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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 25 and 195

[Docket ID OCC–2013–0024]

RIN 1557–AD77

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Regulation BB; Docket No. R–1475]

RIN 7100–AE07

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AD90

Community Reinvestment Act Regulations

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint final rule; technical amendment.

SUMMARY: The OCC, the Board, and the FDIC (collectively, the Agencies) are amending their Community Reinvestment Act (CRA) regulations to adjust the asset-size thresholds used to define ''small bank'' or ''small savings association'' and ''intermediate small bank'' or ''intermediate small savings association.'' As required by the CRA regulations, the adjustment to the threshold amount is based on the annual percentage change in the Consumer Price Index.

DATES: Effective January 1, 2014.

FOR FURTHER INFORMATION CONTACT:

OCC: Margaret Hesse, Senior Counsel, Community and Consumer Law Division, (202) 649–6350; Melissa J. Lisenbee, Law Clerk, Legislative and Regulatory Activities Division, (202) 649–5490; or Bobbie K. Kennedy, Bank Examiner, Compliance Policy Division, (202) 649–5470, 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 Nikita Pastor, Counsel, (202) 452–3667, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

FDIC: Patience R. Singleton, Senior Policy Analyst, Supervisory Policy Branch, Division of Depositor and Consumer Protection, (202) 898–6958; or Richard M. Schwartz, Counsel, Legal Division, (202) 898–7424, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background and Description of the Joint Final Rule

The Agencies' CRA regulations establish CRA performance standards for small and intermediate small banks and savings associations. The regulations define small and intermediate small banks and savings associations by reference to asset-size criteria expressed in dollar amounts, and they further require the Agencies to publish annual adjustments to these dollar figures based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW), not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million. 12 CFR 25.12(u)(2), 195.12(u)(2), 228.12(u)(2), and 345.12(u)(2). This adjustment formula was first adopted for CRA purposes by the OCC, Board, and FDIC on August 2, 2005, effective September 1, 2005. 70 FR 44256 (Aug. 2, 2005). As explained in the **SUPPLEMENTARY INFORMATION** section of these agencies' proposed rule, this particular index is used in other federal lending regulations such as the Home Mortgage Disclosure Act (HMDA). 70 FR 12148 (Mar. 11, 2005). *See* 12 U.S.C. 2808; 12 CFR 203.2(e)(1). On March 22, 2007, and effective July 1, 2007, the former Office of Thrift Supervision (OTS), the agency then responsible for regulating savings associations, adopted an annual adjustment formula consistent with that of the other federal banking agencies in its CRA rule previously set forth at 12 CFR 563e. 72 FR 13429 (Mar. 22, 2007). Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[1] and effective July 21, 2011, CRA rulemaking authority for federal and state savings associations was transferred from the OTS to the OCC, and the OCC subsequently republished, at 12 CFR 195, the CRA regulations applicable to those institutions.[2] In addition, the Dodd-Frank Act transferred responsibility for supervision of savings and loan holding companies and their non-depository subsidiaries from the OTS to the Board, and the Board subsequently amended its CRA regulation to reflect this transfer of supervision authority.[3]

The threshold for small banks and small savings associations was revised most recently effective January 1, 2013 (77 FR 75521 (Dec. 21, 2012)). The CRA regulations, effective January 1, 2013, provided that banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than $1.186 billion are small banks or small savings associations. Small banks and small savings associations with assets of at least $296 million as of December 31 of both of the prior two calendar years and less than $1.186 billion as of December 31 of either of the prior two calendar years are intermediate small banks or intermediate small savings associations. 12 CFR 25.12(u)(1), 195.12(u)(1), 228.12(u)(1), and 345.12(u)(1). This joint final rule further revises these thresholds.

During the period ending November 2013, the CPIW increased by 1.39 percent. As a result, the Agencies are revising 12 CFR 25.12(u)(1), 195.12(u)(1), 228.12(u)(1), and 345.12(u)(1) to make this annual adjustment. Beginning January 1, 2014, banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than $1.202 billion are small banks or small

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

[2] *See* OCC interim final rule, 76 FR 48950 (Aug. 9, 2011).

[3] *See* Board interim final rule, 76 FR 56508 (Sept. 13, 2011).

savings associations. Small banks and small savings associations with assets of at least $300 million as of December 31 of both of the prior two calendar years and less than $1.202 billion as of December 31 of either of the prior two calendar years are intermediate small banks or intermediate small savings associations. The Agencies also publish current and historical asset-size thresholds on the Web site of the Federal Financial Institutions Examination Council at *http://www.ffiec.gov/cra/*.

Administrative Procedure Act and Effective Date

Under 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA), an agency may, for good cause, find (and incorporate the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

The amendments to the regulations to adjust the asset-size thresholds for small and intermediate small banks and savings associations result from the application of a formula established by a provision in the respective CRA regulations that the Agencies previously published for comment. *See* 70 FR 12148 (Mar. 11, 2005), 70 FR 44256 (Aug. 2, 2005), 71 FR 67826 (Nov. 24, 2006), and 72 FR 13429 (Mar. 22, 2007). Sections 25.12(u)(1), 195.12(u)(1), 228.12(u)(1), and 345.12(u)(1) are amended by adjusting the asset-size thresholds as provided for in §§ 25.12(u)(2), 195.12(u)(2), 228.12(u)(2), and 345.12(u)(2).

Accordingly, since the Agencies' rules provide no discretion as to the computation or timing of the revisions to the asset-size criteria, the Agencies have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary.

The effective date of this joint final rule is January 1, 2014. Under 5 U.S.C. 553(d)(3) of the APA, the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except, among other things, as provided by the agency for good cause found and published with the rule. Because this rule adjusts asset-size thresholds consistent with the procedural requirements of the CRA rules, the Agencies conclude that it is not substantive within the meaning of the APA's delayed effective date provision. Moreover, the Agencies find that there is good cause for dispensing with the delayed effective date requirement, even if it applied, because their current rules already provide notice that the small and intermediate small asset-size thresholds will be adjusted as of December 31 based on twelve-month data as of the end of November each year.

Regulatory Flexibility Act

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

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320), the Agencies reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires the OCC to prepare a budgetary impact statement before promulgating any final rule for which a general notice of proposed rulemaking was published. As discussed above, the OCC has determined that the publication of a general notice of proposed rulemaking is unnecessary. Accordingly, this joint final rule is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 195

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 228

Banks, banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 345

Banks, banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

For the reasons discussed in the preamble, 12 CFR parts 25 and 195 are amended as follows:

PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), 1835a, 2901 through 2908, and 3101 through 3111.

■ 2. In § 25.12, revise paragraph (u)(1) to read as follows:

§ 25.12 Definitions.

* * * * *

(u) *Small bank*—(1) *Definition. Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.202 billion. *Intermediate small bank* means a small bank with assets of at least $300 million as of December 31 of both of the prior two calendar years and less than $1.202 billion as of December 31 of either of the prior two calendar years.

* * * * *

PART 195—COMMUNITY REINVESTMENT

■ 3. The authority citation for part 195 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1814, 1816, 1828(c), 2901 through 2908, and 5412(b)(2)(B).

■ 4. In § 195.12, revise paragraph (u)(1) to read as follows:

§ 195.12 Definitions.

* * * * *

(u) *Small savings association*—(1) *Definition. Small savings association* means a savings association that, as of December 31 of either of the prior two calendar years, had assets of less than $1.202 billion. *Intermediate small savings association* means a small savings association with assets of at least $300 million as of December 31 of both of the prior two calendar years and less than $1.202 billion as of December 31 of either of the prior two calendar years.

* * * * *

Federal Reserve System

12 CFR Chapter II

For the reasons set forth in the preamble, the Board of Governors of the Federal Reserve System amends part 228 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

■ 5. The authority citation for part 228 continues to read as follows:

Authority: 12 U.S.C. 321, 325, 1828(c), 1842, 1843, 1844, and 2901 *et seq.*

■ 6. In § 228.12, revise paragraph (u)(1) to read as follows:

§ 228.12 Definitions.

* * * * *

(u) *Small bank*—(1) *Definition. Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.202 billion. *Intermediate small bank* means a small bank with assets of at least $300 million as of December 31 of both of the prior two calendar years and less than $1.202 billion as of December 31 of either of the prior two calendar years.

* * * * *

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends part 345 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 345—COMMUNITY REINVESTMENT

■ 7. The authority citation for part 345 continues to read as follows:

Authority: 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u and 2901–2908, 3103–3104, and 3108(a).

■ 8. In § 345.12, revise paragraph (u)(1) to read as follows:

§ 345.12 Definitions.

* * * * *

(u) *Small bank*—(1) *Definition. Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.202 billion. *Intermediate small bank* means a small bank with assets of at least $300 million as of December 31 of both of the prior two calendar years and less than $1.202 billion as of December 31 of either of the prior two calendar years.

* * * * *

Dated: December 18, 2013.

Amy S. Friend,

Senior Deputy Comptroller and Chief Counsel.

By order of the Board of Governors of the Federal Reserve System, under delegated authority, December 19, 2013.

Robert deV. Frierson,

Secretary of the Board.

By order of the Board of Directors.

Dated at Washington, DC, this 19th day of December, 2013.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013–30960 Filed 12–27–13; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1003

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

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official commentary.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is publishing a final rule amending the official commentary that interprets the requirements of the Bureau's Regulation C (Home Mortgage Disclosure) to reflect a change in the asset-size exemption threshold for banks, savings associations, and credit unions based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). The exemption threshold is adjusted to increase to $43 million from $42 million. The adjustment is based on the 1.4 percent increase in the average of the CPI–W for the 12-month period ending in November 2013. Therefore, banks, savings associations, and credit unions with assets of $43 million or less as of December 31, 2013, are exempt from collecting data in 2014.

DATES: This final rule is effective January 1, 2014.

FOR FURTHER INFORMATION CONTACT: David Friend, Counsel, Office of Regulations, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552 at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

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

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

The definition of ''financial institution'' in Regulation C provides that the Bureau will adjust the asset threshold based on the year-to-year change in the average of the CPI–W, not seasonally adjusted, for each 12-month period ending in November, rounded to the nearest million. 12 CFR 1003.2. For 2013, the threshold was $42 million. During the 12-month period ending in November 2013, the CPI–W increased by 1.4 percent. As a result, the exemption threshold is increased to $43 million. Thus, banks, savings associations, and credit unions with assets of $43 million or less as of December 31, 2013, are exempt from collecting data in 2014. An institution's exemption from collecting data in 2014 does not affect its responsibility to report data it was required to collect in 2013.

II. Procedural Requirements

Administrative Procedure Act

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

For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary and the amendment is adopted in final form.

Section 553(d) of the APA generally requires publication of a final rule not less than 30 days before its effective date, except for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule. 5 U.S.C. 553(d). At a minimum, the Bureau believes the amendments fall under the third exception to section 553(d). The Bureau finds that there is good cause to make the amendments effective on January 1, 2014. The amendment in this notice is technical and non-discretionary, and it applies the method previously established in the agency's regulations for determining adjustments to the threshold.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603(a), 604(a).

List of Subjects in 12 CFR Part 1003

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

Authority and Issuance

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

PART 1003—HOME MORTGAGE DISCLOSURE (REGULATION C)

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

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

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

Supplement I to Part 1003—Staff Commentary

* * * * *

Section 1003.2—Definitions

* * * * *

Financial institution.

* * * * *

2. *Adjustment of exemption threshold for banks, savings associations, and credit unions.* For data collection in 2014, the asset-size exemption threshold is $43 million. Banks, savings associations, and credit unions with assets at or below $43 million as of December 31, 2013, are exempt from collecting data for 2014.

* * * * *

Dated: December 24, 2013.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2013–31223 Filed 12–26–13; 11:15 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Truth in Lending (Regulation Z): Adjustment to Asset-Size Exemption Threshold

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official commentary.

SUMMARY: The Bureau is amending the official commentary that interprets the requirements of the Bureau's Regulation Z (Truth in Lending) to reflect a change in the asset size threshold for certain creditors to qualify for an exemption to the requirement to establish an escrow account for a higher-priced mortgage loan based on the annual percentage change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) for the 12-month period ending in November. The exemption threshold is adjusted to increase to $2.028 billion from $2 billion. The adjustment is based on the 1.4 percent increase in the average of the CPI–W for the 12-month period ending in November 2013. Therefore, creditors with assets of $2.028 billion or less as of December 31, 2013, are exempt, if other requirements of Regulation Z also are met, from establishing escrow accounts for higher-priced mortgage loans in 2014.

DATES: This final rule is effective January 1, 2014.

FOR FURTHER INFORMATION CONTACT: David Friend, Counsel, Office of Regulations, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552 at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended TILA section 129D(a) to contain a general requirement that an escrow account be established by a creditor to pay for property taxes and insurance premiums for certain first-lien higher-priced mortgage loan transactions. Section 1461 of the Dodd-Frank Act also generally permits an exemption from the higher-priced mortgage loan escrow requirement for a creditor that: (1) Operates predominantly in rural or underserved areas; (2) together with all affiliates, has total annual mortgage loan originations that do not exceed a limit set by the Bureau; (3) retains its mortgage obligations in portfolio; and (4) meets any asset-size threshold and any other criteria as the Bureau may establish.

In the 2013 Escrows Final Rule, 78 FR 4726 (January 22, 2013), the Bureau established such an asset-size threshold of $2,000,000,000, which will adjust automatically each year, based on the year-to year change in the average of the CPI–W for each 12-month period ending in November, with rounding to the nearest million dollars. *See* 12 CFR 1026.35(b)(2)(iii)(C). For 2013, the threshold was $2 billion. During the 12-month period ending in November 2013, the average CPI–W increased by 1.4 percent. As a result, the exemption threshold is increased to $2.028 billion for 2014. Thus, loans made by creditors with assets of $2.028 billion or less as of December 31, 2013, that meet the other requirements of 12 CFR 1026.35(b)(2)(iii) will be exempt in 2014 from the escrow-accounts requirement for higher-priced mortgage loans.

II. Procedural Requirements

Administrative Procedure Act

Under the Administrative Procedure Act (APA), notice and opportunity for public comment are not required if the Bureau finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). Pursuant to this final rule, supplement I and comment 35(b)(2)(iii)–1 in Regulation Z, are amended to update the exemption threshold. The amendment in this final rule is technical and nondiscretionary, and it merely applies the formulas established by Regulation X for determining any adjustments to the exemption threshold. For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary and the amendment is adopted in final form.

Section 553(d) of the APA generally requires publication of a final rule not less than 30 days before its effective date, except for (1) a substantive rule which grants or recognizes an

exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule. 5 U.S.C. 553(d). At a minimum, the Bureau believes the amendments fall under the third exception to section 553(d). The Bureau finds that there is good cause to make the amendments effective on January 1, 2014. The amendment in this notice is technical and non-discretionary, and it applies the method previously established in the agency's regulations for automatic adjustments to the threshold.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603(a), 604(a).

List of Subjects in 12 CFR Part 1026

Advertising, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

■ 2. In Supplement I to part 1026—Official Interpretations, under *Section 1026.35—Requirements for Higher-Priced Mortgage Loans, 35(b)(2) Exemptions, Paragraph 35(b)(2)(iii),* paragraph 1.iii is revised.

The revision reads as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 1026.35—Requirements for Higher-Priced Mortgage Loans

* * * * *

35(b)(2) Exemptions.

* * * * *

Paragraph 35(b)(2)(iii)

1. *Requirements for exemption.* * * *

* * * * *

iii. As of the end of the preceding calendar year, the creditor had total assets that are less than the asset threshold for the relevant calendar year. For calendar year 2014, the asset threshold is $2,028,000,000. Creditors that had total assets of less than $2,028,000,000 on December 31, 2013, satisfy this criterion for purposes of the exemption during 2014. This asset threshold shall adjust automatically each year based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars. The Bureau will publish notice of the asset threshold each year by amending this comment. For historical purposes, the prior asset threshold was:

A. For calendar year 2013, the asset threshold was $2,000,000,000. Creditors that had total assets of less than $2,000,000,000 on December 31, 2012, satisfied this criterion for purposes of the exemption during 2013.

* * * * *

Dated: December 24, 2013.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2013–31225 Filed 12–26–13; 11:15 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0370; Directorate Identifier 2013–NM–034–AD; Amendment 39–17711; AD 2013–26–02]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) airplanes. This AD was prompted by a report that traces of oil could be found in the crew oxygen system due to the use of incorrect pressure testing procedures during manufacturing. This AD requires cleaning the crew oxygen system. We are issuing this AD to detect and correct oil contaminants, which could cause an ignition and result in a fire in the oxygen system.

DATES: This AD becomes effective February 3, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 3, 2014.

ADDRESSES: You may examine the AD on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-0370;* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. The NPRM published in the **Federal Register** on May 10, 2013 (78 FR 27314). The NPRM proposed to correct an unsafe condition for the specified products.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2013–01, dated January 22, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> It was found that traces of oil could be present in the crew oxygen system due to the use of incorrect pressure testing procedures during manufacturing. Field sampling of nine aeroplanes have confirmed this condition. When the oxygen system is used, oil contaminants can cause an ignition and result in a fire in the oxygen system.
>
> This [Canadian] AD mandates the cleaning of the crew oxygen system to reduce oil contaminants to a safe level.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/*

#!documentDetail;D=FAA-2013-0370-0002.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request to Revise the NPRM (78 FR 27314, May 10, 2013) Based On New Service Information

ExpressJet requested the NPRM (78 FR 27314, May 10, 2013) be revised due to a new revision of the service information. ExpressJet stated that since the NPRM was issued, Bombardier Service Bulletin 670BA–35–012, Revision B, including Appendix A, dated May 6, 2013, has been released.

We agree with ExpressJet's request to use Bombardier Service Bulletin 670BA–35–012, Revision B, including Appendix A, dated May 6, 2013. We have updated paragraph (g) of this final rule in this regard. We have also added a new paragraph (h) to this final rule to give credit for actions done before the effective date of this AD using Bombardier Service Bulletin 670BA–35–012, dated August 3, 2012; and Bombardier Service Bulletin 670BA–35–012, Revision A, dated November 26, 2012. Subsequent paragraphs have been redesignated accordingly.

Request To Revise the Compliance Time

The Air Line Pilots Association (ALPA) requested we revise the compliance time. ALPA stated it understands the requirements of the NPRM (78 FR 27314, May 10, 2013) take 51 work-hours per product, but stated that the safety benefit would necessitate a compliance time of between 12 and 24 months.

We do not agree with ALPA's request. We determined that the proposed compliance time of ''within 6,600 flight hours or 36 months after the effective date of this AD, whichever occurs first'' is appropriate in consideration of the safety implications, the average utilization rate of the affected fleet, and the practical aspects of an orderly cleaning of the crew oxygen system. In addition, TCCA and Bombardier, Inc., reviewed the risks and found the compliance time to be adequate. We have not changed the final rule in this regard.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (78 FR 27314, May 10, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 27314, May 10, 2013).

Costs of Compliance

We estimate that this AD affects 400 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Cleaning the Crew Oxygen System	51 work-hours × $85 per hour = $4,335	$827	$5,162	$2,064,800

Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0370-0002;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the MCAI, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section.

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:

2013–26–02 Bombardier, Inc.: Amendment 39–17711. Docket No. FAA–2013–0370; Directorate Identifier 2013–NM–034–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective February 3, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial numbers 10002 through 10265 inclusive; and Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15002 through 15153 inclusive, 15156, and 15157; certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Reason

This AD was prompted by a report that traces of oil could be found in the crew oxygen system due to the use of incorrect pressure testing procedures during manufacturing. We are issuing this AD to detect and correct oil contaminants, which could cause an ignition and result in a fire in the oxygen system.

(f) Compliance

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

(g) Actions

Within 6,600 flight hours or 36 months after the effective date of this AD, whichever occurs first: Clean the crew oxygen system, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–35–012, Revision B, including Appendix A, dated May 6, 2013.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 670BA–35–012, dated August 3, 2012; or Bombardier Service Bulletin 670BA–35–012, Revision A, dated November 26, 2012; which are not incorporated by reference in this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the New York ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2013–01, dated January 22, 2013, for related information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0370-0002.*

(2) Service information identified in this AD that is not incorporated by reference may be obtained at the addresses specified in paragraphs (k)(3) and (k)(4) of this AD.

(k) 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 this AD specifies otherwise.

(i) Bombardier Service Bulletin 670BA–35–012, Revision B, including Appendix A, dated May 6, 2013.

(ii) Reserved.

(3) For service information identified in this AD, Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

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

Issued in Renton, Washington, on December 11, 2013.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–30288 Filed 12–27–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0304; Directorate Identifier 2013–NM–005–AD; Amendment 39–17713; AD 2013–26–04]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 747–400, –400D, and –400F series airplanes. This AD was prompted by a report of water leakage into the main deck cargo wire integration unit (WIU). The water flowed from the main deck floor panels, through disbonded seams in the aft main equipment center (MEC) drip shield gutter, then onto the WIU. This AD requires cleaning the aft MEC drip shield gutter; and doing a one-time general visual inspection for disbonded seams, and repair if necessary. This AD also requires installing a fiberglass reinforcement overcoat to the underside of the bonded seams of the aft MEC drip shield gutters. We are issuing this AD to prevent water penetration into the MEC, which could result in the loss of flight critical systems.

DATES: This AD is effective February 3, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 3, 2014.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-0304;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Francis Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6596; fax: (425) 917–6590; email *francis.smith@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to the specified products. The NPRM published in the **Federal Register** on April 11, 2013 (78 FR 21571). The NPRM proposed to require removing the cargo liner support; cleaning the aft MEC drip shield gutter; and doing a one-time general visual inspection for disbonded seams, and repair if necessary. The NPRM also proposed to require installing a fiberglass reinforcement overcoat to the top surface of the aft MEC drip shield gutters and installing the cargo liner support.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (78 FR 21571, April 11, 2013) and the FAA's response to each comment.

Request To Clarify Area for Installing Fiberglass Reinforcement Overcoat

United Airlines (UAL), British Airways (BAB), and Boeing asked that the area for installing the fiberglass reinforcement overcoat, as specified in paragraph (g)(2) of the NPRM (78 FR 21571, April 11, 2013), be changed for clarification. Boeing stated that the description of the area is not accurate. UAL stated that the location for installing the fiberglass reinforcement overcoat ''to the top surface'' of the aft main equipment center (MEC) drip shield gutters, as specified in paragraph (g)(2) of the NPRM, is different than the area specified in Boeing Alert Service Bulletin 747–25A3613, dated June 22, 2012. UAL noted that the referenced service information specifies installing the fiberglass reinforcement overcoat ''to the underside surface'' of the aft MEC drip shield gutters. BAB stated that Figure 4, Sheets 2 and 3 of Boeing Alert Service Bulletin 747–25A3613, dated June 22, 2012, show the installation from underneath the aft MEC drip shield gutter; and added that Figure 4, Step 3, Note (c) specifies to ''Install the prepared BMS 9–3 fiberglass impregnated fabric to the underside of the bonded seams.''

We agree with the commenters' requests to clarify the location for installing the fiberglass reinforcement overcoat. Figure 4, Sheets 2 and 3 of Boeing Alert Service Bulletin 747–25A3613, dated June 22, 2012, provide clarity. Therefore, we have changed the **SUMMARY** section and paragraph (g)(2) of this final rule to specify the location in Figure 4, Step 3, Note (c) for installation of the fiberglass reinforcement overcoat to ''the underside of the bonded seams.''

Request To Clarify the Unsafe Condition

Boeing asked that we clarify the second sentence of the reason for the unsafe condition, as specified in the **SUMMARY** section and paragraph (e) of the NPRM (78 FR 21571, April 11, 2013), from ''The water flowed from the drip shield through disbonded floor seams into the aft . . .'' to ''The water flowed from the main deck floor panels, through disbonded seams in the aft . . ..'' Boeing stated that, as specified, the description is not accurate based on reports received from operators.

We agree with the commenter's request for the reason provided. We have clarified the reason for the unsafe condition in the **SUMMARY** section and paragraph (e) of this final rule accordingly.

Request To Add a Note Allowing Different Access for Different Structural Configurations

UAL asked that we include a note specifying that accessing certain areas to accomplish the actions proposed in the NPRM (78 FR 21571, April 11, 2013) may vary due to configuration differences. UAL stated that including such a note would save operators a lot of time dealing with variances in the quantity of fasteners called out in the service information versus those on the airplane. UAL noted that for AD 2012–15–10, Amendment 39–17139 (77 FR 46943, August 7, 2012), regarding the MEC drip shield, it already has six alternative methods of compliance (AMOCs) due to these variances.

We agree with the commenter's request. Boeing Alert Service Bulletin 747–25A3613, dated June 22, 2012, does not identify all possible structural configurations of the affected airplanes when gaining access to the repair area. The resulting AMOC requests and review of those requests creates a high volume of work and time, which impacts both operators and the FAA. These deviations do not directly impact the specified corrective actions.

We have changed the language in the **SUMMARY** and Costs of Compliance sections, as well as paragraphs (g)(1) and (g)(2) of this final rule, to remove the reference to the cargo liner support. We have also added a sentence to the introductory text of paragraph (g) of this AD to specify that accomplishing paragraphs 3.B.1. and 3.B.4. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3613, dated June 22, 2012, is optional.

Request To Ground All Affected Airplanes

One anonymous commenter reiterated the actions proposed by the NPRM (78 FR 21571, April 11, 2013), and stated that he found it troubling that we are asking the public ''(presumably experts)'' to comment on a safety issue with a Boeing design, yet these airplanes have not been grounded until the notice and comment period ends. The commenter added that The Boeing Company must comply with strict FAA guidelines, as outlined by the Federal Aviation Act of 1958 (49 U.S.C. App. 1301 et seq.). The commenter noted that, crucial to this particular airworthiness directive, the FAA encourages the development of ''next wave'' civil aeronautics, new aviation technology, and continued safety enhancements of all domestically flown commercial airplanes. The commenter also added that participation in the notice and comment period is in line with the FAA's mission. The commenter concluded that Congress charges the FAA with promoting safe flight of civil airplanes in air commerce by prescribing regulations for practices, methods, and procedures.

We infer that the commenter finds we lack sufficient information to determine a compliance time for correcting this unsafe condition before receiving public comment. We also infer the commenter concluded that affected airplanes are exposed to an unacceptably high risk requiring immediate action to remove

them from service until more information is obtained through public comments. We do not agree. Before posting an NPRM for public comment, we must perform an investigative review of the subject concern or unsafe condition first obtained from operator reports. After gathering this information from operators and the manufacturer, we make a determination on the associated risk of the unsafe condition and coordinate with the manufacturer on a compliance time and corrective action for all affected airplanes. Airplanes are grounded in rare cases where it is determined that the unsafe condition has an immediate risk to public safety. The unsafe condition in this AD does not meet these criteria.

Additionally, agencies welcome and consider all relevant rulemaking comments received from the public. The purpose of public participation is more to obtain comments from interested parties, not necessarily ''experts'' in the aviation industry. This is in line with the democratic, legal, and management principles behind good government and effective rulemaking. Further information on these principles can be found on the Internet at *http://www.regulations.gov,* under ''docs/Factsheet_Public_Comments_Make_a_Difference.pdf.'' We have made no change to this final rule in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Costs of Compliance

We estimate that this AD affects 79 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Clean gutter, inspect	1 work-hour × $85 per hour = $85	$0	$85	$6,715
Install fiberglass reinforcement	1 work-hour × $85 per hour = $85	100	185	14,615

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–26–04 The Boeing Company: Amendment 39–17713; Docket No. FAA–2013–0304; Directorate Identifier 2013–NM–005–AD.

(a) Effective Date

This AD is effective February 3, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–400, –400D, and –400F series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–25A3613, dated June 22, 2012.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 25: Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by a report of water leakage into the main deck cargo wire integration unit (WIU). The water flowed from the main deck floor panels, through disbonded seams in the aft main equipment center (MEC) drip shield gutter, then onto the WIU. We are issuing this AD to prevent water penetration into the MEC, which could result in the loss of flight critical systems.

(f) Compliance

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

(g) Removal/Cleaning/Inspection/Repair if Necessary/Installations

Within 24 months after the effective date of this AD: Do the actions specified in paragraphs (g)(1) and (g)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3613, dated June 22, 2012. Accomplishing paragraphs 3.B.1. and 3.B.4. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3613, dated June 22, 2012, is optional.

(1) Clean the aft MEC drip shield gutter, and do a general visual inspection for disbonded seams; repair before further flight if any seam disbonding is found.

(2) Install a fiberglass reinforcement overcoat to the underside of the bonded seams of the aft MEC drip shield gutters.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and the approval must specifically refer to this AD.

(i) Related Information

For more information about this AD, contact Francis Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6596; fax: (425) 917–6590; email *francis.smith@faa.gov.*

(j) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin 747–25A3613, dated June 22, 2012.

(ii) Reserved.

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

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

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

Issued in Renton, Washington, on December 13, 2013.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–30469 Filed 12–27–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–1030; Directorate Identifier 2012–NM–193–AD; Amendment 39–17712; AD 2013–26–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are superseding airworthiness directive (AD) 2011–24–09 which applied to certain Airbus Model A340–200 and A340–300 series airplanes. AD 2011–24–09 requires inspections to verify electrical bonding for the water drain system and ventilation intake system, and modification if necessary. This new AD requires revising the maintenance program to incorporate certain maintenance requirements and airworthiness limitations, and adds additional airplanes to the applicability. This AD was prompted by a determination that existing maintenance requirements are not adequate to address the unsafe condition. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: This AD becomes effective January 14, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of January 14, 2014.

We must receive comments on this AD by February 13, 2014.

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:* 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 Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the technical agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0168, dated August 31, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information or ''the (MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Prompted by an accident [involving a fuel tank system explosion in flight] * * * the FAA published Special Federal Aviation Regulation (SFAR) 88 (*http://rgl.faa.gov/Regulatory_and_Guidance_Library%5CrgFAR.nsf/0/EEFB3F94451DC06286256C93004F5E07?OpenDocument*), and the Joint Aviation Authorities (JAA)

published Interim Policy INT/POL/25/12. The design review conducted Airbus to develop Fuel Airworthiness Limitations (FAL) * * * now referenced in Airbus A330 and A340 Airworthiness Limitations Section (ALS) Part 5 revision 00 (both approved by EASA on 16 November 2011) * * *.

Failure to comply with items as identified in Airbus A330 and A340 ALS Part 5 could result in a fuel tank explosion and consequent loss of the aeroplane.

To address this condition, EASA issued:

EASA AD 2007–0023 *(http://ad.easa.europa.eu/ad/2007-0023)* [which corresponds to FAA AD 2007–14–01, Amendment 39–15123, (72 FR 38006, July 12, 2007)] to require compliance with FAL specified in the Airbus A330 FAL Document reference 95A.1932/05 at Issue 02 (comprising maintenance/inspection tasks and Critical Design Configuration Control Limitations (CDCCL)) for A330 aeroplanes, and

EASA AD 2006–0205 *(http://ad.easa.europa.eu/ad/2006-0205)* [which also corresponds to FAA AD 2007–14–01, Amendment 39–15123, (72 FR 38006, July 12, 2007)] to require compliance with FAL specified in Airbus A340 FAL Document reference 95A.1933/05 at Issue 01 (comprising maintenance/inspection tasks and Critical Design Configuration Control Limitations (CDCCL)) for Airbus A340 aeroplanes.

* * * other EASA ADs required accomplishment of aeroplane modifications related to Fuel Tank Safety items, the requirements and compliance times of which are now integrated into ALS Part 5.

For the reasons described above this [EASA] AD * * * requires the implementation of the new or more restrictive maintenance requirements and/or airworthiness limitations as specified in the revision 00 of * * * Airbus A340 ALS Part 5.

This AD also adds new airplanes to the applicability of this AD. AD 2011–24–09 (76 FR 73486, November 29, 2011) applied to certain Airbus Model A340–200 and A340–300 series airplanes. This AD applies to all Airbus Model A340–200, A340–300, A340–500, and A340–600 series airplanes. We are considering additional rulemaking to address the Airbus Model A330–200 freighter, A330–200, and A330–300 series airplanes. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued A340 Airworthiness Limitations Section (ALS), Part 5—Fuel Airworthiness Limitations, dated November 16, 2011; and A340 Variation to revision 00 of ALS Part 5—Fuel Airworthiness Limitations (FAL), dated January 23, 2012 (variation reference 0FVLG110039/C0S). The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

Related Rulemaking

Certain maintenance requirements specified Airbus A340 Airworthiness Limitations Section (ALS), Part 5—Fuel Airworthiness Limitations, dated November 16, 2011, are already required by other ADs. Therefore accomplishing the actions required by this AD will terminate the requirements of the following ADs for Model A340 airplanes:

- AD 2006–21–08, Amendment 39–14793 (71 FR 61639, October 19, 2006);
- AD 2007–14–01, Amendment 39–15123 (72 FR 38006, July 12, 2007);
- AD 2008–25–02, Amendment 39–15760 (73 FR 75307, December 11, 2008);
- AD 2010–04–09, Amendment 39–16202 (75 FR 7940, February 23, 2010; as corrected in the **Federal Register** on March 3, 2010 (75 FR 9515);
- AD 2011–01–02, Amendment 39–16555 (76 FR 432, January 5, 2011); and
- AD 2012–16–05, Amendment 39–17152 (77 FR 48425, August 14, 2012).

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

This AD requires revisions to certain operator maintenance documents to include new actions (e.g., inspections) and Critical Design Configuration Control Limitations (CDCCLs). Compliance with these actions and CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these actions, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (l)(1) of this AD. The request should include a description of changes to the required actions that will ensure the continued operational safety of the airplane.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

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–2013–1030; Directorate Identifier 2012–NM–193–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 affects 0 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise maintenance program	1 work-hour × $85 per hour = $85	$0	$85	$0

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

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 removing the airworthiness directive: (AD) 2011–24–09, Amendment 39–16873 (76 FR 73486, November 29, 2011), and adding the following new AD:

2013–26–03 Airbus: Amendment 39–17712. Docket No. FAA–2013–1030; Directorate Identifier 2012–NM–193–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective January 14, 2014.

(b) Affected ADs

(1) This AD supersedes AD 2011–24–09, Amendment 39–16873 (76 FR 73486, November 29, 2011).

(2) Certain requirements of this AD terminate the requirements of the ADs specified in paragraphs (b)(2)(i) through (b)(2)(vi) of this AD, for Airbus Model A340 airplanes only.

(i) AD 2006–21–08, Amendment 39–14793 (71 FR 61639, October 19, 2006).

(ii) AD 2007–14–01, Amendment 39–15123 (72 FR 38006, July 12, 2007).

(iii) AD 2008–25–02, Amendment 39–15760 (73 FR 75307, December 11, 2008).

(iv) AD 2010–04–09, Amendment 39–16202 (75 FR 7940, February 23, 2010; as corrected in the **Federal Register** on March 3, 2010 (75 FR 9515).

(v) AD 2011–01–02, Amendment 39–16555 (76 FR 432, January 5, 2011).

(vi) AD 2012–16–05, Amendment 39–17152 (77 FR 48425, August 14, 2012).

(c) Applicability

This AD applies to Airbus Model A340–211, A340–212, A340–213, A340–311, A340–312, A340–313, A340–541, and A340–642 airplanes; certificated in any category; all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that existing maintenance requirements are not adequate to address the unsafe condition. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

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

(g) Maintenance Program Revision

(1) Within 3 months after the effective date of this AD, revise the maintenance program by incorporating Airbus A340 Airworthiness Limitations Section (ALS) Part 5—Fuel Airworthiness Limitations, dated November 16, 2011; and Airbus A340 Variation to revision 00 of ALS Part 5—Fuel Airworthiness Limitations (FAL), dated January 23, 2012 (variation reference 0FVLG110039/C0S).

(2) Comply with all applicable instructions and airworthiness limitations included in A340 ALS Part 5—Fuel Airworthiness Limitations, dated November 16, 2011; and Airbus A340 Variation to revision 00 of ALS Part 5—Fuel Airworthiness Limitations (FAL), dated January 23, 2012 (variation reference 0FVLG110039/C0S), except as required by paragraph (i) of this AD. The initial compliance times for the actions specified in Airbus A340 Airworthiness Limitations Section (ALS) Part 5—Fuel Airworthiness Limitations, dated November 16, 2011, are at the later of the times specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD; except as required by paragraph (h) of this AD.

(i) Within the applicable compliance times specified in Airbus A340 Airworthiness Limitations Section (ALS) Part 5—Fuel Airworthiness Limitations, dated November 16, 2011, including the Record of Revisions pages of A340 ALS, Part 5—Fuel Airworthiness Limitations, dated November 16, 2011.

(ii) Within 3 months after accomplishing paragraph (g)(1) of this AD.

(h) Compliance Time Exception

For the tasks specified in the table in Sub-Part 5–4 Repetitive Maintenance/Inspections Tasks of Airbus A340 Airworthiness Limitations Section (ALS) Part 5—Fuel Airworthiness Limitations, dated November 16, 2011, the initial compliance times are at the later of the times specified in paragraph (h)(1) and (h)(2) of this AD.

(1) Before the accumulation of the applicable compliance time specified in the ''Interval'' column on airplanes identified in the ''Applicability'' column.

(2) Within 3 months after accomplishing paragraph (g)(1) of this AD.

(i) Exception for Compliance Time for Modification of Control Circuit

Where Airbus A340 ALS Part 5, Fuel Airworthiness Limitations, dated November 16, 2011, specifies a calendar compliance time for modifying the control circuit for the fuel pump of the center fuel tank (for Model A340–200 and A340–300 airplanes), and of the center and rear center fuel tanks (for Model A340–541 and A340–642 airplanes), and installing ground fault interrupters to the center tank fuel pump control circuit, the calendar compliance time is September 18, 2016 (48 months after the effective date of AD 2012–16–05, Amendment 39–17152 (77 FR 48425, August 14, 2012)).

(j) No Alternative Actions, Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

After accomplishing the revision required by paragraph (g) of this AD, no alternative actions (e.g., inspections), intervals, or CDCCLs may be used, except as defined in paragraphs (h) and (i) of this AD, or unless the actions, intervals, or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the

procedures specified in paragraph (l)(1) of this AD.

(k) Terminating Action for Other ADs

Accomplishing the revision required by paragraph (g)(1) of this AD terminates the requirements of the ADs specified in paragraphs (k)(1) through (k)(6) of this AD, for Airbus Model A340 airplanes only.

(1) AD 2006–21–08, Amendment 39–14793 (71 FR 61639, October 19, 2006).

(2) AD 2007–14–01, Amendment 39–15123 (72 FR 38006, July 12, 2007).

(3) AD 2008–25–02, Amendment 39–15760 (73 FR 75307, December 11, 2008).

(4) AD 2010–04–09, Amendment 39–16202 (75 FR 7940, February 23, 2010; as corrected in the **Federal Register** on March 3, 2010 (75 FR 9515).

(5) AD 2011–01–02, Amendment 39–16555 (76 FR 432, January 5, 2011).

(6) AD 2012–16–05, Amendment 39–17152 (77 FR 48425, August 14, 2012).

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: (425) 227–1138; fax: (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or the DAH with a State of Design Authority's design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD. You are required to ensure the product is airworthy before it is returned to service.

(m) Related Information

Refer to Mandatory Continuing Airworthiness Information European Aviation Safety Agency (EASA) Airworthiness Directive 2012–0168, dated August 31, 2012, for related information, which can be found in the AD docket on the Internet at *http://www.regulations.gov.*

(n) Material Incorporated by Reference

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

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

(i) Airbus A340 Airworthiness Limitations Section (ALS) Part 5—Fuel Airworthiness Limitations, Revision 00, dated November 16, 2011. The revision date is not identified on the title page of this document.

(ii) Airbus A340 Variation to revision 00 of ALS Part 5—Fuel Airworthiness Limitations (FAL), dated January 23, 2012 (variation reference 0FVLG110039/C0S).

(3) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.*

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

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

Issued in Renton, Washington, on December 11, 2013.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–31042 Filed 12–27–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0407; Directorate Identifier 2012–NE–22–AD; Amendment 39–17710; AD 2013–26–01]

RIN 2120–AA64

Airworthiness Directives; CFM International S.A. Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all CFM International (CFM) S.A. CFM56–3 and CFM56–7B series turbofan engines with certain accessory gearboxes (AGBs) not equipped with a handcranking pad ''oil dynamic seal'' assembly. This AD was prompted by 42 events of total loss of engine oil from CFM56 series turbofan engines while in flight. This AD requires an independent inspection to verify re-installation of the handcranking pad cover after removal of the pad cover for maintenance until installation of a handcranking pad oil dynamic seal assembly. We are issuing this AD to prevent loss of engine oil while in flight, which could result in engine failure, loss of thrust control, and damage to the airplane.

DATES: This AD is effective February 3, 2014.

ADDRESSES: For service information identified in this AD, contact CFM International Inc., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: 877–432–3272; fax: 877–432–3329; email: *geae.aoc@ge.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2013–0407; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts, 01803; phone: 781–238–7751; fax: 781–238–7199; email: *antonio.cancelliere@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. The NPRM published in the **Federal Register** on June 10, 2013 (78 FR 34605). The NPRM proposed to require an independent inspection to verify re-installation of the handcranking pad

cover after removal of the pad cover for maintenance until installation of a handcranking pad oil dynamic seal assembly.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment.

Request To Make Optional Terminating Action Mandatory

The National Transportation Safety Board comments that the FAA should make the installation of an oil dynamic seal assembly a mandatory, rather than an optional, terminating action, as has the European Aviation Safety Agency (EASA) and the Civil Aviation Administration of China.

The FAA agrees that the loss of engine oil from unsecured handcranking pad covers can be addressed with the introduction of a dynamic seal. The FAA has structured its approach to achieving that goal, however, through a combination of inspections and part replacement, which allows each affected operator to manage its own maintenance schedule. The FAA believes that this approach will not have as great an economic effect on the affected operators as mandating a part replacement. The FAA also finds that the level of safety achieved with its approach to this unsafe condition is acceptable, and believes that operators will eventually incorporate the dynamic seal to terminate the required inspections.

Request To Revise Optional Terminating Action

American Airlines (AAL) requested that we revise paragraph (g) of the AD (the Terminating Action paragraph) to minimize the effects of differences in the AGB disassembly and assembly procedures between those specified in the engine shop manual and current or subsequent service bulletins. AAL noted that this method of specifying the terminating action would preclude the need for Alternative Method of Compliance (AMOC) requests.

We agree in part. We revised the Terminating Action paragraph by removing the requirement to follow specific service bulletins (SBs). Guidance on CFM CFM56 SBs and engine manual can now be found in the Related Information section of this AD.

Request To Include FAA-Approved Maintenance Program in Compliance

Airlines for America asked that we include in paragraph (f) of this AD, a time period in which an approved maintenance program must be revised to include an Independent Inspection. Airlines for America also asked that we clarify that documentation for each inspection on every airplane need not be made if relying on the insertion of an Independent Inspection in the aircraft Continuous Airworthiness Maintenance Program (CAMP).

We agree in part, and have made paragraphs (f)(1) and (f)(2) of this AD disjunctive in order to clarify that either an Independent Inspection is required after each maintenance involving the handcranking pad cover or that operators insert an Independent Inspection requirement in their aircraft CAMP. We do point out that if an operator relies on paragraph (f)(1) of this AD, a maintenance record entry is required to record compliance with this AD after each time the handcranking pad cover is removed and re-installed. If an operator relies on paragraph (f)(2) of this AD however, only one record entry is required to document that the CAMP has been modified as required. After the CAMP has been modified, the operator need only document actions as required by the CAMP.

We have not, however, added a time period within which operators must make a change to their CAMP. This AD itself states that it will become effective 35 days after publication in the **Federal Register**. After that date, operators must comply with either paragraph (f)(1), (f)(2), or (g) of this AD.

Request To Clarify Inspection Options

Delta Airlines (Delta) requested that we clarify that both apparent options—an independent inspection or addition of the inspection as a Required Inspection Item into the operator's approved CAMP—in compliance with paragraph (f) of this AD are indeed options for meeting the requirements of this AD.

We agree that further clarification was needed. As explained with the response to the Airlines for America comment, we have made paragraphs (f)(1) and (f)(2) of this AD disjunctive to clarify that an operator either perform an Independent Inspection each time the handcranking pad cover is removed and re-installed, or insert in its aircraft CAMP a requirement for an Independent Inspection.

Request To Delay Issuance of This AD

Delta requested that we delay issuance of this AD until CFM issues revisions to CFM SB CFM56–7B S/B 72–0564, Revision 3, dated May 25, 2011, and CFM SB CFM56–7B S/B 27–0879, Revision 1, dated April 12, 2012. Delay in publication of this AD would minimize the burden of AMOC requests on operators, CFM, and the FAA. It would also allow CFM to modify these SBs to correct tooling references and to modify impingement test requirements.

We partially agree. We agree that we need not mandate use of specific SB versions to accomplish the terminating action. We have therefore, removed those SB references from paragraph (g) of this AD and moved those references to paragraph (j), Related Information, of this AD. This will eliminate the need for requests for AMOCs should the manufacturer modify its SBs. Accordingly, we need not delay issuance of this AD until any particular SB version is published.

Request To Allow Acceptable Maintenance Procedures To Install Seal

Delta requested that we allow operators or maintenance facilities to install oil dynamic seal assemblies using the SBs referenced in the NPRM (78 FR 34605, June 10, 2013) along with other acceptable maintenance procedures rather than mandating that all work be performed in accordance with the referenced SBs.

We agree. We moved the references to the SBs from the compliance section of this AD to the Related Information section of this AD.

Request To Define Compliance Time

Delta asked that we specifically define the compliance time in which operators have after the effective date of this AD to put the inspection program in place.

We disagree. As stated earlier, this AD will become effective as indicated in the **DATES** section. As of that date, operators must comply with this AD by either following paragraph (f)(1) of this AD for each time maintenance is performed to remove and re-install the handcranking pad cover, or (f)(2) of this AD to insert an Independent Inspection requirement in their aircraft CAMP, or (g) of this AD by replacing the AGB that incorporates an oil dynamic seal assembly. No further compliance time need be allowed. We did not change this AD.

Request To Harmonize With EASA AD 2012–0209

RyanAir requested that we harmonize differences between the NPRM (78 FR 34605, June 10, 2013) and EASA AD 2012–0209, dated October 8, 2012. RyanAir identified differences between the EASA AD and the NPRM in the areas of applicability, terminating action, service information, and compliance language.

We disagree. We believe that references in the Applicability section

of this AD to specific AGB part numbers not equipped with the oil dynamic seal assembly will avoid the need to revise this AD in the future should additional approved AGBs be available for installation. We did not change this AD.

Support for This AD

The Boeing Company and United Airlines support this AD as proposed (78 FR 34605, June 10, 2013).

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously.

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

Costs of Compliance

We estimate that this AD will affect 2,702 CFM56–3 and CFM56–7B engines installed on airplanes of U.S. registry. We also estimate that it will take about 1 hour to perform the independent inspection required by this AD. The average labor rate is $85 per hour. We estimate that normal maintenance will require the AGB handcranking pad cover to be removed every 1,300 flights cycles. Based on an average use of these model engines of approximately 6,000,000 flight cycles per year, we estimate that an independent inspection would be required about 4,615 times per year. Therefore, assuming that an operator does not already have an Independent Inspection of the AGB handcranking pad cover in its approved aircraft maintenance program, we estimate the cost of this AD for U.S. operators to be $392,275.

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

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

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

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

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

(3) Will not affect intrastate aviation in Alaska 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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–26–01 CFM International S.A.: Amendment 39–17710; Docket No. FAA–2013–0407; Directorate Identifier 2012–NE–22–AD.

(a) Effective Date

This AD is effective February 3, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to CFM International S.A. CFM56–3 series and CFM56–7B series turbofan engines equipped with the following accessory gearbox (AGB) part numbers (P/Ns):

(1) For CFM56–3 engines: 335–300–103–0, 335–300–105–0, 335–300–106–0, 335–300–107–0, 335–300–108–0, 335–300–109–0, or 335–300–110–0.

(2) For CFM56–7B engines (except CFM56–7B27A, CFM56–7B27A/3, and CFM56–7B27AE engines): 340–046–503–0, 340–046–504–0, or 340–046–505–0.

(3) For CFM56–7B27A, CFM56–7B27A/3, and CFM56–7B27AE engines: 340–188–601–0 or 340–188–603–0.

(d) Unsafe Condition

This AD was prompted by 42 events of total loss of engine oil while in flight. We are issuing this AD to prevent loss of engine oil while in flight, which could result in engine failure, loss of thrust control, and damage to the airplane.

(e) Compliance

Unless already done, do the actions in paragraphs (f) or (g) of this AD.

(f) Inspection of the AGB Handcranking Pad Cover

(1) Perform an Independent Inspection to verify re-installation of the AGB handcranking pad cover after any maintenance that involves the removal and re-installation of the AGB handcranking cover, or

(2) Insert an Independent Inspection as a required inspection item in the approved continuous airworthiness maintenance program for the aircraft.

(g) Optional Terminating Action

As an optional terminating action to the inspection requirement of paragraph (f) of this AD, install an AGB that is not listed in paragraph (c) of this AD that incorporates the oil dynamic seal assembly.

(h) Definition

For the purpose of this AD, an Independent Inspection means a second inspection by a qualified individual who was not involved in the original re-installation of the AGB handcranking pad cover following maintenance to confirm that the cover is installed correctly.

(i) 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.

(j) Related Information

(1) For more information about this AD, contact Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts, 01803; phone: 781–238–7751; fax: 781–238–7199; email: *antonio.cancelliere@faa.gov*.

(2) CFM International S.A. Service Bulletin (SB) No. CFM56–7B S/B 72–0564, Revision 3, dated May 25, 2011, and SB No. CFM56–7B S/B 27–0879, Revision 1, dated April 12, 2012, which are not incorporated by reference in this AD, provide guidance on obtaining an AGB that incorporates an oil dynamic seal assembly. The CFM56 engine manuals, which are also not incorporated by reference in this AD, include instructions on assembling and disassembling the AGB.

(3) For service information identified in this AD, contact CFM International Inc.,

Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: 877–432–3272; fax: 877–432–3329; email: *geae.aoc@ge.com.*

(4) 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.

(k) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on December 16, 2013.

Frank P. Paskiewicz,

Acting Director, Aircraft Certification Service.

[FR Doc. 2013–30862 Filed 12–27–13; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 270

[Release No. 33–9503; IC–30845]

Securities Exempted; Distribution of Shares by Registered Open-End Management Investment Company; Applications Regarding Joint Enterprises or Arrangements and Certain Profit-Sharing Plans

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendments.

SUMMARY: The Securities and Exchange Commission (''Commission'') is correcting outdated cross-references in rule 602 under the Securities Act of 1933 (''Securities Act'') and rule 12b–1 under the Investment Company Act of 1940 (''Investment Company Act'') and correcting an inadvertent error in rule 17d–1 under the Investment Company Act as published in the **Federal Register** on January 22, 2003.

DATES: Effective December 30, 2013.

FOR FURTHER INFORMATION CONTACT: Daniel K. Chang, Senior Counsel, or Thoreau Bartmann, Branch Chief, at (202) 551–6792, Investment Company Rulemaking Office, Division of Investment Management, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION:

I. Background

A. Rule 602

In December 1958, the Commission adopted Regulation E under the Securities Act, which exempts from registration small offerings by small business investment companies registered under the Investment Company Act.[1] Regulation E was amended in 1984 to increase the size of offerings that may be made under the regulation, and include as exempted issuers certain investment companies who elect to be treated as business development companies under the Investment Company Act.[2] The purpose of the 1984 amendments was to increase the ability of small business investment companies and business development companies to raise capital.

As part of Regulation E, rule 602 establishes conditions under which securities issued by small business investment companies or business development companies may be exempt from registration under the Securities Act. Rule 602(c)(3) provides that the exemption is not available for the securities of any issuer if any of its affiliated directors, officers, principal security holders, investment advisers, or underwriters has been ''subject to an order of the Commission entered pursuant to section 203(d) or (e) of the Investment Advisers Act of 1940.''[3]

In 1970, the Investment Company Amendments Act was enacted and, among other things, redesignated sections 203(d) and (e) of the Advisers Act as sections 203(e) and (f), respectively.[4] To correct this cross-reference, this technical amendment to rule 602(c)(3) will replace the cross-reference to paragraphs (d) and (e) of section 203 of the Advisers Act with a cross-reference to paragraphs (e) and (f).

B. Rule 12b–1

In 1980, the Commission adopted rule 12b–1 under the Investment Company Act to permit a fund that meets certain conditions to use fund assets to pay for distribution of securities of which it is the issuer. Among other requirements, the fund must have a written plan describing all material aspects of the proposed distribution financing.

Rule 12b–1(g) provides certain conditions for plans that cover more than one series or class of shares, but further provides that paragraph (g) does not affect the rights of any purchase class under rule 18f–3(e)(2)(iii).[5]

On January 2, 2001, the Commission adopted amendments to certain exemptive rules under the Investment Company Act and, among other things, redesignated paragraph (e) of rule 18f–3 as paragraph (f). To correct this cross-reference, this technical amendment to rule 12b–1(g) will replace the cross-reference to rule 18f–3(e)(2)(iii) with a cross-reference to rule 18f–3(f)(2)(iii).

C. Rule 17d–1

In January 2003, the Commission adopted amendments to certain rules under the Investment Company Act to, among other things, expand the exemptions for investment companies (''funds'') to engage in transactions with ''portfolio affiliates''—companies that are affiliated with the fund solely as the result of the fund (or an affiliated fund) controlling them or owning more than five percent of their voting securities.[6] The amendments were designed to permit transactions between funds and certain affiliated persons under circumstances where it was unlikely that the affiliate would be in a position to take advantage of the fund.

In implementing these amendments, the Adopting Release renumbered the paragraphs of rule 17d–1 and also added a cross-reference in paragraph (d)(6) of the rule to rule 17a–6, a related rule dealing with exemptions for transactions with portfolio affiliates that was also amended by the Adopting Release.[7] However, the text of rule 17d–1(d)(6) as published in the ''Text of Rule and Form Amendments'' section of the Adopting Release, and subsequently in

[1] Regulation E—Exemption for Securities of Small Business Investment Companies, 23 FR 10484 (Dec. 30, 1958).

[2] Amendments to the Offering Exemption Under Regulation E of the Securities Act of 1933, 49 FR 35342 (Sept. 7, 1984).

[3] Section 203 of the Investment Advisers Act of 1940 (''Advisers Act'') requires certain investment advisers to register with the Commission, and gives the Commission broad enforcement authority over them. In particular, current section 203(e) authorizes the Commission, by order, to censure, place limitations on the activities, functions, or operations of, suspend, or revoke the registration of any investment adviser if the Commission makes certain findings with regards to that adviser. Current section 203(f) allows the Commission, by order, to censure, suspend, bar, or place limitations on the activities of any person associated or seeking to become associated with an investment adviser or certain other entities if the Commission makes certain findings with regards to that person.

[4] Investment Company Amendments Act of 1970, Public Law 91547, 84 Stat. 1413 (Dec. 14, 1970).

[5] Current rule 18f–3(f)(2)(iii) provides certain rights for shareholders of purchase classes in funds that are acquired as part of a merger.

[6] Transactions of Investment Companies With Portfolio and Subadvisory Affiliates, Investment Company Act Release No. 25888 (Jan. 14, 2003) [68 FR 3142 (Jan. 22, 2003)] (''Adopting Release'').

[7] The cross-reference to rule 17a–6 was intended to conform provisions in paragraph (d)(6) of rule 17d–1 to similar provisions in rule 17a–6 in order to make them consistent with regards to which entities are considered prohibited participants for purposes of affiliate transactions. *See* Transactions of Investment Companies With Portfolio and Subadvisory Affiliates, Investment Company Act Release No. 25557 (April 30, 2002) [67 FR 31081 (May 8, 2002)] at n.30 and accompanying text.

The renumbering of the paragraphs of rule 17d–1 reflected the deletion of a condition in the rule that limited a fund to committing no more than five percent of its assets to a joint enterprise with a portfolio affiliate. *See* Adopting Release, *supra* note 1, at n.12.

the **Federal Register**, included an incorrect cross-reference to paragraph (d)(5)(iii) of the rule instead of (d)(5)(ii). In addition, the rule as published in the Code of Federal Regulations inadvertently omitted three paragraphs (*i.e.,* (d)(6)(i)–iii)) that should have followed immediately after paragraph (d)(6) of rule 17d–1.

This technical amendment to rule 17d–1(d)(6) corrects the internal cross-reference to paragraph (d)(5)(ii) instead of (d)(5)(iii) and restores the inadvertently omitted paragraphs of the rule text.

List of Subjects in 17 CFR Parts 230 and 270

Investment companies; Reporting and recordkeeping requirements; Securities.

Text of Amendment

For reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The authority for part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77d note, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78*o,* 78*o*–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, sec. 201(a), 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

■ 2. Section 230.602 is amended by revising paragraph (c)(3) to read as follows:

§ 230.602 Securities exempted.

* * * * *

(c) * * *

(3) Is subject to an order of the Commission entered pursuant to section 15(b) or 15A(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*(b) or 78*o*–3(1)); has been found by the Commission to be a cause of any such order which is still in effect; or is subject to an order of the Commission entered pursuant to section 203(e) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(e) or (f));

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 3. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

■ 4. Section 270.12b–1 is amended by revising paragraph (g) to read as follows:

§ 270.12b–1 Distribution of shares by registered open-end management investment company.

* * * * *

(g) If a plan covers more than one series or class of shares, the provisions of the plan must be severable for each series or class, and whenever this rule provides for any action to be taken with respect to a plan, that action must be taken separately for each series or class affected by the matter. Nothing in this paragraph (g) shall affect the rights of any purchase class under § 270.18f–3(f)(2)(iii).

* * * * *

■ 5. Section 270.17d–1 is amended by revising paragraph (d)(6) to read as follows:

§ 270.17d–1 Applications regarding joint enterprises or arrangements and certain profit-sharing plans.

* * * * *

(d) * * *

(6) The receipt of securities and/or cash by an investment company or a controlled company thereof and an affiliated person of such investment company or an affiliated person of such person pursuant to a plan of reorganization: *Provided,* That no person identified in § 270.17a–6(a)(1) or any company in which such a person has a direct or indirect financial interest (as defined in paragraph (d)(5)(ii) of this section):

(i) Has a direct or indirect financial interest in the corporation under reorganization, except owning securities of each class or classes owned by such investment company or controlled company;

(ii) Receives pursuant to such plan any securities or other property, except securities of the same class and subject to the same terms as the securities received by such investment company or controlled company, and/or cash in the same proportion as is received by the investment company or controlled company based on securities of the company under reorganization owned by such persons; and

(iii) Is, or has a direct or indirect financial interest in any person (other than such investment company or controlled company) who is:

(A) Purchasing assets from the company under reorganization; or

(B) Exchanging shares with such person in a transaction not in compliance with the standards described in this paragraph (d)(6).

* * * * *

Dated: December 24, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–31172 Filed 12–27–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. FDA–2013–N–0002]

New Animal Drugs for Use in Animal Feeds; Bambermycins; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration is correcting a document that appeared in the **Federal Register** of December 16, 2013 (78 FR 76059). The document amended the animal drug regulations to remove dairy replacement heifers from the pasture cattle class for which free-choice, loose-mineral medicated feeds containing bambermycins are approved. The document was published with an incorrect docket number. This document corrects that error.

DATES: Effective on December 16, 2013.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 3208, Silver Spring, MD 20993–0002, 301–796–9148.

SUPPLEMENTARY INFORMATION: In the FR Doc. 2013–29810, appearing on page 76059 in the **Federal Register** of Monday, December 16, 2013 (78 FR 76059), the following correction is made:

1. On page 76059, in the third column, the docket number is corrected to read ''FDA–2013–N–0002.''

Dated: December 24, 2013.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2013–31184 Filed 12–27–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 870

[Docket No. FDA–2013–N–0581]

Cardiovascular Devices; Reclassification of Intra-Aortic Balloon and Control Systems for Acute Coronary Syndrome, Cardiac and Non-Cardiac Surgery, or Complications of Heart Failure; Effective Date of Requirement for Premarket Approval for Intra-Aortic Balloon and Control Systems for Septic Shock or Pulsatile Flow Generation

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final order to reclassify intra-aortic balloon and control system (IABP) devices when indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure, a preamendments class III device, into class II (special controls), and to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for IABPs when indicated for septic shock or pulsatile flow generation.

DATES: This order is effective December 30, 2013.

FOR FURTHER INFORMATION CONTACT: Angela Krueger, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1666, Silver Spring, MD 20993, 301–796–6380, *angela.krueger@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), the Safe Medical Devices Act of 1990 (Pub. L. 101–629), the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115), the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107–250), the Medical Devices Technical Corrections Act (Pub. L. 108–214), the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85), and the Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112–144), establish a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) established three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the FD&C Act, devices that were in commercial distribution before the enactment of the 1976 amendments, May 28, 1976 (generally referred to as preamendments devices), are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976 (generally referred to as postamendments devices), are automatically classified by section 513(f) of the FD&C Act into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval unless, and until, the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

A preamendments device that has been classified into class III and devices found substantially equivalent by means of premarket notification (510(k)) procedures to such a preamendments device or to a device within that type may be marketed without submission of a PMA until FDA issues a final order under section 515(b) of the FD&C Act (21 U.S.C. 360e(b)) requiring premarket approval or until the device is subsequently reclassified into class I or class II. Section 515(b)(1) of the FD&C Act directs FDA to issue an order requiring premarket approval for a preamendments class III device.

Although, under the FD&C Act, the manufacturer of a class III preamendments device may respond to the call for PMAs by filing a PMA or a notice of completion of a PDP, in practice, the option of filing a notice of completion of a PDP has not been used. For simplicity, although corresponding requirements for PDPs remain available to manufacturers in response to a final order under section 515(b) of the FD&C Act, this document will refer only to the requirement for the filing and receiving approval of a PMA.

On July 9, 2012, FDASIA was enacted. Section 608(a) of FDASIA amended section 513(e) of the FD&C Act changing the mechanism for reclassifying a device from rulemaking to an administrative order. Section 608(b) of FDASIA amended section 515(b) of the FD&C Act changing the mechanism for requiring premarket approval for a preamendments class III device from rulemaking to an administrative order.

A. Reclassification

FDA is reclassifying IABP devices when indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure from class III to class II.

Section 513(e) of the FD&C Act governs reclassification of classified preamendments devices. This section provides that FDA may, by administrative order, reclassify a device based upon ''new information.'' FDA can initiate a reclassification under section 513(e) of the FD&C Act or an interested person may petition FDA to reclassify a preamendments device. The term ''new information,'' as used in section 513(e) of the FD&C Act, includes information developed as a result of a reevaluation of the data before the Agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland-Rantos Co.* v. *United States Department of Health, Education, and Welfare,* 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch,* 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard,* 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously before the Agency is an appropriate basis for subsequent action where the reevaluation is made in light of newly available authority (see *Bell,* 366 F.2d at 181; *Ethicon, Inc.* v. *FDA,* 762 F.Supp. 382, 388–391 (D.D.C. 1991)), or in light of changes in ''medical science'' (*Upjohn,* 422 F.2d at 951). Whether data before the Agency are old or new data, the ''new information'' to support reclassification under section 513(e) of the FD&C Act must be ''valid scientific evidence,'' as defined in section 513(a)(3) of the FD&C Act and 21 CFR 860.7(c)(2). (See, e.g., *General Medical Co.* v. *FDA,* 770 F.2d 214 (D.C. Cir.

1985); *Contact Lens Manufacturers Association* v. *FDA,* 766 F.2d 592 (D.C. Cir. 1985), cert. denied, 474 U.S. 1062 (1986).)

FDA relies upon ''valid scientific evidence'' in the classification process to determine the level of regulation for devices. To be considered in the reclassification process, the ''valid scientific evidence'' upon which the Agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, e.g., the contents of a pending PMA. (See section 520(c) of the FD&C Act (21 U.S.C. 360j(c)).) Section 520(h)(4) of the FD&C Act, added by FDAMA, provides that FDA may use, for reclassification of a device, certain information in a PMA 6 years after the application has been approved. This can include information from clinical and preclinical tests or studies that demonstrate the safety or effectiveness of the device but does not include descriptions of methods of manufacture or product composition and other trade secrets.

Section 513(e)(1) of the FD&C Act sets forth the process for issuing a final order. Specifically, prior to the issuance of a final order reclassifying a device, the following must occur: (1) Publication of a proposed order in the **Federal Register**; (2) a meeting of a device classification panel described in section 513(b) of the FD&C Act; and (3) consideration of comments to a public docket. FDA held a meeting of a device classification panel described in section 513(b) of the FD&C Act with respect to IABP devices on December 5, 2012 (the 2012 Panel). The 2012 Panel recommended that IABP devices indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure be reclassified to class II with special controls. The 2012 Panel agreed with FDA's conclusion that the available scientific evidence is adequate to support the safety and effectiveness of IABP devices indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure. The 2012 Panel further agreed that the special controls identified by FDA were appropriate to mitigate the relevant risks to health for this use. FDA published a proposed order in the **Federal Register** of June 19, 2013 (78 FR 36702) (the 2013 proposed order). FDA received and has considered one comment on the 2013 proposed order as discussed in section II of this document. Therefore, FDA has met this requirement under section 513(e)(1) of the FD&C Act.

B. Requirement for Premarket Approval Application

FDA is requiring PMAs for IABP devices when indicated for septic shock or pulsatile flow generation.

Section 515(b)(1) of the FD&C Act sets forth the process for issuing a final order. Specifically, prior to the issuance of a final order requiring premarket approval for a preamendments class III device, the following must occur: (1) Publication of a proposed order in the **Federal Register**; (2) a meeting of a device classification panel described in section 513(b) of the FD&C Act; and (3) consideration of comments from all affected stakeholders, including patients, payers, and providers. FDA held a meeting of a device classification panel described in section 513(b) of the FD&C Act with respect to IABP devices on December 5, 2012. The 2012 Panel recommended that IABP devices when indicated for septic shock or pulsatile flow generation remain in class III (subject to premarket approval application). The 2012 Panel supported FDA's conclusion that the effectiveness of IABP devices when indicated for septic shock or pulsatile flow generation has not been established through adequate scientific evidence. FDA published the 2013 proposed order on June 19, 2013 (78 FR 36702). FDA received and has considered one comment on the 2013 proposed order as discussed in section II of this document, and therefore, has met this requirement under section 515(b)(1) of the FD&C Act.

Section 515(b)(2) of the FD&C Act provides that a proposed order to require premarket approval shall contain: (1) The proposed order, (2) the proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from the use of the device, (3) an opportunity for the submission of comments on the proposed order and the proposed findings, and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device. The 2013 proposed order satisfies these requirements.

Section 515(b)(3) of the FD&C Act provides that FDA shall, after the close of the comment period on the proposed order, consideration of any comments received, and a meeting of a device classification panel described in section 513(b) of the FD&C Act, issue a final order to require premarket approval or publish a document terminating the proceeding together with the reasons for such termination. If FDA terminates the proceeding, FDA is required to initiate reclassification of the device under section 513(e) of the FD&C Act, unless the reason for termination is that the device is a banned device under section 516 of the FD&C Act (21 U.S.C. 360f).

A preamendments class III device may be commercially distributed without a PMA until 90 days after FDA issues a final order (a final rule issued under section 515(b) of the FD&C Act prior to the enactment of FDASIA is considered to be a final order for purposes of section 501(f) of the FD&C Act (21 U.S.C. 351(f))) requiring premarket approval for the device, or 30 months after final classification of the device under section 513 of the FD&C Act, whichever is later. For IABP devices, the preamendments class III devices that are the subject of this final order, the later of these two time periods is the 90-day period. Since these devices were classified in 1980, the 30-month period has expired (45 FR 7966; February 5, 1980). Therefore, section 501(f)(2)(B) of the FD&C Act requires that a PMA for such device be filed within 90 days of the date of issuance of this final order. If a PMA is not filed for such device within 90 days after the issuance of this final order, the device will be deemed adulterated under section 501(f) of the FD&C Act.

Also, a preamendments device subject to the order process under section 515(b) of the FD&C Act is not required to have an approved investigational device exemption (IDE) (see part 812 (21 CFR part 812)) contemporaneous with its interstate distribution until the date identified by FDA in the final order requiring the filing of a PMA for the device. At that time, an IDE is required only if a PMA has not been filed. If the manufacturer, importer, or other sponsor of the device submits an IDE application and FDA approves it, the device may be distributed for investigational use. If a PMA is not filed by the later of the two dates, and the device is not distributed for investigational use under an IDE, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the FD&C Act, and subject to seizure and condemnation under section 304 of the FD&C Act (21 U.S.C. 334) if its distribution continues. Other enforcement actions include, but are not limited to, the following: Shipment of devices in interstate commerce will be subject to injunction under section 302 of the FD&C Act (21 U.S.C. 332) and the individuals responsible for such shipment will be subject to prosecution under section 303 of the FD&C Act (21 U.S.C. 333). FDA

requests that manufacturers take action to prevent the further use of devices for which no PMA has been filed.

II. Public Comments in Response to the Proposed Order

In response to the 2013 proposed order to reclassify IABP devices when indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure, and require the filing of a PMA or a notice of completion of a PDP for IABP devices when indicated for septic shock or pulsatile flow generation, FDA received one comment. The comment supported FDA's intent to call for PMAs for IABP devices when indicated for septic shock or pulsatile flow generation, but disagreed with FDA's intent to reclassify IABP devices when indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure, stating that the risks to health are ''serious,'' and ''special controls are inadequate to provide reasonable assurance of safety and effectiveness for these complex, life-supporting devices.''

FDA disagrees with this comment. According to section 513(a)(1)(C) of the FD&C Act, a class III device is defined as a device which (1) ''cannot be classified as a class I device because insufficient information exists to determine that the application of general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device,'' and (2) ''cannot be classified as a class II device because insufficient information exists to determine that the special controls . . . would provide reasonable assurance of its safety and effectiveness,'' and (3) ''is purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health,'' or (4) ''presents a potential unreasonable risk of illness or injury.'' Although FDA considers IABP devices to be life-supporting, a viewpoint which was supported by the 2012 Panel, FDA believes that, based on the available evidence, that special controls, in addition to general controls, would be sufficient to provide a reasonable assurance of safety and effectiveness, and there is not an unreasonable risk of illness or injury for IABP devices when indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure. The 2012 Panel agreed with FDA's conclusions and provided the following rationale for recommending that these devices be reclassified to class II: (1) There is a wealth of clinical experience that attests to the benefit of the device; (2) there is an important advantage to use of intra-aortic balloon counter-pulsation to provide hemodynamic stability or protection from ischemia in precarious or unstable patients; and (3) the recommended special controls will mitigate the health risks associated with the device. Therefore, FDA disagrees that IABP devices when indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure should be classified as class III devices. FDA believes that the identified special controls mitigate the risks to health and provide a reasonable assurance of safety and effectiveness for this patient population with high morbidity and mortality.

The commenter also provided a summary of recalls and adverse event reports in FDA's Manufacturer and User Facility Device Experience (MAUDE) database for this device type to support their perspective that reclassification is inappropriate for IABP devices when indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure. FDA is aware of this data, fully considered this information prior to the proposed reclassification, and presented this information to the 2012 Panel. As such, this is not new information which would have a bearing on FDA's decision to reclassify IABP devices when indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure from class III to class II.

The commenter further notes that ''A major problem with this proposed order is that it splits the device into two classifications (Class III and Class II) . . . down-classification for any indication would create an enormous and dangerous loophole that would allow manufacturers to avoid the more rigorous PMA review process.'' FDA disagrees with this comment. FDA does not regulate the practice of medicine but rather regulates the use of a device as indicated by the party offering the device for interstate commerce. The indications for IABP devices are limited by the codified classification.

The commenter also states that ''the down-classification of these devices means that companies manufacturing new models with unique characteristics in the future would not be required to provide that their products are safe or effective.'' The commenter suggests that classification to class II (special controls) precludes FDA from requesting clinical data for these devices. FDA disagrees with this comment. FDA believes that the proposed special controls provide a reasonable assurance of safety and effectiveness for IABP devices that feature similar technology when indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure. FDA is also not precluded from requesting clinical data for IABP devices where it is necessary to demonstrate substantial equivalence.

III. The Final Order

Under sections 513(e) and 515(b) of the FD&C Act, FDA is adopting its findings as published in the preamble to the 2013 proposed order. FDA is issuing this final order to require the filing of a PMA or a notice of completion of a PDP for IABP devices when indicated for septic shock or pulsatile flow generation. In addition, FDA is issuing this final order to reclassify IABP devices when indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure from class III to class II and establish special controls. This final order will revise part 870 (21 CFR part 870).

Under the final order, a PMA or a notice of completion of a PDP is required to be filed on or before 90 days after the date of publication of the final order in the **Federal Register**, for any of these class III preamendments devices that were in commercial distribution before May 28, 1976, or that has been found by FDA to be substantially equivalent to such a device on or before 90 days after the date of publication of the final order in the **Federal Register**. An approved PMA or a declared completed PDP is required to be in effect for any such devices on or before 180 days after FDA files the application. Any other class III preamendments device subject to this order that was not in commercial distribution before May 28, 1976, is required to have an approved PMA or a declared completed PDP in effect before it may be marketed.

If a PMA or a notice of completion of a PDP for any of the class III preamendments devices is not filed on or before the 90th day past the effective date of this regulation, that device will be deemed adulterated under section 501(f)(1)(A) of the FD&C Act, and commercial distribution of the device must cease immediately. The device may, however, be distributed for investigational use, if the requirements of the IDE regulations (part 812) are met.

Following the effective date of this final order, firms submitting a 510(k) premarket notification for an IABP device when indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of

heart failure will need either to (1) comply with the particular mitigation measures set forth in the codified special controls or (2) use alternative mitigation measures, but demonstrate to the Agency's satisfaction that those alternative measures identified by the firm will provide at least an equivalent assurance of safety and effectiveness.

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the FD&C Act if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the devices. FDA has determined that premarket notification is necessary to provide reasonable assurance of safety and effectiveness of IABP devices when indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure, and therefore, this device type is not exempt from premarket notification requirements.

An applicant whose device was legally in commercial distribution before May 28, 1976, or whose device has been found to be substantially equivalent to such a device, who does not intend to market such device for septic shock or pulsatile flow generation, may remove such intended uses from the device's labeling by initiating a correction within 90 days after issuance of this final order. Under 21 CFR 806.10(a)(2) a device manufacturer or importer initiating a correction to remedy a violation of the FD&C Act that may present a risk to health is required to submit a written report of the correction to FDA.

IV. Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Paperwork Reduction Act of 1995

This final order refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814, subpart B, have been approved under OMB control number 0910–0231; and the collections of information under 21 CFR part 801 have been approved under OMB control number 0910–0485.

VI. Codification of Orders

Prior to the amendments by FDASIA, section 513(e) of the FD&C Act provided for FDA to issue regulations to reclassify devices and section 515(b) of the FD&C Act provided for FDA to issue regulations to require approval of an application for premarket approval for preamendments devices or devices found to be substantially equivalent to preamendments devices. Although sections 513(e) and 515(b) of the FD&C Act as amended require FDA to issue final orders rather than regulations, FDASIA also provides for FDA to revoke previously issued regulations by order. FDA will continue to codify reclassifications and requirements for approval of an application for premarket approval in the Code of Federal Regulations. Therefore, under section 513(e)(1)(A)(i) of the FD&C Act, as amended by FDASIA, in this final order, we are revoking the requirements in § 870.3535 related to the classification of IABP devices when indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure as class III devices and codifying the reclassification of these devices into class II.

List of Subjects in 21 CFR Part 870

Medical devices, Cardiovascular devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 870 is amended as follows:

PART 870—CARDIOVASCULAR DEVICES

■ 1. The authority citation for 21 CFR part 870 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Revise § 870.3535 to read as follows:

§ 870.3535 Intra-aortic balloon and control system.

(a) *Identification.* An intra-aortic balloon and control system is a prescription device that consists of an inflatable balloon, which is placed in the aorta to improve cardiovascular functioning during certain life-threatening emergencies, and a control system for regulating the inflation and deflation of the balloon. The control system, which monitors and is synchronized with the electrocardiogram, provides a means for setting the inflation and deflation of the balloon with the cardiac cycle.

(b) *Classification.* (1) Class II (special controls) when the device is indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure. The special controls for this device are:

(i) Appropriate analysis and non-clinical testing must be conducted to validate electromagnetic compatibility and electrical safety of the device;

(ii) Software verification, validation, and hazard analysis must be performed;

(iii) The device must be demonstrated to be biocompatible;

(iv) Sterility and shelf-life testing must demonstrate the sterility of patient-contacting components and the shelf life of these components;

(v) Non-clinical performance evaluation of the device must demonstrate mechanical integrity, durability, and reliability to support its intended purpose; and

(vi) Labeling must include a detailed summary of the device- and procedure-related complications pertinent to use of the device.

(2) Class III (premarket approval) when the device is indicated for septic shock and pulsatile flow generation.

(c) *Date premarket approval application (PMA) or notice of completion of product development protocol (PDP) is required.* A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before March 31, 2014, for any intra-aortic balloon and control system indicated for septic shock or pulsatile flow generation that was in commercial distribution before May 28, 1976, or that has, on or before March 31, 2014, been found to be substantially equivalent to any intra-aortic balloon and control system indicated for septic shock or pulsatile flow generation that was in commercial distribution before May 28, 1976. Any other intra-aortic balloon and control system indicated for septic shock or pulsatile flow generation shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: December 23, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–31218 Filed 12–27–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 870

[Docket No. FDA–2013–N–0487]

Cardiovascular Devices; Reclassification of External Counter-Pulsating Devices for Treatment of Chronic Stable Angina; Effective Date of Requirement for Premarket Approval for External Counter-Pulsating Devices for Other Specified Intended Uses

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final order to reclassify external counter-pulsating (ECP) devices for treatment of chronic stable angina that is refractory to optimal anti-anginal medical therapy and without options for revascularization, which is a preamendments class III device, into class II (special controls), and to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for ECP devices for other intended uses specified in this proposed order.

DATES: This order is effective December 30, 2013.

FOR FURTHER INFORMATION CONTACT: Angela Krueger, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1666, Silver Spring, MD 20993, 301–796–6380, *angela.krueger@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), the Safe Medical Devices Act of 1990 (Pub. L. 101–629), the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115), the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107–250), the Medical Devices Technical Corrections Act (Pub. L. 108–214), the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85), and the Food and Drug Administration Safety and Innovation Act (FDASIA) (Public Law 112–144), establishes a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) established three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513(d) of the FD&C Act, devices that were in commercial distribution before the enactment of the 1976 amendments, May 28, 1976 (generally referred to as preamendments devices), are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976 (generally referred to as postamendments devices), are automatically classified by section 513(f) of the FD&C Act into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval unless, and until, the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

A preamendments device that has been classified into class III and devices found substantially equivalent by means of premarket notification (510(k)) procedures to such a preamendments device or to a device within that type may be marketed without submission of a PMA until FDA issues a final order under section 515(b) of the FD&C Act (21 U.S.C. 360e(b)) requiring premarket approval or until the device is subsequently reclassified into class I or class II. Section 515(b)(1) of the FD&C Act directs FDA to issue an order requiring premarket approval for a preamendments class III device.

Although, under the FD&C Act, the manufacturer of a class III preamendments device may respond to the call for PMAs by filing a PMA or a notice of completion of a PDP, in practice, the option of filing a notice of completion of a PDP has not been used. For simplicity, although corresponding requirements for PDPs remain available to manufacturers in response to this final order under section 515(b) of the FD&C Act, this document will refer only to the requirement for the filing and receiving approval of a PMA.

On July 9, 2012, FDASIA was enacted. Section 608(a) of FDASIA (126 Stat. 1056) amended section 513(e) of the FD&C Act, changing the mechanism for reclassifying a device from rulemaking to an administrative order. Section 608(b) of FDASIA (126 Stat. 1056) amended section 515(b) of the FD&C Act, changing the process for requiring premarket approval for a preamendments class III device from rulemaking to an administrative order.

A. Reclassification

FDA is reclassifying ECP devices for treatment of chronic stable angina that is refractory to optimal anti-anginal medical therapy and without options for revascularization from class III to class II.

Section 513(e) of the FD&C Act governs reclassification of classified preamendments devices. This section provides that FDA may, by administrative order, reclassify a device based upon ''new information.'' FDA can initiate a reclassification under section 513(e) of the FD&C Act or an interested person may petition FDA to reclassify a preamendments device. The term ''new information,'' as used in section 513(e) of the FD&C Act, includes information developed as a result of a reevaluation of the data before the Agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland-Rantos Co.* v. *United States Department of Health, Education, and Welfare,* 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch,* 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard,* 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously before the Agency is an appropriate basis for subsequent action where the reevaluation is made in light of newly available authority (see *Bell,* 366 F.2d at 181; *Ethicon, Inc.* v. *FDA,* 762 F.Supp. 382, 388–391 (D.D.C. 1991)), or in light of changes in ''medical science'' (*Upjohn,* 422 F.2d at 951). Whether data before the Agency are old or new data, the ''new information'' to support reclassification under section 513(e) must be ''valid scientific evidence,'' as defined in section 513(a)(3) of the FD&C Act and § 860.7(c)(2) (21 CFR 860.7(c)(2)). (See, e.g., *General Medical*

Co. v. *FDA,* 770 F.2d 214 (D.C. Cir. 1985); *Contact Lens Manufacturers Association* v. *FDA,* 766 F.2d 592 (D.C. Cir. 1985), cert. denied, 474 U.S. 1062 (1986).)

FDA relies upon ''valid scientific evidence'' in the classification process to determine the level of regulation for devices. To be considered in the reclassification process, the ''valid scientific evidence'' upon which the Agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, e.g., the contents of a pending PMA. (See section 520(c) of the FD&C Act (21 U.S.C. 360j(c)).) Section 520(h)(4) of the FD&C Act, added by FDAMA, provides that FDA may use, for reclassification of a device, certain information in a PMA 6 years after the application has been approved. This can include information from clinical and preclinical tests or studies that demonstrate the safety or effectiveness of the device but does not include descriptions of methods of manufacture or product composition and other trade secrets.

Section 513(e)(1) of the FD&C Act sets forth the process for issuing a final order reclassifying a device. Specifically, prior to the issuance of a final order reclassifying a device, the following must occur: (1) Publication of a proposed order in the **Federal Register**; (2) a meeting of a device classification panel described in section 513(b) of the FD&C Act; and (3) consideration of comments to a public docket. FDA held a meeting of a device classification panel described in section 513(b) of the FD&C Act with respect to external-counter pulsating devices on December 5, 2012. The panel recommended that ECP devices intended for treatment of chronic stable angina that is refractory to optimal anti-anginal medical therapy and without options for revascularization be reclassified to class II with special controls. The panel agreed with FDA's conclusion that the available scientific evidence is adequate to support the safety and effectiveness of ECP devices for treatment of chronic stable angina that is refractory to optimal anti-anginal medical therapy and without options for revascularization. The panel further agreed that the special controls identified by FDA were appropriate to mitigate the relevant risks to health for this use. FDA published a proposed order in the **Federal Register** of May 21, 2013 (78 FR 29672). FDA received and has considered one comment on this proposed order as discussed in section II of this document. Therefore, FDA has met the requirements under section 513(e)(1) of the FD&C Act.

