation-induced stem cell loss and mucositis.

Development Stage:

- Pre-clinical
- In vitro data available
- In vivo data available (animal)

Inventors: Silvio Gutkind (NIDCR), Ramiro Iglesias-Bartolome (NIDCR), Vyomesh Patel (NIDCR), Ana Cotrim (NIDCR), Alfredo Molinolo (NIDCR), James Mitchell (NCI).

Publication: Iglesias-Bartolome R, et al. mTOR inhibition prevents epithelial stem cell senescence and protects from radiation-induced mucositis. Cell Stem Cell. 2012 Sep 7;11(3):401–14. [PMID 22958932].

Intellectual Property: HHS Reference No. E–257–2012/0—U.S. Provisional Application No. 61/696,681 filed 05 Sep 2012.

Related Technology: HHS Reference No. E–300–2008—U.S. Patent Application No. 13/376,984 filed 08 Dec 2011.

Licensing Contact: Whitney Hastings; 301–451–7337; *hastingw@mail.nih.gov*.

Combination Chemotherapeutics for the Treatment of Chordoma

Description of Technology: Utilizing high-throughput screening methodology, NIH scientists have identified two classes of clinically-available drugs, proteasome inhibitors and topoisomerase inhibitors, that synergize to promote chordoma cell death. Moreover, use of the two-part chemotherapeutic regimen in animal models effectively suppressed the growth of chordoma cells and resulted in significant tumor regression. Currently, no chemotherapeutic agents have been approved for the treatment of chordoma. Using FDA approved drugs in a combination therapeutic regimen will help expedite the availability of a therapeutic for chordoma.

Chordoma is a rare form of bone cancer that arises within the skull, sacrum or bony spine. Surgical resection and radiation therapy are the current standards-of-care; however, post-treatment complications remain significant and neither modality is effective for the control of metastatic tumors.

Potential Commercial Applications:

- Chemotherapeutic regimen for the treatment of inoperable chordomas.
- Therapy for the treatment of recurrent or metastatic chordomas.
- Therapeutic kit combining an FDA-approved proteasome inhibitor with a topoisomerase inhibitor.

Competitive Advantages:

- Therapy utilizes FDA-approved drugs with known pharmacokinetics and safety profiles.
- Reduced drug dosing from combination therapy may result in fewer patient side effects.
- Combination therapy inhibits multiple molecular targets, enhancing disease response.

Development Stage:

- Pre-clinical
- In vitro data available

• In vivo data available (animal)

Inventors: Menghang Xia, Ruili Huang, Christopher P. Austin (all of NCATS).

Intellectual Property: HHS Reference No. E–156–2012/0—US Application No. 61/692,560 filed 23 Aug 2012.

Licensing Contact: Sabarni Chatterjee, Ph.D., MBA; 301–435–5587; *chatterjeesa@mail.nih.gov.*

Collaborative Research Opportunity: The National Center for Advancing Translational Sciences, Division of Pre-Clinical Innovation, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize Combination Chemotherapeutics for the Treatment of Chordoma. For collaboration opportunities, please contact Lili M. Portilla, MPA at *lilip@nih.gov.*

Dated: March 8, 2013.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2013–06070 Filed 3–15–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Start-Up Option Exclusive License: The Development of Liposomal Therapeutic Agents for the Treatment of Human Epithelial Cancers and Liposarcomas

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant to ZoneOne Pharma, Inc., of an exclusive evaluation option license to practice the inventions embodied in the following US Patent (and all foreign counterparts): Serial No. 6,890,917 entitled, ''Geldanamycin Derivative and Method of Treating Cancer Using Same'' [HHS Ref. E–050–2000/0–US–15]. The patent rights in this invention have been assigned to the Government of the United States of America.

The prospective exclusive evaluation option license territory may be worldwide, and the field of use may be limited to:

The pharmaceutical use in humans of 17-dimethylaminoethylamino-17-demethoxygeldanamycin (''17–DMAG'') as a liposome-encapsulated drug, alone or in combination with other agents, for the treatment of the following types of cancer: ovary, pancreas, metastatic skin, head and neck, colon, kidney, non-small cell lung, or liposarcoma.

Upon the expiration or termination of the exclusive evaluation option license, ZoneOne Pharma, Inc., will have the exclusive right to execute an exclusive commercialization license which will supersede and replace the exclusive evaluation option license with no greater field of use and territory than granted in the exclusive evaluation option license.

DATES: Only written comments or applications for a license (or both) which are received by the NIH Office of Technology Transfer on or before April 2, 2013 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive evaluation option license should be directed to: Patrick McCue, Ph.D., Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5560; Facsimile: (301) 402–0220; Email: *mccuepat@mail.nih.gov*.

SUPPLEMENTARY INFORMATION: This invention concerns 17–DMAG, the first water-soluble analog of 17–AAG, a less toxic and more stable analog of the antitumor antibiotic geldanamycin.

The prospective exclusive evaluation license is being considered under the small business initiative launched on 1 October 2011, and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive evaluation license, and a subsequent exclusive commercialization license, may be granted unless the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7 within fifteen (15) days from the date of this published notice.

Complete applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive evaluation option license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: March 8, 2013.

Richard U. Rodriguez,

Director, Division of Technology Development & Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2013–06069 Filed 3–15–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2012–0059]

Chemical Facility Anti-Terrorism Standards (CFATS)

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 30-day notice and request for comments; Extension of Information Collection Request: 1670–0014.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Infrastructure Protection (IP), Infrastructure Security Compliance Division (ISCD) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). The Department previously published this ICR in the **Federal Register** on December 17, 2012, for a 60-day public comment period.[1] In this notice, NPPD is responding to one comment[2] and is soliciting public comments concerning the extension of Information Collection Request, Chemical Facility Anti-Terrorism Standards (CFATS) for an additional 30 days.

DATES: Comments are encouraged and will be accepted until April 17, 2013. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to OMB Desk Officer, Department of Homeland Security, National Protection and Programs Directorate. Comments must be

[1] *See* 77 FR 74677. The 60-day **Federal Register** notice for Information Collection 1670–0014, which solicited comments for 60 days, may be found at *https://federalregister.gov/a/2012-30314.*

[2] The comment was submitted under docket # DHS–2012–0059 and provided comment not only on this information collection request (i.e., 1670–0014), but also on ICR 1670–0007 and ICR 1670–0015. The comment may be viewed at *http://www.regulations.gov/#!documentDetail;D=DHS-2012-0059-0002.*

identified by docket number DHS–2012–0059 and may be submitted by *one* of the following methods:

○ *Federal eRulemaking Portal: http://www.regulations.gov.*

○ *Email: oira_submission@omb.eop.gov.* Include the docket number in the subject line of the message.

○ *Fax:* (202) 395–5806.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided. Comments that include trade secrets, confidential commercial or financial information, Chemical-terrorism Vulnerability Information (CVI), Sensitive Security Information (SSI), or Protected Critical Infrastructure Information (PCII) should not be submitted to the public regulatory docket. Please submit such comments separately from other comments in response to this notice. Comments containing trade secrets, confidential commercial or financial information, CVI, SSI, or PCII should be appropriately marked and submitted by mail to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to OMB Desk Officer, Department of Homeland Security, National Protection and Programs Directorate. Comments must be identified by docket number DHS–2012–0059.

OMB is particularly interested in comments that:

1. 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;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: CFATS Program Manager, DHS/NPPD/IP/ISCD, *CFATS@hq.dhs.gov*.

SUPPLEMENTARY INFORMATION: Section 550 of the Homeland Security Appropriations Act of 2007, Public Law 109–295, provides DHS with the authority to regulate the security of high-risk chemical facilities. On April 9, 2007, the Department issued an Interim Final Rule (IFR), implementing this statutory mandate at 72 FR 17688. Section 550 of the Homeland Security Appropriations Act of 2007 requires a risk-based approach to security.

CFATS is the Department's regulations under Section 550 governing security at high-risk chemical facilities. *See* 6 CFR part 27. CFATS represents a national-level effort to minimize terrorism risk to such facilities. Its design and implementation balance maintaining economic vitality with security facilities and their surrounding communities. In collaboration with the private sector and other stakeholders, the Department designed the regulations to take advantage of protective measures already in place and to allow facilities to employ a wide range of tailored measures to satisfy the regulations' Risk-Based Performance Standards (RBPS). The instruments within this collection will be used to manage the CFATS program.

Response to Comment Submitted During 60-Day Comment Period: The Department received a comment suggesting that in the 60-day notice, the Department incorrectly calculated the burden estimates associated with the instrument ''Request for a Technical Correction.'' The commenter assumed that the number of responses per respondent for this instrument was one. In fact, the Department estimated in the current Information Collection, which expires on March 31, 2013, that each respondent will on average respond 1.5 times. This assumption was carried over into the burden estimates used by the Department in the 60-day notice but not made explicit. The total annual burden for this instrument is calculated as follows [0.25 hours x 185 respondents x 1.5 responses per respondent], which equals 69.37 hours. The Department did not revise the burden estimates for this instrument.

Therefore, for this instrument and the other instruments in this 30-day notice the Department will continue to rely on the analysis and resulting burden estimates in the 60-day notice.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection, Infrastructure Security Compliance Division.

Title: Chemical Facility Anti-Terrorism Standards (CFATS).

OMB Number: 1670–0014.

Instrument: Request for Redetermination.

Frequency: On occasion/Other.

Affected Public: Business or other for-profit.

Number of Respondents: 625 respondents (estimate).

Estimated Time per Respondent: 0.25 hours.

Total Burden Hours: 156.25 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $13,437.

Instrument: Request for an Extension.

Frequency: On occasion/Other.

Affected Public: Business or other for-profit.

Number of Respondents: 185 respondents (estimate).

Estimated Time per Respondent: 0.25 hours.

Total Burden Hours: 46.25 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $3,977.

Instrument: Notification of a New Top Screen.

Frequency: On occasion/Other.

Affected Public: Business or other for-profit.

Number of Respondents: 1250 respondents (estimate).

Estimated Time per Respondent: 0.25 hours.

Total Burden Hours: 468.75 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $40,312.

Instrument: Request for a Technical Consultation.

Frequency: On occasion/Other.

Affected Public: Business or other for-profit.

Number of Respondents: 185 respondents (estimate).

Estimated Time per Respondent: 0.25 hours.

Total Burden Hours: 69.37 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $5,966.

Dated: March 11, 2013.

Michael Butcher,

Acting Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2013–06097 Filed 3–15–13; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2012–0058]

Chemical Security Assessment Tool (CSAT)

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 30-day notice and request for comments; Revision of Information Collection Request: 1670–0007.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Infrastructure Protection (IP), Infrastructure Security Compliance Division (ISCD), will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). The Department previously published this ICR in the **Federal Register** on December 17, 2012, for a 60-day public comment period.[1] In this notice NPPD is (1) responding to one comment submitted in response to the 60-day notice previously published for this ICR, (2) responding to an additional comment that was responsive to different notice, also published on December 17, 2012, that solicited comments on a related Information Collection Request,[2] and (3) soliciting comments concerning the extension of Information Collection Request, Chemical Security Assessment Tool for an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until April 17, 2013. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to OMB Desk Officer, Department of Homeland Security, National Protection and Programs Directorate. Comments must be identified by the docket number DHS–2012–0058 and may be submitted by *one* of the following methods:

○ *Federal eRulemaking Portal: http://www.regulations.gov.*

○ *Email: oira_submission@omb.eop.gov.* Include the docket number in the subject line of the message.

○ *Fax:* (202) 395–5806.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Comments that include trade secrets, confidential commercial or financial information, Chemical-terrorism Vulnerability Information (CVI), Sensitive Security Information (SSI), or Protected Critical Infrastructure Information (PCII) should not be submitted to the public regulatory docket. Please submit such comments separately from other comments in response to this notice. Comments containing trade secrets, confidential commercial or financial information, CVI, SSI, or PCII should be appropriately marked and submitted by mail to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to OMB Desk Officer, Department of Homeland Security, National Protection and Programs Directorate. Comments must be identified by docket number DHS–2012–0058.

OMB is particularly interested in comments that:

1. 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;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: CFATS Program Manager, DHS/NPPD/IP/ISCD, *CFATS@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: Section 550 of the Homeland Security Appropriations Act of 2007, Public Law 109–295 (2006), provides DHS with the authority to regulate the security of high-risk chemical facilities. On April 9, 2007, the Department issued an Interim Final Rule (IFR), implementing this statutory mandate at 72 FR 17688. Section 550 of the Homeland Security Appropriations Act of 2007 requires a risk-based approach to security.

The Chemical Facility Anti-Terrorism Standards (CFATS) are the Department's regulations under Section 550 governing security at high-risk chemical facilities. *See* 6 CFR part 27. CFATS represents a national-level effort to minimize terrorism risk to such facilities. Its design and implementation balance maintaining economic vitality with securing facilities and their surrounding communities. The regulations were designed, in collaboration with the private sector and other stakeholders, to take advantage of protective measures already in place and to allow facilities to employ a wide range of tailored measures to satisfy the regulations' Risk-Based Performance Standards (RBPS).

The Department collects the core regulatory data through the portions of the Chemical Security Assessment Tool (CSAT) covered under this collection. For more information about CFATS and CSAT, you may access *www.dhs.gov/chemicalsecurity.* The current information collection for these portions of CSAT will expire on March 31, 2013.

Response to Comments Submitted During the 60-Day Comment Period

The Department received two comments in response to the **Federal Register** notices published on December 17, 2012. One comment requested that the Department correct a citation in one of its user guides but did not comment on the Department's Paperwork Reduction Act burden estimates. The Department has made available on its Web site (*www.dhs.gov/chemicalsecurity*) updated materials that contain the correct citation.[3]

[1] *See* 77 FR 74678. The 60-day **Federal Register** notice for Information Collection 1670–0007, which solicited comments for 60 days, may be found at *https://federalregister.gov/a/2012-30313.*

[2] The comment was submitted under docket # DHS–2012–0059 and provided comment not only on this Information Collection Request (i.e., 1670–0007), but also on ICR 1670–0014 and ICR 1670–0015. The comment may be viewed at *http://www.regulations.gov/#!documentDetail;D=DHS-2012-0059-0002.*

[3] The commenter requested that the Department correct a citation in DHS Form 9007 (version 1.3). The Department has made available on its Web site version 2.8 of DHS Form 9007 which contains the correct citation.

The Department received a second responsive comment that was submitted in response to a separate but related notice, also published on December 17, 2012, that solicited comments on a related Information Collection Request. *See* 77 FR 74677. As a result, the Department has made several revisions to its burden estimate for ICR 1670–0007 in this 30-day notice in response to the comment. These revisions are discussed in the sections below. The commenter also made two other recommendations that touch on several of the instruments in this ICR. First, the commenter recommended that the Department include on its forms examples of potential responses and pre-populate documents with data previously submitted to the Department by each chemical facility. Second, the commenter recommended that the Department make the instruments (e.g., Top-Screen, Security Vulnerability Assessment [SVA]/Alternative Security Program [ASP], and Site Security Plan [SSP]/ASP) available online for both data entry and final submission. Further, the commenter recommended that the instruments should be easy to navigate and allow facilities to revise and submit the instruments online in various document formats (e.g., Word, PDF, Visio). The commenter suggested that if the Department implemented these recommendations it would decrease the administrative time spent by both respondents and the Department while improving the content of the information submitted to the Department to better satisfy program requirements. The Department will consider these suggestions, and if incorporated in the future will evaluate whether or not the burden estimates in this information collection should be revised.

The Department's Methodology in Estimating the Burden for the Top-Screen

Number of Respondents

This 30-day notice relies on the analysis and resulting burden estimate in the 60-day notice for this instrument which estimated the number of Top-Screen respondents as 2500 respondents.

Estimated Time per Respondent

By using the data collected between January 2009 and December 2011, the Department was able to measure the duration a user, on behalf of a facility, was logged into the Top-Screen application. The Department determined that 98 percent of users who submitted Top-Screens were logged into the Top-Screen application for no more than 2.25 hours. Based upon the Department's interactions with regulated chemical facilities, the Department assumed in the 60-day notice that for every hour a facility is logged into CSAT, it spends an average of two hours in preparation. This resulted in an estimated time per respondent to submit a Top-Screen of 6.75 hours.

The Department received a comment suggesting that the estimated time per response for this instrument should be 25 hours rather than the 6.75 hours estimated by the Department in the 60-day notice. As a result of the comment, and its ongoing interactions with regulated chemical facilities, the Department has revised its estimated time per response for this instrument. The Department will assume in this 30-day notice that a respondent spends an average of four hours in preparation outside of CSAT for every hour logged into CSAT. This results in an estimated time per respondent to submit a Top-Screen of 11.25 hours.

To account for the anticipated resubmission by facilities, the Department will continue to estimate that 50 percent of the respondents will submit two Top-Screens.

The Department will also continue to estimate that it will collect supporting documentation from approximately half of the respondents. Based upon the Department's day-to-day informal discussions with regulated chemical facilities, the Department believes that a reasonable burden for the gathering and provision of supporting documentation is 0.25 hours.

Annual Burden Hours

As a result of the revised estimated time per respondent the annual burden hours for the Top-Screen is [11.25 hours × 2,500 respondents × 1.5 responses per respondent], which equals 42,187.50 hours. The annual burden hours to submit supporting documentation is 312 hours [0.25 hours × 1,250 respondents × one response per respondent].

Therefore, the Department estimates that the total annual burden hours for the Top-Screen is 42,499.5 hours [42,187.5 hours + 312 hours]. The rounded estimate is 42,500 hours.

Total Burden Cost (Capital/Startup)

The Department provides access to CSAT free of charge, and the Department assumes that each respondent already has access to the internet for basic business needs. Therefore, for the purposes of this notice, the Department estimates that there are no capital/startup costs.

Total Recordkeeping Burden

A chemical facility that has submitted a Top-Screen may or may not be determined by the Department to present a high level of security risk. Only covered facilities that present a high level of security risk are required to keep records mandated by CFATS.

For chemical facilities that ultimately are determined not to present a high level of security risk, the Department estimates any CFATS recordkeeping burden to be de minimis.

For chemical facilities that are determined to present a high level of security risk, the Top-Screen recordkeeping burden is accounted for within the recordkeeping burden estimate for the ''Site Security Plan (SSP) and Alternative Security Program (ASP) submitted in lieu of the Site Security Plan,'' discussed later in this notice. The recordkeeping burden estimate for the ''Site Security Plan (SSP) and Alternative Security Program (ASP) submitted in lieu of the Site Security Plan'' accounts for all records high-risk chemical facilities are required to maintain under CFATS because the Department assumes that high-risk chemical facilities maintain their Top-Screen records and any other required records in the same manners, formats, and locations as they maintain their SSP/ASP records.

Total Annual Burden Cost (Operating/Maintaining)

The 2007 CFATS Regulatory Evaluation assumes that Site Security Officers are responsible for submitting Top-Screens. For the purpose of this notice, the Department maintains this assumption.

Therefore, to estimate the total annual burden, the Department multiplied the annual burden of 42,499.5 hours by the wage rate of Site Security Officers and adjusted for the actual and estimated Employment Cost Index (ECI) published by the Bureau of Labor Statistics (BLS). For the purpose of this notice, the Department adjusted the wage rate of Site Security Officers from $80.00 per hour to $86.00 per hour. Therefore, the total annual burden cost for the Top-Screen is $3,654,957 [42,499.5 total annual burden hours × $86 per hour]. The rounded estimate is $3,655,000.

The Department's Methodology in Estimating the Burden for the Security Vulnerability Assessment (SVA) & Alternative Security Program (ASP) Submitted in Lieu of the Security Vulnerability Assessment

Number of Respondents

This 30-day notice relies on the analysis and resulting burden estimate in the 60-day notice for this instrument, which estimated the number of SVA/ASP respondents as 740 respondents.

Estimated Time per Respondent

By using the data collected between January 2009 and December 2011, the Department was able to measure the duration a user, on behalf of a facility, was logged into the SVA/ASP application. The Department determined that 98 percent of users who submitted SVAs were logged into the SVA/ASP application for no more than 13 hours. Based upon the Department's interactions with regulated chemical facilities, the Department assumed in the 60-day notice that for every hour a facility is logged into CSAT, it spends an average of two hours in preparation. This resulted in an estimated time per respondent to submit an SVA/ASP of 39 hours.

The Department received a comment suggesting that the estimated time per response for this instrument should be 60 hours rather than the 39 hours estimated by the Department in the 60-day notice. As a result of the comment, and its ongoing interactions with regulated chemical facilities, the Department has revised its estimated time per response for this instrument. The Department will assume in this 30-day notice that a respondent spends an average of four hours in preparation outside of CSAT for every hour logged into CSAT. This results in an estimated time per respondent to submit a Top-Screen of 65 hours.

To account for the anticipated resubmission by facilities, the Department will continue to estimate that 50 percent of the respondents will submit an additional SVA/ASP.

The Department will also continue to estimate that it will collect supporting documentation from approximately half of the respondents. Based upon the Department's day-to-day informal discussions with regulated chemical facilities, the Department believes that a reasonable burden for gathering and provision of supporting documentation is 0.25 hours per facility.

Annual Burden Hours

The annual burden hours for the SVA/ASP is 72,150 hours [740 respondents × 65 hours × 1.5 response per respondent].

The annual burden estimate to obtain supporting documentation is 92.5 hours [0.25 hours × 370 respondents x one response per respondent].

Therefore, the Department estimates that the total annual burden in hours for the SVA/ASP is 72,242.5 hours [72,150 hours + 92.5 hours]. The rounded estimate is 72,200 hours.

Total Burden Cost (Capital/Startup)

The Department provides access to CSAT free of charge, and the Department assumes that each respondent already has access to the internet for basic business needs. Therefore, for the purposes of this notice, the Department estimates that there are no capital/startup costs.

Total Recordkeeping Burden

A chemical facility that has submitted an SVA/ASP may or may not be determined by the Department to present a high level of security risk. Only covered facilities that present a high level of security risk have a recordkeeping requirement.

For chemical facilities that ultimately are determined not to present a high level of security risk, the Department estimates any CFATS recordkeeping burden to be de minimis.

For chemical facilities that are determined to present a high level of security risk, the SVA recordkeeping burden is accounted for within the recordkeeping burden estimate for the ''Site Security Plan (SSP) and Alternative Security Program (ASP) submitted in lieu of the Site Security Plan,'' discussed later in this notice. The recordkeeping burden estimate for the ''Site Security Plan (SSP) and Alternative Security Program (ASP) submitted in lieu of the Site Security Plan'' accounts for all records high-risk chemical facilities are required to maintain under CFATS because the Department assumes that high-risk chemical facilities maintain their Top-Screen records and any other required records in the same manners, formats, and locations as they maintain their SSP/ASP records.

Total Annual Burden Cost (Operating/Maintaining)

The 2007 CFATS Regulatory Evaluation assumes that Site Security Officers will be responsible for submitting SVA/ASPs. For the purpose of this notice, the Department maintains this assumption.

The total annual burden cost for the SVA/ASP is $6,212,855 [72,242.5 total annual burden hours × $86 (average hourly wage rate for Site Security Officers)]. The rounded estimate is $6,212,900.

The Department's Methodology in Estimating the Burden for Site Security Plan (SSP) and Alternative Security Program (ASP) Submitted in Lieu of the Site Security Plan

Number of Respondents

This 30-day notice relies on the analysis and resulting burden estimate in the 60-day notice for this instrument which estimated the number of SSP/ASP respondents is 486 respondents.

Estimated Time per Respondent

By using the data collected between January 2009 and December 2011, the Department was able to measure the duration a user, on behalf of a facility, was logged into the SSP/ASP application. The Department determined that 98 percent of users who submitted SSPs were logged into the SSP/ASP application for no more than 45 hours. Based upon the Department's interactions with regulated chemical facilities, the Department assumed in the 60-day notice that for every hour a facility is logged into CSAT, it spends an average of 4.5 hours in preparation. This resulted in an estimated time per respondent to submit an SSP/ASP as 200 hours.

The Department received a comment suggesting that the estimated time per response for this instrument should be 225 hours rather than the 200 hours estimated by the Department in the 60-day notice. As a result of the comment, and its ongoing interactions with regulated chemical facilities, the Department has revised its estimated time per response for this instrument. The Department will assume in this 30-day notice that a respondent spends an average of four hours in preparation outside of CSAT for every hour logged into CSAT. This results in an estimated time per respondent to submit an SSP/ASP as 225 hours.

To account for anticipated resubmissions by facilities, the Department will continue to estimate that 50 percent of the respondents will submit an additional SSP/ASP.

The Department will also continue to estimate that it will collect supporting documentation from approximately half of the respondents. Based upon the Department's day-to-day informal discussions with regulated chemical facilities, the Department believes that a reasonable burden for the gathering and provision of supporting documentation is 0.25 hours per facility.

Annual Burden Hours

The annual burden hours for SSP/ASP submission is 164,025 hours [225 hours × 486 SSP/ASP respondents × 1.5 response per respondent].

The annual burden hours for obtaining supporting documentation is 60.75 hours [0.25 hours × (0.5 × 486 SSP/ASP respondents) × (one response per respondent)].

Therefore, the Department estimates that the total annual burden hours for SSP/ASP submission is 164,085.75 hours [164,025 hours + 60.75 hours]. The rounded estimate is 164,100 hours.

Total Burden Cost (Capital/Startup)

The Department provides access to CSAT free of charge, and the Department assumes each respondent already has access to the internet for basic business needs. Therefore, for the purposes of this notice, the Department estimates that there are no capital/startup costs.

Total Recordkeeping Burden

The Department received a comment that correctly identified a calculation error in the 60-day notice. Specifically, although the Department estimated the average annual cost for paper-based recordkeeping to be $336 (which is the correct estimate), in later calculations, the value of $366 was used.

The Department received a comment that suggested that the Department did not properly acknowledge in its estimates that the data collection process requires cooperation and input from a variety of individuals with wage rates greater than adjusted wage rate of clerical staff (i.e., $43) estimated in the ECI published by the BLS. The Department agrees with the commenter. In fact in the 60-day notice when estimating the total annual cost for the Top-Screen, SVA/ASP, and the SSP/ASP instruments the Department used the adjusted wage rate for Site Security Officers (i.e., $86) estimated in the ECI published by the BLS. In the 60-day notice, the wage rate for clerical staff was used solely to estimate recordkeeping costs. The Department believes this is reasonable and as a result did not revise its wage rates.

Therefore, the Department has revised its estimate of the annual recordkeeping burden to be $1,191,405.70 [($336 + $2,064) × (0.95 × 486 SSP/ASP respondents) + [($333 + $3,096) × (0.05 × 486 SSP/ASP respondents)]. The rounded estimate is $1,191,400.

Total Annual Burden Cost (Operating/Maintaining)

The Department received a comment that correctly identified a second calculation error in the 60-day notice.[4] Specifically, the comment pointed out that although the Department estimated the estimated time per respondent, a different value was used in later calculations to estimate the total annual burden cost. The Department has corrected the error in this notice.

Therefore, the revised total annual burden cost for the SSP/ASP is $15,302,780.20 [164,085.75 hours multiplied by $86 (average hourly wage rate for Site Security Officers) + $1,191,405.70 (total annual recordkeeping burden)]. The rounded estimate is $15,302,800.

The Department's Methodology in Estimating the Burden for the Helpdesk

This 30-day notice relies on the analysis and resulting burden estimates in the 60-day notice for this instrument.

The Department's Methodology in Estimating the Burden for the User Registration

This 30-day notice relies on the analysis and resulting burden estimates in the 60-day notice for this instrument.

The Department's Methodology in Estimating the Burden for the Request for Information To Improve Program

This 30-day notice relies on the analysis and resulting burden estimates in the 60-day notice for this instrument.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection, Infrastructure Security Compliance Division.

Title: Chemical Security Assessment Tool (CSAT).

OMB Number: 1670–0007.

Instrument: CSAT Top-Screen.

Frequency: ''On occasion'' and ''Other''.

Affected Public: Business or other for-profit.

Number of Respondents: 2,500 respondents (estimate).

Estimated Time per Respondent: 11.25 hours.

Total Burden Hours: 42,500 hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $3,655,000.

Instrument: Security Vulnerability Assessment and Alternative Security Program Submitted in Lieu of the Security Vulnerability Assessment.

Frequency: ''On occasion'' and ''Other''.

Affected Public: Business or other for-profit.

Number of Respondents: 740 respondents (estimate).

Estimated Time per Respondent: 65 hours.

Total Burden Hours: 472,200 hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $6,212,900.

Instrument: Site Security Plan and Alternative Security Program Submitted in Lieu of the Site Security Plan.

Frequency: ''On occasion'' and ''Other''.

Affected Public: Business or other for-profit.

Number of Respondents: 486 respondents (estimate).

Estimated Time per Respondent: 225 hours.

Total Burden Hours: 164,100 hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $1,191,400.

Total Burden Cost (operating/maintaining): $15,302,800.

Instrument: Chemical Facility Anti-Terrorism Standards (CFATS) Helpdesk.

Frequency: ''On occasion'' and ''Other''.

Affected Public: Business or other for-profit.

Number of Respondents: 15,000 respondents (estimate).

Estimated Time per Respondent: 0.17 hours.

Total Burden Hours: 2,250 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $219,300.

Instrument: Chemical Security Assessment Tool (CSAT) User Registration.

Frequency: ''On occasion'' and ''Other''.

Affected Public: Business or other for-profit.

Number of Respondents: 625 respondents (estimate).

Estimated Time per Respondent: Two hours.

Total Burden Hours: 1,250 hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $107,500.

[4] In the 60-day notice the Department estimated the total burden hours to submit an SSP/ASP to be 148,860.75 hours but then incorrectly used a different value when estimating the total annual cost. In this notice the total burden hours to submit an SSP/ASP was revised to be 164,100 hours. The revised total burden hours value of 164,100 is then subsequently used when estimating the total annual cost in this 30-day notice.

Instrument: Request for Information to Improve Program.

Frequency: ''On occasion'' and ''Other''.

Affected Public: Business or other for-profit.

Number of Respondents: 329 respondents (estimate).

Estimated Time per Respondent: One hour.

Total Burden Hours: 122 hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $10,500.

Dated: March 11, 2013.

Michael Butcher,

Acting Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2013–06095 Filed 3–15–13; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2012–0057]

Chemical Facility Anti-Terrorism Standards (CFATS) Chemical-Terrorism Vulnerability Information (CVI)

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 30-day notice and request for comments; Extension of Information Collection Request: 1670–0015.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Infrastructure Protection (IP), Infrastructure Security Compliance Division (ISCD) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). The Department previously published this ICR in the **Federal Register** on December 17, 2012, for a 60-day public comment period.[1] In this notice, NPPD is responding to one relevant comment that was responsive to different notice, also published in the **Federal Register** on December 17, 2012 that solicited comments on a related Information Collection Request.[2] This notice is also soliciting comments concerning the Information Collection Request, Chemical Facility Anti-Terrorism Standards (CFATS) Chemical-terrorism Vulnerability Information (CVI) for an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until April 17, 2013. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to OMB Desk Officer, Department of Homeland Security, National Protection and Programs Directorate. Comments must be identified by docket number DHS–2012–0057 and may be submitted by *one* of the following methods:

○ *Federal eRulemaking Portal: http://www.regulations.gov.*

○ *Email: oira_submission@omb.eop.gov.* Include the docket number in the subject line of the message.

○ *Fax:* (202) 395–5806.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. Comments that include trade secrets, confidential commercial or financial information, CVI, Sensitive Security Information (SSI), or Protected Critical Infrastructure Information (PCII) should not be submitted to the public regulatory docket. Please submit such comments separately from other comments in response to this notice. Comments containing trade secrets, confidential commercial or financial information, CVI, SSI, or PCII should be appropriately marked and submitted by mail to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to OMB Desk Officer, Department of Homeland Security, National Protection and Programs Directorate. Comments must be identified by docket number DHS–2012–0057.

OMB is particularly interested in comments that:

1. 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;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: CFATS Program Manager, DHS/NPPD/IP/ISCD, *CFATS@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: Section 550 of the Homeland Security Appropriations Act of 2007, Public Law 109–295, provides DHS with the authority to regulate the security of high-risk chemical facilities. On April 9, 2007, the Department issued an Interim Final Rule (IFR), implementing this statutory mandate at 72 FR 17688. Section 550 of the Homeland Security Appropriations Act of 2007 requires a risk-based approach to security.

CFATS is the Department's regulations under Section 550 governing security at high-risk chemical facilities. *See* 6 CFR part 27. CFATS represents a national-level effort to minimize terrorism risk to such facilities. Its design and implementation balance maintaining economic vitality with securing facilities and their surrounding communities. In collaboration with the private sector and other stakeholders, the Department designed the regulations to take advantage of protective measures already in place and to allow facilities to employ a wide range of tailored measures to satisfy the regulations' Risk-Based Performance Standards.

In 6 CFR 27.400, CFATS also establishes the requirements that covered persons must follow to safeguard certain documents and other information developed under the regulations. This information is identified as ''Chemical-terrorism Vulnerability Information'' (CVI) and by law receives protection from public disclosure and misuse. The instruments within this collection will be used to manage the CVI program in support of CFATS.

Response to Comment Submitted During 60-Day Comment Period: The Department received a comment

[1] *See* 77 FR 74685. The 60-day **Federal Register** notice for IC 1670–0015 which solicited comments for 60 days may be found at *https://federalregister.gov/a/2012-30316.*

[2] The comment was submitted under docket # DHS–2012–0059 and provided comment not only on this information collection request (i.e., 1670–0015), but also on ICR 1670–0007 and ICR 1670–0014. The comment may be viewed at *http://www.regulations.gov/#!documentDetail;D=DHS-2012-0059-0002.*

suggesting that in the 60-day notice, the Department incorrectly calculated the burden estimates associated with the instrument ''Chemical-terrorism Vulnerability Information Tracking Log.'' The commenter assumed that the number of responses per respondent for this instrument was one. In fact, the Department estimated in the current Information Collection, which expires on March 31, 2013, that each respondent will on average respond 12 times. This assumption was carried over into the burden estimates used by the Department in the 60-day notice but not made explicit. The total annual burden for this instrument is calculated as follows [0.0833 hours (five minutes) × 30,000 respondents × 12 responses per respondent], which equals 29,988 hours. The rounded estimate is 30,000 hours. The Department did not revise the burden estimates for this instrument.

Therefore, for this instrument and the other instruments in this 30-day notice the Department will continue to rely on the analysis and resulting burden estimates in the 60-day notice.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection, Infrastructure Security Compliance Division.

Title: Chemical Facility Anti-Terrorism Standards (CFATS) Chemical-terrorism Vulnerability Information (CVI).

OMB Number: 1670–0015.

Instrument: Chemical-terrorism Vulnerability Information Authorization.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 30,000 respondents (rounded estimate).

Estimated Time per Respondent: One hour.

Total Burden Hours: 30,000 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $2,580,000.

Instrument: Determination of Chemical-terrorism Vulnerability Information (CVI).

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 300 respondents (rounded estimate).

Estimated Time per Respondent: 0.25 hours.

Total Burden Hours: 75 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $6,450.

Instrument: Determination of a ''Need to Know'' by a Public Official.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 14,200 respondents (rounded estimate).

Estimated Time per Respondent: 0.25 hours.

Total Burden Hours: 3,550 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $305,300.

Instrument: Disclosure of Chemical-terrorism Vulnerability Information (CVI) Information.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 300 respondents (rounded estimate).

Estimated Time per Respondent: 0.25 hours.

Total Burden Hours: 75 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $6,450.

Instrument: Notification of Emergency or Exigent Circumstances.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 300 respondents (rounded estimate).

Estimated Time per Respondent: 0.25 hours.

Total Burden Hours: 75 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $6,450.

Instrument: Tracking Log for Chemical-terrorism Vulnerability Information (CVI) Received.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 30,000 respondents (rounded estimate).

Estimated Time per Respondent: 0.0833 hours (5 minutes).

Total Burden Hours: 30,000 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $2,580,000.

Dated: March 11, 2013.

Michael Butcher,

Acting Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2013–06096 Filed 3–15–13; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2012–0797]

National Maritime Security Advisory Committee; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The National Maritime Security Advisory Committee (NMSAC) will meet on April 2–3, 2013 in Washington, DC to discuss various issues relating to national maritime security. This meeting will be open to the public.

DATES: The Committee will meet on Tuesday, April 2, 2013 from 9:00 a.m. to 4:00 p.m. and Wednesday, April 3, 2013 from 8:00 a.m. to 11:00 a.m. This meeting may close early if all business is finished. All written material and requests to make oral presentations should reach the Coast Guard on or before March 29, 2012.

ADDRESSES: The Committee will meet in the Oklahoma Room at the Department of Transportation, 1200 New Jersey Ave SE., Washington, DC 20590. Seating is very limited. Members of the public wishing to attend should register with Mr. Ryan Owens, Alternate Designated Federal Official (ADFO) of NMSAC, telephone 202–372–1108 or *ryan.f.owens@uscg.mil* no later than March 25, 2013. Additionally, this meeting will be broadcasted via a web enabled interactive online format and teleconference line.

To participate via teleconference, dial 866–810–4853, the pass code to join is 9760138#. Additionally, if you would like to participate in this meeting via the online web format, please log onto *https://connect.hsin.gov/r11254182* and follow the online instructions to register for this meeting.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the Committee as listed in the ''Agenda'' section below. You may submit written comments no later than March 29, 2013. Identify your comments by docket number [USCG–2012–0797] using one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. We encourage use of electronic submissions because security screening may delay delivery of mail.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Same as mail address above, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. The telephone number is 202–366–9329.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and docket number [USCG–2012–0797]. All submissions received will be posted without alteration at *www.regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316)

Docket: Any background information or presentations available prior to the meeting will be published in the docket. For access to the docket to read background documents or submissions received by NMSAC, go to *http://www.regulations.gov,* insert ''USCG–2012–0797'' in the ''Search'' box, and then click ''Search.''

Public oral comment period will be held during the meetings on April 2, 2013, from 3:30 p.m. to 4:00 p.m., and April 3, 2013 from 10:30 a.m. to 11:00 a.m. Speakers are requested to limit their comments to 5 minutes. Please note that the public comment period will end following the last call for comments. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Owens, ADFO of NMSAC, 2100 2nd Street SW., Stop 7581, Washington, DC 20593–7581; telephone 202–372–1108 or email *ryan.f.owens@uscg.mil.* If you have any questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). NMSAC operates under the authority of 46 U.S.C. 70112. NMSAC provides advice, consults with, and makes recommendations to the Secretary of Homeland Security, via the Commandant of the Coast Guard, on matters relating to national maritime security.