B. Requirement for Premarket Approval Application

FDA is requiring PMAs for ECP devices for Certain Specified Intended Uses. For the purposes of this final order, the term ''Certain Specified Intended Uses'' includes the following intended uses:

- Unstable angina pectoris;
- Acute myocardial infarction;
- Cardiogenic shock;
- Congestive heart failure;
- Postoperative treatment of patients who have undergone coronary artery bypass surgery;
- Peripheral arterial disease associated with the following: Ischemic ulcers rest pain or claudication, threatened gangrene, insufficient blood supply at an amputation site, persisting ischemia after embolectomy or bypass surgery, and/or pre- and post-arterial reconstruction to improve runoff;
- Diabetes complicated by peripheral arterial disease or other conditions possibly related to arterial insufficiency including the following: Nocturnal leg cramps and/or necrobiosis diabeticorum;
- Venous diseases, including the following: Prophylaxis of deep vein thrombophlebitis, edema (e.g., chronic lymphedema) and/or induration (e.g., stasis dermatitis) associated with chronic venous stasis, venous stasis ulcers, and/or thrombophlebitis;
- Athletic injuries, including the following: Charley horses, pulled muscles, and/or edematous muscles; and
- Necrotizing cellulitis.

Section 515(b)(1) of the FD&C Act sets forth the process for issuing a final order requiring PMAs. Specifically, prior to the issuance of a final order requiring premarket approval for a preamendments class III device, the following must occur: (1) Publication of a proposed order in the **Federal Register**; (2) a meeting of a device classification panel described in section 513(b) of the FD&C Act; and (3) consideration of comments from all affected stakeholders, including patients, payors, and providers. As discussed in this document, FDA has met the requirements under section 515(b)(1) of the FD&C Act.

FDA held a meeting of a device classification panel described in section 513(b) of the FD&C Act with respect to external-counter pulsating devices on December 5, 2012. The panel recommended that ECP devices for Certain Specified Intended Uses remain in class III. The panel supported FDA's conclusion that because the safety and effectiveness of ECP devices for Certain Specified Intended Uses has not been established through adequate scientific evidence, the device presents a potential unreasonable risk of injury given that the benefit of ECP devices for these uses is unknown. In addition, there was insufficient information to establish special controls for these uses.

FDA published a proposed order in the **Federal Register** of May 21, 2013 (78 FR 29672), that satisfied the requirements of section 515(b)(2) of the FD&C Act, which provides that a proposed order to require premarket approval shall contain: (1) The proposed order, (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from the use of the device, (3) an opportunity for the submission of comments on the proposed order and the proposed findings, and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device. FDA received and has considered one comment on this proposed order as discussed in section II of this document.

Section 515(b)(3) of the FD&C Act provides that FDA shall, after the close of the comment period on the proposed order, consideration of any comments received, and a meeting of a device classification panel described in section 513(b) of the FD&C Act, issue a final order to require premarket approval or publish a document terminating the proceeding together with the reasons for such termination. If FDA terminates the proceeding, FDA is required to initiate reclassification of the device under section 513(e) of the FD&C Act, unless the reason for termination is that the device is a banned device under section 516 of the FD&C Act (21 U.S.C. 360f).

A preamendments class III device may be commercially distributed without a PMA until 90 days after FDA issues a final order (a final rule issued under section 515(b) of the FD&C Act prior to the enactment of FDASIA is considered to be a final order for purposes of section 501(f) of the FD&C Act (21 U.S.C. 351(f))) requiring premarket approval for the device, or 30 months after final classification of the device under section 513 of the FD&C Act, whichever is later. For ECP devices, the preamendments class III devices that are the subject of this final order, the later of these two time periods is the 90-day period. Since these devices were classified in 1980, the 30-month period

has expired (45 FR 7966; February 5, 1980). Therefore, section 501(f)(2)(B) of the FD&C Act requires that a PMA for such device be filed within 90 days of the date of issuance of this final order. If a PMA is not filed for such device within 90 days after the issuance of this final order, the device will be deemed adulterated under section 501(f) of the FD&C Act.

Also, a preamendments device subject to the order process under section 515(b) of the FD&C Act is not required to have an approved investigational device exemption (IDE) (see part 812 (21 CFR part 812)) contemporaneous with its interstate distribution until the date identified by FDA in the final order requiring the filing of a PMA for the device. At that time, an IDE is required only if a PMA has not been filed. If the manufacturer, importer, or other sponsor of the device submits an IDE application and FDA approves it, the device may be distributed for investigational use. If a PMA is not filed by the later of the two dates, and the device is not distributed for investigational use under an IDE, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the FD&C Act, and subject to seizure and condemnation under section 304 of the FD&C Act (21 U.S.C. 334) if its distribution continues. Other enforcement actions include, but are not limited to, the following: Shipment of devices in interstate commerce will be subject to injunction under section 302 of the FD&C Act (21 U.S.C. 332) and the individuals responsible for such shipment will be subject to prosecution under section 303 of the FD&C Act (21 U.S.C. 333). FDA requests that manufacturers take action to prevent the further use of devices for which no PMA has been filed.

II. Public Comments in Response to the Proposed Order

In response to the May 21, 2013, proposed order to reclassify ECP devices for treatment of chronic stable angina that is refractory to optimal anti-anginal medical therapy and without options for revascularization, and require the filing of a PMA or a notice of completion of a PDP for ECP devices for Certain Specified Intended Uses, FDA received one comment. The comment supported FDA's intent to call for PMAs for ECP devices for Certain Specified Intended Uses, but disagreed with FDA's intent to reclassify ECP devices intended for treatment of chronic stable angina that is refractory to optimal anti-anginal medical therapy and without options for revascularization, stating, ''Since the law specifies that high-risk devices are considered class III, we see no justification for down-classifying this obviously high-risk device used for the high-risk indication of chronic stable angina, and all other indications. We believe that high-risk cardiac devices should remain class III devices and be subjected to PMA because they are life-supporting and life-sustaining.'' The commenter further notes that ''Currently available clinical evidence does not prove safety and effectiveness for these devices for any indication,'' and that, ''Special controls are not enough to ensure safety and effectiveness.'' FDA disagrees with this comment. According to section 513(a)(1)(C) of the FD&C Act, a class III device is defined as a device which (1) ''cannot be classified as a class I device because insufficient information exists to determine that the application of general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device,'' and (2) ''cannot be classified as a class II device because insufficient information exists to determine that the special controls . . . would provide reasonable assurance of its safety and effectiveness,'' and (3) ''is purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health,'' or (4) ''presents a potential unreasonable risk of illness or injury.'' FDA does not believe that ECP devices are considered life-supporting devices, a viewpoint which was supported by the panel members at the December 5, 2012, device classification panel meeting (the 2012 Panel). In addition, FDA believes that the available evidence supports a reasonable assurance of safety and effectiveness, that special controls, in addition to general controls, would be sufficient to provide such assurance, and there is not an unreasonable risk of illness or injury for ECP devices intended for treatment of chronic stable angina that is refractory to optimal anti-anginal medical therapy and without options for revascularization. The 2012 Panel agreed with FDA's conclusions and further agreed that the special controls identified by FDA were appropriate to mitigate the relevant risks to health. Therefore, FDA disagrees that ECP devices intended for treatment of chronic stable angina that is refractory to optimal anti-anginal medical therapy and without options for revascularization should be classified as class III devices. FDA believes that the identified special controls mitigate the risks to health and provide a reasonable assurance of safety and effectiveness for this patient population.

The commenter further notes that ''having two different classifications for the same device, based on different indications, does not provide adequate safeguards for patients, or sufficient evidence-based guidelines for physicians. Instead, it provides an incentive for companies to use the easier approval pathway, the 510(k) process rather than the PMA pathway, knowing that physicians can use the implant off label for any indication that they choose.'' FDA disagrees with this comment. FDA does not regulate the practice of medicine but rather regulates the use of a device as indicated by the party offering the device for interstate commerce. The indications for ECP devices are limited by the codified classification. Also, ECP devices are not implants as referred to by the commenter.

III. The Final Order

Under sections 513(e) and 515(b) of the FD&C Act, FDA is adopting its findings as published in the preamble to the proposed order (78 FR 29672). FDA is issuing this final order to require the filing of a PMA or a notice of completion of a PDP for ECP devices intended for Certain Specified Intended Uses (see section I.B of this document):

In addition, FDA is issuing this final order to reclassify ECP devices for treatment of chronic stable angina that is refractory to optimal anti-anginal medical therapy and without options for revascularization from class III to class II and establish special controls. This final order will revise 21 CFR part 870.

Under the final order, a PMA or a notice of completion of a PDP is required to be filed on or before 90 days after the date of publication of the final order in the **Federal Register**, for any of these class III preamendments devices that were in commercial distribution before May 28, 1976, or that has been found by FDA to be substantially equivalent to such a device on or before 90 days after the date of publication of the final order in the **Federal Register**. An approved PMA or a declared completed PDP is required to be in effect for any such devices on or before 180 days after FDA files the application. Any other class III preamendments device subject to this order that was not in commercial distribution before May 28, 1976, is required to have an approved PMA or a declared completed PDP in effect before it may be marketed.

If a PMA or a notice of completion of a PDP for any of the class III preamendments devices is not filed on or before the 90th day past the effective

date of this regulation, that device will be deemed adulterated under section 501(f)(1)(A) of the FD&C Act, and commercial distribution of the device must cease immediately. The device may, however, be distributed for investigational use, if the requirements of the IDE regulations (part 812) are met.

Following the effective date of this final order, firms submitting a 510(k) premarket notification for a ECP device intended for treatment of chronic stable angina that is refractory to optimal anti-anginal medical therapy and without options for revascularization will need either to: (1) Comply with the particular mitigation measures set forth in the codified special controls or (2) use alternative mitigation measures, but demonstrate to the Agency's satisfaction that those alternative measures identified by the firm will provide at least an equivalent assurance of safety and effectiveness.

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the FD&C Act if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the devices. FDA has determined that premarket notification is necessary to provide reasonable assurance of safety and effectiveness of ECP devices for treatment of chronic stable angina that is refractory to optimal anti-anginal medical therapy and without options for revascularization, and therefore, this device type is not exempt from premarket notification requirements.

An applicant whose device was legally in commercial distribution before May 28, 1976, or whose device has been found to be substantially equivalent to such a device, who does not intend to market such device for any one or more Certain Specified Intended Uses, may remove such intended uses from the device's labeling by initiating a correction within 90 days after issuance of any final order based on this proposal. 21 CFR part 806.10(a)(2) requires a device manufacturer or importer initiating a correction to remedy a violation of the FD&C Act that may present a risk to health to submit a written report of the correction to FDA.

IV. Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Paperwork Reduction Act of 1995

This final order refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814, subpart B, have been approved under OMB control number 0910–0231; and the collections of information under 21 CFR part 801 have been approved under OMB control number 0910–0485.

VI. Codification of Orders

Prior to the amendments by FDASIA, section 513(e) of the FD&C Act provided for FDA to issue regulations to reclassify devices and section 515(b) of the FD&C Act provided for FDA to issue regulations to require approval of an application for premarket approval for preamendments devices or devices found to be substantially equivalent to preamendments devices. Although sections 513(e) and 515(b) as amended require FDA to issue final orders rather than regulations, FDASIA also provides for FDA to revoke previously issued regulations by order. FDA will continue to codify reclassifications and requirements for approval of an application for premarket approval in the Code of Federal Regulations. Therefore, under section 513(e)(1)(A)(i) of the FD&C Act, as amended by FDASIA, in this final order, we are revoking the requirements in § 870.5225 related to the classification of external counter-pulsating devices for chronic stable angina that is refractory to optimal anti-anginal medical therapy and without options for revascularization as class III devices and codifying the reclassification of these devices into class II.

List of Subjects in 21 CFR Part 870

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 870 is amended as follows:

PART 870—CARDIOVASCULAR DEVICES

■ 1. The authority citation for 21 CFR part 870 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Revise § 870.5225 to read as follows:

§ 870.5225 External counter-pulsating device.

(a) *Identification.* An external counter-pulsating device is a noninvasive, prescription device used to assist the heart by applying positive or negative pressure to one or more of the body's limbs in synchrony with the heart cycle.

(b) *Classification.* (1) Class II (special controls) when the device is intended for the treatment of chronic stable angina that is refractory to optimal anti-anginal medical therapy and without options for revascularization. The special controls for this device are:

(i) Nonclinical performance evaluation of the device must demonstrate a reasonable assurance of safety and effectiveness for applied pressure, synchronization of therapy with the appropriate phase of the cardiac cycle, and functionality of alarms during a device malfunction or an abnormal patient condition;

(ii) Reliabilities of the mechanical and electrical systems must be established through bench testing under simulated use conditions and matched by appropriate maintenance schedules;

(iii) Software design and verification and validation must be appropriately documented;

(iv) The skin-contacting components of the device must be demonstrated to be biocompatible;

(v) Appropriate analysis and testing must be conducted to verify electrical safety and electromagnetic compatibility of the device; and

(vi) Labeling must include a detailed summary of the device-related and procedure-related complications pertinent to use of the device.

(2) Class III (premarket approval) for the following intended uses: Unstable angina pectoris; acute myocardial infarction; cardiogenic shock; congestive heart failure; postoperative treatment of patients who have undergone coronary artery bypass surgery; peripheral arterial disease associated with ischemic ulcers rest pain or claudication, threatened gangrene, insufficient blood supply at an amputation site, persisting ischemia after embolectomy or bypass surgery, and/or pre- and post-arterial

reconstruction to improve runoff; diabetes complicated by peripheral arterial disease or other conditions possibly related to arterial insufficiency including nocturnal leg cramps and/or necrobiosis diabeticorum; venous diseases, including prophylaxis of deep vein thrombophlebitis, edema (e.g., chronic lymphedema) and/or induration (e.g., stasis dermatitis) associated with chronic venous stasis, venous stasis ulcers, and/or thrombophlebitis; athletic injuries, including Charley horses, pulled muscles and/or edematous muscles; necrotizing cellulitis.

(c) *Date premarket approval application (PMA) or notice of completion of product development protocol (PDP) is required.* A PMA or notice of completion of a PDP is required to be filed with FDA on or before March 31, 2014, for any external counter-pulsating device, with an intended use described in paragraph (b)(2) of this section, that was in commercial distribution before May 28, 1976, or that has, on or before March 31, 2014, been found to be substantially equivalent to any external counter-pulsating device, with an intended use described in paragraph (b)(2) of this section, that was in commercial distribution before May 28, 1976. Any other external counter-pulsating device with an intended use described in paragraph (b)(2) of this section shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: December 23, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–31216 Filed 12–27–13; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. FDA–2012–N–1239]

Dental Devices; Reclassification of Temporary Mandibular Condyle Prosthesis

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final order to reclassify temporary mandibular condyle prosthesis, a preamendments class III device, into class II (special controls), and rename the device ''temporary mandibular condyle reconstruction plate.'' FDA is also issuing the special controls guideline entitled ''Temporary Mandibular Condyle Reconstruction Plate Class II Special Controls Guideline'' that sets forth the special controls that are necessary to provide a reasonable assurance of the safety and effectiveness of the device.

DATES: This order is effective December 30, 2013.

FOR FURTHER INFORMATION CONTACT: Michael Ryan, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1615, Silver Spring, MD 20993, 301–796–6283.

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), the Safe Medical Devices Act of 1990 (Pub. L. 101–629), the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115), the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107–250), the Medical Devices Technical Corrections Act (Pub. L. 108–214), the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85), and the Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112–144), among other amendments, established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) established three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513(d) of the FD&C Act, devices that were in commercial distribution before the enactment of the 1976 amendments, May 28, 1976 (generally referred to as preamendments devices), are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976 (generally referred to as postamendments devices) are automatically classified by section 513(f) of the FD&C Act into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval unless, and until, the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

On July 9, 2012, FDASIA was enacted. Section 608(a) of FDASIA (126 Stat. 1056) amended section 513(e) of the FD&C Act, changing the mechanism for reclassifying a device from rulemaking to an administrative order.

Section 513(e) of the FD&C Act governs reclassification of classified preamendments devices. This section provides that FDA may, by administrative order, reclassify a device based upon ''new information.'' FDA can initiate a reclassification under section 513(e) of the FD&C Act or an interested person may petition FDA to reclassify a preamendments device. The term ''new information,'' as used in section 513(e) of the FD&C Act, includes information developed as a result of a reevaluation of the data before the Agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland-Rantos Co.* v. *United States Department of Health, Education, and Welfare,* 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch,* 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard,* 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously before the Agency is an appropriate basis for subsequent action where the reevaluation is made in light of newly available authority (see *Bell,* 366 F.2d at 181; *Ethicon, Inc.* v. *FDA,* 762 F.Supp. 382, 388–391 (D.D.C. 1991)), or in light of changes in ''medical science'' (*Upjohn,* 422 F.2d at 951). Whether data before the Agency are old or new data, the ''new information'' to support reclassification under section 513(e) must be ''valid scientific evidence,'' as defined in section 513(a)(3) of the FD&C Act and 21 CFR 860.7(c)(2). (See, e.g., *General Medical Co.* v. *FDA,* 770 F.2d 214 (D.C. Cir. 1985); *Contact Lens Association* v. *FDA,* 766 F.2d 592 (D.C.

Cir. 1985), cert. denied, 474 U.S. 1062 (1986).)

FDA relies upon ''valid scientific evidence'' in the classification process to determine the level of regulation for devices. To be considered in the reclassification process, the ''valid scientific evidence'' upon which the Agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, e.g., the contents of a pending premarket approval application (PMA). (See section 520(c) of the FD&C Act (21 U.S.C. 360j(c)).) Section 520(h)(4) of the FD&C Act, added by FDAMA, provides that FDA may use, for reclassification of a device, certain information in a PMA 6 years after the application has been approved. This includes information from clinical and preclinical tests or studies that demonstrate the safety or effectiveness of the device but does not include descriptions of methods of manufacture or product composition and other trade secrets.

Section 513(e)(1) of the FD&C Act sets forth the process for issuing a final order. Specifically, prior to the issuance of a final order reclassifying a device, the following must occur: (1) Publication of a proposed order in the **Federal Register**; (2) a meeting of a device classification panel described in section 513(b) of the FD&C Act; and (3) consideration of comments to a public docket. FDA published a proposed order to reclassify this device in the **Federal Register** of February 7, 2013 (78 FR 9010) (the 2013 proposed order). FDA received and has considered one comment on the 2013 proposed order, as discussed in section II of this document. On February 12, 1997, FDA held a meeting of a device classification panel described in section 513(b) of the FD&C Act with respect to temporary mandibular condyle prosthesis (the 1997 Panel), and therefore, has met this requirement under section 513(e)(1) of the FD&C Act. As explained further in section II of the 2013 proposed order, a meeting of a device classification panel described in section 513(b) of the FD&C Act took place in 1997 to discuss whether temporary mandibular condyle prosthesis should be reclassified or remain in class III, and the 1997 Panel recommended that the device be reclassified into class II because there was sufficient information to establish special controls. FDA is not aware of new information since the 1997 Panel that would provide a basis for a different recommendation or findings.

II. Public Comments in Response to the Proposed Order

In response to the 2013 proposed order to reclassify temporary mandibular condyle prostheses and rename the device temporary mandibular condyle reconstruction plates (TMCRPs), FDA received one comment. This comment disagreed with FDA's intent to reclassify these devices from class III to class II. The commenter believes that TMCRPs should be classified as class III (PMA) devices, similar to permanent mandibular condyle prostheses, because reclassification to class II (special controls) would allow TMCRPs to enter the market and be used off-label for permanent use. FDA disagrees with this comment. FDA generally does not regulate the practice of medicine but rather regulates the use of a device as indicated by the party offering the device for interstate commerce. The indications for TMCRP are limited to temporary use by the codified identification. FDA is requiring in the special control guideline for this device (see section IV of this final order) patient labeling for TMCRP devices that clearly indicate that the device ''is intended for temporary use (defined as less than 24 months) only. It is not intended to permanently reconstruct the TMJ. It is not intended for permanent treatment of TMJ disorders.'' FDA recommends that patients discuss the risks and benefits of any treatment with their surgeon, especially if off-label use is involved.

The commenter also states that the special controls are not rigorous enough and that clinical trials are necessary to provide a reasonable assurance of the device's safety and effectiveness. The commenter suggests that classification to class II (special controls) precludes FDA from requesting clinical data for these devices. FDA disagrees with this comment. FDA believes that the special controls provide a reasonable assurance of safety and effectiveness for TMCRP devices that feature similar technology and indications. The Agency believes it has identified all relevant risks to health (see section V of the 2013 proposed order) and that the mitigation methods described in the associated special controls guideline will be effective in mitigating these risks. These risks and mitigations were based on recommendations from the 1997 Panel and information provided by manufacturers in response to the section 515(i) of the FD&C Act call for information, which included information on preclinical testing and literature reports demonstrating that TMCRPs are effective for temporary reconstruction of the mandible and not associated with complications. FDA is also not precluded from requesting clinical data for TMCRP devices where it is necessary to demonstrate substantial equivalence. See section 513(a)(1)(B) of the FD&C Act.

The commenter also states that the new identification for this device is misleading and that the device should be limited to terminally ill patients who have had a tumor resection procedure. FDA disagrees with these comments. FDA believes the 1997 Panel did not intend to limit the use of TMCRP to terminally ill patients. FDA believes that the identified risks to health associated with TMCRP devices are inclusive for a patient population that has undergone resective surgical procedures, whether the result of a tumor or not, that requires the removal of the mandibular condyle and mandibular bone. Further, FDA believes that the identified special controls mitigate these risks and provide a reasonable assurance of safety and effectiveness in this patient population.

III. The Final Order

Under section 513(e) of the FD&C Act, FDA is adopting its findings as published in the preamble to the 2013 proposed order. FDA is issuing this final order to reclassify temporary mandibular condyle prostheses from class III to class II, rename them temporary mandibular condyle reconstruction plates, and establish special controls by revising part 872 (21 CFR part 872).

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the FD&C Act if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the devices. FDA has determined that premarket notification is necessary to provide reasonable assurance of safety and effectiveness of TMCRPs, and therefore, this device type is not exempt from premarket notification requirements.

IV. Electronic Access to the Special Controls Guideline

Persons interested in obtaining a copy of the guideline may do so by using the Internet. A search capability for all Center for Devices and Radiological Health guidelines and guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* The

guideline is also available at *http://www.regulations.gov.*

To receive ''Temporary Mandibular Condyle Reconstruction Plate Class II Special Controls Guideline,'' you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1799 to identify the guidance you are requesting.

V. Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Paperwork Reduction Act of 1995

This final order refers to currently approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814, subpart B, have been approved under OMB control number 0910–0231; and the collections of information under 21 CFR part 801 have been approved under OMB control number 0910–0485.

VII. Clarifications to Special Controls Guidelines

The special controls guideline reflects changes the Agency is making to clarify its position on the binding nature of special controls. The changes include referring to the document as a ''guideline,'' as that term is used in section 513(a) of the FD&C Act, which the Secretary has developed and disseminated to provide a reasonable assurance of safety and effectiveness for class II devices, and not a ''guidance,'' as that term is used in 21 CFR 10.115. The guideline also clarifies that firms will need either to (1) comply with the particular mitigation measures set forth in the special controls guideline or (2) use alternative mitigation measures, but demonstrate to the Agency's satisfaction that those alternative measures identified by the firm will provide at least an equivalent assurance of safety and effectiveness. Finally, the guideline uses mandatory language to emphasize that firms must comply with special controls to legally market their class II devices. These revisions do not represent a change in FDA's position about the binding effect of special controls, but rather are intended to address any possible confusion or misunderstanding.

VIII. Codification of Orders

Prior to the amendments by FDASIA, section 513(e) of the FD&C Act provided for FDA to issue regulations to reclassify devices. Although section 513(e) of the FD&C Act as amended requires FDA to issue final orders rather than regulations, FDASIA also provides for FDA to revoke previously issued regulations by order. FDA will continue to codify classifications and reclassifications in the Code of Federal Regulations (CFR). Changes resulting from final orders will appear in the CFR as changes to codified classification determinations or as newly codified orders. Therefore, under section 513(e)(1)(A)(i) of the FD&C Act, as amended by FDASIA, in this final order, we are revoking the requirements in § 872.3960 related to the classification of TMCRPs as Class III devices and codifying the reclassification of TMCRPs into Class II.

List of Subjects in 21 CFR Part 872

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 872 is amended as follows:

PART 872—DENTAL DEVICES

■ 1. The authority citation for 21 CFR part 872 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 872.3960 is amended by revising paragraph (c) to read as follows:

§ 872.3960 Mandibular condyle prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before March 30, 1999, for any mandibular condyle prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before March 30, 1999, been found to be substantially equivalent to a mandibular condyle prosthesis that was in commercial distribution before May 28, 1976. Any other mandibular condyle prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

■ 3. Section 872.4770 is added to subpart E to read as follows:

§ 872.4770 Temporary mandibular condyle reconstruction plate.

(a) *Identification.* A temporary mandibular condyle reconstruction plate is a device that is intended to stabilize mandibular bone and provide for temporary reconstruction of the mandibular condyle until permanent reconstruction is completed in patients who have undergone resective surgical procedures requiring removal of the mandibular condyle and mandibular bone. This device is not intended for treatment of temporomandibular joint disorders.

(b) *Classification.* Class II (special controls). The special controls for this device is FDA's guideline entitled ''Temporary Mandibular Condyle Reconstruction Plate Class II Special Controls Guideline.'' See § 872.1(e) for the availability of this guidance document.

Dated: December 23, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–31217 Filed 12–27–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 985

[Docket No. FR–5729–N–01]

Partial Section Eight Management Assessment Program (SEMAP) Indicator Waiver; Family Self-Sufficiency (FSS) Program Demonstration

AGENCY: Office of Policy Development and Research and Office of Public and Indian Housing, HUD.

ACTION: Waiver.

SUMMARY: This document advises the public of a HUD regulation that has been temporarily waived in order to facilitate voluntary PHA participation in the FSS Program Demonstration. The FSS Program Demonstration is a study using a random assignment methodology to evaluate the effectiveness of the FSS program. Specifically, this document announces a temporary, partial waiver to the SEMAP rating criteria at 24 CFR 985.3(o) (''*Family self-sufficiency (FSS) enrollment and escrow accounts*''), for PHAs with a mandatory Housing Choice Voucher (HCV) FSS program who are

participating in the FSS Program Demonstration.

DATES: Effective December 30, 2013.

FOR FURTHER INFORMATION CONTACT: Regina Gray, Ph.D., Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW., Room 8132, Washington, DC 20410; telephone number 202–402–2876 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Family Self-Sufficiency (FSS) Program Demonstration is a random assignment study conducted under contract by MDRC [1] and its subcontractors to evaluate the effectiveness of the FSS program, as part of the Transformation Initiative.[2] The FSS program has operated since 1992 and its objective is to enable participating low-income families to increase their earned income and reduce their dependency on welfare assistance and rental subsidies. FSS program coordinators create plans with participating families to achieve goals and connect them with services that will enhance their employment opportunities. As the family's earnings increase, money is credited to an escrow account on behalf of the family. This study, unlike the two previous studies of the FSS program, will use a random assignment model to determine whether FSS program features, rather than the characteristics of the participating families, cause participant incomes to increase.

PHAs participating in the FSS Program Demonstration may experience unintended consequences due to the requirements for participation and the methodology of the study. For example, PHAs are required to recruit and screen about twice as many families as they would usually enroll in the program in a year, to maintain stable enrollment in the FSS program when only half of the families are randomly assigned to a treatment group (enrollment in FSS) and the other half are assigned to a control group (non-enrollment). In fact, PHAs may voluntarily increase the number of FSS participants they have because of the program demand resulting from the enhanced recruitment methods they are using and their commitment to the evaluative process.

In addition to the requirement to screen more families for participation in the FSS program than in the past and the option to enroll more participants, PHAs participating in the FSS Program Demonstration will have less control over which participants are enrolled in their FSS programs due to the random assignment of families to either the treatment or control group. If families enrolled in the FSS program by random assignment (as a result of a PHA's participation in the FSS Program Demonstration) accrue escrow balances at lower rates than previous cohorts of families, PHAs participating in the FSS Program Demonstration may experience a decreased rating on the Section 8 Management Assessment Program (SEMAP) performance indicator that specifically measures for the percentage of families with escrow balances.

SEMAP, through a four-page questionnaire, provides one way for PHAs to certify their performance to HUD on fourteen indicators. Under current regulations at 24 CFR part 985, the SEMAP Certification form (HUD–52648) must be submitted annually by all PHAs administering Section 8 tenant-based assistance programs. (Information collection requirements have been approved by the Office of Management and Budget under control number 2577–0215). Upon receipt of the certification, HUD rates the PHA's performance under each SEMAP indicator in accordance with 24 CFR 985.3.

As discussed above, there is a possibility that participating in the FSS Program Demonstration may result in a PHA having a lower percentage of families with escrow account balances than they otherwise would have had in their FSS program. This is problematic because the indicator at 24 CFR 985.3(o),[3] which corresponds to items 14a and 14b of the SEMAP Certification, awards a PHA a rating ranging from zero to ten points based on a combination of two components: (1) The percentage of mandatory FSS slots filled; and (2) the percentage of FSS families that have escrow account balances. This, in turn, may negatively impact a PHA's overall performance rating, as described in 24 CFR 985.103. The possibility of this outcome may deter PHAs from volunteering to participate in this important study. In order to ensure that PHAs will not be affected negatively by participation in the FSS Program Demonstration, HUD is partially waiving 24 CFR 985.3(o), as discussed below.

II. Partial Waiver of 24 CFR 985.3(o)

This document announces a partial waiver to the rating criteria of the ''Family self-sufficiency (FSS) enrollment and escrow accounts'' SEMAP indicator item discussed at 24 CFR 985.3(o)(3)(i)–(vi) for PHAs with a mandatory HCV FSS program, who are participating in the FSS Program Demonstration, effective from December 30, 2013 through September 30, 2018. During only the second and third full reporting periods ending after the PHA's enrollment in the demonstration, PHAs meeting the aforementioned criteria may elect to have the SEMAP performance indicator for FSS enrollment and escrow accounts rated by omitting reference to the percent of FSS families with escrow balances (SEMAP indicator item 14b of form HUD–52648).[4] Thus, the rating would be determined solely by the percentage of mandatory FSS slots that have been filled by the PHA, as reported in SEMAP indicator item 14a of form HUD–52648.[5]

In order to affirmatively elect to apply this waiver, a PHA participating in the FSS Program Demonstration must select ''Check here if not applicable'' under SEMAP indicator item 14b of form HUD–52648. PHAs participating in the demonstration that have a mandatory

[1] MDRC is a nonprofit, nonpartisan education and social policy research organization dedicated to learning what works to improve programs that affect low-income individuals. See *http://www.mdrc.org/about/about-mdrc-overview-0.*

[2] In the Consolidated Appropriations Act of 2010, Public Law 111–117, Congress enacted the Transformation Initiative, which made up to one percent of program funds available for (1) research, evaluation, and program metrics; (2) program demonstrations; (3) technical assistance; and (4) information technology. The Transformation Initiative was renewed under the full-year continuing appropriations act for FY 2011, Public Law 111–242. The Consolidated and Further Continuing Appropriations Act of 2012, Public Law 112–55, renewed the Transformation Initiative again, but designated a specific amount of money to remain available until September 30, 2014. The continuing appropriations resolution for 2013, Public Law 112–175, did not impose any additional limitations on the Transformation Initiative.

[3] Regulations at 24 CFR 985.3(o) are only applicable to PHAs with mandatory FSS programs.

[4] For example, if a PHA enrolls in the FSS Program Demonstration in July 2013, and has a SEMAP reporting period of October 1 through September 30, the waiver would be applicable for October 1, 2014 through September 30, 2015 (the second full reporting period ending after the PHA's enrollment in the demonstration) and October 1, 2015 through September 30, 2016 (the third full reporting period ending after the PHA's enrollment in the demonstration). The waiver is not applicable to earlier reporting periods because the SEMAP score measures escrow among families with progress reports, and treatment group families generally will not have progress reports until the second full reporting period ending after the PHA's enrollment in the demonstration.

[5] For example, if a PHA has filled 80 percent or more of its mandatory FSS slots, it will receive 10 points (24 CFR 985.3(o)(3)(i)), regardless of the percent of families with escrow account balances.

HCV FSS program[6] must continue to report on item 14a and may *not* select ''Check here if not applicable'' under SEMAP indicator item 14a of form HUD–52648.

III. Authority To Grant Waivers

Under 24 CFR 5.110, HUD's regulations in 24 CFR may be waived upon a determination of good cause, subject to statutory limitations. A partial waiver of 24 CFR 985.3(o) was determined necessary to eliminate penalties that may be associated with voluntary participation in the FSS Program Demonstration.

IV. Findings and Certifications

Paperwork Reduction Act

The information collection requirements applicable to this waiver have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Numbers 2528–0296 and 2577–0215. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Environmental Impact

This document does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this document is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Dated: December 19, 2013.

Sandra Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2013–31044 Filed 12–27–13; 8:45 am]

BILLING CODE 4210–67–P

[6] Some PHAs are required, by statute, to carry out a FSS program; see 42 U.S.C. 1437u.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket Number USCG–2013–1030]

Drawbridge Operation Regulation; Upper Mississippi River, Rock Island, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Rock Island Railroad and Highway Drawbridge across the Upper Mississippi River, mile 482.9, at Rock Island, Illinois. The deviation is necessary to allow the St. Patrick's Day Road Race to cross the bridge. This deviation allows the bridge to be maintained in the closed-to-navigation position for two hours.

DATES: This deviation is effective from 10 a.m. to noon, March 15, 2014.

ADDRESSES: The docket for this deviation, [USCG–2013–1030] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation, West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone 314–269–2378, email *Eric.Washburn@uscg.mil.* If you have questions on viewing the docket, contact Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The U.S. Army Rock Island Arsenal requested a temporary deviation for the Rock Island Railroad and Highway Drawbridge, across the Upper Mississippi River, mile 482.9, at Rock Island, Illinois to remain in the closed-to-navigation position for a two hour period from 10 a.m. to noon, March 15, 2014, while the St. Patrick's Day Road Race is held between the cities of Davenport, IA and Rock Island, IL.

The Rock Island Railroad and Highway Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that drawbridges shall open promptly and fully for the passage of vessels when a request to open is given in accordance with the subpart.

There are no alternate routes for vessels transiting this section of the Upper Mississippi River.

The Rock Island Railroad and Highway Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 23.8 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This temporary deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 18, 2013.

Eric A. Washburn,

Bridge Administrator, Western Rivers.

[FR Doc. 2013–31278 Filed 12–27–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–0934]

RIN 1625–AA87

Security Zone; On the Waters in Kailua Bay, Oahu, HI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone on the waters south of Kapoho Point and a nearby channel in Kailua Bay within the Honolulu Captain of the Port (COTP) Zone. This security zone is necessary to ensure the safety of the President of the United States.

DATES: This rule is effective without actual notice from December 30, 2013 through 10 p.m. (HST) on January 5, 2014. For the purposes of enforcement, actual notice will be used from 6 a.m. (HST) on December 20, 2013, through 10 p.m. (HST) on January 5, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0934. To view documents mentioned in this preamble as being

available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Lieutenant Commander Scott O. Whaley, Waterways Management Division, U.S. Coast Guard Sector Honolulu; telephone (808) 522–8264 (ext. 3352), email *Scott.O.Whaley@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

A. Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency, for good cause, finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The details of the President's intended travel to Hawaii were not made available to the Coast Guard in sufficient time to issue a notice of proposed rulemaking. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect the President; therefore, a 30-day notice period is impracticable. Delaying the effective date would be contrary to the security zone's intended objectives of protecting the President, mitigating potential terroristic acts and enhancing public and maritime safety and security. Publishing a Notice of Public Rule Making (NPRM) and delaying the effective date would be contrary to the public interest since the occasion would occur before a notice-and-comment rulemaking could be completed, thereby jeopardizing the safety of the President. The COTP finds that this temporary security zone needs to be effective by December 20, 2013, to ensure the safety of the President while visiting the Kailua Bay area on the eastern coast of Oahu, Hawaii.

B. Basis and Purpose

From December 20, 2013, through January 5, 2014, the President of the United States plans to visit the Kailua Bay area on Oahu, Hawaii. This position is located adjacent to U.S. navigable waters in the Honolulu COTP Zone. The Coast Guard is establishing this security zone to ensure the safety of the President.

C. Discussion of Temporary Final Rule

This temporary final rule is effective from 6 a.m. HST on December 20, 2013 through 10 p.m. HST on January 5, 2014. The security zone area is located within the Honolulu COTP Zone (See 33 CFR 3.70–10) and covers all U.S. navigable waters in the Kailua Bay on the west side of a line connecting Kapoho Point and continuing at a bearing of 225° (true) to 21°25′11″ N, 157°44′39″ W; as well as the nearby channel from its entrance near Kapoho Point to a point 150-yards to the south of the N. Kalaheo Avenue Road Bridge. This zone extends from the surface of the water to the ocean floor. This zone will include the navigable waters of the channel beginning at point 21°24′56″ N, 157°44′58″ W, then extending to 21°25′26″ N, 157°44′21″ W (Kapoho Point) including all the waters to the west of a straight line to 21°25′11″ N, 157°44′39″ W and then extending back to the original point 21°24′56″ N, 157°44′58″ W.

One (1) yellow buoy and two (2) shore-side markers will be placed in proximity of the security zone along the security zone boundary and one (1) orange boom will be placed at the channel boundary south of the N. Kalaheo Avenue Road Bridge as visual aids for mariners and the public to approximate the zone. An illustration of the security zone will be made available on *www.regulations.gov* in docket for this rulemaking, USCG–2013–0934.

In accordance with the general regulations in 33 CFR Part 165, Subpart D, no person or vessel will be permitted to transit into or remain in the zone except for authorized support vessels, aircraft and support personnel, or other vessels authorized by the COTP. Any Coast Guard commissioned, warrant, or petty officer, and any other COTP representative permitted by law, may enforce the zone. Vessels, aircraft, or persons in violation of this rule would be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the limited duration of the zone, the limited geographic area affected by it, and the lack of commercial vessel traffic affected by the zone.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule will economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking.

If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LCDR Scott O. Whaley at (808) 522–8264 ext. 3352. The Coast Guard will not retaliate against small entities that question or

complain about this temporary final rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This regulation establishes one security zone. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine security, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T14–0934 to read as follows:

§ 165.T14–0934 Security Zone; On the Waters in Kailua Bay, Oahu, HI.

(a) *Location.* The following area, within the COTP Honolulu Zone (see 33 CFR 3.70–10), from the surface of the water to the ocean floor is a temporary security zone: All waters in Kailua Bay to the west of a line beginning at Kapoho Point and thence southwestward at a bearing of 225° (true) to the shoreline at 21°25′11″ N, 157°44′39″ W; as well as the nearby channel from its entrance at Kapoho Point to a point 150-yards to the southwest of the N. Kalaheo Avenue Road Bridge. This zone extends from the surface of the water to the ocean floor. This zone will include the navigable waters of the channel beginning at point 21°24′56″ N, 157°44′58″ W, then extending to 21°25′26″ N, 157°44′21″ W (Kapoho Point) including all the waters to the west of a straight line to 21°25′11″ N, 157°44′39″ W, and then extending back to the original point 21°24′56″ N, 157°44′58″ W.

(b) *Effective period.* This section is effective from 6 a.m. HST on December 20, 2013, through 10 p.m. HST on January 5, 2014.

(c) *Regulations.* The general regulations governing security zones contained in 33 CFR 165.33, subpart D, apply to the security zone created by this temporary section, § 165.T14–0934.

(1) All persons are required to comply with the general regulations governing security zones found in 33 CFR part 165.

(2) Entry into or remaining in this zone is prohibited unless authorized by the COTP.

(3) Persons desiring to transit the security zones identified in paragraph (a) of this section may contact the COTP at Command Center telephone number (808) 842–2600 and (808) 842–2601, fax (808) 842–2624 or on VHF channel 16 (156.8 Mhz) to seek permission to transit the zones. If permission is granted, all persons and vessels must comply with the instructions of the COTP or his designated representative and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(4) The U.S. Coast Guard may be assisted in the patrol and enforcement of the zones by Federal, State, and local agencies.

(d) *Notice of enforcement.* The COTP will cause notice of the enforcement of the security zone described in this section to be made by verbal broadcasts and written notice to mariners and the general public.

(e) *Definitions.* As used in this section, *designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the COTP to assist in enforcing the security zones described in paragraph (a) of this section.

Dated: December 3, 2013.

S.N. Gilreath,

Captain, U.S. Coast Guard, Captain of the Port, Honolulu.

[FR Doc. 2013–31281 Filed 12–27–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AO91

Copayments for Medications in 2014

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its medical regulations concerning the copayment required for certain medications. But for this rulemaking, beginning on January 1, 2014, the copayment amount would increase based on a formula set forth in regulation. The maximum annual copayment amount payable by veterans would also increase. This rulemaking freezes copayments at the current rate for 2014 for veterans in priority categories 2 through 8, and thereafter resumes increasing copayments in accordance with the regulatory formula.

DATES: *Effective Date:* This rule is effective on December 30, 2013.

Comment date: Comments must be received on or before February 28, 2014.

ADDRESSES: Written comments may be submitted by email through *http://www.regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. (This is not a toll-free number.) Comments should indicate that they are submitted in response to ''RIN 2900–AO91, Copayments for Medications in 2014.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kristin Cunningham, Director, Business Policy, Chief Business Office, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 382–2508. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 1722A(a), VA must require veterans to pay a $2 copayment for each 30-day supply of medication furnished on an outpatient basis for the treatment of a non-service-connected disability or condition unless a veteran has a service-connected disability rated 50 percent or more, is a former prisoner of war, or has an annual income at or below the maximum annual rate of VA pension that would be payable if the veteran were eligible for pension. Under 38 U.S.C. 1722A(b), VA ''may,'' by regulation, increase that copayment amount and establish a maximum annual copayment amount (a ''cap''). We have consistently interpreted section 1722A(b) to mean that VA has discretion to determine the appropriate copayment amount and annual cap amount for medication furnished on an outpatient basis for covered treatment, provided that any decision by VA to increase the copayment amount or annual cap amount is the subject of a rulemaking proceeding. We have implemented this statute in 38 CFR 17.110.

Under 38 CFR 17.110(b)(1), veterans are obligated to pay VA a copayment for each 30-day or less supply of medication provided by VA on an outpatient basis (other than medication administered during treatment). Under the current regulation, for the period from July 1, 2010, through December 31, 2013, the copayment amount for veterans in priority categories 2 through 6 of VA's health care system is $8. 38 CFR 17.110(b)(1)(ii). For the period July 1, 2010, through December 31, 2013, the copayment amount for veterans in priority categories 7 and 8 is $9. 38 CFR 17.110(b)(1)(iii). Thereafter, the copayment amount for all affected veterans is to be established using a formula based on the prescription drug component of the Medical Consumer Price Index (CPI–P), set forth in 38 CFR 17.110(b)(1)(iv).

Current § 17.110(b)(2) also includes a ''cap'' on the total amount of copayments in a calendar year for a veteran enrolled in one of VA's health care enrollment system priority categories 2 through 6. Through December 31, 2013, the annual cap is set at $960. Thereafter, the cap is to increase ''by $120 for each $1 increase in the copayment amount'' applicable to veterans enrolled in one of VA's health care enrollment system priority categories 2 through 6.

Current paragraph (b)(1)(i) provides the amount for copayments for medication immediately after VA published revisions to this regulation on December 31, 2009. 74 FR 69283, 69285. However, the time period governed by this paragraph, between January 1, 2010, and June 30, 2010, has now passed. VA is removing paragraph (b)(1)(i) to simplify the regulation because this provision is no longer necessary. VA is redesignating the remaining paragraphs accordingly and correcting the reference in the note to § 17.110(b)(1).

On December 31, 2012, we published an interim final rulemaking that ''froze'' copayments for veterans in priority categories 2 through 6 at $8 and for veterans in priority categories 7 and 8 at $9, through December 31, 2013. 77 FR 76865, Dec. 31, 2012. This interim final rule was made final on May 23, 2013. 78 FR 30767, May 23, 2013. In these rulemakings, we stated that this freeze was appropriate because, as justified in prior rulemakings, higher copayments reduced the utilization of VA pharmacy benefits. 77 FR 76866. We continue to believe this to be the case. The ability to ensure that medications are taken as prescribed is essential to effective health care management. VA can monitor whether its patients are refilling prescriptions at regular intervals while also checking for medications that may interact with each other when these prescriptions are filled by VA. When non-VA providers are also issuing prescriptions, there is a greater risk of adverse interactions and harm to the patient because it is more difficult for each provider to assess if the patient is taking any other medications.

Specifically, we are removing December 31, 2013, in each place it appears in the newly designated paragraphs (b)(1)(i), (ii), and (iii), and inserting December 31, 2014, to continue to keep copayment rates and caps at their current levels.

At the end of calendar year 2014, unless additional rulemaking is initiated, VA will once again utilize the CPI-P methodology in the newly re-designated § 17.110(b)(1)(iii) to determine whether to increase copayments and calculate any mandated increase in the copayment amount for

veterans in priority categories 2 through 8. At that time, CPI-P as of September 30, 2014, will be divided by the index as of September 30, 2001, which was 304.8. The ratio will then be multiplied by the original copayment amount of $7. The copayment amount of the new calendar year will be rounded down to the whole dollar amount. As mandated by current § 17.110(b)(2), the annual cap will be calculated by increasing the cap by $120 for each $1 increase in the copayment amount. Any change in the copayment amount and cap, along with the associated calculations explaining the basis for the increase, will be published in a **Federal Register** notice. Thus, the intended effect of this rule is to temporarily prevent increases in copayment amounts and the copayment cap for veterans in priority categories 2 through 8, following which copayments and the copayment cap will increase as prescribed in current § 17.110(b).

Administrative Procedure Act

The Secretary of Veterans Affairs finds that there is good cause under 5 U.S.C. 553(b)(B) and (d)(3) to dispense with the opportunity for advance notice and opportunity for public comment and good cause to publish this rule with an immediate effective date. As stated above, this rule freezes at current rates the prescription drug copayment that VA charges certain veterans. The Secretary finds that it is impracticable and contrary to the public interest to delay this rule for the purpose of soliciting advance public comment or to have a delayed effective date. Increasing the copayment amount on January 1, 2014, might cause a significant financial hardship for some veterans and may decrease patient adherence to medical plans and have other unpredictable negative health effects.

For the above reasons, the Secretary issues this rule as an interim final rule. VA will consider and address comments that are received within 60 days of the date this interim final rule is published in the **Federal Register**.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this interim final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

This interim final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB), as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined that it may be an economically significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www1.va.gov/orpm/,* by following the link for ''VA Regulations Published.''

Congressional Review Act

This regulatory action may be considered a major rule under the Congressional Review Act, 5 U.S.C. 801–08, because it may result in an annual effect on the economy of $100 million or more. Although this regulatory action may constitute a major rule within the meaning of the Congressional Review Act, 5 U.S.C. 804(2), it is not subject to the 60-day delay in effective date applicable to major rules under 5 U.S.C. 801(a)(3) because the Secretary finds that good cause exists under 5 U.S.C. 808(2) to make this regulatory action effective on January 1, 2014, consistent with the reasons given for the publication of this interim final rule. Increasing the copayment amount on January 1, 2014, might cause a significant financial hardship for some veterans and may decrease patient adherence to medical plans and have other unpredictable negative health effects. Accordingly, the Secretary finds that additional advance notice and public procedure thereon are impractical, unnecessary, and contrary to the public interest. In accordance with 5 U.S.C. 801(a)(1), VA will submit to the Comptroller General and to Congress a copy of this regulatory action and VA's Regulatory Impact Analysis (RIA).

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This interim final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Regulatory Flexibility Act

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This interim final rule will temporarily freeze the copayments that certain veterans are required to pay for prescription drugs furnished by VA. The interim final rule directly affects individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are

as follows: 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on December 2, 2013, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Dated: December 23, 2013.

Robert C. McFetridge,

Director, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, VA amends 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501(a), and as noted in specific sections.

§ 17.110 [Amended]

■ 2. Amend § 17.110 as follows:

■ a. Remove paragraph (b)(1)(i).

■ b. Redesignate paragraphs (b)(1)(ii) through (b)(1)(iv) as (b)(1)(i) through (b)(1)(iii), respectively.

■ c. In redesignated paragraphs (b)(1)(i), (ii), and (iii) and in paragraph (b)(2), remove ''December 31, 2013'' each place it appears and add, in each place, ''December 31, 2014''.

■ d. In the note following redesignated (b)(1)(iii), remove ''(b)(1)(iv)'' and add, in its place, ''(b)(1)(iii)''.

[FR Doc. 2013–31102 Filed 12–27–13; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–R08–OAR–2013–0330, FRL–9904–88-Region 8]

Approval of Request for Delegation of Authority for Prevention of Accidental Release, North Dakota Department of Agriculture

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve North Dakota Department of Agriculture's (NDDA's) request for partial delegation of the Risk Management Program (RM Program) for facilities with an anhydrous ammonia storage capacity of ten thousand pounds or more that is intended to be used as fertilizer or in the manufacturing of a fertilizer (''agricultural anhydrous ammonia facilities'') in the state of North Dakota. EPA retains authority for the RM Program for all other regulated chemicals which may be present at these facilities and for the RM Program generally in North Dakota for all other facilities.

DATES: This final rule is effective January 29, 2014.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2013–0330. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Preparedness Program, Environmental Protection Agency (EPA), Region 8 (8EPR–ER), 1595 Wynkoop Street, Denver, Colorado 80202–1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Brent Truskowski, Acting RMP Coordinator, Emergency Response and Preparedness Program, U.S. Environmental Protection Agency (EPA), Region 8 (8EPR–ER), 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6235, *truskowski.brent@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The word and initials *RM* Program means Risk Management Program

(iii) The initials *NDDA* mean North Dakota Department of Agriculture

(iv) The initials *RMP* mean Risk Management Plan

(v) The initials *CFR* mean Code of Federal Regulations

(vi) The initials *FR* mean Federal Register

(vii) The initials *NDCC* mean North Dakota Century Code

(viii) The initials *NDAC* mean North Dakota Administrative Code

Table of Contents

I. Background
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I. Background

On June 20, 1996, the EPA promulgated the RM Program regulations (40 CFR Part 68) which were mandated under the accidental release prevention provisions of section 112(r)(7) of the CAA (61 FR 31668, June 20, 1996). These regulations require owners and operators of stationary sources subject to the regulations to submit risk management plans (RMPs) to a central location specified by the EPA. These regulations also encourage sources to reduce the probability of accidentally releasing substances that have the potential to cause harm to public health and the environment, and stimulate dialogue between industry

and the public to improve accident prevention and emergency response practices.

Section 112(l) of the CAA and 40 CFR part 63, Subpart E authorize the EPA to approve state rules and programs to be implemented and enforced in place of certain CAA requirements, including the RM Program set forth at 40 CFR part 68. Under 40 CFR 63.95(b), the State's Part 68 program shall contain the following elements, consistent with the procedures in section 63.91, that an approvable State Accidental Release Prevention program is regulating:

- A demonstration of the State's authority and resources to implement and enforce regulations that are no less stringent than the regulations of 40 CFR Part 68, Subparts A through G and section CFR 68.200;
- A requirement that any source subject to the State's Part 68 program submit a RMP that reports at least the same information in the same format as required under Part 68, Subpart G;
- Procedures for reviewing RMPs and providing technical assistance to stationary sources including small businesses; and
- A demonstration of the State's authority to enforce all Part 68 requirements must be made, including an auditing strategy that complies with section 68.220.

For a program that covers all of the federally-listed chemicals (a ''complete program'') or a program covering less than all of the federally-listed chemicals (a ''partial program'') the State must take delegation of the full part 68 program for the federally-listed chemicals it regulates. For additional details regarding these requirements, refer to our proposal notice cited above.

The NDDA has a program in place for regulation of anhydrous ammonia facilities under authority of North Dakota Century Code (NDCC) 19–20.2 and 19–20.3 and promulgated in North Dakota Administrative Code (NDAC) 7–12–03–03, which addresses RM Program requirements and adopts 40 CFR Part 68 requirements by reference.

NDCC 19–20.2 provides general authority for the NDDA to license and regulate anhydrous ammonia facilities with a capacity exceeding six thousand gallons, engineering requirements for tanks, valve fittings, and other equipment, and siting requirements that specify minimum distances between anhydrous ammonia storage tanks and adjoining property lines, residences, places of public assembly, and institutional residences. NDCC 19–20.2 also provides the NDDA authority to enter any public or private premises to inspect equipment and respond to complaints. If violations are found, NDCC 19–20.2 allows the NDDA to issue cease and desist orders, revoke or suspend facility licenses, and issue civil penalties.

NDCC 19–20.3–01 gives the Agriculture Commissioner authority to determine compliance with the RM Program requirements set forth in 40 CFR Part 68 by providing the Commissioner authority to:

1. Request information from any person that sells, stores, or handles anhydrous ammonia for agricultural purposes, and is required to comply with the RM Program requirements.
2. Conduct inspections of any person that sells, stores, or handles anhydrous ammonia for agricultural purposes, and is required to comply with the RM Program requirements.
3. Obtain and review RMPs required under 40 CFR Part 68, and other records applicable to any person that sells, stores, or handles anhydrous ammonia for agricultural purposes, and is required to comply with the RM Program requirements.

The NDAA has requested partial delegation of the RM Program for facilities with an anhydrous ammonia storage capacity of ten thousand pounds or more that is intended to be used as fertilizer or in the manufacturing of a fertilizer (''agricultural anhydrous ammonia facilities''). After a thorough review (as described in detail in our proposal notice) of North Dakota's partial delegation request, the pertinent statutes and regulations, and after appropriate public notice of the proposed delegation, Region 8 finds that such a delegation is appropriate in that North Dakota has satisfied the criteria in 40 CFR 63.91 and 63.95 by demonstrating it has adequate and effective authorities, resources, and procedures in place for implementation and enforcement of agricultural anhydrous ammonia facilities subject to the RM Program. As approved, North Dakota has the primary authority and responsibility to carry out elements of the RM Program for agricultural anhydrous ammonia facilities within the State, including on-site inspections, recordkeeping reviews, audits, compliance assistance and outreach, and non-criminal enforcement. The EPA will retain the RM Program for all other regulated chemicals which may be present at these facilities. *See* 40 CFR 68.130. For additional information, please see the proposed rule, ''Approval of North Dakota Request for Partial Delegation of Prevention of Accidental Release, Clean Air Act Section 112(r) Program'' EPA–R08–OAR–2013–0330, 78 FR 66321 (Nov. 5, 2013).

II. Response to Comments

We received no comments on our proposed approval of NDDA's request for delegation.

III. Final Action

The EPA is approving NDDA's request for partial delegation of authority to implement and enforce (with the exception of criminal enforcement) the RM Program for agricultural anhydrous ammonia facilities as defined by NDAC 7–12–03–03. This delegation will extend to agricultural anhydrous ammonia facilities in North Dakota that are sources subject to the accidental release prevention regulations in 40 CFR Part 68,[1] with the exception of sources in Indian country as defined by 18 U.S.C. 1151.

If the EPA determines that NDDA's procedures for enforcing or implementing the 40 CFR part 68 requirements are inadequate, or are not being effectively carried out, this delegation may be revoked in whole or in part in accordance with the procedures set out in 40 CFR 63.96(b). In instances where there is a conflict between a NDDA interpretation and a Federal interpretation of applicable regulations in 40 CFR part 68, the Federal interpretation must be applied if it is more stringent than that of the NDDA. The Administrator retains the specific authorities under 40 CFR 68.120 regarding the petition process for modifying the list of regulated substances identified in 40 CFR 68.130.[2] Although the NDDA has primary authority and responsibility to implement and enforce the chemical accident prevention provisions for agricultural anhydrous ammonia, nothing shall preclude, limit, or interfere with the authority of the EPA to exercise its enforcement, investigatory, and information gathering authorities concerning this part of the Act.

IV. Statutory and Executive Order Reviews

Under the CAA, the Regional Administrator is authorized to approve program delegation when that program complies with the provisions of the CAA and applicable federal regulations (42 U.S.C. 7410(k), 40 CFR 52.02(a)). Thus, in reviewing delegation requests, the EPA's role is to review and approve state programs provided that they meet the criteria of the CAA. Accordingly,

[1] EPA notes that under 40 CFR 68.125, ammonia used as an agricultural nutrient, when held by farmers, is exempt from all provisions of part 68.

[2] Accordingly, the NDDA rules do not incorporate by reference 40 CFR 68.120.

this proposed action merely approves a state program and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the state program is not approved to regulate in Indian country located in North Dakota, and the EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 28, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, pertaining to the approval of the NDDA's delegation of authority for the chemical accident prevention provisions (CAA section 112), may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Intergovernmental relations, Risk management program.

Dated: December 13, 2013.

Shaun L. McGrath,

Regional Administrator, Region 8.

40 CFR part 63 is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart E—Approval of State Programs and Delegation of Federal Authorities

■ 2. Section 63.99 is amended by adding paragraph (a)(35) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(35) *North Dakota.* The North Dakota Department of Agriculture is delegated the authority to implement and enforce the provisions of 40 CFR part 68 at facilities with an anhydrous ammonia storage capacity of ten thousand pounds or more that is intended to be used as fertilizer or in the manufacturing of a fertilizer within North Dakota and that are subject to the requirements of 40 CFR part 68, in accordance with the final rule, dated December 30, 2013.

[FR Doc. 2013–31269 Filed 12–27–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 312

[EPA–HQ–SFUND–2013–0513; FRL–9904–52–OSWER]

Amendment to Standards and Practices for All Appropriate Inquiries Under CERCLA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is taking final action to amend the standards and practices for conducting all appropriate inquiries under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) to reference a standard practice recently made available by ASTM International, a widely recognized standards development organization. Specifically, this final rule amends the ''All Appropriate Inquiries Rule'' at 40 CFR Part 312 to reference ASTM International's E1527–13 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process'' and make clear that persons conducting all appropriate inquiries may use the procedures included in this standard to comply with the All Appropriate Inquiries Rule.

DATES: This rule is effective on December 30, 2013.

FOR FURTHER INFORMATION CONTACT: For general information contact the CERCLA Call Center at 800–424–9346 or TDD 800–533–7672 (hearing impaired). In the Washington, DC metropolitan area, call 703–412–9810 or TDD 703–412–3323. For more detailed information on specific aspects of this rule, contact Patricia Overmeyer, Office of Brownfields and Land Revitalization (5105T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460–0002, 202–566–2774, or *Overmeyer.patricia@epa.gov*.

SUPPLEMENTARY INFORMATION:

Who potentially may be affected by today's rule?

Today's action offers parties the option of using an additional ASTM International standard to conduct all appropriate inquiries. Parties purchasing potentially contaminated properties may use the ASTM E1527–13 standard practice when conducting all appropriate inquiries pursuant to CERCLA. However, today's rule does not require that any party use this standard. Any party who wants to conduct all appropriate inquiries under CERCLA may follow the All Appropriate Inquiries Rule at 40 CFR Part 312 or use the new standard recognized in today's final rule, the ASTM E1527–13 standard.

Parties potentially affected by this action are those who may choose to use the newly referenced ASTM standard to perform all appropriate inquiries and include public and private parties who, as bona fide prospective purchasers, contiguous property owners, or innocent landowners, are purchasing potentially contaminated properties and

intend to claim a limitation on CERCLA liability in conjunction with the property purchase. In addition, any party conducting a site characterization or assessment on a property with a brownfields grant awarded under CERCLA section 104(k)(2)(B)(ii) may be affected by today's action. This includes state, local and tribal governments that receive brownfields site assessment grants. A summary of the potentially affected industry sectors (by North American Industry Classification System (NAICS) codes) is displayed in the table below.

Industry category	NAICS code
Real Estate	531
Insurance	52412
Banking/Real Estate Credit	52292
Environmental Consulting Services	54162
State, Local and Tribal Government	926110, 925120
Federal Government	925120, 921190, 924120

The list of potentially affected entities in the table above may not be exhaustive. Our aim is to provide a guide for readers regarding those entities that EPA is aware potentially could be affected by this action. However, this action may affect other entities not listed in the table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT**.

Content of Today's Rule

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I. Statutory Authority

This rule, which amends the All Appropriate Inquiries Rule at 40 CFR part 312 setting federal standards for the conduct of ''all appropriate inquiries'', is promulgated under the authority of section 101(35)(B) of CERCLA (42 U.S.C. 9601), as amended by the Small Business Liability Relief and Brownfields Revitalization Act of 2002.

II. Background

On January 11, 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act, Public Law 107–118 (''the Brownfields Amendments''), which amended CERCLA. In general, the Brownfields Amendments provide funds to assess and clean up brownfields sites; clarify CERCLA liability provisions related to certain purchasers of contaminated properties; and provide funding to enhance state and tribal cleanup programs. Subtitle B of the Brownfields Amendments revises some of the provisions of CERCLA section 101(35) and limits CERCLA liability under Section 107 (42 U.S.C. 9607) for bona fide prospective purchasers and contiguous property owners, in addition to clarifying the requirements necessary to establish the innocent landowner defense under CERCLA. The Brownfields Amendments provide that parties purchasing potentially contaminated property must undertake ''all appropriate inquiries'' into prior ownership and use of the property at issue prior to purchase in order to qualify for protection from CERCLA liability.

The Brownfields Amendments also required EPA to develop regulations establishing standards and practices for conducting all appropriate inquiries. EPA promulgated regulations that set standards and practices for all appropriate inquiries on November 1, 2005 (70 FR 66070). In that rule, EPA referenced the ASTM E1527–05 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process'' and authorized its use to comply with the rule. In December 2008, EPA amended the rule to recognize another ASTM International standard as compliant with the rule, ASTM E2247–08 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property'' (73 FR 78716).

In November 2013, ASTM International published ASTM E1527–13, ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.'' Earlier in 2013, EPA reviewed this standard, in response to ASTM International's request, and determined that use of the standard would be compliant with the All Appropriate Inquiries Rule.

On August 15, 2013, EPA published a direct final rule to amend the All Appropriate Inquiries Rule to reference ASTM International's E1527–13 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process'' and allow for its use to comply with the All Appropriate Inquiries Rule (78 FR 49690). A companion proposed rule, also published on August 15, 2013, invited comment on the direct final rule and stated that if EPA received adverse comment on the proposal to reference the ASTM E1527–13 standard, the Agency would withdraw the direct final rule (78 FR 49714). EPA received adverse comments on the direct final rule and published a notice of withdrawal of the direct final rule on October 29, 2013 (78 FR 64403). With today's action, EPA is addressing the comments received in response to the August 15, 2013, proposed rule and finalizing the amendment to the All Appropriate Inquiry Rule referencing the ASTM E1527–13 standard practice. EPA also is announcing today its intent to publish a proposed rule, in the near future, that will propose amending the All Appropriate Inquiries final rule to remove the previous reference to the ASTM E1527–05 Phase I Environmental Site Assessment Standard. This action was not discussed in the August 15, 2013 **Federal Register** notices, and so the Agency intends to propose this separately in order to provide an opportunity for public comment.

With today's action, EPA is establishing that parties seeking liability relief under CERCLA's landowner liability protections, as well as recipients of brownfields grants for conducting site assessments, will be considered to have met the standards and practices for all appropriate inquiries, as set forth in the Brownfields Amendments to CERCLA and 40 CFR Part 312, if such parties follow the procedures provided in the ASTM E1527–13 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.'' EPA made this determination based upon the Agency's finding that the ASTM E1527–13 standard is compliant with the All Appropriate Inquiries Rule. Therefore, parties conducting all appropriate inquiries may use the procedures in the newly issued ASTM E1527–13 standard when conducting all appropriate inquiries.

III. Summary of Comments

EPA received forty-one comments on the proposed rule published August 15, 2013. EPA developed a response-to-comments document and placed it in the docket for today's action. The comments and EPA's responses are summarized here. Most commenters supported the Agency's proposed action. Several commenters raised concerns related to the Agency's decision to continue to recognize a previous ASTM standard, ASTM E1527–05, as compliant with the All Appropriate Inquiries Rule. Other than recognizing the new standard, EPA did not propose, and is not finalizing with today's action, any amendments or changes to the AAI Rule. Although

today's action will not remove the current reference in the All Appropriate Inquiries Rule to the ASTM E1527–05 standard, EPA agrees with commenters that the revised ASTM E1527–13 standard includes improvements to the previous standard and its use will result in greater clarity for prospective purchases with regard to potential contamination at a property. Therefore, EPA recommends that environmental professionals and prospective purchasers use the ASTM E1527–13 standard. In the near future, EPA intends to publish a proposed rulemaking to remove the reference to the ASTM E1527–05 standard in the All Appropriate Inquiries Rule. By taking such action the Agency's intent will be to promote the use of the current industry standard and reduce confusion associated with the regulatory reference to a standard no longer recognized as current by ASTM International and no longer marketed by the standards development organization as reflecting its current consensus-based standard.

EPA also received comments recommending changes to the requirements contained in the All Appropriate Inquiries Rule, including several comments requesting changes to the rule's definition of environmental professional. In the August 15, 2013, Direct Final Rule and the companion Proposed Rule, EPA did not propose any changes to the requirements of 40 CFR Part 312 and did not request comment on the content of the rulemaking beyond whether the new ASTM standard could be recognized as compliant with the All Appropriate Inquiries Rule. Therefore, those comments were outside the scope of the rulemaking and EPA is not responding to those comments.

Some commenters included in their comments to EPA recommendations for changes to the ASTM E1527–13 standard or commented on the ASTM process for reviewing and updating its standards. Comments critical of the new standard that are unrelated to whether it meets the requirements of the All Appropriate Inquiries Rule are outside the scope of this rulemaking. Commenters interested in proposing changes to the ASTM standard should contact ASTM International directly.

IV. Overview of Today's Action

A. What is the intent of today's Final Rule?

In today's Final Rule, EPA is recognizing the newly issued ASTM E1527–13 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,'' as compliant with the All Appropriate Inquiries Rule. In EPA's view, the new ASTM E1527–13 provides an improved process for parties who choose to undertake all appropriate inquiries.

The ASTM E1527–13 standard is similar to the previous ASTM E1527–05 standard. ASTM International updated the previous standard in accordance with its standard protocol for the review of its standard practices and guides. (ASTM typically reviews and revises or re-issues its standards every eight years.) The changes in the standard are based upon expertise and experience gained by ASTM members and practitioners in the field since the 2005 standard was published. In EPA's view, these changes enhance the usefulness of the standard in identifying potential releases and threatened releases of hazardous substances at commercial and industrial properties. To facilitate an understanding of the differences between the updated ASTM E1527–13 Phase I Environmental Site Assessment Standard and the previous ASTM E1527–05 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,'' EPA developed, and placed in the docket for today's action, the document ''Summary of Updates and Revisions to ASTM E1527 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process: How E1527–13 Differs from E1527–05.''

By taking today's action, EPA is fulfilling the intent and requirements of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113. The NTTAA requires federal agencies to use voluntary consensus standards in their regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. The ASTM E1527–13 is a voluntary consensus standard, and EPA believes it is appropriate under the NTTAA to recognize this standard as a means of conducting all appropriate inquiries.

B. What are the revisions to the ASTM International Phase I Environmental Site Assessment Standard?

The ASTM E1527–13 standard is similar to the ASTM E1527–05 standard in format, process, and areas of coverage. In fact, many of the sections in ASTM E1527–13 are taken verbatim from ASTM E1527–05. The newly revised standard provides some clarifications and additional guidance for the environmental assessment of commercial and industrial properties and the determination of whether there are recognized environmental conditions or conditions indicative of releases or threatened releases of hazardous substances at a property.

EPA believes that ASTM E1527–13 improves upon the previous standard and reflects the evolving best practices and level of rigor that will afford prospective property owners necessary and essential information when making property transaction decisions and meeting continuing obligations under the CERCLA liability protections. In particular, the new ASTM E1527–13 standard enhances the previous standard with regard to the delineation of historical releases or recognized environmental conditions at a property and makes important revisions to the standard practice to clarify that all appropriate inquires and phase I environmental site assessments must include, within the scope of the investigation, an assessment of the real or potential occurrence of vapor migration and vapor releases on, at, in or to the subject property. Additional revisions to the ASTM E1527–05 standard include:

- ASTM International updated the definition of ''Recognized Environmental Condition (REC).''
- ASTM International updated its definition of ''Historical Recognized Environmental Condition (HREC).''
- ASTM International added a definition of ''Controlled Recognized Environmental Condition (CREC) to the standard.''
- ASTM International added a clarification to the definition of ''de minimis condition.''
- ASTM International revised the definition of ''migrate/migration'' to specifically include vapor migrations.
- ASTM International revised the standard's definition of ''release'' to clarify that the definition has the same meaning as the definition of release in CERCLA .
- ASTM International added additional guidance related to the regulatory agency file and records review requirement to provide a standardized framework for verifying agency information obtained from key databases.

EPA views these enhancements and clarifications to the ASTM standard as valuable improvements and strongly encourages prospective purchasers of real property to use the updated ASTM E1527–13 standard when conducting all appropriate inquiries. Several of the more significant changes are discussed briefly below.

In the case of vapor releases, or the potential presence or migration of vapors associated with hazardous

substances or petroleum products, EPA notes that both the All Appropriate Inquiries Rule and the ASTM E1527–05 standard already call for the identification of potential vapor releases or vapor migration at a property, to the extent they are indicative of a release or threatened release of hazardous substances. The All Appropriate Inquiries Rule is designed to identify conditions indicative of releases and threatened releases of hazardous substances on, at, in, or to the subject property. 40 CFR 312.1(c)(2). In the case of the ASTM E1527–05 standard, users and environmental professionals are required to identify recognized environmental conditions that include the presence or likely presence of hazardous substances or petroleum products under conditions that indicate an existing release, a past release, or a material threat of a release. Neither the All Appropriate Inquiries Rule nor the ASTM E 1527–05 standard excludes the identification of vapor releases as a possible type of release. However, some users of the ASTM E1527–05 standard and some who submitted comments in response to EPA's August 15, 2013, proposed rule raised concerns that potential vapor releases on, at, in or to a property are often not considered or may be overlooked by many practitioners when conducting all appropriate inquiries. EPA wishes to be clear that, in its view, vapor migration has always been a relevant potential source of release or threatened release that, depending on site-specific conditions, may warrant identification when conducting all appropriate inquiries. EPA applauds the revisions made by ASTM International to the updated E1527–13 standard regarding vapor migration. EPA anticipates that practitioners properly conducting all appropriate inquiries will consider all conditions indicative of releases and threatened releases of hazardous substances and that the revised standard will help reduce previous confusion on how to conduct a thorough all appropriate inquiries investigation.

ASTM International also revised the definition of ''historical recognized environmental condition'' (HREC). The revised definition clarifies that the scope and application of a HREC is limited to only past releases that have been addressed to a degree allowing for unrestricted use of the property. In addition, the revised standard includes a new term ''Controlled Recognized Environmental Condition'' (CREC) that is defined as past releases that have been addressed but allow contamination to remain in place subject to the implementation of required controls. The result of these two clarifications will have the effect of providing prospective purchasers with better information regarding the nature of historic releases at a property and provide prospective purchasers with a better basis for making informed decisions regarding potential future uses of a property. EPA notes that these clarifications and the improved level of information that may result due to the implementation of the revised standard will result in enhanced information on potential contamination for prospective purchasers. Therefore, EPA anticipates that prospective purchasers looking to claim protection from CERCLA liability will prefer this additional clarity and will request that environmental professionals use the ASTM E1527–13 standard when conducting all appropriate inquiries investigations. EPA applauds the additional rigor and clarity provided in ASTM E1527–13 standard, and the Agency recommends that prospective property owners and environmental professionals use the updated standard.

Other revisions to the ASTM E1527–05 standard include additional guidance related to the regulatory agency file and records review requirements. The ASTM E1527–13 standard provides a standardized framework for verifying agency information obtained from key databases. This additional guidance, and added framework for file and record reviews, clarifies that an environmental professional should make efforts to review and document the validity of information found from searches of agency databases. Such an inquiry will generally enhance the quality of reports and level of confidence that users, or prospective property owners, can place on site assessment results.

In EPA's view, all of the clarifications and revisions listed above represent enhancements to the ASTM E1527–05 standard. EPA anticipates that prospective purchasers and environmental professionals will embrace the increased level of rigor provided by the revisions and will adopt the ASTM E1527–13 standard. EPA recommends that the ASTM E1527–13 standard be used to conduct all appropriate inquiries investigations and Phase I Environmental Site Assessments. EPA anticipates that those conducting or relying on an all appropriate inquiries investigation will generally adjust to using the updated standard, particularly in light of the fact that ASTM International will label the ASTM E1527–05 Standard a historical standard and establish that the revised standard is the only standard reflecting the current consensus of the responsible ASTM International technical committee. Given that the revised ASTM E1527–13 standard is now available from ASTM International, and given that ASTM International established that the ASTM E1527–13 standard is the only standard that reflects the consensus of its technical committee, EPA intends to publish a proposed rule to remove the current reference in the AAI Rule to the historic standard. Such action will remove any confusion prompted by the regulatory reference to a standard that does not correspond to ASTM International's consensus practice. Should EPA determine in the future that the enhanced standards and practices contained in the ASTM E1527–13 standard are not being widely adopted, EPA may examine the need to further modify the All Appropriate Inquiries Rule (40 CFR part 312) to explicitly require the types of enhanced activities provided for in the updated ASTM E1527–13 standard.

C. What is the effective date of this rule?

This rule is effective as of the date of its publication in the **Federal Register**. There is good cause under Section 553 of the Administrative Procedure Act (APA) for this revision to become effective immediately. Section 553(d)(3) of the APA allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rule, however, does not create any new regulatory requirements or take other action for which affected parties would need time to prepare before the rule takes effect. Rather, this action merely offers parties the option of using an additional ASTM International standard to conduct all appropriate inquiries. Today's rule does not require that any party use this standard. For these reasons, there is good cause under the APA for this revision to become effective on the date of publication of this action.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under Executive Order (EO) 12866, titled ''Regulatory Planning and Review'' (58 FR 51735

(October 4, 1993)), and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). The current regulation does not have an information collection burden and today's action only change to the regulation is to allow for the use of an additional standard.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small business, small organizations, and small governmental jurisdictions.

Today's action does not change the current regulatory status quo and does not impose any regulatory requirements. After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. This action merely allows for the use of a voluntary consensus standard. This action allows for the newly recognized standard to be used by any entity. The action imposes no new regulatory requirements and will result in no additional burden to any entity. Therefore, this action is not subject to the requirements of sections 202 or 205 of UMRA.

As stated above, this rule is also not subject to the requirements of section 203 of UMRA because it contains no new regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. Today's action does not substantially change the current regulation, it merely allows for the use of an additional voluntary consensus standard. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. Thus, EO 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in EO 13175 (65 FR 67249 (November 9, 2000)). Today's action does not change any current regulatory requirements and therefore does not impose any impacts upon tribal entities. Thus, EO 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to EO 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under EO 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action involves technical standards. Therefore, the requirements of section 12(d) of the NTTAA (15 U.S.C. 272) apply. The NTTAA was signed into law on March 7, 1996 and, among other things, directs the National Institute of Standards and Technology (NIST) to bring together federal agencies as well as state and local governments to achieve greater reliance on voluntary standards and decreased dependence on government developed standards. It states that use of such standards, whenever practicable and appropriate, is intended to achieve the following goals: (a) Eliminate the cost to the government of developing its own standards and decrease the cost of goods procured and the burden of complying with agency regulation; (b) provide incentives and opportunities to establish standards that serve national needs; (c) encourage long-term growth for U.S. enterprises and promote efficiency and economic competition through harmonization of standards; and (d) further the policy of reliance upon the private sector to supply Government needs for goods and services. The Act requires that federal agencies adopt private sector standards, particularly those developed by standards developing organizations (SDOs), wherever possible in lieu of creating proprietary, non-consensus standards.

Today's action complies with the NTTAA as it allows for persons conducting all appropriate inquiries to use the procedures included in the use of the ASTM International standard known as Standard E1527–13 and entitled ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process to comply with the All Appropriate Inquiries Rule.''

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or

environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. Today's action does not change any regulatory requirements or impose any new requirements.

K. Congressional Review Act

The Congressional Review Act, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule is effective on December 30, 2013.

List of Subjects in 40 CFR Part 312

Administrative practice and procedure, Hazardous substances.

Dated: December 19, 2013.

Mathy Stanislaus,

Assistant Administrator.

For the reasons set out in the preamble, title 40 chapter I of the code of Federal Regulations is amended as follows:

PART 312—[AMENDED]

■ 1. The authority citation for part 312 continues to read as follows:

Authority: Section 101(35)(B) of CERCLA, as amended, 42 U.S.C. 9601(35)(B).

Subpart B—Definitions and References

■ 2. Section 312.11 is amended by adding paragraph (c) to read as follows:

§ 312.11 References.

* * * * *

(c) The procedures of ASTM International Standard E1527–13 entitled ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.'' This standard is available from ASTM International at *www.astm.org,* 1–610–832–9585.

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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–8315]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *http://www.fema.gov/fema/csb.shtm.*

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR Part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register.**

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR Part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Region I				
Massachusetts:				
Marion, Town of, Plymouth County	255213	October 8, 1971, Emerg; April 6, 1973, Reg; February 5, 2014, Susp.	Feb. 5, 2014	Feb. 5, 2014.
Mattapoisett, Town of, Plymouth County	255214	June 18, 1971, Emerg; March 16, 1973, Reg; February 5, 2014, Susp.	do	Do.
Wareham, Town of, Plymouth County	255223	July 10, 1970, Emerg; May 28, 1971, Reg; February 5, 2014, Susp.	do	Do.
Region III				
Pennsylvania:				
Armstrong, Township of, Lycoming County.	420635	March 30, 1973, Emerg; September 28, 1979, Reg; February 5, 2014, Susp.	do	Do.
Duboistown, Borough of, Lycoming County.	420639	December 22, 1972, Emerg; March 1, 1977, Reg; February 5, 2014, Susp.	do	Do.
Loyalsock, Township of, Lycoming County.	421040	February 5, 1974, Emerg; May 16, 1977, Reg; February 5, 2014, Susp.	do	Do.
Montoursville, Borough of, Lycoming County.	420648	February 9, 1973, Emerg; August 15, 1977, Reg; February 5, 2014, Susp.	do	Do.
Old Lycoming, Township of, Lycoming County.	420652	January 19, 1973, Emerg; April 15, 1977, Reg; February 5, 2014, Susp.	do	Do.
South Williamsport, Borough of, Lycoming County.	420658	January 7, 1974, Emerg; April 15, 1977, Reg; February 5, 2014, Susp.	do	Do.
Susquehanna, Township of, Lycoming County.	420659	April 19, 1973, Emerg; September 28, 1979, Reg; February 5, 2014, Susp.	do	Do.
Williamsport, City of, Lycoming County	420662	November 24, 1972, Emerg; December 1, 1977, Reg; February 5, 2014, Susp.	do	Do.
Woodward, Township of, Lycoming County.	420664	June 4, 1973, Emerg; September 28, 1979, Reg; February 5, 2014, Susp.	do	Do.
Region IV				
Alabama:				
Montgomery, City of, Montgomery County.	010174	February 12, 1974, Emerg; January 20, 1982, Reg; February 5, 2014, Susp.	do	Do.
Montgomery County, Unincorporated Areas.	010278	October 22, 1975, Emerg; January 6, 1982, Reg; February 5, 2014, Susp.	do	Do.
Pike Road, Town of, Montgomery County.	010433	May 29, 2003, Emerg; August 4, 2003, Reg; February 5, 2014, Susp.	do	Do.
Florida:				
Jefferson County, Unincorporated Areas.	120331	April 21, 1978, Emerg; July 16, 1991, Reg; February 5, 2014, Susp.	do	Do.
Monticello, City of, Jefferson County	120365	April 9, 1981, Emerg; June 3, 1986, Reg; February 5, 2014, Susp.	do	Do.
Region V				
Indiana:				
Clinton, City of, Vermillion County	180259	June 30, 1975, Emerg; July 1, 1987, Reg; February 5, 2014, Susp.	do	Do.
Newport, Town of, Vermillion County	180262	March 26, 1981, Emerg; June 15, 1981, Reg; February 5, 2014, Susp.	do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Union County, Unincorporated Areas	180411	October 24, 1984, Emerg; April 1, 1988, Reg; February 5, 2014, Susp.	.....do	Do.
Vermillion County, Unincorporated Areas.	180449	December 1, 1993, Emerg; November 1, 1995, Reg; February 5, 2014, Susp.	.....do	Do.
Michigan:				
Broomfield, Township of, Isabella County.	260815	March 22, 1989, Emerg; August 5, 1991, Reg; February 5, 2014, Susp.	.....do	Do.
Chippewa, Township of, Isabella County.	260824	August 14, 1989, Emerg; January 7, 1998, Reg; February 5, 2014, Susp.	.....do	Do.
Coe, Township of, Isabella County	260819	April 24, 1989, Emerg; July 16, 1991, Reg; February 5, 2014, Susp.	.....do	Do.
Deerfield, Township of, Isabella County	260816	March 22, 1989, Emerg; January 7, 1998, Reg; February 5, 2014, Susp.	.....do	Do.
Denver, Township of, Isabella County	260817	March 22, 1989, Emerg; July 16, 1991, Reg; February 5, 2014, Susp.	.....do	Do.
Isabella, Township of, Isabella County	260820	April 24, 1989, Emerg; April 16, 1991, Reg; February 5, 2014, Susp.	.....do	Do.
Mount Pleasant, City of, Isabella County.	260104	May 14, 1975, Emerg; August 16, 1982, Reg; February 5, 2014, Susp.	.....do	Do.
Nottawa, Township of, Isabella County	260821	April 24, 1989, Emerg; May 2, 1991, Reg; February 5, 2014, Susp.	.....do	Do.
Rolland, Township of, Isabella County	260422	April 24, 1989, Emerg; September 14, 1990, Reg; February 5, 2014, Susp.	.....do	Do.
Sherman, Township of, Isabella County	260822	April 24, 1989, Emerg; October 16, 1991, Reg; February 5, 2014, Susp.	.....do	Do.
Union, Charter Township of, Isabella County.	260812	October 13, 1988, Emerg; February 15, 1991, Reg; February 5, 2014, Susp.	.....do	Do.
Vernon, Township of, Isabella County	260825	September 7, 1989, Emerg; February 5, 1992, Reg; February 5, 2014, Susp.	.....do	Do.
Wise, Township of, Isabella County	260823	July 18, 1989, Emerg; September 18, 1991, Reg; February 5, 2014, Susp.	.....do	Do.
Wisconsin:				
Dodge County, Unincorporated Areas	550094	July 18, 1973, Emerg; June 15, 1981, Reg; February 5, 2014, Susp.	.....do	Do.
Fox Lake, City of, Dodge County	550097	August 1, 1975, Emerg; March 16, 1981, Reg; February 5, 2014, Susp.	.....do	Do.
Region VII				
Kansas:				
Kansas City, City of, Wyandotte County	200363	December 10, 1974, Emerg; August 3, 1981, Reg; February 5, 2014, Susp.	.....do	Do.
Region VIII				
Colorado:				
Arvada, City of, Adams and Jefferson County.	085072	April 30, 1971, Emerg; June 23, 1972, Reg; February 5, 2014, Susp.	.....do	Do.
Edgewater, City of, Jefferson County	080089	June 6, 1974, Emerg; August 15, 1989, Reg; February 5, 2014, Susp.	.....do	Do.
Golden, City of, Jefferson County	080090	June 19, 1975, Emerg; May 15, 1985, Reg; February 5, 2014, Susp.	.....do	Do.
Jefferson County, Unincorporated Areas.	080087	July 5, 1973, Emerg; August 5, 1986, Reg; February 5, 2014, Susp.	.....do	Do.
Lakewood, City of, Jefferson County	085075	April 16, 1971, Emerg; July 21, 1972, Reg; February 5, 2014, Susp.	.....do	Do.
Morrison, Town of, Jefferson County	080092	September 11, 1975, Emerg; December 1, 1982, Reg; February 5, 2014, Susp.	.....do	Do.
Westminster, City of, Adams and Jefferson County.	080008	July 13, 1973, Emerg; September 30, 1988, Reg; February 5, 2014, Susp.	.....do	Do.
Wheat Ridge, City of, Jefferson County	085079	April 16, 1971, Emerg; May 26, 1972, Reg; February 5, 2014, Susp.	.....do	Do.
Wyoming: Fremont County, Unincorporated Areas.	560080	July 8, 1975, Emerg; February 1, 1979, Reg; February 5, 2014, Susp.	.....do	Do.