Agenda of Meeting

Day 1

The agenda for the Committee meeting is as follows:

(1) Cyber Security Executive Order. On February 12, 2013, President Barack Obama signed an Executive Order [1] to strengthen the cybersecurity of critical infrastructure by increasing information sharing and by jointly developing and implementing a framework of cybersecurity practices with our industry partners. NMSAC will be engaged to discuss and hear public comment on the Executive Order and begin initial work in developing a framework for the maritime community.

(2) Presidential Policy Directive-21.[2] On February 12, 2013, the White House Office of the Press Secretary published a Presidential Policy Directive (PPD) on critical infrastructure security and resilience. PPD–21 updates the national approach from Homeland Security Presidential Directive–7 (issued in 2003) to adjust to the new risk environment, understand key lessons learned, and drive toward enhanced capabilities. NMSAC will be engaged to discuss and hear public comment on PPD–21 and its impacts on the maritime community.

(3) Maritime Domain Awareness and Information Sharing. NMSAC will receive a brief on, and will engage in a discussion on, the efforts of the Coast Guard and DHS to implement Maritime Domain Awareness and Information Sharing.

(4) National Suspicious Activity Reporting Initiative (NSI). NMSAC will receive a brief, hear public comments and provide recommendations, on the NSI program.

(5) Public Comment Period.

Day 2

(1) Radiation Portal Monitoring. NMSAC will continue its discussion of the Radiation Portal Monitoring Program.

(2) Port Security Grant Program. NMSAC will discuss the Port Security Grant Program, hear public comments and provide recommendations to the Coast Guard on the future implementation of the program.

(3) Public comment period.

Dated: March 11, 2013.

R.F. Owens,

U.S. Coast Guard, Office of Port and Facility Compliance, Deputy Designated Federal Official.

[FR Doc. 2013–06125 Filed 3–15–13; 8:45 am]

BILLING CODE 9110–04–P

[1] The Executive Order (not numbered) is available for viewing online at the White House's Web site: *http://www.whitehouse.gov/the-press-office/2013/02/12/executive-order-improving-critical-infrastructure-cybersecurity.*

[2] Presidential Policy Directive-21 is available for viewing online at the White House's Web site: *http://www.whitehouse.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil.*

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4101–DR; Docket ID FEMA–2013–0001]

Mississippi; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–4101–DR), dated February 13, 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 the incident period for this disaster is closed effective February 22, 2013.

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. 2013–06117 Filed 3–15–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Application for Foreign Trade Zone and/or Status Designation, and Application for Foreign Trade Zone Activity Permit

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security

ACTION: 30-Day Notice and request for comments; Extension of an existing collection of information: 1651–0029.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application for Foreign Trade Zone Admission and/or Status Designation, and Application for Foreign Trade Zone Activity Permit (CBP Forms 214, 214A, 214B, 214C and 216). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This information collection was previously published in the **Federal Register** (78 FR 4155) on January 18, 2013, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before April 17, 2013.

ADDRESSES: Interested persons are invited to submit written comments on this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Application for Foreign Trade Zone Admission and/or Status Designation, and Application for Foreign Trade Zone Activity Permit.

OMB Number: 1651–0029.

Form Number: CBP Forms 214, 214A, 214B, 214C and 216.

Abstract: Foreign trade zones (FTZs) are geographical enclaves located within the geographical limits of the United States but for tariff purposes are considered to be outside the United States. Imported merchandise may be brought into FTZs for storage, manipulation, manufacture or other processing and subsequent removal for exportation, consumption in the United States, or destruction. A company bringing goods into a zone has a choice of zone status (privileged/non-privileged foreign, domestic, or zone-restricted) which affects the way such goods are treated by Customs and Border Protection (CBP) and for tariff purposes upon entry into the customs territory of the United States.

CBP Forms 214, 214A, 214B, and 214C, *Application for Foreign-Trade Zone Admission and/or Status Designation,* are used by companies that bring merchandise into a foreign trade zone to register the admission of such merchandise into FTZs, and to apply for the appropriate zone status. CBP Form CBP 216, *Foreign-Trade Zone Activity Permit,* is used by companies to request approval to manipulate, manufacture, exhibit or destroy merchandise in a foreign trade zone.

These FTZ forms are authorized by 19 U.S.C. 81 and provided for by 19 CFR 146.22, 146.32, 146.41, 146.44, 146.52, 146.53, and 146.66. These forms are accessible at: *http://www.cbp.gov/xp/cgov/toolbox/forms/.*

Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to CBP Forms 214, 214A, 214B, 214C and 216.

Type of Review: Extension (without change).

Affected Public: Businesses.

Form 214, Application for Foreign-Trade Zone Admission and/or Status Designation.

Estimated Number of Respondents: 6,749.

Estimated Number of Annual Responses per Respondent: 25.

Estimated Total Annual Responses: 168,725.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 42,182.

Form 216, Application for Foreign-Trade Zone Activity Permit.

Estimated Number of Respondents: 2,500.

Estimated Number of Annual Responses per Respondent: 10.

Estimated Total Annual Responses: 25,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 4,167.

Dated: March 13, 2013.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2013–06186 Filed 3–15–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5687–N–10]

Notice of Proposed Information Collection: Comment Request Multifamily Default Status Report

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. HUD is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 17, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Mark Van Kirk, Director, Office of Multifamily Asset Management, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; telephone (202) 402–2558 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: HUD is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Multifamily Default Status Report.

OMB Control Number, if applicable: 2502–0041.

Description of the need for the information and proposed use: Mortgagees use this information collection to notify HUD that a project owner is delinquent (16 days) or more than 30 days past due on a mortgage payment, and to elect to assign a defaulted mortgage to the Department (per regulations at 24 CFR Part 207.256) by the 75th day from the date of default. To avoid an assignment of mortgage to HUD, which costs the Government millions of dollars each year, HUD and the mortgagor may develop a plan for reinstating the loan since HUD uses the information as an early warning mechanism. HUD Field Office and Headquarters staff use the data to (a) monitor mortgagee compliance with HUD's loan servicing procedures and assignments; and (b) potentially avoid mortgage assignments. This information is submitted electronically via the Internet.

Agency form numbers, if applicable: HUD–92426.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 1,159. The number of respondents is 44, the number of responses is 6,959, the frequency of response is 158, and the burden hour per response is 10 minutes.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 12, 2013.

Laura M. Marin,

Acting General Assistant Secretary for Housing—Acting General Deputy Federal Housing Commissioner.

[FR Doc. 2013–06111 Filed 3–15–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5687–N–09]

Notice of Proposed Information Collection: Comment Request FHA-Insured Mortgage Loan Servicing Property Physical Inspection/ Preservation

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. HUD is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 17, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., L'Enfant Plaza Building, Room 9120, Washington, DC 20410 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Eric Ramsey, Director, Business Relationships and Special Initiatives Division, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3944 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: HUD is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: MF Uniform Physical Inspection Reporting Requirements.

OMB Control Number, if applicable: 2502–0369.

Description of the need for the information and proposed use:

All multifamily properties with Section 8 project based assistance or housing with HUD insured or HUD Held mortgages or Housing that is receiving insurance from HUD must be inspected regularly. Entities responsible for conducting physical inspections of the properties are HUD, the lender or the owner. Owners/Agents which have been cited with Exigent Health and Safety (EH&S) deficiencies must certify that (EH&S) deficiencies noted during the

inspections have been repaired. This information is intended to ensure that HUD Program Participants maintain HUD properties in a condition that is decent, safe, and sanitary and in good repair.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours annually is *32,953.* The number of respondents annually is *10,576,* the number of responses annually is *10,554,* the frequency of response is on occasion, and the burden hour per response is about *6.3.*

Status of the proposed information collection: This is a request for extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 12, 2013.

Laura M. Marin,

Acting General Assistant Secretary for Housing—Acting General Deputy Federal Housing Commissioner.

[FR Doc. 2013–06109 Filed 3–15–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2013–N063; FXES11130800000–134–FF08E00000]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

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 (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing these permits.

DATES: Comments on these permit applications must be received on or before April 17, 2013.

ADDRESSES: Written data or comments should be submitted to the Endangered Species Program Manager, U.S. Fish and Wildlife Service, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (telephone: 916–414–6464; fax: 916–414–6486). Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist; see **ADDRESSES** (telephone: 760–431–9440; fax: 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 et seq.). We seek review and comment from local, State, and Federal agencies and the public on the following permit requests.

Applicant

Permit No. TE–94965A

Applicant: Susan E. Townsend, Oakland, California

The applicant requests a permit to take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with surveys and population studies throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–221411

Applicant: Center For Natural Lands Management, Temecula, California

The applicant requests an amendment to take (harass by survey, capture, and release) the Pacific pocket mouse (*Perognathus longimembris pacificus*), take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*), and take (survey, capture, handle, and release) the tidewater goby (*Eucyclogobius newberryi*) in conjunction with surveys, population monitoring, and land management activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–94977A

Applicant: Theodore D. Robertson, Walnut Creek, California

The applicant requests a permit to take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with surveys and population studies throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–110373

Applicant: Eric F. Kline, San Diego, California

The applicant requests a permit renewal to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–94998A

Applicant: Leonard Y. Liu, Oakland, California

The applicant requests an amendment to a permit to take (harass by survey) the California clapper rail (*Rallus longirostris obsoletus*) in conjunction with survey activities throughout the range of the species in in Marin, Sonoma, Napa, Solano, Contra Costa, Alameda, Santa Clara, San Mateo, and San Francisco Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–198922

Applicant: LaTisha M. Sarre, Pleasant Grove, California

The applicant requests a permit renewal to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–190302

Applicant: Mitch C. Siemens, Arroyo Grande, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County DPS) (*Ambystoma californiense*) in conjunction with surveys and population studies throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–008031

Applicant: David W. Flietner, San Diego, California

The applicant requests a permit renewal to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in

conjunction with surveys throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–221290

Applicant: Lee Ripma, San Diego, California

The applicant requests a permit renewal to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) and take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–96471A

Applicant: Mason Holmes, San Ramon, California

The applicant requests a permit to take (harass by survey, capture, handle, mark, take biological samples, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with surveys and population studies throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–019949

Applicant: Vipul R. Joshi, San Diego, California

The applicant requests a permit renewal to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) and take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–021929

Applicant: California Native Plant Society, Mather, California

The applicant requests a permit renewal to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with educational tours and population monitoring in Sacramento County, California, for the purpose of enhancing the species' survival.

Permit No. TE–96483A

Applicant: Elizabeth A. Kempton, Glendora, California

The applicant requests a permit to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–012973

Applicant: ECORP Consulting, Inc., Rocklin, California

The applicant requests an amendment to an amendment to take (survey, capture, handle, measure, and release) the giant kangaroo rat (*Dipodomys ingens*) and take (survey, capture, handle, measure, mark, and release) the salt marsh harvest mouse (*Reithrodontomys raviventris*) in conjunction with survey, demographic study, and restoration activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–168927

Applicant: Drew C. Stokes, San Diego, California

The applicant requests a renewal to take (survey, capture, handle, mark, and take biological samples) and an amendment to take (pitfall trap) the arroyo toad (arroyo southwestern) (*Anaxyrus californicus (Bufo microscaphus c.)*) in conjunction with survey, population monitoring, and upland use study in San Diego County, California, for the purpose of enhancing the species' survival.

Permit No. TE–221295

Applicant: Angelica Mendoza, Fontana, California

The applicant requests a permit renewal to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–185611

Applicant: CuriOdyssey Corporation, San Mateo, California

The applicant requests a permit to take (harass by capture, handle, transport, and captive rear) the California tiger salamander (Sonoma County DPS) (*Ambystoma californiense*) in conjunction with public outreach display and ecological research studies within the geographic jurisdiction of the Sacramento Fish and Wildlife Office, California, for the purpose of enhancing the species' survival.

Permit No. TE–200339

Applicant: Sarah M. Foster, Sacramento, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with surveys and population studies throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–97709A

Applicant: Kathryn L. Riley, San Diego, California

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–074955

Applicant: Susan R. Scatolini, San Diego, California

The applicant requests a permit renewal to take (capture, collect, and collect vouchers) the Riverside fairy shrimp (*Streptocephalus woottoni*) and San Diego fairy shrimp (*Branchinecta sandiegonensis*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–97717A

Applicant: Melissa Blundell, Encinitas, California

The applicant requests a permit to take (capture, handle, band, monitor nests, and release) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction

with surveys and population monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Public Comments

We invite public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

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.

Michael Long,

Acting Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2013–06122 Filed 3–15–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–R–2013–N039; FXRS12610800000V2–134–FF08RSRC00]

Llano Seco Riparian Sanctuary Unit Restoration and Pumping Plant/Fish Screen Facility Protection Project, CA; Final Environmental Impact Statement and Environmental Impact Report

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) and the California Department of Fish and Wildlife (CDFW), announce that the final environmental impact statement and environmental impact report (EIS/EIR) for the Llano Seco Riparian Sanctuary Unit Restoration and Princeton, Codora, Glenn & Provident Irrigation Districts (PCGID–PID) Pumping Plan/Fish Screen Facility Protection Project is now available. The final EIS/EIR, which we prepared and now announce in accordance with the National Environmental Policy Act of 1969 (NEPA), describes the alternatives identified to protect the pumping plant and fish screen facility located at river mile 178.5 on the Sacramento River, and to restore the Riparian Sanctuary Unit of the Sacramento River National Wildlife Refuge.

ADDRESSES: The final EIS/EIR is available at:

- Sacramento National Wildlife Refuge Complex, 752 County Road 99 W, Willows, CA 95988; telephone 530–934–7814.
- River Partners Office, 580 Vallombrosa Avenue, Chico, CA 95926; telephone 530–894–5401.
- Orland Free Library, 333 Mill Street, Orland, CA 95963.
- Chico Branch Library, 1108 Sherman Avenue, Chico, CA 95926.
- CDFW Office, 629 Entler Ave, Suite 12, Chico, CA 95928.
- PCGID–PID Office, 258 South Butte Street, Willows, CA 95988; telephone 530–934–4801.
- Internet: *www.fws.gov/sacramentovalleyrefuges/* and *http://www.riverpartners.org/where-we-work/sanctuary/documents.html*.

FOR FURTHER INFORMATION CONTACT: Kelly Moroney, Refuge Manager, Sacramento River National Wildlife Refuge, 530–934–2801 (phone); *kelly_moroney@fws.gov* (email), or; Helen Swagerty, River Partners, 530–894–5401 (phone); *hswagerty@riverpartners.org* (email).

SUPPLEMENTARY INFORMATION:

Background

The Llano Seco Riparian Sanctuary Unit was acquired by the Service in 1991 and added to the Sacramento River National Wildlife Refuge. The Service acquired the Llano Seco Riparian Sanctuary Unit as part of the Joint Management Agreement between Parrot Investment Co., The Nature Conservancy, California Department of Fish and Game, and the Service to cooperatively manage lands on the Llano Seco Ranch. The Llano Seco Riparian Sanctuary Unit is one piece of the larger Llano Seco Ranch, and was cleared of riparian vegetation for agricultural production by the previous landowner during the 1970s. Although the property has been out of agricultural production for close to 15 years, the habitat remains dominated by nonnative and invasive noxious weeds. Currently, just over 200 acres is farmed to dryland row crops to help control nonnative weeds.

Prior to acquisition by the Service, rock revetment was placed on the north end of the Llano Seco Riparian Sanctuary Unit by the Department of Water Resources in 1985 and 1986. The rock was placed in order to lock the Sacramento River in place, ensuring that flood flows would continue to be diverted from the Sacramento River through the Goose Lake overflow structure and into the Butte Basin. When the Service acquired the ranch property in 1991, we did so with the understanding that our management activities would not impact the Goose Lake overflow structure that diverts flood water into the Butte Basin.

Since the placement of rock revetment in 1986, the natural riverbank that is south of the revetment has eroded approximately 600 feet. The erosion on refuge property is directly across from the PCGID–PID pumping plant and fish screening facility. In 1999, the PCGID–PID consolidated three pumping plants into one new facility equipped with state-of-the-art fish screens. The fish-screening efficiency of the new PCGID–PID pumping plant is now endangered by the bank erosion on the refuge property and the migration of the Sacramento River. Although the rock revetment on the north edge of refuge property is decades old and eroding, it plays a key role in protecting the PCGID–PID pumping plant. As the bank erodes, the angle of flow and velocity of the water passing the screens will change, trapping fish against the screen rather than sweeping them past. Without some type of protection, it is likely the bank will continue to erode and the pumping plant facility will fail to meet guidelines for operation of the pumping-plant fish screens that were published by the National Marine Fisheries Service of National Oceanic and Atmospheric Administration (Department of Commerce).

The Draft EIS/EIR was available for a 45-day public review and comment period, which we announced via several methods, including public notices in local newspapers and a notice in the **Federal Register** (77 FR 26569, May 4, 2012). We held a public meeting to solicit comments on the Draft EIS/EIR on May 30, 2012. We identified and analyzed four alternatives in the Draft EIS/EIR:

Alternative 1: No-Action Alternative

Under the No-Action Alternative, only the ongoing removal and management of invasive plant species would occur at the Riparian Sanctuary. No active restoration of native plants would occur. Maintenance activities for the PCGID–PID pumping plant and fish screens would continue, but no new actions would be taken to prevent river meander.

Alternative 2: Spur Dikes and Site-Specific Plantings

Under Alternative 2, bank protection measures would consist of installing eight rock spur dikes along the

Sacramento River on the northern side of the Riparian Sanctuary. The dike field would extend about 2,000 feet in length. The dikes would be spaced 225 feet apart, and each dike would extend 75 feet into the river. Restoration activities on the Riparian Sanctuary would consist of site-specific plantings across 400 acres of the site. Restoration activities would include preparing the site, planting native plants, irrigating plants for the first 3 years, and monitoring and managing the restored area.

Alternative 3: Traditional Riprap and Site-Specific Plantings

Under Alternative 3, bank protection measures would consist of installing riprap with or without a low berm along the Sacramento River on the northern side of the Riparian Sanctuary. Riprap revetment would be installed from the end of the existing riprap upstream for 2,500 to 2,700 feet, to a point almost directly across from the pumping plant and fish screen facility, to protect the riverbank from further erosion. In addition to the site-specific plantings described under Alternative 2, revegetation is proposed on both the bank and low berm areas under this alternative.

Alternative 4: Traditional Riprap With Upstream Rock Removal and Site-Specific Plantings

Under Alternative 4, bank protection measures would consist of installing riprap with or without a low berm along the Sacramento River on the north side of the Riparian Sanctuary as described in Alternative 3, including revegetation on both the bank and low berm. Riparian restoration would take place as described in Alternative 2. In addition, under Alternative 4, we proposed to remove approximately 2,300 linear feet of upstream bank revetment on State- and Service-managed lands along the north side of the peninsula upstream of the Riparian Sanctuary. Removal of the revetment would encourage a natural progression of streambank erosion, and the eventual cutoff of an oxbow. This cut off would allow the river to flow parallel to the pumping plant and fish screen facility, which is the desired alignment for the fish screen to properly function. Installing traditional riprap on the northern side of the Riparian Sanctuary would hold the river in place to prevent it from migrating further east, away from the facility.

Following public review of the Draft EIS/EIR, the Service and CDFG, in coordination with PCGID–PID, river Partners, and the design engineers, identified the preferred alternative, which is based on a combination of the features of Alternative 4. *Preferred Alternative:* The preferred alternative includes installation of traditional riprap on the northwest bank of the Riparian Sanctuary, including a low berm along the gravel bar and a toe trench just off the gravel bar; removal of upstream rock; and site-specific plantings on the Riparian Sanctuary. The upstream rock removal and site-specific plantings would be the same as described for Alternative 4 in the Draft EIS/EIR. The traditional riprap was designed to incorporate the beneficial features of both the low-berm and no-berm options described in Alternative 4. The traditional riprap without a berm would be located in areas where the channel would be affected to reduce the footprint, and a low berm would be located across the gravel bar and would be planted with native trees, sedges, and grasses, along with large woody debris to provide immediate fish habitat. The traditional riprap under the preferred alternative would involve less excavation than the no-berm option and have a smaller footprint than the low-berm option, resulting in less riprap placement in the Sacramento River. It would incorporate the key benefit of the low-berm option by providing a planting surface for native vegetation.

National Environmental Policy Act Compliance

We will make a decision no sooner than 30 days after the publication of the final EIS/EIR. We anticipate issuing a Record of Decision in the summer of 2013.

We provide this notice under regulations in the Code of Federal Regulations (CFR) for implementing the National Environmental Policy Act (40 CFR 1506.6).

Alexandra Pitts,

Acting, Regional Director, Pacific Southwest Region.

[FR Doc. 2013–06178 Filed 3–15–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change.

SUMMARY: The Water Resources Planning Act of 1965 and the Water Resources Development Act of 1974 require an annual determination of a discount rate for Federal water resources planning. The discount rate for Federal water resources planning for fiscal year 2013 is 3.75 percent. Discounting is to be used to convert future monetary values to present values.

DATES: This discount rate is to be used for the period October 1, 2012, through and including September 30, 2013.

FOR FURTHER INFORMATION CONTACT: Michelle Kelly, Water and Environmental Resources Division, Denver, Colorado 80225; telephone: 303–445–2888.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 3.75 percent for fiscal year 2013.

This rate has been computed in accordance with Section 80(a), Public Law 93–251 (88 Stat. 34) and 18 CFR 704.39, which: (1) Specify that the rate will be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate will not be raised or lowered more than one-quarter of 1 percent for any year. The U.S. Department of the Treasury calculated the specified average to be 2.6948 percent. This decrease is greater than the one-quarter of 1 percent allowed. Therefore; based on the fiscal year 2012 rate of 4 percent, the fiscal year 2013 rate is 3.75 percent.

The rate of 3.75 percent will be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs or otherwise converting benefits and costs to a common-time basis.

Dated: March 11, 2013.

Richard W. Rizzi,

Acting Director, Policy and Administration.

[FR Doc. 2013–06177 Filed 3–15–13; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Docket No. 2943]

Certain Electronic Devices Having Placeshifting or Display Replication Functionality and Products Containing Same; Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Electronic Devices Having Placeshifting or Display Replication Functionality and Products Containing Same;* DN 2943; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS. [1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC. [2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS. [3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Sling Media, Inc. on March 12, 2013. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic devices having placeshifting or display replication functionality and products containing same. The complaint names as respondents Belkin International, Inc. of CA; Monsoon Multimedia, Inc. of CA; and C2 Microsystems, Inc. of CA.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2943'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures. [4]) Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS. [5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: March 13, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–06138 Filed 3–15–13; 8:45 am]

BILLING CODE 7020–02–P

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–807]

Certain Digital Photo Frames and Image Display Devices and Components Thereof; Issuance of a Limited Exclusion Order and Cease and Desist Orders; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has terminated the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended, and has issued a limited

exclusion order directed against infringing products of the following respondents previously found in default: Nextar Inc. (''Nextar'') of La Verne, California; WinAccord Ltd. of Taipei, Taiwan and WinAccord U.S.A., Inc. of San Jose, California (collectively, ''the WinAccord respondents''); Aiptek International Inc. (''Aiptek'') of Hsinchu, Taiwan; and Pandigital, Inc. (''Pandigital'') of Dublin, California (collectively, ''the defaulting respondents''). The Commission has also issued cease and desist orders directed against these defaulting respondents.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 27, 2011, based on a complaint filed by Technology Properties Limited, LLC (''TPL'') of Cupertino, California. 76 FR 59737–38. The complaint alleged a violation 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 digital photo frames and image display devices and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 6,976,623 (''the '623 patent''); 7,162,549; 7,295,443; and 7,522,424. The complaint further alleged the existence of a domestic industry. The Commission's notice of investigation named twenty respondents including Nextar; the WinAccord respondents; Aiptek; Pandigital; Action Electronics Co., Ltd. (''Action'') of Taoyuan County, Taiwan; Aluratek, Inc. (''Aluratek'') of Tustin, California; Audiovox Corporation (''Audiovox'') of Happauge, New York; CEIVA Logic, Inc. (''CEIVA'') of Burbank, California; Circus World Displays Ltd. (''Circus'') of Niagra Falls, Canada; Coby Electronics Corporation (''Coby'') of Lake Success, New York; Curtis International, Ltd. (''Curtis'') of Ontario, Canada; Digital Spectrum Solutions, Inc. (''Digital Spectrum'') of Irvine, California; Eastman Kodak Company (''Eastman Kodak'') of Rochester, New York; Mustek Systems, Inc. (''Mustek'') of Hsinchu Taiwan; Royal Consumer Information Products, Inc. (''Royal Consumer'') of Somerset, New Jersey and Sony Corporation of Tokyo, Japan; Sony Corporation of America of New York, New York (collectively, ''the Sony respondents''); Transcend Information, Inc. (''Transcend'') of Taipei, Taiwan; and Viewsonic Corporation (''Viewsonic'') of Walnut, California. The complaint and notice of investigation were served on all respondents. *See* Notice of Investigation, Certificate of Service (Sept. 22, 2011) (EDIS Document 459720). No Commission investigative attorney participated in the investigation.

On November 10 and 30, 2011, respectively, the Commission determined not to review initial determinations (''IDs'') issued by the presiding administrative law judge (''ALJ'') terminating the investigation as to Coby and Aluratek based on settlement agreements. On December 21, 2011, the Commission determined not to review an ID terminating the investigation as to Circus based on a settlement agreement. On January 25, 2012, the Commission determined not to review an ID terminating the investigation as to Curtis based on a settlement agreement. On February 10 and 23, 2012, respectively, the Commission determined not to review IDs terminating the investigation as to Royal Consumer and Viewsonic based on settlement agreements. On March 16, 2012, the Commission determined not to review an ID terminating the investigation as to CEIVA based on a settlement agreement. On April 11, 2012, the Commission determined not to review IDs terminating the investigation as to Eastman Kodak and Mustek, respectively, based on consent order stipulations. On May 24, 2012, the Commission determined not to review an ID terminating the investigation as to Audiovox based on a settlement agreement. Also, on May 24 and 29, 2012, respectively, the Commission determined not to review IDs terminating the investigation as to the '623 patent with respect to Pandigital, and terminating Digital Spectrum, based on consent order stipulations. On June 20, 2012, the Commission determined not to review an ID terminating the investigation as to Action based on a consent order stipulation. On July 26, 2012, the Commission determined not to review an ID terminating the investigation as to Transcend based on a consent order stipulation. On October 3, 2012, the Commission determined not to review an ID terminating the investigation as to the Sony respondents based on a consent order stipulation.

On December 6 and 22, 2011, respectively, the ALJ issued IDs finding Nextar, the WinAccord respondents, and Aiptek in default, pursuant to 19 CFR 210.16, because these respondents did not respond to the complaint and notice of investigation, or to Order Nos. 13 and/or 15 to show cause why it should not be found in default. On January 3 and 9, 2012, respectively, the Commission determined not to review the IDs finding Nextar, the WinAccord respondents, and Aiptek in default. The Commission found that the statutory requirements of section 337(g)(1)(A)–(E) (19 U.S.C. 1337(g)(1)(A)–(E)) were met with respect to Aiptek, Nextar, and the WinAccord respondents. Accordingly, pursuant to section 337(g)(1) (19 U.S.C. 1337(g)(1)) and Commission rule 210.16(c) (19 CFR 210.16(c)), the Commission presumed the facts alleged in the complaint to be true.

On March 8, 2012, complainant TPL filed a declaration requesting immediate relief against defaulting respondent Aiptek under Commission rule 210.16(c)(1), 19 CFR 210.16(c)(1), which it later withdrew.

On October 9, 2012, the ALJ issued Order No. 47, directing Pandigital to show cause why it should not be found in default and in violation of section 337 pursuant to 19 CFR 210.17 because it did not file a pre-hearing statement and brief as required by the ALJ's Procedural Schedule. As of November 7, 2012, Pandigital had not responded to Order No. 47 and the ALJ issued an ID finding Pandigital in default and in violation of section 337. He also extended the target date in this investigation to March 7, 2013.

On December 7, 2012, the Commission determined not to review the ID finding Pandigital in default and in violation of section 337. The Commission also requested public briefing on remedy, the public interest, and bonding with respect to Pandigital, Aiptek, Nextar, and the WinAccord respondents and requested that TPL address certain issues related to remedy and bonding. 77 FR 74220–21 (Dec. 13, 2012). On December 21, 2012, TPL

submitted responsive briefing including a proposed limited exclusion order directed to the covered products of Pandigital, Aiptek, Nextar, and the WinAccord respondents and cease and desist orders directed to each of the defaulting respondents.

The Commission has determined that the appropriate form of relief includes a limited exclusion order prohibiting: (1) The unlicensed entry of digital photo frames and image display devices and components thereof that infringe one or more of claims 9, 11–12, and 14 of the '443 patent, claims 25–26 and 28–29 of the '424 patent, or claims 1, 7, 11, 17, 19, and 21 of the '549 patent, which are manufactured abroad by or on behalf of, or are imported by or on behalf of, Pandigital or one of the WinAccord respondents, or any of their affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or their successors or assigns; (2) the unlicensed entry of digital photo frames and image display devices and components thereof that infringe one or more of claims 9 and 14 of the '443 patent or claims 25–26 and 28–29 of the '424 patent, which are manufactured abroad by or on behalf of, or are imported by or on behalf of, Nextar or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or its successors or assigns; and (3) the unlicensed entry of digital photo frames and image display devices and components thereof that infringe one or more of claims 9 and 11–12 of the '443 patent or claims 25–26 and 28–29 of the '424 patent, which are manufactured abroad by or on behalf of, or are imported by or on behalf of, Aiptek or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or its successors or assigns. Appropriate relief also includes cease and desist orders prohibiting: (1) Pandigital or either of the WinAccord respondents from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for digital photo frames and image display devices and components thereof that infringe one or more of claims 9, 11–12, and 14 of the '443 patent, claims 25–26 and 28–29 of the '424 patent, or claims 1, 7, 11, 17, 19, and 21 of the '549 patent; (2) Nextar from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for digital photo frames and image display devices and components thereof that infringe one or more of claims 9 and 14 of the '443 patent or claims 25–26 and 28–29 of the '424 patent; and (3) Aiptek from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for digital photo frames and image display devices and components thereof that infringe one or more of claims 9 and 11–12 of the '443 patent or claims 25–26 and 28–29 of the '424 patent.

The Commission has further determined that the public interest factors enumerated in sections 337(d), (f), and (g)(1) (19 U.S.C. 1337(d), (f), and (g)(1)) do not preclude issuance of the limited exclusion order or the cease and desist orders. Finally, the Commission has determined that a bond in the amount of 100 percent of the entered value of the covered products is required to permit temporary importation during the period of Presidential review (19 U.S.C. 1337(j)). The Commission's orders were delivered to the President and to the United States Trade Representative on the day of their issuance.

The Commission has terminated this investigation. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.16(c), 210.17, 210.41, and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.16(c), 210.17, 210.41, and 210.50).

Issued: March 12, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–06107 Filed 3–15–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–13–008]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: March 21, 2013 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none
2. Minutes
3. Ratification List
4. Vote in Inv. Nos. 701–TA–489 and 731–TA–1201 (Final) (Drawn Stainless Steel Sinks from China). The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before April 4, 2013.
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Dated: March 14, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–06265 Filed 3–14–13; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–666 (Modification Proceeding)]

Certain Cold Cathode Fluorescent Lamp (''CCFL'') Inverter Circuits and Products Containing Same; Commission's Determination To Institute a Modification Proceeding; Modification of the September 25, 2009 Consent Order; Termination of the Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute a modification proceeding, modify the Commission's September 25, 2009 Consent Order, and terminate the modification proceeding.

FOR FURTHER INFORMATION CONTACT: Amanda S. Pitcher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2737. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General

information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the investigation on January 14, 2009, based on a complaint filed by O2 Micro International, Ltd. of the Cayman Islands and O2 Micro, Inc. of Santa Clara, California. 74 FR 2099. The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cold cathode fluorescent lamp inverter circuits and products containing the same by reason of infringement of various U.S. patents. The complaint named ten respondents, including LG Display Co., Ltd. and LG display America, Inc. (collectively ''LGD''). On September 25, 2009, the Commission terminated the investigation as to LGD based on a consent order. Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation with Respect to Respondents LG Display Co., Ltd. and LG Display America, Inc. Based on a Consent Order.

On November 20, 2012, Respondents LGD filed a petition to modify the Commission's Consent Order based on allegations of changed circumstances. Specifically, LGD asked that paragraph 13 of the Consent Order, which contains a reporting requirement, be cancelled. On November 29, 2012, the Commission investigative attorney filed a response which did not oppose LGD's petition. Complainants did not file a response to LGD's petition.

The Commission has determined on its own initiative, to institute a modification proceeding. Upon consider of these particular circumstances, the Commission has determined that it is appropriate to modify the September 25, 2009 Consent Order by deleting paragraph 13. The Commission also terminates the modification proceeding.

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 section 210.76 of the Commission's Rules of Practice and Procedure (19 CFR 210.76).

Issued: March 13, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–06166 Filed 3–15–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0277]

Agency Information Collection Activities; Proposed Collection Comments Requested; Revisions of Currently Approved Collection and Extension of Currently Approved Collection: OJJDP National Training and Technical Assistance Center (NTTAC) Evaluation Feedback Form Package

ACTION: 60-Day notice.

The Department of Justice, Office of Justice Programs will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until May 17, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Tricia Trice, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Department of Justice, 810 7th Street NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision and Extension of a currently approved collection.

(2) *Title of the Form/Collection:* OJJDP NTTAC Evaluation Feedback Form Package.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local, or Tribal. Other: Federal Government, Individuals or households; Not-for-profit institutions; Businesses or other for-profit. The Office for Juvenile Justice and Delinquency Prevention National Training and Technical Assistance Center (NTTAC) Evaluation Feedback Form Package is designed to collect in-person and online data necessary to continuously assess the outcomes of the assistance provided for both monitoring and accountability purposes and for continuously assessing and meeting the needs of the field. OJJDP NTTAC will send these forms to technical assistance (TA) recipients; conference attendees; training and TA providers; online meeting participants; in-person meeting participants; and focus group participants to capture important feedback on the recipients' satisfaction with the quality, efficiency, referrals, information and resources provided and assess the recipients' additional training and TA needs. The data will then be used to advise NTTAC on ways to improve the support provided to its users; the juvenile justice field at-large; and ultimately improve services and outcomes for youth.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 12,751 respondents will complete forms and participant in focus groups. The response times will range from .05 hours to 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated

1,149.25 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, U.S. Department of Justice, Policy and Planning Staff, Justice Management Division, Two Constitution Square, 145 N Street NE., Room 1407–B, Washington, DC 20530.

Dated: March 12, 2013.

Jerri Murray,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 2013–06071 Filed 3–15–13; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On March 12, 2013, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Central District of California in the lawsuit entitled *United States* v. *John D. Williams, Trustee of the Julia A. Fischer Living Trust,* Civil Action No. 2:13-cv-01752–ABC–AGR.

The Consent Decree resolves a claim against John D. Williams, Trustee of the Julia A. Fischer Living Trust, (''Fischer Trust''), under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607, related to releases and threatened releases of hazardous substances at the Puente Valley Operable Unit (''PVOU'') of the San Gabriel Valley Superfund Site, Area 4, Los Angeles County, California (the ''Site''). The Consent Decree recovers $410,000 in response costs from Defendant and provides a covenant not to sue to Defendant for past and certain future costs and response work at the Site under Sections 106 and 107 of CERCLA and Section 7003 of the Resource Conservation and Recovery Act, (''RCRA''), 42 U.S.C. 6973.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *John D. Williams, Trustee of the Julia A. Fischer Living Trust,* D.J. Ref. No. 90–11–2–354/31. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Under section 7003(d) of RCRA, a commenter may request an opportunity for a public meeting in the affected area.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $7.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–06112 Filed 3–15–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

Annual Determination of Average Cost of Incarceration

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: The fee to cover the average cost of incarceration for Federal inmates in Fiscal Year 2011 was $28,893.40. The average annual cost to confine an inmate in a Community Corrections Center for Fiscal Year 2011 was $26,163.

DATES: *Effective Date:* March 18, 2013.

ADDRESSES: Office of General Counsel, Federal Bureau of Prisons, 320 First St. NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, (202) 307–2105.

SUPPLEMENTARY INFORMATION: 28 CFR part 505 allows for assessment and collection of a fee to cover the average cost of incarceration for Federal inmates. We calculate this fee by dividing the number representing Bureau facilities' monetary obligation (excluding activation costs) by the number of inmate-days incurred for the preceding fiscal year, and then by multiplying the quotient by 365.

Under § 505.2, the Director of the Bureau of Prisons determined that, based upon fiscal year 2011 data, the fee to cover the average cost of incarceration for Federal inmates in Fiscal Year 2011 was $28,893.40. The average annual cost to confine an inmate in a Community Corrections Center for Fiscal Year 2011 was $26,163.

Charles E. Samuels, Jr.,

Director, Bureau of Prisons.

[FR Doc. 2013–06139 Filed 3–15–13; 8:45 am]

BILLING CODE 4410–05–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that 23 meetings of the Humanities Panel will be held during April, 2013 as follows. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965 (20 U.S.C. 951–960, as amended).

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: The meetings will be held at the Old Post Office Building, 1100 Pennsylvania Ave. NW., Washington, DC 20506. See **SUPPLEMENTARY INFORMATION** section for meeting room numbers.

FOR FURTHER INFORMATION CONTACT: Lisette Voyatzis, Committee Management Officer, 1100 Pennsylvania Ave. NW., Room 529, Washington, DC 20506, or call (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the National Endowment for the Humanities' TDD terminal at (202) 606–8282.

SUPPLEMENTARY INFORMATION:

Meetings

1. Date: April 02, 2013.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 315.
   This meeting will discuss applications for the Scholarly Editions grant program on the subject of the Arts, submitted to the Division of Research Programs.