*-do- =Ditto.
Code for reading third column: Emerg. —Emergency; Reg. —Regular; Susp. —Suspension.

Dated: December 11, 2013.

David L. Miller

Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–31155 Filed 12–27–13; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register

Vol. 78, No. 250

Monday, December 30, 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 Parts 40, 70, 72, 74, and 150

[NRC–2009–0096 and NRC–2013–0195]

RIN 3150–AI61

Amendments to Material Control and Accounting Regulations and Proposed Guidance for Fuel Cycle Facility Material Control and Accounting Plans and Completing the U.S. Nuclear Regulatory Commission Form 327

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of rescheduled public meeting and extension of comment period.

SUMMARY: The Nuclear Regulatory Commission (NRC) is rescheduling a public meeting that was cancelled due to inclement weather and extending the public comment period for a proposed rule and draft guidance on material control and accounting (MC&A) of special nuclear material (SNM). The public meeting has been rescheduled for January 9, 2014. The public comment period has been extended to March 10, 2014, in response to a request by stakeholders.

DATES: The public meeting announced at 78 FR 71532 (November 29, 2013) is rescheduled to January 9, 2014. The public comment period announced at 78 FR 67224 and 67225 has been extended from February 18, 2014, to March 10, 2014

ADDRESSES: The public meeting will be held at the NRC's headquarters, Room 3WFN–1D07, Three White Flint North, 11601 Landsdown Street, North Bethesda, MD 20852. Members of the public may also participate in the meeting via teleconference or Webinar. Information for the teleconference and Webinar is available in the meeting notice, which can be accessed through the NRC's public Web site at: *http://meetings.nrc.gov/pmns/mtg.*

Please refer to Docket ID NRC–2009–0096 when contacting the NRC about the availability of information for the proposed rule, and refer to Docket ID: NRC–2013–0195 when contacting the NRC about the availability of information for the draft NUREGs. You may access publicly-available information related to this action by any of the following methods:

- Federal Rulemaking Web site: Go to: *http://www.regulations.gov* and search for Docket ID NRC–2009–0096 for information about the proposed rule and Docket ID: NRC–2013–0195 for information about the draft NUREGs. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- 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.*
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Thomas Young, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5795; email: *Thomas.Young@nrc.gov.*

I. Background

On November 8, 2013 (78 FR 67225; NRC–2009–0096), the NRC published for public comment a proposed rule to amend its regulations for MC&A of SNM. Also on November 8, 2013 (78 FR 67224; NRC–2013–0195), the NRC published for public comment the proposed guidance documents that discuss acceptable methods that licensees may use to prepare and implement their MC&A plans and how the NRC will review and inspect these plans. The public comment period for the proposed rule and the proposed guidance would have closed on February 18, 2014. In addition, the NRC had planned to hold a public meeting on the proposed rule and proposed guidance on December 10, 2013. Due to inclement weather, this public meeting has been rescheduled to be held on January 9, 2014. The NRC received a request to extend the comment period to 60 days after the rescheduled public meeting. The NRC has decided to extend the comment period until March 10, 2014.

The goal of this rulemaking is to revise and consolidate the MC&A requirements in order to update, clarify, and strengthen them. The proposed amendments add new requirements that would apply to NRC licensees who are authorized to possess SNM in a quantity greater than 350 grams.

II. Public Meeting

To facilitate the understanding of the public and other stakeholders of these issues and the submission of comments, the NRC staff plans to hold a public meeting on January 9, 2014, from 10:00 a.m. to 5:00 p.m. (EST), in Rockville, Maryland. The meeting notice can be accessed through the NRC's public Web site at: *http://meetings.nrc.gov/pmns/mtg.* The final agenda and the meeting materials will be posted no fewer than 10 days prior to the meeting at this Web site.

In addition, members of the public may also participate in the meeting via teleconference or Webinar. Information for the teleconference and Webinar is available in the meeting notice, which can be accessed through the NRC's public Web site at: *http://meetings.nrc.gov/pmns/mtg.* To register in advance for the teleconference and Webinar, please contact Thomas Young at: 301–415–5795 (email: *Thomas.Young@nrc.gov*).

Dated at Rockville, Maryland, this 20th day of December, 2013.

For the Nuclear Regulatory Commission.

Christopher G. Miller,

Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2013–31200 Filed 12–27–13; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–1065; Directorate Identifier 2011–NM–230–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to certain Bombardier, Inc. Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 Variants) airplanes. The existing AD currently requires operators to assign serial numbers or part numbers to certain landing gear parts; and to establish the number of landings on the parts, if necessary. The existing AD also requires operators to revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA) to reflect the new life limits of the landing gear parts. Since we issued that AD, additional landing gear parts have been identified that need serialization. This proposed AD would add airplanes to the applicability; require operators to assign serial numbers or part numbers to certain additional landing gear parts, to establish the number of landings on the parts, if necessary; and record in all required airplane technical records and manuals the new part numbers, serial numbers, and landings assigned to these parts. We are proposing this AD to prevent life-limited landing gear parts from being used beyond their safe-life limits, which could lead to collapse of the landing gear.

DATES: We must receive comments on this proposed AD by February 13, 2014.

ADDRESSES: You may send comments by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: (202) 493–2251.
- Mail: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- Hand Delivery: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For Bombardier, Inc./Canadair service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com*. For Messier-Dowty service information identified in this proposed AD, contact Messier Services Americas, Customer Support Center, 45360 Severn Way, Sterling, VA 20166–8910; phone: 703–450–8233; fax: 703–404–1621; Internet: *https://techpubs.services/messier-dowty.com* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Andreas Rambalakos, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7345; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–1065; Directorate Identifier 2011–NM–230–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On July 11, 2005, we issued AD 2005–15–04, Amendment 39–14193 (70 FR 43032, July 26, 2005). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2005–15–04, Amendment 39–14193 (70 FR 43032, July 26, 2005), Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, has issued Canadian Airworthiness Directives CF–2003–18R2, dated September 28, 2011; CF–2003–20R1, dated September 28, 2011; and CF–2003–21R2, dated September 28, 2011; (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI'') to correct an unsafe condition for the specified products. The MCAI states:

> Certain landing gear parts that are listed in the aeroplane model Airworthiness Limitations Section, as safe life items with structural life limits, could be rotable and may not have been serialized, making tracking difficult. This [Canadian airworthiness] directive mandates that such parts be serialized. This [Canadian airworthiness] directive also provides the procedure to determine the number of landings for those parts where the service history cannot be established.
>
> * * * * *
>
> [T]his [Canadian Airworthiness] directive * * * mandate[s] serialization of * * * additional landing gear parts.

This proposed AD would also add airplanes to the applicability. The unsafe condition is using life-limited landing gear parts beyond their safe-life limits, which could lead to collapse of the landing gear. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–1065.

Relevant Service Information

Bombardier, Inc. has issued the following service bulletins.

- Bombardier Service Bulletin 600–0710, Revision 03, dated May 9, 2011, including Appendix 1, dated May 9, 2011, and Service Bulletin Information Sheet, dated July 6, 2010 (for Model CL–600–1A11 (CL–600) airplanes).
- Bombardier Service Bulletin 601–0546, Revision 03, dated May 9, 2011, including Appendix 1, dated May 9, 2011, and Service Bulletin Information Sheet, dated July 6, 2010 (for Model CL–600–2A12 (CL–601) airplanes and Model CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes).

• Bombardier Service Bulletin 604–32–014, Revision 02, dated May 9, 2011, including Appendix 1, dated May 9, 2011, and Service Bulletin Information Sheet, dated July 6, 2010 (for Model CL–600–2B16 (CL–604 Variant) airplanes).

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed AD and the MCAI or Service Information

For Model CL–600–2B16 (CL–604 Variant) airplanes, the MCAI specifies serial numbers 5301 through 5595 inclusive; however, the actions of the MCAI address only serial numbers 5301 through 5573 inclusive, 5579, and 5595. Consequently, we have specified the proposed applicability as serial numbers 5301 to 5573 inclusive, 5579, and 5595. We have coordinated this difference with TCCA.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 419 products of U.S. registry.

The actions that are required by AD 2005–15–04, Amendment 39–14193 (70 FR 43032, July 26, 2005), and retained in this proposed AD take up to 13 work-hours per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $1,105 per product.

We estimate that it would take about 9 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $320,535, or $765 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 proposed regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2005–15–04, Amendment 39–14193 (70 FR 43032, July 26, 2005), and adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2013–1065; Directorate Identifier 2011–NM–230–AD.

(a) Comments Due Date

We must receive comments by February 13, 2014.

(b) Affected ADs

This AD supersedes AD 2005–15–04, Amendment 39–14193 (70 FR 43032, July 26, 2005).

(c) Applicability

This AD applies to Bombardier, Inc. airplanes, certificated in any category, as identified in paragraphs (c)(1) through (c)(4) of this AD.

(1) Model CL–600–1A11 (CL–600) airplanes, serial numbers 1004 through 1085 inclusive.

(2) Model CL–600–2A12 (CL–601) airplanes, serial numbers 3001 through 3066 inclusive;

(3) Model CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes, serial numbers 5001 through 5194 inclusive.

(4) Model CL–600–2B16 (CL–604 Variant) airplanes, serial numbers 5301 through 5573 inclusive, 5579, and 5595.

(5) This AD requires revisions to certain operator maintenance documents to include new actions (e.g., inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (r) of this AD. The request should include a description of changes to the required actions that will ensure the continued damage tolerance of the affected structure.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Reason

This AD was prompted by reports that landing gear parts that have safe-life limits but do not have serial numbers or part numbers can be removed from one landing gear and re-installed on another, making tracking difficult. We are issuing this AD to prevent life-limited landing gear parts from being used beyond their safe-life limits, which could lead to collapse of the landing gear.

(f) Compliance

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

(g) Retained Requirement To Add Serial Numbers (S/Ns) or Part Numbers (P/Ns)

This paragraph restates the actions required by paragraph (f) of AD 2005–15–04, Amendment 39–14193 (70 FR 43032, July 26, 2005), with revised affected airplanes. Except for Model CL–600–2B16 airplanes having serial numbers 5514 through 5595 inclusive: At the applicable compliance time specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD, add serial numbers and part numbers, as applicable, to the parts identified in the applicable service bulletin specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD. Do all actions in accordance with the applicable service bulletin specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD.

(1) For parts identified in Bombardier Service Bulletin 600–0710, Revision 01, dated December 15, 2003; and Bombardier Service Bulletin 601–0546, Revision 01, dated December 15, 2003; as having a compliance time of ''five years for the parts listed in Part A'': Within 60 months after August 30, 2005 (the effective date of AD 2005–15–04, Amendment 39–14193 (70 FR 43032, July 26, 2005)).

(2) For parts identified in Bombardier Service Bulletin 600–0710, Revision 01, dated December 15, 2003; and Bombardier Service Bulletin 601–0546, Revision 01, dated December 15, 2003; as having a compliance time of ''ten years for the parts listed in Part B'': Within 120 months after August 30, 2005 (the effective date of AD 2005–15–04, Amendment 39–14193 (70 FR 43032, July 26, 2005)).

(3) For parts identified in Bombardier Service Bulletin 604–32–014, dated May 31, 2002, as having a compliance time of ''no later than a calendar time of 8 years'': Within 96 months after August 30, 2005 (the effective date of AD 2005–15–04, Amendment 39–14193 (70 FR 43032, July 26, 2005)).

Note 1 to paragraph (g) of this AD: The Bombardier service bulletins refer to the Messier-Dowty service bulletins in table 1 to paragraph (g) of this AD as additional sources of service information for adding part numbers or serial numbers by vibro-peening the numbers on main landing gear (MLG) and nose landing gear (NLG) components that do not have them; and for determining the number of landings for parts without a part number or serial number on which the time since new (TSN) and cycles since new (CSN) have not been tracked.

TABLE 1 TO PARAGRAPH (g) OF THIS AD—MESSIER-DOWTY SERVICE BULLETINS

Messier–Dowty Service Bulletin	Model	Landing gear component	Corresponding Bombardier Service Bulletin(s)
M–DT SB104467009/010–32–1, dated March 19, 2001.	CL–600–1A11 (CL–600), CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes.	MLG side strut retraction actuator eye bolt.	600–0710 and 601–0546.
M–DT SB19090–32–4, dated March 19, 2001.	CL–600–2B16 (CL–604) airplanes	MLG shock strut	604–32–014.
M–DT SB20020–32–5, dated July 12, 2001.	CL–600–2B16 (CL–604) airplanes	NLG shock strut	604–32–014.
M–DT SB200814001–32–3, dated March 19, 2001.	CL–600–1A11 (CL–600), CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes.	NLG drag brace hinge pin	600–0710 and 601–0546.
M–DT SB200922001/2–32–6, dated March 19, 2001.	CL–600–1A11 (CL–600) airplanes	MLG shock strut	600–0710.
M–DT SB200924003/004–32–16, dated July 12, 2001.	CL–600–1A11 (CL–600) airplanes	NLG shock strut	600–0710.
M–DT SB6100–32–10, dated March 19, 2001.	CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes.	MLG shock strut pin	601–0546.
M–DT SB6500–32–1, dated March 19, 2001.	CL–600–1A11 (CL–600), CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes.	MLG side strut retraction actuator.	600–0710 and 601–0546.
M–DT SB7200–32–6, dated March 19, 2001.	CL–600–1A11 (CL–600), CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes.	NLG drag brace hinge pin	600–0710 and 601–0546.
M–DT SB7300–32–16, dated July 12, 2001.	CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes.	NLG shock strut	601–0546.

(h) Retained Requirement To Establish the Number of Landings

This paragraph restates the actions required by paragraph (g) of AD 2005–15–04, Amendment 39–14193 (70 FR 43032, July 26, 2005), with revised affected airplanes. Except for Model CL–600–2B16 airplanes having serial numbers 5314 through 5595 inclusive: At the applicable time specified in paragraph (g) of this AD, if a component does not have a serial number and the CSN or TSN were not tracked, use the formula in the applicable Messier-Dowty service bulletin in table 1 to paragraph (g) of this AD to establish the number of landings (TSN or CSN), and record the newly calculated TSN or CSN in the aircraft log books.

(i) Retained Requirement To Revise the Airworthiness Limitations Section (ALS)

This paragraph restates the revision required by paragraph (h) of AD 2005–15–04, Amendment 39–14193 (70 FR 43032, July 26, 2005), with revised affected airplanes. Except for Model CL–600–2B16 airplanes having serial numbers 5514 through 5595 inclusive: Within 30 days after August 30, 2005 (the effective date of AD 2005–15–04), revise the ALS of the applicable Instructions for Continued Airworthiness to reflect the new life limits of the landing gear parts by inserting copies of the Canadair temporary revisions (TR) in table 2 to paragraph (i) of this AD into the ALS of the applicable Canadair Time-Limits/Maintenance Check Manual. When the contents of the TRs are included in the general revisions of the ALS, these TRs may be removed provided the relevant information in the ALS is identical to that in the TRs.

TABLE 2 TO PARAGRAPH (i) OF THIS AD—CANADAIR TEMPORARY REVISIONS

Temporary revision	Applicable Canadair Time-Limits/ Maintenance Check Manual	Manual section	Model
5–116, dated April 11, 2002	PSP 605	5–10–10	CL–600–1A11 (CL–600) airplanes.
5–190, dated April 11, 2002	PSP 601–5	5–10–10	CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes.
5–191, dated April 11, 2002	PSP 601–5	5–10–11	CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes.
5–192, dated April 11, 2002	PSP 601–5	5–10–12	CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes.
5–2–6, dated April 11, 2002	CL–604	5–10–10	CL–600–2B16 (CL–604) airplanes.
5–204, dated April 11, 2002	PSP 601A–5 ..	5–10–10	CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes.
5–205, dated April 11, 2002	PSP 601A–5 ..	5–10–11	CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes.
5–206, dated April 11, 2002	PSP 601A–5 ..	5–10–12	CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes.

(j) Retained Parts Installation Limitation

This paragraph restates the limitations specified in paragraph (i) of AD 2005–15–04, Amendment 39–14193 (70 FR 43032, July 26, 2005), with revised affected airplanes. Except for Model CL–600–2B16 airplanes having serial numbers 5514 through 5595 inclusive: As of August 30, 2005 (the effective date of AD 2005–15–04), no person may install on any airplane a landing gear part, unless it has had the applicable part number or serial number added in accordance with paragraph (g) of this AD; and has had the number of landings established in accordance with paragraph (h) of this AD.

(k) Retained Stipulation of Information of No Reporting

This paragraph restates the stipulation specified in paragraph (j) of AD 2005–15–04, Amendment 39–14193 (70 FR 43032, July 26, 2005). Although the service bulletins identified in paragraph (g) of this AD specify that operators should submit incorporation notices to Bombardier after each new part number or serial number and landings assigned to these parts is added, this AD does not include that action.

(l) New Requirement of This AD: Add Serial Numbers and Part Numbers

(1) For Model CL–600–2B16 (CL–604 Variant) airplanes: Within 96 months after the effective date of this AD, add serial numbers and part numbers, as applicable, to the parts identified in paragraphs (l)(1)(i) and (l)(1)(ii) of this AD, as applicable, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 604–32–014, Revision 02, dated May 9, 2011, including Appendix 1, dated May 9, 2011, and Service Bulletin Information Sheet, dated July 6, 2010.

(i) For airplanes having serial numbers 5301 through 5513 inclusive: Main fitting/drag stay pin of the NLG having P/N 200811721.

(ii) For airplanes having serial numbers 5301 through 5573 inclusive, 5579, and 5595: NLG crossbeam pins having P/N 200814601 and NLG center hinge pins having P/N 200814624.

(2) For Bombardier Model CL–600–2A12 (CL–601) airplanes and Model CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes: Within 60 months after the effective date of this AD, add serial numbers and part numbers, as applicable, to left and right MLG side strut pins having P/N 6318–1 or 6318–3; and to left and right MLG hinge pins having P/N 6329–3; in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601–0546, Revision 03, dated May 9, 2011, including Appendix 1, dated May 9, 2011, and Service Bulletin Information Sheet, dated July 6, 2010.

(3) For Bombardier Model CL–600–2A12 (CL–601) airplanes and Model CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes: Within 120 months after the effective date of this AD, add serial numbers and part numbers, as applicable, to NLG main fitting/drag stay pins having P/N 200811721; NLG drag brace pivot pins having P/N 200814601; and left and right MLG pintle pins having P/N 6324–1; in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601–0546, Revision 03, dated May 9, 2011, including Appendix 1, dated May 9, 2011, and Service Bulletin Information Sheet, dated July 6, 2010.

(4) For Bombardier Model CL–600–1A11 (CL–600) airplanes: Within 120 months after the effective date of this AD, add serial numbers and part numbers, as applicable, to NLG main fitting/drag stay pins having P/N 200811721 and NLG drag brace pivot pins having P/N 200814601, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 600–0710, Revision 03, dated May 9, 2011, including Appendix 1, dated May 9, 2011, and Service Bulletin Information Sheet, dated July 6, 2010.

(m) New Requirement of This AD: Establish the Number of Landings (CSN)

At the applicable times specified in paragraph (l) of this AD: If a component does not have a serial number and the number of landings (CSN) were not tracked, use the applicable service bulletin specified in paragraph (m)(1), (m)(2), or (m)(3) of this AD to establish the number of landings (CSN).

(1) Appendix 1, dated May 9, 2011, of Bombardier Service Bulletin 604–32–014, Revision 02, dated May 9, 2011, including Service Bulletin Information Sheet, dated July 6, 2010 (for Bombardier Model CL–600–2B16 (CL–604 Variant) airplanes).

(2) Appendix 1, dated May 9, 2011, of Bombardier Service Bulletin 601–0546, Revision 03, dated May 9, 2011, including Service Bulletin Information Sheet, dated July 6, 2010 (for Model CL–600–2A12 (CL–601) airplanes and Model CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes).

(3) Appendix 1, dated May 9, 2011, of Bombardier Service Bulletin 600–0710, Revision 03, dated May 9, 2011, including Service Bulletin Information Sheet, dated July 6, 2010 (for Bombardier Model CL–600–1A11 (CL–600) airplanes).

(n) New Requirement of This AD: Records Update

Concurrently with the actions specified in paragraphs (l) and (m) of this AD: Record any newly calculated number of landings (CSN), new part numbers, and new serial numbers in the airplane technical records and manuals.

(o) New Requirement of This AD: Parts Installation Limitation

As of the effective date of this AD, no person may install on any airplane a landing gear part identified in paragraph (l) of this AD, unless it has had the applicable part number or serial number added as required by paragraph (l) of this AD, and had the number of landings (CSN) established as required by paragraph (m) of this AD.

(p) New Action of This AD: Optional Method of Compliance

Accomplishing the action required by paragraph (g) of this AD, in accordance with the Accomplishment Instructions of the applicable service bulletin specified in paragraph (p)(1), (p)(2), or (p)(3) of this AD, is acceptable for compliance with the requirements of paragraph (g) of this AD.

(1) Bombardier Service Bulletin 601–0546, Revision 03, dated May 9, 2011, including Appendix 1, dated May 9, 2011, and Service Bulletin Information Sheet, dated July 6, 2010 (for Model CL–600–2A12 (CL–601) airplanes and Model CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes).

(2) Bombardier Service Bulletin 604–32–014, Revision 02, dated May 9, 2011, including Appendix 1, dated May 9, 2011, and Service Bulletin Information Sheet, dated July 6, 2010 (for Model CL–600–2B16 (CL–604 Variant) airplanes).

(3) Bombardier Service Bulletin 600–0710, Revision 03, dated May 9, 2011, including Appendix 1, dated May 9, 2011, and Service Bulletin Information Sheet, dated July 6, 2010 (for Model CL–600–1A11 (CL–600) airplanes).

(q) Credit for Previous Actions

(1) This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before August 30, 2005 (the effective date of AD 2005–15–04, Amendment 39–14193 (70 FR 43032, July 26, 2005)), using the applicable service bulletin specified in paragraph (q)(1)(i), (q)(1)(ii), or (q)(1)(iii) of this AD, which are not incorporated by reference in this AD.

(i) Bombardier Service Bulletin 601–0546, dated May 31, 2002 (for Model CL–600–2A12 (CL–601) airplanes and Model CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes).

(ii) Bombardier Service Bulletin 600–0710, dated May 31, 2002 (for Model CL–600–1A11 (CL–600) airplanes).

(iii) Bombardier Service Bulletin 604–32–014, dated May 31, 2002 (for Model CL–600–2B16 (CL–604 Variant) airplanes).

(2) This paragraph provides credit for the addition of serial numbers and part numbers required by paragraph (l) of this AD, if those actions were performed before the effective date of this AD using the applicable service bulletin specified in paragraph (q)(2)(i), (q)(2)(ii), or (q)(2)(iii) of this AD, which are not incorporated by reference in this AD.

(i) Bombardier Service Bulletin 604–32–014, Revision 01, dated October 29, 2007 (for Bombardier Model CL–600–2B16 (CL–604 Variant) airplanes).

(ii) Bombardier Service Bulletin 601–0546, Revision 02, dated October 29, 2007 (for Model CL–600–2A12 (CL–601) airplanes and Model CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes).

(iii) Bombardier Service Bulletin 600–0710, Revision 02, dated October 29, 2007 (for Bombardier Model CL–600–1A11 (CL–600) airplanes).

(3) This paragraph provides credit for the establishment of the number of landings (CSN) required by paragraph (m) of this AD, if those actions were performed before the effective date of this AD using the applicable service bulletin information sheet specified in paragraph (q)(3)(i), (q)(3)(ii), or (q)(3)(iii) of this AD.

(i) Service Bulletin Information Sheet, dated July 6, 2010, of Bombardier Service Bulletin 604–32–014 (for Bombardier Model CL–600–2B16 (CL–604 Variant) airplanes).

(ii) Service Bulletin Information Sheet, dated July 6, 2010, of Bombardier Service Bulletin 601–0546 (for Bombardier Model CL–600–2A12 (CL–601) and Model CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes).

(iii) Service Bulletin Information Sheet, dated July 6, 2010 of Bombardier Service Bulletin 600–0710 (for Bombardier Model CL–600–1A11 (CL–600) airplanes).

(r) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD. AMOCs approved previously in accordance with AD 2005–15–04, Amendment 39–14193 (70 FR 43032, July 26, 2005), are approved as AMOCs for the corresponding provisions of this AD.

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

(s) Related Information

(1) Refer to the Mandatory Continuing Airworthiness Information Canadian Airworthiness Directives specified in paragraphs (s)(1)(i), (s)(1)(ii), and (s)(1)(iii) of this AD for related information. These MCAIs may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–1065.

(i) Canadian Airworthiness Directive CF–2003–18R2, dated September 28, 2011.

(ii) Canadian Airworthiness Directive CF–2003–20R1, dated September 28, 2011.

(iii) Canadian Airworthiness Directive CF–2003–21R2, dated September 28, 2011.

(2) For Bombardier, Inc./Canadair service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* For Messier-Dowty service information identified in this proposed AD, contact Messier Services Americas, Customer Support Center, 45360 Severn Way, Sterling, VA 20166–8910. You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on December 19, 2013.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–31185 Filed 12–27–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–1066; Directorate Identifier 2013–NM–021–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede airworthiness directive (AD) 2000–12–12, for certain Airbus Model A300, A300–600, and A310 series airplanes. AD 2000–12–12 currently requires inspecting to detect cracks in the lower spar axis of the nacelle pylon between ribs 9 and 10, and repair if necessary. AD 2000–12–12 also provides for optional modification of the pylon, which terminates the inspections for Model A300 series airplanes. Since we issued AD 2000–12–12, we have received reports of cracking of the lower pylon spar after accomplishing the existing modification and have determined that shorter initial and repetitive inspection compliance times are necessary to address the identified unsafe condition. This proposed AD would reduce the initial and repetitive inspection compliance times. We are proposing this AD to detect and correct fatigue cracking, which could result in reduced structural integrity of the lower spar of the nacelle pylon.

DATES: We must receive comments on this proposed AD by February 13, 2014.

ADDRESSES: You may send comments by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Fax: (202) 493–2251.
- Mail: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

• Hand Delivery: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–1066; Directorate Identifier 2013–NM–021–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On June 9, 2000, we issued AD 2000–12–12, Amendment 39–11790 (65 FR 39072, June 23, 2000). That AD required actions intended to address an unsafe condition on the products listed above. AD 2000–12–12 superseded AD 95–10–03, Amendment 39–9220 (60 FR 25604, May 12, 1995).

Since we issued AD 2000–12–12, Amendment 39–11790 (65 FR 39072, June 23, 2000), The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0016, dated September 17, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Cracks were found between ribs 9 and 10 in the lower pylon spar of A310 aeroplanes equipped with Pratt & Whitney (PW) engines.
>
> For A310, A300 and A300–600 aeroplanes and, in order to prevent crack initiation, the implementation of a first inspection programme of this area was required by DGAC [Direction Générale de l'Aviation Civile] France AD 1992–049–130(B) [which corresponds to certain actions in FAA AD 2000–12–12, Amendment 39–11790 (65 FR 39072, June 23, 2000)], currently at Revision 4.
>
> General Electric (GE) and PW pylons on A300 aeroplanes are also affected, due to similar design.
>
> After that [DGAC] AD was issued, prompted by new findings, a specific inspection programme for A310 aeroplanes was introduced and required by DGAC France AD 1999–237–285(B) [which corresponds to certain actions in FAA AD 2000–12–12, Amendment 39–11790 (65 FR 39072, June 23, 2000)], which was subsequently superseded by EASA AD 2008–0008 [*http://ad.easa.europa.eu/blob/easa_ad_2008_0008_superseded.pdf/AD_2008-0008_1],* which introduced new thresholds and intervals in the frame of the A310 extended service goal exercise.
>
> Some cracks, which were discovered after the implementation of the preventive modification, prompted Airbus to perform a new Fatigue and Damage Tolerance analysis with a refined model of the area with and without repair or preventive reinforcement before crack appearance. Based on the results of this analysis, Airbus revised the related Service Bulletins to introduce more restrictive thresholds and intervals for curative and preventive repair configuration.
>
> EASA issued AD 2013–0014 [*http://ad.easa.europa.eu/blob/easa_ad_2013_0214.pdf/AD_2013-0014_1*], which superseded DGAC France AD 1992–049–130(B) and EASA AD 2008–0008, to mandate a new inspection programme [including related investigative and corrective actions].
>
> After EASA AD 2013–0014 was issued, further analysis allowed to identify one A300 aeroplane model and one retrofitted A300 MSN [manufacturer serial number] missing in the applicability chapter.
>
> For the reason described above, this [EASA] AD retains the requirements of EASA AD 2013–0014, which is superseded, and clarifies the Applicability section and adds one A300 model and one A300 MSN.

The unsafe condition is fatigue cracking, which could result in reduced structural integrity of the lower spar of the nacelle pylon. Related investigative actions include additional eddy current and liquid penetrant inspections for cracking. Corrective actions include repairing cracking. For certain cracking lengths, repairs are described as reinforcing the lower spar with a doubler. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–1066.

Relevant Service Information

Airbus has issued the following service bulletins. The actions described in these service bulletins are intended to correct the unsafe condition identified in the MCAI.

• Airbus Mandatory Service Bulletin A300–54–0071, Revision 04, dated April 11, 2013 (for Model A300 B2–203, B2K–3C, B4–103, B4–203, and B4–2C airplanes).

• Airbus Mandatory Service Bulletin A300–54–6011, Revision 03, dated June 23, 2011 (for Model A300 B4–620, B4–622, and B4–622R airplanes).

• Airbus Mandatory Service Bulletin A310–54–2016, Revision 06, dated January 16, 2013 (for Model A310–221, –222, –322, –324, and –325 airplanes).

The initial inspection compliance times for pre-repair and pre-modification airplanes range between 3,300 total flight cycles or 6,600 total flight hours, whichever occurs first; and 9,000 total flight cycles; depending on airplane configuration. The repetitive inspection interval is 2,300 flight cycles or 4,700 flight hours, whichever occurs first; or 2,500 flight cycles, depending on airplane configuration.

The inspection compliance times for post-modification airplanes range between 5,100 total flight cycles and 10,200 total flight hours, whichever occurs first after the modification; and between 12,300 and 15,700 total flight hours, whichever occurs later after the modification; depending on airplane configuration. The repetitive inspection interval ranges between 8,700 total flight cycles and 9,800 total flight hours, whichever occurs first; and between 12,200 total flight cycles and 23,400 total flight hours, whichever occurs first; depending on airplane configuration.

The inspection compliance times for post-repair airplanes range between 2,100 flight cycles and 6,900 flight hours, whichever occurs first after the repair; and between 7,600 flight cycles and 13,600 flight hours, whichever occurs later after the repair; depending on airplane configuration. The repetitive inspection interval ranges between 2,100 flight cycles and 2,700 flight hours, whichever occurs first; and between 4,300 flight cycles and 14,700 flight hours, whichever occurs first; depending on airplane configuration.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

In many FAA transport ADs, when the service information specifies to contact the manufacturer for further instructions if certain discrepancies are found, we typically include in the AD a requirement to accomplish the action using a method approved by either the FAA or the State of Design Authority (or its delegated agent).

We have recently been notified that certain laws in other countries do not allow such delegation of authority, but some countries do recognize design approval organizations. In addition, we have become aware that some U.S. operators have used repair instructions that were previously approved by a State of Design Authority or a Design Approval Holder (DAH) as a method of compliance with this provision in FAA ADs. Frequently, in these cases, the previously approved repair instructions come from the airplane structural repair manual or the DAH repair approval statements that were not specifically developed to address the unsafe condition corrected by the AD. Using repair instructions that were not specifically approved for a particular AD creates the potential for doing repairs that were not developed to address the unsafe condition identified by the MCAI AD, the FAA AD, or the applicable service information, which could result in the unsafe condition not being fully corrected.

To prevent the use of repairs that were not specifically developed to correct the unsafe condition, this proposed AD would require that the repair approval specifically refer to the FAA AD. This change is intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we use the phrase ''its delegated agent, or by the DAH with State of Design Authority design organization approval, as applicable'' in this proposed AD to refer to an DAH authorized to approve required repairs for this proposed AD.

Differences Between This Proposed AD and the MCAI or Service Information

Although the MCAI and Airbus service information allow further flight after cracks are found during compliance with the required action, the new actions of this proposed AD would not permit further flight if cracks are detected in the lower nacelle pylon spar. We have determined that, because of the safety implications and consequences associated with that cracking, any cracked lower pylon spar must be repaired or modified before further flight. This difference has been coordinated with the EASA.

Costs of Compliance

We estimate that this proposed AD affects 91 airplanes of U.S. registry.

The actions that are required by AD 2000–12–12, Amendment 39–11790 (65 FR 39072, June 23, 2000), and retained in this proposed AD take about 4 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that were required by AD 2000–12–12 is $340 per product.

We also estimate that it would take about 12 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $92,820, or $1,020 per product.

In addition, we estimate that any necessary follow-on actions would take about 60 work-hours and require parts costing $1,680, for a cost of $6,780 per product. We have no way of determining the number of aircraft that might need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD)

2000–12–12, Amendment 39–11790 (65 FR 39072, June 23, 2000), and adding the following new AD:

Airbus: Docket No. FAA–2013–1066; Directorate Identifier 2013–NM–021–AD.

(a) Comments Due Date

We must receive comments by February 13, 2014.

(b) Affected ADs

This AD supersedes AD 2000–12–12, Amendment 39–11790 (65 FR 39072, June 23, 2000).

(c) Applicability

This AD applies to the Airbus airplanes identified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category.

(1) Airbus Model A300 B2–203, B2K–3C, B4–103, B4–203, and B4–2C airplanes on which Airbus modification 2434 has been embodied in production.

(2) Airbus Model A300 airplane having manufacturer serial number 125, on the left hand side pylon only.

(3) Airbus Model A300 B4–620, B4–622R, and B4–622 airplanes, except for airplanes on which Airbus Modification 10149 has been embodied in production.

(4) Airbus Model A310–221, –222, –322, –324, and –325 airplanes, except for airplanes on which Airbus Modification 10149 has been embodied in production.

(d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/pylons.

(e) Reason

This AD was prompted by reports of cracking of the lower nacelle pylon spar after accomplishing an existing modification. We are issuing this AD to detect and correct fatigue cracking, which could result in reduced structural integrity of the lower spar of the nacelle pylon.

(f) Compliance

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

(g) Retained Inspection and Corrective Action for Certain A300 Series Airplanes

This paragraph restates the requirements of paragraph (a) of AD 2000–12–12, Amendment 39–11790 (65 FR 39072, June 23, 2000), with revised repair instructions. For Model A300 B4–2C, B2K–3C, B2–203, B4–103, and B4–203 series airplanes: Prior to the accumulation of 9,000 total landings, or within 500 landings after June 12, 1995 (the effective date of AD 95–10–03, Amendment 39–9220 (60 FR 25604, May 12, 1995)), whichever occurs later, perform an internal eddy current inspection to detect cracks in the lower spar axis of the pylon between ribs 9 and 10, in accordance with Airbus Industrie Service Bulletin A300–54–071, dated November 12, 1991; or Revision 1, dated October 15, 1993. Accomplishment of an inspection required by paragraph (k), (l), or (m) of this AD terminates the inspection requirements of this paragraph.

(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 2,500 landings.

(2) If any crack is found that is less than or equal to 30 millimeters (mm): Perform subsequent inspections and repair in accordance with the methods and times specified in Airbus Industrie Service Bulletin A300–54–071, dated November 12, 1991; or Revision 1, dated October 15, 1993.

(3) If any crack is found that is greater than 30 mm, but less than 100 mm: Before further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the European Aviation Safety Agency (EASA) (or its delegated agent, or the Design Approval Holder with EASA design organization approval, as applicable). For a repair method to be approved, the repair approval must specifically refer to this AD.

(4) If any crack is found that is greater than or equal to 100 mm: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or EASA (or its delegated agent, or the Design Approval Holder with EASA design organization approval, as applicable). For a repair method to be approved, the repair approval must specifically refer to this AD.

(5) Accomplishment of the modification specified in Airbus Industrie Service Bulletin A300–54–0079, dated October 15, 1993, constitutes terminating action for the inspections required by paragraph (g) of this AD.

(h) Retained Inspection and Corrective Action for Model A300–600 Series Airplanes

This paragraph restates the requirements of paragraph (b) of AD 2000–12–12, Amendment 39–11790 (65 FR 39072, June 23, 2000), with revised repair instructions. For Model A300–600 B4–620, C4–620, B4–622R, and B4–622 series airplanes: Except as provided by paragraph (h)(5) of this AD, prior to the accumulation of 4,000 total landings, or within 500 landings after June 12, 1995 (the effective date of AD 95–10–03, Amendment 39–9220 (60 FR 25604, May 12, 1995)), whichever occurs later, perform an internal eddy current inspection to detect cracks in the lower spar axis of the pylon between ribs 9 and 10, in accordance with Airbus Industrie Service Bulletin A300–54–6011, dated November 12, 1991, as amended by Airbus Industrie Service Bulletin Change Notice O.A., dated July 10, 1992; or Revision 1, dated October 15, 1993. Accomplishment of an inspection required by paragraph (k), (l), or (m) of this AD terminates the inspection requirements of this paragraph.

(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 2,500 landings.

(2) If any crack is found that is less than or equal to 30 mm: Perform subsequent inspections and repair in accordance with the methods and times specified in Airbus Industrie Service Bulletin A300–54–6011, dated November 12, 1991, as amended by Airbus Industrie Service Bulletin Change Notice O.A., dated July 10, 1992; or Revision 1, dated October 15, 1993.

(3) If any crack is found that is greater than 30 mm, but less than 100 mm: Before further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the European Aviation Safety Agency (EASA) (or its delegated agent, or the Design Approval Holder with EASA design organization approval, as applicable). For a repair method to be approved, the repair approval must specifically refer to this AD.

(4) If any crack is found that is greater than or equal to 100 mm: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the European Aviation Safety Agency (EASA) (or its delegated agent, or the Design Approval Holder with EASA design organization approval, as applicable). For a repair method to be approved, the repair approval must specifically refer to this AD.

(5) Accomplishment of the modification specified in Airbus Industrie Service Bulletin A300–54–6019, dated October 15, 1993, increases the threshold and repetitive interval of the inspections required by paragraph (h) of this AD to the threshold and interval specified in paragraph 2.D. of the Accomplishment Instructions of Airbus Industrie Service Bulletin A300–54–6011, Revision 1, dated October 15, 1993.

(i) Retained Inspection and Corrective Action for Model A310 Series Airplanes

This paragraph restates the requirements of paragraph (c) of AD 2000–12–12, Amendment 39–11790 (65 FR 39072, June 23, 2000), with revised repair instructions. For Model A310–221, –222, –322, –324, and –325 series airplanes: Perform an internal eddy current inspection to detect cracks in the lower spar axis of the pylon between ribs 9 and 10, in accordance with Airbus Industrie Service Bulletin A310–54–2016, dated November 12, 1991; or Revision 1, dated October 15, 1993; or Revision 02, dated June 11, 1999; at the time specified in paragraph (j) of this AD. Accomplishment of an inspection required by paragraph (k), (l), or (m) of this AD terminates the inspection requirements of this paragraph.

(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 2,500 landings.

(2) If any crack is found that is less than or equal to 30 mm: Perform subsequent inspections and repair in accordance with the methods and times specified in Airbus Industrie Service Bulletin A310–54–2016, dated November 12, 1991; or Revision 1, dated October 15, 1993; or Revision 02, dated June 11, 1999.

(3) If any crack is found that is greater than 30 mm, but less than 100 mm: Before further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the European Aviation Safety Agency (EASA) (or its delegated agent, or the Design Approval Holder with EASA design organization approval, as applicable). For a repair method to be approved, the repair approval must specifically refer to this AD.

(4) If any crack is found that is greater than or equal to 100 mm: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the European Aviation Safety Agency

(EASA) (or its delegated agent, or the Design Approval Holder with EASA design organization approval, as applicable). For a repair method to be approved, the repair approval must specifically refer to this AD.

(5) Accomplishment of the modification specified in Airbus Industrie Service Bulletin A310–54–2022, dated October 15, 1993; or Revision 01, dated March 16, 1999; increases the threshold and repetitive interval of the inspections required by paragraph (i) of this AD to the threshold and interval specified in paragraph 2.D. of the Accomplishment Instructions of Airbus Industrie Service Bulletin A310–54–2016, Revision 02, dated June 11, 1999.

(j) Retained Compliance Time for Paragraph (i) of This AD

This paragraph restates the requirements of paragraph (d) of AD 2000–12–12, Amendment 39–11790 (65 FR 39072, June 23, 2000), with no changes. Perform the initial inspection required by paragraph (i) of this AD at the earlier of the times specified by paragraphs (j)(1) and (j)(2) of this AD.

(1) Prior to the accumulation of 25,000 total landings, or within 500 landings after June 12, 1995 (the effective date of AD 95–10–03, Amendment 39–9220 (60 FR 25604, May 12, 1995), whichever occurs later.

(2) At the applicable time specified by paragraph (j)(2)(i), (j)(2)(ii), or (j)(2)(iii) of this AD.

(i) For airplanes that have accumulated fewer than 10,000 landings as of July 28, 2000 (the effective date of AD 2000–12–12, Amendment 39–11790 (65 FR 39072, June 23, 2000)): Perform the inspection prior to the accumulation of 3,800 total landings, or within 1,500 landings after July 28, 2000, whichever occurs later.

(ii) For airplanes that have accumulated 10,000 total landings or more, but fewer than 20,000 total landings, as of July 28, 2000 (the effective date of AD 2000–12–12, Amendment 39–11790 (65 FR 39072, June 23, 2000)): Perform the inspection within 1,000 landings after July 28, 2000.

(iii) For airplanes that have accumulated 20,000 total landings or more as of July 28, 2000 (the effective date of AD 2000–12–12, Amendment 39–11790 (65 FR 39072, June 23, 2000)): Perform the inspection within 500 landings after July 28, 2000.

(k) New Repetitive Inspections for Cracking

(1) For airplanes identified in paragraph (k)(2) of this AD: Except as provided by paragraphs (n)(1) and (n)(4) of this AD, at the applicable compliance time specified in paragraph 1.E.(2), ''Compliance,'' of the applicable service bulletin specified in paragraph (k)(1)(i), (k)(1)(ii), or (k)(1)(iii) of this AD or within 100 flight cycles after the effective date of this AD, whichever occurs later, do an eddy current inspection or liquid penetrant inspection for cracking of the lower spar of the pylon between ribs 9 and 10; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of the applicable service bulletin specified in paragraph (k)(1)(i), (k)(1)(ii), or (k)(1)(iii) of this AD, except as required by paragraphs (n)(2) and (n)(3) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the inspection of the lower spar of the pylon between ribs 9 and 10 thereafter at intervals not to exceed the applicable interval specified in paragraph 1.E.(2), ''Compliance,'' of the applicable service bulletin specified in paragraph (k)(1)(i), (k)(1)(ii), or (k)(1)(iii) of this AD. Accomplishment of corrective actions required by this paragraph terminates the repetitive inspections required by this paragraph. Accomplishment of an inspection required by this paragraph terminates the inspection requirements of paragraphs (g), (h), and (i) of this AD. Accomplishment of the optional modification specified in the applicable service bulletin specified in paragraph (k)(1)(i), (k)(1)(ii), or (k)(1)(iii) of this AD terminates the repetitive inspections required by this paragraph.

(i) Airbus Mandatory Service Bulletin A300–54–0071, Revision 04, dated April 11, 2013 (for Model A300 B2–203, B2K–3C, B4–103, B4–203, and B4–2C airplanes).

(ii) Airbus Mandatory Service Bulletin A310–54–2016, Revision 06, dated January 16, 2013 (for Model A310–221, –222, –322, –324, and –325 airplanes).

(iii) Airbus Mandatory Service Bulletin A300–54–6011, Revision 03, dated June 23, 2011 (for Model A300 B4–620, B4–622R, and B4–622 airplanes).

(2) For airplanes that have not been modified or repaired with a doubler as specified in the applicable service bulletin specified in paragraph (k)(2)(i), (k)(2)(ii), or (k)(2)(iii) of this AD, do the inspections required by paragraph (k)(1) of this AD.

(i) Airbus Service Bulletin A300–54–0079 (for Model A300 B2–203, B2K–3C, B4–103, B4–203, and B4–2C airplanes).

(ii) Airbus Service Bulletin A310–54–2022 (for Model A310–221, –222, –322, –324, and –325 airplanes).

(iii) Airbus Service Bulletin A300–54–6019 (for Model A300 B4–620, B4–622R, and B4–622 airplanes).

(l) New Repetitive Inspections for Post-Repair Airplanes

For airplanes that have been repaired with a doubler as specified in the applicable Airbus service bulletin specified in paragraph (k)(1)(i), (k)(1)(ii), or (k)(1)(iii) of this AD: At the applicable compliance time specified in paragraph 1.E.(2), ''Compliance,'' in the applicable service bulletin specified in paragraph (k)(1)(i), (k)(1)(ii), or (k)(1)(iii) of this AD, except as specified in paragraph (n)(1) and (n)(4) of this AD: Do an eddy current inspection or liquid penetrant inspection for cracking of the lower spar of the pylon between ribs 9 and 10, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of the applicable service bulletin specified in paragraph (k)(1)(i), (k)(1)(ii), or (k)(1)(iii) of this AD, except as required by paragraph (n)(2) of this AD. Do all applicable corrective actions before further flight. Repeat the inspection of the lower spar of the pylon between ribs 9 and 10 thereafter at intervals not to exceed the applicable interval specified in paragraph 1.E.(2), ''Compliance,'' of the applicable service bulletin specified in in paragraph (k)(1)(i), (k)(1)(ii), or (k)(1)(iii) of this AD. Accomplishment of an inspection required by this paragraph terminates the inspection requirements of paragraphs (g), (h), and (i) of this AD.

(m) New Repetitive Inspections for Post-Modification Airplanes

For airplanes that have been modified as specified in the applicable Airbus service bulletin specified in paragraph (k)(1)(i), (k)(1)(ii), or (k)(1)(iii): At the applicable compliance time specified in paragraph 1.E.(2), ''Compliance,'' in the applicable service bulletin specified in paragraph (k)(1)(i), (k)(1)(ii), or (k)(1)(iii) of this AD, except as specified in paragraph (n)(1) and (n)(4) of this AD: Do an eddy current inspection or liquid penetrant inspection for cracking of the lower spar of the pylon between ribs 9 and 10; and do all applicable corrective actions; in accordance with the Accomplishment Instructions of the applicable service bulletin specified in paragraph (k)(1)(i), (k)(1)(ii), or (k)(1)(iii) of this AD, except as required by paragraph (n)(2) of this AD. Do all applicable corrective actions before further flight. Repeat the inspection of the lower spar of the pylon between ribs 9 and 10 thereafter at intervals not to exceed the applicable interval specified in paragraph 1.E.(2), ''Compliance,'' of the applicable service bulletin specified in in paragraph (k)(1)(i), (k)(1)(ii), or (k)(1)(iii) of this AD. Accomplishment of an inspection required by this paragraph terminates the inspection requirements of paragraphs (g), (h), and (i) of this AD.

(n) New Service Bulletin Exceptions

(1) Where the service bulletins specified in paragraphs (k)(1)(i), (k)(1)(ii), and (k)(1)(iii) of this AD specify a compliance time ''from the publication date,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) If any crack is detected during any inspection required by paragraph (k), (l), or (m) of this AD, and the service bulletin specified in paragraph (k)(1)(i), (k)(1)(ii), or (k)(1)(iii) of this AD specifies to contact the manufacturer: Before further flight, repair the cracking using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent, or by the Design Approval Holder (DAH) with the EASA design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD.

(3) Where the service bulletins specified in paragraphs (k)(1)(i), (k)(1)(ii), and (k)(1)(iii) of this AD specify to contact the manufacturer for inspection requirements: inspect using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA (or its delegated agent, or by the DAH with the EASA design organization approval). For an inspection method to be approved, the approval must specifically refer to this AD.

(4) Where the ''Threshold'' column in the tables in paragraph 1.E., ''Compliance,'' of the service bulletins specified in paragraphs (k)(1)(i), (k)(1)(ii), and (k)(1)(iii) of this AD specifies a compliance time in flight cycles/

flight hours, this AD requires compliance within the corresponding time in total flight cycles/total flight hours; except for tables for post-repair and post-modification airplanes, this AD requires compliance within the corresponding time after accomplishing the repair or modification.

(o) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (k) of this AD, if those actions were performed before the effective date of this AD using the applicable service bulletin specified in paragraphs (o)(1) through (o)(4) of this AD.

(1) Airbus Mandatory Service Bulletin A300–54–0071, Revision 02, dated August 25, 2000 (for Model A300 B2–203, B2K–3C, B4–103, B4–203, and B4–2C airplanes), which is not incorporated by reference in this AD.

(2) Airbus Mandatory Service Bulletin A300–54–0071, Revision 03, dated October 5, 2012 (for Model A300 B2–203, B2K–3C, B4–103, B4–203, and B4–2C airplanes), which is not incorporated by reference in this AD.

(3) Airbus Mandatory Service Bulletin A310–54–2016, Revision 04, dated November 16, 2007; or Airbus Mandatory Service Bulletin A310–54–2016, Revision 05, dated October 5, 2012 (for Model A310–221, –222, –322, –324, and –325 airplanes), which are not incorporated by reference in this AD.

(4) Airbus Mandatory Service Bulletin A300–54–6011, Revision 02, dated August 25, 2000 (for Model A300 B4–620, B4–622R, and B4–622 airplanes), which is not incorporated by reference in this AD.

(p) Other FAA AD Provisions

The following provisions also apply to this AD:

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

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or by the Design Approval Holder with a State of Design Authority's design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD. You are required to ensure the product is airworthy before it is returned to service.

(3) Previous AMOCs: AMOCs approved previously for AD 2000–12–12, Amendment 39–11790 (65 FR 39072, June 23, 2000), are approved as AMOCs for the corresponding provisions of this AD.

(q) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2013–0216, dated September 17, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2013–1066.

(2) For service information identified in this AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on December 19, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–31186 Filed 12–27–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–1067; Directorate Identifier 2013–NM–164–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–400 series airplanes. This proposed AD was prompted by reports of missing clamps that are required to provide positive separation between the alternating current (AC) feeder cables and the hydraulic line of the landing gear alternate extension. This proposed AD would require inspecting for missing clamps, and related investigative and corrective actions if necessary. We are proposing this AD to detect and correct chafing of the AC feeder cable. A chafed and arcing AC feeder cable could puncture the adjacent hydraulic line, which, in combination with the use of the alternate extension system, could result in an in-flight fire.

DATES: We must receive comments on this proposed AD by February 13, 2014.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Assata Dessaline, Aerospace Engineer, Avionics and Service Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7301; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments

to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–1067; Directorate Identifier 2013–NM–164–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2013–16, dated June 14, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During production checks, it was found that the appropriate clamps required to provide positive separation between the AC feeder cables and the hydraulic line of the landing gear alternate extension were omitted. The AC feeder cable could sag and be in direct contact with the swage fitting of the landing gear alternate extension hydraulic line, resulting in chafing of the AC feeder cable. The chafed and arcing AC feeder cable could puncture the adjacent hydraulic line. In combination with the use of the alternate extension system, this could result in an in-flight fire.
>
> This [TCCA] AD mandates the [general visual] inspection [for missing clamps], and rectification [related investigative and corrective actions] as necessary, for proper clamp installation.

The related investigative action is a general visual inspection of the AC power feeder cables and the hydraulic line for damage due to chafing. The corrective actions include repair of chafed parts, and replacement of missing clamps. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–1067.

Relevant Service Information

Bombardier, Inc. has issued Bombardier Service Bulletin 84–24–53, Revision A, dated May 16, 2013. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 78 airplanes of U.S. registry.

We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $13,260, or $170 per product.

In addition, we estimate that any necessary follow-on actions would take about 2 work-hours and require parts costing $11, for a cost of $181 per product. We have received no definitive data that would enable us to provide cost estimates for the on-condition repair of the AC power feeder cables and hydraulic lines specified in this proposed AD. We have no way of determining the number of aircraft that might need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2013–1067; Directorate Identifier 2013–NM–164–AD.

(a) Comments Due Date

We must receive comments by February 13, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes, certificated in any category, serial numbers 4001 through 4347 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical power.

(e) Reason

This AD was prompted by reports of missing clamps that are required to provide positive separation between the alternating current (AC) feeder cables and the hydraulic line of the landing gear alternate extension.

We are issuing this AD to detect and correct chafing of the AC feeder cable. A chafed and arcing AC feeder cable could puncture the adjacent hydraulic line, which, in combination with the use of the alternate extension system, could result in an in-flight fire.

(f) Compliance

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

(g) Clamp Inspection, Related Investigative Actions, and Corrective Actions

Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs earlier: Do a general visual inspection for installation of clamps between the AC feeder cables and hydraulic line; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–24–53, Revision A, dated May 16, 2013. Do all applicable related investigative and corrective actions before further flight.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 84–24–53, dated May 11, 2012.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or the DAH with a State of Design Authority's design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD. You are required to ensure the product is airworthy before it is returned to service.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2013–16, dated June 14, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–1067.

(2) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–31188 Filed 12–27–13; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2013–0439; FRL–9904–87–Region–6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Stage II Vapor Recovery Program and Control of Air Pollution From Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Texas State Implementation Plan (SIP) submitted by the Texas Commission on Environmental Quality (TCEQ). The EPA is proposing to approve revisions to regulations that control emissions of volatile organic compounds (VOCs) at gasoline dispensing facilities (GDFs) in Texas. The revisions address the maintenance and removal of Stage II vapor recovery equipment at GDFs. The EPA is also proposing to approve related revisions to the Stage II SIP narrative that pertain to the maintenance and removal of Stage II vapor recovery equipment and demonstrate that the absence of Stage II equipment in the Beaumont-Port Arthur (BPA), Dallas-Fort Worth (DFW) and Houston-Galveston Brazoria (HGB) areas, and in El Paso County would not interfere with attainment of the national ambient air quality standards (NAAQS) for ozone, reasonable further progress (RFP) or any other requirement of the Clean Air Act (CAA or Act). The EPA is proposing to approve these revisions pursuant to section 110 of the Act and the EPA's regulations and consistent with the EPA's guidance.

DATES: Comments must be received on or before January 29, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2013–0439, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions.
- *E-Mail:* Ms. Carrie Paige at *paige.carrie@epa.gov.*
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2013–0439. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through *http://www.regulations.gov* or email, if you believe that it is CBI or otherwise protected from disclosure. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD–ROM submitted. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy

at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment with the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Paige, Air Planning Section (6PD–L); telephone (214) 665–6521; email address *paige.carrie@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' means EPA.

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I. Background
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I. Background

A. What is a SIP?

A SIP is a set of air pollution regulations, control strategies, other means or techniques, and technical analyses developed by the state, to ensure that the state meets the NAAQS. It is required by section 110 and other provisions of the CAA. A SIP protects air quality primarily by addressing air pollution at its point of origin. A SIP can be extensive, containing state regulations or other enforceable documents, and supporting information such as emissions inventories, monitoring networks, and modeling demonstrations. When a state makes changes to the regulations and control strategies in its SIP, such revisions must be submitted to EPA for approval and incorporation into the federally-enforceable SIP.

B. What is Stage II Vapor Recovery?

When an automobile or other vehicle is brought into a gas station to be refueled, the empty portion of the gas tank on the vehicle contains gasoline vapors, which belong to a class of compounds known as VOCs. When liquid gasoline is pumped into the partially empty gas tank the vapors are forced out of the tank as the tank fills with liquid gasoline. Where air pollution control technology is not used, these vapors are emitted into the air. In the atmosphere, these VOCs can, in the presence of sunlight, react with nitrogen oxides (NO_X) and VOCs from other sources to form ozone. The Stage II system consists of special nozzles and coaxial hoses at each gas pump that capture vapors from the vehicle's fuel tank and route them to underground or aboveground storage tank(s) during the refueling process.

The 1990 CAA Amendments require owners or operators of GDFs in serious, severe or extreme ozone nonattainment areas to install and operate a system for recovery of gas vapor from the fueling of vehicles. This requirement only applies to facilities that sell more than a specified number of gallons per month and is set forth in section 182(b)(3)(A)–(C) and section 324(a)–(c) of the CAA. States were required to adopt rules for this requirement no later than two years after the enactment of the 1990 CAA Amendments. As a consequence of these provisions, GDF owners or operators in moderate or worse nonattainment areas have installed these vapor control systems, known as ''Stage II controls.'' [1]

The first Stage II SIP for Texas was submitted by the State to EPA on September 30, 1992. The SIP required owners and operators of GDFs to install and operate Stage II vapor recovery equipment in the four Texas ozone nonattainment areas classified as moderate or worse. The EPA approved these rules on April 15, 1994 (59 FR 17940). The four areas where Stage II is required are comprised of 16 counties: Beaumont-Port Arthur (BPA), including Hardin, Jefferson and Orange counties; Dallas-Fort Worth (DFW), including Collin, Dallas, Denton and Tarrant counties; El Paso County; and Houston-Galveston-Brazoria (HGB), including Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties. In this rulemaking, where we refer to all 16 of these counties, we will note such as ''the 16 counties.'' For additional information on Stage II, including the history of Stage II in Texas, please see the technical support document (TSD) in the docket for this action.

C. What is Onboard Refueling Vapor Recovery (ORVR)?

In addition to Stage II controls, the 1990 CAA Amendments required another method of controlling vehicle refueling emissions. Section 202(a)(6) of the Act requires an onboard system of capturing vehicle refueling emissions, referred to as an ORVR system. The ORVR system captures fuel vapors from the vehicle gas tank during refueling. The gas tank and fill pipe are designed so that when refueling the vehicle, fuel vapors in the gas tank travel into a special canister, which adsorbs the vapor. When the engine is in operation, it draws the gasoline vapors into the engine to be used as fuel. In fact, the per-vehicle vapor recovery efficiency of ORVR exceeds that of Stage II. The EPA began the phase-in of ORVR by requiring that 40 percent of passenger cars manufactured in model year 1998 be equipped with ORVR, increasing to 100 percent by model year 2000. The phase-in of ORVR included other vehicle types and ORVR has been a required control on nearly all new gasoline-powered highway vehicles since 2006.[2]

Each year, non-ORVR vehicles continue to be replaced with ORVR vehicles. Stage II and ORVR emission control systems are redundant, and on May 16, 2012, the EPA determined that emission reductions from ORVR are essentially equal to and will soon surpass the emission reductions achieved by Stage II alone (see 77 FR 28772). In the May 16, 2012 action, we found that ORVR vehicles are in ''widespread use'' and waived the Stage II requirement in order to ensure that refueling vapor control regulations are beneficial without being unnecessarily burdensome to American business. Effective May 16, 2012, a state previously required to implement a Stage II program may take appropriate action to remove the program from its SIP (77 FR 28772, codified at 40 CFR 51.126).

D. What did the State submit?

On October 31, 2013, the TCEQ submitted revisions to Title 30 of the Texas Administrative Code, Chapter 115 (denoted 30 TAC 115 or Chapter 115) and corresponding revisions to the Texas Stage II SIP. Chapter 115 addresses control of air pollution from VOCs. The revisions to Chapter 115 specify that new GDFs would not be required to install Stage II equipment and provide removal (also defined as decommissioning) procedures that existing GDFs in the 16 counties must complete by August 31, 2018. The GDFs electing to retain Stage II equipment for some time until August 31, 2018, would be required to maintain such equipment pursuant to the rules in the approved SIP. The revisions to the Stage II SIP narrative describe the removal of Stage

[1] Stage I vapor recovery systems are installed on the transport tanker trucks that deliver gasoline to the service stations. Stage I systems direct vapors from the underground storage tank at the service station back into the tanker truck as the underground tank is filled with liquid gasoline from the tanker truck.

[2] For more detailed information on the phase-in of ORVR, please see the discussion in EPA's proposed rule for the Widespread Use for Onboard Refueling Vapor Recovery and Stage II Waiver, published on July 15, 2011 (76 FR 41731).

II equipment at GDFs and require maintenance of the Stage II equipment until decommissioning occurs. The revisions to the SIP narrative also include a demonstration that the removal of, or failure to install, Stage II equipment in the 16 counties is consistent with section 110(l) of the Act. Section 110(l) precludes the Administrator from approving a SIP revision if it would interfere with applicable CAA requirements, including attainment and maintenance of the ozone NAAQS.

In addition to the October 31, 2013 submittal, there are two submittals that address revisions to the State's Stage II rules and related SIP, dated November 14, 2002 and June 27, 2007, on which EPA has not taken action.

The revisions in the November 14, 2002 submittal addressed the Stage II rules at 30 TAC 115 (Division 4) and the Stage II SIP narrative. The EPA approved the revisions to Chapter 115 (see 70 FR 15769, March 29, 2005) but evidently overlooked the SIP narrative. EPA is not taking action on the 2002 Stage II SIP narrative because it is superseded by the October 31, 2013 submittal.

The revisions submitted on June 27, 2007, revise Chapter 115 to add exemption language for fleets having 95% or more vehicles with ORVR. EPA is not taking action on the June 27, 2007 revisions because they would be superseded by the revisions in the October 31, 2013 submittal. In addition, in the TCEQ's submittal dated October 31, 2013, the TCEQ adopted the withdrawal of the June 27, 2007 submittal from the EPA.

II. EPA's Evaluation of the Revisions

A. Revisions to 30 TAC 115 and the Stage II SIP Narrative

The TCEQ submitted revisions to 30 TAC 115 sections 240–247 and 249. The revised language details the requirements for decommissioning equipment and the requirements for operating the Stage II equipment until it is decommissioned. We have reviewed the revisions and believe the revisions are consistent with 77 FR 28772 and 40 CFR 51.126, EPA's Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures [3] (EPA's Guidance on Removing Stage II), and the recommended installation and decommissioning procedures published by the Petroleum Equipment Institute (PEI RP300–93).[4] For a line-by-line evaluation of these revisions, please see the TSD. We are proposing approval of the revisions to sections 115.240–115.247 and 115.249.

The TCEQ is also revising the Stage II SIP narrative, which provides an accounting and description of the Stage II program components. The appendix also explains why the revisions to allow decommissioning of Stage II equipment meet the requirements of the Clean Air Act, Section 110(l). These revisions are consistent with the EPA's Stage II Waiver at 77 FR 28772 and 40 CFR 51.126, the EPA's Guidance on Removing Stage II, and the PEI RP300–93.

B. Section 110(l) Analysis

Our primary consideration for determining the approvability of the TCEQ's revisions to remove Stage II vapor control requirements from the SIP and provide for decommissioning of all Stage II equipment by August 31, 2018 in the BPA, DFW and HGB areas and El Paso County is whether these revisions comply with section 110(l) of the Act. Section 110(l) of the Act provides that the EPA cannot approve a SIP revision if that revision interferes with any applicable requirement regarding attainment, reasonable further progress (RFP) or any requirement established in the CAA. The EPA can, however, approve a SIP revision that removes or modifies control measures in the SIP once the State makes a ''noninterference'' demonstration that such removal or modification will not interfere with attainment of the NAAQS, RFP or any other CAA requirement. As such, Texas must make a demonstration of noninterference in the 16 counties in order to remove the Stage II requirements from its SIP.

The TCEQ estimated the impacts on air quality from decommissioning Stage II in Texas by using the equations in the EPA's Guidance on Removing Stage II. The TCEQ assumed there would not be any Stage II equipment in place and calculated emissions based on the national average for replacement of older vehicles with newer, ORVR-equipped models (fleet turnover). We note that the State is not requiring or expecting decommissioning to occur at all GDFs in the 16 counties in the first year following approval of the SIP revision, but assumed an absence of Stage II equipment as a worst-case scenario. The TCEQ compared the estimated impacts against future emission inventories already established in RFP and maintenance plans for these 16 counties. For each area, the calculations show that there would be increases in VOC emissions from Stage II decommissioning and we refer to these increases as a ''loss in benefit.'' Our evaluation of each of the four areas is provided below. For more detail regarding each area, please see the TSD.

1. The Beaumont-Port Arthur Area

The BPA area was redesignated as attainment for the 1997 8-hour ozone standard on October 20, 2010, (75 FR 64675). The approved maintenance plan for the redesignated area (see 78 FR 7672, February 4, 2013) [5] demonstrates attainment of the 1997 ozone NAAQS through 2021. We compared the loss in benefit from decommissioning against the VOC emissions approved in the BPA maintenance plan (78 FR 7672) for 2014 and 2021. For each of the future years 2014, 2017 and 2021, the loss in benefit is estimated to be 0.166 tpd, 0.109 tpd and 0.059 tpd respectively. In the approved maintenance plan, the VOC emissions for the future years 2014, 2017 and 2021 are greater than the base year (2005) emissions, thus these future years show a shortfall in emissions reductions. Adding the loss in benefit from decommissioning, the shortfall from 2005 to 2021 increases to an estimated 12.24 tpd or 5.8%. However, the approved maintenance plan provides a drop in NO_X emissions for the years 2014, 2017 and 2021 and the decrease from 2005 to 2021 is 7.3%, which offsets the 5.8% shortfall in VOC emissions reductions. These numbers indicate that with decommissioning of Stage II equipment, emissions in the BPA area would continue to decline. Furthermore, the TCEQ calculated the loss in benefit through 2030 and the losses shrink each year.[6] The dwindling of loss in VOC benefits is expected over time, as non-ORVR vehicles continue to be replaced with ORVR vehicles.

In addition, the photochemical modeling analysis in the approved maintenance plan (75 FR 64675) showed that the formation of ozone in the BPA area is more sensitive to NO_X

[3] EPA document number EPA–457/B–12–001, dated August 7, 2012 and available electronically at *www.epa.gov/glo/pdfs/20120807guidance.pdf.* This guidance is also in the docket for today's action.

[4] The EPA regulations do not require the use of a particular issue of code. The PEI and several states have recommended practices or specific requirements for decommissioning Stage II systems. The PEI guidance referred to as PEI RP300–93 was developed by industry experts with a focus on regulatory compliance and safety. The EPA's Guidance on Removing Stage II is included in the docket for this rulemaking. The PEI document is protected by copyright and is available at *www.pei.org/.*

[5] The action at 78 FR 7672 approved the replacement of the BPA motor vehicle emission budgets with new budgets based on the MOVES2010a emissions model.

[6] See Table 12–1 in the TCEQ proposal dated April 23, 2013, in the docket for this rulemaking.

emissions than to VOC emissions. Specifically, the modeling showed that to decrease the ozone design value in the BPA area, reducing NO_X emissions is 3.76 times as effective as reducing VOC emissions.[7] Based on this analysis and with the surplus of NO_X emissions reductions projected through 2021, we would not expect the loss in benefit from Stage II decommissioning to contribute to future violations of the ozone standard in the BPA area.

We are proposing to find that the absence of Stage II vapor recovery equipment in the BPA area will not interfere with any applicable requirement regarding attainment and RFP, or any other applicable requirement of the CAA.

2. The DFW Area

The TCEQ estimated that the loss in benefit from decommissioning Stage II equipment in the DFW area would be 2.425 tpd in 2012, 1.594 tpd in 2014, and the estimated losses in benefit continue to decrease as more non-ORVR cars are removed from the fleet. The TCEQ estimates the loss of benefit in 2030 would only be 0.322 tpd. The estimated loss of 1.594 tpd of VOC reduction in 2014, which is when we anticipate decommissioning could begin, assumes that Stage II is completely absent in Collin, Dallas, Denton and Tarrant counties. We understand there are a limited number of contractors qualified to perform decommissioning and owners and operators with relatively newer Stage II equipment would prefer to maintain such equipment through its useful life. Therefore, we expect decommissioning will proceed at an orderly and gradual pace and as such, the actual loss in projected emission reductions will be less than the State has estimated for 2014. Modeling provided by TCEQ indicates very little sensitivity of ozone levels to small changes in VOC emissions (i.e., an estimated increase of up to 0.01 ppb had the decommissioning been completed in 2012).

In addition and as described in more detail elsewhere in this action, the TCEQ acquired 2011 vehicle registration data showing that by the end of 2012 approximately 78.5% of the vehicles registered in Collin, Dallas, Denton, and Tarrant counties were equipped with ORVR. Using national default fuel economy values, the TCEQ estimated that 83.6% of the gasoline dispensed in these counties in 2012 was to ORVR-equipped vehicles. These numbers are at least five percentage points higher than the projected penetration of ORVR in the national vehicle fleet for 2012, as presented by EPA in the Stage II waiver (77 FR 28772, 28778). The EPA determined that at least 75% of ORVR coverage is substantial enough to be viewed as ''widespread'' (77 FR 28772). The TCEQ does not have to demonstrate that ORVR is in widespread use in the DFW area because EPA's action at 77 FR 28772 provides a nationwide determination of widespread use effective May 16, 2012. However, the results of the TCEQ's findings are consistent with the Stage II waiver and support the revisions to decommission Stage II equipment in the DFW area.

Finally, Stage II was required for implementation in only four of the DFW nonattainment counties and ORVR is required nationwide. Because ORVR is more efficient than Stage II and ORVR is in widespread use, and because the DFW area ozone levels are more sensitive to NO_X emissions, we would not expect the loss in benefit from decommissioning in the four counties to contribute to future violations of the ozone standard or interfere with RFP or other applicable CAA requirements.

We are proposing to find that the absence of Stage II vapor recovery equipment in the DFW area will not interfere with any applicable requirement regarding attainment and RFP, or any other applicable requirement of the CAA.

3. El Paso County

El Paso County has an approved maintenance plan for the 1997 8-hour ozone NAAQS, which demonstrates attainment of the 1997 ozone NAAQS from 2004 through 2014 (see 74 FR 2387, January 15, 2009). We compared the loss in benefit from decommissioning against the VOC emissions in the approved maintenance plan for 2014. For 2014, the loss in benefit is estimated to be 0.224 tpd. In the approved maintenance plan, the VOC emissions for 2014 are estimated to be 44.61 tpd, which are lower than the base year emissions of 52.44 tpd. The resultant surplus of 7.83 tpd offsets the estimated loss in benefit from decommissioning. The approved maintenance plan also shows a surplus in NO_X emission reductions through 2014. These numbers indicate that with decommissioning of Stage II equipment, emissions of VOC in El Paso County would continue to decline through 2014. The TCEQ calculated the loss in benefit through 2030 and the losses get smaller each year.

We are proposing to find that the absence of Stage II vapor recovery equipment in El Paso County will not interfere with any applicable requirement regarding attainment and RFP, or any other applicable requirement of the CAA.

4. The Houston-Galveston-Brazoria Area

The TCEQ estimated that the loss in benefit from decommissioning Stage II equipment in the HGB area would be 2.361 tpd in 2012, 1.539 tpd in 2014, 0.667 tpd in 2018, and the estimated losses in benefit continue to decrease through 2030, when the TCEQ estimates the loss of benefit would only be 0.298 tpd. The estimated loss of 1.539 tpd of VOC reduction in 2014, which is when we anticipate decommissioning could begin, assumes that Stage II is completely absent in the eight HGB area counties. As stated earlier however, we expect decommissioning will proceed gradually and as such, the actual loss in projected emission reductions will be less than the State has estimated for 2014. Modeling provided by TCEQ indicates very little sensitivity of ozone levels to these small changes in VOC emissions (i.e., an estimated increase of up to 0.02 ppb had the decommissioning been completed in 2012 and an estimated increase of up to 0.01 ppb in 2018).

In addition, the TCEQ acquired 2011 vehicle registration data showing that by the end of 2012 approximately 77.4% of the vehicles registered in the eight HGB counties were equipped with ORVR. Using national default fuel economy values, the TCEQ estimated that 82.7% of the gasoline dispensed in these counties in 2012 was to ORVR-equipped vehicles. These numbers are at least five percentage points higher than the projected penetration of ORVR in the national vehicle fleet for 2012 (77 FR 28772, 28778). The results of the TCEQ's findings are therefore consistent with the Stage II waiver and support the revisions to decommission Stage II equipment in the HGB area.

We would not expect the loss in benefit from decommissioning in the HGB area to contribute to future violations of the ozone standard or interfere with RFP or other applicable CAA requirements.

We are proposing to find that the absence of Stage II vapor recovery equipment in the HGA area will not interfere with any applicable requirement regarding attainment and RFP, or any other applicable requirement of the CAA.

[7] See the docket for 75 FR 64675 and specifically the TSD and proposed rule; the docket ID is EPA–R06–OAR–2008–0932.

C. The Fraction of ORVR-Equipped Vehicles Where Stage II is Required in Texas

The TCEQ reviewed vehicle registration data to determine what portion of the on-road vehicles in the 16 counties are equipped with ORVR and what portion of the gasoline dispensed in these areas goes into ORVR-equipped vehicles. For these calculations, the TCEQ obtained 2011 vehicle registration data from the Texas Department of Motor Vehicles for each of the 16 counties. The results indicate that by the end of 2012 more than 75% of gasoline was dispensed to ORVR-equipped vehicles in each of the four areas where Stage II is required. In addition, by the end of 2013 at least 75% of the vehicle population in each of these four areas is expected to be ORVR-equipped. We determined that at least 75% of ORVR coverage (percent of gasoline that will be dispensed into ORVR-equipped vehicles) is substantial enough to constitute widespread use (77 FR 28772). The TCEQ does not have to demonstrate that ORVR is in widespread use because EPA's action at 77 FR 28772 provides a nationwide determination of widespread use effective May 16, 2012. However, the TCEQ's findings do demonstrate that ORVR is in widespread use in all four areas and thus lend support to the revisions to decommission Stage II equipment.

III. Proposed Action

The EPA is proposing to approve revisions to the Texas SIP that control emissions of VOCs and pertain to the maintenance and removal of Stage II vapor recovery equipment submitted on October 31, 2013. We are proposing to approve revisions to the following sections within 30 TAC 115: 115.240, 115.241, 115.242, 115.243, 115.244, 115.245, 115.246, 115.247, and 115.249. The EPA is also proposing to approve related revisions to the Stage II SIP narrative that address the maintenance and removal of Stage II equipment, and demonstrate that the removal of, or failure to install Stage II equipment in the BPA, DFW, and HGB areas, and in El Paso County, meets section 110(l) of the Act. The EPA is proposing to approve these revisions in accordance with section 110 of the Act and EPA's regulations and consistent with EPA guidance.

IV. Statutory and Executive Order Reviews

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: December 16, 2013.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2013–31107 Filed 12–27–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2010–1071, FRL–9904–68–Region 10]

Approval and Promulgation of Implementation Plans; State of Washington; Regional Haze State Implementation Plan; Federal Implementation Plan for Best Available Retrofit Technology for Alcoa Wenatchee

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to partially disapprove a Washington Regional Haze State Implementation Plan (RH SIP) element submitted by the State of Washington (the State) on December 22, 2010, that exempted Alcoa's Wenatchee Works aluminum smelting facility (Alcoa Wenatchee facility or Wenatchee facility), located near Wenatchee, Washington, from the Clean Air Act's Best Available Retrofit Technology (BART) requirements. On December 26, 2012, the EPA proposed to approve, along with proposed action on other SIP elements, the State's determination that the Alcoa Wenatchee facility is exempt from BART requirements. The EPA received adverse comments regarding the dispersion modeling used for this determination. After further review, the EPA now proposes to disapprove the State's determination that the facility is not subject to BART and proposes to find that the Wenatchee facility is subject to BART. The EPA is also proposing a BART determination for the facility through a Federal Implementation Plan (FIP). This **Federal Register** document also announces the availability of new information regarding Alcoa's ability to afford limestone slurry forced oxidation (LSFO) sulfur dioxide (SO_2) control technology at the Intalco Aluminum Corporation facility in Ferndale, Washington (Intalco). Also available for public review is new air quality

dispersion modeling regarding the visibility improvement assessment for the BART Alternative for the Tesoro Refining and Marketing refinery in Anacortes, Washington (Tesoro).

DATES: *Comments:* Written comments must be received at the address below on or before February 20, 2014.

Public Hearing: A public hearing is offered to provide interested parties the opportunity to present information and opinions to the EPA concerning today's proposal. Comments are limited to the specific elements and new information discussed in today's proposal and the comment period for other aspects of the Washington State Regional Haze Plan is not reopened. Interested parties may also submit written comments, as discussed below. If you wish to request a hearing and present testimony, you should notify Mr. Steve Body on or before January 8, 2014 and indicate the nature of the issues you wish to provide oral testimony during the hearing. Mr. Body's contact information is found in **FOR FURTHER INFORMATION CONTACT** below. At the hearing, the hearing officer may limit oral testimony to 5 minutes per person. The hearing will be limited to the subject matter of this proposal, the scope of which is discussed below. The EPA will not respond to comments during the public hearing. When we publish our final action, we will provide a written response to all written or oral comments received on the proposal. The EPA will not be providing equipment for commenters to show overhead slides or make computerized slide presentations. A transcript of the hearing and written statements will be made available for copying during normal working hours at the address listed for inspection of documents, and also included in the Docket. Any member of the public may provide written or oral comments and data pertaining to our proposal at the hearing. Note that any written comments and supporting information submitted during the comment period will be considered with the same weight as any oral comments presented at the public hearing. If no requests for a public hearing are received by close of business on January 8, 2014, a hearing will *not* be held; please contact Mr. Body at (206) 553–0782 to find out if the hearing will actually be held or if it was cancelled for lack of any request to speak.

ADDRESSES: *Public Hearing:* A public hearing, if requested, will be held January 21, 2014, beginning at 6:00 p.m. at the Washington Department of Ecology Offices, Room #34–36, 300 Desmond Drive, Lacey, WA 98503.

Comments: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2010–1071, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: R10-Public_Comments@epa.gov.*
- *Mail:* Steve Body, EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.
- *Hand Delivery:* EPA Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: Steve Body, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2010–1071. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA, without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: 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 form. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Steve Body at telephone number (206) 553–0782, *body.steve@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA. Information is organized as follows:

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I. Overview and Summary of This Proposed Action

On December 22, 2010, the State of Washington submitted a RH SIP to address regional haze for the first implementation period. This plan was submitted to meet the requirements of Clean Air Act (CAA) sections 169A and 169B and EPA's implementing regulations at 40 CFR 51.308 that require states to prevent any future and remedy any existing man-made impairment of visibility in mandatory Class I areas. On December 26, 2012, the EPA published a rule in the **Federal Register** proposing to approve the State's determination that the Alcoa Wenatchee facility is exempt from federal BART requirements. 77 FR 76174. At the same time, the EPA also: (1) Proposed to approve in part the Washington RH SIP as meeting most of the requirements of the regional haze program; (2) proposed a limited approval and limited disapproval of the SO_2 Best Available Retrofit Technology (BART) determination for Intalco Aluminum Corporation (Intalco) facility and proposed a Better-than-BART

alternative (BART Alternative); and (3) proposed to disapprove the BART determination for oxides of nitrogen (NO_X) for five BART emission units at the Tesoro Refining and Marketing refinery (Tesoro) and proposed a BART Alternative.

The Wenatchee facility is a primary aluminum smelter, located approximately ten miles south of Wenatchee, Washington, on the Columbia River. The State's BART exemption determination, that would exempt the Alcoa Wenatchee facility from BART requirements, was based on air quality dispersion modeling. As explained further below, the EPA received adverse comments on its proposal to approve the State's determination to exempt the Wenatchee facility from BART requirements. After further review and consideration, we now propose to disapprove that exemption determination and propose that the facility is subject to BART. We are also proposing a BART determination for the facility.

This **Federal Register** notice also announces new information available for public review regarding whether Alcoa can afford LSFO SO_2 control technology as BART for Alcoa's Intalco facility in Ferndale, Washington. As part of the December 26, 2012 action, we proposed that Intalco could not afford LSFO and referenced an affordability assessment of the Intalco facility and Alcoa Corporation. *See* Intalco BART SO_2 Affordability Assessment, November, 2012 (2012 Affordability Assessment). As explained in further detail below, we received adverse comments on the affordability determination requesting that we update the affordability assessment with current information and expressing concern with the use of information that was not publically available. In response to these comments, we have obtained updated information, revised the 2012 Affordability Assessment, and have made a final confidential business information (CBI) determination. *See* Revised Intalco BART SO_2 Affordability Assessment, September 2013 and Intalco Final CBI Determination, respectively. This information, including the aforementioned documents, is in the docket for this proposed action and is available for public review and comment.

We also received adverse comments regarding the proposed determination that the BART Alternative for the Tesoro refining facility in Anacortes, Washington, provides for greater reasonable progress than BART. The initial demonstration was based on comparing the emissions allowed under BART to the emissions allowed under the BART Alternative. The comments suggested that air quality dispersion modeling should be used to make this demonstration. As explained below, Tesoro conducted this dispersion modeling and it is now in the docket for this action and is available for public review and comment.

The EPA will respond to all comments received on the December 26, 2012 proposal, that are not discussed today, and will take final action on the remaining Washington RH SIP elements in a future **Federal Register** notice.

II. Background for the EPA's Proposed Action

In the CAA Amendments of 1977, Congress established a program to protect and improve visibility in national parks and wilderness areas. *See* CAA section 169A. Congress amended the visibility provisions in the CAA in 1990 to focus attention on the problem of regional haze. *See* CAA section 169B. The EPA promulgated regulations in 1999 to implement sections 169A and 169B of the Act. These regulations require states to develop and implement SIPs to ensure reasonable progress toward improving visibility in mandatory Class I Federal areas [1] (Class I areas). 64 FR 35714 (July 1, 1999); *see also* 70 FR 39104 (July 6, 2005) and 71 FR 60612 (October 13, 2006).

A. Definition of Regional Haze

Regional haze is impairment of visual range or colorization caused by emission of air pollution produced by numerous sources and activities, located across a broad regional area. The sources include, but are not limited to, major and minor stationary sources, mobile sources, and area sources, including non-anthropogenic sources. Visibility impairment is primarily caused by fine particulate matter ($PM_{2.5}$), particles with an aerodynamic diameter of less than 2.5 micrometers, or secondary aerosol formed in the atmosphere from precursor gases (e.g., SO_2, NO_X, and in some cases, ammonia and volatile organic compounds). Atmospheric $PM_{2.5}$ reduces clarity, color, and visual range of visual scenes. Visibility-reducing $PM_{2.5}$ is primarily composed of sulfate, nitrate, organic carbon compounds, elemental carbon, and soil dust, and impairs visibility by scattering and absorbing light. $PM_{2.5}$ can also cause serious health effects and mortality in humans, and contributes to environmental effects such as acid deposition and eutrophication.[2]

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national parks and wilderness areas. Average visual range in many Class I areas in the Western United States is 100–150 kilometers, or about one-half to two-thirds the visual range that would exist without manmade air pollution.[3] Visibility impairment also varies day-to-day and by season depending on variation in meteorology and emission rates.

B. Regional Haze Rules and Regulations

In section 169A of the 1977 CAA Amendments, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in Class I areas which impairment results from manmade air pollution.'' CAA section 169A(a)(1). On December 2, 1980, the EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, i.e., ''reasonably attributable visibility impairment''. 45 FR 80084. These regulations represented the first phase in addressing visibility impairment. The EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling, and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. The EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35713) (the Regional Haze Rule

[1] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' 42 U.S.C. 7602(i). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

[2] See 64 FR at 35715.

[3] *Id.*

or RHR). The RHR revised the existing visibility regulations by adding provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in the EPA's visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the regional haze requirements are summarized in section III of this notice. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia, and the Virgin Islands.[4] 40 CFR 51.308(b) required states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

III. Requirements for Regional Haze SIPs Related to This Proposal

A. The CAA and the Regional Haze Rule

Regional haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the CAA and the EPA's implementing regulations require states to establish long-term strategies for making reasonable progress toward meeting this goal. SIPs must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install BART controls for the purpose of eliminating or reducing visibility impairment. The specific regional haze SIP requirements are discussed in further detail below.

B. Best Available Retrofit Technology

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources[5] built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' as determined by the state. States are directed to conduct BART determinations for such sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

On July 6, 2005, the EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at appendix Y to 40 CFR part 51 (hereinafter referred to as the ''BART Guidelines'') to assist states in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. In making a BART-applicability determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts, a state must use the approach set forth in the BART Guidelines. A state is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources.

States must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility-impairing pollutants are SO_2, NO_X, and $PM_{2.5}$. The EPA has indicated that states should use their best judgment in determining whether volatile organic compounds or ammonia compounds contribute to visibility impairment in Class I areas.

Under the BART Guidelines, states may select an exemption threshold value to determine those BART-eligible sources that are not subject to BART. A BART-eligible source with an impact below the threshold would not be expected to cause or contribute to visibility impairment in any Class I area. The state must document this exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. In setting an exemption threshold, States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. Generally, an exemption threshold set by the state should not be higher than 0.5 deciviews (dv).

In their SIPs, states must identify BART-eligible sources, as well as those BART-eligible sources that have a visibility impact in any Class I area above the exemption threshold established by the state and are therefore subject to BART. States must document their BART control analysis and determination for all sources subject to BART.

The term ''BART-eligible source,'' as used in the BART Guidelines, means the collection of individual emission units at a facility that together comprise the BART-eligible source. In making a BART determination, section 169A(g)(2) of the CAA requires that states consider the following factors: (1) the costs of compliance, (2) the energy and non-air quality environmental impacts of compliance, (3) any existing pollution control technology in use at the source, (4) the remaining useful life of the source, and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. States are free to determine the weight and significance to be assigned to each factor.

The regional haze SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. Once a state has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than 5 years after the date the EPA approves the regional haze SIP. CAA section 169A(g)(4); 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART emission limits. States have the flexibility to choose the type of control measures they will use to meet the requirements of BART.

IV. The EPA's Analysis of the BART Exemption for the Alcoa Wenatchee Facility

The Alcoa Wenatchee facility produces aluminum from alumina using an electrochemical reduction process commonly known as the Hall-Heroult process. The facility is capable of producing 184,000 metric tons of aluminum per year. The facility currently consists of a carbon anode production plant, four prebake aluminum potlines, and an ingot casting facility. It initially opened in 1952 with four potlines. These four potlines and associated processes were constructed prior to the BART window and are not BART-eligible. In 1967, a fifth potline

[4] Albuquerque/Bernalillo County in New Mexico must also submit a regional haze SIP to completely satisfy the requirements of section 110(a)(2)(D) of the CAA for the entire State of New Mexico under the New Mexico Air Quality Control Act (section 74–2–4).

[5] The set of ''major stationary sources'' potentially subject to BART is listed in CAA section 169A(g)(7).

was added along with increased anode production capability and materials handling operations. The equipment associated with this expansion was constructed within the BART-eligibility window and is therefore BART-eligible. In 2004, one of the original potlines was decommissioned, resulting in the current operation of four potlines.

The Alcoa Wenatchee facility is located in a river valley and sits on the banks of the Columbia River at an altitude of approximately 740 feet. The river valley is approximately 1.8 miles wide and is surrounded by bluffs rising to 760 feet above the valley floor immediately adjacent to the river. The Cascade Mountain Range is to the west and is generally running north to south with peaks reaching more than 9000 feet. The Alpine Lakes Wilderness Area is located approximately 28 miles (45 kilometers (km)) west of the Alcoa Wenatchee facility, at the crest of the Cascade Mountain Range, and is characterized by complex terrain.

As explained above, the BART Guidelines allow states to exempt sources from a BART determination if the source cannot reasonably be anticipated to cause or contribute to visibility impairment in any Class I area. The State of Washington established an exemption threshold of 0.5 dv as the level above which a BART-eligible source may reasonably be considered to contribute to visibility impairment in any Class I area.

In the Washington RH SIP, the State determined that the Wenatchee facility is exempt from BART because the facility's modeled visibility impact in all Class I areas was less than 0.5 dv. At the State's request, Alcoa initially conducted dispersion modeling following the three-state modeling protocol [6] agreed upon by the EPA, Region 10 and using an EPA-approved version of the dispersion model CALPUFF,[7] to model the visibility impact of the BART-eligible sources and to determine whether the facility is subject to BART. The State required all BART-eligible sources in Washington to follow the protocol to determine whether their impacts are greater than the BART exemption threshold.

According to the agreed upon protocol, the modeling should be conducted with the surface wind field having a 4 km grid cell resolution. Alcoa completed the exemption modeling using CALPUFF version 6.112; Level 060412. Model results showed that the 98th percentile, or twenty-second highest visibility impact value, over a three-year period at Alpine Lakes Wilderness Area was predicted to be 0.6 dv, exceeding the exemption threshold of 0.5 dv. As a result, the facility would be subject to BART. In the State's view, however, the 4 km grid resolution did not provide realistic wind flow estimates between the Alcoa Wenatchee facility and the Alpine Lakes Wilderness Area.

Alcoa re-ran the model using CALPUFF with 0.5 km grid resolution and the predicted visibility impact decreased to 0.4 dv, under the 0.5 dv exemption threshold. In Appendix I of the Washington RH SIP, the State provided information to explain why the finer grid resolution of 0.5 km was more appropriate. As explained in the Washington RH SIP, the State then determined that the facility was not subject to BART.

In our December 26, 2012 action, we proposed to approve the exemption modeling for the Wenatchee facility and the State's determination that the facility is exempt from BART. 77 FR 76147. We received adverse comments on that part of the proposal. The comments claimed that the Wenatchee facility was improperly exempted from BART review and requested that EPA disapprove Washington's determination that the Wenatchee facility is not subject to BART. The comments indicated that the use of fine grid modeling (0.5 km grid resolution) did not follow the agreed upon three-state protocol, that the higher grid resolution underestimates the visibility impacts, and that allowing its use in this instance is contrary to numerous prior statements by the EPA. One comment cited an exchange of communications between the EPA, FLMs, and the State that was critical of using 0.5 km grid cells as not technically justified or in accordance with the agreed upon modeling protocol, and requested that these prior communications be included in the public record.[8]

In response to these comments, the EPA reevaluated the State's BART exemption determination. The EPA has previously addressed the use of CALMET [9] horizontal grid resolutions less than 4 km. *See,* EPA, Model Clearinghouse Review of CALPUFF Modeling Protocol for BART, Memorandum from Tyler Fox, EPA, May 15, 2009. (May 15, 2009, Model Clearinghouse Memo). This memo discusses, among other items, the proper justification for adjusting the modeled wind field from the default 4 km horizontal grid resolution to a finer grid resolution. While the May 15, 2009, Model Clearinghouse Memo does not automatically preclude the use of a higher (finer) resolution meteorological grid, it discusses two conditions that should be addressed in considering the use of a finer meteorological grid. First, the memo explains that higher resolution data does not necessarily improve the model performance, but may in fact degrade it for some predicted meteorological parameters. Therefore, the memo states that ''. . . scientific evidence to support the claim that a 1 km CALMET grid resolution increases the objective accuracy of the final wind field'' is needed. Second, because CALMET's ability to independently capture the full three dimensional structure of complex flows is limited, there is the need for high resolution numerical weather prediction (NWP) data or a density of representative observational data to accurately simulate the meteorological fields. *See* May 15, 2009 Model Clearinghouse Memo at 4.

Appendix I of the Washington RH SIP presents the State's rationale for using a CALMET fine grid resolution of 0.5 km to model the Alcoa Wenatchee facility. However, Appendix I provides no objective evaluation of the fine grid modeling necessary for use in the RH SIP. The State's justification discussed the two conditions contained in the May 15, 2009, Model Clearinghouse Memo. To address the first condition, the State presented the wind fields layered onto topographic maps at 4 km and 0.5 km resolutions and concluded that at 0.5 km, the wind fields conform to the topographic features better than at 4 km. The State also included a graphic of the terrain profile at 12 km, 4 km, 0.5 km and 0.1 km resolution, which showed that at each succeeding finer grid resolution the ridges and valleys were more resolved. When the State addressed the second condition, however, it acknowledged that there were no meteorological observational data between the Alpine Lakes Wilderness Area and the Alcoa Wenatchee facility. It further acknowledged that there is ''no direct way to assess the improvement in the wind field by using the finer grid.'' Washington RH SIP, Appendix I at I–4. Instead, the State provided a qualitative discussion based on a combination of

[6] The three-state modeling protocol was an agreement between Idaho, Oregon, and Washington, the FLMs and EPA-Region 10. This protocol was submitted with the RH SIP and is also included as a separate document in the docket for this action.

[7] CALPUFF is a Gaussian puff dispersion model used to estimate pollutant concentrations.

[8] We have included the correspondence in the docket as requested.

[9] CALMET is a generalized-non-steady state air quality model used to characterize meteorology and is used in conjunction with CALPUFF to estimate visibility impacts from stationary sources.

experience and scrutiny of the wind fields computed at the fine grid resolution and then concluded that the 0.5 km grid resolution provided a more accurate result in this instance. But the State failed to provide either high resolution NWP data or a density of representative data. An objective evaluation of the performance of the NWP data set was not performed. Accordingly, the justification provided in the Washington RH SIP Appendix I fails to demonstrate that CALMET had adequately captured the non steady-state meteorological conditions. Consequently, the second condition in the policy memorandum was not satisfied by the State. *See* EPA's Evaluation of Appendix I in the Washington Regional Haze State Implementation, November 21, 2013.

We recognize the effort the State took to further assess the nuances of the complex meteorology, terrain, modeled wind fields and model grid spacing in an attempt to demonstrate that the results from the State's non-guideline approach are more accurate than the results from the approved approach. The 4 km and 0.5 km grid modeling predict visibility impacts at the Alpine Lakes Wilderness Area of 0.6 dv and 0.4 dv respectively from the Alcoa Wenatchee facility. This difference of just 0.2 dv may, or may not be significant in terms of the accuracy of the CALPUFF model in general, or in justifying the appropriateness of one meteorological wind field representation over another. In this case, however, the difference is determinative in demonstrating whether the facility is exempt from BART requirements. Without an objective evaluation of the fine grid modeling, as required by the Model Clearinghouse Memo, we believe that conservatism is warranted in this instance, where the purpose of the modeling is solely to determine if the source contributes to visibility impairment such that it should be subject to BART review.

Consideration of the modeling conducted, EPA's prior evaluations of CALPUFF and CALMET modeling using fine grid resolution, and the purpose for which the modeling was conducted all lead us to conclude that relying on the results from the fine grid modeling to exempt the facility from further BART review is not warranted in this instance. Therefore, we conclude that the State has not demonstrated that this facility is exempt from BART. We are proposing to disapprove the State's determination that the facility is exempt from BART and propose that the Alcoa Wenatchee facility is subject to BART. Additionally, we are proposing a BART FIP for the Alcoa Wenatchee facility.

V. Proposed BART Determination for the Alcoa Wenatchee Facility

There are ten emission units at the Alcoa Wenatchee facility that are BART-eligible: potline 5, one anode bake furnace, three ingot furnaces, two coke-handling operations, and three alumina-handling operations, including rail car unloading. The emission rates for the BART-eligible units are presented in the exemption modeling report, ''CALPUFF Modeling Report for BART Analysis at Alcoa Inc.—Wenatchee Facility in Washington,'' September 2007, Table 2–3. The emission rates, converted to tons per year (t/y), are presented in the Table below.

TABLE 1—BART-ELIGIBLE UNIT EMISSIONS

Source name	PM t/y	SO_2 t/y	NO_x t/y
Potline 5 Emissions	148.9	1000.8	4.6
Ingot Furnace 1	9.5	0.0	0.7
Ingot Furnace 2	9.9	0.0	0.7
Ingot Furnace 11	17.7	0.0	1.1
Anode Bake Furnace	0.4	250.3	34.8
Dry Coke Scrubber	1.4	0.0	0.0
Dust Collector #2	11.5	0.0	0.0
Alumina Handling 21	0.3	0.0	0.0
Alumina Handling 19C	0.3	0.0	0.0
Alumina Handling 43E	16.7	0.0	0.0
Totals	216.6	1251.1	41.9

BART Determination Approach

The EPA completed a BART review for the BART-eligible emission units at the Alcoa Wenatchee facility. In making the BART determination for this facility, the EPA considered the following:

- Existing air pollution controls for each BART emission unit;
- Technically feasible and available control technologies with higher control efficiency than existing controls;
- Costs of compliance;
- Energy and non-air environmental impacts; and
- Visibility improvement.

A memorandum to the files included in the docket to this action contains the BART review. *See* memorandum dated December 10, 2013 from Steve Body, Alcoa Wenatchee Works BART Determination. This memorandum contains a more detailed discussion of our review and consideration of the five BART factors. The Alcoa Intalco facility in Ferndale, Washington and the Alcoa Wenatchee facility use the same aluminum smelting process with similar pollutant concentrations and exhaust gases temperatures. Because there are similarities between some of the BART-eligible units at the Alcoa Intalco facility and the BART-eligible units at the Alcoa Wenatchee facility, our BART determination for the Wenatchee facility uses, where appropriate, data and information from our Intalco BART analysis and the Washington RH SIP (which included an ENVIRON Corporation report (ENVIRON report) that contained a BART analysis for Intalco). In some instances, the data and information from the Intalco analysis was updated or scaled as needed for the Wenatchee facility. Additionally, as explained below, in some instances, the consideration of one factor alleviated the need for further evaluation of a control technology and a streamlined analysis was appropriate. For example, if an emission unit is currently controlled by the most stringent control technology available, additional technologies need not be considered and a comprehensive analysis of the remaining factors is not necessary.

The Alcoa Wenatchee facility operates under a State-issued Title V operating permit, No. 000068–0, issued on March 1, 2010 (Alcoa Wenatchee Operating Permit). Where a proposed BART determination is also a requirement in the current operating permit, but the requirement is not yet federally

enforceable, the proposed BART determination will make the requirement federally enforceable and consistent with the requirements in the permit.

Anode Bake Furnace

Process Description. Carbon anodes are used in the electric arc furnaces (pots) used to produce aluminum. They are manufactured on site from purchased calcined petroleum coke and anode butt material (residual anode material after its useful life and defective anodes) that is crushed and sized, mixed together with pitch, and formed into blocks called ''green anodes.'' The green anodes are then baked in the anode bake furnace to achieve the structural integrity necessary for use in the potlines.

The Alcoa Wenatchee facility operates two anode bake furnaces, but due to their dates of construction, only one is BART-eligible. Both furnaces are fueled with natural gas and consist of a series of formed firebrick-lined pits. Exhaust gases from both furnaces are collected in an underground duct, combined and sent to the A446 anode bake scrubber. Thus, the exhaust gases from the BART-eligible and non-BART-eligible emission units are combined into a common duct and control device. The exhaust gases contain, among other pollutants, the visibility-impairing pollutants SO_2, NO_X, and $PM_{2.5}$.

Existing Control. The anode bake furnaces' emissions are controlled by the A446 anode bake scrubber, a dry alumina scrubber followed by fabric filtration. Fabric filters generally reflect the highest level of control for $PM_{2.5}$, reducing emissions by more than 99 percent. Recent source tests for $PM_{2.5}$ emission rates from the A446 anode bake scrubber reflect a properly operating fabric filter. *See* CAA Site Visit Report, July 12, 2013, and Alcoa Wenatchee Works-Summary of Emission Test Data for BART-Eligible Emission Units. The A446 anode bake scrubber does not control for SO_2 or NO_X.

Control Options. Because the anode bake furnace emission characteristics (i.e. pollutant concentration and temperature) of SO_2 and NO_X are similar to those from the potlines, the SO_2 and NO_X BART control options considered for the potlines are also applicable to the anode bake furnace. However, the emission gas flow rates for the anode bake furnaces are significantly less than the potline emission gas flow rates, only a small fraction of the airflow volume of the Potline 5 Gas Treatment Center (GTC). Gas flow rate dictates the size (and cost) of a potential control technology.

Due to the operational similarities and similar exhaust gas characteristics between the anode bake furnaces at the Wenatchee facility and the Intalco facility, control options for the anode bake furnaces at the Wenatchee facility rely in large part on the analytical work completed for the Intalco anode bake furnaces and potlines. *See* Appendix L of the Washington RH SIP, the ENVIRON Report, and the EPA's proposed BART determination for the Intalco anode bake furnace.

*SO_2 Control Options.*After a review of the EPA's proposed BART determination for the Intalco facility and the BART analysis in the ENVIRON Report, a wet scrubber was identified as the only technically feasible add-on control option for the Wenatchee facility. Emissions of SO_2 from the Intalco anode bake furnaces are 181 t/y, while emissions from the Wenatchee facility bake furnaces are 250 t/y. However, as discussed above, the Wenatchee emissions are from both the BART and non-BART units that are ducted to a common stack.

At Alcoa's Intalco facility, the ENVIRON Report (and Appendix L of the Washington RH SIP) estimated that the installed capital cost of a retrofit wet scrubber that would remove 95 percent of the SO_2 from the anode bake furnace exhaust would be approximately $29.5 million with a total annualized cost of $6.3 million per year. The ENVIRON report explained that these costs corresponded to a cost-effectiveness of $36,400 per ton of SO_2 removed. *See* ENVIRON Report, Table 5–3; Washington RH SIP, Appendix L, pg. L–73. With the greater gas flow rate at the Wenatchee facility, the capital and annual operating costs would be higher, but the cost-effectiveness values would only be slightly lower. Other than the gas flow rate, there are no significant differences between the emission characteristics, current control technology, and physical design of the anode bake furnaces at the Intalco facility and at the Wenatchee facility that would lead to significantly different cost-effectiveness values. Consequently, we believe that wet scrubbing of SO_2 would not be cost-effective for the Wenatchee anode bake furnace.

In addition to wet scrubbing, a pollution prevention option would be to establish a maximum sulfur content of the anode coke at 3% for the anode bake furnaces and potlines. The sulfur limit in anode coke would limit the emissions from the anode bake furnaces and, because the anodes are consumed in the potlines, would also result in reduced SO_2 emissions from the potlines. The current permit for the Wenatchee facility limits the sulfur content of anode coke for potlines 1, 2, and 3 to 3%. *See* Alcoa Wenatchee Air Operating Permit, condition D.12. There is no such restriction on the anodes made for potline 5. We believe that requiring the same limit for coke used to make anodes for potline 5 would add no cost to the operation, but would ensure that SO_2 emissions from the anode bake furnaces would always reflect the use of no more than 3% sulfur coke.

PM Control Options. Dry alumina injection with fabric filtration currently controls PM emissions from the anode bake furnaces. The installed fabric filter reflects high efficiency control for PM. An electrostatic precipitator (ESP) is also a technically feasible control option, with a similar PM capture efficiency to fabric filtration. Because the control-effectiveness of these two options is largely equivalent, further evaluation of an ESP is not necessary. Other possible controls, such as cyclones, inertial separators, and wet scrubbers are less effective at removing small and submicron particles than fabric filters and ESPs.

There is a current PM emission limit in the Alcoa Wenatchee Air Operating Permit of 0.1 grains per dry standard cubic foot (gr/dscf) for anode bake furnaces. *See* permit condition B.1. We believe this limit does not accurately represent the performance of a properly maintained and operated fabric filter. A review of source tests conducted in 2011 to 2013 indicates that the A446 scrubber consistently controls PM emissions to concentrations of less than 0.01 gr/dscf. Therefore, because a BART emission limitation must be ''based on the degree of reduction *achievable* through the application of the best system of continuous emission reduction,'' *see* 40 CFR 51.301 (emphasis added), we are proposing to set a PM BART limit of 0.01 gr/dscf for the anode bake furnaces.

*NO_X Control Options.*The evaluation of available NO_X control options for the anode bake furnaces, including the control technology descriptions, is based on the BART determination contained in the Washington RH SIP, the ENVIRON Report, and the EPA's proposed BART determination for the Intalco facility.

The amount of NO_X emitted from a natural gas-fired anode bake furnace varies depending on operating practices and burner design. The traditional methods of preventing NO_X formation using staged combustion or low NO_X burners are not applicable for the Alcoa Wenatchee anode bake furnaces because

of the unique configuration of the furnaces, with fuel injected at several points in narrow flues. However, advanced firing systems that measure and regulate fuel flow precisely using a computerized control system can reduce total fuel usage. By reducing fuel usage, advanced firing also reduces NO_X emissions. Prevention of NO_X formation using a more efficient advanced firing control system is technically feasible for the anode bake furnaces. While specific cost estimates were not determined for an advanced firing system, we did determine that it would entail the purchase and installation of equipment and computers for measuring and metering a variety of parameters. Total gas usage could be reduced by up to 20%, which would result in a corresponding 20% reduction in NO_X emissions, or approximately 7 t/y. This reduction represents a 0.05% reduction in emissions from all BART units that would result in negligible visibility improvement in any Class I area. Thus, we believe it is unreasonable to require an advanced firing system at the Wenatchee facility.

The LoTOX™ system is the patented technology of Linde Industrial Gases. At a control efficiency of 90%, the resulting reduction in NO_X emissions would be 31 t/y if it was installed at the Wenatchee facility. As explained in the Alcoa Wenatchee Works BART Determination memorandum, dated December 10, 2013, the cost per ton of removal is expected to be in excess of $18,000 per ton. Due to the extremely high cost and only a 31 t/y NO_X emission reduction, it is unreasonable to require emission limits based on LoTOx™ at the Wenatchee facility.

BART is therefore proposed to be the existing operating conditions of firing the furnaces on natural gas. There is no information available that can be used to establish a numerical emission limitation, so the proposed NO_X BART requirement for the anode bake furnace will be a fuel specification that requires that only natural gas may be combusted in the anode bake furnaces.

Proposed BART Limits for the Anode Bake Furnaces

PM: 0.01 gr/dscf
SO_2: 3% sulfur content in anode coke
NO_X: combust only natural gas

Potline 5

Process description. The potlines are where electrical current is passed through the alumina mix in a number of small ''pots'' or crucibles to produce aluminum. Because it is an electrical chemical heating process, and not a combustion process, very limited amounts of NO_X are emitted. Thermal NO_X is created when ambient air comes into contact with the hot surface of the alumina in the pots. Sulfur in the anode coke does react with the oxygen liberated from the alumina, resulting in emissions of SO_2. Because of the high PM control efficiency of the potline 5 GTC, minimal amounts of PM are emitted.

Existing Control. Potline emissions at the Wenatchee facility are collected by hoods and ducted the GTC control device. The GTC consists of dry scrubbing with alumina followed by fabric filtration. This control system provides control of PM, fluorides, and polycyclic organic matter (POM). It provides no control for SO_2 or NO_X.

SO_2 Control Options. As discussed in our proposed BART determination for the Intalco potlines, the Washington RH SIP Appendix L, and the ENVIRON report for the Alcoa Intalco facility, limestone slurry forced oxidation (LSFO) is a technically feasible add-on control option for SO_2 emissions from the potlines. Several potential control technologies were evaluated by Alcoa for both the potlines and anode bake furnace, including LSFO, limestone slurry scrubbing with natural oxidation (LSNO), conventional lime wet scrubbing, seawater scrubbing, dual alkali sodium/lime scrubbing (dilute mode), conventional sodium scrubbing, dry injection, and semi-dry scrubbing. As described in the proposed EPA BART determination for Intalco and the ENVIRON Report, LNSO, conventional wet lime scrubbing and dual alkali sodium/lime scrubbing either have clear disadvantages or are likely to be more costly than LSFO. Dry scrubbing is technically infeasible for control of SO_2 emissions from the potlines because dry scrubbing requires temperatures of 250–260 °F, whereas the potlines have a flue gas temperature of ~205 °F. Spray dry control technology requires evaporation of the moisture introduced into the exhaust gas. Spray drying generally requires temperatures higher than those needed for dry scrubbing, thus spray drying is also technically infeasible for control of SO_2 from the potlines. Due to the inland location of the Wenatchee facility, seawater scrubbing is infeasible. The infrastructure and associated capital costs for a sodium scrubber would be similar to that of LSFO, although sodium-based reagents are generally more expensive than limestone or lime. Thus, sodium scrubbing, while technically feasible, would be less cost-effective than LSFO.

LSFO was determined to be a technically feasible retrofit control option for the potlines and the anode baking exhausts even though it is not ideally suited for scrubbing SO_2 concentrations that are less than or equal to 105 parts per million, that is the case for the Wenatchee facility.

The EPA conducted a cost analysis of LSFO scaled from the Intalco analysis to the Wenatchee facility. *See* ''Alcoa Wenatchee Works Cost Analysis for Limestone Slurry Forced Oxidation (LSFO) Scrubbing—Wenatchee, Washington,'' September 18, 2013. That analysis found that the cost-effectiveness values for LSFO at the Wenatchee facility ranged from $7500/ton to $8500/ton of SO_2 removed.

The cost-effectiveness values are at the high end of what the EPA would generally consider reasonable unless the controls would result in significant visibility improvement in one or more Class I areas. The dispersion modeling in this instance shows that the Wenatchee facility contributes to impairment in only one Class I area at about the level of the BART threshold. Thus, due to the high cost and limited visibility improvement, we are eliminating LSFO as BART for the Wenatchee facility.

The operating permit for the Wenatchee facility currently controls SO_2 from potlines 1, 2, and 3, by limiting the sulfur content of anode coke to a maximum of 3% and SO_2 emissions are also limited to 46 pounds per ton of aluminum produced. *See* permit condition D.12. This permit condition (which represents Best Available Control Technology (BACT) as established in an EPA PSD permit) does not apply to potline 5. The same coke is used for the anodes in all four potlines. Thus, EPA understands that potline 5 currently complies with both the 3% maximum coke sulfur content and the 46 pounds per ton of aluminum produced limit currently in effect for potlines 1, 2, and 3. As such, we believe there would be no cost involved in applying these same limits to potline 5. Therefore, EPA is proposing that SO_2 BART is to limit sulfur in the anode coke for potline 5 to 3% and limit SO_2 emissions from potline 5 to 46 pounds per ton of aluminum produced.

NO_X Control Options. The potlines are electrically heated and none of the raw materials used in the potlines contain significant quantities of nitrogen. As a result, the NO_X emissions from the potlines are insignificant. Potline 5 NO_X emissions are just 4.5 t/y. We reviewed the ENVIRON Report and agree with its determination that there are no technically feasible options to control NO_X from the potlines at Intalco. We believe that due to the similarities discussed above between the Intalco

and Wenatchee facilities, the conclusions regarding NO_X controls for the potlines at the Intalco facility also apply to the Wenatchee facility. Current operating conditions therefore represent BART. Currently, the Wenatchee facility determines NO_X emissions based on an emission factor of 0.34 pounds of NO_X per ton of aluminum produced. Based on the production capacity for potline 5, NO_X emissions will be limited to 0.95 tons per calendar month.

PM Control Options. PM emissions from the potlines are currently effectively controlled by fabric filters. The existing Air Operating Permit limits PM emissions to 0.005 gr/dscf. *See* permit condition D.5. We believe that fabric filtration is the most effective PM control device for this source and a limit of 0.005 gr/dscf is an appropriate limit for a highly efficient fabric filter. We are proposing 0.005 gr/dscf as the BART emission limit for PM.

Proposed BART Limits for Potline 5

PM: 0.005 gr/dscf
SO_2: 46 pounds per ton of aluminum produced
NO_X: 0.95 tons per calendar month

Ingot Furnaces 1, 2, and 11

Process Description, Existing Controls, and Control Options. The ingot furnaces are natural gas-fired furnaces that heat molten aluminum after it has been siphoned out of the pots, prior to casting. The furnaces are used to remove aluminum dross from the molten aluminum. In the past, they also were used to create aluminum alloys by mixing other metals with the molten aluminum. There are a total of five ingot furnaces located in the casthouse, three of which were constructed or modified within the BART-eligibility window and are subject to BART. All ingot furnaces operate uncontrolled, and the emissions are periodically tested by facility personnel.

Emissions of visibility impairing pollutants from the three ingot furnaces subject to BART are insignificant. In total, the furnaces emit 37.1 t/y of $PM_{2.5}$, no SO_2, and only 2.5 t/y of NO_X. It is therefore unnecessary to control these three sources because their emissions are likely to have only a negligible impact on visibility. We are therefore proposing that BART for PM and NO_X is no additional controls beyond the continued use of natural gas as fuel. The current operating permit for the Wenatchee facility contains a PM emission limit of 0.1 gr/dscf. *See* permit condition G.1. We believe that this limit is appropriate for natural gas fired furnaces without add-on PM controls and propose to establish it as the BART emission limit for the ingot furnaces. For NO_X BART, we propose to establish a fuel specification requiring the furnaces burn only natural gas.

Proposed BART Limits for the Ingot Furnaces

PM: 0.1 gr/dscf
SO_2: BART limit not necessary because there are no SO_2 emissions
NO_X: combust only natural gas

Green Mill

Process Description. The green mill is where ''green'' anodes (i.e., un-baked) are formed from a mixture of coke and petroleum pitch. The coke and pitch mixture is placed into a vibratory anode-forming mold that uses elevated temperature of the raw materials, vibration, and pressure from an overhead weight to form the coke/pitch mixture into solid green anodes. The vibratory former was installed in 1972. All emissions from the green mill, including the vibratory forming unit, are collected and sent either to the dry coke scrubber or dust collector 2.

Existing Controls. There are two air emission control devices currently operating for emissions from the green mill and vibratory forming unit. Emissions from various processes within the green mill are collected and sent either to the dry coke scrubber or dust collector 2. The dry coke scrubber is a dry scrubber using powdered coke, followed by fabric filtration. The dust collector 2 is a fabric filter.

Proposed BART Limits for Dry Coke Scrubber. The dry coke scrubber uses fabric filters to capture PM from the green mill. There is no more efficient technology for PM, thus analysis of additional PM control options is not necessary. The State has established an emission limit for this unit of 0.005 gr/dscf, which represents the capture efficiency for high efficiency fabric filters. *See* permit condition A–5. A recent source test shows this source is capable of meeting this limit. We therefore propose that 0.005 gr/dscf as the BART emission limit for PM for the dry coke scrubber.

PM: 0.005 gr/dscf
SO_2: BART limit not necessary because there are no SO_2 emissions
NO_X: BART limit not necessary because there are no NO_X emissions

Proposed BART Limits for Dust Collector 2. The dust collector 2 uses fabric filtration to capture PM from the green mill. There is no more efficient control technology for PM, so the existing technology is the basis for BART. Emissions from the dust collector 2 are 11.5 t/y. The State has established an emission limit for this unit in the operating permit for the facility at 0.1 gr/dscf. *See* permit condition A–9. However, this limit does not adequately represent the control efficiency for properly operated and maintained fabric filters. The EPA has obtained and reviewed recent source test data from the State for this emission point and finds that 0.01 gr/dscf is more representative of a properly operated and maintained fabric filter. Because BART must be ''an emission limitation based on the degree of reduction achievable'' by the selected control technology, 40 CFR 51.301, and because the available data demonstrates that the existing fabric filter in dust collector 2 can readily achieve an emission limit of 0.01 gr/dscf, we are proposing it as PM BART.

PM: 0.01 gr/dscf
SO_2: BART limit not necessary because there are no SO_2 emissions
NO_X: BART limit not necessary because there are no NO_X emissions

Alumina Handling Equipment

Process Description, Existing Controls, and Control Options. There are two alumina handling emission points. The first is a very small fabric filter dust collector on an alumina conveyance line that is identified as unit 21M. The second is a small fabric filter dust collector controlling emissions from an alumina handling unit situated above an alumina storage silo that is identified as unit 19C. Combined emissions from 21M and 19C total less than 1 t/y. Because these PM emissions are currently controlled by fabric filters, which represent high efficiency PM control, an analysis of additional PM control options is not necessary. However, due to physical constraints, PM emissions from these two units cannot be tested or measured, therefore we are proposing to establish the PM BART limits for 21M and 19C in the form of an opacity standard instead of a PM emission limitation. Because there are no SO_2 or NO_X emissions from alumina handling, BART for these pollutants is not applicable.

Proposed BART Limits for Alumina Handling Equipment 21M and 19C

PM: 20% opacity
SO_2: BART limit not necessary because there are no SO_2 emissions
NO_X: BART limit not necessary because there are no NO_X emissions

Alumina Railcar Unloading Facility

Process Description, Existing Controls, and Control Options. The

alumina railcar unloading facility is equipped with below-ground hoppers controlled by a large fabric filter and is identified as unit 43E. The PM emissions from unit 43E are 17 t/y.

Because PM emissions are currently controlled by a fabric filter, which represents high efficiency PM control, analysis of additional PM control options is not necessary. The current PM emission limit for the railcar unloading facility is the statewide PM limit of 0.1 gr/dscf. However, Alcoa provided source test data that demonstrates that unit 43E can achieve a much lower limit representative of a high efficiency fabric filter. Based on this source test data, we are proposing a PM BART emission limit of 0.005 gr/dscf. Because there are no SO_2 or NO_X emissions from the railcar unloading facility, BART for these pollutants is not applicable.

Proposed BART Limits for Alumina Railcar Unloading Facility

PM: 0.005 gr/dscf
SO_2: BART limit not necessary because there are no SO_2 emissions
NO_X: BART limit not necessary because there are no NO_X emissions

VI. New Information Relevant to the EPA's Previous Proposal

We received adverse comments on our proposed action on two FIP elements: Our analysis regarding the affordability of LSFO control technology for SO_2 at the Intalco facility in Ferndale, Washington, and our demonstration that the BART Alternative for the Tesoro refinery in Anacortes, Washington provides greater reasonable progress than NO_X BART. In response to the comments regarding these specific issues, new information is now available for public review, as discussed below.

A. Affordability Analysis of LSFO at Intalco

As explained in our prior proposal, the BART Guidelines provide that even if a control technology is determined to be reasonable after consideration of all five BART factors, there may be some cases where installation of the controls will affect the viability of continued plant operations. After we initially found that SO_2 BART for the potlines at the Intalco facility was an LSFO control system, Alcoa indicated to EPA that it could not afford to install and operate LSFO. In response, we conducted an affordability analysis to confirm the company's assertion. We contracted with RTI International (RTI) to conduct the requested affordability analysis. *See* 2012 Affordability Assessment. In our December 2012 proposal, we concluded that the 2012 Affordability Assessment demonstrated that Alcoa could not afford to install LSFO at this time while maintaining the Intalco facility as a viable operation and requested comment. 77 FR 76191–76192.

Several commenters questioned the sufficiency of the 2012 Affordability Assessment, suggesting that the analysis lacked an adequate explanation or basis for the affordability determination. The commenters alleged that the 2012 Affordability Assessment did not provide a clear argument why Alcoa cannot afford the cost of LSFO at the Intalco facility. The commenters also argued that RTI improperly relied on the OAQPS Control Cost Manual to determine the rate at which Alcoa would have to borrow funds to install LSFO when RTI should have used site-specific data. One commenter also said that the 2012 Affordability Assessment did not describe what the cost/sales ratio means, what ratio would suggest LSFO is affordable, or why the cost/sales ratio is significant in determining affordability. The commenters also pointed out that the 2012 Affordability Assessment acknowledged that a long-term power contract with the Bonneville Power Administration, which had expired at the time of the analysis, would affect the affordability analysis. Because a new long-term power contract was signed and became effective shortly after the 2012 Affordability Assessment was finalized, the commenters asserted that it should be considered in a final affordability determination. The commenters claimed that the foundation for the EPA's conclusion was factually incorrect because the determinative fact on which the affordability conclusion was based (the existence of a long-term power supply contract) substantially changed less than a month after the 2012 Affordability Assessment was finalized. The commenters also argued that the 2012 Affordability Assessment failed to disclose what amount of power at the IP rate [10] is actually necessary for Intalco to run all 3 potlines. The 2012 Affordability Assessment did not analyze whether LSFO would be affordable if Intalco were able to obtain power for two lines under a long-term contract and other power for the third. The commenters requested that the affordability analysis be redone in light of Intalco's new long-term power supply contract and other facts absent from the 2012 Affordability Assessment.

[10] "IP rate" means the Industrial Firm Power Rate contained in BPA's 2012 Wholesale Power Rate Schedules.

In response to these comments, we asked RTI to update its Affordability Assessment based on the availability of new and updated information. RTI considered, for example, new information regarding commodity price forecasting for the aluminum market, updated investment ratings, the December 2012 Long-Term Power Sales Agreement between Alcoa and the Bonneville Power Administration (BPA) (2012 Power Sales Agreement), and the 2012 Alcoa Annual Report. RTI completed its Revised Intalco BART SO_2 Affordability Assessment in September 2013 (Revised Affordability Assessment). The Revised Affordability Assessment includes an improved explanation of the various data used to determine financial health in the context of an affordability analysis for a BART determination. The Revised Affordability Assessment now specifically addresses the long-term power supply contract, cost/sales ratio, ability to borrow funds, the price of electricity, updated investment ratings, aluminum market conditions and other factors relevant to the affordability determination.

RTI analyzed the information to determine the impact that requiring the LSFO control technology could have on the profitability of Alcoa and on the Intalco facility. RTI describes how it calculated the Intalco cost/sales ratio to be a range of 5.1% to 21.7%. This range of values depends on assumptions about control costs, capacity utilization, and aluminum prices. It further explains that the cost/sales ratios may be higher or lower depending on plant utilization and future aluminum prices, but that the ratios are high in even the most optimistic scenarios. RTI also suggests that even in the absence of requiring the LSFO technology, the profitability of operating Intalco is highly sensitive to external factors. The Revised Affordability Assessment describes the current demand for aluminum and the fact that several aluminum smelters in the northwest have shut down within the past 10 years. It also reviews the 2012 Power Sales Agreement and the electricity price forecasts in the northwest. It concludes that Intalco's ability to run at full capacity depends on the availability of affordable power, but explains that even with the long-term power contract, Intalco may not be able to operate profitably if additional regulatory costs are factored into the plant's operating cost. Revised Affordability Assessment at 4–4 through 4–6.

The Revised Affordability Assessment also describes why Alcoa is unlikely to be able to pass the cost of controls on

to consumers. As explained, aluminum is a commodity traded on global markets, such as the London Metal Exchange. Aluminum producers can affect the cost/sales ratio by negotiating long-term contracts with alumina suppliers, but have little control over product price. In the case of Intalco, the increased costs of installing and operating LSFO would affect only this one aluminum facility, so the increased costs would have little impact on global supply. Therefore, RTI concluded, the market price would remain essentially unaffected, and Intalco would be unable to pass much, if any, of its cost increase along to its customers. Intalco would experience increased costs due to LSFO, with little to no change in the price of its products. Revised Affordability Assessment at 4–7. As a result, its profits, per-ton and overall, could be reduced to unacceptable levels by LSFO that would likely lead to a business decision to close the facility.

As explained in the Revised Affordability Assessment, RTI also analyzed Alcoa's ability to fund using cash, or finance using debt, the control technology costs. As explained, the cost of installing and operating LSFO will represent approximately 5–21% of the facility's sales revenue over the 30-year lifetime of the equipment at current utilization. Although limited cash reserves are available, the control technology expenditure would use over 8% of Alcoa's cash reserves. Additionally, as of 2013, the credit ratings provided by Standard & Poors, Moody's, and Fitch showed that Alcoa's financial outlook was negative or under review for downgrade. Alcoa's 2013 BBB–credit rating may also limit its ability to borrow money to purchase pollution control equipment. The Revised Affordability Assessment concluded that:

> [W]hile we cannot definitively determine what business decisions Alcoa will make, should installation and operation of LFSO be required, it is our belief based on our analysis and sound business practices that Alcoa would seriously consider other options, such as shifting production to other facilities, rather than installing and operating LSFO and continuing aluminum production at Intalco. Revised Affordability Assessment at 5–1.

As previously explained in our December 2012 notice, Alcoa submitted financial information to the EPA in support of its affordability claim. A portion of the information, Attachment 2 of the letter from Robert Wilt, Alcoa Inc., to Dennis McLerran, EPA Region 10 Administrator, dated June 22, 2012, was claimed as confidential business information (CBI). Thus, Attachment 2 was not available at that time for public review. Subsequently, in accordance with EPA regulations regarding CBI at 40 CFR Part 2, the EPA asked Alcoa to substantiate its CBI claim. In response, Alcoa submitted a redacted version of Attachment 2 reducing the amount of information it claimed as confidential and providing substantiation for the redacted information. The information Alcoa continued to claim as confidential consists of several years of 'after tax' cash flow values. After considering the criteria specified in 40 CFR 2.208, the EPA made a final CBI determination finding that the redacted information constituted CBI within the meaning of the EPA's regulations. The redacted Attachment 2, the substantiation, and the final CBI determination are included in the docket for this action and are available for public review.

The additional and updated information regarding the affordability of LSFO at Intalco, including the Revised Affordability Assessment, is also included in the docket for this proposed action and is available for public review. Comments regarding this additional and updated information may be made in accordance with the procedures explained in the public comment section above. Other aspects of our previously proposed action related to Intalco are outside the scope of this notice. Accordingly, other comments we previously received in response to our December 2012 proposal related to the proposed Intalco BART and affordability determination will be responded to in a future **Federal Register** notice.

B. Tesoro Modeling Demonstration for BART Alternative

In our December 2012 notice, we proposed to disapprove the State's NO_X BART determination for five BART emission units at the Tesoro Refining and Marketing refinery (Tesoro) and proposed a federal BART Alternative. The proposal explained that the EPA's proposed BART Alternative provides for greater reasonable progress towards meeting natural visibility conditions than BART.

The RHR provides two methods by which this demonstration can be made. First, if the distribution of emissions is not substantially different than under BART, and the alternative measure results in greater emission reductions, then the alternative measure may be deemed to achieve greater reasonable progress. Second, for disperse or widely distributed sources in a regional emissions trading program, dispersion modeling is to be used. 40 CFR 51.308(e)(3). Because in this case, the emission sources covered by BART and the BART Alternative are within the same facility and the distribution of emissions is not substantially different, applying the first method's emissions test would meet regulatory requirements. The demonstration in the December 2012 proposal relied on the emission test. It compared the allowed emissions under BART to the emissions that would be allowed under the BART Alternative. We determined that the BART Alternative would reduce SO_2 emissions by 1068 tons per year, which exceeds the 466 tons of NO_X per year expected to be reduced under BART. Thus, in accordance with the RHR, because the alternative measure results in greater emission reductions, the alternative ''may be deemed to achieve greater reasonable progress.'' 40 CFR 51.308(e)(3).

Several commenters stated that even with the greater SO_2 emission reductions under the BART Alternative, the EPA made an inappropriate greater-reasonable-progress demonstration. The commenters explained that in cool moist climates (like the Pacific Northwest), the CALPUFF model predicts that the conversion of NO_X to nitrate is enhanced in the winter months. The commenters suggested that dispersion modeling should have been used to demonstrate whether the BART Alternative truly resulted in greater reasonable progress. The dispersion modeling results would compare the visibility improvement expected from the proposed BART Alternative to the visibility improvement expected from source-specific NO_X BART. The commenters asserted that it was not sufficient for the EPA to simply compare the emission reductions expected from BART with emission reductions expected from the BART Alternative. The commenters said that SO_2 and NO_X have significantly different chemical aerosol formation mechanisms in the atmosphere, depending on meteorology. They also said that the presence of more sulfate than nitrate at a Class I area does not necessarily indicate, without more analysis, that one ton of SO_2 has more or less impact than one ton of NO_X. One commenter specifically suggested that NO_X emissions have a greater ''per ton'' impact on visibility than SO_2 emissions. The commenters suggested that air quality/visibility dispersion modeling, similar to the modeling used in determining whether a BART-eligible source is subject to BART, should be conducted. Therefore, the commenters argued that the EPA had not adequately shown that the Tesoro BART

Alternative was in fact 'Better than BART'.

After consideration and in response to these comments, the EPA decided that a modeling analysis was appropriate for the Tesoro 'Better than BART' demonstration. At the EPA's request, Tesoro agreed to provide such a modeling demonstration. Tesoro used the 'Modeling Protocol for Washington, Oregon, and Idaho: Protocol for the Application of the CALPUFF Modeling System Pursuant to the Best Available Retrofit Technology (BART) Regulation' that was used for determining which BART-eligible sources were subject to BART. That protocol, as supplemented with detailed information specific to the Tesoro 'Better than BART' demonstration, including the Class I areas to be evaluated, parameters used for comparison (i.e., 98th percentile change in daily haze index, and maximum change in the daily haze index), and emission sources, was approved by the EPA on March 28, 2013. (The approved protocol is found in the April 11, 2013 letter from Tesoro, Appendix I). The modeling was conducted to assess whether the visibility improvement from the BART Alternative's SO_2 emission reductions would be greater than the visibility improvement from the BART NO_X reductions. The modeling assessed both pollutants' chemical aerosol formation mechanisms and impacts on visibility. The modeling demonstrated that the visibility improvement associated with the SO_2 reductions under the BART Alternative was greater than the improvements associated with the NO_X reductions under BART.

The results of the modeling effort confirm that the BART Alternative provides greater reasonable progress toward natural conditions in all Class I areas within 300 km of the Tesoro facility over the three year baseline period. Tesoro April 11, 2013, letter Appendix 2. The Tables below show the Class I areas evaluated, the baseline impacts, the visibility impacts with BART controls, and the visibility impacts with the BART Alternative. The values shown in Table 2 are the number of days over the three-year period from 2003 through 2005 that the Tesoro facility is predicted to cause visibility impacts of greater than 0.5 dv.

TABLE 2—TESORO 'BETTER THAN BART' IMPACTS

[Number of Days With a Haze Index (Deciview (dv)) Above 0.5 dv 2003–2005]

Class I area	Baseline impact	Impact with BART	Impact with BART alternative
Alpine Lakes Wilderness Area	94	39	28
Glacier Peak Wilderness Area	111	48	33
Goat Rocks Wilderness Area	10	4	2
Mt. Adams Wilderness Area	9	4	1
Mt. Rainier National Park	44	21	8
North Cascades National Park	128	58	47
Olympic National Park	116	78	73
Pasayten Wilderness Area	31	9	2

Table 3 presents modeling results showing the 98th percentile visibility impacts of Tesoro over the same three-year period (2003–2005) at the seven Class I areas within 300 km of the Tesoro facility.

TABLE 3—TESORO 'BETTER THAN BART' IMPACTS

[Daily Haze Index (dv) 2003–2005, based on the 22nd highest value in three years within a Class I Area]

Class I area	Baseline impact	Impact with BART	Impact with BART alternative
Alpine Lakes Wilderness Area	0.932	0.639	0.558
Glacier Peak Wilderness Area	0.963	0.649	0.566
Goat Rocks Wilderness Area	0.317	0.212	0.172
Mt. Adams Wilderness Area	0.277	0.168	0.146
Mt. Rainier National Park	0.737	0.498	0.394
North Cascades National Park	1.035	0.707	0.666
Olympic National Park	1.736	1.212	1.106
Pasayten Wilderness Area	0.575	0.387	0.332

The dispersion modeling conducted for the Tesoro BART Alternative demonstrates that the BART Alternative provides for greater reasonable progress than NO_X BART at all seven Class I areas.

The new information regarding the Tesoro BART Alternative modeling demonstration, including the approved modeling protocol, Tesoro's April 11, 2013 letter explaining the modeling results, and the modeling results (including the input files), is included in the docket for this proposed action and is available for public review. Comments regarding this additional information may be made in accordance with the procedures explained in the public comment section above. Other aspects of our previously proposed action related to the Tesoro BART Alternative are outside the scope of this notice. Accordingly, other comments we previously received in response to our December 2012 proposal related to the Tesoro BART Alternative will be responded to in a future **Federal Register** notice.

VII. What action is the EPA proposing?

The EPA is proposing to disapprove Washington's determination that the Wenatchee facility is not subject to BART, determine that the facility is subject to BART, and propose BART for the BART-eligible emission units

through a FIP. The EPA is also notifying the public of new information available in the docket for this action related to our BART affordability assessment for Alcoa's Intalco facility and our previously proposed BART Alternative for the Tesoro refinery.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). The proposed FIP applies to only one facility and is not a rule of general applicability.

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Under the Paperwork Reduction Act, a ''collection of information'' is defined as a requirement for ''answers to . . . identical reporting or recordkeeping requirements imposed on ten or more persons . . .'' 44 U.S.C. 3502(3)(A). Because the proposed FIP applies to just one facility, the Paperwork Reduction Act does not apply. *See* 5 CFR 1320(c). Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control numbers for our regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of this proposed action on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. The FIP for the one Washington facility being proposed today does not impose any new requirements on small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and Tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to state, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more (adjusted for inflation) in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 of UMRA do not apply when they are inconsistent with applicable law. Moreover, section 205 of UMRA allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Under Title II of UMRA, EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of $100 million by state, local, or Tribal governments or the private sector in any 1 year. In addition, this proposed rule does not contain a significant Federal intergovernmental mandate as described by section 203 of UMRA nor does it contain any regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct -effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state

and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation. This action does not have federalism implications. This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely addresses the state not fully meeting its regional haze SIP obligations established in the CAA. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175 because the SIP and FIP do not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. EPA interprets EO 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it implements specific standards established by Congress in statutes. However, to the extent this proposed rule will limit emissions of NO_X, SO_2, and PM_{10} the rule will have a beneficial effect on children's health by reducing air pollution.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves technical standards. EPA proposes to use American Society for Testing and Materials (ASTM) Methods and generally accepted test methods previously promulgated by EPA. Because all of these methods are generally accepted and are widely used by State and local agencies for determining compliance with similar rules, EPA believes it would be impracticable and potentially confusing to put in place methods that vary from what is already accepted. As a result, EPA believes it is unnecessary and inappropriate to consider alternative technical standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. This FIP, if finalized, will limit air emissions from one facility. We have determined that this proposed rule, if finalized, will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low income populations.

List of Subjects in 40 CFR Part 52

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

Dated: December 13, 2013.

Dennis J. McLerran,

Regional Administrator, Region 10.

For reasons discussed in the preamble the Environmental Protection Agency proposes to amend 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart WW—Washington

■ 2. Section 52.2498 is amended by adding paragraph (c) to read as follows:

§ 52.2498 Visibility protection.

* * * * *

(c) The requirements of sections 169A and 169B of the Clean Air Act are not met because the plan does not include approvable provisions for protection of visibility in mandatory Class I Federal areas, specifically the Best Available

Retrofit Technology (BART) requirement for regional haze visibility impairment (§ 51.308(e)). The EPA BART regulations are found in §§ 52.2500, 52.2501, and 52.2502

■ 3. Section 52.2502 is added to read as follows.

§ 52.2502 Best available retrofit technology requirements for the Alcoa Inc.—Wenatchee Works primary aluminum smelter.

(a) *Applicability.* This section applies to the Alcoa Inc.—Wenatchee Works primary aluminum smelter located near Wenatchee, Washington and to its successors and/or assignees.

(b) *Best available retrofit technology (BART) emission limitations for Potline #5*—(1) *Sulfur dioxide (SO_2) emission limit.* Starting 120 days after publication, SO_2 emissions from Potline #5 must not exceed 46 pounds per ton of aluminum produced during any calendar month as calculated in paragraph (b)(1)(i) of this section.

(i) *Compliance demonstration.* SO_2 emissions, on a calendar month basis, shall be determined using the following formulas:

SO_2 emissions in pounds = (carbon ratio) x (tons of aluminum produced during the calendar month) x (% sulfur in baked anodes/100) x (% sulfur converted to SO_2/100) x (2 pounds of SO_2 per pound of sulfur)

SO_2 emissions in pounds per ton of aluminum produced = (SO_2 emissions in pounds during the calendar month)/(tons of aluminum produced during the calendar month)

(A) The carbon ratio is the calendar month average of tons of baked anodes consumed per ton of aluminum produced as determined using the baked anode consumption and aluminum production records required in paragraph (h)(2) of this section.

(B) The % sulfur in baked anodes is the calendar month average sulfur content as determined in paragraph (b)(1)(ii) of this section.

(C) The % sulfur converted to SO_2 is 90%.

(ii) *Emission monitoring.* The % sulfur of baked anodes shall be determined using ASTM Method D6376 or an alternative method approved by EPA Region 10.

(A) At a minimum, Alcoa must collect no less than four baked anode core samples during each calendar week.

(B) Calendar month average sulfur content shall be determined by averaging the sulfur content of all samples collected during the calendar month.

(2) *Particulate matter (PM) emission limit.* Starting 120 days after publication, PM emissions from the Potline #5 Gas Treatment Center stack must not exceed 0.005 grains per dry standard cubic foot of exhaust gas.

(3) *Nitrogen oxides (NO_X) emission limit.* Starting 120 days after publication, NO_X emissions from Potline #5 must not exceed 0.95 tons per calendar month.

(i) *Compliance demonstration.* NO_X emissions, on a calendar month basis, shall be determined using the following formula:

NO_X emissions in tons per calendar month = (0.34 pounds of NO_X per ton of aluminum produced) × (number of tons of aluminum produced in the calendar month)/(2000 pounds per ton).

(c) *Best available retrofit technology (BART) emission limitations for Anode Bake Furnace #62.* (1) *Sulfur dioxide (SO_2) emission limit.* Starting 120 days after publication, the sulfur content of the coke used in anode manufacturing must not exceed 3.0 percent by weight.

(i) *Compliance demonstration.* Each shipment of coke must be tested for sulfur content using ASTM Method D6376 or an alternative method approved by EPA Region 10. Written documentation from the coke supplier certifying the sulfur content is an approved alternative method.

(ii) [Reserved].

(2) *Particulate matter (PM) emission limit.* Starting 120 days after publication, the PM emissions from the anode bake furnaces stack must not exceed 0.01 grains per dry standard cubic foot of exhaust gas.

(3) *Nitrogen oxides (NO_X) emission limit.* Starting 120 days after publication, the anode bake furnaces must only combust natural gas.

(i) *Compliance demonstration.* Compliance shall be demonstrated through fuel purchase records.

(ii) [Reserved].

(d) *Best available retrofit technology (BART) emission limitations for Ingot Furnace 1 (IP–1), Ingot Furnace 2 (IP–2), and Ingot Furnace 11 (IP–11)*—(1) *Particulate matter (PM) emission limits.* Starting 120 days after publication, the PM emissions from each of ingot furnaces IP–1, IP–2, and IP–11 must not exceed 0.1 grains per dry standard cubic foot of exhaust gas.

(2) *Nitrogen oxides (NO_X) emission limit.* Starting 120 days after publication, each of the ingot furnaces IP–1, IP–2, and IP–11 must only combust natural gas.

(i) *Compliance demonstration.* Compliance shall be demonstrated through fuel purchase records.

(ii) [Reserved].

(e) *Best available retrofit technology (BART) particulate matter (PM) emission limitations for the Green Mill.* (1) Starting 120 days after publication, the PM emissions from the Green Mill Dry Coke Scrubber must not exceed 0.005 grains per dry standard cubic foot of exhaust gas.

(2) Starting 120 days after publication, the PM emissions from the Green Mill Dust Collector 2 must not exceed 0.01 grains per dry standard cubic foot of exhaust gas.

(f) *Best available retrofit technology (BART) particulate matter (PM) emission limitations for alumina handling operations.* (1) Starting 120 days after publication, the opacity from the alumina handling fabric filters (21M and 19C) must not exceed 20 percent.

(2) Starting 120 days after publication, the PM emissions from the alumina rail car unloading baghouse (43E) must not exceed 0.005 grains per dry standard cubic foot of exhaust gas.

(g) *Source testing.* (1) Alcoa must perform source testing to demonstrate compliance with emission limits established in this section upon request by the EPA Region 10 Administrator.

(2) The reference test method for measuring PM emissions is EPA Method 5 (40 CFR part 60, appendix A.

(3) The reference test method for measuring opacity from the alumina handling fabric filters (21M and 19C) is EPA Method 9 (40 CFR part 60, appendix A).

(4) EPA Region 10 may approve the use of an alternative to a reference test method upon an adequate demonstration by Alcoa that such alternative provides results equivalent to that of the reference method.

(h) *Recordkeeping.* Starting 120 days after publication Alcoa must keep the following records:

(1) Alcoa must retain a copy of all calendar month potline #5 SO_2 emissions calculations.

(2) Alcoa must maintain records of the baked anode consumption and aluminum production data used to develop the carbon ratio.

(3) Alcoa must retain a copy of all calendar month carbon ratio and potline SO_2 emission calculations.

(4) Alcoa must record the calendar day and calendar month production of aluminum.

(5) Alcoa must record the calendar month average sulfur content of the baked anodes.

(6) Alcoa must retain a copy of all calendar month potline NO_X emission calculations.

(7) Alcoa must record the sulfur content of each shipment of coke.

(8) Alcoa must keep fuel purchase records showing the type(s) of fuel combusted in the anode bake furnaces.

(9) Alcoa must keep fuel purchase records showing the types(s) of fuel combusted in the ingot furnaces.

(10) Records must be retained at the facility for at least five years and be made available to EPA Region 10 upon request.

(i) *Reporting.* (1) Alcoa must report SO_2 emissions by calendar month to EPA Region 10 on an annual basis at the same time as the annual compliance certification required by the Part 70 operating permit for the Alcoa plant is submitted to the Title V permitting authority.

(2) Alcoa must report NO_X emissions by calendar month to EPA Region 10 on an annual basis at the same time as the annual compliance certification required by the Part 70 operating permit for the Alcoa plant is submitted to the Title V permitting authority.

(3) Alcoa must report the sulfur content of each shipment of coke received at the facility during the compliance period to EPA Region 10 at the same time as the annual compliance certification required by the Part 70 operating permit for the Alcoa plant is submitted to the Title V permitting authority.

(4) Alcoa must report the fuel purchase records for the anode bake furnaces and the ingot furnaces during the compliance period to EPA Region 10 at the same time as the annual compliance certification required by the Part 70 operating permit for the Alcoa plant is submitted to the Title V permitting authority.

(5) All documents and reports must be sent to EPA Region 10 electronically, in a format approved by EPA Region 10, to the following email address: *R10-AirPermitReports@epa.gov.*

[FR Doc. 2013–30894 Filed 12–27–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2013–0023; FRL–9903–69]

Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petitions and request for comment.

SUMMARY: This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before January 29, 2014.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (BPPD) (7511P), telephone number: (703) 305–7090, email address: *BPPDFRNotices@epa.gov;* or Lois Rossi, Registration Division (RD) (7505P), telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov;* Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

If you have any questions regarding the applicability of this action to a particular entity, consult the division listed at the end of the pesticide petition summary of interest.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help

address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), (21 U.S.C. 346a), requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available online at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on various food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerance

1. *PP 3E8201.* (EPA–HQ–OPP–2013–0729). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W., Princeton, NJ 08540, requests to establish a tolerance in 40 CFR part 180 for residues of the desiccant, defoliant, and herbicide paraquat dichloride, (1,1′-dimethyl-4,4′-bipyridinium-ion) derived from application of the dichloride salt (calculated as the cation) in or on tuberous and corm vegetables subgroup (Crop subgroup 1C) at 0.5 parts per million (ppm). An analytical method (spectrometric method) has been accepted and published in the Pesticide Analytical Manual (PAM Vol. II) for the enforcement of tolerances in plant commodities. (RD)

2. *PP 3E8202.* (EPA–HQ–OPP–2013–0712). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W., Princeton, NJ 08540, requests to establish a tolerance in 40 CFR part 180 for the residues of the herbicide sulfentrazone, (*N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide) and its metabolite HMS (*N*-(2,4-dichloro-5-(4-(difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1*H*-1,2,4-triazol-1-yl)phenyl)methanesulfonamide, calculated as the stoichiometric equivalent of sulfentrazone, in or on apple at 0.15 ppm. There is a practical analytical method for detecting and measuring levels of sulfentrazone and its metabolites in or on food with a limit of quantitation that allows monitoring of food with residues at or above the levels set or proposed in the tolerances. The analytical enforcement method for sulfentrazone was used with minor modification that eliminated several clean-up and derivatization steps that was required for gas chromatography/mass spectrometry detection (GC/MSD), but not for liquid chromatograph/tandem mass spectrometry (LC/MS/MS). The analytical method for sulfentrazone involves separate analyses for parent and its metabolites. The parent is analyzed by evaporation and reconstitution of the sample prior to analysis by LC/MS/MS GC/ECD. The metabolites samples were refluxed in the presence of acid and cleaned up with solid phase extraction prior to analysis by LC/MS/MS. (RD)

3. *PP 3E8203.* (EPA–HQ–OPP–2013–0730). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W., Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180 for the combined residues of the insecticide spinetoram, expressed as a combination of XDE-175-J: 1-H-as-indaceno[3,2-d]oxacyclododecin-7,15-dione, 2-[(6-deoxy-3-O-ethyl-2,4-di-O-methyl-a-L-mannopyranosyl)oxy]-13-[[(2R,5S,6R)-5-(dimethylamino)tetra hydro-6-methyl-2H-pyran-2-yl] oxy]-9-ethyl-2,3,3a,4,5,5a,5b,6,9,10, 11,12,13,14,16a,16b-hexadecahydro 14-methyl- (2R,3aR,5aR,5bS,9S,13S, 14R,16aS,16bR); XDE-175-L: 1H-as-indaceno[3,2-d]oxacyclododecin-7,15-dione, 2-[(6-deoxy-3-O-ethyl-2,4-di-O-methyl-a-L-mannopyranosyl)oxy]-13-[[(2R,5S,6R)-5-(dimethylamino)tetra hydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11, 12,13,14,16a,16b-tetradecahydro-4,14-dimethyl- (2S,3aR,5aS,5bS,9S,13S,14R, 16aS, 16bS); ND-J: (2R,3aR,5aR, 5bS,9S,13S,14R,16aS,16bR)-9-ethyl-14-methyl-13-[[(2S,5S,6R)-6-methyl-5-(methylamino)tetrahydro-2H-pyran-2-yl] oxy]-7,15-dioxo-2,3,3a,4, 5,5a,5b,6,7,9,10,11,12,13,14,15,16a,16b-octadecahydro-1H-as-indaceno[3,2-d]oxacyclododecin-2-yl 6-deoxy-3-O-ethyl-2,4-di-O-methyl-alpha-L-manno pyranoside; and NF-J: (2R,3S,6S)-6-([[(2R,3aR,5aR,5bS,9S,13S,14R, 16aS,16bR)-2-[(6-deoxy-3-O-ethyl-2,4-di-O-methyl-alpha-L-mannopyranosyl) oxy]-9-ethyl-14-methyl-7,15-dioxo-2,3,3a,4,5,5a,5b,6,7,9,10,11,12,13,14,15, 16a,16b-octadecahydro-1H-as-indaceno[3,2-d]oxacyclododecin-13-yl]oxy)-2-methyltetrahydro-2H-pyran-3-yl(methyl)formamide in or on the following raw agricultural commodities: Coffee, green bean at 0.2 ppm; coffee, instant at 0.4 ppm; coffee, roasted bean at 0.4 ppm; cottonseed subgroup 20C at 0.04 ppm; caneberry subgroup 13–07A at 0.7 ppm; bushberry subgroup 13–07B, except lingonberry at 0.25 ppm; fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 0.5 ppm; berry, low growing, subgroup 13–07G, except blueberry, lowbush, and cranberry at 1.0 ppm; fruit, pome group 11–10 at 0.2 ppm; vegetable, fruiting, group 8–10 at 0.4 ppm; fruit, citrus, group 10–10 at 0.3 ppm; fruit, stone, group 12–12 at 0.2 ppm; onion, bulb, subgroup 3–07A at 0.1 ppm; onion, green, subgroup 3–07B at 2.0 ppm; and nuts, tree, group 14–12 at 0.1 ppm. Per the **Federal Register** of October 10, 2007 (72 FR 57492) (FRL–8149–9) supported by Data Package (DP) # 325387, August 9, 2008, EPA has determined adequate analytical methods are available for enforcement purposes for spinetoram in plant and animal matrices. For more details on the analytical methods and for specific GRMs, see EPA Memorandum—''Subject: Spinosad and Spinetoram; Human-Health Assessment Scoping Document in Support of Registration Review'' dated August 9, 2011 (Decision # 446932). EPA conservatively concluded that for water, residues should be estimated using the total spinetoram residue method (EPA, DP # 331741, September 20, 2007). (RD)

4. *PP 3E8204.* (EPA–HQ–OPP–2013–0727). Interregional Research Project Number 4 (IR–4), 500 College Road East,

Suite 201 W., Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180 for residues of the insecticide spinosad, a fermentation product of *Saccharopolyspora spinosa,* consisting of two related active ingredients: Spinosyn A (Factor A: CAS Registry No. 131929–60–7) or 2-[(6-deoxy-2,3,4-tri-O-methyl-α-L-manno-pyranosyl)oxy]-13-[[5-(dimethylamino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-14-methyl-1H-as-Indaceno[3,2-d]oxacyclo dodecin-7,15-dione; and Spinosyn D (Factor D; CAS Registry No. 131929-63-0) or 2-[(6-deoxy-2,3,4-tri-O-methyl-α-L-manno-pyranosyl)oxy]-13-[[5-(dimethyl-amino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14-methyl-1H-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione, in or on the raw agricultural commodities: Coffee, green bean at 0.2 ppm; coffee, instant at 0.4 ppm; coffee, roasted bean at 0.4 ppm; cottonseed subgroup 20C at 0.02 ppm; caneberry subgroup 13–07A at 0.7 ppm; bushberry subgroup 13–07B, except lingonberry at 0.25 ppm; fruit, small, vine climbing, except fuzzy kiwifruit subgroup 13–07F at 0.5 ppm; berry, low growing, subgroup 13–07G, except blueberry, lowbush, and cranberry at 1.0 ppm; fruit, pome group 11–10 at 0.2 ppm; vegetable, fruiting, group 8–10 at 0.4 ppm; fruit, citrus, group 10–10 at 0.3 ppm; fruit, stone, group 12–12 at 0.2 ppm; onion, bulb, subgroup 3–07A at 0.1 ppm; onion, green, subgroup 3–07B at 2.0 ppm; and nuts, tree, group 14–12 at 0.1 ppm. EPA has determined adequate analytical methods are available for enforcement purposes for spinosad in plant and animal matrices. For more details on the analytical methods and for specific GRMs, see EPA Memorandum—''Subject: Spinosad and Spinetoram; Human-Health Assessment Scoping Document in Support of Registration Review,'' dated August 9, 2011 (Decision # 446932). EPA conservatively concluded that for water, residues should be estimated using the total spinosad residue method (EPA, Decision # 316077, August 2, 2006). (RD)

5. PP 2F8053 (Revised) (EPA–HQ–OPP–2013–0008). BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528 submitted revisions to their initial pesticide petition 2F8139 to establish tolerances in 40 CFR part 180 for residues of the herbicide saflufenacil, its metabolites, and degradates, in or on various commodities. Based on EPA's evaluation of the data supporting the original petition, BASF Corporation revised the petition by proposing tolerances for fish-freshwater finfish and fish-shellfish, crustacean; at 0.01 parts per million (ppm). Compliance with the tolerance levels is to be determined by measuring only saflufenacil, 2-chloro-5-[3,6-dihydro-3-methyl-2,6-dioxo-4-(trifluoromethyl)-1(2*H*)-pyrimidinyl]-4-fluoro-*N*-[[methyl(1-methylethyl)amino] sulfonyl]benzamide, in or on the commodities. Adequate enforcement methodology (LC–MS/MS) methods D0603/02 (plants) and L0073/01 (livestock)) is available to enforce the tolerance expression. (RD)

6. *PP 3F8173.* (EPA–HQ–OPP–2013–0445). ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, OH 44077, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide flazasulfuron, 1-(4,6-dimethoxypyrimidin-2-yl)-3-(3-trifluoromethyl-2-pyridylsulfonyl) urea, in or on tree nuts (Crop group 14–12) at 0.01 ppm. A practical analytical method for flazasulfuron using LC–MS/MS is available for enforcement purposes. (RD)

Amended Tolerance

1. *PP 3E8201.* (EPA–HQ–OPP–2013–0729). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W., Princeton, NJ 08540, requests to remove the existing tolerance in 40 CFR 180.205(a) for residues of the desiccant, defoliant, and herbicide paraquat dichloride, (1,1′-di methyl-4,4′-bipyridinium-ion) derived from application of the dichloride salt (calculated as the cation), in or on potato at 0.5 ppm, upon establishment of the proposed tolerance for the tuberous and corm vegetables subgroup (Crop subgroup 1C) at 0.5 ppm in paragraph 1. under ''New Tolerance.'' (RD)

2. *PP 3E8203.* (EPA–HQ–OPP–2013–0730). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W., Princeton, NJ 08540, proposes based upon the establishment of tolerances in paragraph 3. under ''New Tolerance'' to remove established tolerances at 40 CFR 180.635 for the combined residues of the insecticide spinetoram, expressed as a combination of XDE-175-J: 1-H-as-indaceno[3,2-d] oxacyclododecin-7,15-dione, 2-[(6-deoxy-3-O-ethyl-2,4-di-O-methyl-a-L-mannop pyranosyl)oxy]-13-[[(2R,5S,6R)-5-(dimethylamino)tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,4,5,5a,5b,6,9,10,11,12,13,14,16a,16b-hexadecahydro1 14-methyl-,(2R,3aR,5aR,5bS,9S,13S,14R,16aS,16bR); XDE-175-L: 1H-as-indaceno[3,2-d] oxacyclododecin-7,15-dione, 2-[(6-deoxy-3-O-ethyl-2,4-di-O-methyl-a-L-manno pyranosyl)oxy]-13-[[(2R,5S,6R)-5-(dimethylamino)tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14-dimethyl-,(2S,3aR,5aS,5bS,9S,13S,14R,16aS,16bS); ND-J:(2R,3aR,5aR,5bS,9S,13S,14R,16aS,16bR)-9-ethyl-14-methyl-13-[[(2S,5S,6R)-6-methyl-5-(methylamino) tetrahydro-2H-pyran-2-yl]oxy]-7,15-dioxo-2,3,3a,4,5,5a,5b,6,7,9,10,11,12,13,14,15,16a,16b-octadecahydro-1H-as-indaceno[3,2-d]oxacyclododecin-2-yl 6-deoxy-3-O-ethyl-2,4-di-O-methyl-alpha-L-mannopyranoside; and NF-J: (2R,3S,6S)-6-([(2R,3aR,5aR,5bS,9S,13S,4R,16aS,16bR)-2-[(6-deoxy-3-O-ethyl-2,4-di-O-methyl-alpha-L-mannopyranosyl) oxy]-9-ethyl-14-methyl-7,15-dioxo-2,3,3a,4,5,5a,5b,6,7,9,10,11,12,13,14,15,16a,16b-octadecahydro-1H-as-indaceno[3,2-d]oxacyclododecin-13-yl]oxy)-2-methyl tetrahydro-2H-pyran-3-yl(methyl) formamide, in or on the following raw agricultural commodities: Bushberry subgroup 13B at 0.25 ppm; caneberry subgroup 13A at 0.70 ppm; fruit, citrus, group 10 at 0.30 ppm; fruit, pome, group 11 at 0.20 ppm; fruit, stone, group 12 at 0.20 ppm; grape at 0.50 ppm; juneberry at 0.25 ppm; lingonberry at 0.25 ppm; nut tree, group 14 at 0.10 ppm; okra at 0.40 ppm; onion, green at 2.0 ppm; pistachio at 0.10 ppm; salal at 0.25 ppm; strawberry at 1.0 ppm; vegetable, bulb, group 3, except green onion at 0.10 ppm; vegetable, fruiting group 8 at 0.4 ppm; and cotton, undelinted seed at 0.04 ppm. (RD)

3. *PP 3E8204.* (EPA–HQ–OPP–2013–0727). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W., Princeton, NJ 08540, proposes based upon the establishment of tolerances in paragraph 4. under ''New Tolerance'' to remove established tolerances at 40 CFR 180.495 for residues of the insecticide spinosad, a fermentation product of *Saccharopolyspora spinosa,* consisting of two related active ingredients: Spinosyn A (Factor A: CAS Registry No. 131929-60-7) or 2-[(6-deoxy-2,3,4-tri-O-methyl-α-L-manno-pyranosyl)oxy]-13-[[5-(dimethylamino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-14-methyl-1H-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione; and Spinosyn D (Factor D; CAS Registry No. 131929-63-0) or 2-[(6-deoxy-2,3,4-tri-O-methyl-α- L-manno-pyranosyl)oxy]-13-[[5-(dimethyl-amino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-

2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14-methyl-1H-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione, in or on the raw agricultural commodities: Bushberry subgroup 13B at 0.25 ppm; caneberry subgroup 13A at 0.70 ppm; fruit, citrus, group 10 at 0.30 ppm; fruit, pome, group 11 at 0.20 ppm; fruit, stone, group 12 at 0.20 ppm; grape at 0.50 ppm; juneberry at 0.25 ppm; lingonberry at 0.25 ppm; nut tree, group 14 at 0.10 ppm; okra at 0.40 ppm; onion, green at 2.0 ppm; pistachio at 0.10 ppm; salal at 0.25 ppm; strawberry at 1.0 ppm; vegetable, bulb, group 3, except green onion at 0.10 ppm; vegetable, fruiting group 8 at 0.4 ppm; and cotton, undelinted seed at 0.02 ppm. (RD)

New Tolerance Exemption

1. *PP 3F8176.* (EPA–HQ–OPP–2013–0717). Anatis Bioprotection, Inc., 278, rang Saint-André, St-Jacques-le-Mineur, Quebec JOJ 1Z0, Canada (represented by Technology Sciences Group, Inc., 712 Fifth St., Suite A, Davis CA 95616), requests to establish an exemption from the requirement of a tolerance for residues of the microbial insecticide, *Beauveria bassiana* strain ANT–03, in or on all food commodities. The petitioner believes no analytical method is needed because their expectation is that, when used as proposed, *Beauveria bassiana* strain ANT–03 would not result in residues that are of toxicological concern. (BPPD)

2. *PP IN–10604.* (EPA–HQ–OPP–2013–0700). Gowan Company, LLC, P.O. Box 5569, Yuma, AZ 85366 requests to establish an exemption from the requirement of a tolerance for residues of ammonium acetate (CAS Registry No. 631–61–8), under 40 CFR 180.920, when used at not more than 15% of a pesticide formulation, as a preharvest inert ingredient in or on raw agricultural commodities. The petitioner believes no analytical method is needed because it is not required for the establishment of a tolerance exemption for inert ingredients. Based on the physical chemical characteristics of ammonium acetate, there is little likelihood of foliar residues remaining on treated crops. Ammonium acetate is highly soluble in water and undergoes rapid environmental degradation in soil and water, breaking down into acetate and ammonium. Acetate/acetic acid as such would not be expected to remain on foliage and or bioaccumulate or persist in humans. Therefore, analytical methods to assess residues of ammonium acetate are not required. (RD)

List of Subjects in 40 CFR Part 180

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 20, 2013.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2013–31258 Filed 12–27–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2013–0002]; [Internal Agency Docket No. FEMA–B–1222]

Proposed Flood Elevation Determinations for Nicollet County, Minnesota, and Incorporated Areas

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) is withdrawing its proposed rule concerning proposed flood elevation determinations for Nicollet County, Minnesota, and Incorporated Areas.

DATES: The proposed rule published October 6, 2011, at 76 FR 62006, is withdrawn as of December 30, 2013.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1222, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: On October 6, 2011, FEMA published a proposed rulemaking at 76 FR 62006, proposing flood elevation determinations along one or more flooding sources in Nicollet County, Minnesota. Because FEMA has or will be issuing a Revised Preliminary Flood Insurance Rate Map, and if necessary a Flood Insurance Study report, featuring updated flood hazard information, the proposed rulemaking is being withdrawn. A Notice of Proposed Flood Hazard Determinations will be published in the **Federal Register** and in the affected community's local newspaper.

Authority: 42 U.S.C. 4104; 44 CFR 67.4.

Dated: November 22, 2013.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–31022 Filed 12–27–13; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 08–15 and 03–123; DA 13–2191]

Request for Comment on Petition Filed by AT&T Services, Inc., Regarding the Provision of Muting for Speech-to-Speech Telephone Services; Correction

AGENCY: Federal Communications Commission.

ACTION: Petition for clarification; request for comments; correction.

SUMMARY: In this document, the Federal Communications Commission (Commission) corrects a document published at 78 FR 76096, December 16, 2013. This document seeks comment on an AT&T Services, Inc., petition requesting clarification. The **ACTION** line incorrectly reflected the caption of the document; therefore, this document corrects the **ACTION** line to read ''Petition for clarification; request for comments''.

DATES: December 30, 2013.

FOR FURTHER INFORMATION CONTACT: Caitlin Vogus, Consumer and Governmental Affairs Bureau, Disability Rights Office, (202) 418–1264, email: *Caitlin.vogus@fcc.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In FR Doc. 2013–28829 published on December 16, 2013, on page 76096, in the second column, correct the **ACTION** caption to read: ''**ACTION:** Petition for clarification; request for comments.''

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–31127 Filed 12–27–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[WC Docket No. 05–25; RM–10593; Report No. 2995]

Petitions for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration.

SUMMARY: In this document, Petitions for Reconsideration (Petitions) have been filed in the Commission's Rulemaking proceeding, one by Gerard J. Duffy of Blooston, Modkofsky, Dickens, Duffy & Prendergrast, LLP, on behalf of Blooston Private Microwave Licenses and a second by David L. Nace, of Lukas, Nace, Gutierrez & Sachs, LLP, on behalf of Small Purchasers Coalition.

DATES: Oppositions to the Petitions must be filed on or before January 14, 2014. Replies to an opposition must be filed on or before January 24, 2014.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Christopher Koves, Wireline Competition Bureau, phone: (202) 418–1520.

SUPPLEMENTARY INFORMATION: This is a summary of Commission's document, Report No. 2995, released December 19, 2013. The full text of Report No. 2995 is available for viewing and copying in Room CY–B402, 445 12th Street SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). The Commission will not send a copy of this *Notice* pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because this *Notice* does not have an impact on any rules of particular applicability.

Subject: Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking To Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, published at 78 FR 67053, November 8, 2013, in WC Docket No. 05–25, RM–10593, and published pursuant to 47 CFR 1.429(e). *See also* § 1.4(b)(1) of the Commission's rules.

Number of Petitions Filed: 2.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–31193 Filed 12–27–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 173, 178, and 180

[Docket Number PHMSA–2010–0019 (HM–241)]

RIN 2137–AE58

Hazardous Materials: Adoption of ASME Code Section XII and the National Board Inspection Code

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: PHMSA is proposing to amend the Hazardous Materials Regulations applicable to the design, construction, certification, recertification and maintenance of cargo tank motor vehicles, cryogenic portable tanks and multi-unit tank car tanks (ton tanks) in response to petitions for rulemaking from the American Society of Mechanical Engineers (ASME), the National Board of Boiler and Pressure Vessel Inspectors (National Board), and the Pressure Vessel Manufacturers Association (PVMA). Specifically, this NPRM proposes to allow the use of the 2013 edition of the ASME's *Boiler and Pressure Vessel Code, Section XII (Section XII)* for the design, construction, and certification of cargo tank motor vehicles, cryogenic portable tanks and ton tanks. PHMSA also proposes to authorize the use of the 2013 edition of the National Board of Boiler and Pressure Vessel Inspectors' *National Board Inspection Code (NBIC),* as it applies to the continuing qualification and maintenance of ASME constructed cargo tank motor vehicles, cryogenic portable tanks, and ton tanks constructed to standards in ASME's *Section XII,* and existing cargo tank motor vehicles and portable tanks constructed to *Section VIII, Division 1.* If adopted, these amendments will allow for regulatory flexibility, without compromising safety.

DATES: Submit comments by March 31, 2014. To the extent possible, PHMSA will consider late-filed comments as we determine whether additional rulemaking is necessary.

ADDRESSES: You may submit comments identified by the docket number (PHMSA–2010–0019; HM–241) by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- Fax: 1–202–493–2251.
- Mail: Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590.
- Hand Delivery: To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. Note that all comments received will be posted without change to the docket management system, including any personal information provided.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov,* or DOT's Docket Operations Office (see **ADDRESSES**). To access ASME's Boiler and Pressure Vessel Code, Section XII (Section XII) go to: *https://shop.asme.org/PublicReview/.* To access the *National Board Inspection Code (NBIC), Part 2, Supplement 6:* Continued Service and Inspection of DOT Transport Tanks, and *Part 3, Supplement 6:* Repair, Alteration, and Modification of DOT Transport Tanks go to: *https://www.nationalboard.org/SiteDocuments/NBIC/DOT_NBIC_supplements.pdf.*

Privacy Act: Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Lisa O'Donnell, Hazardous Materials Standards and Rulemaking Division, (202) 366–8553, or Stanley Staniszewski, Engineering and Research

Division, (202) 366–4492, Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

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I. Executive Summary

In this NPRM, PHMSA (also ''we'' or ''us'') proposes to amend the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) in response to petitions submitted by industry representatives to incorporate *Section XII* and the 2013 edition of the *NBIC* as alternatives to *Section VIII, Division 1* and the current HMR requirements in part 178, for the design of cryogenic portable tanks and CTMVs, part 179 for the design of ton tanks, and part 180 for the continuing qualification and maintenance of CTMVs, cryogenic portable tanks and ton tanks. *Section XII* sets forth standards for construction [1] and continued service [2] of pressure vessels for transporting hazardous materials by highway, rail, air or water at pressures from close to 15 psig external pressure to 3,000 psig and volumes greater than 120 gallons. The 2013 edition of the *NBIC* provides rules and guidelines for installing, inspecting, repairing and altering boilers, pressure vessels and pressure relief devices. *Section XII* may be used for the following tanks:

TABLE 1—PROPOSED TANKS AUTHORIZED UNDER SECTION XII

Tank type	Specification
Cargo Tank Motor Vehicles (CTMVs).	MC331, 338, 406, 407, and 412.
Cryogenic Portable Tanks.	UN T75.
Ton Tanks	DOT–106A and 110AW.

If the proposed amendments are adopted, manufacturers could choose to build their tanks using either the specifications set forth in *Section XII* or those set forth in *Section VIII, Division 1.* While *Section VIII, Division 1* applies to construction of new tanks only, *Section XII* applies to both new construction and continued service. Further, as proposed, a manufacturer who builds a tank to *Section VIII, Division 1* would be authorized to use either the 1992 edition of the *NBIC* that is currently incorporated by reference or the 2013 edition of the *NBIC;* whereas manufacturers who choose to build tanks to *Section XII* would be required to use the 2013 edition of the *NBIC.*

Section XII and the 2013 edition of the *NBIC* include advancements in design, material, construction, repair and inspection of transport tanks. Incorporating *Section XII* and the 2013 edition of the *NBIC* by reference in the HMR, would allow manufacturers and owners of transport tanks to be flexible in the materials they use to build tanks, how they build tanks, and how they test and inspect tanks, while providing the same level of safety as that provided by *Section VIII, Division 1* for new construction and the HMR for continued qualification and maintenance.

The 2013 edition of the *NBIC* was developed in conjunction with *Section XII* to provide consistent, up-to-date standards for the lifespan of transport tanks. Both the *NBIC* and *Section XII* were developed as international standards, and were written to be compatible with UN recommendations. Further, these standards were developed by voluntary consensus standards-development organizations comprised of all stakeholders involved in the design, certification, continued qualification and maintenance of transport tanks, including manufacturers of tanks and PHMSA engineers. These individuals have expert knowledge of how to design, construct and maintain tanks to withstand the unique dynamic conditions and stresses of a transportation environment.