2. Date: April 03, 2013.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 315.
   This meeting will discuss applications for the Collaborative Research grant program on the subjects of Philosophy, Religion and History of Science, submitted to the Division of Research Programs.
3. Date: April 04, 2013.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 315.
   This meeting will discuss applications for the Collaborative Research grant program on the subject of Social Sciences, submitted to the Division of Research Programs.
4. Date: April 04, 2013.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 415.
   This meeting will discuss applications for the Sustaining Cultural Heritage Collections grant program, submitted to the Division of Preservation and Access.
5. Date: April 09, 2013.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 415.
   This meeting will discuss applications for the Sustaining Cultural Heritage Collections grant program, submitted to the Division of Preservation and Access.
6. Date: April 09, 2013.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 421.
   This meeting will discuss applications for the America's Historical and Cultural Organizations Implementation grant program on the subject of Cultures and the Arts, submitted to the Division of Public Programs.
7. Date: April 11, 2013.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 421.
   This meeting will discuss applications for the America's Media Makers Production grant program on the subject of 20th and 21st-century U.S. history, submitted to the Division of Public Programs.
8. Date: April 16, 2013.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 421.
   This meeting will discuss applications for the America's Media Makers Production grant program on the subject of Digital Projects, submitted to the Division of Public Programs.
9. Date: April 16, 2013.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 415.
   This meeting will discuss applications for the National Digital Newspaper Program grant program, submitted to the Division of Preservation and Access.
10. Date: April 16, 2013.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 402.
   This meeting will discuss applications for the Digital Humanities Implementation Grants grant program on the subject of Education and Public Programs, submitted to the Office of Digital Humanities.
11. Date: April 16, 2013.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 315.
   This meeting will discuss applications for the Landmarks of American History and Culture Workshops grant program, submitted to the Division of Education Programs.
12. Date: April 17, 2013.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 315.
   This meeting will discuss applications for the Landmarks of American History and Culture Workshops grant program, submitted to the Division of Education Programs.
13. Date: April 18, 2013.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 315.
   This meeting will discuss applications for the Landmarks of American History and Culture Workshops grant program, submitted to the Division of Education Programs.
14. Date: April 18, 2013.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 402.
   This meeting will discuss applications for the Digital Humanities Implementation Grants grant program on the subject of Geospatial and Visualization Research, submitted to the Office of Digital Humanities.
15. Date: April 18, 2013.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 421.
   This meeting will discuss applications for the America's Historical & Cultural Organizations Implementation grant program on the subjects of U.S. History, the West and Immigration, submitted to the Division of Public Programs.
16. Date: April 22, 2013.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 421.
   This meeting will discuss applications for the America's Media Makers Production grant program on the subject of International Science and Ecology, submitted to the Division of Public Programs.
17. Date: April 22, 2013.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 402.
   This meeting will discuss applications for the Digital Humanities Implementation Grants grant program on the subject of Scholarly Communications and Collections, submitted to the Office of Digital Humanities.
18. Date: April 23, 2013.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 420.
   This meeting will discuss applications for the Challenge Grants Special Initiative for Two-Year Colleges grant program, submitted to the Office of Challenge Grants.
19. Date: April 24, 2013.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 402.
   This meeting will discuss applications for the Digital Humanities Implementation Grants grant program on the subject of Computationally-Intensive Research, submitted to the Office of Digital Humanities.
20. Date: April 24, 2013.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 315.
   This meeting will discuss applications for the Seminars and Institutes for College and University Teachers grant program, submitted to the Division of Education Programs.
21. Date: April 25, 2013.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 315.
   This meeting will discuss applications for the Seminars and Institutes for School Teachers grant program, submitted to the Division of Education Programs.
22. Date: April 29, 2013.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 315.
   This meeting will discuss applications for the Seminars and Institutes for School Teachers grant program, submitted to the Division of Education Programs.
23. Date: April 30, 2013.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 315.
   This meeting will discuss applications for the Seminars and Institutes for School Teachers grant program, submitted to the Division of Education Programs.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections

552b(c)(4) and 552b(c)(6) of Title 5 U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated July 19, 1993.

Dated: March 13, 2013.

Lisette Voyatzis,

Committee Management Officer.

[FR Doc. 2013–06190 Filed 3–15–13; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting; April 16, 2013; Richland, WA

The U.S. Nuclear Waste Technical Review Board will meet to discuss DOE work on the vitrified HLW waste form for disposal in a repository.

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, The U.S. Nuclear Waste Technical Review Board will hold an open public meeting in Richland, Washington, on Tuesday, April 16, 2013, to review information on U.S. Department of Energy (DOE) activities related to vitrifying high-level radioactive waste (HLW) stored at the Hanford facility in preparation for eventual disposal in a deep geologic repository. State, local, and regional public organizations have been invited to provide their perspectives on the most important technical issues associated with disposal of wastes from the Hanford site. Also discussed will be the Administration's recent response to recommendations of the Blue Ribbon Commission on America's Nuclear Future and DOE's work related to the potential direct disposal in a deep geologic repository of existing SNF storage containers used at commercial nuclear utility sites.

The Board is a completely independent agency in the Executive Branch of the Federal Government. The Board was created in the 1987 Amendments to the Nuclear Waste Policy Act (NWPA) to conduct an ongoing and objective evaluation of the technical and scientific validity of DOE activities related to implementing the NWPA, including transporting, packaging, and disposing of SNF and HLW. The 1987 Act directs the Board to report its findings, conclusions, and recommendations to Congress and the Secretary of Energy. The Board's statutorily established technical purview does not include the safety or operations of DOE-owned facilities or the management or disposal of low-level radioactive waste. The Board's technical and scientific review of DOE activities at the Hanford facility is focused primarily on the vitrified waste form, which eventually will require disposal in a deep geologic repository.

The Board meeting will be held at the Marriott Courtyard, 480 Columbia Point Drive, Richland, WA 99352; Tel 509–942–9400, Fax 509–942–9401. A block of rooms has been reserved at the Marriott Courtyard for meeting attendees. Reservations can be made online at *http://cwp.marriott.com/psccy/technicalreviewboard*. Reservations must be made by March 22, 2013 to ensure receiving the meeting rate. The reservation Group Name is ''U.S. Nuclear Waste;'' the Group Code is NWRG.

The meeting will begin at 8:00 a.m. with a call to order by the Board Chairman, followed by a welcome from DOE's Office of River Protection. A presentation that includes a broad overview of the responsibilities and objectives of DOE's Office of Environmental Management will precede a discussion of vitrification of HLW as a complex-wide waste management practice. A series of presentations and a panel discussion of technical experience with vitrification will follow. The last discussion before the lunch break will wrap up the technical presentations on vitrification, focusing on DOE's research and development programs related to waste forms.

A panel composed of representatives of affected state, local, and regional organizations will kick off the discussions on Tuesday afternoon. The panel members will present their views on the most important technical issues associated with the eventual disposal of HLW and SNF stored at the Hanford site. The panel discussion will be followed by a non-Hanford-related update on analyses being performed by DOE's Office of Nuclear Energy on the potential for directly disposing of existing SNF storage canisters used by commercial nuclear utilities in a deep geologic repository. The last presentation of the day will be on DOE's Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Radioactive Waste. At the end of the day, an opportunity for public comment will be provided.

Those wanting to speak during the public comments session are encouraged to sign the ''Public Comment Register'' at the check-in table. It may be necessary to set a time limit on individual remarks, but written comments of any length may be submitted for the record.

A detailed meeting agenda will be available on the Board's Web site: *www.nwtrb.gov* approximately one week before the meeting. The agenda also may be obtained by telephone request at that time.

Transcripts of the meeting will be available no later than May 10, 2013, on the Board's Web site, by email, on computer disk, and in paper format on library-loan from Davonya Barnes of the Board's staff.

For information on the meeting, contact Karyn Severson at *severson@nwtrb.gov*. For information on lodging or logistics, contact Linda Coultry: *coultry@nwtrb.gov*. Both can be reached by mail at 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201–3367; by telephone at 703–235–4473; or by fax at 703–235–4495.

Dated: March 12, 2013.

Nigel Mote,

Executive Director, U.S. Nuclear Waste Technical Review Board.

[FR Doc. 2013–06024 Filed 3–15–13; 8:45 am]

BILLING CODE 6820–AM–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to single agencies that were established or revoked from January 1, 2013, to January 31, 2013.

FOR FURTHER INFORMATION CONTACT: Senior Executive Resources Services, Senior Executive Service and Performance Management, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: In accordance with title 5 of the Code of Federal Regulations (CFR) 213.103, Schedule A, B, and C appointing authorities that are available for use by all agencies are codified in the (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/*. OPM also publishes annually a consolidated listing of all Schedule A, B, and C appointing authorities current as of June 30 as a notice in the **Federal Register**.

Schedule A

The following Schedule A authority was approved in January 2013:

94. Department of the Transportation (Sch. A, 213.3194)

(f) Up to 40 positions at the GS–13 through 15 grade levels and within authorized senior-level (SL) allocations necessary to support the following credit agency programs of the Department: The Federal Highway Administration's Transportation Infrastructure Finance and Innovation Act Program, the Federal Railroad Administration's Railroad Rehabilitation and Improvement Financing Program, the Federal Maritime Administration's Title XI Program, and the Office of the Secretary's Office of Budget and Programs Credit Staff. This authority may be used to make temporary, time-limited, or permanent appointments, as the DOT deems appropriate, in the following occupational series: Director or Deputy Director SL–301/340, Origination Team Lead SL–301, Deputy Director/Senior Financial Analyst GS–1160, Origination Financial Policy Advisor GS–301, Credit Budgeting Team Lead GS–1160, Credit Budgeting Financial Analysts GS–1160, Portfolio Monitoring Lead SL–1160, Portfolio Monitoring Financial Analyst GS–1160, Financial Analyst GS–1160. No new appointments may be made under this authority after December 31, 2014.

Schedule B

No schedule B authorities to report during January 2013.

Schedule C

The following Schedule C appointing authorities were approved during January 2013:

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE.	Office of the Assistant Secretary for Congressional Relations.	Special Assistant	DA130022	1/25/2013
DEPARTMENT OF COMMERCE	Office of Executive Secretariat	Confidential Assistant	DC130017	1/4/2013
COUNCIL ON ENVIRONMENTAL QUALITY.	Council on Environmental Quality	Special Assistant Land and Water Ecosystems.	EQ130001	1/29/2013
DEPARTMENT OF DEFENSE	Office of Assistant Secretary of Defense (Public Affairs).	Speechwriter (2)	DD130025	1/11/2013
			DD130026	1/18/2013
	Office of Principal Deputy Under Secretary for Policy.	Special Assistant for Policy	DD130031	1/25/2013
DEPARTMENT OF EDUCATION	Office of Planning, Evaluation and Policy Development.	Deputy Assistant Secretary for Planning and Policy Development.	DB120098	1/11/2013
	Office of the Under Secretary	Confidential Assistant	DB120101	1/11/2013
	Office of Communications and Outreach.	Deputy Assistant Secretary for Communication Development.	DB130008	1/17/2013
	Office of the Under Secretary	Special Assistant	DB130011	1/25/2013
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Associate Administrator for External Affairs and Environmental Education.	Press Secretary	EP130011	1/24/2013
FEDERAL HOUSING FINANCE AGENCY.	Federal Housing Finance Agency	Confidential Assistant	HA130001	1/16/2013
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Assistant Secretary for Planning and Evaluation.	Director of Coverage Policy (Office of Health Reform).	DH130018	1/17/2013
	Office of the Secretary	Confidential Assistant	DH130020	1/24/2013
DEPARTMENT OF THE INTERIOR.	Secretary's Immediate Office	Press Secretary	DI130007	1/15/2013
DEPARTMENT OF LABOR	Employment and Training Administration.	Policy Advisor	DL130007	1/25/2013
OFFICE OF MANAGEMENT AND BUDGET.	Communications	Press Secretary	BO130007	1/11/2013
SECURITIES AND EXCHANGE COMMISSION.	Division of Investment Management.	Confidential Assistant	SE130002	1/11/2013
SMALL BUSINESS ADMINISTRATION.	Office of Communications and Public Liaison.	Deputy Press Secretary for the Office of Communications and Public Liaison.	SB130002	1/16/2013
DEPARTMENT OF STATE	Bureau of East Asian and Pacific Affairs.	Deputy Assistant Secretary	DS130027	1/11/2013

The following Schedule C appointing authorities were revoked during January 2013:

Agency	Organization	Position title	Authorization No.	Vacate date
DEPARTMENT OF COMMERCE	Bureau of the Census	Director, Office of Faith Based and Neighborhood Partnerships.	DC090123	1/5/2013
	Assistant Secretary and Director General for United States and Foreign Commercial Service.	Executive Assistant	DC110120	1/13/2013
	Office of the General Counsel	Senior Advisor	DC110128	1/13/2013

Agency	Organization	Position title	Authorization No.	Vacate date
DEPARTMENT OF EDUCATION ..	Office of the Under Secretary	Director of the White House Initiative on Historically Black Colleges and Universities.	DB110085	1/4/2013
	Office of Innovation and Improvement.	Chief of Staff	DB100070	1/12/2013
	Office of the Secretary	Special Assistant	DB100060	1/28/2013
DEPARTMENT OF ENERGY	Office of Public Affairs	Deputy Director	DE120021	1/11/2013
	Office of the Secretary	Special Advisor	DE120067	1/11/2013
	Office of Assistant Secretary for Policy and International Affairs.	Special Assistant	DE120071	1/11/2013
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Secretary	Deputy White House Liaison for Political Personnel, Boards and Commissions.	DH120052	1/12/2013
DEPARTMENT OF HOMELAND SECURITY.	Office of the General Counsel	Special Advisor to the General Counsel.	DM110095	1/18/2013
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Housing	Special Assistant	DU110012	1/3/2013
DEPARTMENT OF JUSTICE	Office of the Associate Attorney General.	Senior Counsel	DJ100109	1/4/2013
DEPARTMENT OF LABOR	Office of Congressional and Intergovernmental Affairs.	Deputy Director of Intergovernmental Affairs.	DL110040	1/28/2013
DEPARTMENT OF STATE	Bureau of Near Eastern Affairs	Legislative Liaison Specialist	DS110052	1/5/2013
	Bureau of Western Hemisphere Affairs.	Deputy Assistant Secretary	DS100056	1/24/2013
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Administrator	Deputy Press Secretary	EP120016	1/26/2013

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

John Berry,

Director, U.S. Office of Personnel Management.

[FR Doc. 2013–06123 Filed 3–15–13; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

National Council on Federal Labor-Management Relations Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The National Council on Federal Labor-Management Relations plans to meet on the following date—Wednesday, May 15, 2013. The meeting will start at 10 a.m. and will be held in Room 1350, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415. Interested parties should consult the Council Web site at *www.lmrcouncil.gov* for the latest information on Council activities, including changes in meeting dates.

The Council is an advisory body composed of representatives of Federal employee organizations, Federal management organizations, and senior government officials. The Council was established by Executive Order 13522, entitled, ''Creating Labor-Management Forums to Improve Delivery of Government Services,'' which was signed by the President on December 9, 2009. Along with its other responsibilities, the Council assists in the implementation of Labor Management Forums throughout the government and makes recommendations to the President on innovative ways to improve delivery of services and products to the public while cutting costs and advancing employee interests. The Council is co-chaired by the Director of the Office of Personnel Management and the Deputy Director for Management of the Office of Management and Budget.

At its meetings, the Council will continue its work in promoting cooperative and productive relationships between labor and management in the executive branch, by carrying out the responsibilities and functions listed in Section 1(b) of the Executive Order. The meetings are open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to present material to the Council at the meeting. The manner and time prescribed for presentations may be limited, depending upon the number of parties that express interest in presenting information.

FOR FURTHER INFORMATION CONTACT: Tim Curry, Deputy Associate Director for Partnership and Labor Relations, Office of Personnel Management, 1900 E Street NW., Room 7H28, Washington, DC 20415. Phone (202) 606–2930 or email at *PLR@opm.gov.*

For the National Council.

John Berry,

Director.

[FR Doc. 2013–06124 Filed 3–15–13; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30422; File No. 812–13976]

Renaissance Capital Greenwich Funds, et al.; Notice of Application

March 11, 2013.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

SUMMARY: *Summary of Application:* Applicants request an order that would permit (a) series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain

series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

Applicants: Renaissance Capital Greenwich Funds (''Trust''), Renaissance Capital LLC (''Adviser''), and Renaissance Capital Investments, Inc. (''Renaissance Capital Investments'').

DATES: *Filing Dates:* The application was filed on November 18, 2011 and amended on June 8, 2012, October 16, 2012, January 17, 2013, and March 7, 2013.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 5, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, 165 Mason Street, Greenwich, CT 06830.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel at (202) 551–6819, or David P. Bartels, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is registered as an open-end management investment company under the Act and is organized as a Delaware statutory trust. Applicants request that the order apply to a newly created series of the Trust described in the application (''Initial Fund'') and to other open-end management investment companies, or series thereof, that may be created in the future as well as future series of the Trust (collectively, ''Future Funds''),[1] each of which will be an exchanged-traded fund and will track a specified domestic and/or foreign securities index (''Underlying Index''). Any Future Fund will (a) be advised by the Adviser or an entity controlling, controlled by, or under common control with the Adviser and (b) comply with the terms and conditions of the application. The Initial Fund and Future Funds, together, are the ''Funds.'' [2] Each Underlying Index will be comprised solely of equity and/or fixed income securities. The Funds will be based on Underlying Indexes comprised of equity and/or fixed income securities that trade in U.S. markets, or equity and/or fixed income securities that trade in non-U.S. markets (''Foreign Funds''), or a combination of domestic and foreign equity and/or fixed income securities (''Global Funds'').

2. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') and will serve as investment adviser to the Initial Fund. Any investment adviser to Future Funds will be registered as an investment adviser under the Advisers Act. The Adviser may enter into sub-advisory agreements with one or more investment advisers to act as sub-advisers to particular Funds (each, a ''Sub-Adviser''). Any Sub-Adviser to a Fund will either be registered under the Advisers Act or will not be required to register thereunder. The distributor for the Initial Fund will be Renaissance Capital Investments, a Delaware corporation, or an unaffiliated distributor to be designated. Renaissance Capital Investments is, and each distributor for a Future Fund will be, a broker-dealer (''Broker'') registered under the Securities Exchange Act of 1934 (the ''Exchange Act'') and will act as distributor and principal underwriter (''Distributor'') of one or more of the Funds. The Distributor of any Fund may be an Affiliated Person (as defined below), or a Second-Tier Affiliate (as defined below), of that Fund's Adviser and/or Sub-Advisers.

3. Each Fund will hold certain securities (''Portfolio Securities'') consisting largely of some or all of the component securities (''Component Securities'') of an Underlying Index selected to correspond before fees and expenses generally to the price and yield performance of such Underlying Index. The Initial Fund and any Future Fund will be entitled to use its Underlying Index pursuant to either a licensing agreement with the entity that compiles, creates, sponsors or maintains an Underlying Index (each, an ''Index Provider'') or one or more sub-licensing arrangements pursuant to such licensing agreement with the Index Provider. The Initial Fund will be a Fund based upon an Underlying Index that is created, compiled, sponsored or maintained by an Index Provider that is an affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person'') or an affiliated person of such Affiliated Person (''Second-Tier Affiliate'') of the Trust, the Adviser, the Distributor, promoter or any Sub-Adviser to the Fund (each, a ''Self-Indexing Fund'').[3] Each Future Fund may be a Self-Indexing Fund, or it may be a Fund based upon an Underlying Index that is created, compiled, sponsored or maintained by an Index Provider who is not and will not be an Affiliated Person, or a Second-Tier Affiliate, of the Trust, the Adviser, the Distributor, promoter or any Sub-Adviser to the Fund.

4. The Index Provider of each Self-Indexing Fund will create and/or own a proprietary, rules based methodology (''Rules-Based Process'') to create indexes for use by the Self-Indexing Funds and other equity or fixed income investors.[4] Applicants contend that any

[1] Prior to the date of the application, the Trust consisted of one mutual fund series, the Global IPO Plus Aftermarket Fund.

[2] All existing entities that currently intend to rely on the requested order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the application. An Investing Fund (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

[3] The licenses for the Self-Indexing Funds will specifically state that the Adviser must provide the use of the Underlying Indexes and related intellectual property at no cost to the Trust and the Self-Indexing Funds.

[4] The Underlying Indexes may be made available to registered investment companies, as well as separately managed accounts of institutional investors and privately offered funds that are not deemed to be ''investment companies'' in reliance on section 3(c)(1) or 3(c)(7) of the Act for which the Adviser acts as adviser or subadviser (''Affiliated Accounts'') as well as other such registered investment companies, separately managed accounts and privately offered funds for which it does not act either as adviser or subadviser (''Unaffiliated Accounts''). The Affiliated Accounts and the Unaffiliated Accounts (collectively referred to herein as ''Accounts''), like the Funds, would seek to track the performance of one or more Underlying Index(es) by investing in the constituents of such Underlying Index(es) or a representative sample of such constituents of the Underlying Index. Consistent with the relief

potential conflicts of interest arising from the fact that the Index Provider of each Self-Indexing Fund will be an ''affiliated person'' of the Adviser will not have any impact on the operation of the Self-Indexing Funds because the Underlying Indexes will maintain transparency, the Self-Indexing Funds' portfolios will be transparent, and the Index Provider, the Adviser, any Sub-Adviser and the Self-Indexing Funds each will adopt policies and procedures to address any potential conflicts of interest (''Policies and Procedures''). The Index Provider will publish in the public domain, including on the Self-Indexing Funds' Web site, the rules that govern the construction and maintenance of each of its Underlying Indexes. Applicants believe that this will prevent the Adviser from possessing any advantage over other market participants by virtue of its affiliation with the Index Provider. Applicants note that the identity and weightings of the Component Securities for a Self-Indexing Fund will be readily ascertainable by anyone, since the Rules-Based Process will be publicly available.

5. While the Index Provider does not presently contemplate specific changes to the Rules-Based Process, it could be modified, for example, to reflect changes in the underlying market tracked by an Underlying Index, the way in which the Rules-Based Process takes into account market events or to change the way a corporate action, such as a stock split, is handled. Such changes would not take effect until the Index Group[5] has given (a) the Calculation Agent (defined below) reasonable prior written notice of such rule changes and (b) the investing public at least sixty (60) days published notice that such changes will be implemented. Each Underlying Index for a Self-Indexing Fund will be reconstituted or rebalanced on at least an annual basis, but no more frequently than monthly.

6. As owner of the Underlying Indexes, the Index Provider of each Self-Indexing Fund will enter into an agreement with a third party to act as ''Calculation Agent.'' The Calculation Agent will be solely responsible for the calculation and maintenance of each Self-Indexing Fund's Underlying Index, as well as the dissemination of the values of each such Underlying Index. The Calculation Agent is not, and will not be, an Affiliated Person or a Second-Tier Affiliate of the Self-Indexing Funds, the Adviser, any Sub-Adviser, any promoter or the Distributor.

7. The Adviser and the Index Provider of each Self-Indexing Fund will adopt and implement Policies and Procedures to minimize or eliminate any potential conflicts of interest. Among other things, the Policies and Procedures will be designed to limit or prohibit communication with respect to issues/information related to the maintenance, calculation and reconstitution of the Underlying Indexes between the Index Administrator,[6] the Index Group, and the employees of the Adviser.[7] As employees of the Index Provider, the Index Administrator and members of the Index Group (i) will not have any responsibility for the management of the Self-Indexing Funds or the Affiliated Accounts, (ii) will be expressly prohibited from sharing this information with any employees of the Adviser or those of any Sub-Adviser, including those persons that have responsibility for the management of the Self-Indexing Funds or the Affiliated Accounts until such information is publicly announced, and (iii) will be expressly prohibited from sharing or using this non-public information in any way except in connection with the performance of their respective duties. In addition, the Adviser has adopted and any Sub-Adviser will have adopted, pursuant to rule 206(4)-7 under the Advisers Act, written policies and procedures designed to prevent violations of the Advisers Act and the rules under the Advisers Act. Also, the Adviser has adopted, and any Sub-Adviser will be required to adopt, a Code of Ethics pursuant to rule 17j–1 under the Act and rule 204A–1 under the Advisers Act.

8. Applicants assert that certain potential conflicts of interest discussed in the application do not exist where the Funds are not Self-Indexing Funds. Applicants assert that the representations and undertakings in the application designed to prevent such potential conflicts of interest shall only apply to the Initial Fund and any Future Funds that are Self-Indexing Funds.

9. The investment objective of each Fund will be to provide investment returns that correspond, before fees and expenses, generally to the price and yield performance of its Underlying Index.[8] Each Fund will sell and redeem Creation Units only on a ''Business Day,'' which is defined as any day that the NYSE, the relevant Listing Exchange (as defined below), the Trust and the custodian are open for business and includes any day that a Fund is required to be open under section 22(e) of the Act. A Fund will utilize either a replication or representative sampling strategy to track its Underlying Index. A Fund using a replication strategy will invest in the Component Securities of its Underlying Index in the same approximate proportions as in such Underlying Index. A Fund using a representative sampling strategy will hold some, but not necessarily all of the Component Securities of its Underlying Index. Applicants state that a Fund using a representative sampling strategy will not be expected to track the performance of its Underlying Index with the same degree of accuracy as would an investment vehicle that invested in every Component Security of the Underlying Index with the same weighting as the Underlying Index. Applicants expect that each Fund will have an annual tracking error relative to the performance of its Underlying Index of less than 5%.

10. Creation Units will consist of specified large aggregations of Shares, e.g., 25,000 or 100,000 Shares, and it is expected that the initial price of a Creation Unit will range from $1 million to $10 million. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into an agreement with the Distributor (''Authorized Participant''). The Distributor will be responsible for transmitting the orders to the Funds. An Authorized Participant must be either (a) a Broker or other participant in the

requested from section 17(a), the Affiliated Accounts will not engage in Creation Unit transactions with a Fund.

[5] The ''Index Group'' refers to those employees of the Index Provider appointed to assist the Index Administrator (as defined below) in the performance of his/her duties.

[6] The ''Index Administrator'' refers to the employee of the Index Provider with ultimate responsibility for the Underlying Indexes and Rules-Based Process.

[7] If the Index Administrator or the Index Group includes employees of the Adviser (such as when the Index Provider is a division of the Adviser), such limits or prohibitions on communication will apply between those employees and the other employees of the Adviser. In the event that the Adviser serves as the Index Provider for a Self-Indexing Fund, the term 'Index Provider,' with respect to that Fund, will refer to the employees of the Adviser that are responsible for creating, compiling, and maintaining the relevant Underlying Index.

[8] Applicants represent that at least 80% of each Fund's total assets (excluding securities lending collateral) (''80% Basket'') will be invested in Component Securities that comprise its Underlying Index or TBA Transactions (as defined below), or in the case of Foreign Funds and Global Funds, the 80% Basket requirement may also include Depositary Receipts (defined below) representing Component Securities. Depositary receipts representing foreign securities (''Depositary Receipts'') include American Depositary Receipts (''ADRs'') and Global Depositary Receipts (''GDRs''). Each Fund may also invest up to 20% of its total assets in a broad variety of other instruments, including securities not included in its Underlying Index, which the Adviser believes will help the Fund track its Underlying Index.

continuous net settlement system of the National Securities Clearing Corporation (''NSCC''), a clearing agency registered with the Commission, or (b) a participant in the Depository Trust Company (''DTC,'' and such participant, ''DTC Participant'').

11. The Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[9] On any given Business Day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, unless the Fund is Rebalancing (as defined below). In addition, the Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions)[10] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;[11] (c) TBA Transactions[12] and other positions that cannot be transferred in kind[13] will be excluded from the Deposit Instruments and the Redemption Instruments,[14] (d) to the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio;[15] or (e) for temporary periods, to effect changes in the Fund's portfolio as a result of the rebalancing of its Underlying Index (any such change, a ''Rebalancing''). If there is a difference between the net asset value (''NAV'') attributable to a Creation Unit and the aggregate market value of the Deposit Instruments or Redemption Instruments exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Balancing Amount'').

12. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Balancing Amount; (b) if, on a given Business Day, the Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, the Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash;[16] (d) if, on a given Business Day, the Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) such instruments are not eligible for transfer through either the NSCC or DTC; or (ii) in the case of Global Funds and Foreign Funds, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if the Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Global Fund or Foreign Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[17]

13. Each Business Day, before the open of trading on a national securities exchange, as defined in section 2(a)(26) of the Act (''Exchange'') on which Shares are listed (''Listing Exchange''), each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Instruments and the Redemption Instruments, as well as the estimated Balancing Amount (if any), for that day. The list of Deposit Instruments and Redemption Instruments will apply until a new list is announced on the following Business Day, and there will be no intra-day changes to the list except to correct errors in the published list. Each Listing Exchange will disseminate, every 15 seconds during regular Exchange trading hours, through the facilities of the Consolidated Tape Association, an amount for each Fund stated on a per individual Share basis representing the sum of (i) the estimated Balancing Amount and (ii) the current value of the Portfolio Securities and other assets of the Fund.

14. An investor acquiring or redeeming a Creation Unit from a Fund will be charged a fee (''Transaction Fee'') to prevent the dilution of the interests of the remaining shareholders resulting from costs in connection with the purchase or redemption of Creation Units.[18] All orders to purchase Shares of a Fund in Creation Units must be placed with the Distributor by or through an

[9] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Funds will comply with the conditions of rule 144A.

[10] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for the Business Day.

[11] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[12] A ''TBA Transaction'' is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date.

[13] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[14] Because these instruments will be excluded from the Deposit Instruments and the Redemption Instruments, their value will be reflected in the determination of the Balancing Amount (as defined below).

[15] A Fund may only use sampling for this purpose if the sample: (i) Is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (ii) consists entirely of instruments that are already included in the Fund's portfolio; and (iii) is the same for all Authorized Participants on a given Business Day.

[16] In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution than Share purchasers because of the Adviser's size, experience and potentially stronger relationships in the fixed income markets. Purchases of Creation Units either on an all cash basis or in-kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in-kind redemption. As a result, tax consideration may warrant in-kind redemptions.

[17] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[18] Where a Fund permits an in-kind purchaser to substitute cash-in-lieu of depositing one or more of the requisite Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Instruments.

Authorized Participant, and it will be the Distributor's responsibility to transmit such orders to the Fund. The Distributor also will be responsible for delivering the Fund's prospectus to those persons acquiring Shares in Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares.

15. Shares of each Fund will be listed and traded individually on a Listing Exchange. It is expected that one or more member firms of a Listing Exchange will be designated to act as a market maker (each, a ''Market Maker'') and maintain a market for Shares trading on that Listing Exchange. Prices of Shares trading on an Exchange will be based on the current bid/offer market. Transactions involving the sale of Shares on an Exchange will be subject to customary brokerage commissions and charges.

16. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers may also purchase or redeem Creation Units in connection with their market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[19] The price at which Shares trade will be disciplined by arbitrage opportunities created by the option to continually purchase or redeem Creation Units at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

17. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Fund, or tender such Shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed by or through an Authorized Participant. A redeeming investor may pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

18. Neither the Trust nor any Fund will be advertised or marketed or otherwise held out as a traditional open-end investment company or a ''mutual fund.'' Instead, each such Fund will be marketed as an ''ETF'' or ''exchange-traded fund.'' All advertising materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and will disclose that the owners of Shares may acquire those Shares from the Fund or tender such Shares for redemption to the Fund in Creation Units only. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Shares.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Trust and each Fund to redeem Shares in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units according to the provisions of the Act. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary materially from their NAV per Share.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that, while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution system of investment company shares by eliminating price competition from non-contract dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

[19] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or the DTC Participants.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the Shares do not trade at a material discount or premium in relation to their NAV.

Section 22(e) of the Act

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions for Foreign Funds and Global Funds will be contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles in local markets for underlying foreign Portfolio Securities held by the Foreign Funds and Global Funds. Applicants state that current delivery cycles for transferring Redemption Instruments to redeeming investors, coupled with local market holiday schedules, in certain circumstances will require a delivery process for the Foreign Funds and Global Funds of up to 14 calendar days. Applicants request relief under section 6(c) of the Act from section 22(e) to allow Foreign Funds and Global Funds to pay redemption proceeds up to 14 calendar days after the tender of the Creation Units for redemption. Except as disclosed in the relevant Foreign Fund's or Global Fund's Statement of Additional Information (''SAI''), applicants expect that each Foreign Fund and Global Fund will be able to deliver redemption proceeds within seven days.[20]

8. Applicants state that Congress adopted section 22(e) to prevent unreasonable, undisclosed and unforeseen delays in the actual payment of redemption proceeds. Applicants state that allowing redemption payments for Creation Units of a Foreign Fund or Global Fund to be made within the number of days indicated above would not be inconsistent with the spirit and intent of section 22(e). Applicants state that the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of in kind redemption proceeds in seven calendar days, and the maximum number of days (up to 14 calendar days) needed to deliver the proceeds for each affected Foreign Fund and Global Fund.

9. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds or Global Funds that do not effect creations and redemptions of Creation Units in-kind.

Section 12(d)(1) of the Act

10. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer registered under the Exchange Act from selling the investment company's shares to another investment company if the sale would cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale would cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request an exemption to permit management investment companies (''Investing Management Companies'') and unit investment trusts (''Investing Trusts'') registered under the Act that are not sponsored or advised by the Adviser or an entity controlling, controlled by, or under common control with the Adviser and are not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Funds (collectively, ''Investing Funds'') to acquire Shares beyond the limits of section 12(d)(1)(A). In addition, applicants seek relief to permit a Fund, any Distributor, and/or any Broker registered under the Exchange Act to sell Shares to Investing Funds in excess of the limits of section 12(d)(1)(B).

12. Each Investing Management Company's investment adviser within the meaning of section 2(a)(20)(A) of the Act is the ''Investing Funds Adviser'' and each Investing Management Company's investment adviser within the meaning of section 2(a)(20)(B) of the Act is the ''Investing Funds Sub-Adviser.'' Any investment adviser to an Investing Fund will be registered under the Advisers Act. Each Investing Trust's sponsor is the ''Sponsor.''

13. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

14. Applicants believe that neither an Investing Fund nor an Investing Funds Affiliate would be able to exert undue influence over a Fund.[21] To limit the control that an Investing Fund may have over a Fund, applicants propose a condition prohibiting the Investing Funds Adviser, Sponsor, any person controlling, controlled by, or under common control with the Investing Funds Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Investing Funds Adviser, the Sponsor, or any person controlling, controlled by, or under common control with the Investing Funds Adviser or Sponsor (''Investing Funds' Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Investing Funds Sub-Adviser, any person controlling, controlled by or under common control with the Investing Funds Sub-Adviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Investing Funds Sub-Adviser or any person controlling, controlled by or under common control with the

[20] Rule 15c6–1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade date. Applicants acknowledge that relief obtained from the requirements of section 22(e) will not affect any obligations that they have under rule 15c6–1.

[21] An ''Investing Funds Affiliate'' is any Investing Funds Adviser, Investing Funds Sub-Adviser, Sponsor, promoter, or principal underwriter of the Investing Funds, and any person controlling, controlled by, or under common control with any of those entities. A ''Fund Affiliate'' is the Adviser, Sub-Adviser, promoter or principal underwriter of a Fund, or any person controlling, controlled by, or under common control with any of those entities.

Investing Funds Sub-Adviser (''Investing Funds' Sub-Advisory Group''). Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Investing Fund or Investing Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Funds Adviser, Investing Funds Sub-Adviser, Sponsor or employee of the Investing Funds, or a person of which any such officer, director, member of an advisory board, Investing Funds Adviser, Investing Funds Sub-Adviser, Sponsor or employee is an affiliated person (except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

15. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''non-interested directors or trustees''), will find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. In addition, under condition B.5, an Investing Funds Adviser, or trustee or Sponsor of an Investing Trust, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b-l under the Act) received from a Fund by the Investing Funds Adviser, or trustee or Sponsor of the Investing Trust, or an affiliated person of the Investing Funds Adviser, or trustee or Sponsor of the Investing Trust, in connection with the investment by the Investing Fund in the Fund. Applicants also state that any sales charges or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in Conduct Rule 2830 of the NASD.[22]

16. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares for short-term cash management purposes. To ensure that an Investing Fund is aware of the terms and conditions of the requested order, the Investing Funds must enter into an agreement with the respective Funds (''Investing Fund Participation Agreement''). The Investing Fund Participation Agreement will include an acknowledgement from the Investing Fund that it may rely on the order only to invest in the Funds and not in any other investment company.

17. Applicants also note that a Fund may choose to reject a direct purchase of Shares in Creation Units by an Investing Fund. To the extent that an Investing Fund purchases Shares in the secondary market, a Fund would still retain its ability to reject initial purchases of Shares made in reliance on the requested order by declining to enter into the Investing Fund Participation Agreement prior to any investment by an Investing Fund in excess of the limits of section 12(d)(1)(A).

Section 17 of the Act

18. Section 17(a) of the Act generally prohibits an Affiliated Person or a Second-Tier Affiliate, from selling any security to or purchasing any security from a registered investment company. Section 2(a)(3) of the Act defines ''affiliated person'' of another person to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company, and provides that a control relationship will be presumed where one person owns more than 25% of a company's voting securities. The Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with the Adviser and hence Affiliated Persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Adviser or an entity controlling, controlled by or under common control with the Adviser (an ''Affiliated Fund''). Applicants also state that any investor, including Market Makers, owning 5% or holding in excess of 25% of the Trust or such Funds, may be deemed affiliated persons of the Trust or such Funds. In addition, an investor could own 5% or more, or in excess of 25%, of the outstanding shares of one or more Affiliated Funds making that investor a Second-Tier Affiliate of the Funds.

19. Applicants request an exemption under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act in order to permit in-kind purchases and redemptions of Creation Units from the Funds by persons that are Affiliated Persons or Second-Tier Affiliates of the Funds solely by virtue of one or more of the following: (a) Holding 5% or more, or more than 25%, of the Shares of the Trust or one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds. Applicants also request an exemption in order to permit each Fund to sell Shares to and redeem Shares from, and engage in the in-kind transactions that would accompany such sales and redemptions with, any Investing Fund of which the Fund is an Affiliated Person or Second-Tier Affiliate.[23]

20. Applicants contend that no useful purpose would be served by prohibiting such affiliated persons from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units. Deposit Instruments and Redemption Instruments for each Fund will be valued in the same manner as the Portfolio Securities currently held by such Fund, and will be valued in this same manner, regardless of the identity of the purchaser or redeemer. Portfolio

[22] All references to Conduct Rule 2830 of the NASD include any successor or replacement rule that may be adopted by FINRA.

[23] To the extent that purchases and sales of Shares of a Fund occur in the secondary market (and not through principal transactions directly between an Investing Fund and a Fund), relief from section 17(a) would not be necessary. The requested relief is intended to cover, however, transactions directly between Funds and Investing Funds. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person or Second-Tier Affiliate of an Investing Fund because the Adviser or an entity controlling, controlled by or under common control with the Adviser is also an investment adviser to the Investing Fund.