Several research and development projects support the adoption of both the 2013 edition of *NBIC* and *Section XII* (See Table 11 of Section VII of this document). These projects include studies on CTMV rollovers, design margins, and puncture resistance. They are discussed in Sections V and VII in this NPRM.[3] Furthermore, by providing the 2013 edition of the *NBIC* and *Section XII* as options, PHMSA would allow the regulated industry to choose from various materials of construction, that we believe provide equivalent safety, to accommodate each entity's preference (see part TM of *Section XII,* which specifies authorized materials). Use of the proposed voluntary standards could enable U.S. manufacturers to better compete internationally.

Manufacturers, tank owners and users, maintenance and repair entities, third-party inspectors, and public sector inspectors would incur costs under the proposed adoption of Section XII and the 2013 edition of the NBIC. Manufacturers who choose to build tanks to Section XII may have to purchase new equipment to manufacture tanks to accommodate the different metals authorized in Section XII and would have to purchase the standard; however, they would also have more flexibility in the materials they use to build the tank, and take advantage of the lower priced materials at the time of purchase. Tank owners would incur the initial cost of the new tank. However, users, most likely also the owners, in many cases, would be able to haul more material in one tank, which would reduce fuel costs. Entities that repair tanks and third-party inspectors would have to be trained in

[1] ''Construction'' is an all-inclusive term comprising materials, design, fabrication, examination, inspection, testing, certification, and over-pressure protection.

[2] ''Continued service'' is an all-inclusive term referring to inspection, testing, repair, alteration, and recertification of a transport tank that has been in service.

[3] See *www.regulations.gov,* Docket Nos. PHMSA–2010–0019–0010, PHMSA–2010–0019–0012, PHMSA–2010–0019–0013, PHMSA–2010–0019–0014, PHMSA–2010–0019–0015, PHMSA–2010–0019–0016, PHMSA–2010–0019–0017, PHMSA–2010–0019–0018, and PHMSA–2010–0019–0019.

and purchase both Section XII and the NBIC. Public sector inspectors would have to be trained, and state and local governments would have to purchase both *Section XII* and the NBIC. Due to PHMSA's three-year training cycle, all employees and inspectors will have been trained within three years, regardless of when or if they transition to HM–241. Once an entity converts to Section XII tanks, PHMSA assumes that the incremental training would be incorporated into regular training, and no further incremental expense would be incurred in future years. Annual benefits would continue to accrue.

Benefits associated with the use of *Section XII* and the 2013 edition of the *NBIC* include a savings in the cost to manufacture tanks. Various economic factors cause the cost of types of materials to fluctuate. Because *Section XII* allows a variety of newer materials to be used to build tanks, manufacturers may choose materials with the lowest cost to construct their tanks. Also, certain tanks built to *Section XII* would provide lower costs per mile due to the use of lighter-weight materials of construction and increased capacity to transport product. A review of previous research by PHMSA's Engineering and Research Division, as well as the independent research studies that are summarized in Section V and Table 11 of Section VII of this NPRM and can be found in the docket file (see *www.regulations.gov,* Docket Nos. PHMSA–2010–0019) indicated the *Section XII* standards provide an equivalent level of safety to the current standards. *Section XII* provides updated specifications for transport tanks. In most cases, due to substitution of material of construction, the thickness of the tanks would be reduced, permitting more material to be hauled, and reducing the number of tanks needed to handle the same volume of product.

These costs and benefits of *Section XII* and the 2013 edition of the *NBIC* would affect only individuals who choose to use the standards. Therefore, PHMSA does not believe adoption of Section XII would impose costs because each entity will choose to continue to use the existing Section VIII or convert to Section XII as their economic interests dictate. For example a manufacturer would not use *Section XII* to build a tank unless it believes it is net beneficial to do so. Since *Section XII* would allow manufacturers the flexibility to purchase the raw material that is least expensive at the time, this may reduce the cost to the manufacturer, who can then pass that discount on to the buyer of the tank. Manufacturers will only elect to utilize *Section XII* if it makes business sense.

II. Abbreviations and Terms Used in This Document

The table below provides a list of abbreviations or acronyms for the terms used in this NPRM.

TABLE 2—ABBREVIATIONS AND TERMS USED IN THIS DOCUMENT

AI:	Authorized Inspector
ANSI:	American National Standards Institute
ASME:	American Society of Mechanical Engineers
BPVC:	Boiler and Pressure Vessel Code
CI:	Certified Individual
CTMV:	Cargo Tank Motor Vehicle
DCE:	Design Certifying Engineer
FMCSA:	Federal Motor Carrier Safety Administration
HMR:	Hazardous Materials Regulations (49 CFR parts 171–180)
IMDG	International Maritime Dangerous Goods
IACS	International Association of Classification Societies Ltd
MAWP:	Maximum Allowable Working Pressure
NBIC:	National Board Inspection Code
PHMSA:	Pipeline and Hazardous Materials Safety Administration
PVMA:	Pressure Vessel Manufacturers Association
QI:	Qualified Inspector
RI:	Registered Inspector
Section VIII, *Division 1*	American Society Mechanical Engineers, Boiler and Pressure Vessel Code, Section VIII, *Division 1*
Section XII:	American Society Mechanical Engineers, Boiler and Pressure Vessel Code, Section XII

III. Background

The Federal hazardous materials transportation law (49 U.S.C. 5101 et seq.; Federal hazmat law) authorizes the Secretary of Transportation to regulate the safe and secure transportation of hazardous materials in commerce. In accordance with its delegated authority from the Secretary, PHMSA has established packaging requirements for the safe transportation of hazardous materials in commerce, including requirements for the design, construction, qualification, maintenance, certification and repair of bulk packagings such as CTMVs, portable tanks, and certain tank car tanks referred to as ton tanks.

Under 49 CFR 1.96, PHMSA is delegated the responsibility to enforce the HMR. In addition, under 49 CFR 1.88 and 1.86, the Federal Railroad Administration (FRA) and the Federal Motor Carrier Safety Administration (FMCSA) are delegated authority to enforce the HMR with particular emphasis on railroad and highway transportation, respectively. PHMSA, FRA and FMCSA work closely with the regulated industry through educational assistance activities and FRA's and FMCSA's compliance and enforcement programs.

Within the United States, the most common modes of transportation for the tanks affected by this NPRM are highway and rail. To clearly identify the differences and unique characteristics of the tanks addressed by this NPRM, we provide the following definitions.

TABLE 3—TANK TYPE DEFINITION

Cargo tank motor vehicle (CTMV) ..	Means a motor vehicle with one or more cargo tanks permanently attached to or forming an integral part of the motor vehicle.

TABLE 3—TANK TYPE DEFINITION—Continued

Portable tank[4]	Means a bulk packaging (except a cylinder having a water capacity of 1000 pounds or less) designed primarily to be loaded onto, or on, or temporarily attached to a transport vehicle or ship and equipped with skids, mountings, or accessories to facilitate handling of the tank by mechanical means. It does not include a CTMV, tank car, multi-unit tank car tank, or trailer carrying 3AX, 3AAX, or 3T cylinders.
UN portable tank	Means an intermodal tank having a capacity of more than 450 liters (118.9 gallons). It includes a shell fitted with service equipment and structural equipment, including stabilizing members external to the shell and skids, mountings or accessories to facilitate mechanical handling. A UN portable tank must be capable of being filled and discharged without the removal of its structural equipment and must be capable of being lifted when full. Cargo tanks, rail tank car tanks, non-metallic tanks, non-specification tanks, bulk bins, and IBCs and packagings made to cylinder specifications are not UN portable tanks.
Multi-unit tank car tank or ton tank	Means a flatcar railcar or flatbed trailer with up to 15 large cylindrical pressure tanks (DOT–106A and 110A tank car specification, see Part 179).

In this NPRM, PHMSA is proposing to amend the HMR applicable to the design, construction, certification, recertification and maintenance of cargo tank motor vehicles, cryogenic portable tanks ton tanks, to allow the use of *Section XII* for the design, construction, and certification of CTMVs, cryogenic portable tanks and ton tanks. PHMSA is also proposing to authorize the use of the 2013 edition of the NBIC, as it applies to *Section VIII, Division 1* or *Section XII.* These proposals are in response to petitions for rulemaking from ASME, the National Board of Boiler and Pressure Vessel Inspectors, and PVMA. This NPRM could affect the following entities that choose to follow Section XII and establishes the following requirements:

TABLE 4—AFFECTED ENTITIES

Affected entities	Proposed revisions
• Manufacturers of CTMVs, cryogenic portable tanks and ton tanks • Repairers of CTMVs, cryogenic portable tanks and ton tanks • Testers of CTMVs, cryogenic portable tanks and ton tanks • Carriers of bulk liquid hazardous materials • Inspectors of CTMVs, cryogenic portable tanks and ton tanks • Owners of CTMVs, cryogenic portable tanks and ton tanks • Federal, state and local enforcement officials	• Provides alternative design, construction, certification, recertification and maintenance to Section VIII, *Division 1* and HMR. • Establishes new alternative "T" stamp for transport tanks • Establish different levels of inspectors as set forth in Section XII.

IV. Petitions for Rulemaking

The Administrative Procedure Act (APA) requires Federal agencies to give interested persons the right to petition an agency to issue, amend, or repeal a rule (5 U.S.C. 553(e)). 49 CFR 106.95, provides the process and procedures for persons to petition PHMSA to add, amend, or delete a regulation. In this NPRM, PHMSA is considering petitions for rulemaking from ASME, the National Board, and PVMA.

The following table provides a brief summary of the petitions addressed in this NPRM and affected sections:

TABLE 5—PETITION SUMMARY

Petition	Party submitting petition	Summary
P–1459	ASME	Requests PHMSA incorporate by reference the *ASME Boiler and Pressure Vessel Code, Section XII, Transport Tanks—2004 edition* (§§ 172.102; 173.5b; 173.24b; 173.32; 173.306; 173.315; 173.318; 173.420; 178.245–1; 178.245–3; 178.245–4; 178.245–6; 178.245–7; 178.255–1; 178.255–2; 178.255–14; 178.255–15; 178.270–2; 178.270–3; 178.270–7; 178.270–9; 178.270–11; 178.270–12; 178.271–1; 178.272–1; 178.273; 178.274; 178.276; 178.277; 178.320; 178.337–1; 178.337–2; 178.337–3; 178.337–4; 178.337–6; 178.337–16; 178.337–18; 178.338–1; 178.338–2; 178.338–3; 178.338–4; 178.338–5; 178.338–6; 178.338–13; 178.338–16; 178.338–18; 178.338–19; 178.345–1; 178.345–2; 178.345–3; 178.345–4; 178.345–7; 178.345–14; 178.345–15; 178.346–1; 178.347–1; 178.348–1; 179.400–3; 180.407).

[4] Only cryogenic portable tanks are involved in this NPRM.

TABLE 5—PETITION SUMMARY—Continued

Petition	Party submitting petition	Summary
P–1474	PVMA	Requests PHMSA incorporate by reference the *ASME Boiler and Pressure Vessel Code, Section XII, Transport Tanks—2004 edition* (§§ 172.102; 173.5b; 173.24b; 173.32; 173.306; 173.315; 173.318; 173.420; 178.245–1; 178.245–3; 178.245–4; 178.245–6; 178.245–7; 178.255–1; 178.255–2; 178.255–14; 178.255–15; 178.270–2; 178.270–3; 178.270–7; 178.270–9; 178.270–11; 178.270–12; 178.271–1; 178.272–1; 178.273; 178.274; 178.276; 178.277; 178.320; 178.337–1; 178.337–2; 178.337–3; 178.337–4; 178.337–6; 178.337–16; 178.337–18; 178.338–1; 178.338–2; 178.338–3; 178.338–4; 178.338–5; 178.338–6; 178.338–13; 178.338–16; 178.338–18; 178.338–19; 178.345–1; 178.345–2; 178.345–3; 178.345–4; 178.345–7; 178.345–14; 178.345–15; 178.346–1; 178.347–1; 178.348–1; 179.400–3; 180.407).
P–1502	National Board	Requests PHMSA incorporate by reference the *National Board Inspection Code—2007 Edition* in § 180.413.

P–1459

On May 10, 2005, ASME petitioned PHMSA to revise the HMR to incorporate by reference the *ASME Boiler and Pressure Vessel Code, Section XII, Transport Tanks—2004 edition. Section XII* of the BPVC provides requirements for construction and continued service of ASME pressure vessels for the transportation of dangerous goods with volumes greater than 450 liters (120 gallons) and design pressures appropriate for the particular transportation mode, i.e., highway, railway, air, and water. The construction requirements cover materials, design, fabrication, examination, inspection, testing, certification, and over-pressure protection. The requirements for continued service cover inspection, testing, repair, alteration, and recertification of in-service ASME constructed transport tanks. These transportation tank requirements include the pressure vessel, appurtenances, and additional components that are covered by Modal Appendices for the specific transport modes and unique service conditions of the specific application. The 2004 edition contains one Modal Appendix for portable tanks carrying cryogenic liquids. The 2007 edition was expanded to include the Modal Appendix for CTMVs. The 2010 edition was expanded to include the Modal Appendix for ton tanks. We are proposing to incorporate the latest edition, which was published in 2013. [This petition can be found at *www.regulations.gov* under Docket No. PHMSA–2005–21351].

P–1474

On February 27, 2006, PVMA also petitioned PHMSA to revise the HMR to incorporate by reference the *ASME Boiler and Pressure Vessel Code, Section XII, Transport Tanks—2004 edition.* PVMA is a trade association representing pressure vessel manufacturers, related component materials suppliers and regulatory organizations. Several of PVMA's member companies participated in the development of *Section XII,* which contains design requirements for tanks and pressure vessels that several of its members manufacture. PVMA reasoned that adoption of *Section XII* into the HMR would encourage uniform design requirements and manufacturing standards for these tanks, and support the safe construction practices of this industry. [This petition can be found at *www.regulations.gov* under Docket No. PHMSA–2006–24712].

P–1502

On July 12, 2007, the National Board of Boiler and Pressure Vessel Inspectors petitioned PHMSA to revise the HMR to incorporate by reference the *National Board Inspection Code—2007 Edition.* The *NBIC* contains rules for continued service inspections, repairs, and modifications of transport tanks, including methods to be used and criteria for inspections, reports, document control, and inspector duties and responsibilities. The term ''inspector'' includes Authorized Inspector (AI), Qualified Inspector (QI), Certified Individual (CI) or Registered Inspector (RI) to address all aspects of continued service.[5] While the petition asked that we incorporate the 2007 edition of the NBIC, we propose to incorporate the most up-to-date version, which is the 2013 edition. [This petition can be found at *www.regulations.gov* under Docket No. PHMSA–2007–28809].

V. ASME Section XII

Currently, the HMR incorporate by reference the 1998 edition of *Section VIII, Division 1* as part of the standards for the design and construction of cryogenic portable tanks and CTMVs. *Section VIII, Division 1* sets forth detailed criteria for the design, construction, certification, and marking of stationary boilers and pressure vessels. Tanks constructed and certified in accordance with Section VIII, *Division 1* are marked with a ''U'' stamp.

While stationary tanks and transportation tanks are both subject to many of the same influences, such as pressure, temperature changes, and atmospheric conditions, transportation tanks are subject to additional, unique dynamic load conditions and stresses; *Section VIII, Division 1* alone does not address the transportation conditions. To address these additional influences on tanks that are used in transportation, general operational requirements for CTMVs, portable tanks, and ton tanks, such as outage and filling limits and self-closing stop valves, are prescribed in 49 CFR part 173 subpart B. In addition, 49 CFR part 178, subpart H for specification 60, steel portable tanks, includes requirements for material construction (see § 178.255–2), expansion domes (see § 178.255–3), closures for manholes and domes (see § 178.255–4), loading and unloading accessories (see § 178.255–6), tank repair (see § 178.255–13, marking (see § 178.255–14), and reporting (see § 178.255–15). Subpart J for CTMVs and 49 CFR part 178, includes general requirements for all DOT specification cargo tank motor vehicles (see § 178.320), and then more specific requirements for types of CTMVs. For specification MC–331 tanks, requirements include, but are not limited to, structural integrity (see § 178.337–3), closures for manholes (see § 178.337–6), and accident damage protection (see § 178.337–10). For MC–338 insulated cargo tank motor vehicles, requirements include, but are not limited to, material (see § 178.338–2),

[5] The *NBIC* has updated the 2007 edition with a 2013 edition.

structural integrity (see § 178.338–3), and accident damage protection (see § 178.338–10). For ton tanks, 49 CFR part 179 subpart E prescribes additional design and construction requirements than those required for stationary tanks in *Section VIII, Division 1,* including but not limited to, protection of fittings (see § 179.300–12), more stringent welding (see § 178.300–9), and inspection (see § 179.300–19). Furthermore, continuing qualification and maintenance requirements, which include periodic tests and inspections, repairs, modifications, alterations, and conversions, are specified in 49 CFR part 180, subpart E for CTMVs, subpart F for ton tanks, and subpart G for portable tanks. It should be noted that design, construction and qualification of rail tank cars (49 CFR part 179 and part 180, subpart F) and non-specification cargo tanks (i.e., nurse tanks) are not being considered in this NPRM.

ASME is a not-for-profit membership professional organization that enables collaboration, knowledge-sharing, and skill development across all engineering disciplines. ASME is recognized globally for its leadership in providing the engineering community with technical content and a forum for information exchange. The Boiler and Pressure Vessel Committees of ASME meet quarterly; however, most of the work is done throughout the year through working groups and an electronic balloting process. The National Board meets biannually and also works throughout the year through working groups and the electronic balloting process. These committees consider revisions to the ASME codes and standards based on safety concerns, technological advances, new data, and changing environmental and industry needs. All meetings are free-of-charge and open to public participation. ASME subcommittees consider correspondence from the general public in the form of requests for interpretation and revision to existing codes, requests for code cases, and requests to develop new standards.

In 1995 the ASME Board on Pressure Technology Codes and Standards formed a committee on transport tanks (SC XII) to develop new standards to specifically address transport tanks. PHMSA actively participated in the committee. SC XII currently consists of a main committee and four subgroups identified as: (1) General Requirements, (2) Fabrication, Inspection and Continued Service, (3) Design and Materials, and (4) Non-Mandatory Appendices. SC XII developed and published in July of 2004 the *ASME BPVC Section XII, Rules for Construction and Continued Service of Transport Tanks* to address pressure vessels that are used in transportation. *Section XII* is based on the existing and long-established *Section VIII, Division 1. Section XII* consists of ten parts, four modal appendices written to address different tank types, sixteen mandatory appendices, and eight non-mandatory appendices. Transport tanks are divided into categories comparable to existing DOT specifications; for example, a DOT 406 CTMV is a Category 406 tank in Article 1 of Modal Appendix 1. The newest edition contains modal appendices for CTMVs, cryogenic portable tanks, and ton tanks.[6]

Section XII contains ten parts, in the following order:

TABLE 6—SECTION XII PART SUMMARY

Part heading	Part requirements
TG	General
TM	Material
TD	Design
TW	Tanks Fabricated by Welding
TF	Fabrication
TE	Examination
TT	Testing
TR	Pressure-relief Device
TS	Stamping, Marking, Certification Reports, and Records
TP	Repair, Alteration, Testing, and Inspection for Continued Service

Section XII requires newly constructed transport tanks to bear a ''T'' stamp. The ''T'' stamp is essentially equivalent to the current ''U'' stamp required for certain DOT CTMVs designed and constructed to *Section VIII, Division 1* standards, currently incorporated by reference in the HMR.

PHMSA is proposing to adopt *Section XII,* in its entirety, as an alternative to *Section VIII, Division 1* for the design and construction requirements for DOT specification tanks. A copy of *Section XII,* 2013 edition, is available for review at www.regulations.gov under Docket Number PHMSA–2010–0019 or DOT's Docket Operations Office (see **ADDRESSES**). The current price of *Section XII* in hard copy is $380.[7]

VI. NBIC

The National Board of Boiler and Pressure Vessel Inspectors was formed in 1921 and is an American National Standards Institute (ANSI) accredited standards development organization. The National Board follows an approved set of standards development procedures (NB–240, National Board Inspection Code Procedures; *http://www.nationalboard.org*) and is subject to regular audits by ANSI.

First published in 1946, the *NBIC* was established by the National Board to provide rules and guidelines for the repair, alteration, inspection, installation, maintenance, and testing of boilers, pressure vessels, and other pressure retaining items. The *NBIC* is developed and maintained by a consensus committee comprised of industry experts (the NBIC Committee). The NBIC Committee consists of a main committee, subcommittees, subgroups, and task groups of industry experts and has Federal representation by PHMSA. Participants meet biannually to consider revisions to the *NBIC* based on safety concerns, technological advances, new data, and industry needs. All meetings are free-of-charge and open to public participation. The *NBIC* subcommittees consider correspondence from the general public in the form of requests for interpretation, revision of existing standards, and requests to develop new standards. The standards-writing subcommittees, subgroups, and task groups are open to participation by representatives of groups that are materially affected by the code. Such groups include manufacturers, repair firms, authorized inspection agencies, and representatives of government agencies. Each year the *NBIC* Committee updates the *NBIC* and presents the updates on the National Board's Web site for public review in April-May and August-September. Updated editions are published biannually.

Section XII requires all alterations and repairs to the pressure vessel of a transport tank to be performed in accordance with the *NBIC* and requires an inspection to be performed by a National Board inspector. The *NBIC* Committee established a task group to develop requirements for continued service, repair, and alteration of *Section XII* transport tanks. The task group included PHMSA and industry representatives. The Committee's efforts culminated in the issuance of two new supplements to the *NBIC* code. While the NBIC code applies to boilers, pressure vessels, and pressure relief devices, these supplements were added to specifically address transport tanks. The first is *NBIC* Part 2, Section 6, Supplement 6, ''Continued Service and Inspection of DOT Transport Tanks.'' This document describes inspection of in-service transport tanks. The second is

[6] A rail tank car appendix may be developed in the future, and consequently, is not part of the scope of this NPRM.

[7] See: *http://www.asme.org/products/codes---standards/bpvc-xii---2013-bpvc-section-xii-rules-for-constru* (Accessed: March 27, 2013).

NBIC Part 3, Section 6, Supplement 6, ''Repair, Alteration, and Modification of DOT Transport Tanks.'' This document contains general requirements that apply to welding, repairs, alterations, modifications, examinations, etc., made to DOT transport tanks used for the transportation of hazardous materials. These supplements also specify the type of inspection to be performed and establish the criteria for inspections, reports, document maintenance, and inspector duties and responsibilities.

A copy of the 2013 edition of the *NBIC* is available for review at *www.regulations.gov* under Docket Number PHMSA–2010–0019 or DOT's Docket Operations Office (see **ADDRESSES** appearing earlier in this notice). The current cost of the complete NBIC set is $265 for either the hard copy or the Flash Drive edition.[8]

VII. Comparison of Section XII and Section VIII, Division 1 Supplemented by the Current HMR

Currently, the HMR incorporates *Section VIII, Division 1* of the ASME Code, which specifies the design and construction of stationary tanks. The HMR supplements *Section VIII, Division 1,* with added design, construction, certification, which are found in parts 178 and 179, and recertification and maintenance requirements, found in part 180, specific to transport tanks. *Section XII* and the 2013 edition of the NBIC have been developed specifically for design, construction, certification, recertification and maintenance of transport tanks. A review of differences between *Section VIII, Division 1* and *Section XII* can be very specific. However in this section we examine the broader philosophical differences between the way in which tanks may be designed in *Section VIII, Division 1* and the way tanks may be designed in *Section XII.* Two overarching differences in the two versions of the ASME standard are design margin allowances and design methodology; they are discussed below. Another difference between the current HMR and the *Section XII* is that when designing and constructing a tank to the requirements of *Section XII,* you *must* use the requirements in the 2013 edition of the *NBIC* for continued service of those tanks; whereas if you are using the HMR and *Section VIII, Division 1* you *may* use the NBIC, but are not required to do so.

Design Margin

The design margin, also known as factor of safety, is defined as the structural capacity of a system beyond the expected loads or actual loads. For the purposes of construction of transport tanks, the design margin is how much stronger than necessary we would require a tank to be built for an intended load. For example, a design margin of 3.5:1 means a tank must be built to withstand forces 3.5 times what it would be expected to endure in transportation. Meeting the required design margin exactly implies that the design meets the minimum allowable strength; however, a tank may be built to withstand greater forces than the design margin. Building a tank to withstand forces well over the required design factor sometimes implies ''over-engineering'' which can result in greater weight and/or cost.

Since the 1940's ASME's design margin for tanks has traditionally been 4.0:1 and, as far back as the 1950's, the HMR has incorporated *Section VIII, Division 1* and required the 4.0:1 design margin for transport tanks. In 1996, the ASME Pressure Vessel Research Committee instituted a research study in which it reviewed burst tests, failure data, failure modes—particularly fatigue and fracture and related toughness requirements, fabrication practices, improved materials, advances in welding, examination and testing. Notably, fracture mechanics did not exist as an engineering discipline when the design margin of 4 was established. Today, fracture mechanics allows an engineer to establish the minimum toughness required in a material based on the stress applied and the maximum credible size flaw.[9] The results of the 1996 study indicated that the design margin for pressure vessels could be safely reduced from 4.0:1 to 3.5:1.[10] Based on this study, and other research and data specific to transport tanks, ASME adopted a design margin of 3.5 on ultimate tensile strength in *Section XII* for the economic advantage of using higher allowable stresses and consequently thinner vessels.

The revised design margins under *Section XII* may have an effect on newly constructed transport tanks. For those tanks where the minimum thicknesses are controlled by pressure, they may be thinner and lighter than those constructed using a design margin of 4.0. PHMSA has issued several special permits allowing a 3.5:1 or a 3.0:1 design margin.[11] PHMSA has reviewed the incident data for these tanks and has not identified any incidents that would indicate a reduction in safety. Furthermore, PHMSA thoroughly evaluates the safety of any special permit before it is issued, and will only issue a permit if the level of safety provided is found to be equivalent to the HMR.

Rational Design

Section VIII, Division 1 and the HMR prescribe tank designs intended for a variety of situations. This approach may be attractive to the designer of a tank, as the same design may be used in a variety of situations; however, generally, this approach to design results in large built-in, design margins, over-design, and use of excess material. Rational design involves the application of a systematic method for determining the design variables that optimize a specific objective while satisfying the constraints.[12] PHMSA, ASME, and industry have determined through cooperative research and development that tanks constructed using rational design methodology provide an equivalent level of safety to currently authorized tank designs, but are more efficient than currently authorized tanks. For this reason, *Section XII* incorporates the rational design method. When using the rational method of design, a tank designer seeks to determine, as comprehensive and rigorously as possible, the factors affecting the safety and performance throughout the life of the tank, to determine the most efficient safe design. This process involves more calculations than previous *Section VIII* design methodologies and can incorporate highly sophisticated computer modeling in developing tank designs. Rational design methodology enables tanks to be designed with greater efficiency and less need for high margins of safety. Rational design under *Section XII,* Appendix VIII has enabled non-circular shell and heads to be made of material with thicknesses up to 15% less than what tank manufacturers currently use. Such a difference results in a tank with at least 2% more payload capacity.

[8] See: *http://www.nationalboard.org/Index.aspx?pageID=14&ID=20* (Accessed March 27, 2013).

[9] ''Reduction of Design Margin in the ASME Boiler and Pressure Vessel Code in the 1999 Addenda,'' Walter J. Sperko, P.E., *available at: http://freepdfz.com/pdf/reduction-of-asme-design-margin-sperko-engineering-service-inc-5156113.html* (last accessed 9/30/13).

[10] See *www.regulations.gov* docket number PHMSA–2010–0019–0016.

[11] See DOT–SP 12628 and DOT–SP 14492 for 3.5:1 design margin; see DOT–SP 14483, DOT–SP 14572, DOT–SP 14578, DOT–SP 14616 and DOT–SP 15220 for 3.0:1 design margin.

[12] See ''A Practical Methods for the Rational Design of Ship Structures; Hughes, Mistree and Zanic; Journal of Ship Research, Vol 24, No. 2, June 1980, pp. 101–113.''

Design and Construction of CTMVs: Identified Differences Between HMR and Section XII Requirements

This section highlights some specific differences between the currently incorporated Section VIII that is supplemented by the HMR and Section XII. This is not an all-encompassing list of differences, and it is only meant to highlight areas in which Section XII has improved upon the current combination of Section VIII and the HMR.

Special Materials Testing and Fabrication Requirements for MC 331 Tanks

Section XII Modal Appendix 1—''Cargo Tanks'' discontinues certain obsolete requirements for construction of MC 331 cargo tanks that are still required in §§ 178.337–2 and 178.337–4. This revision modernizes material specification designations and eliminates obsolete material specifications. It also eliminates certain obsolete material impact test requirements, especially for quenched and tempered materials. PHMSA has issued several special permits allowing the use of the newer material specifications in the ASME Code for construction and repair. A review of historical incident data shows an acceptable safety history with no reported incidents.

Standardization of Allowable Peak Secondary Stresses for MC 331 Cargo Tanks

The requirements in Modal Appendix 1–3.5.5 and 1–3.5.1(a)(1)(b) of Section XII standardize the allowable peak secondary stress levels resulting from short interval, non-persistent loads to that permitted for lading surge loads for MC 331 cargo tanks by § 178.337–3(d). The Appendix also aligns the MC 331 cargo tank design with the design standard of the DOT 400-series cargo tanks for short interval peak loads.

Defined Incident Provisions Relating to Pressure Boundaries

Currently the HMR specifically requires defined incident protection (accident protection) for specification tanks throughout Part 178 subpart J. The Modal Appendix 1 Article 1–1.5 of Section XII specifies that tank attachment points shall be designed for accident protection and leakage prevention. ASME asserts that inclusion of these requirements in Section XII clarifies and improves the accident protection requirements.

New Requirements To Account for Fatigue Loading in MC 331 Tanks

Section XII includes a new requirement to account for fatigue loading due to dynamic loading and full pressure cycles in design of MC 331 cargo tanks. This consideration is a safety enhancement from the previous *Section VIII* and HMR combination and provides explicit criteria for fatigue failure avoidance. This requirement compensates for slightly reduced stiffness and increased elastic deflection due to thinner tank walls authorized by Section XII. Accounting for fatigue loading is also intended to provide specific design guidance that will help avoid the potential for stress corrosion cracking in tanks made of quenched and tempered steels.

Consolidation of DOT's Special Design Requirements for MC 331 Tanks

In Section XII, the Modal Appendix 1–3.11.1 [Construction Requirements for Cargo Tank Vessels Used to Transport Specific Hazardous Materials]; and 1–3.11.2 [Equivalent Material Thickness] consolidate special DOT design requirements [13] for certain MC 331 cargo tanks designed for certain specific ladings into a single place.

The benefit resulting from consolidating design and construction requirements for each special lading tank vessel into its own subparagraph is that it will prevent the cargo tank designer from overlooking design requirements essential to DOT compliance. 49 CFR § 178.337 distributes these requirements throughout that section according to the particular design feature. Many DOT requirements essential to vessel construction are not found in § 178.337, but in § 173.315, which in turn references other 49 CFR sections. Specifically, the requirements for construction to an equivalent metal thickness criterion are found several places. Modal Appendix 1–3.11.2 converts these specific requirements into a generic form where it can be conveniently located. The consolidation of these requirements in Section XII is viewed as a safety enhancement as it will provide easier understanding of the requirements.

Standardized Pressure Relief Devices for Both Portable and Cargo Cryogenic Tankage

Both cryogenic portable tanks and cargo tanks are similar in design and construction. Their pressure relief devices have the same function in protecting the pressure vessel against over pressure for all conditions of operation. They should be similarly specified, and this has been done in Section XII, with the exception of the pressure relief valve setting and the tag stamping of the burst disc for portable tanks.

Uniformity of Piping and Valving Requirements for Cargo and Portable Cryogenic Tankage

As has been done for the Pressure Relief Devices, piping, filling and discharge openings together with valve requirements have been standardized for portable and cargo cryogenic transport tanks in Section XII. The standardization of these requirements in Section XII is viewed as a safety enhancement.

Continued Service of CTMVs, Portable Tanks, and Ton Tanks: Roles of Inspectors

Part 180 of the HMR specifies continued service requirements for DOT and UN portable tanks and DOT specification and certain non-specification CTMVs. Specific requirements for the qualification, maintenance, repair, and testing of packagings are located in 49 CFR part 180: subpart E for CTMVs, subpart F for ton tanks, and subpart G for portable tanks.

Incorporating *Section XII* and the *NBIC* as an alternative for continued service requirements for these ASME stamped bulk packagings may impact the roles and responsibilities of persons who perform tests, inspections, modifications, alterations, and repairs.

To ensure that DOT specification CTMVs are designed, constructed, and maintained in accordance with the applicable specification, the HMR require that each person who certifies CTMV design, construction, repair, or testing meet certain minimum qualifications. The qualification criteria are based on the function performed. Professionals who meet the qualifications set forth currently in the HMR for Design Certifying Engineer (DCE), Authorized Inspector (AI), and Registered Inspector (RI) perform continued service functions that are specified in the table below.

[13] The consolidated 49 CFR requirements are: § 178.337–1(c)(2); § 178.337–1(e)(2); § 178.337–1(f); § 178.337–2(b); § 178.337–2(c); § 178.337–8(a)(5)(iii); § 178.337–8(b); § 178.337–8(c); § 178.337–9(a); § 173.24b(b); § 173.315.

TABLE 7—TYPES OF INSPECTORS CURRENTLY IN THE HMR

Type of Inspector	Qualifications
A Design Certifying Engineer (DCE)	• Is a person registered with the U.S. DOT in accordance with subpart F of part 107 of the HMR who has the knowledge and ability to perform stress analysis of pressure vessels and otherwise determine whether a cargo tank design and construction meets the applicable DOT specification. • Certifies each specification cargo tank or CTMV design type, including its required accident damage protection; the design of a modified, stretched, or rebarrelled CTMV; or mounting of a cargo tank on a motor vehicle chassis involving welding on the cargo tank head or shell or any change or modification of the methods of attachment. • Must fulfill the knowledge and ability requirements by meeting any one of the following qualifications: ○ Have an engineering degree and one year of work experience in cargo tank structural or mechanical design; ○ Be currently registered as a professional engineer by appropriate authority of a state of the United States or a province of Canada; or ○ Have at least three years' experience in performing the duties of a DCE prior to September 1, 1991.
An Authorized Inspector (AI)	• Is regularly employed by an ASME-accredited Authorized Inspection Agency (AIA), who has been qualified to ASME-developed criteria to perform inspections under the rules of any jurisdiction that has adopted the ASME Code. • Is not employed by the manufacturer. • Holds a valid Certificate of Competency (where required), as defined in National Board Rules for Commissioned Inspectors, and a valid National Board Commission with an ''A'' endorsement. • Has satisfactory expertise, experience, and background for the inspection of boilers and pressure vessels and demonstrate the ability to perform shop and field (on-site) inspections to the satisfaction of the AIA. • Has knowledge of applicable sections of the ASME Code, Quality Control Programs, and requirements for the maintenance and retention of in-transit and permanent records. • Has received a passing grade on an examination given by the National Board that evaluates the individual's knowledge of, and familiarity with, the ASME Code, and complies with the National Board's rules for commissioned inspectors.
An Authorized Inspection Agency (AIA).	• Is a jurisdiction that has adopted and administers one or more sections of the ASME Boiler and Pressure Vessel Code as a legal requirement and has a representative serving as a member of the ASME Conference Committee; or • Is an insurance company that has been licensed or registered by the appropriate authority of a State of the United States or a Province of Canada to underwrite boiler and pressure vessel insurance in such State or Province.
A Registered Inspector (RI)	• Is a person registered with the Department in accordance with subpart F of part 107 of this chapter who has the knowledge and ability to determine whether a cargo tank conforms to the applicable DOT specification. A Registered Inspector meets the knowledge and ability requirements of this section by meeting any one of the following requirements: • Has an engineering degree and one year of work experience relating to the testing and inspection of cargo tanks; • Has an associate degree in engineering and two years of work experience relating to the testing and inspection of cargo tanks; • Has a high school diploma (or General Equivalency Diploma) and three years of work experience relating to the testing and inspection of cargo tanks; or • Has at least three years' experience performing the duties of a Registered Inspector prior to September 1, 1991.

Section XII requires all alterations and repairs to the pressure vessel of a transport tank to be performed in accordance with the *NBIC* and requires an inspection to be performed by a National Board inspector. The inspector, depending on the class designation of the transport tank, must be an Authorized Inspector (AI), Qualified Inspector (QI), or Certified Individual (CI). The different levels of inspectors and their required qualifications are shown in the table below.

TABLE 8—TYPES OF INSPECTORS IN SECTION XII AND THE NBIC

Type of Inspector	Qualifications
An Authorized Inspector (AI)	• Is regularly employed by an ASME-accredited Authorized Inspection Agency (AIA), who has been qualified to ASME-developed criteria to perform inspections under the rules of any jurisdiction that has adopted the ASME Code. • Is not employed by the manufacturer. • Holds a valid Certificate of Competency (where required), as defined in National Board Rules for Commissioned Inspectors, and a valid National Board Commission with an ''A'' endorsement. • Has satisfactory expertise, experience, and background for the inspection of boilers and pressure vessels and demonstrate the ability to perform shop and field (on-site) inspections to the satisfaction of the AIA. • Has knowledge of applicable sections of the ASME Code, Quality Control Programs, and requirements for the maintenance and retention of in-transit and permanent records.

TABLE 8—TYPES OF INSPECTORS IN SECTION XII AND THE NBIC—Continued

Type of Inspector	Qualifications
A Qualified Inspector (QI)	• Has received a passing grade on an examination given by the National Board that evaluates the individual's knowledge of, and familiarity with, the ASME Code, and complies with the National Board's rules for commissioned inspectors. • Is an inspector regularly employed by an ASME Qualified Inspection Organization (QIO) who has been qualified to ASME-developed criteria by a written examination, to perform inspections under the rules of any jurisdiction that has adopted the ASME Code. • May not be in the employ of the manufacturer. • Holds a valid Certificate of Competency (where required), as defined in National Board Rules for Commissioned Inspectors, and a valid National Board certification as a Qualified Inspector. • Has satisfactory expertise, experience, and background for the inspection of boilers and pressure vessels and demonstrate the ability to perform shop and field (on-site) inspections to the satisfaction of the QIA. • Has knowledge of applicable sections of the ASME Code, Quality Control Programs, and requirements for the maintenance and retention of in-transit and permanent records. • Has received a passing grade on an examination given by the National Board that evaluates the individual's knowledge of, and familiarity with, the ASME Code. The Qualified Inspector must comply with the National Board's rules for qualified inspectors.
A Certified Individual (CI)	• Is an individual certified by an ASME accredited organization authorized to use ASME marks, as either a full-time or part-time employee or contractor to the ASME certificate holder. • Is neither an AI nor a QI and must be certified and qualified to perform inspections by the CI's employer. • May be employed by the manufacturer or assembler. • Has the following minimum qualifications: ○ Knowledge of the requirements of Section XII for application of the appropriate Code Symbol stamp; ○ Knowledge of the Manufacturer's or Assembler's Quality System Program; and ○ Training commensurate with the scope, complexity, or special nature of the activities to which oversight is to be provided. • Has a record maintained and certified by the manufacturer or assembler, containing objective evidence of the qualifications of the CI and training provided the CI's qualifications and duties are as required in the latest edition and addenda of ASME QA1–1, Qualifications for Authorized Inspection.

For continued service, under both the current HMR and *Section XII,* the *NBIC* authorizes owner/users who meet the requirements of NB–371, ''Accreditation of Owner, User, and Inspection Organizations'' to perform service inspections, including repairs and alterations, if the owner/user possesses a valid National Board Owner/User Certificate of Authorization. Inspectors employed by the Owner/User may perform continued service inspections, including repairs and alterations, if the individual possesses a National Board Owner/User commission. Currently, under the HMR and as proposed in this NPRM, motor carriers or CTMV owner/operators may perform annual external visual inspections and leakage tests, with certain limitations (see 49 CFR 180.409).

While *Section VIII,* Division 1 does not distinguish between types of tanks and levels of inspectors, *Section XII* assigns transport tanks to three separate classes depending on the design of the tank. Each class includes transport tank designs that generally correspond to existing DOT specifications. The *NBIC* inspection requirements correspond to the class of transport tank as assigned in the Modal Appendices.

In the table below, PHMSA lists each class of transport tank to be constructed or repaired and the type of inspector required to perform the inspection. Currently there are no specifications in either *Section VIII, Division 1* or *Section XII* for Class 2 tanks, which is the designation that the committee set aside originally for rail car tanks and non-cryogenic portable tanks. While the specifications for Class 2 tanks are expected to be developed and incorporated into future editions of *Section XII* and the *NBIC,* the current editions do not include them.

TABLE 9—ASME TRANSPORT TANK CLASSES

Class	Current specification in HMR	Type of inspector	
		Section VIII and the HMR	Proposed section XII
Class 1	UN cryogenic portable tanks (See § 178.277) DOT 407 MAWP > 35 psi (See § 178.347) DOT 412 MAWP > 15 psi (See § 178.348) MC 338 (See § 178.338) MC 331 (See § 178.337) DOT 106A and 110AW (See § 179.300).	Authorized Inspector	Authorized Inspector.
Class 2	To be developed in future editions	N/A	N/A.
Class 3	DOT 406 (See § 178.346) DOT 407 MAWP ≤ 35 psi (See § 178.347) DOT 412 MAWP ≤ 15 psi (See § 178.348).	Authorized Inspector	Certified Individual, Authorized Inspector, or Qualified Inspector.

Repairs and alterations must be performed by organizations holding a valid National Board ''TR'' certificate of Authorization and in possession of the appropriate National Board Code symbol stamp. Alternatively, organizations employing Owner/User/Inspectors and in possession of a valid Owner/User Certificate of Authorization

issued by the National Board may repair and perform alterations on transport tanks owned and operated by the Owner/User Certificate of Authorization holder.

The periodic inspection and test frequencies for cargo tanks are specified in Modal Appendix 1 of Section XII. Periodic inspection and test frequencies for cryogenic portable tanks are specified in Modal Appendix 3 of Section XII. The periodic inspection and test frequencies are consistent with those specified currently in the HMR for cargo tanks and portable tanks.

Summary and Supporting Research Initiatives

In this NPRM, PHMSA proposes to amend the HMR in response to petitions submitted by industry representatives to incorporate *Section XII* and the 2013 edition of the *NBIC* as alternatives to *Section VIII, Division 1* and the current HMR requirements in part 178, for the design of cryogenic portable tanks and CTMVs, part 179 for the design of ton tanks, and part 180 for the continuing qualification and maintenance of CTMVs, cryogenic portable tanks and ton tanks.

As mentioned previously, *Section XII* and the 2013 edition of the NBIC will be optional, and industry could choose to continue to use *Section VIII, Division 1* and the current HMR requirements. The table below provides an overview of the options available to design, construct, repair and inspect tanks for use should the proposals in this NPRM be finalized.

TABLE 10—SUMMARY OF STANDARDS OPTIONS AS PROPOSED IN THIS NPRM

Stamp	Standard used for:		
	Build	Repair	Inspect
Specification, Non-Stamped Transport tanks.	ASME Section VIII with 49 CFR Parts 173 and 178.	1992 Edition of the NBIC with 49 CFR Part 180 *or* 2013 Edition of the NBIC without Supplement 6 and 49 CFR Part 180.	1992 Edition of the NBIC with 49 CFR Part 180 *or* 2013 Edition of the NBIC without Supplement 6 and 49 CFR Part 180
"U" Stamp	ASME Section VIII with 49 CFR Parts 173 and 178.	1992 Edition of the NBIC with 49 CFR Part 180 *or* 2013 Edition of the NBIC without Supplement 6 and 49 CFR Part 180.	1992 Edition of the NBIC with 49 CFR Part 180 *or* 2013 Edition of the NBIC without Supplement 6 and 49 CFR Part 180
"T" Stamp	ASME Section XII as authorized by proposed 173.14.	2013 Edition of the NBIC with Supplement 6.	2013 Edition of the NBIC with Supplement 6

In developing Section XII, the SC XII committee on transport tanks, as well as other stakeholders, commissioned studies on materials used in the construction of tanks, components of tanks, and tanks themselves, to aid in developing safe specifications for transport tanks. The table below highlights studies that address issues relevant to this NPRM. This table is not meant to be a definitive list of the body of research available and serves as a supplement to this rulemaking effort. The following table summarize these studies and others that relate to this NPRM, and the results of these studies:

TABLE 11—SUMMARY OF SUPPORTING RESEARCH INITIATIVES

Study Title/Docket No.	Study summary	Relation to ASME Section XII
DOT sponsored research project PO—TRS56–02–P–7004 Dynamic Analysis of DOT 407/412 Cargo Tank Motor Vehicles. PHMSA–2010–0019–0010, PHMSA–2010–0019–0017, PHMSA–2010–0019–0018.	The study analyzed DOT 407/412 CTMVs subjected to dynamic loads. The loads were harmonically analyzed to determine critical factors to the dynamic design of the CTMVs.	Results showed that most severe dynamic stress conditions occur rarely enough that fatigue may not be a contributing factor and that current DOT regulations (Section VIII and the HMR) may be too conservative. It was determined that more realistic allowable stress values for dynamic loads should be used as an alternative to the HMR. The results of this study were used in developing Section XII.
ASME Standards Technical Report, STP–PT–032, Buckling of Cylindrical, Thin Wall Trailer Truck Tanks. PHMSA–2010–0019–0013	This study used a full-scale trailer truck tank to develop rules specific to the design of DOT cylindrical, thin wall tanks. Specifically, this study focused on buckling of cylindrical pressure vessels under axial compression and examined bending. These issues are normally evaluated using the axial compression stress evaluation design methods in ASME Section VIII, Division 1. However, this study sought to define new methods for determining allowable compressive stresses.	The results of this study noted that new specific criteria for fabrication such as straightness, out of roundness, weld location, and use of actual material properties, incorporated in Section XII, improves upon Section VIII, Division 1 and the HMR, and provides acceptable design basis for establishing buckling design criteria and shell stiffening details for transport tanks.

TABLE 11—SUMMARY OF SUPPORTING RESEARCH INITIATIVES—Continued

Study Title/Docket No.	Study summary	Relation to ASME Section XII
Evaluation of the Puncture Resistance for Stainless Steel and Carbon Steel Tank Heads. PHMSA–2010–0019–0012	This study conducted a series of puncture resistance tests on various tank heads. The head sections tested fabricated of stainless steel (SST) and carbon steel (CS) with nominal wall thickness of ¼ inch, ⅜ inch and ½ inch. The objective of the puncture resistance tests was to demonstrate that SST heads are more puncture resistant than CS heads.	The study indicated that SST heads had greater puncture resistance compared with CS heads. The results of this study were used in developing Section XII specifically determining types of materials authorized and additional safety requirements for materials authorized in Section XII.
Evaluation of the Puncture Resistance for Bare and Insulated Stainless Steel (ISO) Tank Heads. PHMSA–2010–0019–0015	This study conducted a series of puncture resistance tests on various types of ISO tank head sections with and without insulation and jackets. The head sections tested were SST with nominal wall thickness of ¼ inches to ⅜ inches. The objectives of the puncture resistance tests were to demonstrate that ⅜-inch-thick SST heads are equal to or more puncture resistant than ¼-inch-thick SST heads with 4¼-inch-thick insulation and a 20-gage aluminum jacket.	The results of this study indicated that ⅜-inch-thick SST heads are equal to or more puncture resistant than ¼-inch-thick SST heads with 4¼-inch-thick insulation and a 20-gage aluminum jacket. Section XII authorizes the use of ⅜-inch-thick SST heads; whereas, Section VIII and the HMR does not.
Evaluation of Design Margins for ASME Code Section VIII, Davison 1. PHMSA–2010–0019–0016	This report examines vessels designed to *Section VIII, Division 1.* The main issues affecting the safety of those vessels are ductile rupture and brittle fracture. Tests on vessels with different strain hardening exponents have demonstrated that ductile rupture is highly unlikely with reduced margin of 3.5 on ultimate tensile strength.	This study concludes that a reduction in the present design margins from 4 to about 3.5 at temperatures below the creep range would be justified based on the improvements in the Code rules and excellent past experience with vessels built to the Code rules.
3.5 Material Design Factor and other Recent Changes to the ASME Boiler and Pressure Code. PHMSA–2010–0019–0014	ASME Pressure Vessel Research Committee instituted a research study in which it reviewed burst tests, failure data, failure modes—particularly fatigue and fracture and related toughness requirements, fabrication practices, improved materials, advances in welding, examination and testing.	The results of the study indicated that the design margin for pressure vessels could be safely reduced from 4.0:1 to 3.5:1. This study observed that most failures were the results of poor notch toughness, service degradation and operating problems. The biggest change that justifies the change in design margin is advancements in materials and more thorough understanding of materials behavior.
WYKE Laboratories—Test Report PHMSA–2010–0019–0017	In this study a Cargo Tank was subjected to Mobility Testing. Specifically, CTMV was driven on public roads, and subjected to dynamic forces in transport. The study collected data under a broad range of transport conditions.	The results of the study were used to develop design criteria for transport tanks in *Section XII* that had not been considered in developing *Section VIII.*
Report of Cargo Tank Rollover Test on an MC 305 Aluminum Trailer. PHMSA–2010–0019–0019	In this study, MC305 cargo tanks were rolled over and dragged over a concrete surface. This study was designed to measure the cargo tanks response to such an incident.	The results demonstrated the weaknesses in the tank structure as a result of a roller. These results were used to develop built-in rollover protection in transport tanks in Section XII.
A Practical Methods for the Rational Design of Ship Structures; Hughes, Mistree and Zanic; Journal of Ship Research, Vol. 24, No. 2, June 1980, pp. 101–113.	Studies the use of Rational design in shipbuilding and examines the application of a systematic method for determining the design variables that optimize a specific objective while satisfying the constraints.	Demonstrates that rational design methodology often provides an equivalent or greater level of safety to typically used practical design methods

Discussion of Proposed Amendments and Applicable Comments

In the ANPRM that was published on December 23, 2010, titled ''Hazardous Materials: Adoption of ASME Code Section XII and the National Board Inspection Code'' (Docket No. PHMSA–2010–0019, (HM–241), 75 FR 80765), we asked a number of questions pertaining to the potential costs, burdens, or safety concerns associated with incorporating *Section XII* and the 2011 edition of the *NBIC* for the construction and continued service of cargo tank motor vehicles, cryogenic portable tanks and ton tanks. Specifically, in the ANPRM we asked for comments on the following:

- What are the differences between *Section XII* and the HMR requirements?
- What is the potential safety and economic impacts of adopting the new *Section XII* requirement allowing a 3.5:1 design margin?
- What are the safety and economic impacts of adopting the new *Section XII* requirements for the testing and fabrication of special materials for construction and repair of MC 331 cargo tanks?
- What are the safety and economic impacts of adopting the *Section XII* requirement for allowable peak secondary stresses for MC 331 cargo tanks?
- What are the safety and economic impacts of using minimum allowed thickness for pressure parts instead of

nominal thickness and corrosion allowance?

• Are there substantial differences between the construction and continued service requirements of the HMR and *Section XII* for cargo tanks? If so, what are the potential costs, burdens, or safety problems associated with incorporating *Section XII* and the *NBIC* for the construction and continued service of these tanks?

• For existing cargo tanks designed, constructed and stamped with *Section VIII, Division 1* ''U'' stamp, are there substantial differences between the continued service requirements of the HMR and the most recent edition of the *NBIC*? If so, what are the potential costs and burdens associated with incorporating the NBIC for existing ''U'' stamped bulk packagings?

• Should PHMSA adopt through incorporation by reference *Section XII* and the most recent edition of the *NBIC* for construction and continued service of cargo tanks? If so, which existing requirements of the HMR should be replaced with references to these consensus standards?

• Would incorporation of *Section XII* and the *NBIC* for construction and continued service of cargo tanks positively affect transportation safety, and/or reduce industry costs?

• If PHMSA incorporates *Section XII* and the *NBIC* for the construction and continued service of cryogenic portable tanks, how long of a transition period would be needed to train employees to use these consensus standards? What are the associated costs of training?

• Are *Section XII* and the *NBIC* rules of construction and continued service of cryogenic portable tanks consistent with current HMR requirements? If not, should PHMSA consider general adoption of the consensus standards while taking exception to specific portions of the standards?

• Are there any potential compliance issues related to incorporating by reference *Section XII* and the newest edition of the *NBIC* in the HMR for the construction and continued service of cryogenic portable tanks?

• Are there substantial differences between the construction and continued service requirements of the HMR and *Section XII* for multi-unit tank car tanks? If so, what are the potential costs, burdens, or safety problems associated with incorporating *Section XII* and the *NBIC* for the construction and continued service of these tanks?

• For existing multi-unit tank car tanks designed and constructed in accordance with the HMR, are there substantial differences between current continued service requirements and the *NBIC*? If so, what are the potential costs and burdens associated with incorporating the latest edition of the *NBIC*?

• Should PHMSA adopt through incorporation by reference *Section XII* and the most recent edition of the *NBIC* for construction and continued service of multi-unit tank car tanks? If so, which existing requirements of the HMR should be replaced with references to these consensus standards?

• Would incorporation of *Section XII* and the latest edition of the *NBIC* for construction and continued service of multi-unit tank car tanks positively affect transportation safety, and/or reduce industry costs?

• Are *Section XII* and the *NBIC* rules of construction and continued service of multi-unit tank car tanks consistent with current HMR requirements? If not, should PHMSA consider general adoption of the consensus standards while taking exception to specific portions of the standards?

• Are there any potential compliance issues related to incorporating by reference *Section XII* and the newest edition of the *NBIC* in the HMR for the construction and continued service of multi-unit tank car tanks?

The ANPRM generated comments from 32 stakeholders, many of whom submitted multiple comments–some on the length of the comment period and most on the substance of the ANPRM. The majority of the comments—40 different comments from 21 commenters—were in opposition to incorporating by reference the two sets of standards into the HMR.[14] The ANPRM was not specific as to potential future course of action. Specifically, the ANPRM did not explicitly state whether PHMSA was going to propose to replace *Section VIII, Division 1* and the HMR with *Section XII* and the *NBIC,* or if we were going to propose to allow *Section XII* and the *NBIC* to be used as alternatives. In the ANPRM, there were no proposals set forth regarding the method of incorporation into the regulations of *Section XII* and the *NBIC* (e.g. outright replacement of *Section VIII, Division 1* with *Section XII* and the *NBIC* or incorporation of *Section XII* and the *NBIC* as an alternative in addition to *Section VIII, Division 1*). For that reason, it was the assumption of many commenters that *Section XII* would outright replace *Section VIII, Division 1* and the HMR, and these commenters voiced their opposition to Section XII with the understanding that they would not have an option as to what requirements they would be able to use.

The comments are accessible by docket number at the following URL: *http://www.regulations.gov.* A listing of the commenters, including the docket number associated with the comment, is provided below (company or organization abbreviations used throughout the document are also provided):

TABLE 12—COMMENTERS

Commenter	Abbreviation	Docket No.
Alloy Custom Products		PHMSA–2010–0019–0049
Altom Transport		PHMSA–2010–0019–0003
American Society of Mechanical Engineers	ASME	PHMSA–2010–0019–0032
American Trucking Associations	ATA	PHMSA–2010–0019–0043
Asian Tank Container Organization		PHMSA–2010–0019–0060
Baltimore Cargo Tank Services, Inc.		PHMSA–2010–0019–0046
Bulk Truck & Transport Service, Inc.		PHMSA–2010–0019–0004
C & R Fleet Services, Inc.		PHMSA–2010–0019–0022
C & R Fleet Services, Inc.		PHMSA–2010–0019–0037
Commercial Vehicle Safety Alliance	CVSA	PHMSA–2010–0019–0056
Compressed Gas Association	CGA	PHMSA–2010–0019–0025
Compressed Gas Association	CGA	PHMSA–2010–0019–0048

[14] The 21 commenters in opposition were: Alloy Custom Products, Altom Transport, ATA, Asian Tank Container Organization, Baltimore Cargo Tank Services, Inc., C & R Fleet Services, Inc, CVSA, DGAC, David Fulbright/WRG, Eurotainer U.S. Inc., International Tank Container Organisation, J & S Transport Co, Inc., James K. Victory, Jerry White, NPGA, NTTC, Silver/CIMS LLC, Steigerwalt Associates Inc., Stolt Nielsen USA Inc., TTMA, and Vulcraft of New York.

TABLE 12—COMMENTERS—Continued

Commenter	Abbreviation	Docket No.
Container Technology Inc.	CTI	PHMSA–2010–0019–0059
Dangerous Goods Advisory Council	DGAC	PHMSA–2010–0019–0050
Dangerous Goods Advisory Council	DGAC	PHMSA–2010–0019–0061
David Fulbright/WRG		PHMSA–2010–0019–0023
Eurotainer U.S. Inc.		PHMSA–2010–0019–0054
Gardner Cryogenics		PHMSA–2010–0019–0057
Heil Trailer International		PHMSA–2010–0019–0036
International Tank Container Organisation		PHMSA–2010–0019–0055
J & S Transport Co, Inc.		PHMSA–2010–0019–0034
James K. Victory		PHMSA–2010–0019–0033
Jerry White		PHMSA–2010–0019–0029
John Counts		PHMSA–2010–0019–0007
Monte Ward		PHMSA–2010–0019–0040
Monte Ward		PHMSA–2010–0019–0041
National Board of Boiler and Pressure Vessel Inspectors	National Board	PHMSA–2010–0019–0051
National Propane Gas Association	NPGA	PHMSA–2010–0019–0028
National Propane Gas Association	NPGA	PHMSA–2010–0019–0053
National Tank Truck Carriers, Inc.	NTTC	PHMSA–2010–0019–0002
National Tank Truck Carriers, Inc.	NTTC	PHMSA–2010–0019–0058
Nicholas Paulick		PHMSA–2010–0019–0039
Nicholas Paulick		PHMSA–2010–0019–0052
Pressure Sciences Incorporated	PSI	PHMSA–2010–0019–0047
Silver/CIMS LLC		PHMSA–2010–0019–0044
Steigerwalt Associates Inc.		PHMSA–2010–0019–0042
Stolt Nielsen USA Inc.		PHMSA–2010–0019–0062
Truck Trailer Manufacturers Association	TTMA	PHMSA–2010–0019–0009
Truck Trailer Manufacturers Association	TTMA	PHMSA–2010–0019–0045
Vulcraft of New York		PHMSA–2010–0019–0006

Comments in Favor of Adopting Section XII and NBIC

Comments received to the HM–241 ANPRM in favor of incorporating *Section XII* and the latest *NBIC* can be grouped generally into three categories: (1) Use of the standards would be economically beneficial; (2) adoption of *Section XII* and the 2013 edition of the *NBIC* will enhance safety; and (3) the standards are internationally compatible. The categories in support of adopting the standards, comments that reflect the nature of the support, and our responses to the comments are as follows.

The Use of Section XII and the 2013 Edition of the NBIC Would Be Economically Beneficial

Comments received from Gardner Cryogenics and Pressure Sciences Incorporated (PSI) indicated that adoption of the two standards would be economically beneficial. Gardener Cryogenics comment pertained to benefits to industry and provided a list of examples of improvements provided in *Section XII,* including:

> Adoption of reference steel thickness and equivalent thickness gives design engineers the freedom to utilize the material properties like modulus of elasticity, tensile strength and poisson's ratio to optimize the design for tank wall/vacuum jacket wall penetration.

We agree with Gardner Cryogenics that adopting *Section XII* will provide flexibility in design and material construction of tanks that would enable U.S. manufacturers to compete internationally without compromising safety.

PSI also spoke to the benefits to manufacturers under *Section XII,* indicating that the standards, if adopted, would allow manufacturers the flexibility to purchase the raw material that is least expensive at the time. This flexibility may reduce the cost to the manufacturer, who can pass those reduced costs on to the buyer of the tank. We agree with PSI and believe that manufacturers would choose to build Section XII tanks only if it is economically beneficial.

Adoption of the Section XII Will Increase Safety

Both Thompson Tank, Inc. and Gardener Cryogenics indicated that tanks designed to *Section XII* would increase the safety of portable and cargo tanks. Thompson Tank, Inc. states that:

> ASME is an international non-profit organization of the best and brightest professional engineers who volunteer their time to protect public safely through good engineering and design practices. DOT presently refers to ASME Section VIII and requires ASME certification of the most dangerous and complicated DOT specification cargo tanks. ASME Section XII will specifically help address the additional loads and stresses encountered when traveling over the highway.

PHMSA agrees with Thompson Tank and Gardener Cryogenics that portable and cargo tanks designed to *Section XII* provide at least an equivalent level of safety to portable tanks and cargo tanks designed to *Section VIII.* Cargo tanks that are partially loaded with liquid cargo may become unstable during sudden starts or stops, on rough terrain, or when the vehicle is turning. The liquid will slosh and make the tank more likely to roll over. Further, cargo tanks that are frequently loaded and unloaded—called cyclic loading—such as cargo tanks used to transport hazardous materials, are more likely to become ''fatigued [15]'' and crack. The design incorporated in *Section XII,* slightly reduces stiffness and increases elastic deflection with thinner tank walls. *Section XII* also provides specific design guidance to help mitigate the potential for stress corrosion cracking in tanks made of quenched and tempered steels.

Additionally, in *Section XII,* design stress criteria is the same for different cargo tank specifications, provided the tanks are to subjected to identical loads. This consistent criteria potentially reduces the added cost and weight of

[15] Fatigue is the progressive and localized structural damage that occurs when a material is subjected to cyclic loading. (Kim, W.H; Laird, C. (1978). Crack Nucleation and State I Propagation in High Strain Fatigue-II Mechanism. Acta Metallurgica. p. 789–799.)

certain additional accident protection devices. As a result, it allows for use of thinner materials and enables tanks to have greater capacities than those built to the *Section VIII, Division 1* standards. As such, this could result in fewer tanks carrying hazardous materials on U.S. highways, which should translate to fewer hazardous materials incidents. Further, the research sponsored by the U.S. DOT and ASME, that is summarized in *Section V* and Table 11 of Section VII of this NPRM indicates that tanks built according to *Section XII* are as safe as tanks authorized currently.

The Standards Are Compatible Internationally

PSI indicated that tanks designed to *Section XII* would increase harmonization with international standards. They state:

> Section XII is written using terminology compatible with international standards such as UN standards and International Maritime Dangerous Goods Code (IMDG). Its intent is to be useable internationally; and several foreign manufacturers already possess the T-symbol stamp certifying their capability to manufacture vessels using the new code.

We agree with PSI that *Section XII* and the *NBIC* may be used internationally and are consistent with other international standards, including UN-based standards and regulations. Several foreign manufacturers already possess the T-symbol stamp certifying their capability to manufacture vessels using the new code.

Comments in Opposition to Adopting Section XII and NBIC

Comments in opposition to adopting the standards ranged in subject matter and can be grouped into five categories: (1) The costs are too high; costs include the cost of purchasing the standards, and training inspectors and enforcement personnel; (2) it would be difficult to comply with the standards; (3) it would be difficult to enforce the standards; (4) adopting the standards would not be in the interest of harmonization; and (5) adoption of the standards would be unsafe. The categories in opposition to adopting the standards, comments that reflect the nature of the support, and our responses to the comments are as follows.

The Cost of Purchasing Section XII and the NBIC Is Too High

Sixteen commenters [16] expressed concern with the costs of purchasing *Section XII* and the *NBIC.* Altom Transport indicated that they have 500 trailers maintained at 12 sites. They stated that ''We would not be able to afford to buy the manuals required to get maintenance and repair information.'' International Tank Container Organisation stated that ''the cost of ASME and NBIC codes is prohibitive in the international community as in certain locations that handle UN and IMO portable tanks, the combined cost of the two codes would exceed an individual's annual earnings.'' DGAC stated:

> We believe the cost of these documents, would limit their availability to those who are subject to and use the regulations, including tank manufacturers, shippers, and carriers, as well as, those in the enforcement community. While the requirements are now readily available in 49 CFR, which can be obtained at no cost electronically, adopting the requirements by reference would mean that anyone wishing to comply with the regulations would be required to purchase publications (and updates) that would cost in the range of $650.

NPGA's echoes other commenters on this subject. They state:

> NPGA believes that purchasing the ANPRM's referenced codes creates a hardship and financial barrier on small businesses and an impediment to the review of PHMSA's proposed regulations. Further, the initial cost of approximately $1.8 million associated with purchasing the ANPRM's referenced codes could actually double before a final rule is promulgated as these codes are in constant change by the very nature of the rules and regulations which govern their revision cycles.

As PHMSA is not proposing to require manufacturers to use *Section XII* and the 2013 edition of the *NBIC,* and to do so is completely voluntary, PHMSA is not imposing any additional costs on manufacturers. A manufacturer will not use *Section XII* to build a tank unless it believes it is net beneficial to do so. Those who choose to use Section XII and the 2013 edition of the *NBIC* will incur some cost and realize some benefits from the use of the new standard.

Cost of Training and Inspecting Tanks Too High

David Fulbright/WRG, NPGA, and Steigerwalt Associates Inc., commented on the costs incurred for training and inspections. NPGA stated:

> NPGA can estimate initial costs to our industry as follows. If approximately 2800 members of NPGA are retail marketers and only two-thirds of these marketers employ their own Registered Inspector, this represents approximately 1875 individuals who need to obtain NBIC certification. Testing costs, the frequency of testing, or an estimate of the cost to train employees on non-commodity specific transport maintenance is not provided. Given these uncertainties, NPGA estimates an initial cost to our members based solely on a test cost of $200 per R.I. would be in excess of $375,000.

Silver CIMS LLC commented and C & R Fleet Services, Inc., on the cost of training to comply with the new standards. Silver CIMS LLC states:

> Anyone that's already developed training and quality plans would redundantly be forced to prescribe to NBIC's training and certification scheme's (at great cost due to the redundant training, training fees charged and loss of earnings during the non-revenue generating man hours needed to complete the redundant training). As a small business, this would be an unnecessary financial burden.

And C & R Fleet Services, Inc., states:

> The purpose of the HMRs is to enhance the safe transportation of hazardous materials. Motor carrier compliance with the HMRs is necessary to protect the public. To ensure this compliance, motor carriers must be aware of the requirements set forth in the HMRs. Requiring motor carriers to purchase Industry Standards to ensure compliance is a serious safety breach, as some carriers may not be able to purchase copies of these regulations for each driver, maintenance professional, and operations staff. Over ninety-six percent of the trucking industry qualifies as a small business.

As stated previously, in this NPRM we are not proposing to require motor carriers to use or purchase tanks built to Section XII, so an owner or user of tanks would only choose to purchase or use a tank built to Section XII if it makes business sense to do so.

The cost of enforcing *Section XII* and the *NBIC* was a concern to also ATA, John Counts and TTMA. ATA states:

> PHMSA is dependent on literally hundreds of state troopers to enforce the HMRs during roadside inspections. How many states have the extra funds in their budget to purchase the copyrighted standards for each of their inspectors? If the cargo tank standards are copyrighted and not made available to these enforcement officials, how will they be upheld? The inability to enforce aspects of the HMRs could create a serious safety risk.

ATA is correct in that PHMSA regulations are enforced by hundreds of state troopers throughout the country. We understand that the cost of purchasing the standards for each inspector would be prohibitive for many state governments. It is our understanding that during roadside inspections, state officials are most often only concerned with identifying that the ASME mark is intended for the packaging on which it is stamped. This

[16] Altom Transport, ATA, Asian Tank Container Organization, CVSA, DGAC, David Fulbright/WRG, International Tank Container Organisation, James K. Victory, Jerry White, NPGA, NTTC, Silver/CIMS LLC, Steigerwalt Associates, Inc., Stolt Nielsen USA, Inc., TTMA, Vulcraft of New York.

would not require state governments to purchase copies of *Section XII* for every state trooper. Rather, the most in-depth inspection performed on a tank is handled by an independent third-party inspector, typically a National Board Commission Inspector from an insurance company. This would also apply to the repair of the ASME packaging using the NBIC, which also requires a marking. Furthermore, as engineers at PHMSA were instrumental in developing *Section XII* and the 2013 edition of the *NBIC,* they understand them and are available to help interpret the standards. As with other highly technical or scientific standards that we incorporate in the HMR, PHMSA's Hazardous Materials Information Center staff will have access to the engineers who helped develop the standards. Furthermore, ASME issues written replies to inquiries concerning interpretation of technical aspects of the Code.

PHMSA acknowledges the purchase of copies of *Section XII* may be cost prohibitive to certain entities. Therefore, PHMSA seeks comets on whether state and local governments will need to purchase the copies of *Section XII* for all applicable personnel or if interpretations issued by ASME or PHMSA will be sufficient.

Incorporating Section XII and the Latest NBIC Is Contrary to International Harmonization

The commenters who voiced their opposition to incorporating the standards for reasons pertaining to international harmonization, supply, use, or represent users or suppliers of cryogenic portable tanks. The commenters indicated that the vast majority of portable tanks are built and inspected in accordance with the IMDG, and the industry believes that switching to *Section XII* and the latest *NBIC* may impede international trade.

Asian Tank Container Organization stated:

> Adopting ASME XII and/or NBIC for in service or Continued Use Inspection would be counter to the efforts made internationally over the past 12 years by representatives of the various countries Competent Authorities. The UN Model Regulations for the Transport of Dangerous Goods is the international consensus standard for UN Portable tanks. This document now forms the basis for UN Portable tank regulations in IMDG, RID, ADR and 49 CFR parts 100·180, as applicable.

The comments provided by Eurotainer, a company that leases portable tanks to manufacturers for import and export bulk shipments of liquefied and cryogenic gases, characterize the comments provided by other portable tank stakeholders. Eurotainer ''would like to see a more harmonized adoption of global regulatory requirements for the design, construction and certification of UN and IM Portable tanks . . .'' They state:

> As Section XII is being proposed to apply to the Cryogenic Portable tank segment (IM 7 & UN T 75), Eurotainer sees this action as segregating an equipment type and applying specialized rules that hinder the equipment in international trade. Current construction of the UN T 75 tanks in the U.S. is governed by the 49 CFR sections which include the requirement of ASME Section VIII Division I and as such section is applied currently we feel SECTION XII would be another layer of regulation that is adding no additional margin of safety but would add another layer of regulatory burden to the global community.

The International Tank Container Organization states:

> We consider that any deviation away from the aforementioned International consensus standard would be a step backwards and a move away from the long desired goal of International Harmonization. Adopting ASME XII and/or NBIC for in-service or Continued Use Inspection would, we believe, be counter to the efforts made internationally over the past 12 years. The international consensus standards for UN Portable tanks is the aforementioned UN Model Regulations, which provides the basis for UN Portable tank requirements in set down RID, ADR, IMDG and 49 CFR parts 100–180, as applicable and not ASME XII or NBIC.

As with Section VIII, Division 1, the 1992 edition of the NBIC and the HMR, which are the current requirements for design and construction of transport tanks, Section XII and the 2013 edition of the NBIC are compatible with international recommendations and standards. PHMSA fully supports the goal of international harmonization through its work with stakeholders at the UN and IMDG. PHMSA also incorporates both of these international standards by reference within the HMR. Currently there is no universally agreed upon pressure vessel code that is recognized by the committee of experts represented at the UN; however, the UN Model Regulations defer to Competent Authorities to determine what pressure vessel code is to be used for the design and construction requirements. The United States has recognized the ASME Code (*Section VIII, Division 1*) as the pressure vessel code for design and construction through its incorporation by reference in the HMR since inception of the UN Model Regulations. As stated earlier in this NPRM, *Section XII* is being proposed as an alternative to existing requirements.

Eurotainer asked if a foreign approval agency [17] that tests a non-U-stamped IM or UN portable tank would be required to carry an NBIC registration and wondered, if so, whether the DOT or NBIC would be able to police those agencies. 49 CFR part 107, authorizes certification agencies to witness testing and examination of portable tanks on behalf of the DOT. They further questioned whether the owner or user of non-U-stamped portable tanks would be responsible for maintaining the NBIC registration of inspectors to meet the requirements of the NBIC code in foreign countries on tanks that may be imported into or exported out of the United States. The answer is no. As is currently required in the HMR, the Designated Approval Agency (DAA) (see 49 CFR part 107) would continue to authorize repairs and witness inspections (see 49 CFR part 180). If it needs to be repaired, the facility doing the repair would need authorization from the DAA for the repair (see 49 CFR 180.605(j)), with the appropriate Authorized Inspector verifying the repair is done in accordance with the NBIC, and the DAA witnesses the final hydrostatic or pneumatic test (see 49 CFR 180.605(h)(3)), in accordance with criteria set forth in the NBIC. For the ''T'' stamped tanks, this process is similar to that in the HMR, and is specified in the 2013 edition of the NBIC.

Eurotainer asked if owners and operators of the equipment would be allowed to perform their own inspections and testing per the CFR 49 § 180.605 with a staff member that is a registered NBIC inspector. If so, Eurotainer feels that ''the NBIC adoption will lower the safety margin that is now in place using uninterested third parties instead of a staff member to the company owning or operating the equipment.''

PHMSA is aware that there is always the potential that a person—either a third-party or an employee—may not comply with a requirement stipulated in a regulation, either set forth directly in the HMR or incorporated by reference in the HMR; however, a person who has function-specific training in inspecting tanks, regardless of their employer, should be able to perform the task to ensure that the tank is safe. PHMSA conducts regulatory enforcement and issues civil penalties to entities that fail

[17] A foreign approval agency is an entity outside of the U.S. that PHMSA has granted authority to perform a certain function required under the HMR. In this case, a foreign approval agency would test and certify that certain transport tanks meet the NBIC (see 49 CFR 107.402).

to perform inspections as required by the HMR.

Adopting the Standards Would Be Unsafe

Five commenters [18] indicated that adopting the standards would be unsafe. Asian Tank Container Organization states:

> The enforcement authorities and Port Authorities in most foreign countries ONLY recognize IACS [International Association of Classification Societies, Ltd.] member Approval Agencies due to their long standing involvement in the IMDG code. Speaking from recent Industry experience, tanks inspected by non-IACS members would be stopped in transit and dangerous goods would need to be trans-loaded to an approved portable tank. The trans-load costs and increased risks would make it impractical to ship product worldwide and this would prove a barrier to International trade which may harm both the USA and third party economies.

Similarly, the International Tank Container Organisation states:

> We anticipate that UN Portable tanks inspected by other non-IACS members would be stopped in transit and dangerous goods would need to be trans-loaded (as has been the case) to an approved portable tank (increasing both cost and risk, exponentially, as most incidents happen during load/unload operations).

PHMSA does not intend to change the established process of using IACS preferred member Approval Agencies [19] with regard to portable tanks, nor the HMR process of authorization for foreign approval agencies (see 49 CFR 107.402). As stated above, under this NPRM the inspection of a cryogenic portable tank, whether ASME ''U'' or ''T'' marked, would follow current HMR requirements in that the manufacture or repair of the pressure vessel would be subject to an Authorized Inspector in addition to the involvement of an Approval Agency.

PHMSA, by proposing to incorporate Section XII and the 2013 edition of the NBIC as alternatives to the current regulatory system is not lessening safety, or creating barriers to international trade that would harm U.S. or third-party economies. On the contrary, PHMSA believes that the proposed rulemaking will help the U.S. economy by allowing the manufacture and repair of an internationally competitive product.

Furthermore, the ASME standards have been deemed equivalent by PHMSA technical staff and have been proven to provide, through special permits, an equivalent level of safety to that of tanks constructed and designed according to the specifications currently provided in the HMR. For example, special permits SP–05749; SP–10481; and SP–12630, SP–14710, SP–14467, 14437, providing similar flexibility in materials of construction as provided by *Section XII,* allow reduced shell thickness and alternatives to the materials of construction specified in the HMR for portable tanks and cargo tanks. These permits have been in use for decades with over 13,000 shipments and no reported incidents.

Voluntary Consensus Standards Are Inherently Inconsistent With the Administrative Procedures Act

Nine additional commenters generally oppose the incorporation of voluntary consensus standards.[20] NPGA opposes ''DOT reliance on a third (3rd) party to write regulations that have such a profound impact on our industry.'' This sentiment is representative of the many commenters opposed to incorporation of the standards because they are developed by voluntary consensus organizations. The commenters are concerned that they would no longer have a voice in changes to the regulations. They also are concerned that the changes made would no longer be transparent. Silver/CIMS LLC states:

> The UN and IMO Portable tank Industry have had NO input in the development of ASME or NBIC proposed rules. USDOT should NOT adopt ASME Chapter XII or NBIC for any other purpose as the publications are NOT International Consensus Standards for UN Portable tank construction or use. If USDOT were to replace 49 CFR 100–180 with ASME and NBIC, the UN Portable tank Industry stakeholders would be hamstrung in their abilities to influence future rules and regulations.

While we understand the concerns regarding incorporating voluntary consensus standards, PHMSA and many other Federal agencies often incorporate by reference standards developed by industry experts. In fact, the National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires agencies to 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 is otherwise impractical. Public Law 104–113 requires Federal agencies to use industry consensus standards to the extent practical; it does not require Federal agencies to endorse a standard in its entirety. The law does not prohibit an agency from generally adopting a voluntary consensus standard while taking exception to specific portions of the standard if those provisions are deemed to be ''inconsistent with applicable law or otherwise impractical.'' Taking specific exceptions furthers the Congressional intent of Federal reliance on voluntary consensus standards because it allows the adoption of substantial portions of consensus standards without the need to reject the standards in their entirety because of limited provisions that are not acceptable to the agency.

It has been PHMSA's practice to review new editions and addenda of the ASME *BPVC* and *NBIC* and periodically update § 171.7 to incorporate newer editions and addenda by reference. New editions of the subject codes will be issued every two years. The BPVC was last incorporated by reference into the regulations under Docket No. RSPA–99–6213 (HM–218) (August 18, 2000; 65 *FR* 50450). In that final rule, § 171.7 was revised to incorporate by reference the 1998 edition of Sections II (Parts A and B), V, VIII (Division I) and IX, of the BPVC. The NBIC 1992 Edition was incorporated by reference under Docket HM–183C (November 3, 1994; 59 FR 55162). We intend to continue to review these standards, and either incorporate them in their entirety, incorporate portions of these standards, or not incorporate them, depending on the outcome of our review. Furthermore, we intend to be active participants in the development of future editions of *Section XII* and the *NBIC.*

Alloy Custom Products, NPGA and NTTC expressed concern that interpretations of the standards would not be readily available through PHMSA. As stated earlier, engineers at PHMSA were instrumental in the development of the standards, they understand them, and are available to help interpret them. As with other highly technical or scientific standards that we incorporate in the HMR, PHMSA's Hazardous Materials Information Center staff will have access to the engineers who helped develop the standards. PHMSA seeks comment on the availability of interpretations of *Section XII* and the *NBIC, specifically, if*

[18] Asian Tank Container Organization, C & R Fleet Services, Inc, International Tank Container Organisation, Steigerwalt Associates Inc., and Stolt Nielsen USA Inc.

[19] IACS is a membership organization that endorses member foreign approval tank inspection agencies as ''preferred approval agencies.'' Foreign enforcement and port authorities recognize these inspection agencies over non- IACS preferred inspection agencies according to IACS.

[20] Baltimore Cargo Tank Services, Inc., Dangerous Goods Advisory Council, J & S Transport Company, Inc., Jerry White, National Propane Gas Association, National Tank Truck Carriers, Inc., Silver CIMS, LLC, Tank Truck Manufacturers Association, Vulcraft of New York.

access to interpretations through ASME and PHMSA would be sufficient.

Finally, as mentioned above the meetings of both ASME and the NBIC are free-of-charge and open to public participation. ASME subcommittees consider correspondence from the general public in the form of requests for interpretation and revision to existing codes, requests for code cases, and requests to develop new standards. The *NBIC* subcommittees consider correspondence from the general public in the form of requests for interpretation, revision of existing standards, and requests to develop new standards. The standards-writing subcommittees, subgroups, and task groups are open to participation by representatives of groups that are materially affected by the code. Each year the *NBIC* Committee updates the *NBIC* and presents the updates on the National Board's Web site for public review in April–May and August–September.

Miscellaneous Comments

In addition to the comments in support and in opposition to the ANPRM some comments were neither in support or opposed and offered other insights and suggestions. These comments are categorized and discussed further below.

Separate Section XII from the NBIC

CTI and Gardner stated that PHMSA should separate into two separate rulemakings the incorporation of the *NBIC* and that of *Section XII.* Gardner states that:

> Our reservations on NBIC are based on the difficulties in implementing two new items simultaneously. We would recommend that Section XII be adopted as soon as possible with the existing DOT Registered Engineers and Inspectors while giving the interested parties extended time to familiarize, discuss and comment on NBIC for eventual adoption in two to three years.

Since *Section XII* was developed to be used in conjunction with the *NBIC,* and that there would be no provision for continued maintenance or inspections of tanks built to *Section XII* in the HMR if the latest NBIC is not incorporated at the same time, we cannot incorporate them at separate times.

Standards Are Not Accurate

Alloy Custom Products voiced concern that ''the rules for ASME Sec XII and NBIC should not be adopted as presently written and they should be sent back to the respective organizations for correction and modification.'' There were no specific errors cited; however, the latest editions of both standards were published in 2013. They are up-to-date and correct typographical errors, and clarify and simplify the previous editions. As with most in-depth, detailed publications, later editions of these standards include updates and corrections.

Replacing Standards Would Create a Monopoly

James K. Victory and NTTC indicated that incorporating the standards would create a monopoly. Victory stated that ''the only profiteers from this being ASME and the National Board of Pressure Vessel Inspectors.'' PHMSA thanks James K. Victory and NTTC for their comments. We will take this view into consideration. However, as mentioned above, we are proposing to adopt *Section XII* and the 2013 edition of the *NBIC* as alternatives to *Section VIII, Division 1* and the HMR, stakeholders will be provided more options.

Adopt Standards As Alternative

Four commenters suggested that if we do incorporate *Section XII* and the *NBIC,* we should only do so as an alternative, not a replacement to *Section VIII, Division 1* and the HMR.[21] TTMA explains that:

> This approach will give the regulated community the option of employing the effective existing regulations, or these other publications. We anticipate the vast majority of industry stakeholders will choose the existing HMR for their code compliance basis.

We agree, and in this NPRM, we are proposing to take this suggested approach, and we believe this will diffuse much of the opposition to the new codes and allow manufacturers greater flexibility.

Proposed Amendments

In this NPRM, PHMSA is proposing to incorporate *Section XII,* with limited exceptions, as an alternative to existing standards for the following tanks: DOT Specification 331, 338, 406, 407, and 412 cargo tanks, cryogenic portable tanks, and ton tanks. *Section VIII, Division 1* applies to construction of new tanks only, and requires that they are marked with a ''U'' stamp to indicate that they constructed and certified in accordance with that section. *Section XII* applies to both new construction and continued service, and tanks constructed under this standard will be marked with a ''T.'' Tanks that are repaired under Section XII would be marked with the ''TR'' stamp. Further, PHMSA is proposing to adopt the 2013 edition of the *NBIC* for alterations, repairs and inspections performed on all ASME constructed tanks used for the transportation of hazardous materials as an alternative to the 1992 edition that is currently incorporated by reference. The 2013 *NBIC may* be used for tanks constructed to the specifications set forth in *Section VIII, Division 1.* While the use of the 2013 edition of the NBIC would be optional under this proposed rulemaking, PHMSA believes that most manufacturers building to Section VIII, Division 1 would choose to use the 2013 edition of the NBIC as it is more current. Under this proposed rule, the 2013 edition of the NBIC *must* be used for tanks constructed to the specification set forth in *Section XII.*

The research and development projects summarized in Section V and Table 11 of Section VII of this NPRM support the proposed codes and standards to be adopted in this rulemaking. These research and development projects are available in the public docket for this rulemaking. From the results of the studies and its own analysis, PHMSA has concluded that the proposed standards, as described in this NPRM, provide an equivalent level of safety to the current standards.

Furthermore, by providing the 2013 edition of the *NBIC* and *Section XII* as options, industry may choose modern materials to fabricate tanks, enabling the use of different, equally safe, materials predicated on market value.[22] The assortment of materials described in *Section XII* include different formulations of carbon steel and alloy/stainless steel, such as Chromium-Nickel Stainless Steel, Chromium-Molybdenum-Vanadium alloy steel, and titanium alloy. *Section XII* also includes specifications for steel fabrication and treatment, such as tempering, quenching, and forging (See *Section XII* Part TM). This variety of approved materials will enable U.S. manufacturers to better compete internationally. It will allow for greater capacity per tank, and reduce the number of tanks on highways in certain circumstances. This reduction of motor vehicles hauling hazardous materials on the highways would reduce the potential for hazardous material

[21] Heil, International Tank Container Organisation, Silver/CIMS LLC, and Truck Trailer Manufacturers Association.

[22] PHMSA has authorized through special permit some of these new materials authorized in ASME *Section XII* specifically Heat Resting Chromium and Chromium-Nickel Stainless Steel Plate, Sheet and Strip for Pressure Vessels (DOT SP–14467) and Titanium and Titanium Alloy Strip, Sheet and Plate (DOT SP–14710) see *http://phmsa.dot.gov/hazmat/permits-approvals/special-permits.*

incidents, and consequently, improve safety.

Section By Section Review

The following is a section-by-section review of the amendments proposed in this rulemaking.

Part 107, Subpart F

This subpart establishes a registration procedure for persons who are engaged in the manufacture, assembly, inspection and testing, certification, or repair of a cargo tank or a cargo tank motor vehicle manufactured in accordance with a DOT specification under subchapter C of this chapter or under terms of a special permit issued under this part. In this NPRM, we are not proposing to revise this subpart, but we are referring to it in section 173.14, where we propose to add the terminology ''inspectors or their employer must be registered with DOT.''

Part 171

Section 171.7

This section lists material incorporated by reference into the HMR. This NPRM proposes to amend § 171.7, Matter incorporated by reference, to list the 2013 edition of ASME Boiler and Pressure Vessel Code, *Section XII* and the 2013 edition of the National Board of Boiler and Pressure Vessel Inspectors' *National Board Inspection Code (NBIC).* Specifically, § 171.7(g)(1) will be revised to include ASME Boiler and Pressure Vessel Code, *Section XII* in addition to the currently reference *Section VIII, Division 1.* The section references in this paragraph will remain the same. In addition, § 171.7(x)(1) and (2) will be revised to include the 2013 edition of NBIC. The section references in this paragraph will remain the same.

Part 173

Section 173.14

In this NPRM we are proposing to establish new Section 173.14 for authorization and conditions for the use of *Section XII.*

• This NPRM proposes to revise part 173 by adding § 173.14 to set forth the authorization for the use of *Section XII* of American Society of Mechanical Engineers Boiler and Pressure Vessel Code. Further, in proposed § 173.14 we are setting forth conditions for the use of *Section XII,* specifically with respect to continued service of transport tanks, where *Section XII* conflicts with the *NBIC.* Conditions for all tanks will be specified in paragraph (a)(1) and include: The 2013 edition of the National Board Inspection Code (NBIC) must be used for the design, construction, and certification qualification and maintenance of cargo tank motor vehicles, cryogenic portable tanks and multi-unit tank car tanks (ton tanks)

• ASME Section XII includes use of ASME Sections II Materials, Section V Nondestructive Examination, Section VIII, Division 1 for Parts only, Section VIII, Division 2 for fatigue analysis only, Section IX Welding and Brazing, and the NBIC Parts 1, 2 and 3, including Supplement 6 of Parts 2 and 3;

• Nameplate character markings must be a minimum 4 mm (5/32″), markings directly on the tank must be a minimum 8 mm (5/16″);

• Periodic test information must not be allowed on the ASME nameplate. Marking must be in accordance with the NBIC Part 2 or Part 3, Supplement 6;

• Inspection personnel must have qualifications as required by ASME Section XII, Article TG–4, and be qualified as evident by having a current NBIC commission with endorsement for the level/type of inspection to be performed or certification from their employer when applicable;

• Inspectors or their employer must be registered with DOT.

• Repairs must be performed by a facility holding a current NBIC certificate of authorization for the use of the National Board ''TR'' Stamp.

Conditions and requirements for cargo tanks will be specified in paragraph (a)(2) and must conform to all applicable requirements of part 173; and must meet ASME Section XII Modal Appendix 1, the appropriate Article for the category of cargo tank, all Mandatory Appendices and Non Mandatory Appendices A thru E and G thru H, except as follows:

• Repairs must be performed by a DOT-registered facility holding a current NBIC certificate of authorization for the use of the National Board ''TR'' Stamp.

• For Category 338 Cargo Tanks, ASME Section XII, Modal Appendix 1, Article 4, paragraph 1–4.4(g)(6) does not apply. A minimum jacketed thickness of 2.4 mm (0.0946 in) 12 gauge in the reference steel is permitted (IBR see § 171.7).

Conditions and requirements for cryogenic portable tanks will be set forth in paragraph (a)(3) and must conform to all applicable requirements of this Part; and must meet ASME Section XII Modal Appendix 3, Article 1, all Mandatory Appendices and Non Mandatory Appendices A thru E and G thru H, except as follows:

• External and internal visual inspection in accordance with NBIC Part 2 Supplement 6 are required in addition to ASME Section XII, Modal Appendix 3, Article 1, paragraph 3–1.10(b), and Article 1, 3–1.10(b)(5) (IBR see § 171.7);

• ASME Section XII, Modal Appendix 3, Article 1, paragraph 3–1.10(b)(6) does not apply. Periodic test information must not be allowed on the ASME nameplate. Marking must be in accordance with the NBIC Part 2 or Part 3, Supplement 6 as applicable. (IBR see § 171.7);

• ASME Section XII, Modal Appendix 3, Article 1, paragraph 3–1.10(d) must require inspection personnel to have qualifications as required by ASME Section XII, Article TG–4, as evident by having a current NBIC commission with endorsement for the level/type of inspection to be performed or certification from their employer when applicable. (IBR see § 171.7); and

• ASME Section XII, Modal Appendix 3, Article 1, paragraph 3–1.10 must require Repairs to be performed by a facility holding a current NBIC certificate of authorization for the use of the National Board ''TR'' Stamp. Records must be in accordance with the NBIC Part 2 or Part 3, Supplement 6 as applicable.(IBR see § 171.7).

Conditions and requirements for ton tanks will be set forth in paragraph (a)(4). Ton tanks must conform to all applicable requirements of part 173 and must meet Modal Appendix 4, Article 1, all Mandatory Appendices and Non Mandatory Appendices A thru E and G thru H except as follows:

• ASME Section XII, Modal Appendix 4, Article 1, paragraph 3–1.10 Manufacturer-certified fusible plugs, tested and qualified under the fuse plug manufacturers' written Quality Control system are required. (IBR see § 171.7);

• ASME Section XII, Modal Appendix 4, Article 1, paragraph 4–8 must allow non-ASME marked fusible plugs.;

• ASME Section XII, Modal Appendix 4, Article 1, paragraph 4–12(a) must require external and internal visual inspection in accordance with NBIC Part 2 Supplement 6, S6.15. (IBR see § 171.7);

• ASME Section XII, Modal Appendix 4, Article 1, paragraph 4–12(a)) does not apply. Periodic test information must not be allowed on the ASME nameplate. Marking must be in accordance with the NBIC Part 2 or Part 3, Supplement 6 as applicable.(IBR see § 171.7);

• ASME Section XII, Modal Appendix 4, Article 1, paragraph 4–12(e) must require records to be in accordance with the NBIC Part 2 or Part 3, Supplement 6 (IBR see § 171.7);

• Inspection personnel must have qualifications as required by ASME Section XII, Article TG–4, as evident by holding a current NBIC commission with endorsement for the level/type of inspection to be performed or certification from their employer when applicable;

• A ton tank that fails a prescribed test or inspection must be repaired as specified in the 2013 NBIC or removed from service;

• Repairs must be performed by a facility holding a current NBIC certificate of authorization for the use of the National Board ''TR'' Stamp.

Part 178

Section 178.200

In this NPRM we are proposing to establish a new § 178.200 for the authorization for the use of *Section XII* and the *NBIC* for cryogenic portable tanks.

Section 178.300

In this NPRM, we are proposing to establish a new § 178.300 for the authorization for the use of *Section XII* and the *NBIC* for cargo tank motor vehicles.

Part 179

Section 179.300

In this NPRM, we are proposing to revise § 179.300 to establish paragraphs (a) and (b). Paragraph (a) would continue to require that multi-unit tank car tanks must meet the requirements set forth in the HMR and paragraph (b) would provide a new authorization for multi-unit tank car tanks to be designed, constructed and certified in accordance with *Section XII* with the conditions and limitations set forth in § 173.14.

Part 180

Section 180.402

In this NPRM, we are proposing to add a new § 180.402 for authorization for the use of the 2013 Edition of the *NBIC* with *Section VIII, Division 1* for the qualification and maintenance of cargo tanks.

Section 180.502

In this NPRM, we are proposing to add a new § 180.502 for authorization for the use of the 2013 Edition of the *NBIC* with *Section VIII, Division 1* for the qualification and maintenance of tank cars.

Section 180.602

In this NPRM, we are proposing to add a new § 180.602 for authorization for the use of the 2013 Edition of the *NBIC* with *Section VIII, Division 1* for the qualification and maintenance of cryogenic portable tanks.

IX. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This NPRM is published under the authority of the Federal Hazardous Materials Transportation Law, 49 U.S.C. 5101 *et seq.* Section 5103(b) authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. This NPRM provides an alternative to the current process for the design, fabrication, maintenance and continued service of CTMVs, cryogenic portable tanks and ton tanks, without compromising safety.

The Administrative Procedure Act (APA) requires Federal agencies to give interested persons the right to petition an agency to issue, amend, or repeal a rule (5 U.S.C. 553(e)). 49 CFR 106.95, provides the process and procedures for persons to petition PHMSA to add, amend, or delete a regulation. In this NPRM, PHMSA is addressing this statutory requirement by considering petitions for rulemaking from ASME, the National Board, and PVMA.

B. Executive Order 13610, Executive Order 13563, Executive Order 12866, and DOT Regulatory Policies and Procedures

This NPRM is not considered a significant regulatory action under section 3(f) Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget (OMB). The proposed rule is not considered a significant rule under the Regulatory Policies and Procedures order issued by the U.S. Department of Transportation (44 FR 11034).

Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866 Regulatory Planning and Review of September 30, 1993. Executive Order 13563, issued January 18, 2011, notes that our nation's current regulatory system must not only protect public health, welfare, safety, and our environment but also promote economic growth, innovation, competitiveness, and job creation.[23] Further, this executive order urges government agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. In addition, federal agencies are asked to periodically review existing significant regulations, retrospectively analyze rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and modify, streamline, expand, or repeal regulatory requirements in accordance with what has been learned.

Executive Order 13610, issued May 10, 2012, urges agencies to conduct retrospective analyses of existing rules to examine whether they remain justified and whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies.[24]

By building off of each other, these three Executive Orders require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.''

PHMSA believes that if *Section XII* and the 2013 edition of the *NBIC* are incorporated as alternatives to *Section VIII, Division 1* and the HMR, tank manufacturers would be given more flexibility in their choice of material and design, allowing carriers of bulk liquid hazardous materials to purchase lighter-weight, higher-capacity tanks capable of transporting more material per shipment. Tanks built to the design and construction requirements in *Section XII* have been tested by ASME to ensure that they withstand conditions and stresses unique to transportation, such as rollovers, bottom damage, or piping damage. The flexibility in selection of ASME standards will facilitate international competitiveness for the transport of hazardous materials and eliminate barriers to U.S. manufacturers transporting goods internationally that are created by the rigid material construction requirements in Section VIII, Division 1 and the HMR. Further, the ASME standards have been deemed equivalent by PHMSA technical staff and have been proven to provide, through special permits, an equivalent level of safety to that of tanks constructed and designed according to the specifications currently provided in the HMR.

As PHMSA is not proposing to require manufacturers to use *Section XII* and the 2013 edition of the *NBIC,* and to do so is completely voluntary, PHMSA is not imposing any additional costs. A manufacturer will not use *Section XII* to build a tank unless it believes it is net beneficial to do so. Since *Section XII*

[23] See *http://www.whitehouse.gov/the-press-office/2011/01/18/improving-regulation-and-regulatory-review-executive-order.*

[24] See *http://www.gpo.gov/fdsys/pkg/FR-2012-05-14/pdf/2012-11798.pdf.*

would allow manufacturers the flexibility to purchase the raw material that is least expensive at the time, this may reduce the cost to the manufacturer, who can then pass on that discount to the buyer of the tank. We know that any rational manufacturer will not avail itself to this option unless it makes business sense.

While we don't believe that this rule imposes any new costs, we request comments, including specific data if possible, concerning the costs and benefits that may be associated with revisions to the HMR based on the issues presented in this notice.

C. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''), and the President's memorandum on ''Preemption'' published in the **Federal Register** on May 22, 2009 (74 FR 24693). This proposed rule will preempt State, local, and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on the following subjects:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This proposed rule addresses packaging for hazardous materials, covered in number 2 above. If adopted as final, this rule will preempt any State, local, or Indian tribe requirements concerning packaging for hazardous materials unless the non-Federal requirements are ''substantively the same'' as the Federal requirements. Furthermore, this proposed rule is necessary to update, clarify, and provide relief from regulatory requirements.

Incorporation of new consensus standards by reference in the HMR may impact state and local CTMV enforcement programs. Potential impacts include the cost of purchasing the new Section XII consensus standards and training employees in the use of this consensus standard. However, PHMSA notes that currently many of state enforcement personnel are not equipped with *Section VIII, Division 1* and must use outside sources to reference this standard. It is our understanding that during roadside inspections, state officials are most often concerned with identifying that the ASME mark is intended for the packaging on which it is stamped. This would not require state governments to purchase copies of *Section XII* for every state trooper. Rather, the most in-depth inspection performed on a tank is handled by an independent third-party inspector, typically a National Board Commission Inspector from an insurance company. This would also apply to the repair of the ASME packaging using the NBIC, which also requires a marking. Furthermore, as engineers at PHMSA were instrumental in developing *Section XII* and the 2013 edition of the *NBIC,* they understand them and are available to help interpret the standards. As with other highly technical or scientific standards that we incorporate in the HMR, PHMSA's Hazardous Materials Information Center staff will have access to the engineers who helped develop the standards. We invite state and local governments with an interest in this rulemaking to comment on any effect that revisions to the HMR to address the issues outlined in this proposed rule may cause.

D. Executive Order 13175

E.O. 13175 requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that ''significantly or uniquely affect'' Indian communities and that impose ''substantial and direct compliance costs'' on such communities. PHMSA is not aware of any significant or unique effects or substantial direct compliance costs on the communities of the Indian tribal governments. Therefore, we conclude that the funding and consultation requirements of Executive Order 13175 do not apply. We invite Indian tribal governments to provide comments if they believe there will be an impact.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Policies and Procedures

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This notice has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

The adoption of *Section XII* should not have any impact on small businesses, given that the standard is optional. After reviewing the safety records of both current tanks and new models of tanks constructed under special permit, PHMSA analysts found no disparities between the safety records.

We estimate that there are 5,166 businesses likely to be affected by this rule. The Small Business Administration (SBA) uses industry-specific standards to estimate which of those are ''small businesses'', which could be based on employment or revenue. PHMSA assumes that a significant number of businesses within the regulatory scope (nearly all) are small.

Based on our analysis, the three major industries—manufacturers, third party inspection agencies, and tank repair services—could, at their discretion—conform to the new standards. Manufacturers could introduce new materials. Third party inspectors would conduct tests under more current, meaningful testing relevant to more modern designs. Tank repair services could expand to accommodate the new standards.

Given the expected service life of about 30 years, we assume that only 1/30 of all tanks will be replaced each year. Given the optional nature of the rule, the new tanks will consist of some newer *Section XII* tanks and some *Section VIII* tanks. Any manufacturer would build tanks according to the needs of the customer, including price. At the same time, the small number of *Section XII* tanks entering the market each year will allow repairers and inspectors to transition their workforce smoothly.

Based upon the above estimates and assumptions, PHMSA certifies that the proposals in this NPRM will not have a significant economic impact on a substantial number of small entities. In this notice, PHMSA is soliciting comments on the preliminary conclusion that the proposals in this NPRM will not cause a significant economic impact on a substantial number of small entities.

F. Paperwork Reduction Act

Section 1320.8(d), Title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. The recordkeeping requirements in *Section XII* and the 2013 edition of the *NBIC* are analogous; the recordkeeping costs of complying with *Section XII* and the 2013 edition of the *NBIC* are not significantly different than those currently required under the current regulatory scheme.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141,300,000 or more to either state, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), and implementing regulations by the Council on Environmental Quality (40 CFR part 1500) require Federal agencies to consider the consequences of Federal actions and prepare a detailed statement on actions that significantly affect the quality of the human environment.

The Council on Environmental Quality (CEQ) regulations order Federal agencies to conduct an environmental review considering (1) the need for the proposed action, (2) alternatives to the proposed action, (3) probable environmental impacts of the proposed action and alternatives, and (4) the agencies and persons consulted during the consideration process (see 40 CFR 1508.9(b)).

Description of Action

PHMSA is considering the following alternatives: Alternative 1 is to take no action; Alternative 2 is to incorporate ASME Section XII and NBIC 2013 by reference and remove Section VIII; Alternative 3 is to allow tank manufacture and use of Section XII as an alternative to Section VIII. Use of the 2013 NBIC for continued service under Section VIII is optional, while use of the 2013 NBIC with Section XII is required; and Alternative 4 is to withdraw the rulemaking action and allow use of the standards through Special Permit. Each alternative presented below represents different levels of adoption of the new *Section XII* code, from Alternative 1 (0%) to Alternative 2 (100%). Alternatives 3 and 4 may result in a proportion between and including these extremes—i.e., Alternative 3 may result in all or no manufacturers choosing to use the *Section XII* specifications. Similarly, reliance on the special permit process could result in all or none of the manufacturers requesting a special permit. At this point, it is difficult to find a basis to project future, based on market activity. However, PHMSA believes that the adoption of the new standard would yield substantial savings to both the manufacturer and the user of the tanks.

Alternative 1: No action. This is not the preferred alternative. This would continue the incorporation by reference of *Section VIII, Division 1* for design and construction of cryogenic portable tanks and CTMVs (The reference to NBIC 1992 for the continued use would also remain unchanged). Though *Section VIII, Division 1* sets forth detailed criteria for the design, construction, certification, and marking of stationary boilers and pressure vessels, it does not address unique conditions and stresses encountered by tanks in the transportation environment. The HMR addresses this deficiency by adding requirements to account for conditions and stresses likely to occur in transportation. This alternative would not impose any costs, but it would prevent the opportunity to realize any efficiency benefits.

Alternative 2: Incorporate ASME *Section XII* and *NBIC* 2013 by reference and remove *Section VIII, Division 1.* This is not the preferred alternative. It would promote more current design standards, by ridding the HMR of outdated information and incorporating standards that address modern manufacturing and welding methods. Efficiency improvements would provide manufacturers more flexibility in design, and allow for lighter-weight tanks that would use less fuel to transport, with larger capacities. *Section XII* would also provide for more uniform enforcement over time. However, it may preclude a normal market-based transition from one standard to another and force manufacturers to incur investments and staffing changes to comply with new standards. Many commenters expressed concern that they would be unduly burdened either immediately or in the future by ASME standards that they have no recourse to appeal. The costs would be the purchase of *Section XII;* the minimal facility transition costs discussed above; and the initial training that may occur before the usual three-year cycle.

Alternative 3: Allow tank manufacture and use under *Section XII* as an alternative to *Section VIII, Division 1* and the applicable *NBIC* for continued use. This option is the preferred alternative, because it would provide regulatory flexibility, without imposing burdensome costs. It would also leave the manufacturers and buyers to negotiate which design best meets their needs, in terms of cost, resilience, and operations. Lastly, it would authorize the use of the 2013 edition of the *NBIC* as it applies to existing tanks and would require its use for those tanks built to *Section XII* specifications. It may, however, create inefficiencies among in-house, third-party and state inspectors, because inspectors would have to be trained to two distinct standards. This alternative would provide regulatory flexibility, without diminishing safety from current levels. It would also leave the manufacturers and buyers to negotiate which design best meets their needs, in terms of cost, resilience, and operations.

Alternative 4: Withdraw the Rulemaking Action and Allow Use of Standards through Special Permit. This is not the preferred alternative. This option would grant permission to produce, use, and maintain tanks manufactured to *Section XII* through a special permit. This would allow PHMSA to promote technological advancement while maintaining the ability to closely monitor performance. PHMSA has already issued one competent authority approval and one special permit related to *Section XII.* This option would require positive action by manufacturers to apply for a special permit and meet PHMSA's standards for fitness. While this may be a more cautious approach, each special

permit application, including technical drawings and costs associated with party-to applications, such as proof of fitness, would be incurred under this option. PHMSA estimates that the typical special permit application costs $45 to the applicant and $3,000 for PHMSA to evaluate. A full analysis of the advantages and disadvantages and the cost and benefits associated with each alternative can be found in the regulatory evaluation in the docket for this rulemaking.

PHMSA is proposing Alternative 3, as it was found to be the most optimal. Benefits associated with the rule include lower manufacturing costs and higher capacities for shippers. Costs to industry are minimal and incurred only when the manufacturer decides to fabricate tanks to the *Section XII* standards.

Environmental Consequences

When developing potential regulatory requirements, PHMSA evaluates those requirements to consider the environmental impact of each amendment. Specifically, PHMSA evaluates the: risk of release and resulting environmental impact; risk to human safety, including any risk to first responders; longevity of the packaging; and if the proposed regulation would be carried out in a defined geographic area, the resources, especially any sensitive areas, and how they could be impacted by any proposed regulations.

Of the regulatory changes proposed in this rulemaking, the non-editorial amendments are discussed in further detail and evaluated based on their overall environmental impact as follows.

Environmental benefits result from the fact that fewer CTMVs, ton tanks and cryogenic tanks will be required to transport the same quantities of hazardous materials. In most cases, due to substitution of material of construction, the thickness of the tanks would be reduced, permitting more material to be hauled, and reducing the number of tanks needed to handle the same volume of product.[25] As supported by the studies referenced in Table 11 of Section VII and based on the analysis of both versions of the ASME codes, PHMSA's Engineering and Research Division asserts that despite the reduction in the design margin between Section VIII and Section XII, the standards provide an equivalent level of safety. As the proposed alternatives would provide the same level of safety as the currently authorized tanks, the risk of incidents is reduced proportionately to the reduction of the number of tanks in commerce.

- Add a new section to part 173 that will provide authorization and conditions for the use of 2013 edition of the *NBIC* in conjunction with *Section VIII, Division 1* as an alternative. The levels of inspectors set forth in the 2013 edition of the *NBIC* provide the same level of oversight as those set forth in the currently incorporated 1992 edition of the *NBIC* combined with the specifications set forth in the HMR. For that reason, PHMSA anticipates that use of the 2013 edition of the NBIC compared to use of the 1992 edition and the HMR will not result in any significant impact to the human environment.

Federal Agencies Consulted

In an effort to ensure all appropriate federal stakeholders are provided a chance to provide input on potential rulemaking actions, PHMSA as part of its rulemaking development consults other federal agencies that could be potentially affected. In developing this rulemaking action PHMSA consulted the Federal Motor Carrier Safety Administration (FMCSA), Federal Railroad Administration (FRA), Environmental Protection Agency (EPA), and Occupational Safety and Health Administration (OSHA).

Conclusion

This NPRM proposes to incorporate by reference *Section XII* and the *NBIC* as alternatives to *Section VIII, Division 1* and the HMR. As discussed above PHMSA believes standards provide an equivalent level of safety and the proposals in this NPRM are environmentally neutral. In fact, dependent on the level of usage of Section XII and subsequent reduction of the number of tanks needed to handle the same volume of product this rule may prove environmentally beneficial over time. However, PHMSA welcomes any data, information, or comments related to environmental impacts that may result from the proposal discussed in this notice.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.dot.gov/privacy.*

K. International Trade Analysis

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we would assess the effects of any rule to ensure that it does not exclude imports that meet this objective. *Section XII* is written using terminology compatible with international standards such as UN standards and IMDG. Its intent is to be useable internationally; and several foreign manufacturers already possess the T-symbol stamp certifying their capability to manufacture vessels using the new code. Accordingly, incorporating *Section XII* and the *NBIC* as alternatives to *Section VIII, Division 1* and the HMR would be consistent with PHMSA's obligations under the Trade Agreement Act, as amended.

List of Subjects

49 CFR Part 171

Applicability, General Requirements, North American shipments, Exports, Hazardous materials transportation, Imports, Incorporated by reference, Definitions.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Qualification and maintenance of cargo tanks, tank cars and portable tanks.

In consideration of the foregoing, 49 CFR chapter I is amended as follows:

[25] For example, a MC 331 propane tank manufactured according to the *Section XII* would have a 12.5% reduction in wall thickness when compared to *Section VIII, Division 1.* This reduction would lead to at least a 2% increase in product capacity while maintaining the current level of safety.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134, section 31001; 49 CFR 1.81 and 1.97.

Subpart A—Applicability, General Requirements, and North American Shipments

■ 2. In § 171.7, paragraphs (g)(1), (x)(1), and (x)(2) are revised to read as follows:

§ 171.7 Reference material.

* * * * *

(g) * * *

(1) 'ASME Code'; ASME Code, Sections II (Parts A and B), V, VIII (Division 1), and IX of 1998 Edition of American Society of Mechanical Engineers Boiler and Pressure Vessel Code, into §§ 172.102; 173.5b; 173.24b; 173.32; 173.306; 173.315; 173.318; 173.420; 178.255–1; 178.255–2; 178.255–14; 178.255–15; 178.272–1; 178.273; 178.274; 178.276; 178.277; 178.320; 178.337–1; 178.337–2; 178.337–3; 178.337–4; 178.337–6; 178.337–16; 178.337–18; 178.338–1; 178.338–2; 178.338–3; 178.338–4; 178.338–5; 178.338–6; 178.338–13; 178.338–16; 178.338–18; 178.338–19; 178.345–1; 178.345–2; 178.345–3; 178.345–4; 178.345–7; 178.345–14; 178.345–15; 178.346–1; 178.347–1; 178.348–1; 179.400–3; 180.407 and Section XII of the 2013 Edition of American Society of Mechanical Engineers Boiler and Pressure Vessel Code into § 173.14, § 178.200, § 178.300, § 179.301(b).

* * * * *

(x) * * *

(1) NB–23, National Board Inspection Code, A Manual for Boiler and Pressure Vessel Inspectors, 1992 Edition, into § 180.413.

(2) National Board Inspection Code, A Manual for Boiler and Pressure Vessel Inspectors, 2013 Edition, into § 180.402; § 180.602, and § 180.502.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 3. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 4. Add § 173.14 to subpart A to read as follows:

§ 173.14 Authorization and conditions for the use of Section XII of American Society of Mechanical Engineers Boiler and Pressure Vessel Code.

(a) This section authorizes, with certain conditions and limitations, the use of Section XII of American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code Section XII) (IBR *see* § 171.7) as an alternative to ASME Code Section VIII, Division 1 (IBR, *see* § 171.7).

(b) Limitations on the use of the ASME Code Section XII for cargo tank motor vehicles, cryogenic portable tanks, and multi-unit tank car tanks (ton tanks) designed, constructed, and certified qualified and maintained in accordance with ASME Code Section XII authorized in paragraph (a) of this section—

(1) *Conditions and requirements for all tanks.* (i) The 2013 edition of the National Board Inspection Code (NBIC) (IBR, *see* § 171.7) must be used for the design, construction, and certification qualification and maintenance of cargo tank motor vehicles, cryogenic portable tanks and multi-unit tank car tanks (ton tanks).

(ii) ASME Section XII must include use of ASME Sections II Materials, Section V Nondestructive Examination, Section VIII, Division 1 for Parts only, Section VIII, Division 2 for fatigue analysis only, Section IX Welding and Brazing, and the NBIC Parts 1, 2 and 3, including Supplement 6 of Parts 2 and 3;

(iii) Nameplate character markings must be a minimum 4 mm (5/32″), markings directly on the tank must be a minimum 8 mm (5/16″);

(iv) Periodic test information is not permitted on the ASME nameplate. Marking must be in accordance with the NBIC Part 2 or Part 3, Supplement 6;

(v) Inspection personnel must have qualifications as required by ASME Section XII, Article TG–4, and be qualified as evident by holding a current NBIC commission with endorsement for the level/type of inspection to be performed or certification from their employer when applicable;

(vi) Inspectors or their employer must be registered with DOT;

(vii) Repairs must be performed by a facility holding a current NBIC certificate of authorization for the use of the National Board ''TR'' Stamp.

(2) *Conditions and requirements for cargo tanks.* Cargo tanks must conform to all applicable requirements of this Part; and must meet ASME Section XII Modal Appendix 1, the appropriate Article for the category of cargo tank, all Mandatory Appendices and Non Mandatory Appendices A thru E and G thru H, except as follows:

(i) Repairs must be performed by a DOT-registered facility holding a current NBIC certificate of authorization for the use of the National Board ''TR'' Stamp.

(ii) For Category 338 Cargo Tanks, ASME Section XII, Modal Appendix 1, Article 4, paragraph 1–4.4(g)(6) does not apply. A minimum jacketed thickness of 2.4 mm (0.0946 in) 12 gauge in the reference metal is permitted (IBR *see* § 171.7).

(3) *Conditions and requirements for cryogenic portable tanks.* Cryogenic portable tanks must conform to all applicable requirements of this Part; and must meet ASME Section XII Modal Appendix 3, Article 1, all Mandatory Appendices and Non Mandatory Appendices A thru E and G thru H, except as follows:

(i) External and internal visual inspection in accordance with NBIC Part 2 Supplement 6 are required in addition to ASME Section XII, Modal Appendix 3,Article 1, paragraph 3–1.10(b), and Article 1, 3–1.10(b)(5) (IBR *see* § 171.7);

(ii) ASME Section XII, Modal Appendix 3, Article 1, paragraph 3–1.10(b)(6) does not apply. Periodic test information is not permitted on the ASME nameplate. Marking must be in accordance with the NBIC Part 2 or Part 3, Supplement 6 as applicable. (IBR *see* § 171.7);

(iii) ASME Section XII, Modal Appendix 3, Article 1, paragraph 3–1.10(d) requires inspection personnel to have qualifications set forth in ASME Section XII, Article TG–4, as evident by having a current NBIC commission with endorsement for the level/type of inspection to be performed or certification from their employer when applicable. (IBR *see* § 171.7); and

(iv) ASME Section XII, Modal Appendix 3, Article 1, paragraph 3–1.10 requires repairs to be performed by a facility holding a current NBIC certificate of authorization for the use of the National Board ''TR'' Stamp. Records must be in accordance with the NBIC Part 2 or Part 3, Supplement 6 as applicable. (IBR *see* § 171.7).

(4) *Conditions and requirements for ton tanks.* Ton tanks must conform to all applicable requirements of this Part and must meet Modal Appendix 4, Article 1, all Mandatory Appendices and Non Mandatory Appendices A thru E and G thru H except as follows:

(i) ASME Section XII, Modal Appendix 4, Article 1, paragraph 3–1.10) Manufacturer-certified fusible plugs, tested and qualified under the fuse plug manufacturers' written

Quality Control system are required. (IBR *see* § 171.7);

(ii) ASME Section XII, Modal Appendix 4, Article 1, paragraph 4–8 must allow Non ASME marked fusible plugs;

(iii) ASME Section XII, Modal Appendix 4, Article 1, paragraph 4–12(a) must require external and internal visual inspection in accordance with NBIC Part 2 Supplement 6, S6.15. (IBR *see* § 171.7);

(iv) ASME Section XII, Modal Appendix 4, Article 1, paragraph 4–12(a)) does not apply. Periodic test information is not allowed on the ASME nameplate. Marking must be in accordance with the NBIC Part 2 or Part 3, Supplement 6 as applicable (IBR see § 171.7);

(v) ASME Section XII, Modal Appendix 4, Article 1, paragraph 4–12(e) must require records to be in accordance with the NBIC Part 2 or Part 3, Supplement 6 (IBR *see* § 171.7);

(vi) Inspection personnel must have qualifications as required by ASME Section XII, Article TG–4, as evident by having a current NBIC commission with endorsement for the level/type of inspection to be performed or certification from their employer when applicable;

(vii) A ton tank that fails a prescribed test or inspection must be repaired or removed from service;

(viii) Repairs must be performed by a facility holding a current NBIC certificate of authorization for the use of the National Board ''TR'' Stamp.

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 5. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 6. Add § 178.200 to subpart H to read as follows:

§ 178.200 Authorization for the use of Section XII of American Society of Mechanical Engineers Boiler and Pressure Vessel Code and the National Board, National Board Inspection Code for cryogenic portable tanks.

As alternative to ASME Code Section VIII, Division 1 (IBR, see § 171.7) and the requirements of this subpart, UN T75 cryogenic portable tanks may be designed, constructed and certified in accordance with Section XII of American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code Section XII) (IBR see § 171.7), with the conditions and limitations set forth in § 173.14.

■ 7. Add § 178.300 to subpart J to read as follows:

§ 178.300 Authorization for the use of Section XII of American Society of Mechanical Engineers Boiler and Pressure Vessel Code and the National Board, National Board Inspection Code for cargo tank motor vehicles.

As alternative to ASME Code Section VIII, Division 1 (IBR, see § 171.7) and the requirements of this subpart, DOT Specification cargo tank motor vehicles may be designed, constructed and certified in accordance with Section XII of American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code Section XII) (IBR see § 171.7), with the conditions and limitations set forth in § 173.14.

PART 179—SPECIFICATIONS FOR TANK CARS

■ 7. The authority citation for part 179 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 8. Revise § 179.300 to read as follows:

§ 179.300 General specifications applicable to multi-unit tank car tanks designed to be removed from car structure for filling and emptying (Classes DOT–106A and 110AW).

(a) Multi-unit tank car tanks must meet the requirements set forth in this subpart; or

(b) Multi-unit tank car tanks may also be designed, constructed and certified in accordance with Section XII of American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code Section XII) (IBR see § 171.7), with the conditions and limitations set forth in § 173.14

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

■ 9. The authority citation for part 180 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 10. Add § 180.402 to subpart E to read as follows:

§ 180.402 Authorization for the use of the 2013 Edition of the National Board, National Board Inspection Code with Section VIII, Division 1 of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code.

This section authorizes, with certain conditions and limitations set forth in § 173.14, the use of the 2013 edition of the National Board Inspection Code (NBIC) (IBR, *see* § 171.7) for the maintenance of cargo tanks constructed to Section VIII, Division 1 of the 1998 Edition of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code. DOT Specification cargo tanks constructed to the 1998 Edition of the ASME Code Section VIII, Division 1 that bear a U Stamp may be examined, inspected, and tested under Part 180 Subpart E and the NBIC Parts 1, 2, and 3, excluding Supplement 6 of Parts 2 and 3. The 2013 edition of the National Board Inspection Code (NBIC) (IBR, *see* § 171.7) must be used for the maintenance of cargo tanks constructed to ASME Code Section XII as set forth in § 178.300.

■ 11. Add § 180.502 to subpart F to read as follows:

§ 180.502 Authorization for the use of the 2013 Edition of the National Board, National Board Inspection Code with Section VIII, Division 1 of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code.

This section authorizes, with certain conditions and limitations set forth in § 173.14, the use of the 2013 edition of the National Board Inspection Code (NBIC) (IBR, *see* § 171.7) for the maintenance of ton tanks constructed to Section VIII, Division 1 of the 1998 Edition of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code. The 2013 edition of the National Board Inspection Code (NBIC) (IBR, *see* § 171.7) must be used for the maintenance of ton tanks constructed to ASME Code Section XII as set forth in § 178.200.

■ 12. Add § 180.602 to subpart G to read as follows:

§ 180.602 Authorization for the use of the 2013 Edition of the National Board, National Board Inspection Code with Section VIII, Division 1 of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code.

This section authorizes, with certain conditions and limitations set forth in § 173.14, the use of the 2013 edition of the National Board Inspection Code (NBIC) (IBR, *see* § 171.7) for the maintenance of cryogenic portable tanks constructed to Section VIII, Division 1 of the 1998 Edition of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code. Portable tanks designed, fabricated, examined, inspected, and tested to Section VIII, Division 1 of the ASME Code may be used with the NBIC Parts 1, 2 and 3, excluding Supplement 6 of Parts 2 and 3. The 2013 edition of the National Board Inspection Code (NBIC) (IBR, *see* § 171.7) must be used for the maintenance of cryogenic portable tanks constructed to ASME Code Section XII as set forth in § 178.200.

* * * * *

Issued in Washington, DC, under authority delegated in 49 CFR part 1.97(b).

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2013–31046 Filed 12–27–13; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

RIN 0648–BD46

Western Pacific Pelagic Fisheries; Catch and Effort Limits for the U.S. Participating Territories

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

ACTION: Notice of availability of fishery ecosystem plan amendment; request for comments.

SUMMARY: NMFS announces that the Western Pacific Fishery Management Council proposes to amend the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific Region. If approved, Amendment 7 would establish a management framework and process for specifying fishing catch and effort limits and accountability measures for pelagic fisheries in the U.S. Pacific territories (American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands). The framework would authorize the government of each territory to allocate a portion of its specified catch or effort limit to a U.S. fishing vessel or vessels through a specified fishing agreement, and establish criteria, which a specified fishing agreement must satisfy. The framework also includes measures to ensure accountability for adhering to fishing catch and effort limits.

DATES: NMFS must receive comments on the proposed amendment and the included environmental assessment by February 28, 2014.

ADDRESSES: You may send comments on the proposed amendment and environmental assessment, identified by NOAA–NMFS–2012–0178, to either of the following addresses:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0178,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700.

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

The Western Pacific Fishery Management Council (Council) prepared Amendment 7 to the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific Region (Pelagics FEP), including an environmental assessment and regulatory impact review, that provides background information on the proposed action. The amendment is available from *www.regulations.gov* or the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, *www.wpcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Adam Bailey, Sustainable Fisheries Division, NMFS PIR, 808–944–2248.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the pelagic fisheries of American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI) and Hawaii under the Pelagics FEP. Typically, the Council recommends conservation and management measures for NMFS to implement under the authority of Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*)). Certain pelagic fish stocks, including tunas, are also subject to conservation and management measures cooperatively agreed to by the Western and Central Pacific Fisheries Commission (WCPFC), an international regional fisheries management organization that has jurisdiction over fisheries harvesting highly migratory species in the western and central Pacific Ocean (WCPO, generally west of 150° W. longitude). Although NMFS often implements these decisions directly under the authority of the Western and Central Pacific Fisheries Convention Implementation Act, the Council may also recommend conservation and management measures applicable to the U.S. component of internationally-managed fisheries for implementation by NMFS under the Magnuson-Stevens Act.

In 2008, the WCPFC adopted Conservation and Management Measure (CMM) 2008–01, ''Conservation and Management Measure for Bigeye and Yellowfin Tuna in the Western and Central Pacific Ocean,'' which established an annual bigeye tuna catch limit for longline fisheries of the United States operating in the WCPO, as well separate longline bigeye tuna catch limits for the U.S. participating territories to the WCPFC, which are American Samoa, Guam, and the CNMI. The annual bigeye tuna catch limit for the United States (U.S. bigeye tuna limit) established through CMM 2008–01 was 3,736 mt, which NMFS implemented in fishing years 2009, 2010, and 2011 (December 7, 2009, 74 FR 63999). This limit applied only to the Hawaii-based longline fisheries or longline vessels based on the West Coast of the United States that fish in the WCPO; the limit did not apply to longline fisheries of the U.S. participating territories. CMM 2008–01 also provided that members and participating territories that caught less than 2,000 mt of bigeye tuna in 2004 would be subject to an annual limit of 2,000 mt, except that Small Island Developing States and Participating Territories of the WCPFC undertaking responsible development of their fisheries would not be subject to individual annual limits for bigeye tuna. The three U.S. participating territories fell into this category.

The WCPFC extended the U.S. bigeye tuna limit for 2012 through CMM 2011–01 (August 27, 2012, 77 FR 51709), and for fishing year 2013 through CMM 2012–01 (September 23, 2013, 78 FR 58240). In addition, under CMM 2012–01, Small Island Developing States and Participating Territories of the WCPFC, including American Samoa, Guam, and the CNMI, were not subject to individual longline limits for bigeye tuna for fishing year 2013. Subsequently, in December 2013, the WCPFC adopted a new tropical tuna conservation and management measure, which maintain the U.S. longline bigeye tuna catch limit of 3,763 mt for 2014, and reduces the limit to 3,554 mt in 2015 and 2016, and to 3,345 mt for 2017. CMM 2013–01 further provides that members that caught less than

2,000 mt of bigeye in 2004 are limited to no more than 2,000 mt in each of 2014, 2015, 2016, and 2017. However, this limit does not apply to Small Island Developing States and Participating Territories of the WCPFC. Consistent with previous WCPFC measures, the U.S. participating territories are not subject to individual longline limits for bigeye tuna under CMM 2013–01.

There are two Hawaii longline fisheries: The deep-set fishery that targets bigeye tuna, and the shallow-set fishery that targets swordfish, but also retains other pelagic management unit species (MUS), including bigeye tuna. Therefore, of the U.S. bigeye tuna limit applies to vessels operating in both fisheries. NMFS monitors the catch of all pelagic MUS by each longline fishery and on the date NMFS projects the fisheries will reach the U.S. bigeye tuna limit, NMFS prohibits the retention, transshipment, or landing of bigeye tuna by Hawaii longline vessels in the WCPO through the remainder of the year as occurred in 2009 and 2010.

In 2011, the U.S. Congress passed Public Law 112–55, 125 Stat. 552 *et seq.,* the Consolidated and Further Continuing Appropriations Act (CFCAA), 2012. Section 113 of the CFCAA allows the U.S. participating territories to use, assign, allocate, and manage catch or effort limits agreed to by the WCPFC through fishing agreements with fishing vessels of the United States to support fisheries development in the territories, and directed NMFS to attribute pelagic MUS catches made by such vessels to the U.S. participating territory to which the agreement applies. In 2011, NMFS forecasted that the U.S. bigeye catch limit of 3,763 mt would likely be reached on November 17, 2011. Under the authority provided by Section 113 of the CFCAA, American Samoa entered into a fishing agreement with certain Hawaii longline fishing vessels and, from November 18 through December 31, 2011, NMFS attributed to American Samoa, 628 mt of bigeye tuna caught by those vessels. Because of the Section 113 agreement, the U.S. bigeye tuna limit was not reached, and Hawaii longline vessels that were not part of that agreement continued to catch bigeye tuna in the WCPO under the remaining amount of the U.S. bigeye tuna catch limit.

In 2012, NMFS forecasted that the U.S. bigeye tuna catch limit of 3,763 mt would be reached on November 27, 2012. In accordance with federal regulations at 50 CFR 300.224, from November 20, 2012, through December 31, 2012, NMFS attributed to American Samoa 771 mt of bigeye tuna caught by Hawaii longline vessels identified in the American Samoa fishing agreement. Consequently, the U.S. bigeye tuna limit was not reached, and Hawaii longline vessels that were not part of that agreement continued fishing for bigeye tuna in the WCPO under the remaining amount of the U.S. bigeye tuna catch limit. In both 2011 and 2012, the United States did not exceed its bigeye tuna limit of 3,763 mt, and the amount of bigeye caught by Hawaii-based longline vessels identified in the fishing agreements with American Samoa, and attributed to the territory was less than 1,000 mt each year.

In 2013, the U.S. Congress extended the Section 113 provisions through Public Law 113–6, 125 Stat. 603, Section 110, the Department of Commerce Appropriations Act, 2013. For fishing year 2013, the CNMI entered into a Section 113 agreement with participants in the Hawaii longline fisheries. On December 5, 2013, in accordance with NMFS regulations at 50 CFR 300.224, NMFS began attributing to the CNMI bigeye tuna catches made by vessels identified in the agreement. The attribution is expected to continue through the end of 2013. NMFS does not expect the 2013 U.S. bigeye tuna limit of 3,763 mt to be reached.

As directed in Section 113 of the CFCAA, the Council prepared Amendment 7 to the Pelagics FEP for Secretarial Review. If approved, the proposed action in Amendment 7 would:

- Establish a process for specifying catch or fishing effort limits and accountability measures for pelagic fisheries in the U.S. participating territories.
- Authorize each U.S. participating territory to enter into specified fishing agreements with fishing vessels of the United States permitted under the Pelagic FEP and allocate to those vessels, a specified portion of a territory's catch or fishing effort limit, as determined by NMFS and the Council;
- Establish the criteria specified fishing agreements must satisfy, and procedures for reviewing specified fishing agreements; and
- Establish accountability measures for attributing and restricting catch and effort towards the specified limits, including catches and effort made by vessels identified in specified fishing agreements.

Comments on Amendment 7 must be received by February 28, 2014 to be considered by NMFS in the decision to approve, partially approve, or disapprove the amendment. NMFS soon expects to publish and request public comment on a proposed rule that would implement the measures recommended in Amendment 7.

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

Dated: December 24, 2013.

Emily H. Menashes,

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

[FR Doc. 2013–31195 Filed 12–27–13; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 78, No. 250

Monday, December 30, 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

December 23, 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 January 29, 2014 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: Interstate Movement of Certain Tortoises.

OMB Control Number: 0579–0156.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to prevent, control, and eliminate domestic diseases such as tuberculosis, as well as to take actions to prevent and to manage exotic diseases such as heartwater disease. The regulations in 9 CFR part 93 prohibit the importation of the leopard tortoise, the African spurred tortoise, and the Bell's hingeback tortoise to prevent the introduction and spread of exotic ticks known to be vectors of heartwater disease, an acute, infectious disease of cattle and other ruminants. The regulations in 9 CFR part 74 prohibit the interstate movement of those tortoises that are already in the United States unless the tortoises are accompanied by a health certificate or certificate of veterinary inspection.

Need and Use of the Information: APHIS will collect information to ensure that the interstate movement of these leopard, African spurred, and Bell's hingeback tortoises poses no risk of spreading exotic ticks within the United States. Owners and veterinarians are required to provide the following information to Federal or accredited veterinarians for completion of the health certificate: name, address, and telephone number of the owner; information identifying the animal such as collar or tattoo number; breed; age; sex; color; distinctive marks; vaccination history; and certifications from both the owner and the veterinarian that all information is true and accurate. The collected information is used for the purposes of identifying each specific tortoise and documenting the State of its health so that the animals can be transported across State and national boundaries. If the information is not collected APHIS would be forced to continue their complete ban on the interstate movement of leopard, African spurred, and Bell's hingeback tortoises, a situation that could prove economically disastrous for a number of U.S. tortoises breeders.

Description of Respondents: Individuals or households; Business or other for-profit.

Number of Respondents: 50.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 500.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–31157 Filed 12–27–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–107–2013]

Foreign-Trade Zone (FTZ) 265—Conroe, Texas, Notification of Proposed Production Activity, Bauer Manufacturing Inc., (Pile Drivers, Boring Machinery, and Foundation Construction Equipment), Conroe, Texas

The City of Conroe, Texas, grantee of FTZ 265, submitted a notification of proposed production activity to the FTZ Board on behalf of Bauer Manufacturing Inc. (Bauer), located in Conroe, Texas. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on December 18, 2013.

Bauer already has authority to produce pile drivers and leads, boring machinery, foundation construction equipment, foundation casings, related parts and sub-assemblies, and tools and accessories for pile drivers and boring machinery within Site 1 of FTZ 265. The current request would add certain foreign-status components to the scope of authority. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Bauer from customs duty payments on the foreign status components used in export production. On its domestic sales, Bauer would be

able to choose the duty rates during customs entry procedures that apply to pile drivers and leads, boring machinery, foundation construction equipment, foundation casings, and tools and accessories for pile drivers and boring machinery (free, 2.9%, 5.0%) for the foreign status inputs noted below and in the existing scope of authority. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: Zinc plated non-alloy steel; alloy steel bars; shapes of non-alloy semi-finished steel; and, keys for control panel doors (duty rate ranges from free to 4.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is February 10, 2014.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: December 23, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–31276 Filed 12–27–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–108–2013]

Foreign-Trade Zone (FTZ) 22—Chicago, Illinois, Notification of Proposed Production Activity, Electrolux Home Care Products Inc., (Kitting of Home Care Products), Minooka, Illinois

The Illinois International Port District, grantee of FTZ 22, submitted a notification of proposed production activity to the FTZ Board on behalf of Electrolux Home Care Products Inc. (Electrolux), located in Minooka, Illinois. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on December 19, 2013.

The Electrolux facility is located within Site 34 of FTZ 22. The facility is used for the distribution and kitting of floor care and other small home appliances. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials/components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Electrolux from customs duty payments on the foreign status materials/components used in export production. On its domestic sales, Electrolux would be able to choose the duty rates during customs entry procedures that apply to: C-clamp packages; elbows; handle bracket bushings; cable clamps; locks; belts; O-rings; sealing gaskets; support packages; filter bags; disposable bags; assembly bags; dust bags; maintenance packs; paper bags; dirt tube kits; paper adaptor bags; filters; zipper bags; duracloth steam mop pads; screws; bolt and nut assemblies; handle screw assemblies; screw and nut assemblies; hex, lock and push nuts; lock washers; spring washers; washer packages; rivets; E-rings; retaining rings; quarter turn retainers; catch springs; flap springs; springs; torque springs; wire racks; bake pans; pizza pans; coffee water filters; water filters; base assemblies; dust cup filters; paper filters; filter assemblies; frame and filter assemblies; HEPA filters; maintenance packs; rotex nozzles; valves; valves with rings; ball bearings; bearing and retainer assemblies; brushroll motors; motors; motors and gaskets; motor and gear assemblies; motor and pulley assemblies; motor assemblies; motor change kits; motor replacement kits; brushroll motor assemblies; drive motors; cartoned motor housing assemblies; HEPA motor and shroud assemblies; HEPA motor assemblies; powerhead, brushroll and belt assemblies; motor kits; boxed motors; powerhead motors; motor mounts; fan and bearing assembly armatures; field assemblies; armature replacement kits; washer packages; transformers; battery packs; battery/charger replacement kits; central vacuums; distributor assemblies; bag adaptors; airspeed bagged modules; clamps; bag covers; bag cover assemblies; bag and exhaust cover assemblies; base and cap assemblies; base and idler clamp assemblies; brackets; brushes; brushroll powerhead assemblies; buckle assemblies; C-clamps; clamp and screw assembly packages; clean out port and screws; hose connector assemblies; control panel assemblies; cord reel pedals; titanium cord retainer assemblies; cord retainer sets; covers; cyclone assemblies; cyclone cover assemblies; carpet nozzles; dirt cup assemblies; dirt tube assemblies; dirt tube bases; dispensing tank assemblies; disturbulator assemblies; disturbulator repair kits; disturbulator replacement kits; dirt receptacles; dust cover replacement kits; dust cup assemblies; dust cup lid assemblies; packaged dust cups; central vacuum accessories; end caps and cover sets; exhaust grills; exhaust extensions; extended reach kits; fan chamber replacement kits; filter cover assemblies; floor nozzles; front covers; front wheel packages; guards; handle and hose assemblies; handle grip assemblies; handle pin packages; handle release/spring assemblies handle socket and foot pedal kits; hood and furniture guard assemblies; hood and nameplate assemblies; hose and coupling assemblies; hose and wand assemblies; hoses; housing assemblies; idler and base kits; dirt cup conversion kits; power head base assembly kits; latch assemblies; middle covers; motor cover assemblies; necks; outer lids; pedal plates; rear housings; recovery tank assemblies; screw packages; soleplate assemblies; support and latch assemblies; switch pedals; switch pedal assemblies; top covers; tubes; telescopic wands; water tank assemblies; wheel and axle assembles; wheel retainer assemblies; wheel/bushing packages; rear wheels; blade assemblies; blender collars; blender jars; blender pour lids; dustbag lids; hood assemblies; boiler assemblies; carafe lids; ceramic pots; coffee carafes; crumb trays; drip trays; filter basket holders; goldtone coffee filters; grill plates; oven crumb trays; rubber feet; slow cooker lids; water filter holders; electromagnetic interference boards; switches; sockets; circuit boards; control modules; main control boards, PCB panels; power cord and PCB assemblies; remotes; speed regulators; rear display boards; cord and terminal assemblies; cord reel assemblies; handle sockets and cord kits; wire harnesses; bristle strips; brushroll assemblies; bristled combination brushes; dusting brushes; floor and wall brushes and elbows; powerbrushes; and, turbo nozzle assemblies (duty rate ranges from duty-free to 8.5%) for the foreign status materials/components noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The materials/components sourced from abroad include: C-clamps; foam filters; polystyrene packs; handle bracket bushings; cable clamps; gaskets; locks; belts; blender sealing gaskets;

bushings; O-rings; boot seals; caps; rubber motor supports; cartons; disposable, dust and paper bags; UPC labels; felt bases; filters; assembly bags; anti-allergy bags; dirt cup assemblies; synthetic bag packages; duracloth mop pads; drycloth mop pads; odor-absorbing pads; motor, shoulder, tapping, machine, and round head Phillips screws; screw assemblies; hex and lock nuts; spring washers; lock washers; washers; shoulder rivets; cotter pins; E-rings; latch, pedal, coil and torque springs; wire racks; bake pans; retaining rings; bushing axles; pizza pans; water filters; filter and frame assemblies; HEPA filters; washable filters; filter cover and graphics assemblies; cap and bearing assemblies; retainer, bearing and washer assemblies; fan units with suspension; motors; motor assemblies; nozzle motors; suction motors; motor and pulley assemblies; motor housing assemblies; HEPA motor assemblies; armature fan and bearing assemblies; fan washers; field assemblies; battery chargers; battery packs; motor adapters; air tubes; axles; bag adapter assemblies; bag cover assemblies; bases; bearing hubs; brushroll assemblies; clean out ports; combination tool assemblies; hose connector assemblies; cover assemblies; cyclone assemblies; deluxe carpet nozzles; dirt cup assemblies; dirt tube and overmold assemblies; dispensing tank assemblies; disturbulator assemblies; dust cups; electric hose assemblies; exhaust grill assemblies; extension hoses; filter baskets; floor nozzles; front covers; front wheels; carrier and graphics assembly guards; handle assemblies; hoods; hose assemblies; housing assemblies; power head base assemblies; rotor knobs; lower blow hoses; lower cord wraps; lower hose hooks; lower nozzle assemblies; machine covers; motor covers; nesting wand assemblies; control panels; foot pedals; powerhead assemblies; rear handle pivots; retainer cords; roll assemblies; separator assemblies; soleplate assemblies; squeegees; dirt cup support and latch assemblies; switch pedals; upper nozzle assemblies; water tank assemblies; wheels; blender replacements; ceramic tanks; coffee carafes; coffee filters; complete boiler assemblies; crumb trays; left grill plates; lid assemblies; press drip trays; rubber feet; 240 volt EMI boards; thermostats; switch assemblies; lamp sockets; circuit boards; power cord and PCB assemblies; speed regulators; actuators-plungers; lamps-headlights; rear display boards; cord and plug assemblies; handle sockets and cord kits; motor brush assemblies; bristle strip assemblies; nozzles; and, powerbrushes (duty rate ranges from duty-free to 8.5%). The request indicates that spring washers (HTSUS 7318.21.0030) are subject to an antidumping/countervailing duty (AD/CVD) order. The FTZ Board's regulations (15 CFR 400.14(e)) require that merchandise subject to AD/CVD actions be admitted to the zone in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 10, 2014.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: December 23, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–31274 Filed 12–27–13; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

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

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (''POR''), it must notify the Department within 60 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *http://iaaccess.trade.gov* in accordance with 19 CFR 351.303. *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011). Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (''Act''). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on the Department's service list.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within seven days of publication of this initiation notice and to make our decision regarding respondent selection within 21 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the applicable review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://www.trade.gov/enforcement* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 60 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [1] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://trade.gov/enforcement/* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following

[1] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[2] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than November 30, 2014.

	Period to be reviewed
Antidumping Duty Proceedings	
Brazil: Polyethylene Terephthalate (PET) Film, A–351–841	11/1/12–10/31/13
Terphane, Ltda.	
Germany: Lightweight Thermal Paper,[3] A–428–840	11/1/12–10/31/13
Mitsubishi HiTec Paper Bielefeld GmbH	
Mitsubishi HiTec Paper Flensburg GmbH	
Mitsubishi International Corp.	
Papierfabrik August Koehler AG	
Papierfabrik August Koehler SE (formerly known as Papierfabrik August Koehler AG)	
Mexico: Certain Circular Welded Non-Alloy Steel Pipe, A–201–805	11/1/12–10/31/13
Conduit, S.A. de C.V.	
Lamina y Placa Comercial, S.A. de C.V.	
Mueller Comercial de Mexico, S. de R.L. de C.V.	
Productos Laminados de Monterrey, S.A. de C.V.	
Prolamsa, Inc.	
PYTCO, S.A. de C.V.	
Ternium Mexico, S.A. de C.V.	
Tuberia Nacional, S.A. de C.V.	
Mexico: Seamless Refined Copper Pipe and Tube, A–201–838	11/1/12–10/31/13
IUSA, S.A. de C.V.	
GD Affiliates S. de R.L. de C.V.	
Luvata Juarez S. de R.L. de C.V.	
Luvata Monterrey S. de R.L. de C.V.	
Nacional de Cobre, S.A. de C.V.	
Republic of Korea: Certain Circular Welded Non-Alloy Steel Pipe, A–580–809	11/1/12–10/31/13
A–JU Besteel Co., Ltd.	
Dongbu Steel Co., Ltd.	
Husteel Co., Ltd.	
Hyundai HYSCO	
Kumkang Industrial Co., Ltd	
Nexteel Co., Ltd.	
SeAH Steel Corporation	
Union Steel Co., Ltd.	
The People's Republic of China: Certain Cut-to-Length Carbon Steel Plate,[4] A–570–849	11/1/12–10/31/13
Hunan Valin Xiangtan Iron & Steel Co. Ltd.	
Zhengzhou Shangdao Iron & Steel Co.	
The People's Republic of China: Certain Hot-Rolled Carbon Steel Flat Products,[5] A–570–865	11/1/12–10/31/13
Baosteel Group Corporation	
Baoshan Iron & Steel Co., Ltd.	
Shanghai Baosteel International Economic & Trading Co., Ltd.	
The People's Republic of China: Diamond Sawblades and Parts Thereof,[6] A–570–900	11/1/12–10/31/13
Advanced Technology & Materials Co., Ltd.	
AT&M International Trading Co., Ltd.	
Beijing Gang Yan Diamond Products Co.	
Bosun Tools Co., Ltd.	
Central Iron and Steel Research Institute Group	
China Iron and Steel Research Institute Group	
Chengdu Huifeng Diamond Tools Co., Ltd.	
Cliff International Ltd.	
Danyang Aurui Hardware Products Co., Ltd.	
Danyang City Ou Di Ma Tools Co., Ltd.	
Danyang Dida Diamond Tools Manufacturing Co., Ltd.	
Danyang Huachang Diamond Tools Manufacturing Co., Ltd.	
Danyang NYCL Tools Manufacturing Co., Ltd.	
Danyang Tsunda Diamond Tools Co., Ltd.	
Danyang Weiwang Tools Manufacturing Co., Ltd.	
Electrolux Construction Products (Xiamen) Co., Ltd.	
Fujian Quanzhou Wanlong Stone Co., Ltd.	
Guilin Tebon Superhard Material Co., Ltd.	
Hangzhou Deer King Industrial and Trading Co., Ltd.	
Hangzhou Kingburg Import & Export Co., Ltd.	
Hebei Husqvarna-Jikai Diamond Tools Co., Ltd.	
Hebei Jikai Industrial Group Co., Ltd.	
Huachang Diamond Tools Manufacturing Co., Ltd.	
Hua Da Superabrasive Tools Technology Co., Ltd.	
Husqvarna (Hebei) Co., Ltd.	
Huzhou Gu's Import & Export Co., Ltd.	
Huzhou Gu's Imp. & Exp. Co., Ltd.	
HXF Saw Co., Ltd.	
Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd.	

	Period to be reviewed
Jiangsu Fengyu Tools Co., Ltd.	
Jiangsu Inter-China Group Corporation	
Jiangyin Likn Industry Co., Ltd.	
Jiangsu Youhe Tool Manufacturer Co., Ltd.	
Protech Diamond Tools	
Pujiang Talent Diamond Tools Co., Ltd.	
Qingdao Hyosung Diamond Tools Co., Ltd.	
Qingdao Shinhan Diamond Industrial Co., Ltd.	
Qingyuan Shangtai Diamond Tools Co., Ltd.	
Quanzhou Shuangyang Diamond Tools Co., Ltd.	
Quanzhou Zhongzhi Diamond Tool Co., Ltd.	
Quanzhou Zongzhi Diamond Tool Co., Ltd.	
Rizhao Hein Saw Co., Ltd.	
Saint-Gobain Abrasives (Shanghai) Co., Ltd.	
Shanghai Deda Industry & Trading Co., Ltd.	
Shanghai Jingquan Ind. Trade Co., Ltd.	
Shanghai Robtol Tool Manufacturing Co., Ltd.	
Shanghai Starcraft Tools Company Limited	
Shijiazhuang Global New Century Tools Co., Ltd.	
Sichuan Huili Tools Co.	
Task Tools & Abrasives	
Wanli Tools Group	
Weihai Xiangguang Mechanical Industrial Co., Ltd.	
Wuhan Wanbang Laser Diamond Tools Co.	
Wuxi Lianhua Superhard Material Tools Co., Ltd.	
Xiamen ZL Diamond Tools Co., Ltd.	
Yichang HXF Circular Saw Industrial Co. Ltd.	
Zhejiang Tea Import & Export Co., Ltd.	
Zhejiang Wanda Import and Export Co.	
Zhejiang Wanda Tools Group Corp.	
Zhejiang Wanli Super-hard Materials Co., Ltd.	
Zhejiang Wanli Tools Group Co., Ltd.	
The People's Republic of China: Fresh Garlic,[7] A–570–831	11/1/12–10/31/13
American Pioneer Shipping	
Anhui Dongqian Foods Ltd.	
Anqiu Friend Food Co., Ltd.	
Anqiu Haoshun Trade Co., Ltd.	
APM Global Logistics (Shanghai) Co., Ltd.	
APS Qingdao	
Cangshan Qingshui Vegetable Foods Co., Ltd.	
Chengwu County Yuanxiang Industry & Commerce Co., Ltd.	
Chiping Shengkang Foodstuff Co., Ltd.	
CMEC Engineering Machinery Import & Export Co., Ltd.	
Dalian New Century Food Co., Ltd.	
Dongying Shunyifa Chemical Co., Ltd.	
Dynalink Systems Logistics (Qingdao) Inc.	
Eimskip Logistics Inc.	
Feicheng Acid Chemicals Co., Ltd.	
Foshan Fuyi Food Co, Ltd.	
Frog World Co., Ltd.	
Golden Bridge International, Inc.	
Goodwave Technology Development Ltd.	
Guangxi Lin Si Fu Bang Trade Co., Ltd	
Hangzhou Guanyu Foods Co., Ltd.	
Hebei Golden Bird Trading Co., Ltd.	
Hejiahuan (Zhongshan) Electrical AP	
Henan Weite Industrial Co., Ltd.	
Heze Ever-Best International Trade Co., Ltd. (f/k/a Shandong Heze International Trade and Developing Company)	
Hongkong Golden Eagle Group Ltd.	
Hongqiao International Logistics Co.	
Intecs Logistics Service Co., Ltd.	
IT Logistics Qingdao Branch	
Jinan Farmlady Trading Co., Ltd.	
Jinan Solar Summit International Co., Ltd.	
Jinan Yipin Corporation Ltd.	
Jining De-Rain Trading Co., Ltd.	
Jining Highton Trading Co., Ltd.	
Jining Jiulong International Trading Co., Ltd.	
Jining Tiankuang Trade Co., Ltd.	
Jining Trans-High Trading Co., Ltd.	
Jining Yifa Garlic Produce Co., Ltd.	
Jining Yongjia Trade Co., Ltd.	
Jinxiang Chengda Import & Export Co., Ltd.	

	Period to be reviewed
Jinxiang County Huaguang Food Import & Export Co., Ltd.	
Jinxiang Dacheng Food Co., Ltd.	
Jinxiang Dongyun Freezing Storage Co., Ltd. (a/k/a Jinxiang Eastward Shipping Import and Export Limited Company).	
Jinxiang Dongyun Import & Export Co., Ltd.	
Jinxiang Fengsheng Import & Export Co., Ltd.	
Jinxiang Grand Agricultural Co., Ltd.	
Jinxiang Hejia Co., Ltd.	
Jinxiang Infarm Fruits & Vegetables Co., Ltd.	
Jinxiang Jinma Fruits Vegetables Products Co., Ltd.	
Jinxiang Merry Vegetable Co., Ltd.	
Jinxiang Meihua Garlic Produce Co., Ltd.	
Jinxiang Richfar Fruits & Vegatables Co., Ltd.	
Jinxiang Shanyang Freezing Storage Co., Ltd.	
Jinxiang Shenglong Trade Co., Ltd.	
Jinxiang Tianheng Trade Co., Ltd.	
Jinxiang Tianma Freezing Storage Co., Ltd.	
Jinxiang Xian Baishite Trade Co., Ltd. (a/k/a Jinxiang Best Trade Co., Ltd.)	
Jinxiang Yuanxin Import & Export Co., Ltd.	
Juye Homestead Fruits and Vegetables Co., Ltd.	
Kingwin Industrial Co., Ltd.	
Laiwu Fukai Foodstuff Co., Ltd.	
Laiwu Jiahe Fruit and Vegatable Co., Ltd.	
Laizhou Xubin Fruits and Vegetables	
Linshu Dading Private Agricultural Products Co., Ltd.	
Linyi City Hedong District Jiuli Foodstuff Co.	
Linyi City Kangfa Foodstuff Drinkable Co., Ltd.	
Linyi Katayama Foodstuffs Co., Ltd.	
Linyi Tianqin Foodstuff Co., Ltd.	
Ningjin Ruifeng Foodstuff Co., Ltd.	
Qingdao Apex Shipping Co., Ltd.	
Qingdao BNP Co., Ltd.	
Qingdao Cherry Leather Garment Co., Ltd.	
Qingdao Chongzhi International Transportation Co., Ltd.	
Qingdao Everfresh Trading Co., Ltd.	
Qingdao Jiuqiu Industrial Co., Ltd.	
Qingdao Key Foods Co., Ltd.	
Qingdao Lianghe International Trade Co., Ltd.	
Qingdao Maycarrier Import & Export Co., Ltd.	
Qingdao Saturn International Trade Co., Ltd.	
Qingdao Sea-Line International Trading Co., Ltd.	
Qingdao Sino-World International Trading Co., Ltd.	
Qingdao Tiantaixing Foods Co., Ltd.	
Qingdao Winner Foods Co., Ltd.	
Qingdao Xintianfeng Foods Co., Ltd.	
Qingdao Xin Tian Feng Food Co., Ltd.	
Qingdao Yuankang International	
Qufu Dongbao Import & Export Trade Co., Ltd.	
Rizhao Huasai Foodstuff Co., Ltd.	
Samyoung America (Shanghai) Inc.	
Shandong Chengshun Farm Produce Trading Co., Ltd.	
Shandong Chenhe Intl Trading Co., Ltd.	
Shandong China Bridge Imports	
Shandong Dongsheng Eastsun Foods Co., Ltd.	
Shandong Garlic Company	
Shandong Jinxiang Zhengyang Import & Export Co., Ltd.	
Shandong Longtai Fruits and Vegetables Co., Ltd.	
Shandong Sanxing Food Co., Ltd.	
Shandong Wonderland Organic Food Co., Ltd.	
Shandong Xingda Foodstuffs Group Co., Ltd.	
Shandong Yipin Agro (Group) Co., Ltd.	
Shanghai Ever Rich Trade Company	
Shanghai Goldenbridge International Co., Ltd.	
Shanghai Great Harvest International Co., Ltd.	
Shanghai LJ International Trading Co., Ltd.	
Shanghai Medicines & Health Products Import/Export Co., Ltd.	
Shanghai Yijia International Transportation Co., Ltd.	
Shenzhen Bainong Co., Ltd.	
Shenzhen Fanhui Import & Export Co., Ltd.	
Shenzhen Greening Trading Co., Ltd.	
Shenzhen Xinboda Industrial Co., Ltd.	
Shenzhen Xunong Trade Co., Ltd.	
Shijiazhuang Goodman Trading Co., Ltd.	
Sunny Import & Export Limited	

	Period to be reviewed
Tangerine International Trading Co.	
T&S International, LLC.	
Taian Eastsun Foods Co., Ltd.	
Taian Fook Huat Tong Kee Pte. Ltd.	
Taian Solar Summit Food Co., Ltd.	
Taiyan Ziyang Food Co., Ltd.	
Tianjin Spiceshi Co., Ltd.	
U.S. United Logistics (Ningbo) Inc.	
V.T. Impex (Shandong) Limited	
Weifang Chenglong Import & Export Co., Ltd.	
Weifang He Lu Food Import & Export Co., Ltd.	
Weifang Hong Qiao International Logistics Co., Ltd.	
Weifang Hongqiao International Logistics Co., Ltd.	
Weifang Jinbao Agricultural Equipment Co., Ltd.	
Weifang Naike Foodstuffs Co., Ltd.	
Weifang Shennong Foodstuff Co., Ltd.	
Weihai Textile Group Import & Export Co., Ltd.	
WSSF Corporation (Weifang)	
Xiamen Huamin Import Export Company	
Xiamen Keep Top Imp. and Exp. Co., Ltd.	
Xinjiang Top Agricultural Products Co., Ltd.	
XuZhou Heiners Agricultural Co., Ltd.	
XuZhou Simple Garlic Industry Co., Ltd.	
Yantai Jinyan Trading Inc.	
Yishui Hengshun Food Co., Ltd.	
You Shi Li International Trading Co., Ltd.	
Zhangzhou Xiangcheng Rainbow Greenland Food Co., Ltd.	
Zhengzhou Dadi Garlic Industry Co., Ltd.	
Zhengzhou Harmoni Spice Co., Ltd.	
Zhengzhou Huachao Industrial Co., Ltd.	
Zhengzhou Xiwannian Food Co., Ltd.	
Zhengzhou Xuri Import & Export Co., Ltd.	
Zhengzhou Yuanli Trading Co., Ltd.	
Zhong Lian Farming Product (Qingdao) Co., Ltd.	
The People's Republic of China: Lightweight Thermal Paper,[8] A–570–920	11/1/12–10/31/13
Anne (Hong Kong) Co., Ltd.	
Gold Hua Sheng Paper (Suzhou Industrial Park) Co., Ltd.	
Guangdong Guanhao High-Tech Co., Ltd.	
Henan Jianghe Paper Co., Ltd.	
Henan Province Jianghe Paper Co., Ltd.	
JHT Paper	
Jianghe Paper Co., Ltd.	
Jinan Fuzhi Paper Co.	
MDCN Technology Co., Ltd.	
New Pride Co., Ltd.	
Sailing International	
Shanghai Hanhong Paper Co., Ltd. and Hanhong International Limited	
Shenzhen Likexin Industrial Co., Ltd.	
Shenzhen Taizhou Industrial Development Co., Ltd.	
Shenzhen Yuanming Industrial Development Co., Ltd.	
Suzhou Cannwell Thermal Paper Ltd.	
Suzhou Guanhua Paper Factory	
Suzhou Xiandai Paper Production Co.	
Xiamen Anne Paper Co., Ltd.	
The People's Republic of China: Polyethylene Terephthalate (PET) Film,[9] A–570–924	11/1/12–10/31/13
Huangshi Yucheng Trade Co. Ltd.	
Fuwei Films (Shandong) Co., Ltd.	
Shanoxing Xingyu Green Packing Co., Ltd.	
Sichuan Dongfang Insulating Material Co., Ltd.	
Tianjin Wanhua Co., Ltd.	
The People's Republic of China: Seamless Refined Copper Pipe and Tube,[10] A–570–964	11/1/12–10/31/13
China Hailiang Metal Trading	
Foshan Hua Hong Copper Tube Co., Ltd.	
Golden Dragon Holding (Hong Kong) International Co., Ltd.	
Golden Dragon Precise Copper Tube Group, Inc.	
Guilin Lijia Metals Co., Ltd.	
Hong Kong GD Trading Co., Ltd.	
Hong Kong Hailiang Metal	
Luvata Alltop (Zhongshan) Ltd.	
Luvata Tube (Zhongshan) Ltd.	
Ningbo Jintian Copper Tube Co., Ltd.	
Shanghai Hailiang Copper Co., Ltd.	
Shanghai Hailiang Metal Trading Limited	

	Period to be reviewed
Sinochem Ningbo Import & Export Co., Ltd.	
Sinochem Ningbo Ltd.	
Taicang City Jinxin Copper Tube Co., Ltd.	
Zhejiang Hailiang Co., Ltd.	
Zhejiang Jiahe Pipes Inc.	
Zhejiang Naile Copper Co., Ltd.	
United Arab Emirates: Polyethylene Terephthalate (PET) Film, A–520–803	11/1/12–10/31/13
Flex Middle East FZE	
JBF RAK LLC	
Countervailing Duty Proceedings	
Indonesia: Coated Paper Suitable For High-Quality Print Graphic Using Sheet-Fed Presses, C–560–824	1/1/12–12/31/12
PT. Pabrik Kertas Tjiwi Kimia, Tbk	
PT. Pindo Deli Pulp and Paper Mills	
PT. Indah Kiat Pulp and Paper, Tbk	
The People's Republic of China: Coated Paper Suitable for High-Quality Print Graphic Using Sheet-Fed Presses, C–570–959	1/1/12–12/31/12
Gold East Paper (Jiangsu) Co., Ltd.	
Gold East Trading (Hong Kong) Company Ltd.	
Gold Huasheng Paper Co., Ltd.	
Hainan Jinhai Pulp & Paper Co., Ltd.	
Ningbo Asia Pulp & Paper Co., Ltd.	
Ningbo Zhonghua Paper Co., Ltd.	
Shandong Chenming Paper Holdings Ltd.	
Shandong Sun Paper Industry, Co., Ltd.	
Sinar Mas Paper (China) Investment Co., Ltd.	
Sun Paper (Hong Kong) Co., Ltd.	
The People's Republic of China: Lightweight Thermal Paper, C–570–921	1/1/12–12/31/12
Anne (Hong Kong) Co., Ltd.	
Gold Hua Sheng Paper (Suzhou Industrial Park) Co., Ltd.	
Guangdong Guanhao High-Tech Co., Ltd.	
Henan Jianghe Paper Co., Ltd.	
Henan Province Jianghe Paper Co., Ltd.	
JHT Paper	
Jianghe Paper Co., Ltd.	
Jinan Fuzhi Paper Co.	
MDCN Technology Co., Ltd.	
New Pride Co., Ltd.	
Sailing International	
Shanghai Hanhong Paper Co., Ltd. and Hanhong International Limited	
Shenzhen Likexin Industrial Co., Ltd.	
Shenzhen Taizhou Industrial Development Co., Ltd.	
Shenzhen Yuanming Industrial Development Co., Ltd.	
Suzhou Cannwell Thermal Paper Ltd.	
Suzhou Guanhua Paper Factory	
Suzhou Xiandai Paper Production Co.	
Xiamen Anne Paper Co., Ltd.	
Suspension Agreements	
None.	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the

[3] We are not initiating an administrative review specifically with respect to Koehler America Inc., as requested by one interested party, because this company is the U.S. affiliate of Papierfabrik August Koehler SE (formerly known as Papierfabrik August Koehler AG) and is not a producer and/or an exporter of the subject merchandise.

[4] If one of the above-named companies does not qualify for a separate rate, all other exporters of Certain Cut-to-Length Carbon Steel Flat Plate from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[5] If one of the above-named companies does not qualify for a separate rate, all other exporters of Certain Hot-Rolled Carbon Steel Flat Products from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[6] If one of the above-named companies does not qualify for a separate rate, all other exporters of Diamond Sawblades and Parts Thereof from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[7] If one of the above-named companies does not qualify for a separate rate, all other exporters of Fresh Garlic from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[8] If one of the above-named companies does not qualify for a separate rate, all other exporters of Lightweight Thermal Paper from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[9] If one of the above-named companies does not qualify for a separate rate, all other exporters of Polyethylene Terephthalate (PET) Film from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[10] If one of the above-named companies does not qualify for a separate rate, all other exporters of Seamless Refined Copper Pipe and Tube from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the POR.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that the meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Revised Factual Information Requirements

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013), which modified two regulations related to antidumping and countervailing duty proceedings: the definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all segments initiated on or after May 10, 2013. Please review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt*, prior to submitting factual information in this segment.

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives. Ongoing segments of any antidumping duty or countervailing duty proceedings initiated on or after March 14, 2011 should use the formats for the revised certifications provided at the end of the *Interim Final Rule. See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (''*Interim Final Rule*''), amending 19 CFR 351.303(g)(1) and (2); *Certification of Factual Information to Import Administration during Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule,* 76 FR 54697 (September 2, 2011). All segments of any antidumping duty or countervailing duty proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule. See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (''*Final Rule*''); *see also* the frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.* The Department intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable revised certification requirements.

Revised Extension of Time Limits Regulation

On September 20, 2013, the Department modified its regulation concerning the extension of time limits for submissions in antidumping (AD) and countervailing duty (CVD) proceedings: *Final Rule,* 78 FR 57790 (September 20, 2013). The modification clarifies that parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning U.S. Customs and Border Protection data; and (5) quantity and value questionnaires. Under certain circumstances, the Department may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, the Department will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which the Department will grant untimely-filed requests for the extension of time limits. These modifications are effective for all segments initiated on or after October 21, 2013. Please review the final rule, available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm*, prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 USC 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: December 24, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–31271 Filed 12–27–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–924]

Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review

AGENCY: Enforcement & Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

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

SUMMARY: The Department of Commerce (''Department'') has determined that a request for a new shipper review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (''PET film'') from the People's Republic of China (''PRC'') meets the statutory and regulatory requirements for initiation. The period of review (''POR'') for the new shipper review is November 1, 2012 through October 31, 2013.

FOR FURTHER INFORMATION CONTACT: Jonathan Hill, AD/CVD Operations, Office IV, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3518.

SUPPLEMENTARY INFORMATION:

Background

The antidumping duty order on polyethylene terephthalate film, sheet, and strip from the PRC was published on November 10, 2008. *See Polyethylene Terephthalate Film, Sheet, and Strip From Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates,* 73 FR 66595 (November 10, 2008). On December 2, 2013, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the ''Act''), and 19 CFR 351.214(c), the Department received a timely request for a new shipper review from Now Plastics, Inc. (''Now Plastics'') and its affiliate Huangshi Yucheng Trade Co., Ltd. (''Huangshi Yucheng'') (collectively ''Requestor'').[1] On December 12, 2013, the Department received entry data from U.S. Customs and Border Protection (''CBP''). We have also requested entry documents from CBP in order to confirm certain information reported by Huangshi Yucheng. The continuation of the new shipper review will be contingent upon confirmation of the information in the request.[2]

Requestor stated that Jiangsu Shuangxing Color Plastic New Materials Co., Ltd. (''Jiangsu Shuangxing'') is the producer and Huangshi Yucheng is the exporter of the subject merchandise upon which its request for a new shipper review is based. Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), Huangshi Yucheng and Jiangsu Shuangxing certified that they did not export PET film to the United States during the period of investigation (''POI''). In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Huangshi Yucheng and Jiangsu Shuangxing certified that, since the initiation of the investigation, they have never been affiliated with any PRC exporter or producer who exported PET film to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), Huangshi Yucheng also certified that its export activities were not controlled by the central government of the PRC.[3]

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), Huangshi Yucheng submitted documentation establishing the following: (1) the date on which it first shipped PET film for export to the United States and the date on which the PET film was first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.[4]

The Department conducted a CBP database query and confirmed by examining the results of the CBP data query that Huangshi Yucheng's subject merchandise entered the United States during the POR specified by the Department's regulations.[5] Pursuant to 19 CFR 351.221(c)(1)(i), the Department will publish the notice of initiation of a new shipper review no later than the last day of the month following the anniversary or semiannual anniversary month of the order.

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Act, 19 CFR 351.214(b), and based on the information on the record, the Department finds that Huangshi Yucheng meets the threshold requirements for initiation of a new shipper review of its shipment(s) of PET film from the PRC.[6] The POR for the new shipper review of Huangshi Yucheng is November 1, 2012, through October 31, 2013.[7] The Department intends to issue the preliminary results of this review no later than 180 days from the date of initiation, and the final results of this review no later than 90 days after the date the preliminary results are issued.[8]

It is the Department's usual practice, in cases involving non-market economies, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue a questionnaire to Huangshi Yucheng which will include a separate rate section. The review of the exporter will proceed if the response provides sufficient indication that the exporter is not subject to either *de jure* or *de facto* government control with respect to its exports of PET film.

We will instruct CBP to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for certain entries of the subject merchandise from Huangshi Yucheng in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because Requestor stated that Huangshi Yucheng exports the subject merchandise, the sales of which form the basis for its new shipper review request, we will instruct CBP to permit the use of a bond only for entries of

[1] *See* Letter from Huangshi Yucheng and Now Plastics to the Secretary of Commerce ''Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China; A–570–924; Request for New Shipper Review of Exports by Huangshi Yucheng Trade Co., Ltd.,'' dated December 2, 2013. The Department notes that the last day of the anniversary month was Saturday, November 30, 2013. Therefore, the deadline to file a request for a new shipper review was the next business day, *i.e.,* Monday, December 2, 2013.

[2] *See* Memorandum to the File through Abdelali Elouaradia, Director, AD/CVD Operations, Office IV ''Initiation of Antidumping New Shipper Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Huangshi Yucheng Trade Co., Ltd. Initiation Checklist,'' dated concurrently with this notice (''Initiation Checklist''), at item 18.

[3] *See* generally, Initiation Checklist.

[4] *Id.*

[5] *See* 19 CFR 351.214(g)(1)(i)(A).

[6] *See* generally, Initiation Checklist.

[7] *See* 19 CFR 351.214(g)(1)(i)(A).

[8] *See* section 751(a)(2)(B)(iv) of the Act.

subject merchandise which the respondent exported.

Interested parties requiring access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: December 23, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–31280 Filed 12–27–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Minnesota, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscope

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 13–028. Applicant: University of Minnesota, Department of Engineering & Material Science, Minneapolis, MN 55455. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: See notice at 78 FR 59916, September 30, 2013.

Docket Number: 13–035. Applicant: Colorado State University, Department of Chemistry, Fort Collins, CO 80523–1872. Instrument: Electron Microscope. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 78 FR 59916, September 30, 2013.

Docket Number: 13–038. Applicant: Air Force Institute of Technology, Wright-Patterson AFB, OH 45433–7765. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 78 FR 59916, September 30, 2013.

Docket Number: 13–039. Applicant: Department of Transportation, McClean, VA 22101. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 78 FR 59916, September 30, 2013.

Docket Number: 13–040. Applicant: Center for Disease Control and Prevention, Atlanta, GA 3041–5539. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 78 FR 59916, September 30, 2013.

Docket Number: 13–041. Applicant: Sanford-Burnham Medical Research, La Jolla, CA 92037. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: See notice at 78 FR 59916, September 30, 2013.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instrument was ordered. Reasons: Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: December 19, 2013.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Enforcement and Compliance.