Securities, Deposit Instruments, Redemption Instruments, and Balancing Amounts will be the same regardless of the identity of the purchaser or redeemer. Therefore, applicants state that in kind purchases and redemptions will afford no opportunity for the specified affiliated persons of a Fund to effect a transaction detrimental to the other holders of Shares. Applicants also believe that in kind purchases and redemptions will not result in abusive self-dealing or overreaching of the Fund. Applicants also submit that the sale of Shares to and redemption of Shares from an Investing Fund satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Applicants note that any consideration paid for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund in accordance with policies and procedures set forth in the Fund's registration statement.[24] Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. As long as a Fund operates in reliance on the requested order, the Shares of such Fund will be listed on an Exchange.

2. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Fund and tender those Shares for redemption to a Fund in Creation Units only.

3. The Web site maintained for each Fund, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or the midpoint of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

4. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based exchange-traded funds.

B. Section 12(d)(1) Relief

1. The members of an Investing Funds' Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of an Investing Funds' Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Investing Funds' Advisory Group or the Investing Funds' Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Investing Funds' Sub-Advisory Group with respect to a Fund for which the Investing Funds Sub-Adviser or a person controlling, controlled by or under common control with the Investing Funds Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Funds Affiliate will cause any existing or potential investment by the Investing Fund in a Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Funds Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the non-interested directors or trustees, will adopt procedures reasonably designed to ensure that the Investing Funds Adviser and any Investing Funds Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Funds Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in the securities of a Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the Board, including a majority of the non-interested directors or trustees of the Board, will determine that any consideration paid by the Fund to the Investing Fund or an Investing Funds Affiliate in connection with any services or transactions: (i) is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Investing Funds Adviser, or trustee or Sponsor of an Investing Trust, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b-l under the Act) received from a Fund by the Investing Funds Adviser, or trustee or Sponsor of the Investing Trust, or an affiliated person of the Investing Funds Adviser, or trustee or Sponsor of the Investing Trust, other than any advisory fees paid to the Investing Funds Adviser, or trustee or Sponsor of an Investing Trust, or its affiliated person by the Fund, in connection with the investment by the Investing Fund in the Fund. Any Investing Funds Sub-Adviser will waive fees otherwise payable to the Investing Funds Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Investing Funds Sub-Adviser, or an affiliated person of the Investing Funds Sub-Adviser, other than any advisory fees paid to the Investing Funds Sub-Adviser or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Investing Funds Sub-Adviser. In the event that the Investing Funds Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an Affiliated Underwriting.

7. The Board, including a majority of the non-interested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by a Fund in an Affiliated Underwriting,

[24] Applicants acknowledge that receipt of compensation by (a) an Affiliated Person of an Investing Fund, or a Second-Tier Affiliate, for the purchase by the Investing Funds of Shares or (b) an Affiliated Person of a Fund, or Second-Tier Affiliate, for the sale by the Fund of its Shares to an Investing Fund may be prohibited by section 17(e)(1) of the Act. The Investing Fund Participation Agreement will include this acknowledgement.

once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (i) whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), any Investing Fund and the Fund will execute an Investing Fund Participation Agreement stating, without limitation, that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Funds Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the Investing Fund Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company including a majority of the non-interested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in Conduct Rule 2830 of the NASD.

12. No Fund will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–06119 Filed 3–15–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69118; File No. SR–Phlx–2013–20]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt New Exchange Rule 1047(f) and (g) for Limit Up/Limit Down Situations

March 12, 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 28, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to: (i) Adopt new Exchange Rule 1047(f) to provide for how the Exchange proposes to treat orders in response to the Regulation NMS Plan to Address Extraordinary Market Volatility; and (ii) adopt new Exchange Rule 1047(g) to codify that the Exchange shall halt trading in all options overlying NMS stocks when the equities markets initiate a market-wide trading halt due to extraordinary market volatility.

The text of the proposed rule change is below; proposed new language is in italics.

* * * * *

Rule 1047. Trading Rotations, Halts and Suspensions

(a)–(e) No change.

(f) This paragraph shall be in effect during a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS, as it may be amended from time to time (''LULD Plan''). Capitalized terms used in this paragraph shall have the same meaning as provided for in the LULD Plan. During a Limit State and Straddle State in the Underlying NMS stock:

(i) The Exchange will not open an affected option.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(ii) After the opening, the Exchange shall reject Market Orders, as defined in Rule 1066(a) (including Complex Orders, as defined in Rule 1080.08), and shall notify Participants of the reason for such rejection. The Exchange shall cancel Complex Orders that are Market Orders residing in the Phlx XL System if they are about to be executed by the Phlx XL System.

(iii) After the opening, the Exchange shall elect Stop Orders, as defined in Rule 1066(c)(1), and, because they become Market Orders, shall cancel them back and notify Participants of the reason for such rejection.

(g) The Exchange shall halt trading in all options whenever the equities markets initiate a market-wide trading halt commonly known as a circuit breaker in response to extraordinary market conditions.

* * * Commentary:

.01–.03 No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes: (i) To adopt Exchange Rule 1047(f) to provide for how the Exchange will treat orders in response to the Regulation NMS Plan to Address Extraordinary Market Volatility (the ''Plan''), which is applicable to all NMS stocks, as defined in Regulation NMS Rule 600(b)(47); and (ii) to adopt Exchange Rule 1047(g) to codify that the Exchange shall halt trading in all options when the equities markets initiate a market-wide trading halt due to extraordinary market volatility. The Exchange proposes to adopt new Rule 1047(f) for a pilot period that coincides with the pilot period for the Plan.

Background

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, i.e., the ''flash crash,'' the equities exchanges and the Financial Industry Regulatory Authority (''FINRA'') have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility. The measures adopted include pilot plans for stock-by-stock trading pauses,[3] related changes to the equities market clearly erroneous execution rules,[4] and more stringent equities market maker quoting requirements.[5] On May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.[6] In addition, the Commission approved changes to the equities market-wide circuit breaker rules on a pilot basis to coincide with the pilot period for the Plan.[7]

The Plan is designed to prevent trades in individual NMS stocks from occurring outside of specified Price Bands.[8] As described more fully below, the requirements of the Plan are coupled with Trading Pauses to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). All trading centers in NMS stocks, including both those operated by Participants and those operated by members of Participants, are required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the requirements specified in the Plan.

As set forth in more detail in the Plan, Price Bands consisting of a Lower Price Band and an Upper Price Band for each NMS Stock are calculated by the Processors.[9] When the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band, the Processors shall disseminate such National Best Bid (Offer) with an appropriate flag identifying it as unexecutable. When the National Best Bid (Offer) is equal to the Upper (Lower) Price Band, the Processors shall distribute such National Best Bid (Offer) with an appropriate flag identifying it as a Limit State Quotation.[10] All trading centers in NMS stocks must maintain written policies and procedures that are reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for NMS stocks. Notwithstanding this requirement, the Processor shall display an offer below the Lower Price Band or a bid above the Upper Price Band, but with a flag that it is non-executable. Such bids or offers shall not be included in the National Best Bid or National Best Offer calculations.[11] Trading in an NMS stock immediately enters a Limit State if the National Best Offer (Bid) equals but does not cross the Lower (Upper) Price Band.[12] Trading for an NMS stock exits a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute trading pause pursuant to Section VII of the Plan, which would be applicable to all markets trading the security.[13] In addition, the Plan defines a Straddle State as when the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS stock is not in a Limit State. For example, assume the Lower Price Band for an NMS Stock is $9.50 and the Upper Price Band is $10.50, such NMS stock would be in a Straddle State if the National Best Bid were below $9.50, and therefore unexecutable, and the National Best Offer were above $9.50 (including a National Best Offer that could be above $10.50). If an NMS stock is in a Straddle State and trading in that stock deviates from normal trading characteristics, the Primary Listing Exchange may declare a trading pause for that NMS stock if such Trading Pause would support the Plan's goal to address extraordinary market volatility.

Proposed Rule 1047(f)

Openings

The Exchange proposes to adopt new Exchange Rule 1047(f) to provide for how the Exchange shall treat orders and quotes in options overlying NMS stocks when the Plan is in effect. First, the Exchange proposes to adopt new

[3] *See e.g.,* Exchange Rule 3100.

[4] *See e.g.,* Exchange Rule 3312.

[5] *See e.g.,* NASDAQ Rule 4613.

[6] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (Order Approving the Plan on a Pilot Basis).

[7] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129).

[8] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[9] *See* Section V(A) of the Plan.

[10] *See* Section VI(A) of the Plan.

[11] *See* Section VI(A)(3) of the Plan.

[12] *See* Section VI(B)(1) of the Plan.

[13] The primary listing market would declare a Trading Pause in an NMS stock; upon notification by the primary listing market, the Processor would disseminate this information to the public. No trades in that NMS stock could occur during the trading pause, but all bids and offers may be displayed. *See* Section VII(A) of the Plan.

subparagraph (i) to provide for how the Exchange shall treat the opening rotation. The opening in an option will not commence in the event that the underlying NMS stock is open, but has entered into a Limit State or Straddle State. If this occurs, the opening will only commence and complete if the underlying NMS stock stays out of a Limit or Straddle State. Accordingly, new Rule 1047(f)(i) will provide that the Exchange will not open an affected option. As a result, if an opening process is occurring, it will cease and then start the opening process from the beginning once the Limit State or Straddle State is no longer occurring. If a Limit State or Straddle State occurs after an option opens, but during a Complex Order Strategy opening, the Complex Order Strategy opening will continue as long as the option remains open. This is consistent with the provisions of Rule 1047 that state that the Exchange will halt an option when the underlying security is subject to a regulatory halt.

Orders

Second, the Exchange proposes to adopt provisions regarding the treatment of certain orders if the underlying NMS stock is in a Limit State or Straddle State. Whenever an NMS stock is in a Limit State or Straddle State, trading continues; however, there will not be a reliable price for a security to serve as a benchmark for the price of the option. For example, if the underlying NMS stock is in a Limit State, while trading in that stock continues, by being in a Limit State, there will be either cancellations or executions at that price, and if the Limit State is not resolved in 15 seconds, the NMS Stock will enter a Trading Pause. If an NMS stock is in a Straddle State, that means that there is either a National Best Bid or National Best Offer that is non-executable, which could result in limited price discovery in the underlying NMS stock. In addition to the lack of a reliable underlying reference price, the Exchange is concerned about the width of the markets and quality of the execution for market participants during a Limit State or Straddle State. While the Exchange recognizes the importance of continued trading in options overlying NMS stocks during Limit States and Straddle States, the Exchange believes that certain types of orders increase the risk of errors and poor executions and therefore should not be allowed during these times when there may not be a reliable underlying reference price, there may be a wide bid/ask quotation differential, and there may be lower trading liquidity in the options markets.

Therefore, the Exchange proposes that if an NMS stock is in a Limit State or Straddle State, once the option has opened for trading, the Exchange shall reject all incoming Market Orders, as defined in Rule 1066(a) (including Complex Orders, as defined in Rule 1080.08), and shall notify Participants of the reason for such rejection.[14] Market orders residing in the Phlx XL System will be handled in the normal fashion under Exchange rules. The Exchange shall also cancel Complex Orders that are Market Orders residing in the Phlx XL System if they are about to be executed by the Phlx XL System.[15] In addition, the Phlx XL System will elect Stop Orders [16] if the underlying NMS stock is in a Straddle State or a Limit State, but, because they become Market Orders, shall cancel them back and notify Participants of the reason for such rejection. The Exchange believes that permitting these order types to execute when the underlying NMS stock is in a Limit State or Straddle State would add to the volatility in the options markets during times of extraordinary market volatility and could have the potential to lead to unwanted executions. The Exchange believes that adding certainty to the treatment of Market Orders and Stop Orders when the underlying NMS stock is in these situations should encourage market participants to continue to provide liquidity to the Exchange and thus promote a fair and orderly market.

Proposed Rule 1047(g)

The Exchange also proposes to adopt Rule 1047(g), which provides that the Exchange shall halt trading in all options whenever the equities markets initiate a market-wide trading halt commonly known as a circuit breaker in response to extraordinary market conditions. Although the Exchange's rules currently address a variety of situations involving halts, pauses and suspensions,[17] the Exchange has determined to adopt a very specific rule to deal with circuit breaker-related halts. The Exchange believes that this rule can be adopted on a permanent basis, even though the equities circuit breakers are subject to a pilot program, because the proposed rule refers to such circuit breakers generally.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the provisions of Section 6 of the Act,[18] in general, and with Section 6(b)(5) of the Act,[19] in particular, which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because it should provide certainty about how options orders and trades will be handled during periods of extraordinary volatility in the underlying security. Specifically, under the proposal, market participants will be able to continue to trade options overlying securities that are in a Limit State or Straddle State, while addressing specific order types that are subject to added risks during such periods. The Exchange believes that the rejection of options Market Orders (including elected Stop Orders) should help to prevent executions that might occur at prices that have not been reliably formed, which should, in turn, protect, in particular, retail investors from executions of un-priced orders during times of significant volatility.

Accordingly, the Exchange believes that the proposed rule change is consistent with these requirements in that it should reduce the negative impacts of sudden, unanticipated volatility in individual options, and serve to preserve an orderly market in a transparent and uniform manner, enhance the price-discovery process, increase overall market confidence, and promote fair and orderly markets and the protection of investors.

[14] Such orders will not be eligible for order re-entry pursuant to Rule 1082, and market orders being re-entered pursuant to this provision will be rejected as well.

[15] Pursuant to Rule 1080.08, Complex Orders can become executable after a COLA and during the COLA Timer.

[16] *See* Rule 1066(c)(1). Stop Orders when elected create a Market Order to buy or sell the option. In contrast, the Exchange is not proposing to prohibit the election of Stop Limit Orders. Stop Limit Orders when elected create a Limit Order to buy or sell the option at a specific price. *See* Rule 1066(c)(1). The Exchange believes that Stop Limit Orders do not raise the same risks during periods of extraordinary volatility, because, once elected, the associated limit orders would not race through the order book in the manner that an elected Market Order would.

[17] For example, Rule 1047(e) addresses halting an option when trading in the underlying NMS stock is paused.

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the proposal does not impose an intra-market burden on competition, because it will apply to all Options Participants. Nor will the proposal impose a burden on competition among the options exchanges, because, in addition to the vigorous competition for order flow among the options exchanges, the proposal addresses a regulatory situation common to all options exchanges. To the extent that market participants disagree with the particular approach taken by the Exchange herein, market participants can easily and readily direct order flow to competing venues. The Exchange believes this proposal for how to treat options openings and orders will not impose a burden on competition and will help provide certainty during periods of extraordinary volatility in an NMS stock.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [20] and Rule 19b–4(f)(6) thereunder.[21] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act [22] 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 No. SR–Phlx–2013–20 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 No. SR–Phlx–2013–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2013–20 and should be submitted on or before April 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

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BILLING CODE 8011–01–P

[20] 15 U.S.C. 78s(b)(3)(A)(iii).

[21] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[22] 15 U.S.C. 78s(b)(2)(B).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69110; File No. SR–ISE–2013–22]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change To Suspend Certain Market Maker Quotation Requirements and To Suspend Rule 720 Regarding Obvious Errors During Limit Up-Limit Down States in Securities That Underlie Options Traded on the ISE

March 11, 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 8, 2013, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to suspend certain market maker quotation requirements and to suspend Rule 720 regarding obvious errors during limit up-limit down states in securities that underlie options traded on the ISE on a pilot basis. The text of the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change is available on the Exchange's Web site *www.ise.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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 31, 2012, the Commission approved the Plan to Address Extraordinary Market Volatility (the ''Plan''),[3] which establishes procedures to address extraordinary volatility in NMS Stocks. The procedures provide for market-wide limit up-limit down requirements that prevent trades in individual NMS Stocks from occurring outside of specified Price Bands. These limit up-limit down requirements are coupled with Trading Pauses to accommodate more fundamental price moves. The Plan procedures are designed, among other things, to protect investors and promote fair and orderly market.[4]

ISE is not a participant in the Plan because it does not trade NMS Stocks. However, the ISE trades options contracts overlying NMS Stocks. Because options pricing models are highly dependent on the price of the underlying security and the ability of options traders to effect hedging transactions in the underlying security, the implementation of the Plan will impact the trading of options classes traded on the Exchange. Specifically, under the Plan, upper and lower price bands will be calculated based on a reference price for each NMS Stock.[5] When one side of the market for an individual security is outside the applicable price band, the national best bid or national best offer will be disseminated with a flag identifying it as non-executable (i.e., a ''Straddle State''). When the other side of the market reaches the applicable price band, such national best bid or offer will be disseminated with a flag identifying it as a Limit State Quotation.[6] If trading for a security does not exit a Limit State within 15 seconds, a Trading Pause will be declared by the Primary Listing Exchange.[7] The Trading Pause will last at least five minutes[8] and will end when the Primary Listing Exchange disseminates a Reopening Price.[9]

When the national best bid (offer) for a security underlying an options class is non-executable, the ability for options market participants purchase (sell) shares of the underlying security and the price at which they may be able to purchase (sell) shares will become uncertain, as there will be a lack of transparency regarding the availability of liquidity for the security.[10] This uncertainty will be factored into the options pricing models of market professionals, such as options market makers, which will likely result in wider spreads and less liquidity at the best bid and offer for the options class. Accordingly, during a Limit State, the Exchange will automatically reject all incoming orders that do not contain a limit price to protect them from being executed at prices that may be vastly inferior to the prices available immediately prior to or following a Limit State or Straddle State.[11] Such unpriced orders include market orders and stop orders, which become market orders when the stop price is elected. The Exchange will also cancel any unexecuted market orders and unexecuted stop orders.

In light of the unusual market conditions, the Exchange proposes to suspend the maximum quotation spread requirement for market maker quotes contained in Rule 803(b)(5) and the continuous market maker quotation requirements contained in Rule 804(e) when the security underlying an option class is in a Limit State or Straddle State. The Exchange believes it may be very difficult for market makers to price options classes when there is uncertainty as to whether they are unable to buy and sell the underlying security, or at what prices and in what quantity. While some market makers may choose to provide liquidity in such circumstances, the risk associated with doing so may be too great for others.[12] The Exchange proposes to remove maximum spread requirements to encourage market makers to choose to provide liquidity during Limit States and Straddle States, as market makers will be discouraged from entering any quotations if they must do so within the maximum spread requirement.

The Exchange also proposes to exclude transactions executed during a Limit State or Straddle State from the provision of ISE Rule 720, on a one-year pilot basis. Rule 720 provides a process by which a transaction may be busted or adjusted when the execution price of a transaction deviates from the option's theoretical price by a certain amount. Under Rule 720, the theoretical price is the national best bid price for the option with respect to a sell order and the national best offer for the option with respect to a buy order.[13] As discussed

[3] Securities Exchange Act Release No. 67091 (May 31, 2012), 77 F.R. 33498 (June 6, 2012) (File No. 4–631) (''Plan Approval Order'').

[4] *Id.* at 33511 (Preamble to the Plan).

[5] The reference price equals the arithmetic mean price of eligible reported transactions for the NMS Stock over the immediately preceding five-minute period. *See* Section I(T) of the Plan.

[6] *See* Section I(D) of the Plan. The Limit State will end when the entire size of all Limit State Quotations are executed or cancelled.

[7] *See* Section VII(A) of the Plan. The Primary Listing Exchange is the market on which an NMS Stock is listed. If an NMS Stock is listed on more than one market, the Primary Listing Exchange is the market on which the security has been listed the longest. *See* Section I(O) of the Plan. A trading pause may also be declared when the national best bid (offer) is below (above) the lower (upper) price band and the security is not in a Limit State, and trading in that security deviates from normal trading characteristics. *See* Section VII(A)(2) of the Plan.

[8] A Trading Pause may last longer than 5 minutes if, for example, the Primary Market declares a Regulatory Halt, or if there is a significant order imbalance. *See* Section VII(B) of the Plan. If the Primary Listing Exchange does not report a Reopening Price within ten minutes after the declaration of a trading Pause and has not declared a Regulatory Halt, all trading centers may begin trading the security. *Id.*

[9] The Reopening Price is the price of a transaction that reopens trading on the Primary Listing Exchange following a Trading Pause or a Regulatory Halt, or, if the Primary Listing Exchange reopens with quotations, the midpoint of those quotations. The Exchange notes that under ISE Rule 702(c), trading on the Exchange is halted whenever trading in the underlying security has been paused by the primary listing market. Accordingly, the Exchange need not adopt any rule changes to address this aspect of the Plan.

[10] *See* Letter to Boris Ilyevsky, Managing Director, ISE, from Thomas Price, Managing Director, Securities Industry and Financial Markets Association, dated October 4, 2012 (''SIFMA Letter''). A copy of the letter is provided in *Exhibit 2* to the filing.

[11] *See* SR–ISE–2013–20 (filed March 4, 2013).

[12] The time periods associated with Limit States and Straddle States will not be considered by the Exchange when evaluating whether a market maker complied with the continuous quotation requirements contained in Rule 804(e).

[13] Rule 720 provides that if there are no quotes from other options exchanges for comparison purposes, the theoretical price will be determined by designated personnel in the Exchange's market control center. However, given that options market makers and other industry professionals will have difficulty pricing options during Limit States and Straddle States, the Exchange does not believe it would be reasonable for ISE personnel to derive theoretical prices to be applied to transactions executed during such unusual market conditions.

above, during a Limit State or Straddle State, options prices may deviate substantially from those available prior to or following the limit state. The Exchange believes this provision would give rise to much uncertainty for market participants as there is no bright line definition of what the ''theoretical value'' should be for an option when the underlying NMS stock has an unexecutable bid or offer or both. Determining ''theoretical value'' in such a situation would be often times very subjective as opposed to an objective determination giving rise to additional uncertainty and confusion for investors. Accordingly, the Exchange does not believe that the approach employed under Rule 720, which by definition depends on a reliable national best bid and offer in the option, is appropriate during a Limit State or Straddle State.[14]

After careful consideration, the Exchange believes the application of the current rule would be impracticable given the lack of a reliable national best bid or offer in the options market during Limit States and Straddle States, and produce undesirable effects. Pursuant to Rule 720, market participants have five minutes (in the case of a market maker) and 20 minutes (in the case of an Electronic Access Member) to notify the Exchange to review a transaction as an obvious error under 720(c) and market participants have until 8:30 a.m. the following day to request that the Exchange review a trade as a catastrophic error under Rule 720(d).[15] The Exchange believes that during periods of extraordinary volatility, the review period for transactions under the obvious error and catastrophic error provisions would allow market participants to re-evaluate a transaction that occurred during a Limit State or Straddle State at a later time, which is potentially unfair to other market participants and would discourage market participants from providing liquidity during Limit States or Straddle States. For example, 20 minutes after a transaction that occurs during extraordinary volatility that triggers a Limit State or Straddle State the market could look drastically different from a price and liquidity level The Exchange believes that market participants should not be able to benefit from the time frame to review their transactions in these situations. Suspending application of Rule 720 would mitigate two of the undesirable aspects described above—(i) the moral hazard associated with granting a second look to trades that went against the market participant after market conditions have changed and (ii) gaming the obvious error rule to retroactively adjust market maker quotes by adjusting the execution price at a later time.

The Exchange notes that there are additional protections in place outside of the Obvious and Catastrophic Error Rule that will continue to safeguard customers. First, SEC Rule 15c3–5 requires that, ''financial risk management controls and supervisory procedures must be reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds, or that appear to be erroneous.'' [16] Secondly, the Exchange has price checks applicable to limit orders that rejects limit orders that are priced sufficiently far through the NBBO that it seems likely an error occurred. The requirements placed upon broker dealers to adopt controls to prevent the entry of orders that appear to be erroneous, coupled with Exchange functionality that filters out orders that appear to be erroneous serve to sharply reduce the incidence of errors arising from situations, for example, where a participant mistakenly enters an order to pay $20 for an option offered at $2. The Exchange also notes that pursuant to ISE Rule 705(d), the Exchange may compensate Members for losses resulting directly from the malfunction of the Exchange's systems, and that this protection is independent from ISE Rule 720. Accordingly, the Exchange believes it is appropriate to eliminate any potential protection applying the obvious error rule might provide during Limit and Straddle States, as its application may produce inequitable results.

The Exchange proposes to review the operation of this provision during the one-year pilot period for the proposal and analyze the impact of the Limit and Straddle States accordingly.[17] In this respect, the Exchange notes that its current obvious error rule does not contain a provision that permits the Exchange to review trades on its own motion. The Exchange believes that in normal market conditions, such a provision is not necessary and undermines the objective nature of the rule. However, during the pilot period, the Exchange will evaluate whether adopting such a provision for review trades during Limit and Straddle states is necessary and appropriate.

The Exchange notes that these proposed changes are consistent with the views of the Securities Industry and Financial Markets Association's (''SIFMA'') Listed Options Trading Committee.[18]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act'') [19] in general, and furthers the objectives of Section 6(b)(5) of the Act [20] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

In consideration of the substantial risk associated with market making during such unusual market conditions, the Exchange believes exempting market makers from their continuous quotation obligations during Limit States and Straddle States, and removing maximum spread requirements for market makers quotes during such states, is necessary and appropriate to promote just and equitable principles of trade. As stated above, it may be very difficult for market makers to price options classes when there is uncertainty as to whether they will be able to buy and sell the underlying security, or at what prices and in what quantity. Moreover, giving options market makers the flexibility to choose whether to enter quotes and to do so without spread restrictions is necessary to encourage market makers to provide liquidity in options classes overlying securities that may enter a Limit State or Straddle State. The Exchange believes that encouraging liquidity in such options classes will help to assure a more fair and orderly market for investors leading up to, during, and following Limit States and Straddle States.

All other requirements related to market maker quotes will be applicable to market makers that choose to enter quotes during a Limit State or Straddle State. In this respect, the Exchange notes that such market makers continue to be subject to many obligations,

[14] *See* SIFMA Letter, *supra* note 10 (requesting that exchange obvious error rules that reference theoretical prices be reviewed to ensure that options exchange officials do not have the discretion to cancel executions of limit orders and stop limit orders during a limit or straddle state).

[15] For transactions in expiring options series that take place on expiration Friday, the Member must notify the Exchange by 5:00 p.m. Eastern Time on that same day. *See* Rule 720(d)(1).

[16] *See* Securities and Exchange Act Release No. 63241, 75 FR 69791 (November 15, 2010) (S7–03–10).

[17] During the pilot, the Exchange will provide the commission with data regarding the how Limit and Straddle States effect the quality of the options market.

[18] *Id.*

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

including the obligation to maintain a fair and orderly market in their appointed classes, and that market makers are not permitted to make bids or offers or enter into transactions that are inconsistent with such course of dealings. Given that market makers are subject to these additional obligations when entering quotes, the Exchange believes it is appropriate to apply its normal execution principles if market makers choose to enter quotes during Limit States or Straddle States, even if they are not under an obligation to provide liquidity during these brief periods. The Exchange also notes that it would be impractical to apply a different execution algorithm during such brief and infrequent unusual market conditions, and that in any such case, the Exchange believes that removing incentives for market makers to provide liquidity during Limit States or Straddle States would serve to decrease the quality of its markets during these brief and unusual market conditions. For these reasons, the Exchange believes that the balance between the benefits provided to market makers and the obligations imposed upon market makers during Limit States and Straddle States by the proposed rule change is appropriate

The Exchange further believes that it is necessary and appropriate in the interest of promoting fair and orderly markets to exclude transactions executed during a Limit State or Straddle State from the provision of ISE Rule 720. The Exchange believes the application of the current rule will be impracticable given the lack of a relievable national best bid or offer in the options market during Limit States and Straddle States, and that the resulting actions (*i.e.,* busted trades or adjusted prices) may not be appropriate given market conditions. This change would ensure that limit orders that are filled during a Limit State or Straddle State would have certainty of execution in a manner that promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of a free and open market and a national market system. Moreover, given that options prices during brief Limit States or Straddle States may deviate substantially from those available shortly following the Limit State or Straddle State, the Exchange believes giving market participants five minutes (in the case of a market maker) and 20 minutes (in the case of an Electronic Access Member) to re-evaluate a transaction would create an unreasonable adverse selection opportunity that would discourage participants from providing liquidity during Limit States or Straddle States. In this respect, the Exchange notes that by rejecting market orders and stop orders, and cancelling pending market orders and stop orders, only those orders with a limit price will be executed during a Limit State or Straddle State. Therefore, on balance, the Exchange believes that removing the potential inequity of busting or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying Rule 720 during such unusual market conditions. Additionally, as discussed above, there are additional pre-trade protections in place outside of the Obvious and Catastrophic Error Rule that will continue to safeguard customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will have any impact on competition among exchanges or market participants on the Exchange, as the proposal provides that market makers may, but are not required to, provide liquidity during Limit States and Straddle States, and that transactions executed during such states will not be reviewed pursuant to Rule 720.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–ISE–2013–22 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 No. SR–ISE–2013–22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2013–22 and should be submitted on or before April 2, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–06087 Filed 3–15–13; 8:45 am]

BILLING CODE 8011–01–P

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69122; File No. SR–CFE–2013–003]

Self-Regulatory Organizations; CBOE Futures Exchange, LLC; Notice of Filing of a Proposed Rule Change Regarding Reportable Position Reporting of Security Futures by Non-Trading Privilege Holders

March 12, 2013.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 1, 2013 CBOE Futures Exchange, LLC (''CFE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change described in Items I, II, and III below, which Items II and III have been prepared by CFE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. CFE also has filed this proposed rule change with the Commodity Futures Trading Commission (''CFTC''). CFE filed a written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act (''CEA'')[2] on March 1, 2013.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

CFE proposes to add new subparagraph (b) to CFE Rule 412B (Reportable Positions) to make clear that Persons[3] that are not CFE Trading Privilege Holders (''TPHs'') and that are required by CFTC regulations to report to the CFTC reportable positions and related information relating to CFE security futures contracts are obligated to also report the foregoing reportable positions and related information to CFE in a form and manner prescribed by CFE. CFE also proposes to amend subparagraph (d) to CFE Rule 308 (Consent to Exchange Jurisdiction) by adding CFE Rule 412B(b) to the list of CFE Rules that are applicable to non-TPHs.

The scope of this filing is limited solely to the application of the rule changes to security futures traded on CFE. The only security futures currently traded on CFE are traded under Chapter 16 of CFE's Rulebook which is applicable to Individual Stock Based and Exchange-Traded Fund Based Volatility Index (''Volatility Index'') security futures.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.cfe.cboe.com,* on the Commission's Web site at *http://www.sec.gov,* 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, CFE 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. CFE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to add new subparagraph (b) to CFE Rule 412B (Reportable Positions) to make clear that Persons that are not CFE TPHs and that are required by CFTC regulations to report to the CFTC reportable positions and related information relating to CFE security futures contracts are obligated to also report the foregoing reportable positions and related information to CFE in a form and manner prescribed by CFE. CFE also proposes to amend subparagraph (d) to CFE Rule 308 (Consent to Exchange Jurisdiction) by including a citation to CFE Rule 412B(b) in the list of CFE Rules that are applicable to non-TPHs.

Under the CFTC's large trader reporting system (''LTRS''), futures commission merchants and others are required to file daily reports with the CFTC under Part 17 of the CFTC's regulations.[4] There are two components to the LTRS for all futures accounts. The first component is a reporting of futures and options on futures positions of traders with positions at or above specific reporting levels. The second component is the filing of CFTC Form 102 (Identification of Special Accounts) which is used to identify each new account that acquires a reportable position.

CFE Rule 412B already provides that TPHs are required to report to CFE in a form and manner prescribed by CFE reportable positions and related information relating to CFE contracts that TPHs are obligated to report to the CFTC pursuant to CFTC regulations. However, CFE Rule 412B does not currently explicitly state that this requirement is applicable to non-TPHs, such as foreign brokers, that are required to report to the CFTC reportable security futures positions and related information concerning to CFE contracts. The purpose of this proposal is to make clear that this requirement would be applicable to those parties.

To affect this change, CFE proposes to add below new paragraph (b) to CFE Rule 412B:

(b) Any Person that is not a Trading Privilege Holder and that is required to report to the [CFTC] pursuant to [CFTC] regulations reportable positions and related information relating to Exchange Contracts shall report the foregoing reportable positions and related information to the Exchange in a form and manner prescribed by the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5)[6] in particular in that it is designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would strengthen its ability to carry out its self-regulatory obligations. Specifically, CFE needs to receive reportable positions and related information in a form and manner that will allow its seamless integration into the market surveillance program and systems utilized by CFE and its regulatory services provider. The proposal will facilitate CFE's ability to receive reportable positions and related information related to CFE security futures contracts in this manner from non-TPHs that are required to report this information to the CFTC.

B. Self-Regulatory Organization's Statement on Burden on Competition

CFE 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

[1] 15 U.S.C. 78s(b)(7).

[2] 7 U.S.C. 7a–2(c).

[3] CFE Rule 155 defines the term ''Person'' to mean any natural person, association, partnership, limited liability company, joint venture, trust or corporation.

[4] 17 U.S.C. 15.03(b).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

believes that the proposed rule change is equitable and not unfairly discriminatory because it makes clear that Persons that are not CFE TPHs and that are required by CFTC regulations to report to the CFTC reportable positions and related information relating to CFE contracts are obligated to also report the foregoing reportable positions and related information to CFE in a form and manner prescribed by CFE. This is the same reporting requirement that applies that CFE TPHs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change will become operative on March 18, 2013.

At any time within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[7]

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–CFE–2013–003 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–CFE–2013–003. 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 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–CFE–2013–003, and should be submitted on or before April 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

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[7] 15 U.S.C. 78s(b)(1).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69078; File No. SR–NYSEArca–2013–19]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Schedule of Fees and Charges for Exchange Services To Reduce the Floor Broker Rebate for Qualified Contingent Cross Transactions

March 8, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 1, 2013, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Schedule of Fees and Charges for Exchange Services (''Fee Schedule'') to (i) reduce the Floor Broker rebate for Qualified Contingent Cross (''QCC'') transactions and (ii) remove an outdated reference. The Exchange proposes to implement the changes on March 1, 2013. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to (i) reduce the Floor Broker rebate for QCC transactions and (ii) remove an outdated reference. The Exchange proposes to implement the changes on March 1, 2013.

Currently, Floor Brokers that execute QCC transactions receive a rebate of $0.05 per contract side. The Exchange proposes reducing that rebate to $.035 per contract side. When the Exchange originally adopted the Floor Broker rebate, the Exchange noted that OTP Holders have two primary means of bringing a QCC order to the Exchange for possible execution: (1) They can configure their systems to deliver the QCC order to the Exchange matching engines for validation and execution; or

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

(2) they can utilize the services of another OTP Holder acting as a Floor Broker.[4] With the latter means, a Floor Broker who is in receipt of such a QCC order can enter the order through an Exchange-provided system to be delivered to the Exchange matching engines for validation and potential execution.

Because the Exchange does not offer a front-end for order entry, unlike some competing exchanges,[5] the Exchange believed that it was necessary from a competitive standpoint to offer this rebate to the executing Floor Broker on a QCC order. In doing so, the Exchange expected that the rebate would allow Floor Brokers to price their services at a level that would enable them to attract QCC order flow from participants who would otherwise utilize the front-end order entry mechanism offered by the Exchange's competitors instead of incurring the cost in time and money to develop their own internal systems to deliver QCC orders directly to the Exchange system. The Exchange believed that to the extent Floor Brokers were able to attract QCC orders, they would gain important information that would allow them to solicit the parties to the QCC orders for participation in other trades.[6] The Exchange further believed that this would, in turn, benefit other Exchange participants through the additional liquidity that would occur as a result.

Although the rebate has not incented additional liquidity and price discovery as expected, the Exchange believes that it is still necessary to keep the rebate, albeit in a lower amount, in order for Floor Brokers to competitively price their services and for the Exchange to remain competitive with other exchanges that offer a similar rebate.[7]

The Exchange also proposes to eliminate an obsolete reference in the Fee Schedule concerning the Options Regulatory Fee. Specifically, prior to December 1, 2012, the Options Regulatory Fee was $0.004 per contract. As reflected in the current Fee Schedule, the fee rose to $0.005 per contract on December 1, 2012. The Exchange proposes to remove the outdated reference to the $0.004 per contract fee in order to make clearer that the current Options Regulatory Fee is $0.005 per contract.

The proposed change is not otherwise intended to address any other problem, and the Exchange is not aware of any significant problem that the affected market participants would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[9] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that reducing the Floor Broker rebate for QCC transactions is reasonable. Specifically, although the rebate has not incented additional liquidity and price discovery as expected, the Exchange believes that it is still necessary to keep the rebate, albeit at a lower amount, in order for Floor Brokers to competitively price their services and for the Exchange to remain competitive with other exchanges that offer a similar rebate. The Exchange believes the proposed rebate is equitable and not unfairly discriminatory because it would uniformly apply to all QCC orders entered by a Floor Broker for validation by the system and potential execution. The rebate is not unfairly discriminatory to firms that enter QCC orders directly into the Exchange's system through an electronic connection because the fee for the QCC order is the same whether it is entered electronically or through a Floor Broker. In addition, under Commentary .01 to NYSE Arca Options Rule 6.90, only Floor Brokers may enter a QCC order from the Floor; therefore, providing the rebate to Floor Brokers does not discriminate against other QCC orders entered into the Exchange's system. Furthermore, any participant will be able to engage a rebate-receiving Floor Broker in a discussion surrounding the appropriate level of fees that they may be charged for entrusting the entry of the QCC order to the Floor Broker into the Exchange systems for validation and execution. In addition, the Exchange believes that removing the outdated reference concerning the Options Regulatory Fee will make the Fee Schedule more user-friendly for Exchange participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, reducing the rebate for QCC transactions will not impose a burden on competition because the rebate has not encouraged liquidity and price discovery as originally intended. Instead, reducing the rebate for QCC transactions will promote competition because, while the rebate has not incented additional liquidity and price discovery as expected, the Exchange believes that it is still necessary to keep the rebate, albeit at a lower amount, in order for Floor Brokers to competitively price their services and for the Exchange to remain competitive with other exchanges that offer a similar rebate. The Exchange does not believe that Exchange participants will be adversely affected by the reduced rebate because they were not availing themselves of it in the manner intended by the Exchange. Moreover, eliminating the obsolete reference to the Options Regulatory Fee will not have an effect on competition because the amendment is technical in nature.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[4] *See* Securities Exchange Act Release No. 65730 (November 10, 2011), 76 FR 71410 (November 17, 2011) (SR–NYSEArca–2011–79) (''Approval Order'').