[FR Doc. 2013–31272 Filed 12–27–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Advisory Committee on Supply Chain Competitiveness Charter Renewal

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: The Chief Financial Officer and Assistant Secretary for Administration, with the concurrence of the General Services Administration, renewed the Charter for the Advisory Committee on Supply Chain Competitiveness on November 20, 2013.

DATES: The Charter for the Advisory Committee on Supply Chain Competitiveness was renewed on November 20, 2013.

FOR FURTHER INFORMATION CONTACT: Richard Boll, Supply Chain Team, Room 11014, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; phone 202–482–1135; email: *richard.boll@trade.gov.*

SUPPLEMENTARY INFORMATION: The Chief Financial Officer and Assistant Secretary for Administration, with the concurrence of the General Services Administration, renewed the Charter for the Advisory Committee on Supply Chain Competitiveness on November 20, 2013. This Notice is published in accordance with the Federal Advisory Committee Act (FACA) (Title 5, United States Code, Appendix 2, § 9). It has been determined that the Committee is necessary and in the public interest. The Committee was established pursuant to Commerce's authority under 15 U.S.C. 1512, established under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., and with the concurrence of the General Services Administration. The Committee provides advice to the Secretary on the necessary elements of a comprehensive policy approach to supply chain competitiveness designed to support U.S. export growth and national economic competitiveness, encourage innovation, facilitate the movement of goods, and improve the competitiveness of U.S. supply chains for goods and services in the domestic and global economy; and to provide advice to the Secretary on regulatory policies and programs and investment priorities that affect the competitiveness of U.S. supply chains. The total number of members that may serve on the Committee is increased from 40 to a maximum of 45.

Dated: December 20, 2013.

David Long,

Director, Office of Supply Chain and Professional & Business Services.

[FR Doc. 2013–31139 Filed 12–27–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 89–5A018]

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review to Outdoor Power Equipment Institute, Inc. (Application no. 89–5A018).

SUMMARY: The U.S. Department of Commerce issued an amended Export Trade Certificate of Review to Outdoor Power Equipment Institute, Inc. (OPEI) on December 20, 2013.

FOR FURTHER INFORMATION CONTACT: Joseph E. Flynn, Director, Office of

Trade and Economic Analysis, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (2013). The U.S. Department of Commerce, International Trade Administration, Trade of Trade and Economic Analysis (''OTEA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the issuance in the **Federal Register**. Under Section 305(a) of the Export Trading Company Act (15 U.S.C. 4012(b)(1)) and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

OPEI's Export Trade Certificate of Review has been amended to:

1. Remove the following Members from OPEI's Certificate: Dixon Industries, Inc., Garden Way, Inc., Hoffco, Inc., Howard Price Turf Equipment, Ingersoll Equipment Company, Kut-Kwick Corporation, Maxim Manufacturing Corporation, Ransomes, Inc., Simplicity Manufacturing, Inc., Solo Incorporated, Southland Mower Company, Yazoo Manufacturing Company, Inc.

2. Change the names of the following OPEI Members: Deere & Company dba Worldwide Lawn & Grounds Care Division, Moline, IL to Deere & Company (Moline, IL), Honda Power Equipment Manufacturing, Inc. to American Honda Motor Company Power Equipment Division (Alpharetta, GA), and Textron, Inc, dba Bunton, a division of Jacobsen, a division of Textron, Inc., Louisville, KY to Textron, Inc.

OPEI's amendment of its Export Trade Certificate of Review results in the following membership list:

1. American Honda Motor Company Power Equipment Division (Alpharetta, GA)
2. Ariens Company (Brillion, WI)
3. Briggs & Stratton Corporation (Wauwatosa, WI).
4. Deere & Company (Moline, IL)
5. Excel Industries, Inc. (Hesston, KS)
6. Magic Circle Corporation d/b/a Dixie Chopper (Coatesville, IN)
7. Maxim Manufacturing Corporation (Sebastopol, MS)
8. MTD Products, Inc. (Valley City, OH)
9. Scag Power Equipment, Inc. (Mayville, WI)
10. Textron, Inc. (Louisville, KY)
11. Toro Company (The) (Minneapolis, MN)

Dated: December 23, 2013.

Joseph E. Flynn,

Office Director, Office of Trade and Economic Analysis.

[FR Doc. 2013–31142 Filed 12–27–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD053

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Joint VMS/Enforcement Committee and Advisory Panel will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Friday, January 17, 2014 at 9:30 a.m.

ADDRESSES: *Meeting address:* The meeting will be held at the DoubleTree Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500; fax: (978) 750–7959.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are:

Hidden compartments on fishing vessels, fish tote regulations, VMS satellite availability, lobster gear marking and gear stowage requirements. Other business may be discussed as necessary.

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

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: December 24, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–31174 Filed 12–27–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD052

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Ad Hoc SBRM Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: This meeting will be held on Thursday, January 16, 2014 at 8:30 a.m.

ADDRESSES: *Meeting address:* The meeting will be held at the Sheraton Harborside Hotel, 25 Market Street, Portsmouth, NH 03801; telephone: (603) 431–2300; fax: (603) 431–7805.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee will review the draft Standardized Bycatch Reporting Methodology Amendment, consider comments received during the public comment period on the amendment (see 78 FR 69391), and prepare recommendations for the Council. Recommendations from this group will

be brought to the full Council for formal consideration and action, if appropriate.

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

This meeting will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: December 24, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–31173 Filed 12–27–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC893

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Rocky Intertidal Monitoring Surveys Along the Oregon and California Coasts: Correction

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

ACTION: Notice; correction.

SUMMARY: NMFS incorrectly published a second notice in the **Federal Register** on December 23, 2013, requesting comments on the proposed issuance of an Incidental Harassment Authorization (IHA) pursuant to the Marine Mammal Protection Act (MMPA). NMFS had published the first notice in the **Federal Register** on October 30, 2013, requesting comments from the public for 30 days. The comment period closed on November 29, 2013. The notice that should have published in the **Federal Register** on December 23, 2013, was the notice of issuance of an IHA.

FOR FURTHER INFORMATION CONTACT: Candace Nachman, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Need for Correction

The public comment period for the proposal to issue an IHA to the Partnership for Interdisciplinary Study of Coastal Oceans (PISCO) at the University of California Santa Cruz published in the **Federal Register** on October 30, 2013 (78 FR 64918), requesting comments from the public for 30 days on that proposal. NMFS issued an IHA to PISCO for the proposed action on December 17, 2013, which took into consideration the public comments received at that time. The **Federal Register** notice that NMFS incorrectly published on December 23, 2013 (78 FR 77433), is a duplicate of the original notice from October 2013. The notice that should have published in the **Federal Register** on December 23, 2013, was the notice of issuance of an IHA. NMFS has submitted the notice of issuance to the **Federal Register** for publication. Therefore, NMFS is withdrawing the Notice of Proposed IHA notice of December 23, 2013 (78 FR 77433), as the public was already afforded an opportunity to comment on the proposal, and the final action has already been taken.

Dated: December 23, 2013.

Perry Gayaldo,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–31201 Filed 12–27–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC893

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Rocky Intertidal Monitoring Surveys Along the Oregon and California Coasts

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the Partnership for Interdisciplinary Study of Coastal Oceans (PISCO) at the University of California (UC) Santa Cruz for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to rocky intertidal monitoring surveys.

DATES: Effective December 17, 2013, through December 16, 2014.

ADDRESSES: A copy of the authorization, application, and associated Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) may be obtained by writing to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Candace Nachman, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking, other means of effecting the least practicable impact on the species or stock and its habitat, and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: ''Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

Summary of Request

On July 10, 2013, NMFS received an application from PISCO for the taking of marine mammals incidental to rocky intertidal monitoring surveys along the Oregon and California coasts. NMFS determined that the application was adequate and complete on July 31, 2013. On October 30, 2013, we published a notice in the **Federal Register** of our proposal to issue an IHA with preliminary determinations and explained the basis for the proposal and preliminary determinations (78 FR 64918). The notice initiated a 30-day public comment period. Responses are discussed below. In December 2012, NMFS issued a 1-year IHA to PISCO to take marine mammals incidental to these same proposed activities (77 FR 72327, December 5, 2012). That IHA expired on December 2, 2013.

The research group at UC Santa Cruz operates in collaboration with two large-scale marine research programs: PISCO and the Multi-agency Rocky Intertidal Network. The research group at UC Santa Cruz (PISCO) is responsible for many of the ongoing rocky intertidal monitoring programs along the Pacific coast. Monitoring occurs at rocky intertidal sites, often large bedrock benches, from the high intertidal to the water's edge. Long-term monitoring projects include Community Structure Monitoring, Intertidal Biodiversity Surveys, Marine Protected Area Baseline Monitoring, Intertidal Recruitment Monitoring, and Ocean Acidification. Research is conducted throughout the year along the California and Oregon coasts and will continue indefinitely. Most sites are sampled one to two times per year over a 4–6 hour period during a negative low tide series. This IHA is only effective for a 12-month period. The following specific aspects of the proposed activities are likely to result in the take of marine mammals: Presence of survey personnel near pinniped haulout sites and approach of survey personnel towards hauled out pinnipeds. Take, by Level B harassment only, of individuals of three species of marine mammals is anticipated to result from the specified activity.

Description of the Specified Activity and Specified Geographic Region

PISCO focuses on understanding the nearshore ecosystems of the U.S. west coast through a number of interdisciplinary collaborations. PISCO integrates long-term monitoring of ecological and oceanographic processes at dozens of sites with experimental work in the lab and field. A short description of each project is contained here. Additional information can be found in PISCO's application (see **ADDRESSES**) and the Notice of Proposed IHA (78 FR 64918, October 30, 2013).

Community Structure Monitoring involves the use of permanent photoplot quadrats which target specific algal and invertebrate assemblages (e.g. mussels, rockweeds, barnacles). This project provides managers with insight into the causes and consequences of changes in species abundance. Each Community Structure site is surveyed over a 1-day period during a low tide series one to two times a year. Sites, location, number of times sampled per year, and typical sampling months for each site are presented in Table 1 in PISCO's application (see **ADDRESSES**).

Biodiversity Surveys, which are part of a long-term monitoring project and are conducted every 3–5 years at established sites, involve point contact identification along permanent transects, mobile invertebrate quadrat counts, sea star band counts, and tidal height topographic measurements. Table 2 in PISCO's application (see **ADDRESSES**) lists established biodiversity sites in Oregon and California. No Biodiversity Surveys are planned to be conducted during the 12-month period of this IHA.

In September 2007, the state of California began establishing a network of Marine Protected Areas along the California coast as part of the Marine Life Protection Act (MLPA). Under baseline monitoring programs funded by Sea Grant and the Ocean Protection Council, PISCO established additional intertidal monitoring sites in the Central Coast (Table 3 in PISCO's application), North Central Coast (Table 4 in PISCO's application), and South Coast (Table 5 in PISCO's application) study regions.

Intertidal recruitment monitoring collects data on invertebrate larval recruitment. Mussel and other bivalve recruits are collected in mesh pot-scrubbers bolted into the substrate. Barnacle recruits and cyprids are collected on PVC plates covered in non-slip tape and bolted to the substrate.

The Ocean Margin Ecosystems Group for Acidification Studies is a National Science Foundation funded project that involves research at eight sites along the California Current upwelling system from Southern California into Oregon. PISCO is responsible for research at three of these sites—Hopkins, Terrace Point, and Soberanes—located in the Monterey Bay region of mainland California. The intention of this collaboration is to monitor oceanic pH on large spatial and temporal scales and to determine if any relationship exists between changing ocean chemistry and the state of intertidal calcifying organisms.

During summer 2014, PISCO will sample eight sites along the Oregon coast (see Table 7 in PISCO's application) using a combination of community structure and biodiversity survey methods to establish a baseline prior to the proposed installation of several wave energy conversion device arrays. This baseline will be used to assess the effects of the arrays on nearshore communities.

Specified Geographic Location and Activity Timeframe

PISCO's research is conducted throughout the year along the California and Oregon coasts. Most sites are sampled one to two times per year over a 1-day period (4–6 hours per site) during a negative low tide series. Due to the large number of research sites, scheduling constraints, the necessity for negative low tides and favorable weather/ocean conditions, exact survey dates are variable and difficult to predict. Table 1 in PISCO's application (see **ADDRESSES**) outlines the typical sampling season for the various locations. Some sampling is anticipated to occur in all months, except for January, August, and September.

The intertidal zones where PISCO conducts intertidal monitoring are also areas where pinnipeds can be found hauled out on the shore at or adjacent to some research sites. Accessing portions of the intertidal habitat may cause incidental Level B (behavioral)

harassment of pinnipeds through some unavoidable approaches if pinnipeds are hauled out directly in the study plots or while biologists walk from one location to another. No motorized equipment is involved in conducting these surveys. The species for which Level B harassment is requested are: California sea lions (*Zalophus californianus californianus*); harbor seals (*Phoca vitulina richardii*); and northern elephant seals (*Mirounga angustirostris*).

Comments and Responses

A Notice of Proposed IHA was published in the **Federal Register** on October 30, 2013 (78 FR 64918) for public comment. During the 30-day public comment period, NMFS received one letter from the Marine Mammal Commission and one letter from a private citizen. No other organizations provided comments on the proposed issuance of an IHA for this activity. The Marine Mammal Commission recommended that NMFS issue the IHA, subject to inclusion of the proposed mitigation and monitoring measures. NMFS has included all of the mitigation and monitoring measures proposed in the Notice of Proposed IHA (78 FR 64918, October 30, 2013) in the issued IHA. The letter from the private citizen did not contain any substantive comments.

Description of Marine Mammals in the Area of the Specified Activity

Several pinniped species can be found along the California and Oregon coasts. The three that are most likely to occur at some of the research sites are California sea lion, harbor seal, and northern elephant seal. On rare occasions, PISCO researchers have seen very small numbers (i.e., five or fewer) of Steller sea lions at one of the sampling sites. These sightings are rare. Therefore, encounters are not expected. However, if Steller sea lions are sighted before approaching a sampling site, researchers will abandon approach and return at a later date. For this reason, this species is not considered further in this IHA notice.

We refer the public to Carretta *et al.* (2013) for general information on these species. The publication is available on the internet at: *http://www.nmfs.noaa.gov/pr/sars/pdf/po2012.pdf.* Additional information on the status, distribution, seasonal distribution, and life history can also be found in PISCO's application and NMFS' Notice of Proposed IHA (78 FR 64918, October 30, 2013). The information has not changed and is therefore not repeated here.

California (southern) sea otters (*Enhydra lutris nereis*), listed as threatened under the ESA and categorized as depleted under the MMPA, usually range in coastal waters within 2 km (1.2 mi) of shore. This species is managed by the U.S. Fish and Wildlife Service and is not considered further in this notice.

Potential Effects of the Specified Activity on Marine Mammals

The appearance of researchers may have the potential to cause Level B harassment of any pinnipeds hauled out at sampling sites. Although marine mammals are never deliberately approached by abalone survey personnel, approach may be unavoidable if pinnipeds are hauled out in the immediate vicinity of the permanent study plots. Disturbance may result in reactions ranging from an animal simply becoming alert to the presence of researchers (e.g., turning the head, assuming a more upright posture) to flushing from the haul-out site into the water. NMFS does not consider the lesser reactions to constitute behavioral harassment, or Level B harassment takes, but rather assumes that pinnipeds that move greater than 1 m (3.3 ft) or change the speed or direction of their movement in response to the presence of researchers are behaviorally harassed, and thus subject to Level B taking. Animals that respond to the presence of researchers by becoming alert, but do not move or change the nature of locomotion as described, are not considered to have been subject to behavioral harassment. NMFS' Notice of Proposed IHA (78 FR 64918, October 30, 2013) contains information regarding potential impacts to marine mammals from the specified activity. The information has not changed and is therefore not repeated here.

Typically, even those reactions constituting Level B harassment would result at most in temporary, short-term disturbance. In any given study season, researchers will visit sites one to two times per year for a total of 4–6 hours per visit. Therefore, disturbance of pinnipeds resulting from the presence of researchers lasts only for short periods of time and is separated by significant amounts of time in which no disturbance occurs. Because such disturbance is sporadic, rather than chronic, and of low intensity, individual marine mammals are unlikely to incur any detrimental impacts to vital rates or ability to forage and, thus, loss of fitness. Correspondingly, even local populations, much less the overall stocks of animals, are extremely unlikely to accrue any significantly detrimental impacts.

NMFS does not anticipate that the activities would result in the injury, serious injury, or mortality of pinnipeds because pups are only found at a couple of the sampling locations during certain times of the year and that many rookeries occur on the offshore islands and not the mainland areas where the activities would occur. In addition, researchers will exercise appropriate caution approaching sites, especially when pups are present and will redirect activities when pups are present.

Anticipated Effects on Marine Mammal Habitat

The only habitat modification associated with the activity is the placement of permanent bolts and other sampling equipment in the intertidal. Bolts are installed during the set-up of a site and, at existing sites, this has already occurred. In some instances, bolts will need to be replaced or installed for new plots. Bolts are 7.6 to 12.7 cm (2 to 5 in) long, stainless steel 1 cm (⅜ in) Hex or Carriage bolts. They are installed by drilling a hole with a battery powered DeWalt 24 volt rotary hammer drill with a 1 cm (⅜ in) bit. The bolts protrude 1.3–7.6 cm (0.5–3 in) above the rock surface and are held in place with marine epoxy. Although the drill does produce noticeable noise, researchers have never observed an instance where near-by or offshore marine mammals were disturbed by it. Any marine mammal at the site would likely be disturbed by the presence of researchers and retreat to a distance where the noise of the drill would not increase the disturbance. In most instances, wind and wave noise also drown out the noise of the drill. The installation of bolts and other sampling equipment is conducted under the appropriate permits (Monterey Bay National Marine Sanctuary, California State Parks). Once a particular study has ended, the respective sampling equipment is removed. No trash or field gear is left at a site. Thus, the proposed activity is not expected to have any habitat-related effects, including to marine mammal prey species, that could cause significant or long-term consequences for individual marine mammals or their populations.

Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(D) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on

such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

PISCO shall implement several mitigation measures to reduce potential take by Level B (behavioral disturbance) harassment. Measures include: (1) Conducting slow movements and staying close to the ground to prevent or minimize stampeding; (2) avoiding loud noises (i.e., using hushed voices); (3) avoiding pinnipeds along access ways to sites by locating and taking a different access way and vacating the area as soon as sampling of the site is completed; (4) monitoring the offshore area for predators (such as killer whales and white sharks) and avoid flushing of pinnipeds when predators are observed in nearshore waters; (5) using binoculars to detect pinnipeds before close approach to avoid being seen by animals; (6) only flushing pinnipeds if they are located in the sampling plots and there are no other means to accomplish the survey (however, flushing must be done slowly and quietly so as not to cause a stampede); (7) no intentional flushing if pups are present at the sampling site; and (8) rescheduling sampling if Steller sea lions are present at the site.

The methodologies and actions noted in this section will be utilized and included as mitigation measures in the IHA to ensure that impacts to marine mammals are mitigated to the lowest level practicable. The primary method of mitigating the risk of disturbance to pinnipeds, which will be in use at all times, is the selection of judicious routes of approach to study sites, avoiding close contact with pinnipeds hauled out on shore, and the use of extreme caution upon approach. In no case will marine mammals be deliberately approached by survey personnel, and in all cases every possible measure will be taken to select a pathway of approach to study sites that minimizes the number of marine mammals potentially harassed. In general, researchers will stay inshore of pinnipeds whenever possible to allow maximum escape to the ocean. Each visit to a given study site will last for approximately 4–6 hours, after which the site is vacated and can be re-occupied by any marine mammals that may have been disturbed by the presence of researchers. By arriving before low tide, worker presence will tend to encourage pinnipeds to move to other areas for the day before they haul out and settle onto rocks at low tide.

PISCO will suspend sampling and monitoring operations immediately if an injured marine mammal is found in the vicinity of the project area and the monitoring activities could aggravate its condition.

NMFS has carefully evaluated PISCO's mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's final measures, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must, where applicable, set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

PISCO can add to the knowledge of pinnipeds in California and Oregon by noting observations of: (1) Unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel; (2) tag-bearing carcasses of pinnipeds, allowing transmittal of the information to appropriate agencies and personnel; and (3) rare or unusual species of marine mammals for agency follow-up.

Monitoring requirements in relation to PISCO's rocky intertidal monitoring will include observations made by the applicant. Information recorded will include species counts (with numbers of pups/juveniles when possible), numbers of observed disturbances, and descriptions of the disturbance behaviors during the monitoring surveys, including location, date, and time of the event. In addition, observations regarding the number and species of any marine mammals observed, either in the water or hauled out, at or adjacent to the site, will be recorded as part of field observations during research activities. Observations of unusual behaviors, numbers, or distributions of pinnipeds will be reported to NMFS so that any potential follow-up observations can be conducted by the appropriate personnel. In addition, observations of tag-bearing pinniped carcasses as well as any rare or unusual species of marine mammals will be reported to NMFS. Information regarding physical and biological conditions pertaining to a site, as well as the date and time that research was conducted will also be noted.

If at any time injury, serious injury, or mortality of the species for which take is authorized should occur, or if take of any kind of any other marine mammal occurs, and such action may be a result of the research, PISCO will suspend research activities and contact NMFS immediately to determine how best to proceed to ensure that another injury or death does not occur and to ensure that the applicant remains in compliance with the MMPA.

A draft final report must be submitted to NMFS Office of Protected Resources within 60 days after the conclusion of the 2013–2014 field season or 60 days prior to the start of the next field season if a new IHA will be requested. The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in the IHA. A final report must be submitted to the Director of the NMFS Office of Protected Resources and to the NMFS Southwest Office Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine

mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

All anticipated takes would be by Level B harassment, involving temporary changes in behavior. The mitigation and monitoring measures are expected to minimize the possibility of injurious or lethal takes such that take by injury, serious injury, or mortality is considered remote. Animals hauled out close to the actual survey sites may be disturbed by the presence of biologists and may alter their behavior or attempt to move away from the researchers.

As discussed earlier, NMFS considers an animal to have been harassed if it moved greater than 1 m (3.3 ft) in response to the researcher's presence or if the animal was already moving and changed direction and/or speed, or if the animal flushed into the water. Animals that became alert without such movements were not considered harassed.

For the purpose of this IHA, only Oregon and California sites that are frequently sampled and have a marine mammal presence during sampling were included in take estimates. Sites where only Biodiversity Surveys are conducted were not included due to the infrequency of sampling and rarity of occurrences of pinnipeds during sampling. In addition, Steller sea lions are not included in take estimates as they will not be disturbed by researchers or research activities since activities will not occur or will be suspended if Steller sea lions are present. A small number of harbor seal and northern elephant seal pup takes are anticipated as pups may be present at several sites during spring and summer sampling.

Takes estimates are based on marine mammal observations from each site. Marine mammal observations are done as part of PISCO site observations, which include notes on physical and biological conditions at the site. The maximum number of marine mammals, by species, seen at any given time throughout the sampling day is recorded at the conclusion of sampling. A marine mammal is counted if it is seen on access ways to the site, at the site, or immediately up-coast or down-coast of the site. Marine mammals in the water immediately offshore are also recorded. Any other relevant information, including the location of a marine mammal relevant to the site, any unusual behavior, and the presence of pups is also noted.

These observations formed the basis from which researchers with extensive knowledge and experience at each site estimated the actual number of marine mammals that may be subject to take. In most cases the number of takes is based on the maximum number of marine mammals that have been observed at a site throughout the history of the site (2–3 observation per year for 5–10 years or more). Section 6 in PISCO's application outlines the number of visits per year for each sampling site and the potential number of pinnipeds anticipated to be encountered at each site. Table 8 in PISCO's application outlines the number of potential takes per site (see **ADDRESSES**).

Based on this information, NMFS has authorized the take, by Level B harassment only, of 60 California sea lions, 337 harbor seals, and 36 northern elephant seals. These numbers are considered to be maximum take estimates; therefore, actual take may be slightly less if animals decide to haul out at a different location for the day or animals are out foraging at the time of the survey activities.

Negligible Impact and Small Numbers Analysis and Determination

NMFS typically includes our negligible impact and small numbers analyses and determinations under the same section heading of our **Federal Register** notices. Despite co-locating these terms, we acknowledge that negligible impact and small numbers are distinct standards under the MMPA and treat them as such. The analyses presented below do not conflate the two standards; instead, each standard has been considered independently, and we have applied the relevant factors to inform our negligible impact and small numbers determinations.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the take occurs.

No injuries or mortalities are anticipated to occur as a result of PISCO's rocky intertidal monitoring, and none are authorized. The behavioral harassments that could occur would be of limited duration, as researchers only conduct sampling one to two times per year at each site for a total of 4–6 hours per sampling event. Therefore, disturbance will be limited to a short duration, allowing pinnipeds to reoccupy the sites within a short amount of time.

Some of the pinniped species may use some of the sites during certain times of year to conduct pupping and/or breeding. However, some of these species prefer to use the offshore islands for these activities. At the sites where pups may be present, PISCO will implement certain mitigation measures, such as no intentional flushing if dependent pups are present, which will avoid mother/pup separation and trampling of pups.

Of the three marine mammal species anticipated to occur in the activity areas, none are listed under the ESA. Table 1 in this document presents the abundance of each species or stock, the authorized take estimates, and the percentage of the affected populations or stocks that may be taken by harassment. Based on these estimates, PISCO would take less than 2.1% of each species or stock. Because these are maximum estimates, actual take numbers are likely to be lower, as some animals may select other haulout sites the day the researchers are present.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that the rocky intertidal monitoring program will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the rocky intertidal monitoring program will have a negligible impact on the affected species or stocks.

TABLE 1—POPULATION ABUNDANCE ESTIMATES, TOTAL AUTHORIZED LEVEL B TAKE, AND PERCENTAGE OF POPULATION THAT MAY BE TAKEN FOR THE POTENTIALLY AFFECTED SPECIES DURING THE PROPOSED ROCKY INTERTIDAL MONITORING PROGRAM

Species	Abundance*	Total authorized level b take	Percentage of stock or population
Harbor Seal	[1] 30,196 [2] 16,165	337	1.1–2.1
California Sea Lion	296,750	60	0.02
Northern Elephant Seal	124,000	36	0.03

* Abundance estimates are taken from the 2012 U.S. Pacific Marine Mammal Stock Assessments (Carretta *et al.,* 2013).
[1] California stock abundance estimate.
[2] Oregon/Washington stock abundance estimate.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

None of the marine mammals for which incidental take is authorized are listed as threatened or endangered under the ESA. NMFS' Permits and Conservation Division worked with the NMFS Southwest Regional Office to ensure that Steller sea lions would be avoided and incidental take would not occur. Therefore, NMFS has determined that issuance of the IHA to PISCO under section 101(a)(5)(D) of the MMPA will have no effect on species listed as threatened or endangered under the ESA.

National Environmental Policy Act (NEPA)

In 2012, we prepared an EA analyzing the potential effects to the human environment from conducting rocky intertidal surveys along the California and Oregon coasts and issued a FONSI on the issuance of an IHA for PISCO's rocky intertidal surveys in accordance with section 6.01 of the NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999). PISCO's proposed activities and impacts for 2013–2014 are within the scope of our 2012 EA and FONSI. We have reviewed the 2012 EA and determined that there are no new direct, indirect, or cumulative impacts to the human and natural environment associated with the IHA requiring evaluation in a supplemental EA and we, therefore, reaffirm the 2012 FONSI.

Authorization

As a result of these determinations, NMFS has authorized the take of marine mammals incidental to PISCO's rocky intertidal monitoring research activities, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: December 23, 2013.

Perry Gayaldo,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–31196 Filed 12–27–13; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities; Notice of Intent To Renew Collection: Procedural Requirements for Requests for Interpretative, No-Action, and Exemptive Letters

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) seeks public comment on the proposed renewal of a collection of information by the agency. Under the Paperwork Reduction Act (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 requirements relating to requests for and issuance of exemptive, no-action, and interpretative letters.

DATES: Comments must be submitted on or before February 28, 2014.

ADDRESSES: You may submit comments, identified by ''Collection 3038–0049–Renewal,'' by any of the following methods:

- The Agency's Web site, at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the Web site.
- *Mail:* Melissa D. Jurgens, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail, above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Christopher W. Cummings, Special Counsel, Division of Swap Dealer and Intermediary Oversight, (202) 418–5228, email: *ccummings@cftc.gov;* Jocelyn Partridge, Special Counsel, Division of Clearing and Risk, (202) 418–5926, email: *jpartridge@cftc.gov*; Riva Spear Adriance, Senior Special Counsel, Division of Market Oversight, (202) 418–5494, *email: radriance@cftc.gov*; or Beverly E. Loew, Assistant General Counsel, Office of General Counsel, (202) 418–5648, email: *bloew@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (''OMB'') for each collection of information they conduct or sponsor. ''Collection of Information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3. The definition includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Sections 3506(c)(2)(A) and 3507(h) of the PRA, 44 U.S.C. 3506(c)(2)(A) and 3507(h), require a Federal agency to provide a 60-day notice in the **Federal Register** whenever it seeks to renew a collection of information previously

approved by OMB, seeking public comment before submitting the collection to OMB for renewal. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

Abstract: This collection covers the procedural requirements for requests for, and issuance of, interpretative, no-action, and exemptive letters according to the provisions of section 140.99 of the Commission's regulations.[1] The current collection, for which a three-year extension is being sought, has been assigned OMB control number 3038–0049. The collection requirements contained herein are voluntary. The requirements are observed by parties that wish to apply most frequently for a benefit from agency staff in the form of regulatory relief described in section 140.99. Relief sought often relieves the persons obtaining it from some or all of the burdens associated with other collections of information.

Burden Statement: There has been an increase in requests for no-action and interpretive letters in particular, following the implementation of the Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') by the Commission. Accordingly, as elaborated below, the burden hours for this collection are being increased from the last renewal of this collection.

The burden increase is related to several factors. First, there have been an increased number of respondents for this collection in the form of requestors that must comply with the collection requirements contained in section 140.99 in order for the request to be considered by staff.

Second, burden increase is attributable to collection requirements contained within issued exemptive and no-action letters providing regulatory relief. Historically, most exemptive, no-action, and interpretive letters were sought by and issued to an individual party (or fewer than ten persons) that may have been subject to discrete collections of information in a letter in order to obtain the benefit of it, which collections were excepted from the application of the PRA. Since the implementation of the Dodd-Frank Act, however, these letters more frequently have been sought by and issued to large groups of similarly situated persons, typically to entire industries or industry subgroups. Because of the increase in respondents, the PRA exception is not applicable to this proposed renewal.

Thus, the proposed renewal accounts for relief issued by staff under regulation 140.99 that contain information collections, which often involves providing notice and certifications to the division or office staff issuing the letter. The proposed renewal also accounts for relief from compliance with an existing collection of information, and occasionally from a regulatory obligation that does not contain a collection of information, with substituted compliance obligations in the form of an information collection in the letter providing the relief.

Third, there has been an increase in burden attributable to adding collection requirements into this collection that are related to this collection, such as compliance with requirements for requesting confidential treatment of letters that may be granted under section 140.98 of the Commission's regulations, but could be effected through separate collections. It was determined not to establish separate collections for the related matters in order to streamline the analysis, compliance, and renewal processes for the Commission and all entities that may submit requests for exemptive, no-action, and interpretive letters that include burden associated with the related matters.

Therefore, in order to establish estimates with respect to no-action and exemptive letters that may be issued during the 3-year renewal period for which the Commission is applying, a sampling was taken of exemptive and no-action letters over a six month period from December 4, 2012, through June 4, 2013. This time period was chosen because it is believed that it reasonably represents the shift in the manner in which these letters are sought and issued since the last renewal of this collection of information.

During this period, encompassing no-action letters 12–40 through 13–22, 58 no-action letters were issued. Thirty contained no collections of information, or collections that do not require an OMB control number, for example because they involved the submission of information by fewer than 10 persons,[2] or they involved notice filings solely requiring a respondent to identify itself as relying on the relief, which notice is not considered to be an information collection under the PRA.[3] Twenty-eight contained collections of information, a number of which require certification requirements that will permit monitoring for compliance with statutory or regulatory requirements not subject to the relief issued.[4]

Other contained substituted compliance obligations in the form of collections that were intended to be no more burdensome than the collection requirements provided for in the regulations, from which the no-action letters provided relief. Of the few letters that contained conditions allowing for substituted compliance that included a collection of information but relieved regulatory burden not associated with a collection of information, the increased collection burden was offset by the overall decrease in collection burden resulting from other letters issued pursuant to section 140.99. Nonetheless, to ensure flexibility over the next three years, burden hours were estimated to cover circumstances in which a collection contained in a no-action or exemptive letter may add to, rather than offset or decrease, regulatory burdens containing collections of information.

Finally, although there has been an increase in requests for no-action relief and interpretive letters, Commission staff does not anticipate that this increase will be permanent. Thus, burden estimates have been bifurcated. Burden hours have been estimated at an increased level for the first year following the renewal of this collection, and then pared for the second and third years, so as not to artificially inflate the Commission's burden budget, or the burden budget that is maintained government-wide by OMB.

Past experience was used to estimate the number of no-action, interpretive, and exemptive letters that may be received over the three-years for which this renewal is being sought. The number of letters received over the past five years are as follows:

Letters Issued	No-action	Interpretive	Exemptive
2013	64	0	0
2012	70	1	11
2011	8	0	1
2010	9	23	4
2009	11	35	3

Burden Estimates. For the proposed renewal period, the respondent burden calculated with consideration to past experience is estimated to be 28,478 hours. These estimates include burden hours for complying with the information requirements for exemptive, no-action, and interpretative letters contained in section 140.99(c) of the Commission's regulations, effecting filing as provided in section 140.99(d), providing notice of material change in

[1] 17 CFR 140.99. An archive containing CFTC staff letters may be found at *http://www.cftc.gov/LawRegulation/CFTCStaffLetters/index.htm.*

[2] *See, e.g.,* 44 U.S.C. 3502(3)(A)(1).

[3] *See, e.g.,* 5 CFR 1320.3(h)(1).

[4] *Id.*

circumstances that may affect any relief granted pursuant to section 140.99(e), and complying with notice and other conditions that may be contained in grant of exemptive or no-action relief issued by staff; and preparing and submitting withdrawals of requests for exemptive, no-action, and interpretative letters pursuant to section 140.99(f). The estimates also include burden hours for preparing a confidential treatment request pursuant to and responding to any process contained in associated section 140.98(b) of the Commission's regulations, and complying with the documentation requirements contained in section 41.3(b), related to exemption requests from certain intermediaries.

Respondents/Affected Entities: Registered entities, intermediaries, eligible contract participants, parties clarifying their status as such or seeking relief from registration or discrete regulatory burdens associated with their status.

Estimated number of respondents: 12,428.

Estimated total annual burden on respondents: 28,478 hours.

Frequency of collection: Occasionally.

The Commission estimates the burden of this collection of information as follows:

	Estimated annual respondents or recordkeepers	Reports or records annually—each respondent	Total annual responses	Estimated average number of hours per response	Estimated annual burden hours
REPORTING—RENEWAL YEAR ONE:					
§ 140.99(c)—information requirements for letters	40	1	40	9.00	360
§ 140.99(d)—filing requirements	40	1	40	0.38	15
§ 140.99(e)—staff response:					
change of facts and circumstances	7	1	7	2.25	16
notice and other conditions	4,500	1	4,500	1.50	6,750
§ 140.99(f)—withdrawal of requests	6	1	6	0.75	5
§ 140.98(b)—confidential treatment requests	5	1	5	1.80	9
§ 41.3(b)—securities brokers and dealers requesting exemptive orders; documentation requirement	10	1	10	3.75	38
REPORTING—YEARS TWO AND THREE:					
§ 140.99(c)—information requirements for letters	25	1	25	9.00	225
§ 140.99(d)—filing requirements	25	1	25	0.38	9
§ 140.99(e)—staff response:					
change of facts and circumstances	4	1	4	2.25	9
notice and other conditions	1,500	1	1,500	1.50	2,250
§ 140.99(f)—withdrawal of requests	3		0		0
§ 140.98(b)—confidential treatment requests	3	1	3	1.80	5
§ 41.3(b)—securities brokers and dealers requesting exemptive orders; documentation requirement	10	1	10	3.75	38
SUBTOTAL REPORTING	6,178	13	6,175	38	9,728
RECORDKEEPING—RENEWAL YEAR ONE:					
§ 140.99(e)—staff response:					
notice and other conditions	4,500	4	18,000	0.75	13,500
RECORDKEEPING—RENEWAL YEARS TWO AND THREE:					
§ 140.99(e)—staff response:					
notice and other conditions	1,750	4	7,000	0.75	5,250
SUBTOTAL RECORDKEEPING	6,250	8	25,000	2	18,750
GRAND TOTAL	12,428	21	31,175	40	28,478

There are no capital costs or operating and maintenance costs associated with this collection.

This estimate is based on the number of requests for such letters in the last three years. Although the burden varies with the type, size, and complexity of the request submitted, such request may involve analytical work and analysis, as well as the work of drafting the request itself.

Comment Solicitation: With respect to this collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

Dated: December 23, 2013.

Christopher J. Kirkpatrick,

Deputy Secretary of the Commission.

[FR Doc. 2013–31106 Filed 12–27–13; 8:45 am]

BILLING CODE 6351–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Fair Credit Reporting Act Disclosures

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice regarding charges for certain disclosures under the Fair Credit Reporting Act.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau)

announces that the ceiling on allowable charges under Section 612(f) of the Fair Credit Reporting Act (FCRA) will remain unchanged at $11.50 for 2014. The Bureau is required to increase the $8.00 amount referred to in Section 612(f)(1)(A)(i) of the FCRA on January 1 of each year, based proportionally on changes in the Consumer Price Index for All Urban Consumers (CPI–U), with fractional changes rounded to the nearest fifty cents. The CPI–U increased 45.25 percent between September 1997, the date the FCRA amendments took effect, and September 2013. This increase in the CPI–U, and the requirement that any increase be rounded to the nearest fifty cents, results in no change in the maximum allowable charge of $11.50.

DATES: Effective January 1, 2014.

FOR FURTHER INFORMATION CONTACT: David Friend, Office of Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552 at (202) 435–7700.

SUPPLEMENTARY INFORMATION: Section 612(f)(1)(A) of the Fair Credit Reporting Act (FCRA) provides that a consumer reporting agency may charge a consumer a reasonable amount for making a disclosure to the consumer pursuant to Section 609 of the FCRA.[1] Section 612(f)(1)(A)(i) of the FCRA provides that, where a consumer reporting agency is permitted to impose a reasonable charge on a consumer for making a disclosure to the consumer pursuant to Section 609 of the FCRA, the charge shall not exceed $8.00 and shall be indicated to the consumer before making the disclosure. Section 612(f)(2) of the FCRA states that the Bureau shall increase the $8.00 maximum amount on January 1 of each year, based proportionally on changes in the Consumer Price Index, with fractional changes rounded to the nearest fifty cents.

In 2011, the responsibility for performing this task was transferred from the Federal Trade Commission to the Bureau pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.[2] Like the Federal Trade Commission, the Bureau's calculations are based on the CPI–U, which is the most general Consumer Price Index and covers all urban consumers and all items.

Section 211(a)(2) of the FACT Act added a new Section 612(a) to the FCRA that gives consumers the right to request free annual disclosures once every 12 months. The maximum allowable charge established by this notice does not apply to requests made under that provision. The charge does apply when a consumer who orders a file disclosure has already received a free annual disclosure and does not otherwise qualify for an additional free disclosure.

The Bureau is using the $8.00 amount set forth in Section 612(f)(1)(A)(i) of the FCRA as the baseline for its calculation of the increase in the ceiling on reasonable charges for certain disclosures made under Section 609 of the FCRA. Since the effective date of the amended FCRA was September 30, 1997, the Bureau calculated the proportional increase in the CPI–U from September 1997 to September 2013. The Bureau then determined what modification, if any, from the original base of $8.00 should be made effective for 2014, given the requirement that fractional changes be rounded to the nearest fifty cents.

Between September 1997 and September 2013, the CPI–U increased by 45.25 percent—from an index value of 161.2 in September 1997 to a value of 234.1 in September 2013. An increase of 45.25 percent in the $8.00 base figure would lead to a new figure of $11.62. However, because the statute directs that the resulting figure be rounded to the nearest $0.50, the maximum allowable charge is $11.50. The Bureau therefore determines that the maximum allowable charge for the year 2014 will remain unchanged at $11.50.

Dated: December 24, 2013.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2013–31219 Filed 12–26–13; 11:15 am]

BILLING CODE 4810–25–P

[1] This provision, originally Section 612(a), was added to the FCRA in September 1996 and became effective in September 1997. It was relabeled Section 612(f) by Section 211(a)(1) of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), Public Law 108–159, which was signed into law on December 4, 2003.

[2] Public Law 111–203, Title X, Section 1088.

DEPARTMENT OF DEFENSE

Office of the Secretary

Announcement of Competition Under the America COMPETES Act

AGENCY: Defense Advanced Research Projects Agency (DARPA), DoD.

ACTION: Notice.

SUMMARY: DARPA announces the Cyber Grand Challenge (CGC), a prize competition under 15 U.S.C. 3719, the America COMPETES Act. The CGC will utilize a series of competition events to test the abilities of fully automated cyber defense systems. The CGC seeks to engender a new generation of autonomous cyber defense capabilities that combine the speed and scale of automation with reasoning abilities exceeding those of human experts.

FOR FURTHER INFORMATION CONTACT: All questions regarding the competition may be sent to *CyberGrandChallenge@darpa.mil.*

SUPPLEMENTARY INFORMATION: DARPA recommends that all parties interested in participating in the CGC read the latest CGC Rules document posted on the CGC Web site (*www.darpa.mil/cybergrandchallenge*) for a full description of CGC events.

Subject of the competition. The DoD maintains information systems using a software technology base comprised of Commercial Off The Shelf (COTS) operating systems and applications. This COTS technology base is common to the DoD, industry, and the Defense Industrial Base, and the continual discovery of potential vulnerabilities in this software base has led to a constant cycle of intrusion, compromise discovery, patch formulation, patch deployment and recovery. At the present time this defensive cycle is performed by highly trained software analysts; it is the role of these analysts to reason about the function of software, identify novel threats and remove them. Manual analysis of code and threats is an artisan process, often requiring skilled analysts to spend weeks or months analyzing a problem. The size of the technology base also contributes to the difficulty of manually discovering vulnerabilities. At the present time, automated program analysis capabilities are able to assist the work of human software analysts. In the Cyber Grand Challenge, competitors will improve and combine these semi-automated technologies into unmanned Cyber Reasoning Systems that can autonomously reason about novel program flaws, prove the existence of flaws in networked applications, and formulate effective defenses. The performance of these automated systems will be evaluated through head-to-head tournament style competition. The CGC will draw widespread attention to the technology issues associated with autonomous software comprehension and motivate entrants to overcome technical challenges to realize truly effective autonomous cyber defense. This competition will challenge the most capable and innovative companies, institutions, and entrepreneurs to produce breakthroughs in capability and performance. Eligible parties may enter

the CGC on the Proposal Track through receiving an award under DARPA's CGC Automated Cyber Reasoning Broad Agency Announcement, or through open entry on the Open Track.

Eligibility for Competition Participation. To be eligible to participate in the CGC, an individual or entity shall have—

(1) registered to participate in the competition in accordance with the CGC Rules document published at *www.darpa.mil/cybergrandchallenge;* and,

(2) complied with all the requirements outlined in the CGC Rules document published at *www.darpa.mil/cybergrandchallenge.*

Competition Registration. There is no fee for entry. Application materials are available on the Cyber Grand Challenge Web site (*www.darpa.mil/cybergrandchallenge*) and must be submitted in accordance with the instructions outlined in the CGC Rules. The application procedure is a two-step process consisting of an initial application and an extended application. Application materials received after the deadlines specified on the CGC Web site will be disposed of in a secure manner. Application materials will not be returned. Incomplete applications will not be accepted.

Winner Selection. Scoring at Cyber Grand Challenge events will reflect successful cyber reasoning. Based on finalized scoring at the CGC Qualifying Event (CQE), DARPA will issue invitations to finalists. Open Track teams invited to the CGC Final Event (CFE) will receive a cash prize. Based on finalized scoring at the CFE, DARPA will determine 1st, 2nd, and 3rd place winners to receive prizes.

Prize Amounts. DARPA anticipates prizes in the following amounts:

- CQE: $750,000
- CFE: 1st place: $2,000,000; 2nd place: $1,000,000; 3rd place: $750,000

Dated: December 23, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–31072 Filed 12–27–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

[Docket ID DoD–2013–OS–0235]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Defense Finance and Accounting Service proposes to alter a system of records, T7205, General Accounting and Finance System—Report Database for Financial Statements, in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. This system will enable the United States Air Force, Defense Security Service, and the National Geospatial-Intelligence Agency (NGA) to produce transaction-driven financial statements in support of Defense Finance and Accounting Service financial mission.

DATES: This proposed action will be effective on January 30, 2014 unless comments are received which result in a contrary determination. Comments will be accepted on or before January 29, 2014.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory L. Outlaw, Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–HKC/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150 or at (317) 212–4591.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Office Web site at *http://dpclo.defense.gov/privacy/SORNs/component/dfas/index.html.*

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 21, 2013, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 23, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T7205

SYSTEM NAME:

General Accounting and Finance System, Report Database for Financial Statements (June 13, 2007, 72 FR 32630)

CHANGES:

* * * * *

Categories of individuals covered by the system: Delete entry and replace with ''Defense Finance and Accounting Service employees, United States Air Force (active duty, reserve, and guard members), Department of Defense civilian employees for the Defense Security Service, and the National Geospatial-Intelligence Agency.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 301, Department of Defense Financial Management Regulation (DoDFMR) 7000.14–R, Vol. 4, Defense Finance and Accounting Service; 31 U.S.C. 3512, Executive agency accounting and other financial management reports and plans; 31 U.S.C. 3513, Financial reporting and accounting system; and E.O. 9397 (SSN), as amended.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Defense Finance and Accounting Service-Columbus, I&T, System Manager, Cash, General Funds and Miscellaneous Division, 3990 E Broad Street, Columbus, OH 43213–1152.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Requests should contain individual's full name, SSN for verification, current

address, and provide a reasonable description of what they are seeking.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this record system should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Request should contain individual's full name, SSN for verification, current address, and telephone number.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Defense Finance and Accounting Service (DFAS) rules for accessing records, for contesting contents and appealing initial agency determinations are published in Defense Finance and Accounting Service Regulation 5400.11–R, 32 CFR 324; or may be obtained from the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''From the individual.''

* * * * *

[FR Doc. 2013–31089 Filed 12–27–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Record of Decision for Hawaii-Southern California Training and Testing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The United States Department of the Navy (DoN), after carefully weighing the strategic, operational, and environmental consequences of the proposed action, announces its decision to conduct training and testing activities in the Hawaii-Southern California study area as described in Alternative 2 of the Final Environmental Impact Statement/Overseas Environmental Impact Statement for Hawaii-Southern California Training and Testing, dated August 2013. Under Alternative 2, the DoN will be able to meet current and future DoN and Department of Defense training and testing requirements. In addition to analyzing baseline testing and training in Alternative 2, the DoN analyzed areas where training and testing will continue as in the past, but were not considered in previous environmental analyses. Alternative 2 also includes the establishment of new range capabilities, as well as modifications of existing abilities; adjustments to the type and tempo of training and testing; and the establishment of additional locations to conduct activities between range complexes.

SUPPLEMENTARY INFORMATION: The complete text of the Record of Decision (ROD) is available on the project Web site at *http://www.hstteis.com*, along with the Final Environmental Impact Statement/Overseas Environmental Impact Statement and supporting documents. Single copies of the ROD are available upon request by contacting: Naval Facilities Engineering Command Pacific/EV21.CS, Attn: HSTT EIS/OEIS Project Manager, 258 Makalapa Drive, Suite 100, Pearl Harbor, HI 96860–3134.

N.A. Hagerty-Ford,

Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2013–31208 Filed 12–27–13; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Applications for New Awards; National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Field Initiated Projects Program

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Field Initiated Projects Program.

Notice inviting applications for new awards for fiscal year (FY) 2014.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.133G–1 (Research) and 84.133G–2 (Development).

DATES: *Applications Available:* December 30, 2013. *Deadline for Transmittal of Applications:* February 28, 2014.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Field Initiated (FI) Projects program is to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities. Another purpose of the FI Projects program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

NIDRR makes two types of awards under the FI Projects program: Research grants (CFDA 84.133G–1) and development grants (CFDA 84.133G–2).

In carrying out a research activity under an FI Projects research grant, a grantee must identify one or more hypotheses or research questions and, based on the hypotheses or research questions identified, perform an intensive, systematic study directed toward producing (1) new scientific knowledge, or (2) better understanding of the subject, problem studied, or body of knowledge.

In carrying out a development activity under an FI Projects development grant, a grantee must use knowledge and understanding gained from research to create materials, devices, systems, or methods, including designing and developing prototypes and processes, that are beneficial to the target population. ''Target population'' means the group of individuals, organizations, or other entities expected to be affected by the project. There may be more than one target population because a project may affect those who receive services, provide services, or administer services.

Note: An applicant should consult NIDRR's Long-Range Plan for Fiscal Years 2013–2017 (78 FR 20299) (the Plan) when preparing its application. The Plan is organized around the following outcome domains: (1) Community living and participation; (2) health and function; and (3) employment and can be accessed on the Internet at the following site: *www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Priority: Under this competition we are particularly interested in applications that address the following priority:

Invitational Priority: For FY 2014, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

The priority is:

Projects that support research or development activities related to the development and application of cloud computing for people with disabilities. Cloud computing offers the potential to provide accommodations that enable people with disabilities to access information technology more readily, support improved management and use of data to improve services for people with disabilities, provide new opportunities to communicate, and help people with disabilities and their families manage important data, such as application forms and records for services they receive. NIDRR seeks to secure these and other potential benefits of this emerging technology for people with disabilities.

Program Authority: 29 U.S.C. 764.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR Parts 74, 75, 77, 80, 81, 82, 84, 86, and 97. (b) The Education Department suspension and debarment regulations in 2 CFR Part 3485. (c) The regulations for this program in 34 CFR Part 350.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $110,000,000 for the NIDRR program for FY 2014, of which we intend to use an estimated $4,000,000 for the FI Projects competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2015 and subsequent fiscal years from the list of unfunded applicants from this competition.

Estimated Range of Awards: $195,000 to $200,000.

Estimated Average Size of Awards: $200,000.

Maximum Award: We will reject any application that proposes a budget exceeding $200,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 20.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is required by 34 CFR 350.62 and will be negotiated at the time of the grant award.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.133G–1 or 84.133G–2.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, and Part III narrative; resumes of staff; and other related materials, if applicable.

In concert with the balance principle described in the Plan, applicants for FI projects should specify in their abstract and project narrative which of NIDRR's major outcome domains of individual well-being their proposed project will focus on: (a) Community living and participation, (b) employment, or (c) health and function. Although applicants may propose projects that address more than one domain, they should select the applicable competition based on the primary domain addressed in their proposed project.

3. *Submission Dates and Times: Applications Available:* December 30, 2013.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on January 21, 2014. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or to arrange for an

individual consultation, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Deadline for Transmittal of Applications: February 28, 2014.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (*Grants.gov*). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR Part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one-to-two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov*. To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html*.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html*.

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the FI Projects program, CFDA Number 84.133G–1 (Research) or 84.133G–2 (Development), must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the FI Projects program, CFDA Number 84.133G–1 (Research) or 84.133G–2 (Development) at *www.Grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133G).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the procedures for submitting an application through Grants.gov that are available at the Grants.gov Web site at *http://www.grants.gov/web/grants/applicants/apply-for-grants.html.* Answers to frequently asked questions are available in Section E of the Application Package for New Grants under the Field Initiated Research Program. Additional support documents, telephone support, and online support are available at the Grants.gov Web site at *www.grants.gov*.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material. Additional, detailed information on how to attach files is in the application instructions.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application). These two automatic notifications should not be interpreted as evidence that your application was correctly uploaded and that it is without any disqualifying errors. For instructions on how to verify that your application was submitted on time and was successfully validated as having no disqualifying errors, refer to the document titled Grants.gov Submission Tips: In Section E in the Application Package for New Grants under the Field Initiated Research Program.

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700. FAX: (202) 245–7323.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133G–1 (Research) or 84.133G–2 (Development)), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133G–1 (Research) or 84.133G–2 (Development)), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the program under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 350.54 and 350.55 and are listed in the application package.

Note: Different selection criteria are used for FI Projects research grants (84.133G–1) and development grants (84.133G–2). Applicants must clearly indicate in the application whether they are applying for a research grant (84.133G–1) or a development grant (84.133G–2) and must address the selection criteria relevant for their grant type. Without exception, NIDRR will review each application based on the grant designation made by the applicant. Applications will be determined ineligible and will not be reviewed if they do not include a clear designation as a research grant or a development grant.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Additional factors we consider in selecting an application for an award are as follows:

The Secretary is interested in outcomes-oriented research or development projects that use rigorous scientific methodologies. To address this interest, applicants are encouraged to articulate goals, objectives, and expected outcomes for the proposed research or development activities. Proposals should describe how results and planned outputs are expected to contribute to advances in knowledge, improvements in policy and practice, and public benefits for individuals with disabilities. Applicants should propose projects that are designed to be consistent with these goals. We encourage applicants to include in their applications a description of how results will measure progress towards achievement of anticipated outcomes (including a discussion of measures of effectiveness), the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies. Submission of the information identified in this section is voluntary, except where required by the selection criteria listed in the application package.

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The number of products (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices developed or tested with NIDRR funding) that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.

• The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.

For these reviews, NIDRR uses information submitted by grantees as part of their Annual Performance Reports. Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *www.ed.gov/about/offices/list/opepd/sas/index.html*.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov*.

If you use a TDD or a TTY, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: December 24, 2013.

Michael K. Yudin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–31279 Filed 12–27–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995), intends to extend for three years, an information collection request (OMB Control Number 1910–1700) with the Office of Management and Budget (OMB). The proposed voluntary collection will request that an individual or an authorized designee provide pertinent information for easy record retrieval allowing for increased efficiencies and quicker processing. Pertinent information includes the requester's name, shipping address, phone number, email address, previous work location, the action requested and any identifying data that will help locate the records (e.g., maiden name, occupational license number, time and place of employment). Comments are invited on: (a) whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and, (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before February 28, 2014. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Troy Manigault, Departmental Records Officer, Office of the Chief Information Officer, U.S. Department of Energy, 19901 Germantown Rd, Room G–312, Germantown, MD 20874, Phone: 301–903–9926 (Office), *informationcollection@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Russell Pereira, Director of E-Government and Standards, Office of the Chief Information Officer, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, 202–586–0338 (Office), *russell.pereira@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. 1910–1700; (2) Information Collection Request Title: Records and Administration; (3) Type of Review: Renewal; (4) Purpose: The Privacy Act Information Request Form (DOE Form 531), which assists the Department of Energy in processing privacy requests submitted by an individual or an authorized designee where-in he or she is requesting records the government may maintain on them, and increases efficiencies including, but not limited to quicker processing of privacy requests by asking individuals or their designees pertinent information for easy record retrieval; (5) Annual Estimated Number of Respondents: 135; (6) Annual Estimated Number of Total Responses: 135; (7) Annual Estimated Number of Burden Hours: 45 hrs; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: N/A.

Statutory Authority: The Privacy Act of 1974, 5 U.S.C. 552(a), 10 CFR 1008.7, and DOE Order 206.1.

Issued in Washington, DC on December 23, 2013.

Troy Manigault,

Departmental Records Officer, Office of the Chief Information Officer.

[FR Doc. 2013–31222 Filed 12–27–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Conservation Program for Consumer Products and Commercial and Industrial Equipment: Effect of Revised Estimates of the Social Cost of Carbon

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

ACTION: Notice of Data Availability (NODA).

SUMMARY: The U.S. Department of Energy (DOE) has, for several years, used monetary values for the Social Cost of Carbon (SCC) to estimate the value to society of reducing carbon emissions that could result from rulemakings establishing energy conservation standards for residential appliances and industrial equipment. In recent standards rulemakings for microwave oven standby and off modes, metal halide lighting fixtures, commercial refrigeration equipment, walk-in coolers and freezers, and furnace fans, DOE used SCC values developed by an interagency group and released to the public in May 2013 by the Office of Management and Budget (OMB). OMB has issued updated SCC values that reflect minor technical corrections to the estimates that were released in May 2013. The purpose of this notice is to show the impact of these updated values on the national economic benefits projected to result from the proposed standards for commercial refrigeration equipment, walk-in coolers and freezers, metal halide lighting fixtures, and furnace fans.

FOR FURTHER INFORMATION CONTACT: Requests for additional information may be sent to Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1692. Email: *John.Cymbalsky@ee.doe.gov*.

Ms. Ami Grace-Tardy, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–5709. Email: *Ami.Grace-Tardy@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

For several years, DOE has used the monetary values provided by the SCC to estimate the value to society of reduced carbon emissions from rulemakings establishing energy conservation standards for residential appliances and industrial equipment. DOE has recently issued standards rulemakings for microwave oven standby and off modes, commercial refrigeration equipment, walk-in coolers and freezers, metal halide lighting fixtures, and furnace fans. DOE issued a final rule for microwave oven standby and off modes standards (78 FR 36316 (June 17, 2013)), and it issued notices of proposed rulemaking (NOPR) for metal halide lighting fixtures (78 FR 51463 (August 20, 2013)), commercial refrigeration equipment (78 FR 55889 (September 11, 2013)), walk-in coolers and freezers (78 FR 55781 (September 11, 2013)), and residential furnace fans (78 FR 64067 (October 25, 2013)). The analyses prepared for these rulemakings used values for the SCC that were developed by an interagency group and issued by OMB in May 2013.[1] The May 2013 estimates reflect values that are similar to those used by other governments, international institutions, and major corporations. Table 1 shows the May 2013 sets of SCC estimates in five year increments from 2010 to 2050. The interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from the three integrated assessment models that were evaluated, at discount rates of 2.5, 3, and 5 percent. The fourth set, which represents the 95th percentile SCC estimate across all three models at a 3-percent discount rate, is included to represent higher-than-expected impacts from temperature change further out in the tails of the SCC distribution.

On November 1, 2013, OMB issued updated values for the May 2013 SCC.[2] OMB announced a 60-day public comment period on the updated values and the underlying technical support document on November 26, 2013. 78 FR 70586. These updated values reflect minor technical corrections to the May 2013 SCC estimates. The technical corrections to the May 2013 SCC values represent the best available science and data on the economic impacts on society of climate change, and, as such, will be used by DOE in its rulemakings. Table 2 shows the updated sets of SCC estimates in five year increments from 2010 to 2050. The changes from the May 2013 values to the November 2013 values are small.

TABLE 1—ANNUAL SCC VALUES FROM MAY 2013 INTERAGENCY REPORT, 2010–2050

[2007 dollars per metric ton CO_2]

Year	Discount rate (percent)			
	5	3	2.5	3
	Average	Average	Average	95th Percentile
2010	11	33	52	90
2015	12	38	58	109
2020	12	43	65	129
2025	14	48	70	144
2030	16	52	76	159
2035	19	57	81	176
2040	21	62	87	192
2045	24	66	92	206
2050	27	71	98	221

[1] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866.* Interagency Working Group on Social Cost of Carbon, United States Government. May 2013.

[2] *http://www.whitehouse.gov/blog/2013/11/01/refining-estimates-social-cost-carbon*

TABLE 2—ANNUAL SCC VALUES FROM NOVEMBER 2013 INTERAGENCY REPORT UPDATE, 2010–2050

[2007 dollars per metric ton CO_2]

Year	Discount rate (percent)			
	5	3	2.5	3
	Average	Average	Average	95th Percentile
2010	11	32	51	89
2015	11	37	57	109
2020	12	43	64	128
2025	14	47	69	143
2030	16	52	75	159
2035	19	56	80	175
2040	21	61	86	191
2045	24	66	92	206
2050	26	71	97	220

II. Discussion

As indicated above, the updated SCC values are only slightly different from the May 2013 SCC values. As such, the impact of using these values on DOE's estimates of the economic value of reductions in CO_2 emissions associated with the energy conservation standards for the products mentioned in section I is very small, and in no way affects the policy decisions made by DOE in the relevant rulemakings. Nonetheless, DOE wishes to inform interested parties of the exact effect of the updated values on the national economic benefits projected to result from the proposed standards for commercial refrigeration equipment, walk-in coolers and freezers, metal halide lighting fixtures, and residential furnace fans. The benefits of reductions in CO_2 emissions associated with energy conservation standards using the May 2013 SCC values and the updated SCC values, along with the total net benefits in each case, are shown in: Table 3 for the proposed metal halide lighting fixtures standards (in real 2012 dollars); Table 4 for the proposed commercial refrigeration equipment standards (in real 2012 dollars); Table 5 for the proposed walk-in coolers and freezers standards (in real 2012 dollars); and Table 6 for the proposed residential furnace fans standards (in real 2012 dollars). Given the small change in the benefits, DOE has, in this notice, only shown the summary National impacts of the changes and not the results at the more detailed trial standard levels (TSLs). However, DOE notes that the changes at the Trial Standard Level (TSL) level are equally small and do not in any way affect DOE's evaluation of those TSLs.[3]

TABLE 3—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF PROPOSED METAL HALIDE LAMP FIXTURE ENERGY CONSERVATION STANDARDS [4]

Category	Present value (*million 2012$*)	Discount rate (percent)
Benefits		
Operating Cost Savings	1,848	7
	3,748	3
Using Revised November 2013 Social Cost of Carbon Values		
CO_2 Reduction Monetized Value ($11.8/t case)*	332	5
CO_2 Reduction Monetized Value ($39.7/t case)*	1,514	3
CO_2 Reduction Monetized Value ($61.2/t case)*	2,406	2.5
CO_2 Reduction Monetized Value ($117/t case)*	4,666	3
NO_X Reduction Monetized Value (at $2,639/ton)*	45	7
	91	3
Total Benefits †	3,406	7
	5,352	3
Using Original May 2013 Social Cost of Carbon Values		
CO_2 Reduction Monetized Value ($12.9/t case)*	333	5
CO_2 Reduction Monetized Value ($40.8/t case)*	1,532	3
CO_2 Reduction Monetized Value ($62.2/t case)*	2,436	2.5
CO_2 Reduction Monetized Value ($117/t case)*	4,689	3
NO_X Reduction Monetized Value (at $2,639/ton)*	45	7
	91	3
Total Benefits †	3,424	7
	5,371	3

[3] In DOE rulemakings, ''TSLs'' represent different efficiency levels that DOE analyzes when deciding which efficiency level to propose or adopt based on statutory criteria.

TABLE 3—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF PROPOSED METAL HALIDE LAMP FIXTURE ENERGY CONSERVATION STANDARDS [4]—Continued

Category	Present value (*million 2012$*)	Discount rate (percent)
Costs		
Incremental Installed Costs	897	7
	1,294	3
Net Benefits (Using Revised November 2013 SCC Values) Costs		
Including CO_2 and NO_X Reduction Monetized Value	2,510	7
	4,058	3
Net Benefits (Using Original May 2013 SCC Values) Costs		
Including CO_2 and NO_X Reduction Monetized Value	2,528	7
	4,076	3

* The CO_2 values represent global values of the social cost of CO_2 emissions (in 2012$) in 2015 under several scenarios. The first three values are averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth value represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The value for NO_X is the average of the low and high values used in DOE's analysis.

† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to SCC value of $39.7/t or $40.8/t in 2015 (derived from the 3% discount rate value for SCC).

TABLE 4—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF PROPOSED COMMERCIAL REFRIGERATION EQUIPMENT ENERGY CONSERVATION STANDARDS [5]

Category	Present value (million 2012$)	Discount rate (percent)
Benefits		
Operating Cost Savings	2,695	7
	6,034	3
Using Revised November 2013 Social Cost of Carbon Values		
CO_2 Reduction Monetized Value ($11.8/t case) *	306	5
CO_2 Reduction Monetized Value ($39.7/t case) *	1,481	3
CO_2 Reduction Monetized Value ($61.2/t case) *	2,418	2.5
CO_2 Reduction Monetized Value ($117/t case) *	4,527	3
NO_X Reduction Monetized Value (at $2,639/ton) *	50	7
	108	3
Total Benefits†	4,226	7
	7,623	3
Using Original May 2013 Social Cost of Carbon Values		
CO_2 Reduction Monetized Value ($12.9/t case) *	308	5
CO_2 Reduction Monetized Value ($40.8/t case) *	1,504	3
CO_2 Reduction Monetized Value ($62.2/t case) *	2,452	2.5
CO_2 Reduction Monetized Value ($117/t case) *	4,552	3
NO_X Reduction Monetized Value (at $2,639/ton) *	50	7
	108	3
Total Benefits†	4,249	7
	7,646	3
Costs		
Incremental Installed Costs	1,089	7
	1,967	3
Net Benefits (Using Revised November 2013 SCC Values)		
Including CO_2 and NO_X Reduction Monetized Value	3,137	7

[4] *See* Table I.3 at 78 FR 51463, 51468 (August 20, 2013).

TABLE 4—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF PROPOSED COMMERCIAL REFRIGERATION EQUIPMENT ENERGY CONSERVATION STANDARDS [5]—Continued

Category	Present value (million 2012$)	Discount rate (percent)
	5,656	3
Net Benefits (Using Original May 2013 SCC Values)		
Including CO_2 and NO_X Reduction Monetized Value	3,160 5,679	7 3

* The CO_2 values represent global values of the social cost of CO_2 emissions (in 2012$) in 2015 under several scenarios. The first three values are averages of SCC distributions calculated using 5, 3, and 2.5 discount rates, respectively. The fourth value represents the 95th percentile of the SCC distribution calculated using a 3 discount rate. The value for NO_X is the average of the low and high values used in DOE's analysis.

† Total Benefits for both the 3 and 7 cases are derived using the series corresponding to SCC value of $39.7/t or $40.8/t in 2015 (derived from the 3 discount rate value for SCC).

TABLE 5—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF PROPOSED WALK-IN COOLERS AND FREEZERS ENERGY CONSERVATION STANDARDS [6]

Category	Present value (billion 2012$)	Discount rate (percent)
Benefits		
Operating Cost Savings	12.41 31.56	7 3
Using Revised November 2013 Social Cost of Carbon Values		
CO_2 Reduction Monetized Value ($11.8/t case) *	1.87	5
CO_2 Reduction Monetized Value ($39.7/t case) *	8.87	3
CO_2 Reduction Monetized Value ($61.2/t case) *	14.19	2.5
CO_2 Reduction Monetized Value ($117/t case) *	27.39	3
NO_X Reduction Monetized Value (at $2,639/ton) *	0.24 0.55	7 3
Total Benefits†	21.52 40.98	7 3
Using Original May 2013 Social Cost of Carbon Values		
CO_2 Reduction Monetized Value ($12.9/t case) *	1.88	5
CO_2 Reduction Monetized Value ($40.8/t case) *	8.96	3
CO_2 Reduction Monetized Value ($62.2/t case) *	14.36	2.5
CO_2 Reduction Monetized Value ($117/t case) *	27.52	3
NO_X Reduction Monetized Value (at $2,639/ton) *	0.24 0.55	7 3
Total Benefits†	21.61 41.07	7 3
Costs		
Incremental Installed Costs	3.77 7.26	7 3
Net Benefits (Using Revised November 2013 SCC Values)		
Including CO_2 and NO_X Reduction Monetized Value	17.76 33.72	7 3
Net Benefits (Using Original May 2013 SCC Values)		
Including CO_2 and NO_X Reduction Monetized Value	17.84 33.80	7 3

* The CO_2 values represent global values of the social cost of CO_2 emissions (in 2012$) in 2015 under several scenarios. The first three values are averages of SCC distributions calculated using 5, 3, and 2.5 discount rates, respectively. The fourth value represents the 95th percentile of the SCC distribution calculated using a 3 discount rate. The value for NO_X is the average of the low and high values used in DOE's analysis.

† Total Benefits for both the 3 and 7 cases are derived using the series corresponding to SCC value of $39.7/t or $40.8/t in 2015 (derived from the 3 discount rate value for SCC).

[5] *See* Table I.3 at 78 FR 55889, 55893 (September 11, 2013).

TABLE 6—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF PROPOSED FURNACE FAN ENERGY CONSERVATION STANDARDS [7]

Category	Present value (billion 2012$)	Discount rate (percent)
Benefits		
Operating Cost Savings	11.58	7
	32.00	3
Using Revised November 2013 Social Cost of Carbon Values		
CO_2 Reduction Monetized Value ($11.8/t case) *	2.22	5
CO_2 Reduction Monetized Value ($39.7/t case) *	11.44	3
CO_2 Reduction Monetized Value ($61.2/t case) *	18.60	2.5
CO_2 Reduction Monetized Value ($117/t case) *	35.42	3
NO_X Reduction Monetized Value (at $2,639/ton) *	0.11	7
	0.31	3
Total Benefits†	23.13	7
	43.76	3
Using Original May 2013 Social Cost of Carbon Values		
CO_2 Reduction Monetized Value ($12.9/t case) *	2.25	5
CO_2 Reduction Monetized Value ($40.8/t case) *	11.52	3
CO_2 Reduction Monetized Value ($62.2/t case) *	18.81	2.5
CO_2 Reduction Monetized Value ($117/t case) *	35.56	3
NO_X Reduction Monetized Value (at $2,639/ton) *	0.11	7
	0.31	3
Total Benefits†	23.21	7
	43.84	3
Costs		
Incremental Installed Costs	3.07	7
	5.85	3
Net Benefits (Using Revised November 2013 SCC Values)		
Including CO_2 and NO_X Reduction Monetized Value	20.06	7
	37.91	3
Net Benefits (Using Original May 2013 SCC Values)		
Including CO_2 and NO_X Reduction Monetized Value	20.14	7
	38.99	3

* The CO_2 values represent global values of the social cost of CO_2 emissions (in 2012$) in 2015 under several scenarios. The first three values are averages of SCC distributions calculated using 5, 3, and 2.5 discount rates, respectively. The fourth value represents the 95th percentile of the SCC distribution calculated using a 3 discount rate. The value for NO_X is the mid-range value used in DOE's analysis.

† Total Benefits for both the 3 and 7 cases are derived using the series corresponding to SCC value of $39.7/t or $40.8/t in 2015 (derived from the 3 discount rate value for SCC).

Issued in Washington, DC, on December 24, 2013.

Kathleen B. Hogan,

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

[FR Doc. 2013–31270 Filed 12–27–13; 8:45 am]

BILLING CODE 6450–01–P

[6] *See* Table I–3 at 78 FR 55781, 55786–87 (September 11, 2013).

[7] *See* Table 1.3 at 78 FR 64067, 64071 (October 25, 2013).

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket No. EERE–2013–BT–DET–0053]

Energy Efficiency Program for Industrial Equipment: Petition of CSA Group for Classification as a Nationally Recognized Certification Program for Small Electric Motors

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

ACTION: Notice of petition and request for public comments.

SUMMARY: This notice announces receipt of a petition from CSA Group (CSA) seeking classification as a nationally recognized certification program under 10 CFR 431.447 and 431.448. In its petition, which appears at the end of this notice, CSA provides documentation to help substantiate its position that its certification program for small electric motors satisfies the evaluation criteria for classification as a nationally recognized certification

program that are specified in 10 CFR 431.447(b). This notice summarizes the substantive aspects of these documents and requests public comments on the merits of CSA's petition.

DATES: DOE will accept comments, data, and information with respect to the CSA Petition until January 29, 2014.

ADDRESSES: You may submit comments, identified by docket number ''EERE–2013–BT–DET–0053,'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: CSACertPrgSmElecMotors 2013DET0053@ee.doe.gov*. Include the docket number EERE–2013–BT–DET–0053 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/ 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., Washington, DC 20024; (202) 586–2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT: Mr. Lucas Adin, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1317. Email: *Lucas.Adin@ee.doe.gov*.

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Part C of Title III of the Energy Policy and Conservation Act contains energy conservation requirements for, among other things, electric motors and small electric motors, including test procedures, energy efficiency standards, and compliance certification requirements. 42 U.S.C. 6311–6316.[1] Section 345(c) of EPCA directs the Secretary of Energy to require manufacturers of electric motors ''to certify through an independent testing or certification program nationally recognized in the United States, that [each electric motor subject to EPCA efficiency standards] meets the applicable standard.'' 42 U.S.C. 6316(c).

Regulations to implement this statutory directive are codified in Title 10 of the Code of Federal Regulations Part 431 (10 CFR part 431) at § 431.36, Compliance Certification, § 431.20, Department of Energy recognition of nationally recognized certification programs, and § 431.21, Procedures for recognition and withdrawal of recognition of accreditation bodies and certification programs. Sections 431.20 and 431.21 set forth the criteria and procedures for national recognition of an energy efficiency certification program for electric motors by the U.S. Department of Energy (''DOE'' or in context, ''the Department''). With the support of a variety of interests, including industry and energy efficiency advocacy groups, DOE published a final rule on May 4, 2012, that established requirements for small electric motors that are essentially identical to the criteria and procedures for national recognition of an energy efficiency certification program for electric motors. See 77 FR 26608, 26629 (discussing DOE's reasoning for codifying parallel provisions for small electric motors at 10 CFR 431.447 and 431.448).

For a certification program to be classified by DOE as being nationally recognized in the United States for the testing and certification of small electric motors, the organization operating the program must submit a petition to the Department requesting such classification, in accordance with §§ 431.447 and 431.448. In sum, for the Department to grant such a petition, the certification program must: (1) Have satisfactory standards and procedures for conducting and administering a certification system, and for granting a certificate of conformity; (2) be independent of small electric motor manufacturers, importers, distributors, private labelers or vendors; (3) be qualified to operate a certification system in a highly competent manner; and (4) be expert in the test procedures and methodologies in IEEE Standard 112–2004 Test Methods A and B, IEEE Standard 114–2010, CSA Standard C390–10, and CSA C747 or similar procedures and methodologies for determining the energy efficiency of small electric motors, and have satisfactory criteria and procedures for selecting and sampling small electric motors for energy efficiency testing. 10 CFR 431.447(b).

Each petition requesting classification as a nationally recognized certification program must contain a narrative statement explaining why the organization meets the above criteria, include documentation that supports the narrative statement, and be signed by an authorized representative. 10 CFR 431.447(c).

II. Discussion

Pursuant to §§ 431.447 and 431.448, on November 1, 2013, CSA submitted to the Department a ''Petition for Recognition as a *Nationally Recognized Certification Program* for small electric motors'' (''Petition'' or ''CSA Petition''). The Petition was accompanied by a cover letter from CSA to the Department, and the petition itself includes five separate sections—(1) Scope and Application, (2) Overview of CSA Group, (3) Certification and Testing—Quality Management System, (4) CSA Group's Motor Energy Efficiency Verification Program—Product Directory, and (5) Examples of Other CSA Group Accreditations. The petition included supporting documentation on these subjects. Copies of the above documents have been placed in the docket.

Consistent with its regulations, the Department is soliciting comments, data and information on whether it should grant the CSA Petition. 10 CFR 431.448(b). Any person submitting written comments to DOE with respect to the CSA Petition must also, at the same time, send a copy of such comments to CSA. As provided under section 431.448(c), CSA may submit to the Department a written response to any such comments. After receiving any such comments and responses, the Department will issue an interim and then a final determination on the CSA Petition, in accordance with § 431.448(d) and (e) of 10 CFR part 431.

In particular, the Department is interested in obtaining comments, data, and information respecting the following evaluation criteria:

(1) Whether CSA has satisfactory standards and procedures for conducting and administering a certification system, including periodic follow up activities to assure that basic models of small electric motors continue to conform to the efficiency levels for which they were certified, and for granting a certificate of conformity.

[1] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

DOE is also interested in obtaining comments as to how rigorously CSA operates its certification system under the guidelines contained in ISO/IEC Guide 65, *General requirements for bodies operating product certification systems.*

(2) Whether CSA is independent of small electric motor manufacturers, importers, distributors, private labelers or vendors. To meet this requirement it cannot be affiliated with, have financial ties with, be controlled by, or be under common control with any such entity.

(3) Whether CSA is expert in the content and application of the test procedures and methodologies in IEEE Std 112–2004 Test Methods A and B, IEEE Std 114–2010, CSA C390–10, and CSA C747 (incorporated by reference, see 10 CFR 431.443) or similar procedures and methodologies for determining the energy efficiency of small electric motors. DOE is also interested in receiving comments on whether CSA's criteria and procedures for the selection and sampling of electric motors tested for energy efficiency are technically appropriate and statistically rigorous.

Issued in Washington, DC, on December 23, 2013.

Kathleen B. Hogan,

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

November 1, 2013

Mr. Lucas Adin, Assistant Secretary for Energy Efficiency and Renewable Energy

U.S. Department of Energy, Forrestal Building, 1000 Independence Ave SW, Washington, DC 20585–0121.

Subject: Petition for Recognition as a *Nationally Recognized Certification Program* for small electric motors.

Dear Mr. Adin,

Please accept this letter and accompanying supporting material as CSA Group's petition for recognition of our small motor energy efficiency verification program to be classified as a nationally recognized certification program in the United States, in accordance with 10 CFR Part 431.

Enclosed please find three (3) binders, each containing the required information for the Department of Energy (DOE) recognition of nationally recognized certification programs described in Sections 431.447 and 431.448 of 10 CFR Part 431, dated May 4, 2012.

Among the topics, this documentation package includes:

1. A guide describing our small motor energy efficiency verification service program;

2. A general description of our quality management system covering the essential elements of our standards and procedures for operating a certification system;

3. CSA Group By-Laws and assurance of our independence and influence from manufacturers, suppliers and vendors; and

4. Samples of CSA Group accreditations.

CSA Group has been offering a motor Energy Efficiency Verification service program since 1992 in support of Canadian Federal and Provincial Regulations and since 2002 for evaluation of electric motor efficiencies to US DOE requirements. Key elements of our program for confirming continued compliance of a motor with a standard are (1) a detailed construction report for a motor on its initial submission; (2) follow-up inspections to confirm consistency of construction and markings; (3) annual re-testing; and (4) challenge testing service. CSA Group is confident that our organization and staff have proven experience in operation a certification program in this area, and our certification system procedures fully meet the evaluation criteria for us to be classified by DOE as a nationally recognized certification program. We, therefore, believe that this petition is in order and that it can be processed without delay. Please let me know if you require any further information.

Thank you very much for your consideration,

Rick Morrison P.Eng., *Technical Manager, Energy Efficiency Verification, CSA Group.*

CSA Group, 178 Rexdale Boulevard, Toronto, ON, M9W 1R3, Canada

T: 416 747 4090

Petition for Recognition

Energy Efficiency Evaluation of Electric Motors to United States Department of Energy Requirements Documented in 10 CFR 431—Subpart B and Subpart X

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Section 1—Scope and Application

Since 2002, CSA Group's electric motor (1 hp–500 hp) energy efficiency verification program has been DOE listed as a nationally recognized certification program. CSA Group is seeking scope expansion to be classified as a nationally recognized certification program in the United States under EPCA with respect to verifying Small Electric Motor (1/4 hp–3 hp) efficiencies when applying the following test procedures and standards:

(a) Test method B of ANSI/IEEE 112–2004, Test Procedure for Polyphase Induction Motors and Generators;

(b) Test method of CSA C390–10, Test method, marking requirements and energy efficiency levels for three-phase induction motors;

(c) Test method of CSA C747–09. Energy efficiency test methods for small motors.

(d) Test method of IEEE 114–2001, Test procedure for single-phase induction motors.

(e) NEMA MG1–2009, Motors and Generators

Facilities

CSA Group Certification Facilities

CSA Group has facilities in Canada, in the United States, in Europe and in the Far East. For your reference they are as follows:

Area	Address
Montreal	865 Ellingham Street, Pointe Claire, PQ H9R 5E8
Toronto	178 Rexdale Boulevard, Toronto, Ontario M9W 1R3
Edmonton	1707–94 Street NW, Edmonton, AB T6N 1E6
Vancouver	13799 Commerce Parkway, Richmond, BC V6V 2N9
Cleveland	8501 East Pleasant Valley Road, Cleveland, OH 44131–5575
Irvine	2805 Barranca Parkway, Irvine, CA 92606–5114
Frankfurt	Weismüllerstrasse 45, 60314 Frankfurt am Main, Germany
Shanghai	1st Floor, Building 4, Qilai Industrial City, 889 Yishan Road, Shanghai, 200233 China

Designated Testing Facilities

As part of CSA Group's motor energy efficiency verification program we are using our Toronto test facility and the *Laboratoire des Technologies de l'Energie of Hydro-Quebec, (LTE*) for such purposes as product qualification testing, re-testing, and challenge testing. The facilities of Toronto are used for testing the full range of motors from 0.25 up to 50 horsepower and the LTE facilities are used for motors ranging 50 to 500 horsepower.

Summary of Section 1 Supporting Documentation

Section 1 of the CSA petition contained no supporting documents.

Section 2—Overview of CSA Group

Name and Address

CSA Group, 178 Rexdale Blvd., Toronto, Ontario, M9W 1R3 (Headquarters)

Background

CSA Group is an independent organization providing services in the fields of Standards Development and Conformity Assessment. The Standards Division of CSA Group is responsible for the administration of the development of voluntary consensus based standards, while the Certification and Testing Division provides conformity assessment programs including laboratory testing certification and inspection. The Consumer Product Evaluation Division provides services for consumer product evaluation.

Canadian Standards Association, operating as CSA Group, was established in 1919 as an independent, not-for-profit corporation under Part II of the *Canada Corporations Act.* CSA Group is a membership association whose

purpose is to make standards work for people and business. CSA Group is the largest standards developer in Canada, certifies and tests various products to standards which may be destined for retail markets in Canada, the US and internationally, and tests consumer products to retailer protocols. CSA Group has staff which includes approximately 1100 employees in 14 offices across North America, as well as over 7,000 members who volunteer their time and knowledge to develop standards and programs that benefit business, industry and society. CSA Group has sales of approximately $250M, is involved in 52 technologies, and has over 2,000 standards and over 88,000 customers.

Ownership

CSA Group is an independent, not-for-profit organization governed by a Board of Directors selected by the membership. The Association has no affiliation with manufacturers or suppliers of the products submitted for certification. Attachment 1 provides information regarding: (a) CSA's Letters of Patent; (b) Statement of Independence; and (c) By-Laws.

Board of Directors and Principal Officers

See CSA Group's Annual Report for the individuals serving on our Board of Directors and Executive Management Team. See Attachment 2.

Major components of the Association are shown on the ''Corporate Organization Chart.'' See Attachment 3.

Summary of Section 2 Supporting Documentation

Section 2, Attachment 1, contains copies of: the Canadian Engineering Standards Association Charter, dated January 21, 1919; the Canadian Standards Association Supplementary Letters Patent, dated April 26, 1944;

Section 2, Attachment 2, a sworn Statement of Independence, dated October 16, 2013;

Section 2, Attachment 3, is a copy of the CSA Group 2012 Annual Report.

Section 2, Attachment 4, is a copy of the CSA Group senior management organization chart.

Section 3—CSA Group Certification Services Quality Management System

CSA Group's Certification Division maintains the quality assurance system for the Association's worldwide operations. The objective of this system is to ensure,

(a) technical excellence;

(b) consistency of interpretation, application of standards, programs and procedures;

(c) integrity of our Mark; and

(d) continuous improvement.

The Quality Assurance system for the Division is based on national and international accreditation requirements and specific contractual customer requirements. The accreditation requirements are found in the applicable editions of the following standards.