[5] The International Securities Exchange offers PRECISE TRADE as a means for users to enter orders and Chicago Board Options Exchange has a similar front-end order entry system called PULSE. Such systems do not require users to develop their own internal front-end order entry systems and may provide savings to users in terms of development time and costs.

[6] *See* Approval Order, *supra* note 4; *see also* Securities Exchange Act Release No. 65797 (November 21, 2011), 76 FR 72988 (November 28, 2011) (SR–NYSEArca–2011–83) (clarifying amendments to the description of the QCC rebate amount).

[7] *See* Securities Exchange Act Release No. 65472 (October 3, 2011), 76 FR 62887 (October 11, 2011) (SR–NYSEAmex–2011–72) and the NASDAQ OMX PHLX fee schedule (describing a rebate program for QCC orders that can range as high as $0.11 per contract), *available at http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLXTools/PlatformViewer.asp?selectednode=chp%5F1%5F4&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx%2Drulesbrd%2F.*

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [10] of the Act and subparagraph (f)(2) of Rule 19b–4 [11] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [12] 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–NYSEArca–2013–19 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–NYSEArca–2013–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2013–19, and should be submitted on or before April 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–06108 Filed 3–15–13; 8:45 am]

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[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

[12] 15 U.S.C. 78s(b)(2)(B).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69114; File No. SR–ISE–2013–18]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change To Address Order Handling Under the Options Order Protection and Locked/Crossed Market Plan, the Authority of the Exchange To Cancel Orders When a Technical or Systems Issue Occurs, and To Describe the Operation of Linkage Handler Error Accounts

March 12, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 6, 2013, the International Securities Exchange, LLC (the ''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to address: (i) Order handling under the Options Order Protection and Locked/Crossed Market Plan; (ii) the authority of the Exchange to cancel orders (or release routing-related orders) when a technical or systems issue occurs; and (iii) describe the operation of Linkage Handler, as that term is defined below, error account(s), which may be used to liquidate unmatched executions that may occur in the provision of the Exchange's routing service. The text of the proposed rule change is available on the Exchange's Web site *www.ise.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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the Options Order Protection and Locked/Crossed Market Plan, the ISE cannot execute orders at a price that is inferior to the national best bid or offer (''NBBO''), nor can the Exchange place an order on its book that would cause the ISE best bid or offer to lock or cross another exchange's quote.[4] In compliance with this requirement, incoming orders are not automatically executed at prices inferior to another exchange's Protected Bid or Protected Offer [5] nor placed on the limit order book if they would lock or cross an away market. Non-Customer Orders (*i.e.,* orders for the account of a broker or dealer) [6] are rejected in these

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] ISE Rules 1901 and 1902.

[5] ISE Rule 1900(o).

[6] ISE Rule 100(a)(28).

circumstances, while Public Customer Orders (*i.e.,* orders for the account of a person that is not a broker-dealer) [7] are handled by the Primary Market Maker.[8] The Primary Market Maker has the responsibility of either executing the Public Customer Order at a price that at least matches the NBBO or obtaining better prices from the away market(s) by sending one or more intermarket sweep orders (''ISOs'') on the Public Customer's behalf.[9] Non-Customer Orders and Public Customer Orders are exposed to all ISE Members for up to one second to give them an opportunity to execute orders at the NBBO price or better before orders are rejected (in the case of Non-Customer Orders) or before the Primary Market Maker sends ISOs to other exchanges (in the case of Public Customer Orders).[10]

The Exchange proposes to amend its rules to remove the requirement that Primary Market Makers handle Public Customer Orders in the circumstances described above,[11] and to instead provide a centralized process for sending ISOs to other exchanges on behalf of Public Customer Orders. Under the proposal, the Exchange will contract with one or more unaffiliated brokers to route orders to other exchanges when necessary to comply with the linkage rules (''Linkage Handlers'').[12] Specifically, in circumstances where marketable Public Customer Orders are received when the ISE is not at the NBBO or orders are received that would lock or cross another market, they will be exposed to ISE Members for up to one second as they are currently.[13] However, any unexecuted balance of a Public Customer Order will be handled by a Linkage Handler instead of the Primary Market Maker. Specifically, if after a Public Customer Order is exposed, the order cannot be executed in full on the Exchange at the then-current NBBO or better, and it is marketable, the lesser of the full displayed size of the Protected Bid(s) or Protected Offer(s) that are priced better than the ISE's quote or the balance of the order will be sent to the Linkage Handler and any additional balance of the order will be executed on the ISE if it is marketable. Any additional balance of the order that is not marketable against the then-current NBBO will be placed on the ISE book.

The Exchange proposes to adopt new Rule 1903 (Order Routing to Other Exchanges), which would govern the Exchange's process for routing ISOs to other markets.[14] As discussed above, the Exchange intends to contract with one or more Linkage Handlers that are not affiliated with the Exchange to route ISOs to other exchanges. Any such contract will restrict the use of any confidential and proprietary information that the Linkage Handler receives to legitimate business purposes necessary for routing orders at the direction of the Exchange. Routing services would be available to Members only and are optional. Members that do not want orders routed can use the Do Not Route designation to avoid routing.

The rule also provides that: (1) The Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the Linkage Handler or any other entity, including any affiliate of the Linkage Handler, and, if the Linkage Handler or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the Linkage Handler or affiliate that provides the other business activities and the segment of the Linkage Handler that provides the routing services; (2) the Exchange will provide its routing services in compliance with the provisions of the Act and the rules thereunder, including, but not limited to, the requirements in Section 6(b)(4) and (5) of the Act that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; (3) the Exchange will determine the logic that provides when, how, and where orders are routed away to other exchanges; [15] (4) the Linkage Handler cannot change the terms of an order or the routing instructions, nor does the Linkage Handler have any discretion about where to route an order; and (5) any bid or offer entered on the Exchange routed to another exchange via a Linkage Handler that results in an execution shall be binding on the Member that entered such bid/offer.

Proposed Supplementary Material .01 to Rule 1903 states that the rule does not prohibit a Linkage Handler from designating a preferred market-maker (or equivalent market participant) at the other exchange to which an outbound ISO is being routed.[16] This proposed provision has no impact on customer orders, which receive the same level of order protection and trade at the best market prices regardless of whether the Linkage Handler designates a preferred market-maker recipient at the destination exchange. The Exchange will still be making the sole determination as to which exchange an order will be routed, as well as when and how the order will be routed. Additionally, Linkage Handlers are prohibited from changing the terms of an order or the Exchange's routing

[7] ISE Rule 100(a)(39).

[8] ISE Rule 714(a).

[9] ISE Rule 803(c)(2).

[10] Supplementary Material .02 to Rule 803.

[11] The Exchange proposes to eliminate Rule 803(c)(1)–(3) and Supplementary Material .02 to Rule 803, which addresses PMMs obligations in handling Public Customer Orders.

[12] The ISE will seek competitive bids to perform the Linkage Handler responsibilities.

[13] The exposure process currently is described in Supplementary Material .02 to Rule 803 (Obligations of Market Makers). Since Primary Market Makers will no longer be responsible for handling the orders, the Exchange proposes to move the current text of Supplementary Material .02 to Rule 803 (Obligations of Market Makers) to Supplementary Material .02 to Rule 1901 (Order Protection). Pursuant to the current process, during the exposure period, Exchange Members may enter responses up to the size of the order being exposed in the regular trading increment applicable to the option. If at the end of the exposure period, the order is executable at the then-current NBBO and the ISE is not at the then-current NBBO, responses that equal or better the NBBO are executed in price priority, and at the same price, allocated pro-rata based on size (*i.e.,* the percentage of the total number of contracts available at the same price that is represented by the size of a Member's response). If during the exposure period, the order becomes executable on the ISE at the prevailing NBBO, the exposure period is terminated, and the order is executed against orders and quotes on the book and responses received during the exposure period. Such interest is executed in price priority. At the same price, Priority Customer Orders are executed first in time priority and then all other interest (orders, quotes and responses) is allocated pro-rata based on size. If during the exposure period the Exchange receives an unrelated order on the opposite side of the market from the exposed order that could trade against the exposed order at the prevailing NBBO price, the exposure period is terminated and the orders are executed. A pattern or practice of submitting unrelated orders that cause an exposure period to conclude early is deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 400 and other Exchange Rules.

[14] ISE proposed rule 1903 is substantially similar to the Chicago Board Options Exchange (''CBOE'') Rule 6.14B (Order Routing to Other Exchanges), except that ISE is not proposing to adopt a similar provision to subsection (c) of CBOE Rule 6.14B because ISE is not approved to be a designated examining authority and ISE is proposing to add .02 of the Supplementary Material to Rule 1903. As discussed in more detail below, .02 of the Supplementary Material to Rule 1903 has been added to address how orders will be handled when there are no operable Linkage Handlers. *See* Securities Exchange Act Release Nos. 60557 (August 20, 2009), 74 FR 43196 (August 26, 2009) (SR–CBOE–2009–040).

[15] The Exchange notes that this provision would not prohibit a Linkage Handler from complying with its obligations under Rule 15c3–5.

[16] Proposed Supplementary Material .01 to Rule 1903 is identical to CBOE Interpretations and Policies .01 to Rule 6.14B. *See* Securities Exchange Act Release No. 68010 (October 9, 2012), 77 FR 63399 (October 16, 2012)) (SR–CBOE–2012–096).

instructions and still have no discretion about to which exchange the order will be routed. This provision merely provides that a Linkage Handler may indicate which market-maker at the away exchange may trade against the routed order in accordance with the order terms and the Exchange's routing instructions. In other words, if a Linkage Handler preferences a customer order that is to be routed to another exchange, the order is not handled any differently by the Linkage Handler than if the Linkage Handler did not preference the order.[17] Further, the order is executed at the same exchange and at the same price and in accordance with the same order terms as it would if the Linkage Handler did not preference the order. Therefore, the proposed rule does not disadvantage customers in any way.

The Exchange proposes to adopt Supplementary Material .02 to Rule 1903 to address how the Exchange will handle orders in the event that there are no operable Linkage Handlers to provide routing services. In such circumstance, the Exchange will cancel orders that, if processed by the Exchange, would violate Rules 1901 (prohibition on trade-throughs) or 1902 (prohibition on locked and crossed markets).

The Exchange is also proposing to adopt Rule 1904 (Order Cancelation/Release) to address the authority of the Exchange to cancel orders (or release routing-related orders) when a technical or systems issue occurs.[18] Specifically, paragraph (a) of the proposed rule would expressly authorize the Exchange to cancel orders as it deems to be necessary to maintain fair and orderly markets if a technical or systems issue occurs at the Exchange,[19] the Linkage Handler, or another exchange to which an Exchange order has been routed. Paragraph (a) would also provide that a Linkage Handler may only cancel orders being routed to another exchange based on the Exchange's standing or specific instructions or as otherwise provided in the Exchange rules.[20] Paragraph (a) would also provide that the Exchange shall provide notice of the cancelation of the Members' original order to affected Members as soon as practicable.

Paragraph (b) of the proposed rule provides that the Exchange may also determine to release orders being held on the Exchange awaiting an away exchange execution as it deems to be necessary to maintain fair and orderly markets if a technical or systems issue occurs at the Exchange, a Linkage Handler, or another exchange to which an order has been routed (the process for ''releasing'' orders is illustrated in more detail below).[21]

The examples set forth below describe some of the circumstances in which the Exchange may decide to cancel (or release) orders.

Example 1: If a Linkage Handler or another exchange experiences a technical or systems issue that results in the Exchange or Linkage Handler not receiving responses to IOC orders sent to the other exchange, and that issue is not resolved in a timely manner, then the Exchange may seek to cancel the routed orders affected by the issue.[22] For instance, if a Linkage Handler experiences a connectivity issue affecting the manner in which it sends and receives order messages to or from another exchange, it may be unable to receive timely execution or cancelation reports from the other exchange, and the Exchange may consequently seek to cancel the affected routed orders (*e.g.,* by calling the Linkage Hander and instructing the Linkage Handler to attempt to cancel the orders) or perhaps the Linkage Handler may initiate the cancelation of the affected routed orders pursuant to a standing or specific instruction from the Exchange. In these circumstances, the Exchange would also attempt to release the initial orders submitted by the Members.[23]

Example 2: If the Linkage Handler experiences a technical issue, which causes it to lose connection to the Exchange and is unable to re-connect then the Exchange will release the initial order being held by the Exchange. The Exchange would also attempt to cancel the routed order in these circumstances.[24]

Example 3: If the Exchange experiences a systems issue, the Exchange may take steps to cancel and/or release all outstanding orders affected by the issue (which may include orders that may or may not be subject to routing services). The Exchange would also attempt to cancel any routed orders

[17] The Exchange notes that orders that may be routed to other exchanges under Rule 1903 are all immediate-or-cancel (''IOC''). Therefore, routed orders would not be subject to any automated price improvement mechanisms that may exist under the other exchanges' rules.

[18] Proposed Rule 1904 is nearly identical to CBOE Rule 6.6A (Order Cancellation/Release). ISE's proposed Rule 1904 differs from CBOE Rule 6.6A in two regards: (1) ISE's proposed (a) clarifies that the Exchange will provide notice of cancelation of the Member's original order; and (2) ISE does not propose to adopt a corresponding paragraph (c) to CBOE's 6.6A(c) as such paragraph has no applicability to ISE's system. *See* Securities and Exchange Act Release No. 68585 (January 4, 2013), 78 FR 2308 (January 10, 2013)(SR–CBOE–2012–108).

[19] To confirm, the authority to cancel orders to maintain fair and orderly markets under proposed Rule 1904 would apply to any technical or systems issue at the Exchange and would include any orders at the Exchange (*i.e.,* the authority to cancel orders would apply to any orders that are subject to the Exchange's routing service and any orders that are not subject to the Exchange's routing service). By comparison, the routing service error account provisions under proposed Rule 1905 (discussed below) would apply to original and corresponding orders that are subject to the Exchange routing service.

[20] As discussed above, the Exchange will use non-affiliated Linkage Handlers to provide the routing services. These Linkage Handlers are also not facilities of the Exchange. For all routing services, the Exchange determines the logic that provides when, how and where orders are routed away to other exchanges. The Linkage Handler receives the routing instructions from the Exchange to route orders to other exchanges and to report executions back to the Exchange. The Linkage Handler cannot change the terms of an order or the routing instructions, nor does the Linkage Handler have any discretion about where to route an order. *See* proposed Rule 1903(c), (d) and (e). Under paragraph (a) to proposed Rule 1904, the decision to take action with respect to orders affected by a technical or systems issue shall be made by the Exchange. Depending on where those orders are located, a Linkage Handler would be permitted to initiate a cancelation of an order(s) pursuant to the Exchange's standing or specific instructions or as otherwise provided in Exchange Rules (*e.g.,* the Exchange's standing instruction might provide, among other things, that the Linkage Handler could initiate the cancelation of orders if the Linkage Handler is experiencing technical or systems issues routing orders to an away exchange).

[21] A determination by the Exchange to cancel or release orders may not cause the Exchange to declare self-help against another exchange pursuant to rule 1901(b)(1)(i). If the Exchange determines to cancel or release orders, as applicable, under proposed Rule 1904, but does not declare self-help against that other exchange, the Exchange would continue to be subject to the trade-through requirements of Rule 1901 with respect to that Exchange.

[22] In a normal situation, (*i.e.,* one in which a technical or systems issue does not exist), the Exchange should receive an immediate response back from the Linkage Handler reporting any executions or cancelations from the other exchange, and would then pass the resulting fill or cancelation onto the Member. If, after submitting an order for which a corresponding order has been routed to another exchange, a Member sends an instruction to cancel the original order, the cancelation is held by the Exchange until a response is received from the Linkage Handler on the corresponding order. For instance, if the other exchange executes the corresponding order, the execution would be passed onto the Member and the cancelation instruction on the Member's original order would be disregarded.

[23] Once an initial order is released, any cancelation that a Member submitted to the Exchange on the initial order during such a situation would be honored. If a Member did not submit a cancelation to the Exchange, however, that initial order would remain ''live'' and thus be eligible for execution or posting on the Exchange, and the Exchange would not treat any execution of the initial order or any subsequent routed order related to that initial order as an error (unless, of course, the order was itself subject to another technical or systems issue).

[24] It is possible that attempts to cancel the routed orders may not succeed. If the Exchange receives an execution report on the order that that had been routed to an away exchange, then the unmatched execution would be considered an ''error position'' under proposed Rule 1905.

related to the Members' initial orders, if applicable, in these circumstances.[25]

Proposed Rule 1905 would provide that each Linkage Handler shall maintain, in the name of the Linkage Handler, one or more accounts for the purpose of liquidating unmatched trade positions that may occur in connection with the away exchange routing service provided under Rule 1903 (''error positions'').[26]

Paragraph (a) of the proposed rule would provide that errors to which the rule would apply include any action or omission by the Exchange, a Linkage Handler, or another exchange to which an Exchange order has been routed, either of which result in an unmatched trade position due to the execution of an original or corresponding order that is subject to the away market routing service and for which there is no corresponding order to pair with the execution (each a ''routing error''). Such routing errors would include, without limitation, positions resulting from determinations by the Exchange to cancel or release an order pursuant to proposed Rule 1904 (as described above).

Paragraph (b) of the proposed rule would provide that each Linkage Handler will utilize its own error account to liquidate error positions. The Exchange believes it is reasonable and appropriate to address routing errors through the error account of a Linkage Handler in the manner proposed because, among other reasons, it is the executing broker associated with these transactions.

From a Member perspective, there would be no impact resulting from the decision to use the Linkage Handler's error account to liquidate the error position in these circumstances. A Linkage Handler utilizing its own account to liquidate error positions, shall liquidate the error positions as soon as practicable. The Linkage Handler could determine to liquidate the position itself or have a third party broker-dealer liquidate the position on the Linkage Handler's behalf.

Paragraph (c)(i) also provides that the Linkage Handlers establish and enforce policies and procedures reasonably designed to (1) adequately restrict the flow confidential and proprietary information associated with the liquidation of the error position in accordance with Rule 1903,[27] and (2) prevent the use of information associated with other orders subject to the routing services when making determinations regarding the liquidation of error positions. In addition, paragraph (c)(ii) provides that the Linkage Handler shall make and keep records associated with the liquidation of such Linkage Handler error positions and shall maintain such records in accordance with Rule 17a–4 under the Act.[28]

Paragraph (d) requires that the Exchange make and keep records to document all determinations to treat positions as error positions under this Rule and maintain such records in accordance with Rule 17a–1 under the Act.

Examples of such error positions due to a routing error may include, without limitation, the following:

Example 4: Error positions may result from routed orders that the Exchange or a Linkage Handler attempts to cancel but that are executed before the other exchange receives the cancellation message or that are executed because the other exchange is unable to process the cancellation message. Using the situation described in Example 1 above, assume the Exchange seeks to release the initial orders being held by the Exchange because it is not receiving timely execution or cancellation reports from another exchange. In such a situation, although the Exchange would attempt to direct the Linkage Handler to cancel the routed corresponding orders, the Linkage Handler may still receive executions from the other exchange after connectivity is restored, which would not then be allocated to the Member because of the earlier decision to release the affected initial orders. Instead, the Linkage Handler would post the positions into its account and resolve the positions in the manner described above.

Example 5: Error positions may result from an order processing issue at another exchange. For instance, if another exchange experienced a systems problem that affects its order processing, it may transmit back a message purporting to cancel a routed order, but then subsequently submit an execution of that same order for clearance and settlement. In such a situation, the Exchange would not then allocate the execution to the Member because of the earlier cancellation message from the other exchange. Instead, the Linkage Handler would post the positions into its account and resolve the positions in the manner described above.

Example 6: Error positions may result if a Linkage Handler receives an execution report from another exchange but does not receive clearing instructions for the execution from the other exchange. For instance, assume that a Member sends the Exchange an order to buy 10 ABC option contracts, which causes the Linkage Handler to send an order to another exchange that is subsequently executed, cleared and closed out by that other exchange, and the execution is ultimately communicated back to the Member. On the next trading day (T+1), if the other exchange does not provide clearing instructions for that execution, the Linkage Handler would still be responsible for settling that Member's purchase and therefore would be left with open positions.[29] Instead, the Linkage Handler would post the positions into its account and resolve the positions in the manner described above.

Example 7: Error positions may result from a technical or systems issue that causes orders to be executed in the name of a Linkage Handler in connection with its routing services function that are not related to any corresponding initial orders of Members. As a result, the Exchange would not be able to assign any positions resulting from such an issue to Members. Instead, the Linkage Handler would post the positions into its account and resolve the positions in the manner described above.

In each of the circumstances described above, the Exchange and its Linkage Handler may not learn about an error position until T+1. For instance, the Exchange and its Linkage Handler may not learn about an error position until either (i) during the clearing process when a routing destination has submitted to The Options Clearing Corporation (''OCC'') a transaction for clearance and settlement for which the

[25] It is possible that attempts to cancel the routed orders may not succeed. If the Exchange receives an execution report on the order that had been routed to an away exchange, then the unmatched execution would be considered an ''error position'' under proposed Rule 1905.

[26] Proposed Rule 1905 is nearly identical to CBOE Rule 6.14C, however ISE's proposed rule differs in that the Exchange is not itself proposing to have an error account. *See* Securities and Exchange Act Release No. 68585 (January 4, 2013), 78 FR 2308 (January 10, 2013) (SR–CBOE–2012–108).

[27] Rule 1903(b) provides that the Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the Linkage Handler, and any other entity, including any affiliate of the Linkage Handler, and, if the Linkage Handler or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the Linkage Handler or affiliate that provides the other business activities and the segment of the Linkage Handler that provides the routing services.

[28] 17 CFR 240.17a–4.

[29] To the extent that a loss is incurred in covering the position, the Linkage Handler (on behalf of the Exchange or itself) may submit a reimbursement claim to that other exchange.

Exchange/Linkage Handler never received an execution confirmation, or (ii) when another exchange does not recognize a transaction submitted by a Linkage Handler to OCC for clearance and settlement. Moreover, the affected Members' trade may not be nullified absent express authority under Exchange Rules.[30] As such, the Exchange believes that use of a Linkage Handler error account to liquidate the error positions that may occur in these circumstances is reasonable and appropriate in these circumstances.

Because a Linkage Handler will be performing an Exchange function on a contractual basis, at the direction of the Exchange, for clarity, the Exchange proposes to explicitly exclude Linkage Handlers from the limits on compensation contained in Rule 705(d). Liability matters will be handled on a contractual basis as they are with other vendors of services to the Exchange.

To assure system stability, the Exchange will transition options classes from the current process to the new proposed process using Linkage Handlers over a period of time. The Exchange anticipates that this transition period would not last more than two months. The Exchange will notify Members via Information Circular as products are transitioned to the Linkage Handlers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the Act and rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[31] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5),[32] requirements that the rules of an exchange be 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.

In accordance with Section 6(b)(5) of the Act,[33] the Exchange is proposing to retain the current process of exposing orders for price improvement, while providing a process that assures orders are handled in compliance with the Linkage rules. By removing the requirement that Primary Market Makers handle Public Customer Orders and instead providing a centralized process for sending ISOs, the proposed rule change helps remove impediments to and perfect the mechanism for a free and open market and a national market system. Additionally, because the proposed rule change provides customer order protection and facilitates trading at away exchanges so that customer orders trade at the best market prices, the proposed rule change protects investors and the public interest.

The proposed rule change also protects investors and the public interest because it clearly states in the rules how customer orders will be handled, which provides transparency to Members regarding the routing of their orders to away exchanges. As proposed, customer orders will still trade in compliance with the Exchange's routing instructions in accordance with the Options Order Protection and Locked/Crossed Market Plan, thereby ensuring that the rules of the Exchange are designed to promote just and equitable principles of trade, consistent with the Act.

The Exchange intends to contract with one or more Linkage Handlers that are not affiliated with the Exchange to route ISOs to other exchanges. In connection with this, and consistent with the Act, the proposed rule will require that the Exchange establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the Linkage Handler or any other entity, including any affiliate of the Linkage Handler, and, if the Linkage Handler or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the Linkage Handler or affiliate that provides the other business activities and the segment of the Linkage Handler that provides the routing services. Additionally, the proposed rule requires the Exchange to provide its Routing Services in compliance with the provisions of the Act and the rules thereunder, including, but not limited to, the requirements in Section 6(b)(4) and (5) of the Act that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that this proposed rule change is in keeping with the principles of the Act since the Exchange's ability to cancel and release orders during a technical or systems issue and to allow Linkage Handlers' to maintain an error account facilitates the smooth and efficient operation of the market. Specifically, the Exchange believes that allowing the Exchange to cancel and release orders during a technical or systems issue (and permitting its Linkage Handlers to cancel orders pursuant to standing or specific instructions or as otherwise permitted under Exchange Rules) would allow the Exchange to maintain fair and orderly markets. Moreover, the Exchange believes that allowing a Linkage Handler to assume error positions in its own account(s) to liquidate those positions subject to the conditions set forth in proposed Rule 1905 would be the least disruptive means to address these errors. Overall, the proposed new rule is designed to ensure full trade certainty to market participants and to avoid disrupting the clearance and settlement process. The proposed new rule is also designed to provide a consistent methodology for handling error positions in a manner that does not discriminate among Members. The proposed new rule is also consistent with Section 6 of the Act insofar as it would require the Linkage Handlers to establish controls to restrict the flow of any confidential information associated with the liquidation of error positions. The proposed new rule also requires the Exchange to make and keep records documenting all determinations to treat positions as error positions and further requires the Exchange to maintain such records in accordance with Rule 17a–1 under the Act.

Because a Linkage Handler will be performing an Exchange function on a contractual basis and the routing is performed at the instruction of the Exchange, the Exchange proposes to explicitly exclude Linkage Handlers from the limits on compensation contained in Rule 705(d) so that the Linkage Handler's liabilities can be handled on a contractual basis, as they are with other vendors of services to the Exchange. This proposed change is consistent with Section 6(b)(5) of the Act[34] as it will ensure that the contractual terms agreed to will not be prohibited under Exchange rules, thereby allowing the Exchange to effect this routing arrangement which is designed 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.

[30] *See, e.g.,* Rule 720.

[31] 15 U.S.C. 78f(b).

[32] 15 U.S.C. 78f(b)(5).

[33] *Id.*

[34] *Id.*

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, but rather should facilitate the ability of the Exchange to ensure compliance with the Options Order Protection and Locked/Crossed Market Plan and, thereby, encourage more robust competition. Providing the Exchange with the ability to cancel/release orders when a when a technical or systems issue occurs will allow the Exchange to run a fair and orderly market, thereby enhancing competition as the Exchange will be able to address technical or systems issues in an orderly fashion. Providing the Exchange with the authority to liquidate unmatched executions that may occur in the provision of the Exchange's routing service does not impose a burden on competition, but rather should encourage competition as market participants will have certainty that any errors that occur will be handled efficiently.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2013–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2013–18. 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 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2013–18 and should be submitted on or before April 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–06158 Filed 3–15–13; 8:45 am]

BILLING CODE 8011–01–P

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69123; File No. SR–ISE–2013–21]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees To Reflect Regulatory Fees Related To the Central Registration Depository

March 12, 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 March 11, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend it Schedule of Fees with respect to regulatory fees related to the Central Registration Depository (''Web CRD''), which are collected by the Financial Industry Regulatory Authority (''FINRA''). The text of the proposed rule change is available on the Exchange's Web site *www.ise.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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Schedule of Fees with respect to regulatory fees related to Web CRD, which are collected by FINRA (''FINRA Web CRD Fees'').[3] The proposed fees, which the Exchange is adopting for the first time on its Schedule of Fees, are collected and retained by FINRA via Web CRD for the registration of employees of ISE members that are not FINRA members (''Non-FINRA members''). The Exchange is merely listing these fees on its Schedule of Fees. The Exchange does not collect or retain these fees.

The FINRA Web CRD Fees listed on ISE's Schedule of Fees consists of General Registration Fees of $100 (for each initial Form U4 filed for the registration of a representative or principal), $110 (for the additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment or certification of one of more disclosure events or proceedings), and $45 (annual system processing fee assessed only during renewals). The FINRA Web CRD Fees listed on the ISE Schedule of Fees also consists of Fingerprint Processing Fees for the initial, second and third submissions. There is a separate fee for electronic submissions and paper submissions. The initial electronic and paper submission fees are $29.50 and $44.50, respectively. The second electronic and paper submission fees are $15.00 and $30.00, respectively. The third electronic and paper submission fees are $29.50 and $44.50, respectively. Finally, there is a $30 processing fee for fingerprint results submitted by self-regulatory organizations other than FINRA.

The FINRA Web CRD Fees are user-based and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA member. Accordingly, the proposed fees mirror those currently assessed by FINRA.[4]

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b)[5] of the Act, in general, and furthers the objectives of Sections 6(b)(4)[6] and 6(b)(5)[7] of the Act, in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed rule change is reasonable because the proposed fees are identical to those adopted by FINRA for use of Web CRD for disclosure and the registration of FINRA members and their associated persons. In the FINRA Fee Filing, FINRA noted that it believed that its fees are reasonable based on the increased costs associated with operating and maintaining Web CRD, and listed a number of enhancements made to Web CRD in support of its fee change. These costs are borne by FINRA when a Non-FINRA member uses Web CRD. FINRA further noted its belief that the fees are reasonable because they help to ensure the integrity of the information in Web CRD, which is very important because the Commission, FINRA, other self-regulatory organizations and state securities regulators use Web CRD to make licensing and registration decisions, among other things.

The Exchange notes that the proposed rule change is reasonable because the amount of the fees are those provided by FINRA, and the Exchange does not collect or retain these fees. The proposed rule change is also equitable and not unfairly discriminatory because the Exchange will not be collecting or retaining these fees, therefore will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change will result in the same regulatory fees being charged to all members required to report information to Web CRD and for services performed by FINRA, regardless of whether or not such members are FINRA members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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)[8] of the Act and Rule 19b–4(f)(6)[9] thereunder.

The Exchange has requested the Commission to waive the 30-day operative delay to allow the proposed rule change to become operative upon filing.[10] The Commission believes it is consistent with the public interest to waive the 30-day operative delay. The proposed rule change lists FINRA's fees on the Exchange's Schedule of Fees—the Exchange will not collect or retain these fees. As such, the Commission believes that the proposal presents no novel regulatory issues and will make the fees more transparent to ISE members. Waiver of the operative delay will allow the Exchange to list on its Schedule of Fees the fees that FINRA charges for use of WebCRD without undue delay. Therefore, the Commission grants such waiver and designates the proposal operative upon filing.[11]

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

[3] FINRA operates Web CRD, the central licensing and registration system for the U.S. securities industry. FINRA uses Web CRD to maintain the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

[4] *See* Securities Exchange Act Release No. 67247 (June 25, 2012), 77 FR 38866 (June 29, 2012) (SR–FINRA–2012–030) (''FINRA Fee Filing'').

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 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.

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–ISE–2013–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–ISE–2013–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2013–21 and should be submitted on or before April 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–06157 Filed 3–15–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69120; File No. SR–NASDAQ–2013–040]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Chapter V, Section 3(d) and (e)

March 12, 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 28, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has filed a proposed rule change for the NASDAQ Options Market (''NOM'') to amend Chapter V, Regulation of Trading on NOM, to adopt paragraph (d) to provide for how NOM proposes to treat orders in response to the Regulation NMS Plan to Address Extraordinary Market Volatility, and paragraph (e) to codify that NOM shall halt trading in all options overlying NMS stocks when the equities markets initiate a market-wide trading halt due to extraordinary market volatility, as described further below.

The text of the proposed rule change is set forth below. Proposed new language is in italics.

* * * * *

Chapter V Regulation of Trading on NOM

* * * * *

Sec. 3 Trading Halts

(a)–(c) No change.

(d) This paragraph shall be in effect during a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS, as it may be amended from time to time (''LULD Plan''). Capitalized terms used in this paragraph shall have the same meaning as provided for in the LULD Plan. During a Limit State and Straddle State in the Underlying NMS stock:

(i) *The Exchange will not open an affected option.*

(ii) *After the opening, the Exchange shall reject Market Orders, as defined in Chapter VI, Section 1, and shall notify Participants of the reason for such rejection.*

(e) The Exchange shall halt trading in all options whenever the equities markets initiate a market-wide trading halt commonly known as a circuit breaker in response to extraordinary market conditions.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes: (i) to adopt Section 3(d) to provide for how NOM will treat orders in response to the Regulation NMS Plan to Address Extraordinary Market Volatility (the ''Plan''), which is applicable to all NMS stocks, as defined in Regulation NMS Rule 600(b)(47); and (ii) to adopt Section 3(e) to codify that NOM shall halt trading in all options when the equities markets initiate a market-wide trading halt due to extraordinary market volatility. The Exchange proposes to adopt Section 3(d) for a pilot period that coincides with the pilot period for the Plan.

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Background

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, i.e., the ''flash crash,'' the equities exchanges and the Financial Industry Regulatory Authority (''FINRA'') have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility. The measures adopted include pilot plans for stock-by-stock trading pauses,[3] related changes to the equities market clearly erroneous execution rules,[4] and more stringent equities market maker quoting requirements.[5] On May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.[6] In addition, the Commission approved changes to the equities market-wide circuit breaker rules on a pilot basis to coincide with the pilot period for the Plan.[7]

The Plan is designed to prevent trades in individual NMS stocks from occurring outside of specified Price Bands.[8] As described more fully below, the requirements of the Plan are coupled with Trading Pauses to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). All trading centers in NMS stocks, including both those operated by Participants and those operated by members of Participants, are required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the requirements specified in the Plan.

As set forth in more detail in the Plan, Price Bands consisting of a Lower Price Band and an Upper Price Band for each NMS Stock are calculated by the Processors.[9] When the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band, the Processors shall disseminate such National Best Bid (Offer) with an appropriate flag identifying it as unexecutable. When the National Best Bid (Offer) is equal to the Upper (Lower) Price Band, the Processors shall distribute such National Best Bid (Offer) with an appropriate flag identifying it as a Limit State Quotation.[10] All trading centers in NMS stocks must maintain written policies and procedures that are reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for NMS stocks. Notwithstanding this requirement, the Processor shall display an offer below the Lower Price Band or a bid above the Upper Price Band, but with a flag that it is non-executable. Such bids or offers shall not be included in the National Best Bid or National Best Offer calculations.[11] Trading in an NMS stock immediately enters a Limit State if the National Best Offer (Bid) equals but does not cross the Lower (Upper) Price Band.[12] Trading for an NMS stock exits a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute trading pause pursuant to Section VII of the Plan, which would be applicable to all markets trading the security.[13] In addition, the Plan defines a Straddle State as when the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS stock is not in a Limit State. For example, assume the Lower Price Band for an NMS Stock is $9.50 and the Upper Price Band is $10.50, such NMS stock would be in a Straddle State if the National Best Bid were below $9.50, and therefore unexecutable, and the National Best Offer were above $9.50 (including a National Best Offer that could be above $10.50). If an NMS stock is in a Straddle State and trading in that stock deviates from normal trading characteristics, the Primary Listing Exchange may declare a trading pause for that NMS stock if such Trading Pause would support the Plan's goal to address extraordinary market volatility.

Proposed Section 3(d)

Openings

The Exchange proposes to adopt new Section 3(d) to provide for how NOM shall treat orders and quotes in options overlying NMS stocks when the Plan is in effect. First, the Exchange proposes to adopt new subparagraph (i) to provide for how the Exchange shall treat the opening. The opening in an option will not commence in the event that the underlying NMS stock is open, but has entered into a Limit State or Straddle State. If this occurs, the opening will only commence and complete if the underlying NMS stock stays out of a Limit or Straddle State. Accordingly, new Section 3(d)(i) will provide that the Exchange will not open an affected option. As a result, if an opening process is occurring, it will cease and then start the opening process from the beginning once the Limit State or Straddle State is no longer occurring.

Orders

Second, the Exchange proposes to adopt provisions regarding the treatment of certain orders if the underlying NMS stock is in a Limit State or Straddle State. Whenever an NMS stock is in a Limit State or Straddle State, trading continues; however, there will not be a reliable price for a security to serve as a benchmark for the price of the option. For example, if the underlying NMS stock is in a Limit State, while trading in that stock continues, by being in a Limit State, there will be either cancellations or executions at that price, and if the Limit State is not resolved in 15 seconds, the NMS Stock will enter a Trading Pause. If an NMS stock is in a Straddle State, that means that there is either a National Best Bid or National Best Offer that is non-executable, which could result in limited price discovery in the underlying NMS stock. In addition to the lack of a reliable underlying reference price, the Exchange is concerned about the width of the markets and quality of the execution for market participants during a Limit State or Straddle State. While the Exchange recognizes the importance of continued trading in options overlying NMS stocks during Limit States and Straddle States, the Exchange believes that certain types of orders increase the risk of errors and poor executions and therefore should not be allowed during these times when there may not be a reliable underlying reference price, there may be a wide bid/ask quotation differential, and there may be lower trading liquidity in the options markets.

Therefore, the Exchange proposes that if an NMS stock is in a Limit State or Straddle State, once the option has opened for trading, the Exchange shall reject all incoming Market Orders, as defined in Chapter VI, Section 1, and

[3] *See e.g.,* NASDAQ Rule 4120.

[4] *See e.g.,* NASDAQ Rule 4762.

[5] *See e.g.,* NASDAQ Rule 4613.

[6] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (Order Approving the Plan on a Pilot Basis).

[7] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129).

[8] Unless otherwise specified, capitalized terms used in this proposed rule change are based on the defined terms of the Plan.

[9] *See* Section V(A) of the Plan.

[10] *See* Section VI(A) of the Plan.

[11] *See* Section VI(A)(3) of the Plan.

[12] *See* Section VI(B)(1) of the Plan.

[13] The primary listing market would declare a Trading Pause in an NMS stock; upon notification by the primary listing market, the Processor would disseminate this information to the public. No trades in that NMS stock could occur during the trading pause, but all bids and offers may be displayed. *See* Section VII(A) of the Plan.

shall notify Participants of the reason for such rejection. Market Orders residing in the System will be handled in the normal fashion under Exchange rules. The Exchange believes that adding certainty to the treatment of Market Orders when the underlying NMS stock is in these situations should encourage market participants to continue to provide liquidity to the Exchange and thus promote a fair and orderly market.

Proposed Section (e)

The Exchange also proposes to adopt Section (e), which provides that the Exchange shall halt trading in all options whenever the equities markets initiate a market-wide trading halt commonly known as a circuit breaker in response to extraordinary market conditions. Although Section 3 currently address a variety of situations involving halts, pauses and suspensions, the Exchange has determined to adopt a very specific rule to deal with circuit breaker-related halts. The Exchange believes that this rule can be adopted on a permanent basis, even though the equities circuit breakers are subject to a pilot program, because the proposed rule refers to such circuit breakers generally.

2. Statutory Basis

NASDAQ believes that its proposal is consistent with Section 6(b) of the Act [14] in general, and furthers the objectives of Section 6(b)(5) of the Act [15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest, because it should provide certainty about how options orders and trades will be handled during periods of extraordinary volatility in the underlying security. Specifically, under the proposal, market participants will be able to continue to trade options overlying securities that are in a Limit State or Straddle State, while addressing specific order types that are subject to added risks during such periods. The Exchange believes that the rejection of options Market Orders should help to prevent executions that might occur at prices that have not been reliably formed, which should, in turn, protect, in particular, retail investors from executions of un-priced orders during times of significant volatility.

Accordingly, the Exchange believes that the proposed rule change is consistent with these requirements in that it should reduce the negative impacts of sudden, unanticipated volatility in individual options, and serve to preserve an orderly market in a transparent and uniform manner, enhance the price-discovery process, increase overall market confidence, and promote fair and orderly markets and the protection of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the proposal does not impose an intra-market burden on competition, because it will apply to all Options Participants. Nor will the proposal impose a burden on competition among the options exchanges, because, in addition to the vigorous competition for order flow among the options exchanges, the proposal addresses a regulatory situation common to all options exchanges. To the extent that market participants disagree with the particular approach taken by the Exchange herein, market participants can easily and readily direct order flow to competing venues. The Exchange believes this proposal for how to treat options openings and orders will not impose a burden on competition and will help provide certainty during periods of extraordinary volatility in an NMS stock.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [16] and Rule 19b–4(f)(6) thereunder.[17] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act [18] 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 No. SR–NASDAQ–2013–040 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 No. SR–NASDAQ–2013–040. 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

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 15 U.S.C. 78s(b)(2)(B).

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2013–040 and should be submitted on or before April 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–06153 Filed 3–15–13; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69115; File No. SR–BOX–2013–10]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule for Trading on BOX

March 12, 2013.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 28, 2013, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule for trading on the BOX Market LLC (''BOX'') options facility. In particular, the Exchange proposes to amend certain Exchange Fees for Professionals set forth in Section I of the Fee Schedule so that Professional Accounts are assessed the same fees as Broker-Dealers. Additionally, the Exchange proposes to increase the existing liquidity fees and credits for Non-Auction transactions within Section II of the Fee Schedule. While changes to the Fee Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on March 1, 2013. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule for trading on BOX. In particular, the Exchange proposes to amend certain Exchange Fees for Professionals set forth in Section I of the Fee Schedule so that all Professional accounts are assessed the same fees as Broker-Dealers. Additionally, the Exchange proposes to increase the existing liquidity fees and credits for Non-Auction transactions within Section II of the Fee Schedule.

In Section I. Exchange Fees, the Exchange proposes increase Auction Transaction[5] fees for Professional PIP Orders or Agency Orders from $0.00 to $0.35. For Non-Auction Transactions the Exchange proposes to increase Professional fees from $0.20 to $0.40. Both of these increases will put the Professional fees in line with those that Broker-Dealers are currently charged. The Exchange notes that the proposed fees for Professionals are within the range of Professional fees presently assessed in the industry.[6]

In Section II. Liquidity Fees and Credits, the Exchange proposes to increase the fees and credits for Non-Auction Transactions. Specifically, the Exchange proposes that the per contract fee for orders that add liquidity to the BOX Book be raised to $0.30 from $0.22 in Penny Pilot Classes, and to $.75 from $0.65 in non-Penny Pilot Classes. For orders that remove liquidity from the BOX Book, the Exchange proposes to raise the per contract credit to $0.30 from $0.22 in Penny Pilot Classes, and to $0.75 from $0.65 in non-Penny Pilot Classes.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[7] in general, and Section 6(b)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Options Participants and other persons using its facilities.

The Exchange believes the proposed fee change for Professionals in both Auction Transactions and Non-Auction Transactions is reasonable, equitable and not unfairly discriminatory because it charges Professionals, whose activity

[5] Auction Transactions are those transactions executed through the Price Improvement Period (''PIP''), Solicitation, and Facilitation auction mechanisms.

[6] Professional customers are charged $0.33 per contract for Select Symbols on the International Securities Exchange (''ISE''), $0.32 per contract for taking liquidity on NYSE Amex, and $0.45 or more per contract on the NASDAQ Options Market (''NOM'') for adding or removing liquidity in non-Penny Pilot securities. See ISE fee schedule, available at: *http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee_schedule.pdf,* NYSE Amex Options Fee Schedule, available at: *https://globalderivatives.nyx.com/sites/globalderivatives.nyx.com/files/nyse_amex_options_fee_schedule_12_01_12__.pdf,* and see NOM Fee Schedule, available at: *http://www.nasdaqtrader.com/Micro.aspx?id=OptionsPricing.*

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

on BOX is akin to the order flow activity and system usage to that of Broker-Dealers, the same fee for transactions as the fee charged to Broker-Dealers. BOX does not assess ongoing systems access fees, ongoing fees for access to BOX market data, or fees related to order cancellation. Professional accounts, while Public Customers by virtue of not being broker-dealers, generally engage in trading activity more similar to broker-dealer proprietary trading accounts (more than 390 orders per day on average). BOX notes that as of December 2012, orders for Professionals generally account for a majority of the orders BOX receives on a given trading day. This level of trading activity draws on a greater amount of BOX system resources than that of non-Professional Public Customers, and thus, greater ongoing BOX operational costs. Simply, the more orders submitted to BOX, the more messages sent to and received from BOX, the more orders potentially routed to away exchanges, and the more BOX system resources utilized. As such, rather than passing the costs of these higher order volumes along to all market participants, the Exchange believes it is more reasonable and equitable to assess those costs to the persons directly responsible. To that end, BOX aims to recover costs incurred by assessing Professional accounts a market competitive fee for transactions.

The Exchange believes the proposed change to increase Professional fees for Auction Transactions is not unfairly discriminatory as the fees will apply to all Professionals and Broker-Dealers competing in these transactions equally. Further, Professionals and Broker-Dealers are free to change the manner in which they access BOX. A Professional may, by sending fewer than 390 orders per day across the industry, begin participating as a non-Professional, Public Customer and potentially reduce transaction fees. Additionally, for Auction Transactions, Professionals will still benefit from certain priority advantages as a customer.[9] As noted above, Professionals' order sending behavior and trading activity tend to be more similar to Broker-Dealers trading on a proprietary basis. This is particularly true in considering orders in response to BOX auction mechanisms. As such, the Exchange believes it is not unfairly discriminatory to charge them the same fee as Broker-Dealers when competing for customer order flow in these Auction Transactions.

Professionals may elect to register as a Broker-Dealer and, once registered, may apply to become a BOX Market Maker, subject to Exchange Fees based on their ADV. The Exchange believes the proposed transaction fees for Professionals is equitable and not unfairly discriminatory because such Participants are not subject to the same obligations as Market Makers when providing liquidity to the market. In particular, Market Makers must maintain active two-sided markets in appointed classes, and must meet certain minimum quoting requirements. As such, the Exchange believes it is appropriate that Market Makers be charged comparably lower transaction fees as compared to Professionals when the Market Makers provide greater volumes of liquidity to the market. In light of the ability to access BOX in a variety of ways, each of which is priced differently, Professionals, Broker-Dealers and other market participants may each select the most economically beneficial manner to access BOX.

Further, the Exchange believes the proposed fee change is equitable and not unfairly discriminatory because it will assure that retail investors (non-Professional, Public Customers) continue to receive the appropriate marketplace advantages on BOX, while furthering fair competition among marketplace professionals by treating them equally when they compete for these desirable customer orders. The Exchange believes it is reasonable and equitable to assess fees for Professionals that are the same as those fees for Broker-Dealers because it applies a pricing structure that groups these sophisticated market participants together when they are competing in this manner.

Generally, competing options exchanges assess Professionals fees at comparable rates to those proposed by the Exchange, and comparable to fees charged to Broker-Dealers.[10] These proposed fee changes will allow Professionals and Broker-Dealers to be charged equally for every type of Exchange Fee. The Exchange operates within a highly competitive market in which market participants can readily direct order flow to any of several other competing venues if they deem fees at a particular venue to be excessive. As such, the Exchange believes the proposed increases are reasonable and equitable.

The Exchange further believes the proposed fee change for PIP Orders or Agency Orders is equitable and not unfairly discriminatory because Professionals generally do not initiate Auction Transactions, unlike some Broker-Dealers. Doing so requires, in part, guaranteeing a customer order an execution. Initiating an Auction Transaction for the benefit of the customer order, and taking on this guarantee provides these Participants potentially discounted fees.[11] The Exchange believes it is reasonable, equitable, and not unfairly discriminatory to charge Professional accounts the same fee as Broker-Dealers to compete for customer orders in Auction Transactions because when acting in response to an auction, as opposed to initiating the transaction, Professionals' behavior, systems' sophistication, and trading activity are similar to Broker-Dealers, and distinct from the retail investors on the opposite side of the Auction Transaction.

The Exchange believes it is equitable and not unfairly discriminatory for Public Customers to be charged lower fees than Professionals and Broker-Dealers for all transactions on BOX. The securities markets generally, and BOX in particular, have historically aimed to improve markets for investors and develop various features within the market structure for the benefit of non-Professional, Public Customers.[12] As such, the Exchange believes the proposed fees for Professional customer transactions are appropriate and not unfairly discriminatory. Additionally, the Exchange believes it promotes the best interests of investors to have lower Auction Transaction costs for non-Professional, Public Customers, and that the BOX fee structure will continue to attract this customer order flow to these auction mechanisms which BOX believes will provide greater potential price improvement to these investors.

BOX believes that the changes to its Non-Auction Transaction fees and credits are equitable and non-

[9] *See* Rules 7150(f)(4) and 7270 regarding allocation and executions within each BOX auction mechanism.

[10] *Supra,* note 6.

[11] *See* Section I.A. of the Fee Schedule that provides Tiered Fees with potential discounts for Participants that Initiate Auction Transactions.

[12] Note that BOX has historically imposed different, and higher, routing fees for Professionals as compared to non-Professional Public Customers. *See* Securities Exchange Act Release Nos. 65538 (October 12, 2011), 76 FR 64413 (October 18, 2011) (Adopting a $0.50 per contract routing fee for Professionals while providing routing to non-Professional Public Customers at no charge), and 68149 (November 5, 2012), 77 FR 67693 (November 13, 2012) (Continuing to charge Professionals $0.50 per contract executed on away exchanges and exempting Public Customer accounts from a routing fee for Directed Orders, provided 33% or more of a Participant's Public Customer Directed Orders received during the month are executed through PIP, and less than 45% of a Participant's Directed Orders received during the month are routed to and executed on an away exchange).

discriminatory in that they apply to all categories of Participants and across all account types. BOX operates within a highly competitive market in which market participants can readily direct order flow to any of eight other competing venues if they deem fee levels at a particular venue to be excessive. The changes to BOX credits and fees proposed by this filing are reasonable because they are intended to attract order flow to BOX by offering incentives to all market participants to submit their orders to the Exchange. BOX notes that this proposed rule change will increase both the fees and credit for Non-Auction Transactions. The result is that BOX will collect a fee from Participants that add liquidity and credit another Participant for removing liquidity in the same transaction. Stated otherwise, the fees collected will not necessarily result in additional revenue to BOX, but will simply allow BOX to provide the credit incentive to Participants to attract additional order flow to the Exchange. BOX believes it is appropriate to provide incentives to market participants, which could benefit all market participants by creating greater liquidity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. BOX currently assesses Professional Customers and Broker Dealers equally for other types of Exchange Fees [13] and this change will result in these participants being charged equally for all Auction and Non-Auction transactions. The BOX auction mechanisms provide the opportunity for market participants to compete for customer orders. The PIP has no limitations regarding the number of Market Makers, Options Participants that are not Market Makers, and customers that can participate and compete for orders in the PIP. BOX asserts that Participants are actively competing for customer orders, which is clearly supported by the simple fact that price improvement occurs in the PIP. Since the PIP began in 2004, customers have received more than $400 million in savings through better executions on BOX, a monthly average of more than $3.5 million over that time.

The Exchange does not believe the proposed fee change will inhibit Professionals' ability to compete within BOX Auction Transactions. Broker-Dealers currently compete actively within the PIP, and BOX does not believe assessing Professionals a $0.35 per contract fee equivalent to that of Broker-Dealers, would impede Professionals' ability, or the incentive for Professionals, to compete therein. BOX notes that its market model and fees are generally intended to benefit retail customers by providing incentives for Participants to submit their customer order flow to BOX, and the PIP in particular. BOX makes a substantial amount of PIP-related data and statistics available to the public on its Web site *www.boxexchange.com.* Specifically, PIP Fee Pilot reports are available at: *http://boxexchange.com/boxrReports_en;* daily PIP volumes and average price improvement at: *http://boxexchange.com/volumes_en;* and BOX execution quality reports at: *http://boxexchange.com/executionQualityReport_en.* The data indisputably supports that the PIP provides price improvement for customer orders.

Furthermore, this proposed rule change will result in Non-Auction transactions being subject to increased fees and credits, which the Exchange believes will promote competition by enabling the Exchange to better compete for order flow and improve the Exchange's competitive position.

The fee changes proposed would assess Professionals the same fees as Broker-Dealers and increase both the fees and credits for Non-Auction Transactions. Because this change would charge Professionals similarly to Broker-Dealers in all circumstances, charge them a fee comparable to what Professionals and Broker-Dealers pay on competing exchanges,[14] and for additional reasons as stated above, the Exchange does not believe that the proposed change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [15] and Rule 19b–4(f)(2) thereunder,[16] because it establishes or changes a due, fee, or other charge applicable only to a member.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2013–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–BOX–2013–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

[13] *See* Section I. of the Fee Schedule. Professionals and Broker Dealers are currently assessed equal fees in Improvement Orders on the PIP, Responses in the Solicitation and Facilitation Mechanism, and in Options Surcharge on the NDX and MNX.

[14] *Supra,* note 6.

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b–4(f)(2).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2013–10 and should be submitted on or before April 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–06120 Filed 3–15–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69119; File No. SR–BX–2013–021]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Chapter V, Section 3(d) and (e)

March 12, 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 28, 2013, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has filed a proposed rule change to amend Chapter V, Regulation of Trading on BX Options, to adopt paragraph (d) to provide for how BX proposes to treat options orders in response to the Regulation NMS Plan to Address Extraordinary Market Volatility, and paragraph (e) to codify that BX shall halt trading in all options overlying NMS stocks when the equities markets initiate a market-wide trading halt due to extraordinary market volatility, as described further below.

The text of the proposed rule change is set forth below. Proposed new language is in italics.

* * * * *

Chapter V Regulation of Trading on BX Options

* * * * *

Sec. 3 Trading Halts

(a)–(c) No change.

(d) This paragraph shall be in effect during a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS, as it may be amended from time to time (''LULD Plan''). Capitalized terms used in this paragraph shall have the same meaning as provided for in the LULD Plan. During a Limit State and Straddle State in the Underlying NMS stock:

(i) *The Exchange will not open an affected option.*

(ii) *After the opening, the Exchange shall reject Market Orders, as defined in Chapter VI, Section 1, and shall notify Participants of the reason for such rejection.*

(e) *The Exchange shall halt trading in all options whenever the equities markets initiate a market-wide trading halt commonly known as a circuit breaker in response to extraordinary market conditions.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes: (i) To adopt Section 3(d) to provide for how BX will treat options orders in response to the Regulation NMS Plan to Address Extraordinary Market Volatility (the ''Plan''), which is applicable to all NMS stocks, as defined in Regulation NMS Rule 600(b)(47); and (ii) to adopt Section 3(e) to codify that BX shall halt trading in all options when the equities markets initiate a market-wide trading halt due to extraordinary market volatility. The Exchange proposes to adopt Section 3(d) for a pilot period that coincides with the pilot period for the Plan.

Background

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, i.e., the ''flash crash,'' the equities exchanges and the Financial Industry Regulatory Authority (''FINRA'') have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility. The measures adopted include pilot plans for stock-by-stock trading pauses,[3] related changes to the equities market clearly erroneous execution rules,[4] and more stringent equities market maker quoting requirements.[5] On May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.[6] In addition, the Commission approved changes to the equities market-wide circuit breaker rules on a pilot basis to coincide with the pilot period for the Plan.[7]

The Plan is designed to prevent trades in individual NMS stocks from occurring outside of specified Price Bands.[8] As described more fully below, the requirements of the Plan are coupled with Trading Pauses to accommodate

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[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See e.g.,* BX Rule 4120.

[4] *See e.g.,* BX Rule 4762.

[5] *See e.g.,* NASDAQ Rule 4613.

[6] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (Order Approving the Plan on a Pilot Basis).

[7] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129).

[8] Unless otherwise specified, capitalized terms used in this proposed rule change are based on the defined terms of the Plan.

more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). All trading centers in NMS stocks, including both those operated by Participants and those operated by members of Participants, are required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the requirements specified in the Plan.

As set forth in more detail in the Plan, Price Bands consisting of a Lower Price Band and an Upper Price Band for each NMS Stock are calculated by the Processors.[9] When the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band, the Processors shall disseminate such National Best Bid (Offer) with an appropriate flag identifying it as unexecutable. When the National Best Bid (Offer) is equal to the Upper (Lower) Price Band, the Processors shall distribute such National Best Bid (Offer) with an appropriate flag identifying it as a Limit State Quotation.[10] All trading centers in NMS stocks must maintain written policies and procedures that are reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for NMS stocks. Notwithstanding this requirement, the Processor shall display an offer below the Lower Price Band or a bid above the Upper Price Band, but with a flag that it is non-executable. Such bids or offers shall not be included in the National Best Bid or National Best Offer calculations.[11] Trading in an NMS stock immediately enters a Limit State if the National Best Offer (Bid) equals but does not cross the Lower (Upper) Price Band.[12] Trading for an NMS stock exits a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute trading pause pursuant to Section VII of the Plan, which would be applicable to all markets trading the security.[13] In addition, the Plan defines a Straddle State as when the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS stock is not in a Limit State. For example, assume the Lower Price Band for an NMS Stock is $9.50 and the Upper Price Band is $10.50, such NMS stock would be in a Straddle State if the National Best Bid were below $9.50, and therefore unexecutable, and the National Best Offer were above $9.50 (including a National Best Offer that could be above $10.50). If an NMS stock is in a Straddle State and trading in that stock deviates from normal trading characteristics, the Primary Listing Exchange may declare a trading pause for that NMS stock if such Trading Pause would support the Plan's goal to address extraordinary market volatility.

Proposed Section 3(d)

Openings

The Exchange proposes to adopt new Section 3(d) to provide for how BX shall treat orders and quotes in options overlying NMS stocks when the Plan is in effect. First, the Exchange proposes to adopt new subparagraph (i) to provide for how the Exchange shall treat the opening. The opening in an option will not commence in the event that the underlying NMS stock is open, but has entered into a Limit State or Straddle State. If this occurs, the opening will only commence and complete if the underlying NMS stock stays out of a Limit or Straddle State. Accordingly, new Section 3(d)(i) will provide that the Exchange will not open an affected option. As a result, if an opening process is occurring, it will cease and then start the opening process from the beginning once the Limit State or Straddle State is no longer occurring.

Orders

Second, the Exchange proposes to adopt provisions regarding the treatment of certain orders if the underlying NMS stock is in a Limit State or Straddle State. Whenever an NMS stock is in a Limit State or Straddle State, trading continues; however, there will not be a reliable price for a security to serve as a benchmark for the price of the option. For example, if the underlying NMS stock is in a Limit State, while trading in that stock continues, by being in a Limit State, there will be either cancellations or executions at that price, and if the Limit State is not resolved in 15 seconds, the NMS Stock will enter a Trading Pause. If an NMS stock is in a Straddle State, that means that there is either a National Best Bid or National Best Offer that is non-executable, which could result in limited price discovery in the underlying NMS stock. In addition to the lack of a reliable underlying reference price, the Exchange is concerned about the width of the markets and quality of the execution for market participants during a Limit State or Straddle State. While the Exchange recognizes the importance of continued trading in options overlying NMS stocks during Limit States and Straddle States, the Exchange believes that certain types of orders increase the risk of errors and poor executions and therefore should not be allowed during these times when there may not be a reliable underlying reference price, there may be a wide bid/ask quotation differential, and there may be lower trading liquidity in the options markets.

Therefore, the Exchange proposes that if an NMS stock is in a Limit State or Straddle State, once the option has opened for trading, the Exchange shall reject all incoming Market Orders, as defined in Chapter VI, Section 1, and shall notify Participants of the reason for such rejection. Market Orders residing in the System will be handled in the normal fashion under Exchange rules. The Exchange believes that adding certainty to the treatment of Market Orders when the underlying NMS stock is in these situations should encourage market participants to continue to provide liquidity to the Exchange and thus promote a fair and orderly market.

Proposed Section (e)

The Exchange also proposes to adopt Section (e), which provides that the Exchange shall halt trading in all options whenever the equities markets initiate a market-wide trading halt commonly known as a circuit breaker in response to extraordinary market conditions. Although Section 3 currently address a variety of situations involving halts, pauses and suspensions, the Exchange has determined to adopt a very specific rule to deal with circuit breaker-related halts. The Exchange believes that this rule can be adopted on a permanent basis, even though the equities circuit breakers are subject to a pilot program, because the proposed rule refers to such circuit breakers generally.

2. Statutory Basis

BX believes that its proposal is consistent with Section 6(b) of the Act[14] in general, and furthers the objectives of Section 6(b)(5) of the Act[15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and

[9] *See* Section V(A) of the Plan.

[10] *See* Section VI(A) of the Plan.

[11] *See* Section VI(A)(3) of the Plan.

[12] *See* Section VI(B)(1) of the Plan.

[13] The primary listing market would declare a Trading Pause in an NMS stock; upon notification by the primary listing market, the Processor would disseminate this information to the public. No trades in that NMS stock could occur during the trading pause, but all bids and offers may be displayed. *See* Section VII(A) of the Plan.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest, because it should provide certainty about how options orders and trades will be handled during periods of extraordinary volatility in the underlying security. Specifically, under the proposal, market participants will be able to continue to trade options overlying securities that are in a Limit State or Straddle State, while addressing specific order types that are subject to added risks during such periods. The Exchange believes that the rejection of options Market Orders should help to prevent executions that might occur at prices that have not been reliably formed, which should, in turn, protect, in particular, retail investors from executions of un-priced orders during times of significant volatility.

Accordingly, the Exchange believes that the proposed rule change is consistent with these requirements in that it should reduce the negative impacts of sudden, unanticipated volatility in individual options, and serve to preserve an orderly market in a transparent and uniform manner, enhance the price-discovery process, increase overall market confidence, and promote fair and orderly markets and the protection of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the proposal does not impose an intra-market burden on competition, because it will apply to all Options Participants. Nor will the proposal impose a burden on competition among the options exchanges, because, in addition to the vigorous competition for order flow among the options exchanges, the proposal addresses a regulatory situation common to all options exchanges. To the extent that market participants disagree with the particular approach taken by the Exchange herein, market participants can easily and readily direct order flow to competing venues. The Exchange believes this proposal for how to treat options openings and orders will not impose a burden on competition and will help provide certainty during periods of extraordinary volatility in an NMS stock.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [16] and Rule 19b–4(f)(6) thereunder.[17] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act [18] 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 No. SR–BX–2013–021 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 No. SR–BX–2013–021. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BX–2013–021 and should be submitted on or before April 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–06152 Filed 3–15–13; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 15 U.S.C. 78s(b)(2)(B).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69109; File No. SR–BOX–2013–13]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing of Proposed Rule Change To Clarify How the Exchange Will Treat a Market Maker's Quoting Obligations When the Underlying Equity Security Enters a Limit State or Straddle State

March 11, 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 8, 2013, BOX Options Exchange LLC (''BOX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7080 to clarify how the Exchange will treat a Market Maker's quoting obligations when the underlying equity security enters a Limit State or Straddle State. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Previously, the Commission approved a National Market System Plan to Address Extraordinary Market Volatility across the equities markets (as amended, the ''Plan''). The purpose of this proposed rule change is to implement joint industry principles across the options exchanges to address the implementation of the Plan. In particular, this proposed rule change will address how the Exchange will treat Market Maker quoting obligations for the options classes to which it is appointed when the underlying equity security enters a Limit State or Straddle State, as those terms are defined within the Plan.

Specifically, the Exchange proposes to amend IM–7080–1 (Trading Conditions During Limit State or Straddle State) to provide that if the underlying security has entered a Limit State or Straddle State, the time in these States shall not count for purposes of calculating whether a Market Maker is fulfilling his obligations for continuous quotes under BOX Rule 8050(e).

The Limit Up-Limit Down Plan is designed to prevent executions from occurring outside of dynamic price bands disseminated to the public by the single plan processor as defined in the Limit Up-Limit Down Plan. Under the Plan, a Limit State will be declared if the national best offer equals the lower price band and does not cross the national best bid, or the national best bid equals the upper price band and does not cross the national best offer. A Straddle State is when the national best bid (offer) is below (above) the lower (upper) price band and the security is not in a Limit State, and trading in that security deviates from normal trading characteristics such that declaring a trading pause would support the Plan's goal to address extraordinary market volatility. Accordingly, when the underlying security is in a Limit State or Straddle State, there will not be a reliable price for the security to serve as a benchmark for the price of the related option.

Under BOX Rule 8050(e), the Exchange requires Market Makers to enter continuous bids and offers for the options series to which it is registered for at least 60% of the time that the classes in which the Market Maker is registered are open for trading. While, in theory, the liquidity provided by requiring Market Makers to continue to quote during a Limit or Straddle State could help to stabilize a volatile market, without a reliable benchmark for pricing an option, Market Makers would likely respond to the uncertainty by entering very wide quotes, which would not provide any additional stability and could potentially lead to additional uncertainty. As such, the Exchange is proposing to specify that an underlying security's Limit State or Straddle State time shall not count for purposes of calculating whether a Market Maker is fulfilling its obligations for continuous quotes under Rule 8050(e). This means that when a Limit State or Straddle State occurs, the total time that the underlying security is in the one of these States shall not be considered as part of the trading day for purposes of calculating the requirement that a Market Maker must post valid quotes at least 60% of the time the classes are open for trading. The Exchange believes that this relief will help to maintain a fair and efficient marketplace for the execution of options.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act in particular, 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. Specifically, the Exchange believes that the proposal is designed to help maintain fair and orderly markets by imposing certain modified conditions during times of uncertainty regarding the price of the underlying security due to extraordinary market volatility in such underlying security.

The Exchange believes that excluding an underlying security's Limit State or Straddle State time for purposes of calculating whether a Market Maker is fulfilling his obligations for continuous quotes will help to prevent executions that might occur at prices that have not been reliably formed. Further, the proposed changes will allow Market Makers to enter orders only where the Market Maker is confident in the price of the option, rather than on a continuous basis in all series in which the Market Maker is registered, which the Exchange believes will help to minimize uncertainty during a volatile market. The Exchange also believes that these changes will help to incentivize participants registered with BOX as Market Makers to continue to act as Market Makers, rather than potentially causing Market Makers to deregister.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The Exchange also believes that this change will help to protect all investors from executions at prices that are not based on a reliable benchmark for the price of an option during times of significant volatility, and thus, believes the proposal to be consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that other options exchanges are proposing to modify a market maker's quoting obligations when the underlying security is subject to a Limit State or Straddle State in connection with the Limit Up-Limit Down Plan consistent with the Exchange's handling proposed by this filing.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–BOX–2013–13 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 No. SR–BOX–2013–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BOX–2013–13 and should be submitted on or before April 2, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[3]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–06088 Filed 3–15–13; 8:45 am]

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[3] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69121; File No. SR–BATS–2013–014]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Operation of Market Orders for BATS Options

March 12, 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 27, 2013, BATS Exchange, Inc. (''BATS'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal for the BATS Options Market (''BATS Options'') to amend Rule 21.1 in connection with the upcoming operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or ''Plan'').[5]

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently allows the entry of market orders, which are orders that are orders to buy or sell at the best price available at the time of execution (''Market Orders''). The purpose of this proposed rule change is to amend BATS Rule 21.1(d)(5) to reject Market Orders if they are received when the underlying security is subject to a ''Limit State'' or ''Straddle State'' as defined Limit in the Up-Limit Down Plan.[6]

The Limit Up-Limit Down Plan is designed to prevent executions from occurring outside of dynamic price bands disseminated to the public by the single plan processor as defined in the Limit Up-Limit Down Plan. Under the Plan, a Limit State will be declared if the national best offer equals the lower price band and does not cross the national best bid, or the national best bid equals the upper price band and does not cross the national best offer. A Straddle State is when the national best bid (offer) is below (above) the lower (upper) price band and the security is not in a Limit State, and trading in that security deviates from normal trading characteristics such that declaring a trading pause would support the Plan's goal to address extraordinary market volatility. Accordingly, when the underlying security is in a Limit State or Straddle State, there will not be a reliable price for the security to serve as a benchmark for the price of the related option. In such a state, the Exchange does not believe that it should permit the execution of Market Orders, which are un-priced orders that execute at the best price available at the time the Exchange receives such orders. The Exchange believes that the rejection of Market Orders when the underlying security is subject to a Limit State or Straddle State will help to maintain a fair and efficient marketplace for the execution of options.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, 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. The Exchange believes that the rejection of options Market Orders when the underlying security is in a Limit State or Straddle State will help to prevent executions that might occur at prices that have not been reliably formed. The Exchange believes that this change will help to protect, in particular, retail investors from executions of un-priced orders during times of significant volatility, and thus, believes the proposal to be consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes other options exchanges are proposing to handle market orders subject to a Limit State or Straddle State in connection with the Limit Up-Limit Down Plan consistent with the Exchange's handling proposed by this filing.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act[11] 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 No. SR–BATS–2013–014 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 No. SR–BATS–2013–014. 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

[6] The Exchange notes that it will verify whether the underlying security is in a Limit State or Straddle State immediately prior to executing any Market Order.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 15 U.S.C. 78s(b)(2)(B).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2013–014 and should be submitted on or before April 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–06155 Filed 3–15–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69124; File Nos. SR–CBOE–2013–016; SR–ISE–2013–08]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; International Securities Exchange, LLC; Order Granting Accelerated Approval of Proposed Rule Changes To Permit the Minimum Price Variation for Mini Options To Be the Same as Permitted for Standard Options on the Same Underlying Security

March 12, 2013.

I. Introduction

On January 31, 2013, Chicago Board Options Exchange, Incorporated (''CBOE'') and on February 6, 2013, International Securities Exchange, LLC (''ISE,'' and together with CBOE, ''Exchanges'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] proposed rule changes to permit the minimum price variation for Mini Options to be the same as the minimum price variation for standard options on the same underlying security. CBOE's proposed rule change was published for comment in the **Federal Register** on February 14, 2013,[3] and the Commission received three comment letters on the proposal.[4] On March 8, 2013, CBOE submitted a response letter.[5] ISE's proposed rule change was published for comment in the **Federal Register** on February 20, 2013,[6] and the Commission received one comment letter on the proposal.[7] The Commission is approving the Exchanges' proposals on an accelerated basis.

II. Description of the Proposed Rule Changes

CBOE and ISE currently have rules that provide for the listing and trading of options (''Mini Options'') that deliver 10 physical shares of SPDR S&P 500 (''SPY''), Apple Inc. (''AAPL''), SPDR Gold Trust (''GLD''), Google Inc. (''GOOG''), and Amazon.com, Inc. (''AMZN'').[8] The Exchanges now propose to amend their rules to provide that the minimum price variation for bids and offers for Mini Options be the same as the minimum price variation for standard options on the same underlying security.[9] For example, if standard options on a security participate in the Penny Pilot Program, Mini Options on the same underlying security would be quoted in the same minimum increments (*i.e.,* $0.01 for series that are quoted at less than $3 per contract and $0.05 for series that are quoted at $3 per contract or greater, and $0.01 for all SPY options series). Of the five securities on which Mini Options are permitted, SPY, AAPL, GLD, and AMZN participate in the Penny Pilot Program. As proposed, for Mini Options on AAPL, GLD, and AMZN, the minimum price variation would be $0.01 for quotations in series that are quoted at less than $3 per contract and $0.05 for quotations in series that are quoted at $3 per contract or greater.[10] For Mini Options on SPY, the minimum price variation would be $0.01 for all quotations in all series.[11] Because GOOG does not participate in the Penny Pilot Program, the minimum price variation for Mini Options on GOOG would be $0.05 for series that are quoted at less than $3 per contract and $0.10 for series that are quoted at $3 per contract or greater.[12]

III. Discussion and Commission Findings

The Commission finds that the proposed rule changes filed by the Exchanges are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] Specifically, the Commission finds that the proposed rule changes are consistent with Section 6(b)(5) of the Act,[14] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that permitting Mini Options on SPY, AAPL, GLD, GOOG, and AMZN to have the same minimum price variation as standard options on the same underlying securities, in the manner proposed by the Exchanges, is consistent with the Act.[15] In addition,

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68873 (February 8, 2013), 78 FR 10671 (''CBOE Notice'').

[4] *See* letters from David Schmueck, Director, Chief Regulatory Officer, LiquidPoint LLC, dated March 11, 2013 (''LiquidPoint Letter''); Ellen Greene, Vice President, Financial Services Operations, Securities Industry and Financial Markets Association (''SIFMA''), dated March 6, 2013 (''SIFMA Letter''); and Michael L. Sheedy, dated February 22, 2013 (''Sheedy Letter'').

[5] *See* letter from Jenny Golding, Senior Attorney, Legal Division, CBOE, dated March 8, 2013 (''CBOE Response Letter'').

[6] *See* Securities Exchange Act Release No. 68919 (February 13, 2013), 78 FR 11921 (''ISE Notice'').

[7] *See* letter from Gary J. Sjostedt, Director, Order Routing Strategy, TD Ameritrade, Inc. (''TD Ameritrade''), dated January 30, 2013 (''TD Ameritrade Letter'').

[8] *See* Securities Exchange Act Release Nos. 68656 (January 15, 2013), 78 FR 4526 (January 22, 2013) (SR–CBOE–2013–001) (''CBOE Mini Options Notice'') and 67948 (September 28, 2012), 77 FR 60735 (October 4, 2012) (SR–ISE–2012–58) (''ISE Mini Options Order'').

[9] *See* CBOE Rule 5.5, Interpretation and Policy .22(d) and ISE Rule 504, Supplementary Material .13(d). While the Exchanges propose these minimum price variations for Mini Options, they are not proposing to include any Mini Option in the Penny Pilot Program. *See* CBOE Notice, *supra* note 3, at 10672 and ISE Notice, *supra* note 6, at 11922. As CBOE states, because Mini Options are a separate class from standard options on the same underlying security, Mini Options would have to qualify separately for entry into the Penny Pilot Program, which they do not, at least initially. *See* CBOE Notice, *supra* note 3, at 10672.

[10] *See* CBOE Rule 6.42(3) and ISE Rule 710, Supplementary Material .01.

[11] *See* CBOE Rule 6.42(3) and ISE Rule 710, Supplementary Material .01.

[12] *See* CBOE Rules 6.42(1) and (2) and ISE Rule 710(a).

[13] In approving these proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] Mini Options are currently limited to overlie SPY, AAPL, GLD, GOOG, and AMZN, and any expansion of the Mini Options program would require that a subsequent proposed rule change be submitted to the Commission. *See* CBOE Mini Options Notice, *supra* note 8, at n.4 and ISE Mini Options Order, *supra* note 8, at n.12. In addition,

the Commission believes that it is important to clearly establish the minimum price variation for Mini Options prior to the anticipated commencement of trading on March 18, 2013.

Commenters offer strong support for the Exchanges' proposals.[16] In their letters, SIFMA and LiquidPoint state that they strongly agree with CBOE's request to mimic the pricing convention of standard options with mini-option contract pricing and note that they believe it is appropriate to allow penny-pricing for Mini Options on securities for which standard options already trade in pennies, specifically SPY, AAPL, GLD, and AMZN.[17]

In its letter, SIFMA notes that given the significant liquidity in the market for the standard options on SPY, AAPL, GLD, GOOG, and AMZN, ''investor confusion could be profound if the standard and mini-options are not aligned with respect to the minimum price variation.''[18] LiquidPoint also expressed similar concern in its letter.[19] Further, in its letter, TD Ameritrade states that ''[i]nvestor confusion would invariably result if Mini Options did not retain the important characteristics, such as the trading increments,'' of the standard options on the same underlying security.[20] The Commission believes that allowing the same minimum price variation for Mini Options as standard options on the same underlying security should help prevent investor confusion.

Maintaining consistency between Mini Options and standard options as to the minimum price variation may also provide additional market benefits. In this regard, the Commission notes that, in its proposal, CBOE states its belief that matched pricing for Mini Options and standard options on the same underlying security would attract additional liquidity providers who would make markets in these options and that the ability to quote Mini Options and standard options on the same underlying security in the same minimum increments would hopefully result in more efficient pricing via arbitrage and possible price improvement in both contracts on the same underlying security.[21] SIFMA and LiquidPoint also note that penny pricing for Mini Options ''would benefit anticipated users by providing additional price points, particularly as the product is intended to be an investment tool with more affordable and realistic prices for the average retail investor.'' [22] Further, TD Ameritrade states that the proposal will allow market makers to ''provide better fills to investors by quoting and trading within a lesser spread than the existing Rule 710 allows.'' [23]

The Commission notes that the proposed minimum price variation treatment is also consistent with the current operation of member firms' systems. Specifically, in its proposal, CBOE states that it has polled its member firms with customers who would be potential users of Mini Options, and these firms have indicated a preference that the premium pricing for Mini Options match what is currently permitted for standard options on the same underlying securities.[24] CBOE states that its firms' systems are configured using the ''root symbol'' of an underlying security and cannot differentiate, for purposes of minimum price variations, between contracts on the same underlying security.[25] In its letter, SIFMA also notes that its members' systems are programmed using ''root symbols,'' and would not be able to assign different minimum price variations to Mini Options and standard options on the same underlying security.[26] Further, LiquidPoint notes that its systems are programmed such that it would be difficult and confusing to systems users to assign different minimum price variations to Mini Options and standard options on the same underlying security.[27]

Lastly, the Commission notes that, with respect to the impact of the proposals on the Exchanges' systems capacity, each of the Exchanges represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with this proposal.[28] The Exchanges state that they do not believe that the increased traffic will become unmanageable because Mini Options are limited to a fixed number of underlying securities.[29]

Accordingly, for the reasons stated above, and in consideration of the anticipated Mini Options launch date of March 18, 2013, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act, [30] for approving the Exchanges' proposals prior to the 30th day after the publication of the notices in the **Federal Register**.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule changes (SR–CBOE–2013–016; SR–ISE–2013–08), be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–06121 Filed 3–15–13; 8:45 am]

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the current proposals are limited to the five approved Mini Options, and the Exchanges must submit subsequent proposed rule changes to extend such treatment of minimum price variations to new Mini Options. *See* CBOE Notice, *supra* note 3, at n.7.

[16] *See* SIFMA Letter, *supra* note 4; LiquidPoint Letter, *supra* note 4; and TD Ameritrade Letter, *supra* note 7. In his comment letter, Sheedy suggested that Mini Options should not be settled by using a portion of a standard option such that a standard option would be ''split,'' resulting in a fractional ownership of a standard option. Sheedy also opined that the option symbols designating each type of option should be distinct and easily identifiable in order to minimize inadvertent mistakes in rapidly changing markets. *See* Sheedy Letter, *supra* note 4. In its response letter, CBOE notes that the deliverable security for standard options will not be used to settle Mini Options on the same underlying security. *See* CBOE Response Letter, *supra* note 5, at 1–2. CBOE also reiterates that Mini Options will be designated with different trading symbols than standard options on the same underlying security. *See id.,* at 2. Further, CBOE notes that the industry-wide symbology for Mini Options will be the use of the same symbol that currently exists for standard options on the same underlying security, followed by ''7.'' *See id.*

[17] *See* SIFMA Letter, *supra* note 4, at 1–2 and LiquidPoint Letter, *supra* note 4, at 1.

[18] *See* SIFMA Letter, *supra* note 4, at 2.

[19] *See* LiquidPoint Letter, *supra* note 4, at 2.

[20] *See* TD Ameritrade Letter, *supra* note 7, at 1.

[21] *See* CBOE Notice, *supra* note 3, at 10673.

[22] *See also* SIFMA Letter, *supra* note 4, at 2 and LiquidPoint Letter, *supra* note 4, at 2.

[23] *See* TD Ameritrade Letter, *supra* note 7, at 1.

[24] *See* CBOE Notice, *supra* note 3, at 10672.

[25] *See id.*

[26] *See* SIFMA Letter, *supra* note 4, at 2.

[27] *See* LiquidPoint Letter, *supra* note 4, at 2.

[28] *See* CBOE Notice, *supra* note 3, at 10673 and ISE Notice, *supra* note 6, at 11922.

[29] *See* CBOE Notice, *supra* note 3, at 10673 and ISE Notice, *supra* note 6, at 11922.

[30] 15 U.S.C. 78s(b)(2).

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2012–0048]

Service Delivery Plan; Correction

AGENCY: Social Security Administration.

ACTION: Notice; request for comments; Correction.

SUMMARY: The Social Security Administration published a document in the **Federal Register** of March 12, 2013, in FR Doc. 2013–05595, on page 15797, in the third column; in the **SUMMARY** caption insert the following hyper-links. In the first sentence after the words, ''Service Delivery Plan (SDP) insert *http://www.ssa.gov/open/SDP*. In

addition, in the third sentence after the words ''Agency Strategic Plan'' insert *http://ssa.gov/asp/plan-2013-2016.pdf.*

Paul Kryglik,

Director, Office of Regulations, Social Security Administration.

[FR Doc. 2013–06089 Filed 3–15–13; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 8240]

U.S. Department of State Advisory Committee on Private International Law (ACPIL): Notice of Public Meeting of the Study Group on Choice of Law in International Commercial Contracts

The Office of the Assistant Legal Adviser for Private International Law, Department of State, hereby gives notice of a public meeting of the Study Group on Choice of Law in International Commercial Contracts. A working group of experts from various countries was established by the Hague Conference on Private International Law to develop non-binding principles relevant to the choice of law in international commercial contracts. The draft principles prepared by that group were considered at a Special Commission of the Hague Conference held November 12–16, 2012. We expect that the Council on General Affairs and Policy of the Hague Conference will request that the working group of experts prepare a detailed commentary to accompany the principles.

The purpose of the public meeting is to obtain the views of concerned stakeholders in advance of the Council meeting in April. This is not a meeting of the full Advisory Committee. The Draft Hague Principles as approved by the November 2012 Special Commission meeting on choice of law in international contracts, and Recommendations for the commentary and other relevant documents can be found at the following link: *http://www.hcch.net/index_en.php?act=text.display&tid=49.*

Time and Place: The meeting of the ACPIL Study Group will take place on April 1, 2013 from 10:30 a.m. to 1:30 p.m. EDT in Room 240, South Building, State Department Annex 4. Participants should arrive at the Navy Hill gate at the corner of 23rd Street NW. and D Street NW before 10:00 a.m. for visitor screening. Persons arriving later will need to make arrangements for entry using the contact information provided below. If you are unable to attend the public meeting and would like to participate from a remote location, teleconferencing will be available.

Public Participation: This meeting is open to the public, subject to the capacity of the meeting room. Access to Navy Hill is strictly controlled. For pre-clearance purposes, those planning to attend in person are requested to email or phone Tricia Smeltzer (*smeltzertk@state.gov,* 202–776–8423) or Niesha Toms (*tomsnn@state.gov,* 202–776–8420) and provide your full name, address, date of birth, citizenship, driver's license or passport number, affiliation, and email address. This will greatly facilitate entry. Participants will be met at the Navy Hill gate at 23rd and D Streets NW., and will be escorted to the South Building.

A member of the public needing reasonable accommodation should advise Ms. Smeltzer or Ms. Toms not later than March 25, 2013. Requests made after that date will be considered, but might not be able to be fulfilled. If you would like to participate by telephone, please contact Ms. Smeltzer or Ms. Toms to obtain the call-in number and other information.

Data from the public is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State-36) at *http://www.state.gov/documents/organization/103419.pdf* for additional information.

Dated: March 7, 2013.

Michael Dennis,

Office of Private International Law, Office of the Legal Adviser, Department of State.

[FR Doc. 2013–06185 Filed 3–15–13; 8:45 am]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Dispute No. WTO/DS429]

WTO Dispute Settlement Proceeding Regarding United States—Anti-Dumping Measures on Certain Shrimp From Vietnam

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice that the Socialist Republic of Vietnam (''Vietnam'') has requested the establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* (''WTO Agreement''). That request may be found at *www.wto.org* contained in a document designated as WT/DS429/3. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before April 16, 2013 to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to *www.regulations.gov,* docket number USTR–2012–0003. If you are unable to provide submissions at *www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: Matthew P. Jaffe, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508, (202) 395–3150.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (''URAA'') (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that a dispute settlement panel has been established pursuant to the WTO Dispute Settlement Understanding (''DSU''). The panel will hold its meetings in Geneva, Switzerland.

Major Issues Raised by Vietnam

In its January 17, 2013 panel request, Vietnam makes a number of allegations relating to certain antidumping administrative reviews and a sunset review conducted by the Department of Commerce on certain frozen warmwater shrimp from Vietnam. Specifically, Vietnam challenges: the imposition of antidumping duties and cash deposit requirements pursuant to the final results of the fourth administrative review for the period from February 1, 2008, to January 31, 2009, in *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final*

Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 4771 (August 9, 2010); the fourth administrative review of *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam* insofar as it did not revoke the antidumping duty order with respect to certain respondents requesting such revocation; the imposition of antidumping duties and cash deposit requirements pursuant to the final results of the fifth administrative review for the period from February 1, 2009, through January 31, 2010, in *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 56158 (September 12, 2011); the fifth administrative review of *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam* insofar as it did not revoke the antidumping duty order with respect to certain respondents requesting such revocation; the imposition of anti-dumping duties and cash deposit requirements pursuant to the final results of the USDOC's sixth administrative review for the period from February 1, 2010 through January 31, 2011, in *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 77 FR 55800 (September 11, 2012); the sixth administrative review of *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam* insofar as it did not revoke the anti-dumping duty order with respect to certain respondents eligible for such revocation; the final results of the sunset review in which the Department of Commerce determined that revocation of the antidumping duty order would be likely to lead to the continuation or recurrence of dumping, *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of the First Five-year ''Sunset'' Review of the Antidumping Duty Order,* 75 FR. 75965 (December 7, 2010); and any other ongoing or future antidumping administrative reviews, and the preliminary and final results thereof, related to the imports of certain frozen warmwater shrimp from Vietnam (DOC case A–552–802), as well as any assessment instructions, cash deposit requirements, and revocation determinations issued pursuant to such reviews. Vietnam also challenges certain laws, regulations, and written statements, including: Section 129 of the URAA, codified as 19 U.S.C. 3538, and the Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316 (1994), vol 1, reprinted in 1994 U.S.C.C.A.N. 4040; the Tariff Act of 1930, as amended, sections 751, 752, 771(18)(C)(i), 771(35)(A), 776(a)(2), 776(b), and 777A(c)(2)(B); implementing regulations of the Department of Commerce, 19 CFR 351.204, 351.408, and 351.414; the Import Administration Antidumping Manual, Chapter 10, ''Non-Market Economies''; and Import Administration Policy Bulletin 98.3, ''Policies Governing the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,'' 63 FR 18871 (April 16, 1998).

Vietnam alleges that the United States has acted inconsistently with Articles VI:1, and VI:2 of the General Agreement on Tariffs and Trade 1994; Articles 1, 2, 2.1, 2.4, 2.4.2, 6.8, 6.10, 6.10.2, 9, 9.1, 9.2, 9.3, 9.4, 11, 11.1, 11.2, 11.3, 11.4, 18.1, 18.3, 18.4, and Annex II of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-Dumping Agreement); Article XVI:4 of the WTO Agreement; and Part I.2 of the Protocol of Accession of the Socialist Republic of Vietnam, WT/L/662, 15 November 2006 and Paragraphs 254, 255, and 527 of the Report of the Working Party on Accession of Vietnam, WT/ACC/VNM/48, 27 October 2006.

Vietnam appears to allege that the United States acted inconsistently with the provisions identified above by not allowing non-dumped sales to offset the amount of dumping with respect to other sales; by applying a Vietnam-wide entity rate based on adverse facts available throughout the antidumping proceedings identified above; by individually investigating or reviewing a limited number of the largest exporters throughout the antidumping proceedings at issue; by applying certain methodologies in the sunset review; by not revoking the applicable antidumping duty order with respect to certain individual respondents having zero or de minimis margins of dumping; and through the application of section 129 of the URAA.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to *www.regulations.gov* docket number USTR–2012–0003. If you are unable to provide submissions by *www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *www.regulations.gov,* enter docket number USTR–2012–0003 on the home page and click ''search''. The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice and click on the link entitled ''*Comment Now*!'' (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page.)

The *www.regulations.gov* Web site allows users to provide comments by filling in a ''Type Comments'' field, or by attaching a document using an ''Upload File'' field. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''Type Comments''field.

A person requesting that information contained in a comment that he/she submitted, be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640.

A non-confidential summary of the confidential information must be submitted to *www.regulations.gov.* The non-confidential summary will be placed in the docket and will be open to public inspection.

USTR may determine that information or advice contained in a comment submitted, other than business confidential information, is confidential in accordance with Section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice. Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov.* The non-confidential summary will be

placed in the docket and will be open to public inspection.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding, docket number USTR–2012–0003, accessible to the public at *www.regulations.gov.*

The public file will include non-confidential comments received by USTR from the public regarding the dispute. If a dispute settlement panel is convened, or in the event of an appeal from such a panel, the following documents will be made available to the public at *www.ustr.gov* the United States' submissions, any non-confidential submissions received from other participants in the dispute, and any non-confidential summaries of submissions received from other participants in the dispute. In the event that a dispute settlement panel is convened, or in the event of an appeal from such a panel, and, if applicable, the report of the Appellate Body, will also be available on the Web site of the World Trade Organization, at *www.wto.org.* Comments open to public inspection may be viewed at *www.regulations.gov.*

Juan Millan,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 2013–06187 Filed 3–15–13; 8:45 am]

BILLING CODE 3290–f3–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twenty-Second Meeting: RTCA Special Committee 213, Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS)

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

ACTION: Meeting Notice of RTCA Special Committee 213, Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS).

SUMMARY: The FAA is issuing this notice to advise the public of the twenty-second meeting of the RTCA Special Committee 213, Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS).

DATES: The meeting will be held April 23–24, 2013 from 9:00 a.m.–5:00 p.m. and April 25, 2013 from 9:00 a.m.–3:00 p.m.

ADDRESSES: The meeting will be held at RTCA, 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 330–0652/(202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.* Additional contact information: please contact Tim Etherington, *tjetheri@rockwellcollins.com,* telephone (319) 295–5233 or mobile at (319) 431–7154, to register for the meeting or Patrick Krohn, *pkrohn@uasc.com,* telephone (425) 602–1375 or mobile at (425) 829–1996. RTCA contact is Jennifer Iverson, *jiverson@rtca.org,* (202) 330–0662.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 213. The agenda will include the following:

Tuesday, April 23

Plenary Discussion (sign in at 9:00 a.m.)

- Introductions and administrative items.
- Review and approve minutes from last full plenary meeting.
- Review of terms of reference.
- Status of DO–342A and DO–315C Drafts.
- Industry updates.
- DO–315C and DO–342A draft review.

Wednesday, April 24

Plenary Discussion

- WG–1 DO–315C draft review.
- WG–2 DO–342A draft review.

Thursday, April 25

Plenary Discussion

- WG–1 DO–315C draft review.
- WG–1 DO–342A draft review.
- Administrative items.
- Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 12, 2013.

Paige Williams,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2013–06154 Filed 3–15–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

International Civil Aviation Organization's (ICAO) Dangerous Goods Panel; Notice of Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: In preparation for the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel's (DGP's) Spring Working Group to be held April 15–19, 2013, in Montreal, Canada, the FAA's Office of Hazardous Materials Safety and the Pipeline and Hazardous Materials Safety Administration's (PHMSA) Office of Hazardous Materials Safety announce a public meeting.

DATES: The public meeting will be held on April 8, 2013 from 10:00 a.m. until 12:00 p.m. (EDT).

ADDRESSES: The public meeting will be held at FAA Headquarters (FOB 10A), Bessie Coleman Conference Center, 2nd Floor, 800 Independence Avenue SW., Washington, DC 20591.

Participants are requested to register by using the following email address: *9-AWA-ASH-ADG-HazMat@faa.gov,*

Please include your name, organization, email address, and whether you will be attending in person or participating via conference call. Conference call connection information will be provided to those who register and indicate that they will participate via conference call.

FOR FURTHER INFORMATION CONTACT: Questions regarding the meeting should be directed to Ms. Janet McLaughlin, Deputy Director, Office of Hazardous Materials Safety, ADG–2, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 385–4900. Email: *9-AWA-ASH-ADG-HazMat@faa.gov.*

We are committed to providing equal access to this meeting for all participants. If you need alternative formats or other reasonable accommodations, please call (202) 385–4900 or email *9-AWA-ASH-ADG-HazMat@faa.gov* with your request by close of business on April 1st.

Purpose of the Public Meeting

Information and viewpoints provided by stakeholders are requested as the United States delegation prepares for the International Civil Aviation Organization's Dangerous Goods Panel's (ICAO DGP's) Working Group of the

Whole 13. The agenda for the Working Group is as follows:

Agenda Item 1: *Development of proposals, if necessary, for amendments to Annex 18—The Safe Transport of Dangerous Goods by Air*

Agenda Item 2: *Development of recommendations for amendments to the Technical Instructions for the Safe Transport of Dangerous Goods by Air (Doc 9284) for incorporation in the 2015–2016 Edition*

2.1: *Part 1—General*
2.2: *Part 2—Classification*
2.3: *Part 3—Dangerous Goods List, Special Provisions and Limited and Excepted Quantities*
2.4: *Part 4—Packing Instructions*
2.5: *Part 5—Shipper's Responsibilities*
2.6: *Part 6—Packaging Nomenclature, Marking, Requirements and Tests*
2.7: *Part 7—Operator's Responsibilities*
2.8: *Part 8—Provisions Concerning Passengers and Crew*

Agenda Item 3: *Development of recommendations for amendments to the Supplement to the Technical Instructions for the Safe Transport of Dangerous Goods by Air (Doc 9284SU) for incorporation in the 2015–2016 Edition*

Agenda Item 4: *Development of recommendations for amendments to the Emergency Response Guidance for Aircraft Incidents involving Dangerous Goods (Doc 9481) for incorporation in the 2015–2016 Edition*

Agenda Item 5: *Review of provisions for the transport of lithium batteries including:*

5.1: *Improved hazard communication for energy storage devices*
5.2: *Simplification and clarification of provisions*
5.3: *Development of guidance material*
5.4: *Monitoring activities in States including the sharing of knowledge and information, training programmes, and outreach activities*

Agenda Item 6: *Resolution, where possible, of the non-recurrent work items identified by Air Navigation Commission or the Dangerous Goods Panel:*

6.1: *Dangerous incident and accident data collection*
6.2: *Dangerous goods requirements in Annex 6—Operation of Aircraft*
6.3: *Development of guidance material on countering the potential use of dangerous goods in an act of unlawful interference*
6.4: *Development of performance standards for air operators and designated postal operators*

Agenda Item 7: *Other business*

Papers relevant to these agenda items can be viewed at the following Web page: *http://www.icao.int/safety/DangerousGoods/Pages/DGP.aspx.*

Public Meeting Procedures

A panel of representatives from the FAA and PHMSA will be present. The meetings are intended to be informal, non-adversarial, and to facilitate the public comment process. No individual will be subject to questioning by any other participant. Government representatives on the panel may ask questions to clarify statements. Unless otherwise stated, any statement made during the meetings by a panel member should not be construed as an official position of the US government.

The meeting will be open to all persons, subject to the capacity of the meeting room and phone lines available for those participating via conference call. Every effort will be made to accommodate all persons wishing to attend. The FAA and PHMSA will try to accommodate all speakers, subject to time constraints.

Issued in Washington, DC, on March 12, 2013.

Christopher Glasow,

Director, Office of Hazardous Materials Safety.

[FR Doc. 2013–06050 Filed 3–15–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twentieth Meeting: RTCA Special Committee 224, Airport Security Access Control Systems

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

ACTION: Meeting Notice of RTCA Special Committee 224, Airport Security Access Control Systems.

SUMMARY: The FAA is issuing this notice to advise the public of the twentieth meeting of the RTCA Special Committee 224, Airport Security Access Control Systems.

DATES: The meeting will be held April 4, 2013 from 9:00 a.m.–4:00 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 224. The agenda will include the following:

April 4, 2013

- Welcome, Introductions & Administrative Remarks
- Review and Approve Summary of Nineteenth Meeting
- Updates from TSA (as required)
- Review Committee Report
- Document Detailed Review
- Document Finalization Process
- Time and Place of Next Meeting
- Any Other Business
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on March 12, 2013.

Paige Williams,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2013–06162 Filed 3–15–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

First Meeting: RTCA Tactical Operations Committee (TOC)

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

ACTION: Meeting Notice of RTCA Tactical Operations Committee.

SUMMARY: The FAA is issuing this notice to advise the public of the first meeting of the RTCA Tactical Operations Committee.

DATES: The meeting will be held April 8, 2013 from 10:00 a.m.–3:00 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW.,

Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 224. The agenda will include the following:

April 8, 2013

- Welcome & Introductions
- Official Statement of Designated Federal Official
- Background on Formation of Committee
- Committee Purpose and Scope Discussion
- Committee Operations
- FAA Taskings Discussion
- FAA Task Groups Discussion
- Anticipated Issues for TOC consideration and action at the next meeting.
- Any Other Business
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 12, 2013.

Paige Williams,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2013–06160 Filed 3–15–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0012]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption from the diabetes mellitus requirement; request for comments.

SUMMARY: FMCSA announces receipt of applications from 20 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before April 17, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2013–0012 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on December 29, 2010 (75 FR 82132), or you may visit *http://www.gpo.gov/fdsys/pkg/FR-2010-12-29/pdf/2010-32876.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 20 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Mick E. Brand

Mr. Brand, 48, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Brand understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brand meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Washington.

Victor L. Daniels, Sr.

Mr. Daniels, 49, has had ITDM since 2011. His endocrinologist examined him in 2013 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or

resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Daniels understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Daniels meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Delaware.

Kenneth T. Faborito

Mr. Faborito, 62, has had ITDM since 2009. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Faborito understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Faborito meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Hawaii.

Colleen M. Herron

Ms. Herron, 25, has had ITDM since 1996. Her endocrinologist examined her in 2012 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Herron understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Herron meets the vision requirements of 49 CFR 391.41(b)(10). Her optometrist examined her in 2012 and certified that she does not have diabetic retinopathy. She holds a Class C operator's license from California.

Vincent K. Johnson

Mr. Johnson, 42, has had ITDM since 2010. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Johnson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Johnson meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from District of Columbia.

Mark R. Kolling

Mr. Kolling, 49, has had ITDM since 2009. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kolling understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kolling meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Minnesota.

Kevin P. Lee

Mr. Lee, 43, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lee understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lee meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Jason J. Libke

Mr. Libke, 26, has had ITDM since 1991. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Libke understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Libke meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from California.

William R. Luckenbach

Mr. Luckenbach, 62, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Luckenbach understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Luckenbach meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Oklahoma.

Duane W. Mansur

Mr. Mansur, 58, has had ITDM since 2005. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Mansur understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mansur meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from New Hampshire.

Fritz R. McBride

Mr. McBride, 30, has had ITDM since 2012. His endocrinologist examined him

in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. McBride understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McBride meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Wisconsin.

Arthur H. Olsen

Mr. Olsen, 35, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Olsen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Olsen meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Arizona.

Jacob D. Parnaby

Mr. Parnaby, 23, has had ITDM since 2006. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Parnaby understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Parnaby meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class D CDL from Ohio.

Billy L. Suffel

Mr. Suffel, 73, has had ITDM since 1999. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Suffel understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Suffel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Samuel A. Tuzenew

Mr. Tuzenew, 35, has had ITDM since 2008. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Tuzenes understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tuzenew meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from North Carolina.

Ronnie L. West

Mr. West, 68, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. West understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. West meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

Robert J. Weyant

Mr. Weyant, 68, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Weyant understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Weyant meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2013 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Douglas G. Willson

Mr. Willson, 56, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Willson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Willson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Oklahoma.

Brandon P. Wilson

Mr. Wilson, 22, has had ITDM since 1999. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wilson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wilson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2013 and certified that he does not have diabetic retinopathy.

He holds a Class B CDL from North Carolina.

Peter S. Zipperer

Mr. Zipperer, 39, has had ITDM since 2004. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Zipperer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Zipperer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class D Chauffer's license from Louisiana.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: March 8, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–06146 Filed 3–15–13; 8:45 am]

BILLING CODE 4910–EX–P

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0398]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 15 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective April 6, 2013. Comments must be received on or before April 17, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: [Docket No. FMCSA–2008–0398] using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on December 29, 2010 (75 FR 82132), or you may visit *http://www.gpo.gov/fdsys/pkg/FR–2010–12–29/pdf/2010–32876.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 15 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 15 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Michael L. Ayers (AL)
Paul V. Daluisio (NY)
Tracy A. Doty (TN)
Matthew A. Ericson (WI)
Charles W. Hillyer (OH)
Stephen R. Jackson (WY)
Darrel R. Martin (MD)
James W. McGhee (MI)
Pahl M. Olson (WI)
Wayne G. Resch (WI)
James L. Rooney (WA)
James E. Russell (AZ)
Wayne A. Whitehead (OH)
Charles F. Wotring (OH)
Forrest L. Wright (AL)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 15 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (74 FR 7097; 74 FR 15584; 76 FR 15361). Each of these 15 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by April 17, 2013.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 15 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: March 8, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–06136 Filed 3–15–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1998–4334; FMCSA–2000–7006; FMCSA–2004–19477; FMCSA–2010–0372; FMCSA–2011–0010]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 22 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective April 11, 2013. Comments must be received on or before April 17, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: [Docket No. FMCSA–1998–4334; FMCSA–2000–

7006; FMCSA–2004–19477; FMCSA–2010–0372; FMCSA–2011–0010] using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on December 29, 2010 (75 FR 82132), or you may visit *http://www.gpo.gov/fdsys/pkg/FR-2010-12-29/pdf/2010-32876.pdf.*

FOR FURTHER INFORMATION CONTACT:

Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 22 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 22 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Gary W. Balcom (MI)
Jimmie L. Blue (MT)
David L. Botkins (NY)
James H. Corby (PA)
Wesley M. Creamer (NM)
Gerald S. Dennis (IA)
Bruce J. Greil (WI)
Thanh V. Ha (CA)
Charles R. Hoeppner (MD)
Paul J. Jones (NY)
Lester H. Killingsworth (TX)
Stephanie D. Klang (MO)
Pedro G. Limon (TX)
Kenneth H. Morris (NC)
John F. Murphy (PA)
Tracy J. Omeara (OR)
Virgil A. Potts (CO)
Larry D. Robinson (MO)
George D. Ruth (PA)
Benjamin Stone (VA)
Edward Timpson (RI)
James H. Wallace, Sr. (FL)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 22 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 66226; 64 FR 16517; 65 FR 20245; 65 FR 57230; 66 FR 17994; 67 FR 57266; 68 FR 15037; 69 FR 52741; 69 FR 64806; 70 FR 2705; 70 FR 14747; 71 FR 55820; 72 FR 5489; 72 FR 12665; 74 FR 6207; 74 FR 6211; 74 FR 9329; 76 FR 7894; 76 FR 8809; 76 FR 9856; 76 FR 9865; 76 FR 15360; 76 FR 20076; 76 FR 20078). Each of these 22 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these

drivers submit comments by April 17, 2013.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 22 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: March 8, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–06141 Filed 3–15–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Limitation on Claims Against Proposed Public Transportation Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) for the Baltimore Red Line Project, Baltimore County and City, MD. The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject project and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: By this notice, FTA is advising the public of final agency actions subject to Section 139(l) of Title 23, United States Code (U.S.C.). A claim seeking judicial review of the FTA actions announced herein for the listed public transportation project will be barred unless the claim is filed on or before August 15, 2013.

FOR FURTHER INFORMATION CONTACT: Nancy-Ellen Zusman, Assistant Chief Counsel, Office of Chief Counsel, (312) 353–2577 or Terence Plaskon, Environmental Protection Specialist, Office of Human and Natural Environment, (202) 366–0442. FTA is located at 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 9:00 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions by issuing certain approvals for the public transportation project listed below. The actions on this project, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA administrative record for the project. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information on the project. Contact information for FTA's Regional Offices may be found at *http://www.fta.dot.gov.*

This notice applies to all FTA decisions on the listed project as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA [42 U.S.C. 4321–4375], Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303], Section 106 of the National Historic Preservation Act [16 U.S.C. 470f], and the Clean Air Act [42 U.S.C. 7401–7671q]. This notice does not, however, alter or extend the limitation period for challenges of project decisions subject to previous notices published in the **Federal Register**.

The project and actions that are the subject of this notice are:

Project name and location: Baltimore Red Line Project, Baltimore County and City, MD. *Project sponsor:* Maryland Transit Administration (MTA). *Project description:* The project consists of a 14.1-mile light rail transit line from the Centers for Medicare and Medicaid Services (CMS) in Baltimore County to the Johns Hopkins Bayview Medical Center campus in Baltimore City. The transitway includes a combination of surface, tunnel, and aerial segments. Key elements include a new double-track alignment; two tunnels (Cooks Lane and Downtown Tunnels); an Operations and Maintenance Facility (OMF) for storage of up to 38 light rail vehicles; a traction power system including overhead catenary system; traction power substation; central instrument houses; 19 stations (14 surface and 5 underground); three new park-and-ride lots (Security Square, I–70, and Brewer's Hill/Canton Crossing); and ventilation system elements including ventilation buildings, fans, air plenums, and shafts for the underground sections; and other ancillary facilities. *Final agency actions:* Section 4(f) determination; a Section 106 Programmatic Agreement, dated February 26, 2013; project-level air quality conformity, and Record of Decision (ROD), dated February 28, 2013. *Supporting documentation:* Final Environmental Impact Statement, dated December 2012.

Issued on: March 12, 2013.

Lucy Garliauskas,

Associate Administrator for Planning and Environment, Washington, DC.

[FR Doc. 2013–06134 Filed 3–15–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2012–0302]

Pipeline Safety: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and Request for Comments on a Previously Approved Information Collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the information collection under Office of Management and Budget (OMB) Control No. 2137–0605, titled ''Integrity Management in High Consequence Areas for Operators of Hazardous Liquid Pipelines'' is being forwarded to OMB for review and comments. A **Federal Register** notice with a 60-day comment period soliciting comments on this information collection was published on December 13, 2012, (77 FR 74276) under docket number PHMSA–2012–0302. No comments were received. The purpose of this notice is to allow the public an

additional 30 days to send comments to OMB on the information collection as described below.

DATES: Comments must be submitted on or before April 17, 2013.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to OMB, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility, the accuracy of the Department's estimate of the burden of the proposed information collection, 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, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Angela Dow by telephone at 202–366–1246, by fax at 202–366–4566, or by mail at U.S. Department of Transportation, PHMSA, 1200 New Jersey Avenue SE., PHP–30, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Title: Integrity Management in High Consequence Areas for Operators of Hazardous Liquid Pipelines.

OMB Control Number: 2137–0605.

Current Expiration Date: 05/31/2013.

Abstract: Hazardous liquid operators with pipelines located in or that could affect high consequence areas (i.e., commercially navigable waterways, high population areas, other populated areas, and unusually sensitive areas as defined in 49 CFR 195.450) are subject to certain information collection requirements relative to the Integrity Management Program provisions of 49 CFR 195.452.

Affected Public: All pipeline operators of hazardous liquid pipelines located in or that could affect high consequence areas.

Annual Reporting and Recordkeeping Burden:

Annual Responses: 203.

Annual Burden Hours: 325,470.

Frequency of collection: On occasion.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended, and 49 CFR 1.48.

Issued in Washington, DC, on March 12, 2013.

John A. Gale,

Director, Office of Standards and Rulemaking.

[FR Doc. 2013–06129 Filed 3–15–13; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Proposed Collection; Comment Request; Office of Financial Stability

AGENCY: Departmental Offices, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of Financial Stability, within the Department of Treasury, is soliciting comments concerning the Troubled Asset Relief Program—Making Home Affordable Participants.

DATES: Comments must be received on or before May 17, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to the Department of the Treasury, Departmental Offices, Office of Financial Stability, ATTN: Tracy Rogers, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (202) 927–8868.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to the Department of the Treasury, Departmental Offices, OFS, ATTN: Tracy Roger, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (202) 927–8868.

SUPPLEMENTARY INFORMATION:

Title: Troubled Asset Relief Program—Making Home Affordable Participants.

OMB Number: 1505–0216.

Abstract: Authorized under the Emergency Economic Stabilization Act (EESA) of 2008 (Public Law 110–343), the Department of the Treasury has implemented several aspects of the Troubled Asset Relief Program. Among these components is a voluntary foreclosure prevention program—Making Home Affordable (MHA) program, under which the Department uses TARP capital to lower the mortgage payments of qualifying borrowers. The Treasury does this through agreements with mortgage servicers (Servicer Participation Agreements, or SPAs) to modify loans on their systems. All servicers are eligible to participate in the program.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Individuals or Households.

Estimated Number of Annual Respondents: 130.

Estimated Number of Annual Responses per Respondent: 1,560.

Estimated hours per response: 8.

Estimated Total Annual Burden Hours: 12,480.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 13, 2013.

Dawn Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2013–06130 Filed 3–15–13; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2013–0003]

FEDERAL RESERVE SYSTEM

[Docket No. OP–1456]

FEDERAL DEPOSIT INSURANCE CORPORATION

Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Notice

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of

Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The OCC, Board, and FDIC (collectively, the Agencies) are proposing to clarify their Interagency Questions and Answers Regarding Community Reinvestment to address several community development issues. The Agencies propose to revise five questions and answers, which address (i) community development activities outside institutions' assessment areas, both in the broader statewide or regional area and in nationwide funds; (ii) additional ways to determine whether recipients of community services are low- or moderate-income; and (iii) providing a community development service by serving on the board of directors of a community development organization. The Agencies also propose to add two new questions and answers, one of which addresses the treatment of community development performance in determining an institution's lending test rating, and the other addresses the quantitative consideration given to a certain type of community development investment. Finally, the Agencies also propose to redesignate one question and answer without substantive change.

DATES: Comments on the proposed questions and answers must be received on or before May 17, 2013.

ADDRESSES: Comments should be directed to:

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Please use the title ''Community Reinvestment Act: Interagency Questions and Answers Regarding Community Reinvestment'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Mail Stop 9W–11, 400 7th Street SW., Washington, DC 20219.
- *Fax:* (571) 465–4326.
- *Hand Delivery/Courier:* 400 7th Street SW., Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2013–0003'' in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this notice by any of the following methods:

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. OP–1456 by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *FederaleRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- Fax: (202) 452–3819 or (202) 452–3102.
- *Mail:* Address to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in person in Room MP–500 of the Board's Martin Building (20th and C Streets NW., Washington, DC) between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC:

- *Mail:* Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.
- *Agency Web site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comment on the agency Web site.
- *Email:* You may also electronically mail comments to *comments@fdic.gov.*
- *Public Inspection:* Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1005, Arlington, Virginia 22226, between 9:00 a.m. and 4:00 p.m. (EST), Monday to Friday.

FOR FURTHER INFORMATION CONTACT:

OCC: Bobbie K. Kennedy, Bank Examiner, Compliance Policy Division, (202) 649–5470; or Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 649–6350, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

Board: Catherine M.J. Gates, Senior Project Manager, (202) 452–2099; or Theresa A. Stark, Senior Project Manager, (202) 452–2302, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

FDIC: Pamela A. Freeman, Senior Examination Specialist, Compliance & CRA Examinations Branch, Division of Depositor and Consumer Protection, (202) 898–3656; or Surya Sen, Section Chief, Supervisory Policy Branch, Division of Depositor and Consumer Protection, (202) 898–6699; or Richard M. Schwartz, Counsel, Legal Division, (202) 898–7424, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background

The OCC, Board, and FDIC implement the Community Reinvestment Act (CRA) (12 U.S.C. 2901 *et seq.*) through their CRA regulations. *See* 12 CFR parts 25, 195, 228, and 345. The Agencies' regulations are interpreted primarily through the ''Interagency Questions and Answers Regarding Community Reinvestment'' (Questions and Answers), which provide guidance for use by agency personnel, financial institutions, and the public. The

Questions and Answers were first published under the auspices of the Federal Financial Institutions Examination Council (FFIEC) in 1996 (61 FR 54647), and were last revised on March 11, 2010 (2010 Questions and Answers) (75 FR 11642).

The Questions and Answers are grouped by the provision of the CRA regulations that they discuss, are presented in the same order as the regulatory provisions, and employ an abbreviated method of citing to the regulations. For example, the small bank performance standards for national banks appear at 12 CFR 25.26; for savings associations, the small savings association performance standards appear at 12 CFR 195.26; for Federal Reserve System member banks supervised by the Board, they appear at 12 CFR 228.26; and for state nonmember banks, they appear at 12 CFR 345.26. Accordingly, the citation would be 12 CFR ____.26. Each question and answer (Q&A) is numbered using a system that consists of the regulatory citation and a number, connected by a dash. For example, the first Q&A addressing 12 CFR ____.26 would be identified as § ____.26–1.

In accordance with their statutory responsibilities, the Agencies regularly review examination policies, procedures, and guidance to better serve the goals of the CRA. To achieve these goals, the Agencies have reviewed various public comments, including comments received during public hearings held in 2010. A number of comments raised during this review related to community development. Accordingly, the Agencies have identified areas in the Questions and Answers regarding community development where clarification or additional guidance may be warranted to address and clarify some of the issues raised during this review.

The Agencies note that community development is an important component of community reinvestment. Community development activities are considered under the regulations' large institution, intermediate small institution, and wholesale and limited purpose institution performance tests. See 12 CFR §§ ____.22(b)(4), ____.23, ____.26(c), and ____.25, respectively. Small institutions may use community development activity to receive consideration toward an outstanding rating. Overall, community development has the effect of improving the circumstances for low- and moderate-income individuals, or of stabilizing and revitalizing the communities in which they live or work. In this proposal, the Agencies intend to address community development-related issues through the Questions and Answers guidance, the Agencies' usual procedure for addressing non-regulatory changes. This notice addressing several community development issues is intended to be the Agencies' first step to addressing substantive and significant issues raised by commenters. After the Agencies have considered comments received on this proposal, the Agencies plan to republish the amended Questions and Answers in final format. The Agencies also intend to revise their examination procedures to reflect the final guidance and to develop examiner training in order to promote consistent application of the guidance within and among the Agencies.

Summary of Comments Regarding Community Development

Industry and community organizations generally agree that community development activities are undervalued. Further, commenters, primarily those from community organizations, stated that the Agencies should evaluate the specifics and the outcomes of community development loans and investments to ensure that they provide value and impact to institutions' communities.

Commenters from both financial institutions and community organizations stated that the Agencies should provide further guidance on how an institution must ''adequately address the community development needs of an institution's assessment area(s)'' before out-of-assessment area activities are considered. As a related matter, commenters described situations in which too many institutions try to find scarce community development projects to fulfill their CRA obligations in some locations, while, in other locations, there are few or no institutions attempting to address community development needs. A number of commenters noted that nationwide funds could be an efficient means of addressing community development needs; however, commenters have suggested that the current methods of ''earmarking'' investments so that individual investors will be assured of CRA consideration in their assessment area(s) may deter some institutions from making investments in such funds.

Generally, commenters indicated they are satisfied with the types of activities that receive consideration as community development activities; however, some commenters believe that institutions' community development loans to, and investments in, certain types of entities should receive consideration regardless of the entity's location. Similarly, these commenters opined that any investment made in a nationwide fund that serves a national market should be given consideration. Other commenters oppose giving such consideration to regional or nationwide funds. For example, one commenter stated that regional funds would hurt smaller and more rural markets. Another commenter has expressed concern that favorable consideration for all banks invested in multi-regional funds would remove the focus from the banks' existing duty to properly serve the consumers in their assessment area(s).

The Agencies believe that the proposed revisions and additions to the Questions and Answers set forth in this **Federal Register** notice may help to address and clarify some of these issues concerning community development.

Proposed Revisions to Existing Q&As

I. Community Development Activities Outside an Institution's Assessment Area(s) in the Broader Statewide or Regional Area That Includes the Institution's Assessment Area(s)

Current Q&As § ____.12(h)–6 and § ____.12 (h)–7

The CRA regulations allow consideration of community development loans, qualified investments, and community development services that benefit an institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s). *See* 12 CFR ____.12(h)(ii), ____.23(a), and ____.24(b). Current Q&As § ____.12(h)–6 and § ____.12 (h)–7 were intended to assure financial institutions that community development loans and services and qualified investments in the broader statewide or regional area(s) that includes their assessment area(s) would be provided consideration in their CRA evaluations. However, based on comments from both financial institutions and community organizations, the Agencies believe that these two Q&As could benefit from additional clarification.

Current Q&A § ____.12(h)–6 addresses whether there must be an immediate or direct benefit to the institution's assessment area(s) to satisfy the regulations' requirement that qualified investments and community development loans or services benefit an institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s). The Q&A states that the answer is generally no. It continues by first addressing community development

activities that could benefit the institution's assessment area(s), because the purpose, mandate, or function of the organization or fund in which the institution is investing or to which it is providing loans or services includes serving an area that includes the institution's assessment area(s). Although the activities of the organization or fund may not always directly benefit the institution's assessment area(s), the Agencies believe that, at some point, the institution's assessment area(s) may receive some benefit. For this reason, community development loans and services and qualified investments to or in such community development projects, organizations, or entities will receive consideration. The current Q&A then addresses other community development activities that, although located in the broader statewide or regional area in which the institution's assessment area(s) is located, will benefit individuals or areas that are not within the institution's assessment area(s). The current Q&A specifically states that, if an institution has, ''considering its performance context,'' ''adequately addressed the community development needs of its assessment area(s),'' it will also receive consideration for those activities, even if those activities will not benefit the institution's assessment area(s).

Financial institution commenters, in particular, noted that it is unclear what is meant by ''adequately addressed the community development needs of its assessment area(s).'' Further, given the lack of clarity, both community organizations and financial institutions indicated that institutions have been unwilling to engage in community development activities without knowing with a degree of certainty that they will receive consideration for such activities in their CRA evaluations.

Commenters also noted that current Q&A § ____.12(h)–7, which addresses the meaning of the term ''regional area,'' is a source of confusion. In addition to explaining the term ''regional area,'' the Q&A states that ''[w]hen examiners evaluate community development loans and services and qualified investments that benefit a regional area that includes the institution's assessment area(s), they will consider the institution's performance context as well as the size of the regional area and the actual or potential benefit to the institution's assessment area(s). With larger regional areas, benefit to the institution's assessment area(s) may be diffused and, thus, less responsive to assessment area needs.''

Current Q&A § ____.12(h)–7 was intended to address the qualitative consideration that some community development activities would receive when examiners considered them, not the quantitative consideration that those activities would be afforded. However, the Agencies understand that some financial institutions may interpret the Q&A to mean that, if there was a diffuse or uncertain potential benefit to the institution's assessment area(s), the community development activity would not receive consideration (either qualitative or quantitative) in the institution's CRA evaluation. As a result, such financial institutions may have been hesitant to engage in community development activities outside their assessment area(s), even if the purpose, mandate, or function of the entity in which they were investing or to which they were lending or providing community development services included serving geographies or individuals located within the institution's assessment area(s). Financial institutions also may have been less likely to engage in those community development activities that would benefit geographies or individuals located somewhere within the broader statewide or regional area that includes the institution's assessment area(s) but that would not benefit its assessment area(s). According to both financial institution and community organization commenters, the confusion generated by Q&A § ____.12(h)–7 may have resulted in many financial institutions refusing to engage in community development activities unless they were certain that their assessment area(s) would benefit.

Given the potential uncertainty of institutions regarding whether community development activities benefiting areas or individuals in the broader statewide or regional area that includes their assessment area(s) would receive the same consideration as an activity directly benefiting the institutions' assessment area(s), they may not have engaged in those activities and worthwhile community development needs may have continued to be unmet. Commenters have stated, for example, that in cities where numerous major financial institutions have designated assessment areas, significant concentrations of community development loans and investments may occur, while in the broader statewide or regional area that includes these institutions' assessment areas, underinvestment in community development loans and investments occurs despite significant needs.

Proposed Revised Q&As § ____.12(h)–6 and § ____.12(h)–7

The Agencies propose to revise Q&As § ____.12(h)–6 and § ____.12(h)–7 to further clarify that community development activities in the broader statewide or regional area that includes an institution's assessment area(s) will be considered in the evaluation of an institution's CRA performance. The first paragraph of the answer in Q&A § ____.12(h)–6 would remain unchanged. Accordingly, the Agencies would reaffirm that an institution's activity will be considered a community development loan or service or a qualified investment if it supports an organization or activity that covers a statewide or regional area that is larger than, but includes, the institution's assessment area(s). The institution's assessment area(s) need not receive an immediate or direct benefit from the institution's participation in the organization or activity, provided that the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located within the institution's assessment area(s). The Agencies propose to revise the second paragraph of the answer in Q&A § ____.12(h)–6 to remove the phrase ''adequately addressed the community development needs of its assessment area(s).'' Instead, the Agencies propose to state that community development activities located in the broader statewide or regional area that includes an institution's assessment area(s) but that will not benefit those assessment area(s) ''must be performed in a safe and sound manner, consistent with the institution's capacity to oversee those activities and may not be conducted in lieu of, or to the detriment of, activities in the institution's assessment area(s). When evaluating whether community development activities are being conducted in lieu of, or to the detriment of, activities in the institution's assessment area(s), examiners will consider an institution's performance context, including the community development needs and opportunities in its assessment area(s), its business capacity and focus, and its past performance.''

Further, in Q&A § ____.12(h)–7, the Agencies propose to modify the current description of what is meant by the term ''regional area'' for additional clarity and flexibility. In addition, to prevent the misinterpretation described above, the Agencies propose to delete the rest of the Q&A, which currently states: ''When examiners evaluate community development loans and services and

qualified investments that benefit a regional area that includes the institution's assessment area(s), they will consider the institution's performance context as well as the size of the regional area and the actual or potential benefit to the institution's assessment area(s). With larger regional areas, benefit to the institution's assessment area(s) may be diffused and, thus, less responsive to assessment area needs.'' The Agencies believe this text is no longer necessary given the misinterpretation of the current language and the clarification that is being provided in proposed revised Q&A § ____.12(h)–6.

The text of proposed revised Q&As § ____.12(h)–6 and § ____.12(h)–7 follows:

§ ____.12(h)—6: *Must there be some immediate or direct benefit to the institution's assessment area(s) to satisfy the regulations' requirement that qualified investments and community development loans or services benefit an institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s)?*

A6. No. The regulations recognize that community development organizations and programs are efficient and effective ways for institutions to promote community development. These organizations and programs often operate on a statewide or even multistate basis. Therefore, an institution's activity is considered a community development loan or service or a qualified investment if it supports an organization or activity that covers an area that is larger than, but includes, the institution's assessment area(s). The institution's assessment area(s) need not receive an immediate or direct benefit from the institution's participation in the organization or activity, provided that the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located within the institution's assessment area(s).

In addition, a retail institution will receive consideration for certain other community development activities. These activities must benefit geographies or individuals located somewhere within a broader statewide or regional area that includes the institution's assessment area(s). Examiners will consider these activities even if they will not benefit the institution's assessment area(s). However, such community development activities must be performed in a safe and sound manner consistent with the institution's capacity to oversee those activities and may not be conducted in lieu of, or to the detriment of, activities in the institution's assessment area(s). When evaluating whether community development activities are being conducted in lieu of, or to the detriment of, activities in the institution's assessment area(s), examiners will consider an institution's performance context, including the community development needs and opportunities in its assessment area(s), its business capacity and focus, and its past performance.

§ ____.12(h)–7: *What is meant by the term, ''regional area''?*

A7. A ''regional area'' may be an intrastate area or a multistate area that includes the financial institution's assessment area(s). Regional areas typically have some geographic, demographic, and/or economic interdependencies and may conform to commonly accepted delineations, such as ''the tri-county area'' or the ''mid-Atlantic states.'' Regions are often defined by the geographic scope and specific purpose of a community development organization or initiative.

The Agencies solicit comments on all aspects of these proposed revised Q&As. In addition, the Agencies specifically request commenters' views on the following:

- Do the revised Q&As clearly convey the Agencies' intent that community development activities in the broader statewide or regional area that includes an institution's assessment area(s) will receive consideration?
- Will this clarification of consideration in the broader statewide or regional area that includes an institution's assessment area(s) provide an incentive for banks to increase their community development activities or expand their opportunities to engage in community development activities?
- Does ''community development activities being conducted in lieu of, or to the detriment of, activities in the institution's assessment area(s)'' raise the same uncertainty as ''adequately addressed the community development needs of its assessment area(s)''? If so, how can the Agencies better describe the concept that a financial institution cannot ignore legitimate and financially reasonable community development needs and opportunities in its assessment area(s) to engage in community development activities elsewhere in the broader statewide or regional area when those activities will not provide any benefit to its assessment area(s)?
- Does removal of the portion of current Q&A § ____.12(h)–7 that discussed a diffuse potential benefit to an institution's assessment area(s) alleviate the confusion between the two Q&As and help to clarify that community development activities in the broader statewide or regional area that includes an institution's assessment area(s) will receive consideration?
- Is the proposed definition of ''regional area'' sufficiently clear and appropriately flexible?

II. Investments in Nationwide Funds

Current Q&A § ____.23(a)–2

In 2007, the Agencies proposed a new Q&A § ____.23(a)–2 addressing consideration of institutions' investments in national or regional funds. See 72 FR 37922 (July 11, 2007). After considering the 33 comments received, the Agencies adopted a final Q&A in 2009 (2009 Q&A). See 74 FR 498 (Jan. 6, 2009). The 2009 Q&A addressed investments in nationwide funds; however, as originally proposed, the Q&A also would have addressed regional funds. This refinement to the 2009 Q&A was made to avoid overlap with Q&As § ____.12(h)–6 and § ____.12(h)–7, which address investments in statewide and regional funds.

The Agencies had noted that the investment test, at 12 CFR ____.23(a), evaluates an institution's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit an institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s). *See* 74 FR at 501. The Agencies further noted that investments in nationwide funds are subject to that standard. The 2009 Q&A advised that an institution may provide documentation from a nationwide fund to demonstrate the geographic benefit to its assessment area(s) or the broader statewide or regional area that includes its assessment area(s). Although the 2009 Q&A suggested types of documentation that could be provided, it also explained that the Agencies would accept any information provided by an institution that reasonably demonstrates that the purpose, mandate, or function of a nationwide fund includes serving geographies or individuals located within the institution's assessment area(s) or a broader statewide or regional area that includes its assessment area(s).

Since adopting the 2009 Q&A, the Agencies have received comments addressing nationwide funds. Some commenters have argued that there should be broad favorable consideration provided to any financial institution that invests in nationwide funds, while others have asserted that consideration

should not be provided for investments in nationwide funds because investments in such funds are not guaranteed to benefit local organizations. Although a number of commenters suggested that the focus should be on an institution's duty to serve consumers in its assessment area(s), some suggested that the Agencies should help regional and larger financial institutions make investments in multi-investor funds and encourage those institutions to invest in areas outside of their markets, especially in rural and underserved areas. In addition, some commenters advised that a retail financial institution should be able to receive consideration for qualified investments, regardless of their location, if the institution has adequately addressed the credit needs in its assessment area(s). Among these commenters, some suggested that a ''Satisfactory'' rating on the institution's previous examination would be indicative of adequately addressing credit needs in its assessment area(s); other commenters believed the standard should be more stringent—an ''Outstanding'' rating on the previous examination.

Several commenters recommended that the Agencies should simplify the documentation suggested in the Q&A for an institution to receive consideration for investments in nationwide funds. At least one commenter believed that the documentation suggestions in the current Q&A, such as side letters, create disincentives for financial institutions to participate in multi-investor funds. Several commenters suggested that investors should be attributed with a pro-rata share of the overall fund for CRA purposes because, legally, each investor owns a pro-rata share of each investment. They asserted that the advantage of a pro-rata share approach would be that several investors would be able to receive consideration for a project in a certain area. These commenters thought side letters artificially award investment projects to one investor, excluding other investors from consideration for those projects. Other commenters, however, were concerned about a pro-rata method for allocating shares of each project given the difficulty in determining whether an investing financial institution's investment addresses the geographic requirements in the regulations. Another commenter suggested that the only equitable method of distributing CRA consideration for multi-investor fund investments is to use the location of a fund's projects, but even this commenter was concerned that each financial institution should receive full consideration and full weighting of the entire amount of its investment. A different commenter proposed that, if a nationwide fund has at least one investment in the broader statewide or regional area that includes the investing financial institution's assessment area(s), the institution should receive full consideration for its investment in the fund.

The Agencies also received comments addressing assessment area issues that are relevant to the consideration of investments in nationwide funds. For example, commenters suggested that global and other large institutions that have relatively small assessment areas should be encouraged to invest in underserved areas and receive full CRA consideration for doing so. Other commenters focused on where a financial institution does business, particularly an institution with one or a few branches. Those commenters advocated that such financial institutions should provide CRA-type activities wherever they do business—not only in their assessment area(s). Commenters also suggested that the regulations' current approach to delineating assessment areas may create disincentives for financial institutions to provide financial services to low- or moderate-income communities and rural areas that are not part of their assessment area(s) due to their lack of a physical presence.

Proposed Revised Q&A § ____.23(a)–2

As discussed above, the Agencies believe that revisions to existing guidance can address some of the concerns raised in the context of investments in nationwide funds. Current Q&A § ____.23(a)–2 provides guidance about investments in nationwide funds in the context of the CRA regulations' scope of the investment test—that the Agencies evaluate an institution's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes its assessment area(s). *See* 12 CFR ____.23(a).

To address some of the commenters' concerns, the Agencies are proposing to revise Q&A § ____.23(a)–2. First, as in the 2009 Q&A, the proposed Q&A would state that there may be several ways to demonstrate that an institution's investment in a nationwide fund meets the geographic requirements and that the Agencies will employ flexibility when reviewing information provided by the institution. The proposed Q&A also would highlight that information about where a fund's investments are expected to be made or targeted usually will be found in the fund's prospectus, or other documents provided by the fund prior to or at the time of the institution's investment. To address some of the commenters' concerns about side letters and earmarking of projects, the proposed revised Q&A would no longer suggest that written documentation by the fund demonstrating earmarking, side letters, or pro-rata allocations may be provided at an institution's option. The Agencies believe that earmarking and side letters may be burdensome and may provide disincentives to investing financial institutions.

In addition, the Agencies believe that the current Q&A § ____.23(a)–2 places too much focus on quantitative measures tied to the assessment area that do not give sufficient recognition to the broader community development needs of the area or the business model of the financial institution making the investment. The proposed revised Q&A continues to recognize that nationwide funds are important sources of investments for low- and moderate-income and underserved communities throughout the country and can be an efficient vehicle for institutions in making qualified investments that help meet community development needs. In doing so, the proposed Q&A stresses that investments in nationwide funds may be suitable investment opportunities, particularly for large financial institutions with a nationwide branch footprint or for other financial institutions with a nationwide business focus, including wholesale or limited purpose institutions. Large institutions with a nationwide branch footprint typically have many assessment areas in many states; thus, investments in nationwide funds are likely to benefit such an institution's assessment area(s), or the broader statewide or regional area that includes its assessment area(s), and provide that institution with the opportunity to match its investments with the geographic scope of its business. Moreover, nationwide funds may be an effective means of engaging in community development activities for other financial institutions with a nationwide business focus, including wholesale or limited purpose institutions, which are evaluated under the community development test.

Further, the proposed revised Q&A states that other financial institutions may find such funds to be efficient investment vehicles to help meet community development needs in their assessment area(s) or the broader statewide or regional area that includes

their assessment area(s). However, as the proposed revised Q&A notes, these other institutions in particular should consider reviewing the fund's investment record to see if it is generally consistent with the institution's investment goals and the geographic considerations in the regulations.

Finally, the proposed Q&A advises that any investments in nationwide funds must be performed in a safe and sound manner, consistent with an institution's capacity to oversee those activities, and may not be conducted in lieu of, or to the detriment of, activities in the institution's assessment area(s). When evaluating whether community development activities are being conducted in lieu of, or to the detriment of, activities in the institution's assessment area(s), examiners will consider an institution's performance context, including the community development needs and opportunities in its assessment area(s), its business capacity and focus, and its past performance. Thus, the performance context of a particular institution is very important when determining whether investments in nationwide funds are appropriate.

The text of the proposed revised Q&A § ____.23(a)–2 follows:

§ ____.23(a)–2: *In order to receive CRA consideration, what information may an institution provide that would demonstrate that an investment in a nationwide fund with a primary purpose of community development will directly or indirectly benefit one or more of the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s)?*

A2. There may be several ways to demonstrate that the institution's investment in a nationwide fund meets the geographic requirements, and the agencies will employ appropriate flexibility in this regard in reviewing information the institution provides that reasonably supports this determination.

In making this determination, the agencies will consider any information provided by a financial institution that reasonably demonstrates that the purpose, mandate, or function of the fund includes serving geographies or individuals located within the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s). Typically, information about where a fund's investments are expected to be made or targeted will be found in the fund's prospectus, or other documents provided by the fund prior to or at the time of the institution's investment, and the institution, at its option, may provide such documentation in connection with its CRA evaluation.

Nationwide funds are important sources of investments for low- and moderate-income and underserved communities throughout the country and can be an efficient vehicle for institutions in making qualified investments that help meet community development needs. Nationwide funds may be suitable investment opportunities, particularly for large financial institutions with a nationwide branch footprint or for other financial institutions with a nationwide business focus, including wholesale or limited purpose institutions. Other financial institutions may find such funds to be efficient investment vehicles to help meet community development needs in their assessment area(s) or the broader statewide or regional area that includes their assessment area(s). Prior to investing in such a fund, an institution should consider reviewing the fund's investment record to see if it is generally consistent with the institution's investment goals and the geographic considerations in the regulations. Any investments in nationwide funds must be performed in a safe and sound manner, consistent with an institution's capacity to oversee those activities, and may not be conducted in lieu of, or to the detriment of, activities in the institution's assessment area(s). When evaluating whether community development activities are being conducted in lieu of, or to the detriment of, activities in the institution's assessment area(s), examiners will consider an institution's performance context, including the community development needs and opportunities in its assessment area(s), its business capacity and focus, and its past performance. *See also* Q&As § ____.12(h)–6 and § ____12(h)–7 (additional information about recognition of investments benefiting an area outside an institution's assessment area(s).)

The Agencies intend for this proposed revised Q&A to apply only to nationwide funds. Institutions that are considering investments in statewide or regional funds would continue to rely on Q&As § ____.12(h)–6 and § ____.12(h)–7.

The Agencies solicit comments on all aspects of this proposed revised Q&A. In addition, the Agencies specifically request commenters' views on the following:

- Would the proposed revised Q&A assist institutions that deliver products on a nationwide basis to address community needs in areas where they provide products and services?
- When might nationwide funds be appropriate investments for regional or smaller institutions?
- Some commenters indicated that current methods of ''earmarking'' investments, including through the use of side letters, are burdensome. Are such methods, in fact, burdensome and, if so, in what way?
- If the proposed revised Q&A is adopted, how should investments in nationwide funds be considered in an investing institution's CRA evaluation? Should there be a special category for investments in nationwide funds? How would such a category affect the amounts of an institution's investments at the assessment area and/or statewide levels?
- Alternatively, should investments in nationwide funds be attributed to particular states or assessment areas? If so, how can that be done in a meaningful manner, particularly if there is no earmarking by the fund?
- If nationwide fund investments are attributed to particular states or assessment areas, how can the Agencies avoid double counting the same funds in the same assessment areas in different institutions' evaluations?

III. Community Services Targeted to Low- or Moderate-Income Individuals

One prong of the definition of ''community development'' is providing community services targeted to low- or moderate-income individuals. *See* 12 CFR § ____.12(g)(2). Current Q&A § ____.12(g)(2)–1 provides guidance on ways that financial institutions may determine that community services are being provided to low- or moderate-income individuals.

Commenters have noted two common situations in which institutions may provide community services to low- or moderate-income people: (1) At schools with a majority of students who receive free or reduced-price meals, and (2) to individuals who receive or are eligible to receive Medicaid. However, the commenters stated that it is not clear whether the Agencies deem such community services as being provided to low- or moderate-income individuals without additional income information about the recipients of such services being provided by the financial institution.

Financial institutions often provide funding for organizations that provide community services to students and their families through schools at which the majority of students qualify for free or reduced-price meals under the U.S. Department of Agriculture's (USDA)

National School Lunch Program. The USDA's eligibility guidelines for free and reduced-price meals are based on the Federal income poverty guidelines and are stated by household size. The CRA regulations, on the other hand, define income based on the area median family income, based on a family of four individuals. In short, the USDA's eligibility guidelines are based on nationwide incomes, while the CRA regulations focus on local incomes. However, an analysis of USDA eligible incomes, based on an average household size of four, against the vast majority of the area median incomes of the Metropolitan Statistical Areas (MSAs) and non-MSA areas in the United States shows that the USDA-eligible incomes generally are less than or very similar to the median family incomes that would be considered low or moderate for an MSA or a non-MSA portion of a state.

Therefore, the Agencies propose to revise Q&A § ____.12(g)(2)–1 to add that, if a community service is provided to students or their families from a school where the majority of students qualify for free or reduced-price meals under the USDA's National School Lunch Program, the community service would be deemed to be provided to low- or moderate-income individuals.

Commenters also noted that the receipt of Medicaid should be an indicator that the recipient is low- or moderate-income for purposes of the CRA regulations. Medicaid is generally available only to individuals with limited income and assets. Although each state determines its own financial criteria for Medicaid recipients, the income criteria generally are based on the state poverty level. Thus, as with the income thresholds used to determine a student's eligibility for free or reduced-price meals, the income criteria for Medicaid are not based on area median income being less than 50 percent or less than 80 percent, respectively, for low- or moderate-income individuals, as defined in the CRA regulations at 12 CFR ____.12(m). As described more fully above, however, the state poverty levels used to determine Medicaid eligibility are, in most cases, less than or similar to the income levels considered low- or moderate-income under the CRA regulations. As a result, the Agencies believe eligibility for Medicaid should be considered as an example of a way that a financial institution may determine that community services are being targeted to low- or moderate-income individuals. Accordingly, the Agencies propose to revise Q&A § ____.12(g)(2)–1 to add targeting of a community service to individuals who receive or are eligible to receive Medicaid as another example of how a financial institution could determine that community services are targeted to low- or moderate-income persons.

The text of proposed revised Q&A § ____.12(g)(2)–1 follows:

§ ____.12(g)(2)–1: *Community development includes community services targeted to low- or moderate-income individuals. What are examples of ways that an institution could determine that community services are offered to low- or moderate-income individuals?*

A1: Examples of ways in which an institution could determine that community services are targeted to low- or moderate-income persons include:

- The community service is targeted to the clients of a nonprofit organization that has a defined mission of serving low- and moderate-income persons, or, because of government grants, for example, is limited to offering services only to low- or moderate-income persons.
- The community service is offered by a nonprofit organization that is located in and serves a low- or moderate-income geography.
- The community service is conducted in a low- or moderate-income area and targeted to the residents of the area.
- The community service is a clearly defined program that benefits primarily low- or moderate-income persons, even if it is provided by an entity that offers other programs that serve individuals of all income levels.
- The community service is offered at a workplace to workers who are low- and moderate-income, based on readily available data for the average wage for workers in that particular occupation or industry (see, e.g., *http://www.bls.gov/bls/blswage.htm* (Bureau of Labor Statistics)).
- The community service is provided to students or their families from a school at which the majority of students qualify for free or reduced-price meals under the U.S. Department of Agriculture's National School Lunch Program.
- The community service is targeted to individuals who receive or are eligible to receive Medicaid.

The Agencies solicit comments on all aspects of this proposed revised Q&A. In addition, the Agencies specifically request commenters' views on the following:

- Will the use of eligibility for free and reduced-price meals and Medicaid effectively identify individuals who are low- or moderate-income?
- Will the use of these proxies reduce the burden on financial institutions and community organizations to obtain actual income and, thus, promote the provision of community development services?
- Are there other commonly used proxies for low- or moderate-income that should be specifically included in the Q&A?

IV. Service on the Board of Directors of an Organization Engaged in Community Development Activities

Current Q&A § ____.12(i)–3 states that providing technical assistance to organizations that engage in community development activities (as defined by the regulation) is considered a community development service. Some commenters stated that they were uncertain whether service on the board of directors of a community development organization would receive consideration as a community development service, or if such service would receive consideration only under certain circumstances, for example, if the board member also serves on a loan review committee or otherwise provides specialized financial services.

The Agencies have previously stated that ''service on the board of directors of an organization that promotes credit availability or affordable housing'' meets the criterion that a community development service must be related to the provision of financial services. *See* Joint Final Rule, 60 FR 22156, 22160 (May 4, 1995). Service by financial institution personnel on the board of directors of an organization engaged in community development activities should consistently receive consideration as a community development service. To further clarify this point, the Agencies propose to modify current Q&A § ____.12(i)–3 to include service on the board of directors as an explicit example of a technical assistance activity that can be provided to community development organizations and that would receive consideration as a community development service.

The text of proposed revised Q&A § ____.12(i)–3 follows:

§ ____.12(i)–3: *What are examples of community development services?*

A3. Examples of community development services include, but are not limited to, the following:

- Providing financial services to low- and moderate-income individuals through branches and other facilities located in low- and moderate-income areas, unless the provision of such services has been considered in the evaluation of an institution's retail

banking services under 12 CFR ____.24(d);

• Increasing access to financial services by opening or maintaining branches or other facilities that help to revitalize or stabilize a low- or moderate-income geography, a designated disaster area, or a distressed or underserved nonmetropolitan middle-income geography, unless the opening or maintaining of such branches or other facilities has been considered in the evaluation of the institution's retail banking services under 12 CFR ____.24(d);

• Providing technical assistance on financial matters to nonprofit, tribal, or government organizations serving low- and moderate-income housing or economic revitalization and development needs;

• Providing technical assistance on financial matters to small businesses or community development organizations, including organizations and individuals who apply for loans or grants under the Federal Home Loan Banks' Affordable Housing Program;

• Lending employees to provide financial services for organizations facilitating affordable housing construction and rehabilitation or development of affordable housing;

• Providing credit counseling, home-buyer and home-maintenance counseling, financial planning, or other financial services education to promote community development and affordable housing, including credit counseling to assist low- or moderate-income borrowers in avoiding foreclosure on their homes;

• Establishing school savings programs or developing or teaching financial education or literacy curricula for low- or moderate-income individuals;

• Providing electronic benefits transfer and point of sale terminal systems to improve access to financial services, such as by decreasing costs, for low- or moderate-income individuals;

• Providing international remittance services that increase access to financial services by low- and moderate-income persons (for example, by offering reasonably priced international remittance services in connection with a low-cost account);

• Providing other financial services with the primary purpose of community development, such as low-cost savings or checking accounts, including ''Electronic Transfer Accounts'' provided pursuant to the Debt Collection Improvement Act of 1996, individual development accounts (IDAs), or free or low-cost government, payroll, or other check cashing services, that increase access to financial services for low- or moderate-income individuals; and

• Providing foreclosure prevention programs to low- or moderate-income homeowners who are facing foreclosure on their primary residence with the objective of providing affordable, sustainable, long-term loan modifications and restructurings.

Examples of technical assistance activities that might be provided to community development organizations include:

• Serving on the board of directors;

• Serving on a loan review committee;

• Developing loan application and underwriting standards;

• Developing loan-processing systems;

• Developing secondary market vehicles or programs;

• Assisting in marketing financial services, including development of advertising and promotions, publications, workshops and conferences;

• Furnishing financial services training for staff and management;

• Contributing accounting/bookkeeping services; and

• Assisting in fund raising, including soliciting or arranging investments.

The Agencies request comment on whether there are other activities that should also be included in this Q&A as explicit examples of community development services.

Proposed New Questions and Answers

I. Qualified Investments

As noted above, several commenters asserted that CRA evaluations should consider the impact of community development loans and services and qualified investments on an institution's performance ratings. The Agencies believe that the qualitative performance criteria considered in CRA evaluations address the responsiveness to community needs. Further, Q&A § ____.23(e)–1 explains how the qualitative factors are considered when evaluating an institution's qualified investments. However, the Agencies are proposing a new Q&A § ____.12(t)–9 to address the quantitative consideration that should be provided for a particular type of investment or loan so that the amount of consideration is consistent with the amount of support provided to the activity or entity with a community development purpose.

The Agencies have become aware of investment or loan opportunities whereby a financial institution invests in or lends to an organization and then the organization invests the funds in an instrument, such as a Treasury security, which does not have a community development purpose, and uses only the income (or a portion thereof) from the investment to support the organization's community development purpose. At the end of the investment or loan term, the institution's investment or loan amount and, in some cases, a portion of the income from the instrument, are returned to the institution.

Although the financial institution has invested or loaned a comparatively large amount to the organization, only the much smaller amount of income from the organization's investment is used to support the organization's community development purpose. The Agencies believe it is inappropriate to consider the entire amount of such investments and loans as qualified investments or community development loans, particularly when they are compared with investments or loans to other organizations for which the entire amount of those investments or loans are used to support the organizations' community development purpose. To address this concern, the Agencies are proposing new Q&A § ____.12(t)–9, which would provide guidance to examiners about the amount of quantitative consideration to provide for these types of investments or loans.

The proposed new Q&A follows:

§ ____.12(t)–9: *How do examiners evaluate loans or investments to organizations that, in turn, invest in instruments that do not have a community development purpose, and use only the income, or a portion of the income, from those investments to support their community development purpose?*

A9. Examiners will give quantitative consideration for the dollar amount of funds that benefit an organization or activity that has a primary purpose of community development. If an institution invests in (or lends to) an organization that, in turn, invests those funds in instruments that do not have as their primary purpose community development, such as Treasury securities, and uses only the income, or a portion of the income, from those investments to support the organization's community development purposes, the Agencies will consider only the amount of the investment income used to benefit the organization or activity that has a community development purpose for CRA purposes.

The Agencies solicit comments on this proposed new Q&A generally, but in particular, would like comments addressing the following:

• Is the proposed new Q&A sufficiently clear?

• Will the proposed Q&A encourage or discourage investments or loans in organizations with a community development mission?

• Does the proposed Q&A provide the flexibility necessary to encourage community development activities, whether direct, indirect, or through the provision of capital investments, in connection with an organization with a primary purpose of community development?

II. Community Development Lending in the Lending Test Applicable to Large Institutions

As discussed above, a number of commenters asserted that community development activities are undervalued. More specifically, several commenters stated that insufficient weight is given to community development loans in the CRA examination. To address this concern, the Agencies propose new Q&A § ____.22(b)(4)–2 to clarify that community development lending performance is always a factor that is considered in an institution's lending test rating.

The lending test applicable to large financial institutions consists of five performance criteria: (i) Lending activity, (ii) geographic distribution, (iii) borrower characteristics, (iv) community development lending, and (v) innovative or flexible lending practices. *See* 12 CFR ____.22(b). The interagency examination procedures and the examination practices of the Agencies currently address how lending activity, geographic distribution, borrower characteristics, and innovative or flexible lending practices are considered. However, the practices at the three Agencies have not always been consistent with regard to community development lending.

In 2000, the OCC adopted its internal guidance to examiners, ''Large Bank CRA Examiner Guidance.'' Although this guidance provided direction to OCC examiners about how to conduct a large bank CRA evaluation, the document also was made publicly available. *See* OCC Bulletin 2000–35 (Dec. 29, 2000). This guidance explains that community development lending performance may have only a positive or neutral impact on overall lending test conclusions.

On the other hand, both the FDIC and the Board consider community development lending performance in all instances. Examiners provide a conclusion regarding an institution's community development lending performance when that performance has a positive, neutral, or negative impact on the lending test rating.

The Agencies are proposing new Q&A § ____.22(b)(4)–2 to address this inconsistency among the Agencies and to address commenters' concerns that community development lending is undervalued. The proposed Q&A clarifies that an institution's record of making community development loans may have a positive, neutral, or negative impact on the institution's lending test rating. The Agencies would consider the institution's community development lending performance in the context of the institution's business model, the needs of its community, and the availability of community development opportunities in its assessment area(s) or the broader statewide or regional area(s) that includes the assessment area(s) (i.e., the institution's performance context). Further, strong performance in retail lending may compensate for weak performance in community development lending, and conversely, strong community development lending may compensate for weak retail lending performance.

The text of proposed new Q&A § ____.22(b)(4)–2 follows:

§ ____.22(b)(4)–2: *How do examiners consider community development loans in the evaluation of an institution's record of lending under the lending test applicable to large institutions?*

A2. An institution's record of making community development loans may have a positive, neutral, or negative impact on the lending test rating. Community development lending is one of five performance criteria in the lending test criteria and, as such, it is considered at every examination. As with all lending test criteria, examiners evaluate an institution's record of making community development loans in the context of an institution's business model, the needs of its community, and the availability of community development opportunities in its assessment area(s) or the broader statewide or regional area(s) that includes the assessment area(s). For example, in some cases community development lending could have either a neutral or negative impact when the volume and number of community development loans are not adequate, depending on the performance context, while in other cases, it would have a positive impact when the institution is a leader in community development lending. Additionally, strong performance in retail lending may compensate for weak performance in community development lending, and conversely, strong community development lending may compensate for weak retail lending performance.

The Agencies solicit comments on this proposed new Q&A. In particular, comment is requested on the following:

• Does the proposed Q&A recognize the appropriate value of community development lending, while allowing flexibility based on performance context consideration?

• Will this proposed Q&A help to promote additional community development lending?

• Does this proposed Q&A appropriately clarify the consideration given to community development lending as one of the five performance criteria under the lending test?

• Does this proposed Q&A raise any issues that the Agencies will need to address with revised ratings guidance? If so, what are they and how should they be addressed?

Redesignation of Existing Question and Answer Without Substantive Change

Activities With Minority- and Women-Owned Financial Institutions and Low-Income Credit Unions

In 2010, the Agencies first adopted implementing regulations for section 804(b) of the CRA. *See* 75 FR 61035 (Oct. 4, 2010). Section 804(b) of the CRA provides that the Agencies may consider capital investment, loan participation, and other ventures undertaken by the institution in cooperation with minority- and women-owned financial institutions and low-income credit unions as a factor when assessing the CRA record of nonminority- and nonwomen-owned financial institutions (''majority-owned institutions''). The regulatory section implementing section 804(b) of the CRA is found at 12 CFR ____.21(f).

Prior to adoption of implementing regulations in 12 CFR ____.21(f), the Agencies had adopted a related Q&A § ____.12(g)–4. *See* 74 FR 498 (Jan. 6, 2009). This Q&A explains that activities with minority- and women-owned financial institutions and low-income credit unions do not have to benefit the majority-owned financial institution's assessment area(s); however, such activities must help meet the credit needs of the local communities in which the minority- or women-owned financial institutions or low-income credit unions are chartered. The Q&A also provided examples of activities undertaken by a majority-owned financial institution in cooperation with minority- or women-owned financial institutions or low-income credit unions that would receive CRA consideration.

Because the new regulatory section addressing this topic is 12 CFR

____.21(f), the Agencies are proposing to redesignate current Q&A § ____.12(g)–4 as Q&A § ____.21(f)–1. The text of the Q&A would remain unchanged.

The text of redesignated Q&A § ____.21(f)–1 follows:

§ ____.21(f)–1: *The CRA provides that, in assessing the CRA performance of non-minority- and non-women-owned (majority-owned) financial institutions, examiners may consider as a factor capital investments, loan participations, and other ventures undertaken by the institutions in cooperation with minority- or women-owned financial institutions and low-income credit unions (MWLIs), provided that these activities help meet the credit needs of local communities in which the MWLIs are chartered. Must such activities also benefit the majority-owned financial institution's assessment area(s)?*

A1. No. Although the regulations generally provide that an institution's CRA activities will be evaluated for the extent to which they benefit the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s), the Agencies apply a broader geographic criterion when evaluating capital investments, loan participations, and other ventures undertaken by that institution in cooperation with MWLIs, as provided by the CRA. Thus, such activities will be favorably considered in the CRA performance evaluation of the institution (as loans, investments, or services, as appropriate), even if the MWLIs are not located in, or such activities do not benefit, the assessment area(s) of the majority-owned institution or the broader statewide or regional area that includes its assessment area(s). The activities must, however, help meet the credit needs of the local communities in which the MWLIs are chartered. The impact of a majority-owned institution's activities in cooperation with MWLIs on the majority-owned institution's CRA rating will be determined in conjunction with its overall performance in its assessment area(s).

Examples of activities undertaken by a majority-owned financial institution in cooperation with MWLIs that would receive CRA consideration may include:

- Making a deposit or capital investment;
- Purchasing a participation in a loan;
- Loaning an officer or providing other technical expertise to assist an MWLI in improving its lending policies and practices;
- Providing financial support to enable an MWLI to partner with schools or universities to offer financial literacy education to members of its local community; or
- Providing free or discounted data processing systems, or office facilities to aid an MWLI in serving its customers.

General Comments

The Agencies invite comments on any aspect of this proposal. The Agencies particularly would like comments on those issues specifically noted in this supplementary information section.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (PRA), the Agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The proposed revisions to the Questions and Answers would not involve any new collections of information pursuant to the PRA (44 U.S.C. 3501 *et seq.*). Consequently, no information will be submitted to OMB for review.

Solicitation of Comments Regarding the Use of ''Plain Language''

Section 722 of the Gramm-Leach-Bliley Act of 1999, 12 U.S.C. 4809, requires the Agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. Although this guidance is not a proposed or final rule, comments are nevertheless invited on whether the proposed revised interagency questions and answers are stated clearly, and how the guidance might be revised to make it easier to read.

Dated: March 8, 2013.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, March 12, 2013.

Robert deV. Frierson,

Secretary of the Board.

Dated at Washington, DC, this 7th day of March 2013.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013–06075 Filed 3–15–13; 8:45 am]

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