ISO/IEC Guide 65/General Requirements for Bodies Operating Product Certification Systems

SCC/CAN–P3

SCC/CAN–P–1500 Additional Requirements for Accreditation of Certification Bodies

ISO/IEC 17025/ General Requirements for the Competence of Calibration and Testing Laboratories

SCC/CAN P–4

ANSI Z34.1 American National Standard for Certification—third party certification program

CSA Group has implemented the requirements specified in ISO/IEC Guide 65, General requirements for bodies operating product certification systems. CSA Group facilities are accredited by accreditation bodies such as Standard Council of Canada and ANSI to these requirements.

Divisional Quality Documents (DQDs) are operating procedures and guidelines used by staff in support of the quality assurance system.

Summary of CSA Group Section 3 Supporting Documentation

Section 3 of the CSA petition contained no supporting documents.

Section 4—CSA Group's Motor Energy Efficiency Verification Program

Overview of the CSA Verification Program:
Application
Evaluation and Testing
Certification
Service Agreement
Accompanying Services
Follow-up Inspections
Product Re-testing
Challenge Testing
Corrective Action
Sampling Process
Expertise in Motor Test Procedures

As Canada's premier Standards Development Organization, CSA Group publishes consensus standards to improve products and enhance trade—all the time ensuring the needs of our various Stakeholders are met. By establishing consensus among the different interest groups, with a balanced committee process, CSA Group creates effective standards that are frequently referenced in Canadian Energy Efficiency Regulations. In addition, US DOE electric motor and small electric motor Regulations reference CSA Standards such as C390–10 and C747–09.

CSA Standard C390–10, Test method, marking requirements and, energy efficiency levels for three-phase induction methods, is widely used in Canada as an integral part of Federal and Provincial Regulations. Electrical utility programs also make use of this standard to promote the use of higher levels of energy performance on a voluntary basis.

Our intimate knowledge of the standard coupled with CSA Group's recognition as an accredited Certification Organization in Canada for motor efficiency and electrical safety supports the needs of manufacturers, consumers and regulators. We provide the necessary independent assurance that motors covered by government regulations meet and continue to comply with the established energy efficiency requirements.

Verification Program

The acceptance of motors under the CSA Group's energy efficiency verification program depends upon the satisfactory evaluation and testing to determine that the requirements of the applicable standard (CSA Standard C390–10, C747–09) are met on a continuing basis. The following is a description of the major elements of our program used for qualifying manufacturers' motors or group of motors.

Application

The customer makes an application requesting energy efficiency verification for his motor and submits all required documentation such as a list of all motors being submitted by model designation, type, and applicable performance ratings. The application is given a specific file to track and record all activities to the project. A qualified person (*e.g.,* professional engineer) is then assigned responsibility for handling the project.

Evaluation and Testing

CSA Group with the manufacturer's assistance prepares a motor control list, identifying the critical features and the controls for these features for maintaining consistent performance with respect to energy efficiency. Representative motor samples are tested by an acceptable facility such as CSA Group or LTE to verify manufacturers rated efficiency values.

Attachment 1 provides a description of the procedures used for the initial motor qualification testing and the follow-up re-testing service to ensure continued compliance. A findings letter is then issued giving the results of our evaluation and actions needed, if applicable, to meet the standard. Modified samples may be required for further examination and testing.

Certification

After the resolution of all the action items and all the conditions of the standard are met, the applicant is formally authorized to apply the CSA Group Energy Efficiency Verification Mark. A report is prepared describing the product and giving the related test results. A directory listing all products verified for energy efficiency is published and available to the general public. See Attachment 2.

Service Agreement

The applicant authorized to represent its motor as verified with our Energy Efficiency Marking must enter a signed agreement with CSA Group. This agreement addresses the conditions for maintaining certification such as access to facilities and records, follow-up inspection, product re-testing and challenge testing. Manufacturers are also required to notify CSA Group when changes are made to the motor, which may affect their performance rating. These terms and conditions are designed to protect the integrity of our Energy Efficiency Marking.

Accompanying Services

After the motor has been initially evaluated and found to comply with the standard, our program includes additional services to ensure that motors bearing the CSA Group verification marking continue to meet the applicable requirements. These services are:

(a) Follow-up inspections;

(b) Product re-testing; and
(c) Challenge testing.

Follow-up Inspections

Follow-up inspections are conducted at the point of manufacturing each year to ensure that,

(a) our mark is only applied to motors that have been verified for energy efficiency;

(b) the manufacturers' product control measures are continuing to produce marked products that are in compliance with our report and the standard;

(c) samples required for re-testing are selected and sealed by CSA Group staff during these visits.

Product Re-testing

Although a report is generated for motors detailing the critical construction features needed for maintaining consistent performance with respect to energy efficiency, our program is supplemented with unannounced motor re-testing to the specified requirement. This facilitates continued compliance with the standard and maintains the integrity of our mark.

Challenge Testing

Another service—challenge testing—is offered to any manufacturer or other party wishing to confirm the motor efficiency rating of a verified motor. This feature assists in ensuring the integrity of our verification program and can lead to the motor efficiency de-rating or a delisting of a series of motors represented by the sample motor.

Corrective Action

When a motor fails to comply with the standards, we take the following steps:

(a) remove the verification mark from the affected motor or motors;

(b) delist the motor(s);

(c) notify the applicable regulatory authorities and government departments of noncompliant motors (*i.e.,* serial number, date code, or equivalent);

(d) re-test and verify the motor efficiency rating after the manufacturer modifies the product.

Sampling Process

The objective of our sampling process is to minimize manufacturers' tests, costs and time to market, while providing sufficient confidence that the series of motors verified meet the applicable energy efficiency standard. The added features of our program such as unannounced follow-up inspections, random motor re-testing and challenge testing are critical components for demonstrating continued compliance to the standard. As a consequence of our CSA Group's continual surveillance, the following sampling process guideline has emerged.

Samples Required For Motor Model Qualification Testing

Test 5 units of each 5 basic motor model type (total of 25 motors). The efficiency of the sample lot must equal or exceed the required nominal full load efficiency rating. The individual sample efficiencies must comply with the nominal efficiency tolerance required by the Standard. Manufacturer's information indicating efficiency ratings must be in agreement with CSA Group's records.

Selection of Basic Model Types To Represent a Series of Motors

A minimum of five (5) basic model types are required to be tested to verify the efficiency ratings of a series of motors. The basic model types are to be selected such that they represent the complete range of motors within the series. This may require that more than 5 basic model types are selected. High volume production motors are to be represented in the basic model types selected.

Samples Required For Scheduled Motor Re-testing

A goal for verifying continued compliance with the standard is to re-test high volume motors at least once every 2 years. Other motors of different frame series are to be retested as needed to ensure continued compliance.

The initial sample lot shall consist of one motor. If the result equals or exceeds the minimum result from the qualification tests, then no further samples are required. If the result is less than the minimum result from the qualifying tests, then select motor samples per the qualifying test procedure.

Expertise in Motor Test Procedures

CSA Group has been active in the certification for safety of electric motors since before 1940 and has more than 450 certification listings active at this time.

CSA Group has been offering the Energy Efficiency Verification Service for Electric Motors since 1992 with motor size from 1 to 500 hp. The motor efficiency is tested to Standards CSA C390–10, IEEE 112–2004, IEEE 114 and CSA 747–09. CSA has obtained accreditation from DOE in 2002 for motor efficiency US Department of Energy as a nationally recognized certification program in 2002 (**Federal Register**/Vol 67, No 249/ Friday December 27, 2002/Notices).

Summary of CSA Group Section 4 Supporting Documentation

Section 4, Attachment 1, contains a copy of an information letter to ''All Manufacturers of AC Three Phase Induction Motors Rated 1 hp to 500 hp,'' which is entitled ''Announcing CSA Standard C390–10 Test methods, marking requirements and energy efficiency levels for three-phase induction motors, 4th edition.''

Section 5—Examples of Other CSA Group Accreditations

The certification system and technical capabilities of the Association have enabled CSA Group to be accredited nationally and internationally for a wide product spectrum such as electrical safety, energy efficiency, plumbing and gas. See Attachment 1 for examples of accreditations CSA Group has received.

Qualification of CSA Group To Operate as a Certification System

The U.S. Department of Energy recognized the Energy Efficiency Verification Service of CSA Group as a Nationally Recognized certification Program in a **Federal Register** Notice dated 27 December 2002 (67 FR 79480).

Summary of CSA Group Section 5 Supporting Documentation

Section 5, Attachment 1, contains copies of the following documents CSA Group has received in recognition of its certification system and technical capabilities:

1. Certificate of Accreditation under the Certification Body Accreditation Program, from the Standard Council of Canada, June 27, 2013;

2. Certificate of Accreditation in recognition of being an Accredited Testing organization, from the International Accreditation Service, November 1, 2012.

3. Certificate of Recognition as a Nationally Recognized Testing Laboratory, from the Occupational Safety and Health Administration, effective through December 31, 2014.

[FR Doc. 2013–31268 Filed 12–27–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1267–100]

Greenwood County; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters

b. *Project No:* 1267–100

c. *Date Filed:* November 22, 2013

d. *Applicant:* Greenwood County

e. *Name of Project:* Buzzards Roost Hydroelectric Project

f. *Location:* Saluda River in Greenwood, Laurens, and Newberry counties, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r

h. *Applicant Contact:* Julie Davis, Director of Lake Management, Greenwood County, 600 Monument Street Suite 19, Greenwood, SC 29646, (864) 943–2648.

i. *FERC Contact:* Mark Carter at (678) 245–3083, or email: mark.carter@ ferc.gov.

j. *Deadline for filing comments, motions to intervene, and protests:* 30 days from issuance

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/ efiling.asp.* Commenters can submit brief comments up to 6,000 characters,

without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–1267–100) on any comments, motions, or recommendations filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Greenwood County (licensee) proposes to permit Mansfield Park Campground, LLC to construct a commercial marina to serve campers and visitors to an existing campground located adjacent to the project boundary. The floating dock structure would measure 145 feet long by 44 feet wide, and could accommodate 20 watercraft. No dredging, excavation, or fill would occur, no vegetation would be disturbed, and no gasoline facilities are proposed.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (P–1267) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: December 20, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–31083 Filed 12–27–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG14–20–000.

Applicants: Pleasant Valley Wind, LLC.

Description: Notice of Self-Certification of EG of Pleasant Valley Wind, LLC.

Filed Date: 12/17/13.

Accession Number: 20131217–5279.

Comments Due: 5 p.m. ET 1/7/14.

Docket Numbers: EG14–21–000.

Applicants: SG2 Imperial Valley LLC.

Description: Notice of Self-Certification Exempt Wholesale Generator Status of SG2 Imperial Valley LLC.

Filed Date: 12/18/13.

Accession Number: 20131218–5048.

Comments Due: 5 p.m. ET 1/8/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1813–002.

Applicants: The Empire District Electric Company.

Description: The Empire District Electric Company submits Compliance Filing to be effective 12/18/2013.

Filed Date: 12/18/13.

Accession Number: 20131218–5079.

Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER12–2068–004.

Applicants: Blue Sky East, LLC.

Description: Blue Sky East, LLC submits Revised Market-Based Rate Tariff Filing in Compliance with Order No. 784 to be effective 12/19/2013.

Filed Date: 12/18/13.

Accession Number: 20131218–5050.

Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER12–2265–001.

Applicants: Canandaigua Power Partners, LLC.

Description: Canandaigua Power Partners, LLC submits Revised Market-Based Rate Tariff Filing in Compliance with Order No. 784 to be effective 12/19/2013.

Filed Date: 12/18/13.

Accession Number: 20131218–5053.

Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER13–80–002.

Applicants: Tampa Electric Company.

Description: Tampa Electric Company submits OATT Order No. 1000 Compliance Filing 2013 to be effective 1/1/2015.

Filed Date: 12/17/13.

Accession Number: 20131217–5186.

Comments Due: 5 p.m. ET 1/16/14.

Docket Numbers: ER13–86–002.

Applicants: Duke Energy Florida, Inc., Duke Energy Carolinas, LLC.

Description: Duke Energy Florida, Inc. submits Order No. 1000 Second Regional Compliance Filing—DEF to be effective 1/1/2015.

Filed Date: 12/17/13.

Accession Number: 20131217–5167.

Comments Due: 5 p.m. ET 1/16/14.

Docket Numbers: ER13–836–002.

Applicants: MATL LLP.
Description: MATL LLP submits Attachment K Filing to be effective 2/17/2014.
Filed Date: 12/17/13.
Accession Number: 20131217–5258.
Comments Due: 5 p.m. ET 1/7/14.

Docket Numbers: ER13–1768–001.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits Integrated Marketplace—Attachment AN–SPP BA Agreement Compliance to be effective 3/1/2014.
Filed Date: 12/18/13.
Accession Number: 20131218–5038.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER13–2130–001.
Applicants: Minco Wind Interconnection Services, LLC.
Description: Minco Wind Interconnection Services, LLC submits Minco Wind Interconnection Services, LLC Amendment to MBR Tariff to be effective 12/19/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5068.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–363–001.
Applicants: South Carolina Electric & Gas Company.
Description: South Carolina Electric & Gas Company submits Schedule 14 re-file to be effective 8/31/2010.
Filed Date: 12/18/13.
Accession Number: 20131218–5043.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–650–000.
Applicants: The United Illuminating Company.
Description: The United Illuminating Company submits Localized Costs Sharing Agreement with Town of Wallingford to be effective 1/1/2014.
Filed Date: 12/17/13.
Accession Number: 20131217–5257.
Comments Due: 5 p.m. ET 1/7/14.

Docket Numbers: ER14–651–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits SGIA and Distribution Service Agreement with Lancaster Little Rock B LLC to be effective 12/19/2013.
Filed Date: 12/17/13.
Accession Number: 20131218–5001.
Comments Due: 5 p.m. ET 1/7/14.

Docket Numbers: ER14–652–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits SGIA and Distribution Serv Agmt with Garnet Solar Power Generation Station 1 LLC to be effective 12/19/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5003.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–653–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits SGIA and Distribution Service Agreement with Lancaster Little Rock A LLC to be effective 12/19/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5004.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–654–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits Amended SGIA with RE Columbia 3 LLC to be effective 2/17/2014.
Filed Date: 12/18/13.
Accession Number: 20131218–5005.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–655–000.
Applicants: Bangor Hydro Electric Company.
Description: Bangor Hydro Electric Company submits Filing to Effect Succession to Rate Schedules and Service Agreements to be effective 1/1/2014.
Filed Date: 12/18/13.
Accession Number: 20131218–5023.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–656–000.
Applicants: Maine Public Service Company.
Description: Maine Public Service Company submits Filing to Effect Cancellation of Existing eTariff Database to be effective 1/1/2014.
Filed Date: 12/18/13.
Accession Number: 20131218–5024.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–657–000.
Applicants: Black River Macro Discretionary Fund Ltd.
Description: Black River Macro Discretionary Fund Ltd. submits notice of cancellation of its market-based rate tariff, effective 12/1/13.
Filed Date: 12/17/13.
Accession Number: 20131218–0001.
Comments Due: 5 p.m. ET 1/7/14.

Docket Numbers: ER14–658–000.
Applicants: Black River Commodity Energy Fund LLC.
Description: Black River Commodity Energy Fund LLC submits notice of cancellation of its market-based rate tariff, effective 12/1/13.
Filed Date: 12/17/13.
Accession Number: 20131218–0002.
Comments Due: 5 p.m. ET 1/7/14.

Docket Numbers: ER14–659–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Midcontinent Independent System Operator, Inc. submits 12–18–2013 SA 2623 MidAm-NIPCO GFA#479 to be effective 12/19/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5025.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–660–000.
Applicants: Plant-E Corp.
Description: Plant-E Corp submits Initial Filing to be effective 2/20/2014.
Filed Date: 12/18/13.
Accession Number: 20131218–5039.
Comments Due: 5 p.m. ET 1/8/14.

Take notice that the Commission received the following electric reliability filings.

Docket Numbers: RD14–2–000.
Applicants: North American Electric Reliability Corporation.
Description: Petition of the North American Electric Reliability Corporation for Approval of Revisions to the Definition of "Bulk Electric System" and Request for Expedited Action.
Filed Date: 12/13/13.
Accession Number: 20131213–5280.
Comments Due: 5 p.m. ET 1/17/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 18, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–31096 Filed 12–27–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC14–37–000.
Applicants: Glacial Energy Holdings, Glacial Energy of California, Inc., Glacial Energy of Illinois, Inc., Glacial Energy of New England, Inc., Glacial Energy of New England, Inc., Glacial Energy of New Jersey, Inc., Glacial Energy of New York, Voltage Energy Holdings, Inc.
Description: Application for Authorization under Section 203 of Glacial Energy Holdings, et al.
Filed Date: 12/19/13.
Accession Number: 20131219–5030.
Comments Due: 5 p.m. ET 1/9/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1982–008; ER10–1246–007; ER10–1252–007; ER10–1253–007.
Applicants: Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Consolidated Edison Energy, Inc., Consolidated Edison Solutions, Inc.
Description: Triennial Market Power Analysis in Northeast region of the Con Edison Companies.
Filed Date: 12/18/13.
Accession Number: 20131218–5234.
Comments Due: 5 p.m. ET 2/18/14.

Docket Numbers: ER11–2853–002.
Applicants: Public Service Company of Colorado.
Description: Public Service Company of Colorado submits 20131218_PSCo FCA and Protocols Att C to be effective 9/1/2011.
Filed Date: 12/18/13.
Accession Number: 20131218–5206.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER13–99–002.
Applicants: Puget Sound Energy, Inc.
Description: Puget Sound Energy, Inc. submits OATT Order No 1000 Compliance Filing to be effective 2/17/2014.
Filed Date: 12/18/13.
Accession Number: 20131218–5197.
Comments Due: 5 p.m. ET 1/16/14.

Docket Numbers: ER13–104–002.
Applicants: Florida Power & Light Company.
Description: Florida Power & Light Company submits FPL Order No. 1000 Further Regional Compliance Filing to be effective 1/1/2015.
Filed Date: 12/19/13.
Accession Number: 20131219–5028.
Comments Due: 5 p.m. ET 1/16/14.

Docket Numbers: ER14–689–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Midcontinent Independent System Operator, Inc. submits 12–16–2013 Entergy IAs Succession Filing Part 1 to be effective 12/19/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5172.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–689–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Midcontinent Independent System Operator, Inc. submits 12–16–2013 Entergy IAs Succession Filing Part 2 to be effective 12/19/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5214.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–690–000.
Applicants: The United Illuminating Company.
Description: The United Illuminating Company submits Cancellation of Localized Costs Sharing Agreement No. 14 to be effective 12/1/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5173.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–691–000.
Applicants: The United Illuminating Company.
Description: The United Illuminating Company submits Localized Costs Sharing Agreement with Emera Energy Services Subsidiary No. 5 to be effective 12/1/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5182.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–692–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc. submits Revisions to Wholesale Power Sales Service Agreements, Units Most Likely to be effective 3/1/2014.
Filed Date: 12/18/13.
Accession Number: 20131218–5195.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–693–000.
Applicants: Entergy Services, Inc.
Description: Entergy Services, Inc. submits EES LBA Agreement—Exxon Mobile Beaumont to be effective 12/19/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5208.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–694–000.
Applicants: Entergy Services, Inc.
Description: Entergy Services, Inc. submits EES LBA Agreement—Exxon Mobil Baton Rouge to be effective 12/19/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5212.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–695–000.
Applicants: Entergy Services, Inc.
Description: Entergy Services, Inc. submits: EES LBA Agreement—Axiall to be effective 12/19/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5213.
Comments Due: 5 p.m. ET 1/31/14.

Docket Numbers: ER14–696–000.
Applicants: Entergy Services, Inc.
Description: Entergy Services, Inc. submits EES LBA Agreement—Dow Plaquemine to be effective 12/19/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5215.
Comments Due: 5 p.m. ET 1/31/14.

Docket Numbers: ER14–697–000.
Applicants: Entergy Services, Inc.
Description: Entergy Services, Inc. submits EES LBA Agreement—Dow Union Carbide to be effective 12/19/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5216.
Comments Due: 5 p.m. ET 1/31/14.

Docket Numbers: ER14–698–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Midcontinent Independent System Operator, Inc. submits 12–17–2013 AIC Attachment O Filing to be effective 1/1/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5217.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–699–000.
Applicants: Entergy Services, Inc.
Description: Entergy Services, Inc. submits EES LBA Agreement—ETEC to be effective 12/19/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5218.
Comments Due: 5 p.m. ET 1/31/14.

Docket Numbers: ER14–700–000.
Applicants: Entergy Services, Inc.
Description: Entergy Services, Inc. submits EES LBA Agreement—Occidental to be effective 12/19/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5219.
Comments Due: 5 p.m. ET 1/31/14.

Docket Numbers: ER14–701–000.
Applicants: Entergy Services, Inc.
Description: Entergy Services, Inc. submits EES LBA Agreement—SRW Cogen to be effective 12/19/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5220.
Comments Due: 5 p.m. ET 1/31/14.

Docket Numbers: ER14–702–000.
Applicants: Entergy Arkansas, Inc.
Description: Entergy Arkansas, Inc. submits EAI LBA Agreement—Calpine Pine Bluff to be effective 12/19/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5221.
Comments Due: 5 p.m. ET 1/31/14.

Docket Numbers: ER14–703–000.
Applicants: Entergy Services, Inc.
Description: Entergy Services, Inc. submits EES LBA Agreement—Tenaska to be effective 12/19/2013.

Filed Date: 12/18/13.

Accession Number: 20131218–5222.

Comments Due: 5 p.m. ET 1/31/14.

Docket Numbers: ER14–704–000.

Applicants: Entergy Services, Inc.

Description: Entergy Services, Inc. submits EES LBA Agreement—Sabine Cogen to be effective 12/19/2013.

Filed Date: 12/18/13.

Accession Number: 20131219–5000.

Comments Due: 5 p.m. ET 1/31/14.

Docket Numbers: ER14–705–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Request for Waiver of certain provisions of Schedule 44 of its Tariff, of Midcontinent Independent System Operator, Inc.

Filed Date: 12/18/13.

Accession Number: 20131218–5232.

Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–706–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Midcontinent Independent System Operator, Inc. submits 2013–12–18 compliance filing re Sched 3 and Att G re Order 784 to be effective 12/27/2013.

Filed Date: 12/19/13.

Accession Number: 20131219–5037.

Comments Due: 5 p.m. ET 1/9/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 19, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–31122 Filed 12–27–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER14–661–000

Applicants: SG2 Imperial Valley LLC

Description: SG2 Imperial Valley LLC submits Application for Initial Market-Based Rate Tariff and Granting Certain Waivers to be effective 2/1/2014.

Filed Date: 12/18/13.

Accession Number: 20131218–5042.

Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–662–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits 2568 Abengoa Bioenergy Biomass of Kansas ASFCA to be effective 12/3/2013.

Filed Date: 12/18/13.

Accession Number: 20131218–5055.

Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–663–000.

Applicants: Energy Discounters, LLC.

Description: Energy Discounters, LLC submits Baseline new to be effective 12/18/2013.

Filed Date: 12/18/13.

Accession Number: 20131218–5071

Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–664–000.

Applicants: BIV Generation Company, L.L.C.

Description: BIV Generation Company, L.L.C. submits Second Revised MBR Tariff to be effective 12/19/2013.

Filed Date: 12/18/13.

Accession Number: 20131218–5073.

Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–665–000.

Applicants: Colorado Power Partners.

Description: Colorado Power Partners submits Second Revised MBR Tariff to be effective 12/19/2013.

Filed Date: 12/18/13.

Accession Number: 20131218–5074.

Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–666–000.

Applicants: Rocky Mountain Power, LLC.

Description: Rocky Mountain Power, LLC submits Second Revised MBR to be effective 12/19/2013.

Filed Date: 12/18/13.

Accession Number: 20131218–5076.

Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–667–000.

Applicants: Erie Wind, LLC.

Description: Erie Wind, LLC submits Revised Market-Based Rate Tariff Filing in Compliance with Order No. 784 to be effective 12/19/2013.

Filed Date: 12/18/13.

Accession Number: 20131218–5083.

Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–668–000.

Applicants: Longfellow Wind, LLC.

Description: Longfellow Wind, LLC submits Revised Market-Based Rate Tariff Filing in Compliance with Order No. 784 to be effective 12/19/2013.

Filed Date: 12/18/13.

Accession Number: 20131218–5084.

Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–669–000

Applicants: Milford Wind Corridor Phase II, LLC

Description: Milford Wind Corridor Phase II, LLC submits Revised Market-Based Rate Tariff Filing in Compliance with Order No. 784 to be effective 12/19/2013.

Filed Date: 12/18/13.

Accession Number: 20131218–5085.

Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–670–000.

Applicants: Stetson Holdings, LLC.

Description: Stetson Holdings, LLC submits Revised Market-Based Rate Tariff Filing in Compliance with Order No. 784 to be effective 12/19/2013.

Filed Date: 12/18/13.

Accession Number: 20131218–5088.

Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–671–000.

Applicants: Entergy Arkansas, Inc..

Description: Entergy Arkansas, Inc. submits Unexecuted Pseudo-Tie Coordination Agreement—EAI-Ameren to be effective 12/19/2013.

Filed Date: 12/18/13.

Accession Number: 20131218–5089.

Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–672–000.

Applicants: Entergy Arkansas, Inc.

Description: Entergy Arkansas, Inc. submits EAI–SMEPA Unexecuted Pseudo-Tie Coordination Agreement—12–18–2013 to be effective 12/19/2013.

Filed Date: 12/18/13.

Accession Number: 20131218–5090.

Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–673–000.

Applicants: Entergy Arkansas, Inc.

Description: Entergy Arkansas, Inc. submits EES-LaGen Unexecuted Pseudo-Tie Coordination Agreement—12–18–2013 to be effective 12/19/2013.

Filed Date: 12/18/13.

Accession Number: 20131218–5093.

Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–674–000.

Applicants: Entergy Arkansas, Inc.

Description: Entergy Arkansas, Inc. submits EES-Cleco Unexecuted Pseudo-Tie Coordination Agreement—12–18–2013 to be effective 12/19/2013.

Filed Date: 12/18/13.
Accession Number: 20131218–5094.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–675–000.
Applicants: Entergy Arkansas, Inc.
Description: Entergy Arkansas, Inc. submits EES–LEPA Unexecuted Pseudo-Tie Coordination Agreement—12–18–2013 to be effective 12/19/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5095.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–676–000.
Applicants: Entergy Arkansas, Inc.
Description: Entergy Arkansas, Inc. submits EES–SMEPA Unexecuted Pseudo-Tie Coordination Agreement—12–18–2013 to be effective 12/19/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5096.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–677–000.
Applicants: Milford Wind Corridor Phase I, LLC.
Description: Milford Wind Corridor Phase I, LLC submits Revised Market-Based Rate Tariff Filing in Compliance with Order No. 784 to be effective 12/19/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5097.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–678–000.
Applicants: Niagara Wind Power, LLC.
Description: Niagara Wind Power, LLC submits Revised Market-Based Rate Tariff Filing in Compliance with Order No. 784 to be effective 12/19/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5101.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–679–000.
Applicants: Palouse Wind, LLC.
Description: Palouse Wind, LLC submits Revised Market-Based Rate Tariff Filing in Compliance with Order No. 784 to be effective 12/19/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5104.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–680–000.
Applicants: Stetson Wind II, LLC.
Description: Stetson Wind II, LLC submits Revised Market-Based Rate Tariff Filing in Compliance with Order No. 784 to be effective 12/19/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5107.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–681–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Midcontinent Independent System Operator, Inc. submits 12–18–2013 Attachment FF–1 Southern Region to be effective 12/19/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5108.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–682–000.
Applicants: Vermont Wind, LLC.
Description: Vermont Wind, LLC submits Revised Market-Based Rate Tariff Filing in Compliance with Order No. 784 to be effective 12/19/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5110.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–683–000.
Applicants: San Diego Gas & Electric Company.
Description: San Diego Gas & Electric Company submits 2014 SDGE RS Update to Transmission Owner Tariff to be effective 1/1/2014.
Filed Date: 12/18/13.
Accession Number: 20131218–5120.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–684–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Midcontinent Independent System Operator, Inc. submits 12–18–2013 SA 2555 AECC NITSA NOA to be effective 12/19/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5134.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–685–000.
Applicants: Evergreen Wind Power III, LLC.
Description: Evergreen Wind Power III, LLC submits Revised Market-Based Rate Tariff Filing in Compliance with Order No. 784 to be effective 12/19/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5136.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–686–000.
Applicants: Evergreen Wind Power, LLC.
Description: Evergreen Wind Power, LLC submits Revised Market-Based Rate Tariff Filing in Compliance with Order No. 784 to be effective 12/19/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5142.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–687–000.
Applicants: First Wind Energy Marketing, LLC.
Description: First Wind Energy Marketing, LLC submits Revised Market-Based Rate Tariff Filing in Compliance with Order No. 784 to be effective 12/19/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5146.
Comments Due: 5 p.m. ET 1/8/14.

Docket Numbers: ER14–688–000.
Applicants: Canandaigua Power Partners II, LLC.
Description: Canandaigua Power Partners II, LLC submits Revised Market-Based Rate Tariff Filing in Compliance with Order No. 784 to be effective 12/19/2013.
Filed Date: 12/18/13.
Accession Number: 20131218–5148.
Comments Due: 5 p.m. ET 1/8/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 18, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–31097 Filed 12–27–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP14–293–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Iroquois Gas Transmission System, L.P. submits tariff filing per 154.204: 12/17/13 Negotiated Rates—JP Morgan Ventures Energy Corp (HUB) 6025–89 to be effective 12/16/2013.
Filed Date: 12/17/13.
Accession Number: 20131217–5175.
Comments Due: 5 p.m. ET 12/30/13.

Docket Numbers: RP14–294–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: EOG Resources Negotiated Rate to be effective 1/1/2014.
Filed Date: 12/17/13.

Accession Number: 20131217–5192.
Comments Due: 5 p.m. ET 12/30/13.

Docket Numbers: CP14–28–000.
Applicants: Peninsula Pipeline Company, Inc.
Description: Blanket Certificate of Peninsula Pipeline Company, Inc.
Filed Date: 12/6/13.
Accession Number: 20131206–5257.
Comments Due: 5 p.m. ET 12/27/13.

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 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 18, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–31098 Filed 12–27–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–1402–003.
Applicants: Arizona Public Service Company.
Description: Request to Change Effective Date of Cancellation for Rate Schedule No. 38 of Arizona Public Service Company.
Filed Date: 12/18/13.
Accession Number: 20131218–5241.
Comments Due: 5 p.m. ET 1/2/14.

Docket Numbers: ER13–2481–001.
Applicants: Duke Energy Progress, Inc., Duke Energy Florida, Inc., Duke Energy Carolinas, LLC.
Description: Duke Energy Progress, Inc. submits OATT Name Change Amendment (Deficiency Letter) to be effective 11/29/2013.
Filed Date: 12/19/13
Accession Number: 20131219–5062
Comments Due: 5 p.m. ET 1/9/14.

Docket Numbers: ER14–371–001.
Applicants: El Paso Electric Company.
Agenda: El Paso Electric Company submits OATT Order No. 764 Compliance Filing to be effective 1/11/2014.
Filed Date: 12/19/13.
Accession Number: 20131219–5113.
Comments Due: 5 p.m. ET 1/9/14.

Docket Numbers: ER14–707–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: ISO New England Inc. submits MR1 Rev. to Rel. Dual-Fuel Switch Prov. from App.K to III.1 to be effective 3/1/2014.
Filed Date: 12/19/13.
Accession Number: 20131219–5042.
Comments Due: 5 p.m. ET 1/9/14.

Docket Numbers: ER14–708–000.
Applicants: ISO New England Inc., Bangor Hydro Electric Company.
Description: ISO New England Inc. submits Bangor Hydro Name Change to be effective 1/1/2014.
Filed Date: 12/19/13.
Accession Number: 20131219–5079.
Comments Due: 5 p.m. ET 1/9/14.

Docket Numbers: ER14–709–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits Queue Position V4–023; Original Service Agreement No. 3674 to be effective 11/21/2013.
Filed Date: 12/19/13.
Accession Number: 20131219–5080.
Comments Due: 5 p.m. ET 1/9/14.

Docket Numbers: ER14–710–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits OATT Revised Schedules 3 and 3A Order 784 Compliance Filing to be effective 2/26/2014.
Filed Date: 12/19/13.
Accession Number: 20131219–5097.
Comments Due: 5 p.m. ET 1/9/14.

Docket Numbers: ER14–711–000.
Applicants: Public Service Company of Colorado.
Description: Public Service Company of Colorado submits 2013–12–19_PSCo-WAPA–NITS–NOA–LTFP2P–0.0.0—Filing to be effective 12/1/2013.
Filed Date: 12/19/13.
Accession Number: 20131219–5102.
Comments Due: 5 p.m. ET 1/9/14.

Docket Numbers: ER14–712–000.
Applicants: Public Service Company of Colorado.
Description: Public Service Company of Colorado submits 2013–12–19_PSCo WAPA–TSA–376–0.0.0-filing to be effective 12/1/2013.
Filed Date: 12/19/13.
Accession Number: 20131219–5103.
Comments Due: 5 p.m. ET 1/9/14.

Docket Numbers: ER14–713–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. submits Conforming Filing of Effective Language to be effective 12/17/2013.
Filed Date: 12/19/13.
Accession Number: 20131219–5125.
Comments Due: 5 p.m. ET 1/9/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 19, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–31123 Filed 12–27–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13953–002]

Mahoning Hydropower, LLC, Ohio, Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed Mahoning Hydropower, LLC's application for a license to construct, operate, and maintain the Lake Milton Hydroelectric Project (FERC Project No.13953–002), to be located on the Mahoning River, in Mahoning County, Ohio at an existing dam owned by the Ohio Department of Natural Resources. The project would not occupy federal lands.

Staff prepared an environmental assessment (EA), which analyzes the potential environmental effects of licensing the project, and concludes that licensing the project, with appropriate environmental protective measures,

would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659.

You may also register online at *www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

For further information, contact Lesley Kordella by telephone at 202–502–6406 or by email at *Lesley.Kordella@ferc.gov.*

Dated: December 20, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–31082 Filed 12–27–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2305–036]

Sabine River Authority of Texas and Sabine River Authority, State of Louisiana; Notice of Availability of the Final Environmental Impact Statement for the Toledo Bend Hydroelectric Project

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR) (18 CFR part 380), the Office of Energy Projects has reviewed the application for license for the Toledo Bend Hydroelectric Project (FERC No. 2305) and has prepared a final environmental impact statement (EIS) for the project.

The existing project is located on the Sabine River between river mile (RM) 147 and RM 279, affecting lands and waters in Panola, Shelby, Sabine, and Newton Counties, Texas, and De Soto, Sabine, and Vernon Parishes, Louisiana. The project occupies lands within the Sabine National Forest in Texas and the Indian Mounds Wilderness Area, administered by the U.S. Department of Agriculture—Forest Service.

The final EIS contains staff's analysis of the applicants' proposals and the alternatives for relicensing the Toledo Bend Project. The final EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicants, and Commission staff.

A copy of the final EIS is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''e-Library'' link. Enter the docket number, excluding the last three digits, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, please contact Alan Mitchnick at (202) 502–6074 or at *alan.mitchnick@ferc.gov.*

Dated: December 20, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–31081 Filed 12–27–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Technical Conference

	Docket Nos.
Filing Requirements for El. Utility S.A.	RM01–8–000
Electricity Market Transparency Provisions of Section 220 of the Federal Power Act	RM10–12–000
Revisions to Electric Quarterly Report Filing Process	RM12–3–000
Revised Public Utility Filing Requirements for Electric Quarterly Reports	ER02–2001–000

Take notice that on January 22, 2014, the staff of the Federal Energy Regulatory Commission (Commission) will hold a technical conference on the Revisions to Electric Quarterly Report (EQR) Filing Process. The conference will take place from 10:00 a.m. to 1:00 p.m. (EST), in the Commission Meeting Room at 888 First Street NE., Washington, DC 20426. The public may attend.

Commission staff will demonstrate the new EQR filing system announced in Order No. 770.[1] The new filing system includes two options for filing EQRs: one that will allow EQR users to file through a web interface on the Commission's Web site, and a second that will allow an EQR filer to file its EQR in an Extensible Mark-up Language formatted file. At the conference, staff will demonstrate how to make a filing using both the XML and web interface approaches.

The new EQR filing system is being prepared for deployment and testing logs indicate that users are successfully making filings in the test sandbox. However, in an effort to assure robust testing by users, staff would like to allow the public additional time to test the new system after having the benefit of participating in the January 22, 2013 technical conference. Staff believes that this will allow the public the opportunity to provide any additional

[1] *Revisions to Electric Quarterly Report Filing Process,* Order No. 770, FERC Stats. & Regs. ¶ 31,338 (2012).

feedback before parties are required to file under the new system. For this reason, staff anticipates that the first filings under the new system (for 3Q EQRs) will be due sometime around March 1 through March 30. Further information regarding the 3Q filing deadline will be forthcoming in a subsequent notice.

Any additional information regarding the agenda for the technical conference will be posted prior to the conference on the Calendar of Events on the Commission's Web site, *www.ferc.gov.*

A free webcast of the conference will be available through *www.ferc.gov.* Anyone with Internet access interested in viewing this conference can do so by navigating to www.ferc.gov's Calendar of Events and locating this event in the Calendar. The event will contain a link to the webcast. Capitol Connection provides technical support for the webcasts and offers the option of listening to the conferences via phone-bridge for a fee. If you need technical support, please visit *www.CapitolConnections.org* or call (703) 993–3100.

Teleconferencing will be available. Participants interested in attending via teleconference must register at *https://www.ferc.gov/whats-new/registration/eqr-01–22–14-form.asp* by close of business on Thursday, January 16, 2014. Teleconferencing may not be available to those who do not register.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For more information about the technical conference, please contact: Astrid Kirstin Rapp, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6264, *Astrid.Rapp@ferc.gov.*

Dated: December 20, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–31084 Filed 12–27–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped chronologically, in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

EXEMPT

Docket No.	Filed date	Presenter or requester
1. CP13–483–000 CP13–492–000	11–22–13	Department of the Army.[1]
2. CP13–73–000 CP13–74–000	12–03–13	Tony King.
3. CP13–113–000	12–04–13	Hon. Chris Van Hollen.
4. CP13–483–000 CP13–492–000	12–04–13	FERC Staff.[2]
5. CP13–492–000	12–06–13	Bureau of Land Mgt.
6. CP13–25–000	12–12–13	FERC Staff.[3]
7. CP13–113–000	12–17–13	Robert J. Boeri.
8. CP13–73–000 CP13–74–000	12–17–13	Arizona House of Representatives.[4]
9. ER14–456–000	12–17–13	Hon. Mike Fitzpatrick.

[1] Email record.
[2] Telephone record.
[3] Telephone record.
[4] Three letters from the Hons. Tom Forese, T.J. Shope, and Frank Pratt.

Dated: December 20, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–31085 Filed 12–27–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project—Post-2017 Resource Pool

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of final marketing criteria and call for applications.

SUMMARY: The Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy (DOE), announces the Boulder Canyon Project (BCP) post-2017 resource pool marketing criteria and is calling for applications from entities interested in an allocation of Federal power from the BCP. The Conformed Power Marketing Criteria or Regulations for the Boulder Canyon Project (2012 Conformed Criteria) published in the **Federal Register** on June 14, 2012, as required by the Hoover Power Allocation Act of 2011, established general eligibility criteria and a resource pool (Post-2017 Resource Pool) to be allocated to new allottees. Western has finalized marketing criteria, developed through a public process, to be used to allocate the Post-2017 Resource Pool, which will become available October 1, 2017. These marketing criteria, in conjunction with the 2012 Conformed Criteria, establish the framework for allocating power from the Post-2017 Resource Pool. Entities applying for an allocation of power from the Post-2017 Resource Pool must submit formal applications as described within this notice.

DATES: Entities applying for an allocation of Federal power from Western must submit an application (see Applicant Profile Data (APD) in Section II) through one of the methods described below. Western will accept applications received on or before March 31, 2014. Western reserves the right to not consider any applications received after this date.

ADDRESSES: Applications must be submitted to Mr. Darrick Moe, Desert Southwest Regional Manager, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457. Applications may also be faxed to (602) 605–2490 or emailed to *Post2017BCP@wapa.gov.* Application forms are available upon request or may be accessed and/or submitted online at *http://www.wapa.gov/dsw/pwrmkt/BCP_Remarketing/BCP_Remarketing.htm.* Applicants are encouraged to use the application form provided at the above Web site.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Simonton, Public Utilities Specialist, Desert Southwest Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, telephone number (602) 605–2675, email *Post2017BCP@wapa.gov.*

SUPPLEMENTARY INFORMATION:

The BCP was authorized by the Boulder Canyon Project Act of 1928 (43 U.S.C. § 617) (BCPA). Under Section 5 of the BCPA, the Secretary of the Interior marketed the capacity and energy from the BCP under electric service contracts effective through May 31, 1987. In 1977, the power marketing functions of the Secretary of Interior were transferred to Western by Section 302 of the Department of Energy Organization Act (42 U.S.C. 7152) (DOE Act). On December 28, 1984, Western published the Conformed General Consolidated Criteria or Regulations for Boulder City Area Projects (1984 Conformed Criteria) (49 FR 50582) to implement applicable provisions of the Hoover Power Plant Act of 1984 (43 U.S.C. 619) for the marketing of BCP power through September 30, 2017.

On December 20, 2011, Congress enacted the Hoover Power Allocation Act of 2011 (Pub. L. 112–72) (HPAA), which provides direction and guidance in marketing BCP power after the existing contracts expire on September 30, 2017. On June 14, 2012, Western published the 2012 Conformed Criteria (77 FR 35671) to implement applicable provisions of the HPAA for the marketing of BCP power from October 1, 2017, through September 30, 2067. The 2012 Conformed Criteria formally established a resource pool defined as ''Schedule D'' to be allocated to new allottees. In accordance with the HPAA, Western allocated portions of Schedule D to the Arizona Power Authority (APA) and the Colorado River Commission of Nevada (CRC), respectively, as described in the June 14, 2012 **Federal Register** notice. Of the remaining portions of Schedule D, Western is to allocate 11,510 kilowatts (kW) of contingent capacity and associated firm energy to new allottees within the State of California, and 69,170 kW of contingent capacity and associated firm energy to new allottees within the Boulder City Area (BCA) marketing area as defined in the 2012 Conformed Criteria.

On October 30, 2012, Western published proposed marketing criteria to be used in the allocation of the Post-2017 Resource Pool. Public information and comment forums were held in Las Vegas, Nevada; Tempe, Arizona; and Ontario, California. Western received comments from existing power contractors, Native American tribes, cooperatives, municipalities, and other potential contractors. Transcripts of the public comment forums, as well as comments received, may be viewed on Western's Web site at *http://www.wapa.gov/dsw/pwrmkt.*

Response to Comments on the Post-2017 Resource Pool Marketing Criteria

Western received numerous comments on its proposed Post-2017 marketing criteria during the comment period. Western reviewed and considered all comments received. This section summarizes and responds to the comments received on the proposed Post-2017 Resource Pool marketing criteria.

Ready, Willing, and Able

Comment: Western should provide time flexibility for those seeking transmission arrangements to meet potential ready, willing, and able provisions.

Response: Western intends to work with potential allottees to the extent feasible to ensure sufficient transmission arrangements are in place by October 1, 2016. However, it is the allottees' ultimate responsibility to meet the ready, willing, and able provisions.

Comment: Western should accept a Memorandum of Agreement (MOA) or similar documentation between an applicant and a transmission distribution provider as evidence the applicant has met the ready, willing, and able requirements. Requiring applicants to develop and execute contractual agreements prior to notification of an allocation could create an unnecessary political and procedural hardship for some applicants.

Response: Applicants will need to demonstrate satisfactory arrangements to meet ready, willing, and able requirements by October 1, 2016. Final allocation determinations are anticipated to be established well in advance of this date. Therefore, applicants should have adequate time to develop and execute any necessary contractual arrangements. Western may accept an MOA or similar documentation between an applicant and a transmission and/or distribution provider if it establishes a legally-binding right of the applicant to receive the required services.

Comment: Request all applicants, including Native American tribes, be required to meet the same criteria such as the ready, willing, and able requirement.

Response: Western finds that certain exceptions for Native American tribes, such as the ready, willing, and able requirement, are consistent with DOE's American Indian and Alaska Native Tribal Government Policy (Tribal Policy), available at *http://energy.gov/em/downloads/doe-american-indian-and-alaska-natives-tribal-government-policy*, and recognizes the special and unique relationship between the United States and tribal governments. Western will work cooperatively with all applicants, but has found that additional flexibility in interacting with tribal applicants is important to ensure the successful implementation of tribal allocations.

Priority Consideration

Comment: The HPAA identifies certain classes of applicants that may ultimately qualify for allocations; it does not identify any mandatory criteria for Western to utilize in prioritizing those allocations. At some point, Western must make such decisions. Western's proposed prioritization is reasonable to determine fair and equitable allocations.

Response: Western agrees with this comment. Western has the need and the authority to prescribe marketing criteria consistent with historical BCP legislation in order to evaluate applications in the allocation of the Post-2017 Resource Pool.

Comment: Western proposes a prioritization of preference-eligible entities in making new allocations. What is Western's statutory authority for making this prioritization? How did Western determine the ranking among preference-eligible entities as proposed?

Response: Section 5 of the BCPA and Section 302 of the DOE Act as well as HPAA authorize Western to establish and apply regulations governing BCP allocations, including the formation of project-specific marketing criteria as proposed. Western's proposed marketing criteria were established to promote widespread use, be consistent with DOE's Tribal Policy, and respond to the public interest in a finite resource. Western concludes that providing an initial consideration for Native American tribes is appropriate based on comments received, and because tribes are specifically identified by the HPAA as eligible allottees and have not previously received allocations of Hoover power. The remaining eligible entities were prioritized to promote widespread use principles in a manner that supports the public interest. However, after considering comments received, Western has decided not to differentiate among the non-tribal, non-profit eligible entities in the final marketing criteria.

Comment: Reclamation Law and its particular priorities do not apply to the Hoover power allocation process. The BCPA establishes specific power allocation and customer priorities, and these statutory requirements govern the Hoover allocation process.

Response: Neither the HPAA nor the BCPA provide for a specific method for determining allocations of BCP power to new entities described in Section 5. Section 5 of the BCPA specifically authorizes the Secretary ''under such general regulations as he may prescribe'' to contract for the sale of Hoover power and to resolve conflicting applications for the power ''with due regard to the public interest.'' Western's public process provides a transparent means of exercising this authority in making final allocations when potential demand is very likely to exceed the available resource to be marketed.

Comment: Section 5 of the BCPA governs the allocation of power from Hoover Dam. Section 5(c) of the BCPA gave the three States of Arizona, California, and Nevada the first right, or a super-preference over all other Section 5 applicants, to apply for, obtain and share among themselves in the power generated at the dam. The states' application takes precedence over any other applicant.

Response: Section 5 of the BCPA cannot be applied in isolation in allocating Schedule D power. Under the HPAA substantial portions of BCP power, including portions of Schedule D, have been allocated to entities in Arizona, California, and Nevada, including the Arizona Power Authority and the Colorado River Commission of Nevada as the agencies specified by State law as the agents for their respective states to purchase power from the Boulder Canyon Project. Section 2(d) of the HPAA provides that the remaining Schedule D power must be allocated by Western to entities not receiving Hoover power under Schedules A and B (''new allottees''). Western concludes that allocating additional Schedule D power to the states would not be consistent with this provision of the HPAA. Furthermore, HPAA's direction to Western to allocate 33 percent of Schedule D equally to the States of Arizona, California, and Nevada with the remainder to be allocated within the marketing area to new allottees indicates a congressional intent for Western to adhere to its historical practice of allocating the remaining portions of Schedule D based on the load or need of the applicants. The House Report for the HPAA (H.R. Rep. No. 112–159) also states that Western is expected to determine allocations by an assessment of the applicants power needs and act in objective manner consistent with Federal preference standards.

Comment: Absent direction from Congress, Western may not selectively implement elements of the BCPA Section 5 to the disadvantage of the ''States,'' i.e., Arizona, California, and Nevada.

Response: Western is not selectively implementing Section 5 of the BCPA to the disadvantage of the states. Section 5 grants the Secretary broad discretion to allocate power in accordance with the public interest and does not require that all BCP power be allocated to the states.

Comment: The HPAA did not authorize Western to take actions that would result in the State of Nevada receiving less resource from the pool than it contributed to the pool. Western's allocation of the 69,170 kW of Schedule D to be marketed within the prescribed marketing area should be made in the same proportion as the states' respective contributions to the resource pool.

Response: The HPAA does not require Western to allocate the remaining portions of Schedule D on a state-by-state basis, and instead requires Western to allocate Schedule D to new allottees within the entire marketing area. Section 5 of the BCPA specifically grants the Secretary broad discretion to allocate power in accordance with the public interest. Western concludes that allocating Schedule D among eligible applicants based on their proportionate peak load serves the public interest while allocating based on the states' proportionate contributions to the resource pool does not.

Comment: Western's allocations of Hoover resources are governed by the HPAA and the BCPA and are not subject to the Preference Law concept in the 1939 Reclamation Act, so Western may not lawfully designate Rural Electric Cooperatives (Cooperatives) as potential new allottees in its allocation process; particularly when Congress was asked to include Cooperatives in Western's 69,170 kW allocation process under the HPAA, and declined to do so.

Response: Western's inclusion of Cooperatives among eligible entities is not based on the Reclamation Project Act of 1939, but rather on the language of the BCPA and the HPAA. In Section 5 of the BCPA, Congress identified ''private corporations'' as eligible

entities, together with states, municipal corporations, and political subdivisions (43 U.S.C. 617d). Further, Section 2(d)(2)(C)(i)(I) of the HPAA expressly provides (in relevant part) that Schedule D may be allocated to entities ''eligible to enter into contracts under Section 5 of the Boulder Canyon Project Act. . . .'' Therefore, under both statutes, Cooperatives as private corporations are eligible to receive allocations under Schedule D.

Beyond the language of the statutes, Western finds additional support for its interpretation in House Report 112–159, which specifically lists Cooperatives among entities eligible to receive allocations from the new proposed Schedule D.

Comment: The legislative history supporting the HPAA reflects the intent of Congress to ensure that Cooperatives are provided access to the power made available under Schedule D. However, that intent is not brought forth in the proposed marketing criteria, which state that Western will consider an allocation for a Cooperative after considering an allocation for federally recognized Native American tribes, municipal corporations, political subdivisions, irrigation or other districts, and other governmental organizations that have electric utility status. Western should ensure fair and equitable access to Cooperatives of Schedule D power.

Response: After considering comments and analyzing various options, Western has established marketing criteria that provide a first consideration to tribes and then treats all Section 5 non-profit entities equally. This results in an aggregation of all Section 5 eligible entities that are non-profit in nature, including Cooperatives. The first consideration to tribes is not intended to establish a tribal-only pool or to meet all tribal needs prior to other eligible applicants. Therefore, Western anticipates the criteria will provide opportunities to Cooperatives seeking Schedule D power.

Comment: Providing priority to Native American tribes, municipal corporations, and political subdivisions ahead of Cooperatives is an unprecedented departure in the treatment of traditional preference entities and is not consistent with the Congressional intent of HPAA. Western should consider applications of tribes on par with the applications of traditional preference entities such as Cooperatives and municipally-owned utilities.

Response: Western's marketing criteria are intended to promote widespread use, be consistent with DOE Tribal Policy, and respond to the public interest in a finite resource. Western has determined that providing an initial priority consideration for Native American tribes is appropriate based on comments received, and because tribes are specifically identified by the HPAA as eligible allottees and have not previously received an allocation of Hoover power. This first consideration for tribes is not intended to establish a tribal-only pool or to meet all tribal needs prior to other eligible applicants. Western anticipates the criteria will provide opportunity to Cooperatives, municipally-owned utilities, and political subdivisions seeking Schedule D power.

Comment: Clarity should be made in priority number 2 such that a municipal corporation or political subdivision that receives power and/or support from a Cooperative should retain a second priority and not be demoted to a third priority.

Response: Based upon comments received, the proposed priority criteria were modified to consider Cooperatives equally with other non-profit Section 5 entities. The final criteria do not distinguish between a municipal corporation or political subdivision that receives services from a Cooperative and the Cooperative itself.

Comment: The 2011 amendments to Section 5 of the BCPA gave federally recognized Indian tribes a preference on an equal basis with other Section 5 applicants.

Response: The HPAA establishes Native American tribes as eligible entities to receive power from the BCP. The HPAA does not prescribe a priority, preference, or direction related to Western's consideration of eligible applicants.

Comment: Comments were received that support a first priority to tribes. Priority to tribes will help redress the historic lack of tribal access to project benefits and is consistent with the HPAA, Western's trust responsibility to tribes, Western's precedent in other marketing efforts, Western's administrative discretion as provided in Reclamation Law, underlying Congressional intent, and HPAA's directive that Western fairly and equitably determines allocations from the new power pool.

Response: Western finds merit in the retention of a tribal priority. Western has consistently provided increased opportunities for Native American tribes. Such consideration has been extended to tribes as Western seeks to promote Federal tribal initiatives as described in Title 5 of the Energy Policy Act of 2005 and DOE's Tribal Policy. The first consideration for tribes does not constitute a tribal-only pool or mean that all tribal needs will be met prior to other eligible applicants.

Comment: Allocations should meet the peak tribal demand requirement before allocations are made to the next priority.

Response: Western finds merit in the retention of a first consideration for tribes. However, it is anticipated that the demand for Schedule D power will far exceed what is available, and Western is not prescribing a tribal-only pool. Allocating the Post-2017 Resource Pool to fully meet peak tribal demands prior to making allocations to Section 5 entities would likely hinder Western's ability to allocate Schedule D power to non-tribal entities and would restrict the promotion of widespread use to a diverse base of customers.

Comment: Priority for Native American tribes should be capped at a maximum of 50 percent of new power allocations available to all states combined to all or any Native American tribes.

Response: After considering comments and analyzing various options, Western has established marketing criteria providing tribes first consideration for an allocation of up to 25 percent of their peak load, considering all Federal power allocations and a 3,000 kW maximum allocation for any applicant. These criteria seek to establish meaningful tribal allocations while also preserving a reasonable portion of Schedule D for new entities eligible under Section 5 to promote widespread use to a diverse base of customers.

Comment: Congress did not intend for the federally recognized tribes to have exclusive rights to the Schedule D power, and the priority criteria will operate as such if there are sufficient applications for allocations.

Response: Western's marketing criteria does not establish a tribal-only pool; the first consideration given to tribes will extend up to 25 percent of their peak loads, considering all Federal power allocations and the 3,000 kW maximum allocation for any applicant. These criteria seek to establish meaningful tribal allocations while also preserving a reasonable portion of Schedule D power for new entities eligible under Section 5 to promote widespread use to a diverse base of customers.

Comment: There should be no priority among all BCPA Section 5 entities and federally recognized Native American tribes. Allocations should be based on other marketing criteria elements, such as the actual load or energy demand of each applicant, whether the applicant

already receives the benefits of a Federal power resource, and the applicant's ability to take delivery of the energy to meet their load.

Response: After considering comments and analyzing various options, Western has retained a first consideration for tribes, but modified the marketing criteria to aggregate all Section 5 eligible entities that are non-profit in nature for allocations after meeting up to 25 percent of tribal peak load when considering all Federal allocations.

Comment: Public water agencies should have an equal opportunity to obtain Federal energy resources that are reserved for the public benefit. The provision of public utility service is of equal benefit to the public, whether the utility is water or electric service.

Response: After considering comments and analyzing various options, Western has established marketing criteria that aggregates all Section 5 eligible entities that are non-profit in nature. Therefore, water and electric utilities will be treated equally.

Comment: Absent direction from Congress, Western may not impose an ''electric utility status'' priority or requirement on potential allottees, particularly when Congress declined to adopt a proposed amendment to the HPAA seeking preference for full-service public power providers. Giving priority to entities having electric utility status would eliminate or at least prejudice the status of all otherwise eligible applicants who are customers of electric utilities. The marketing criteria should include municipal corporations and political subdivisions including irrigation or other districts, municipalities and other governmental organization without electric utility status. Western should eliminate the priority for having electric utility status.

Response: After considering comments and analyzing various options, Western has determined there is no need to retain the provisions regarding electrical utility status for establishing allocations.

Comment: Comments were received that support Western's continued adherence to its historic policy of allocating Hoover power to new tribal customers without regard to their ''electric utility status.'' This supports broad inclusion of new tribal customers, and nothing in the legislation or legislative record contradicts Western's adherence to this practice with respect to the Hoover allocation.

Response: After considering comments and analyzing various priority options, Western has not retained an electrical utility status priority or requirement for applicants.

Comment: There is no statutory requirement linking eligibility to an entity having electric utility responsibility, nor ownership of electric distribution facilities. Support the inclusion of public utilities other than electric utilities as it is essential to meet the ''widest use'' statutory requirements and public policy objectives.

Response: After considering comments and analyzing various priority options, Western has not retained an electrical utility status priority or requirement for applicants.

Comment: The proposed criteria properly give priority to municipal utilities and irrigation districts. Such entities should receive priority in the Post-2017 remarketing.

Response: After considering comments and analyzing various options, Western has established marketing criteria that aggregates all Section 5 eligible entities that are non-profit in nature for allocations after meeting 25 percent of tribal peak load when considering all Federal allocations.

Comment: The HPAA provides for Schedule D for ''entities not receiving contingent capacity and firm energy under subparagraphs (A) and (B). . . .'' Western's proposed marketing criteria do not include that criterion. The marketing criteria must adhere to statutory directives in the allocation of the Post 2017 Resource Pool.

Response: Part VI Section D of the 2012 Conformed Criteria states in part that ''Western shall offer Schedule D contingent capacity and firm energy to entities not receiving contingent capacity and firm energy under Section A (Schedule A) or Section B (Section B) (referred to herein as ''New Allottees'') for delivery commencing October 1, 2017.'' Therefore Western's marketing criteria does adhere to applicable statutory directives. Based on comments received, Western has further clarified in the final marketing criteria that entities receiving Schedule A or Schedule B contingent capacity and firm energy from APA or CRC will not be eligible for an allocation as a new allottee.

Comment: If there is insufficient power available for interested and eligible entities within a subgroup, Western should give priority to applicants within each tier that would use the resource to advance environmental objectives.

Response: After considering this comment, Western has determined not to adopt the suggested priority for applicants that would advance environmental objectives. Such a priority is not addressed in either the BCPA or HPAA, and Western is not aware of applicable criteria to determine which uses would advance environmental objectives.

Comment: Western should avoid allocation to only the first priority tier in order to promote widespread use to a diverse base of customers. Western should reserve portions of power for subsequent tiers to meet demands of more than just the first priority tier.

Response: Western agrees with this comment. Although final allocations are dependent upon the applications received, Western does not anticipate allocating the entire Schedule D resource pool to a single category. In response to comments of this nature, Western has established a 3,000 kW maximum allocation. The 3,000 kW maximum allocation will be applied to all entities receiving an allocation of Schedule D. The final marketing criteria seek to establish meaningful tribal allocations and preserve a reasonable portion of Schedule D power for new entities eligible under Section 5 to promote widespread use to a diverse base of customers.

Comment: Would there be any power reserved for each priority group?

Response: Final allocations are dependent upon the applications received. However, Western anticipates allocating power to both tribal entities and entities eligible under Section 5 of the BCPA. In response to comments of this nature, Western has established a 3,000 kW maximum allocation. The maximum allocation criterion will help promote widespread use to a diverse base of customers.

Comment: With regard to municipal water utilities, what is meant by the independently governed standard?

Response: After considering comments, Western has eliminated this requirement.

Comment: If allocating to an aggregated entity, is its priority established by the nature of its members, or its own nature?

Response: Eligibility and priority will be determined based upon the nature of the applying entity. All members of an aggregated entity must be themselves defined as an eligible entity.

Consideration of Existing Federal Power Resource Allocations:

Comment: In this Hoover allocation effort, Western should impose a maximum of five percent reduction on new tribal customers receiving the benefit of other Federal hydropower resources.

Response: Under Western's marketing criteria, first consideration will be given to tribes for up to 25 percent of their peak loads considering all Federal power allocations. Western finds merit in considering the direct or indirect benefits of all Federal power allocations of all applicants, without limitation, to ensure Federal power is spread widely and equitably among eligible entities.

Comment: In order to advance the ''widest use'' public policy objective, Western should deem entities currently receiving any Western allocation, not just BCP resources, to be ineligible for Schedule D resources.

Response: Western will not deem entities to be ineligible based solely upon existing Western allocations from other projects; however, all existing Western allocations will be considered in the allocation process to advance widespread use principles.

Comment: While it is understood that Western has not proposed to exclude or reprioritize tribes that currently have an allocation of Federal power, tribes should not be blocked from receiving an allocation, by disqualification or reprioritization, on the basis of a prior Federal resource allocation.

Response: Western will not prevent a tribe from receiving an allocation solely because it currently receives an allocation from another Western project. First consideration will be given to tribes to receive up to 25 percent of their peak loads considering all Federal power allocations.

Comment: Preference should be given first to tribes, regardless of receiving any other Federal hydropower allocation, and then to non-tribal entities, if there is any Hoover power left.

Response: Western's marketing criteria does provide first consideration to tribes for up to 25 percent of their peak loads considering all Federal power allocations. Western finds merit in providing opportunity for non-tribal applicants and that it is consistent with the intent of the HPAA. Western anticipates the marketing criteria will promote Federal tribal initiatives and provide opportunity for non-tribal applicants.

Comment: Western should consider other Federal power allocations as well as the availability of other lower cost power to the applicants. Greater consideration should be given in instances where Hoover power is the only lower cost power available to the applicant. First priority should be provided to eligible entities that currently do not have a contract with Western for Federal power resources or are not a member of a parent entity that has a contract with Western for Federal power.

Response: Western will consider any other Federal power allocations the applicants receive, either directly from Western or indirectly through a parent or host entity, when making allocation determinations, but will not consider the price of power as prices change over time and there are a number of variables that may be influencing such prices.

Load Data and Application Assistance

Comment: Technical assistance provided by Western in the preparation of an application for Hoover power should be made available equally to any eligible applicant.

Response: Western agrees with this comment and will endeavor to assist all those in need of technical assistance.

Comment: Western should seek representative load data from applicants when available and allow applicants to supplement such load data with other information, including aggregated load data, to support any request for an allocation as well as estimating loads where historical information is not available. Recommend Western consider new or future loads in establishing allocations.

Response: Western will base allocations to eligible applicants on actual loads experienced in one of the last three calendar years, i.e., calendar years 2011, 2012, or 2013, as designated by the applicant. For Native American tribes, Western may use estimated load values if actual load data is not available. An applicant will be able to submit other information it deems pertinent to receiving an allocation. Such information will be considered at Western's discretion. Consideration of future loads would introduce speculation and unquantifiable collective risk across all applicants and will not be the foundation of establishing allocations.

Comment: Suggest Western consider allowing applicants to provide a broader range of load history than just one year at their election. Western should allow consideration of the historical load experienced by an eligible applicant over the previous three year period if an applicant can demonstrate significant load/demand variance and can explain the basis for the variance.

Response: Western will base allocations to eligible applicants on actual loads experienced in one of the last three calendar years, i.e., calendar years 2011, 2012, or 2013, as designated by the applicant. For Native American tribes, Western may use estimated load values if actual load data is not available. Western anticipates that this will provide additional flexibility than the proposed most recent calendar year and will maintain a comparable and manageable basis for allocations.

Minimum Allocation and Aggregation

Comment: Western should not allocate Hoover power that has access to the dynamic signal in such small increments as to be non-cost-effective.

Response: Under the HPAA and the 2012 Conformed Criteria, all BCP Contractors are entitled access to the dynamic signal regardless of the size of their allocation. While allocations may be made as small as 100 kW, Western's anticipates the establishment of operational protocols to enable Western and the contractors to meet industry scheduling parameters such as scheduling in whole megawatt (MW) values. These operational protocols may assist in the cost effectiveness of managing small allocations.

Comment: Western has stated that the administrative costs associated with dealing with small allocations will be subsumed into general administrative costs and spread over the entire allocation base. Why would other allottees be required to subsidize a cost that can be allocated directly to a particular allottee? Is this subsidy going to reach across all Hoover contractors?

Response: Western's costs for the administration of power allocations are tracked and accounted for each Federal project at the functional activity level (scheduling, dispatching, marketing, etc.,) rather than for each contractor. This is true of all Federal projects administered by Western, including the BCP. These costs are aggregated and included in the Federal project's revenue requirement. Each contractor pays its proportionate share of the revenue requirement on a per unit cost basis. This accounting treatment conforms to generally accepted accounting principles and is consistent with Federal Energy Regulatory Commission (FERC) regulations, FERC's prescribed uniform system of accounts for electric utilities, and DOE's accounting practices. Western concludes this is an acceptable means of cost recovery across customers of variable allocations sizes.

Comment: Western can appropriately address its allocation rounding concerns solely through operational protocols.

Response: Western agrees with this comment and, therefore, has lowered the minimum allocation threshold for the BCP from 1,000 kW to 100 kW. Western anticipates establishing operational protocols in the contracting process to minimize rounding and other

issues associated with the delivery of small allocations.

Comment: The commenter supported the ability of applicants to aggregate loads to meet minimum allocation requirements.

Response: Western's proposed marketing criteria included minimum allocations of 1,000 kW; Western also proposed allowing applicants to aggregate their loads to meet this requirement. After considering comments, Western is adopting a minimum allocation of 100 kW for each applicant, which may include an aggregated entity. However, note that scheduling protocols require a 1 megawatt (MW) minimum; therefore, smaller entities will likely need to formulate aggregation arrangements to facilitate deliveries. The adoption of a much lower minimum allocation is anticipated to eliminate the need for aggregation for allocation purposes.

Comment: Support for the establishment of allocation criteria that provides tribes with maximum flexibility to access Schedule D power. Western should ensure that the implementation of an aggregation mechanism does not result in a loss of Schedule D power to new entities due to a given allottee's inability to meet Western's aggregation standards. Western must implement the tribal priority to ensure that allocations to willing and eligible Schedule D allottees are satisfied to the maximum extent feasible prior to the returning any Schedule D power to Schedule A and B contractors.

Response: After considering comments, Western is adopting a minimum allocation of 100 kW for each applicant, which may include an aggregated entity. Therefore, perceived risk associated with aggregation to receive an allocation has been minimized. Western agrees that efforts should be made to distribute Schedule D power to new allottees. Therefore, Western has established marketing criteria element ''M'', which results in allocated Schedule D resource that is not put under contract by October 1, 2016, to be redistributed to other new allottees that have been allocated and contracted for Schedule D with Western. This criterion is anticipated to ensure all of the Schedule D resource that Western allocates will be retained by new allottees.

Comment: Comments were received that oppose any minimum allocation. Western has not demonstrated sufficient justification to require the proposed minimum 1,000 kW allocation criteria or to require new customers to enter into an ''aggregation arrangement'' in order to satisfy the requirement. Western has offered no justification for the minimum allocation criteria other than for its own convenience, which, by itself, is not a justification. This requirement penalizes the smallest scale new customers, a group consisting overwhelmingly of small tribes in the service area. Western should proceed without of a minimum allocation requirement.

Response: After considering comments, Western is adopting a minimum allocation of 100 kW for each applicant, which may include an aggregated entity. The 100 kW minimum has been established to assist Western in adhering to sound business principles when establishing allocations. An allocation of less than 100 kW is of such a small magnitude it has historically not yielded meaningful value to the allottee. In times in which a benefit or bill crediting arrangement has been sought, allocations of less than 100 kW have experienced significant difficulty in acquiring a benefit or bill crediting partner willing to engage in transactions for this quantity of power. This 100 kW minimum allocation threshold has been successfully applied in other Western marketing efforts and Western finds merit in establishing it for this allocation process.

Comment: Linking individual allocations with some type of allocation share penalty due to scale is unprecedented and without justification. Western regularly manages the Hoover and other hydropower resources in less than full megawatt quantities. Therefore, given the total number of potential new tribal Hoover customers, Western's approach of only whole megawatt allocations would be prejudicial and would only penalize tribes.

Response: Western has historically established minimum allocation and/or load thresholds to maintain sound business principles. After considering comments, Western has eliminated a 1,000 kW minimum allocation and is instead adopting a minimum allocation of 100 kW. This significant reduction in the minimum allocation provides opportunity for small applicants while also establishing a practical threshold to ensure the allocation has sufficient value to warrant its implementation. However, note that scheduling protocols require a 1 MW minimum; therefore, smaller entities will likely need to formulate aggregation arrangements to facilitate deliveries.

Comment: Further clarification is needed for an applicant seeking an allocation of less than 1,000 kW. When would communication of how scheduling arrangements will work be expected? Since all non-tribal Arizona allocations will be going through the APA, would those arrangements be sufficient to meet any load aggregation requirements?

Response: After considering comments, Western has eliminated a 1,000 kW minimum allocation and is instead adopting a minimum allocation of 100 kW for each applicant, which may include an aggregated entity. Communications concerning scheduling arrangements and other operational related issues will occur during the contracting process. Allocations to non-tribal Arizona applicants offered through the APA will not be considered an aggregation arrangement. Applicants seeking less than 100 kW must meet the load aggregation requirements in some other manner.

Comment: The aggregation concept is vague as defined. Western should utilize the aggregation concept consistent with its historic allowance for aggregation on a voluntary basis in arranging for allocation scheduling and/or delivery. Allocating less than whole megawatts to tribes will not end up creating scheduling and operational problems for Western. Due to the limited number of tribal utilities, the vast majority of tribes would need to enter into some type of benefit crediting arrangement. This would achieve Western's expressed goal of aggregating the less than whole megawatt allocations.

Response: Western's proposed marketing criteria included minimum allocations of 1,000 kW and allowed applicants to aggregate their loads to meet this requirement. After considering comments, Western is instead adopting a minimum allocation of 100 kW for each applicant, which may include an aggregated entity. Western anticipates establishing operational protocols in the contracting process to minimize issues associated with the delivery of small allocations.

Comment: Western should accept a MOA or similar document between members of an aggregated group as demonstration of the group's intention and ability to apply for an aggregate load.

Response: To be considered for an allocation, the aggregated group, as the applicant, must be an eligible entity as defined by the HPAA and the 2012 Conformed Criteria, and must provide sufficient documentation demonstrating this eligibility. All members of an aggregated entity must be themselves defined as an eligible entity. Western may accept the use of a MOA or similar documentation between members of an aggregated group as demonstration of

the group's intention and ability to apply for an aggregate load if it establishes a legitimate, legally-binding aggregation of the members as determined by Western.

Comment: Western should address the authority for allottees to join together and the nature of their ability to do so in terms of the type of entity that would have to be utilized. Where do these envisioned entities classify under Section 5 of the BCPA eligibility definition?

Response: In order to be eligible for an allocation, the entity submitting the application must either be a Native American tribe or a Section 5 entity. The determination of whether the applicant meets these requirements will be made on a case-by-case basis.

Economic Benefit to Tribes

Comment: The HPAA makes specific reference to the Secretary of Energy obligation to offer capacity and energy under Schedule D. While Western may desire flexibility to provide an equivalent benefit as set forth in subsection L, the statutory language of the HPAA limits the Secretary to providing contingent capacity and firm energy.

Response: The HPAA requires that Western allocate the contingent capacity and firm energy to eligible entities by December 2014, and place it under contract by October 1, 2017. It does not prohibit Western from including provisions in the contracts to provide the economic benefits to allottees should issues with the delivery of the service occur. It is anticipated that economic benefits would be achieved through arrangements with third-party benefit-crediting or bill-crediting partners.

Comment: Western should clarify what is meant by ''unanticipated obstacles'' and ''economic benefit'' as these terms are used in these proposed criterion. This criterion should either be eliminated or applied to all eligible applicants equally.

Response: The phrase ''unanticipated obstacles'' refers to unexpected barriers to delivery of the electric service. In such instance, Western will follow its historic practice of allowing tribes to contract with a third-party for benefit or bill-crediting arrangements yielding the economic value (economic benefit) of the delivered power directly to the tribe. This will only be available to tribes.

Additional Marketing Criteria Comments

Comment: Requirements to execute a contract within six months of receiving a contract offer from Western and requirements related to transmission or distribution service in place by October 1, 2016 are acceptable.

Response: Western agrees with these comments and has retained this requirement.

Comment: Western's marketing effort schedule should be compressed to establish final allocations sooner than the summer of 2014 in order to provide tribes more time to reach contractual arrangement for the beneficial delivery of Hoover power to their communities.

Response: Western intends to complete the marketing effort through a public process as soon as possible, but anticipates that this will occur in the summer of 2014.

Comment: Western should adopt the plain language of the HPAA defining ''new allottees'' as ''entities not receiving contingent capacity and firm energy'' under Schedules A and B, and the clear intent of Congress to ''further allocate and expand the availability of hydroelectric power generated at Hoover Dam.'' Existing customers of APA and CRC who have a sub-allocation for Schedules A and B through APA or CRC should not be eligible applicants for Schedule D from Western. All applicants should only be eligible to receive only one allocation of power among all the available Schedule D established via the HPAA.

Response: The HPAA defines ''new allottees'' as entities not receiving contingent capacity and firm energy under Schedule A and Schedule B. This definition excludes not only the contractors named in those schedules, but also entities receiving sub-allocations of the capacity and energy. Therefore, neither the listed contractors nor their sub-allottees will be eligible for an allocation from the Post-2017 Resource Pool. Post-2017 sub-allocations of BCP power made by APA or CRC subsequent to Western's allocation process are to be established through the respective APA or CRC allocation process.

Comment: The HPAA indicates that Schedule D is intended to go to new allottees, which are entities that are not named in the legislation. APA customers are not named in the legislation. APA customers have no assurances that anything allocated to APA will come their way. APA customers should be treated as potential new allottees to avoid potential exclusion. Request further explanation on how Western intends to proceed.

Response: The HPAA defines ''new allottees'' as entities not receiving contingent capacity and firm energy under Schedule A and Schedule B, and not as entities that are not named in the legislation. Therefore, Western will not provide an allocation to any entity currently receiving Schedule A or Schedule B power.

Comment: Western should consider allocation to existing APA customers with withdrawal provisions in the event that allottee was to be allocated further BCP resource from APA.

Response: Western has not adopted this proposal. The HPAA requires Western to allocate Schedule D power by December 2014 for delivery commencing on October 1, 2017. It is currently unclear when APA allocations will be made. Western cannot ensure there would be sufficient time to make subsequent allocations and contracts for any Schedule D power made available after conclusion of the APA process. Western concludes that implementation of its allocation process contingent upon such external factors is not practical.

Comment: Western may not, through its administrative processes, impose standards, requirements or limitations on potential new allottees, that are inconsistent with or not authorized by Federal law specific to the BCP.

Response: Western's marketing criteria are in compliance with Federal law specific to the BCP.

Comment: Western must contract directly with each tribe receiving Hoover power. Western has identified no precedent for deviation from such a practice and, in fact, Western has never contracted in any manner other than directly with its allocation recipients.

Response: Western intends to contract directly with each tribe receiving an allocation.

Comment: Western should clarify how it will treat customers eligible for/receiving Hoover allocations through the States of Nevada or Arizona.

Response: The HPAA states that the Western Schedule D allocations in Arizona and Nevada to other than Native American tribes are to be offered through APA and CRC, respectively. Therefore, after making any allocations to non-tribal entities in those states, Western will contractually provide the capacity and energy to APA and/or CRC, which will contract directly with the allottee. The contracts between APA and/or CRC and the allottee must contain all contract terms required by the HPAA, the 2012 Conformed Criteria, and any necessary provisions prescribed in Western's contracts with APA and/or CRC.

Comment: Western should publish in a single document all of its criteria and regulations regarding or impacting BCP, including the relevant portions of the 1984 marketing criteria as well as the material resulting from its actions on the

June 14, 2012, and October 30, 2012 **Federal Register** notices.

Response: Although Western will not combine all that information into one hard copy document, those materials are all available for review at Western's BCP Web site located at *http://www.wapa.gov/dsw/pwrmkt/BCP_Remarketing/BCP_Remarketing.htm*.

Comment: Western's identified procedure to address the allocation of Schedule D is vague. Matters not clarified by Western's proposed criteria may constitute a new agency action. Western must provide a supplemental opportunity to address any new criteria created as part of this public comment process prior to making any allocations.

Response: There are no new criteria contained in this notice. The final criteria are all refinements of the proposed criteria developed in consideration of the comments Western has received. Therefore, Western concludes that it is not necessary to conduct further public processes to establish these marketing criteria.

Comment: Western should explain the formula for determining and allocating excess energy in written procedures during the allocation process.

Response: This process concerns only the allocation of Schedule D power and not the allocation of Schedule C excess energy under the HPAA. Therefore, no explanation or procedures concerning excess energy are being provided in this notice.

Comment: All applicants should only be eligible to receive one allocation of BCP power from Western or APA and/or CRC.

Response: After considering this comment, Western is not promulgating additional requirements or regulations to be imposed within the APA and/or CRC BCP allocation efforts. Western does not have the authority to prescribe requirements upon APA and CRC in their processes for marketing BCP power within their respective states. These provisions are also not provided for in either the BCPA or the HPAA.

Comment: Western should clarify in the final marketing criteria that the revised marketing criteria for Post-2017 apply solely to the allocation of Schedule D resources made available by the HPAA. Support a fair, transparent, detailed, and documented written process via the public record for the allocation of BCP resources.

Response: Western agrees with this comment and believes that it has appropriately done so. Western is adopting the final marketing criteria after considering comments received through its public process.

Comment: Questions were submitted concerning a potential applicant's load location relative to the BCA marketing area and the contract terms that will be applicable to the sale of BCP power, such as if Hoover power is considered green/renewable, if any purchased firming power would be green/renewable, treatment of transactions with an Independent System Operator (ISO), ISO scheduling points, and provision of referenced documents and related contracts.

Response: Questions of this nature are outside the scope of the marketing criteria proposals. Questions concerning contract terms and individual applicants will be addressed later in the marketing process, as appropriate.

I. Final Post-2017 Resource Pool Marketing Criteria

The following general marketing criteria shall be applied to applicants seeking an allocation of power from the Post-2017 Resource Pool. This includes the 69.17 MW of Schedule D to be allocated within the entire marketing area and the additional 11.51 MW of Schedule D to be allocated within the State of California.

A. Allocations of power will be made in amounts determined solely by Western in the exercise of its discretion under Reclamation Law, including the HPAA.

B. Allocations will be made only to new allottees, defined in the HPAA as entities not receiving Schedule A and Schedule B contingent capacity and firm energy. An entity receiving Schedule A or Schedule B contingent capacity and firm energy from APA or CRC will not be eligible for an allocation as a new allottee.

C. An allottee may purchase power only upon the execution of an electric service contract and satisfaction of all conditions stated within that contract.

D. Eligible applicants, except Native American tribes, must be ready, willing, and able to receive and distribute or use power from Western. Ready, willing, and able means the eligible applicant has the facilities needed for the receipt of power or has made the necessary arrangements for transmission and/or distribution service, and its power supply contracts with third parties permit the delivery of Western's power. Eligible applicants must have the necessary arrangements for transmission and/or distribution service in place by October 1, 2016.

E. An eligible Native American applicant must be an Indian tribe as defined in the Indian Self Determination Act of 1975, 25 U.S.C. § 450b, as amended.

F. Eligible Native American tribes will receive first consideration for an allocation of BCP sufficient to provide Federal hydropower up to 25 percent of their peak load in consideration of criterion element G.

G. In making allocations, Western will consider the amount of the applicant's load already served by existing Federal power resource allocations.

H. Remaining Schedule D shall be allocated to non-profit applicants eligible under Section 5 of the BCPA in proportion to their peak loads.

I. Western will base allocations to all eligible applicants on actual loads experienced in one of the last three calendar years including calendar years 2011, 2012, or 2013, as designated by the applicant. For Native American tribes, Western may use estimated load values if actual load data is not available. Western will evaluate and may adjust inconsistent estimates during the allocation process. Western is available to assist tribes in developing load estimates if necessary.

J. The minimum allocation shall be 100 kW.

K. The maximum allocation shall be 3,000 kW.

L. Contractors must execute electric service contracts within six months of receiving a contract offer from Western, unless Western agrees otherwise in writing.

M. Any allocated Post-2017 Resource Pool power not under contract by October 1, 2016, shall be redistributed on a pro-rata basis to the remaining Post-2017 Resource Pool new allottees. In the execution of this redistribution, criteria elements F and K may be waived at Western's discretion. Any Post-2017 Resource Pool power not allocated and under contract by October 1, 2017, shall be distributed in accordance with the 2012 Conformed Criteria.

N. If unanticipated obstacles to the delivery of electric service to a Native American tribe arise, Western will allow the economic benefit of the resource to be provided to the tribe through benefit-crediting or bill-crediting arrangements.

II. Applications for Power

This notice formally requests applications from qualified entities seeking to purchase Federal power from the Post-2017 Resource Pool. Western is requesting the APD to provide a uniform basis for evaluating applications. To be considered, qualified entities must submit an application to the Western Area Power Administration Desert Southwest Region as requested below. To ensure full consideration for all applicants, Western reserves the right to

not consider applications submitted before publication of this notice or after the deadline specified in the **DATES** section. Application forms are available upon request or may be accessed and/or submitted online at *http://www.wapa.gov/dsw/pwrmkt/BCP_Remarketing/BCP_Remarketing.htm*.

Applicant Profile Data Application

The content and format of the APD are outlined below. Applicants must provide all requested information, or the most reasonable available estimate, or should indicate ''not applicable'' if they have no information to be considered for a requested item. Western is not responsible for errors in data or missing pages. All items of information in the APD should be answered as if prepared by the entity seeking the allocation. The APD includes the following:

1. Applicant:

a. Applicant's (entity requesting a new allocation) name and address.

b. Person(s) representing applicant: Please provide the name, title, address, telephone and fax number, and email address of such person(s).

c. Type of organization: For example, Federal or state agency, irrigation district, municipal, rural, industrial user, municipality, Native American tribe, public utility district, or rural electric cooperative.

d. Parent organization of applicant, if any.

e. Name of members or suballottees, if any.

f. Applicable law under which the organization was established.

g. Applicant's geographic service area: If available, submit a map of the service area, and indicate the date prepared.

h. Describe the entity/organization that will interact with Western on contract and billing matters.

i. The amount of power the applicant is requesting to be provided by Western.

2. Loads:

a. All Applicants:

i. If applicable, number and type of customers served in one of the last three calendar years including calendar years 2011, 2012, or 2013; e.g., residential, commercial, industrial, military base, agricultural.

ii. The actual monthly maximum demand (in kilowatts) and energy use (in kilowatt hours) experienced in one of the last three calendar years including calendar years 2011, 2012, or 2013.

iii. For Native American tribe applicants, if actual demand and energy data is not available, provide estimated monthly demand (in kilowatts) with a description of the method and basis for this estimated demand.

3. Resources:

a. A list of current power supplies, including the applicant's own generation and purchases from others. For each supply, provide the amount of capacity received from that power supply and its location.

b. Status of power supply contract(s), including a contract termination date. Indicate whether power supply is on a firm basis or some other type of arrangement.

4. Transmission:

a. Point(s) of delivery: BCP will be delivered at Mead Substation. Applicants may provide preferred point(s) of delivery on Western's transmission system or a third party's system and the required service voltage. The applicant will ultimately be responsible for acquiring transmission to alternate delivery points.

b. Transmission arrangement: Describe the applicant's transmission arrangements necessary to deliver power to the requested points of delivery beyond Western's transmission system. Provide a single-line drawing of applicant's system, if available.

c. Provide a brief explanation of the applicant's ability to receive and use, or receive and distribute Federal power as of October 1, 2017.

5. Other Information: The applicant may provide any other information pertinent to receiving an allocation.

6. Signature: The signature and title of an appropriate official who is able to attest to the validity of the APD and who is authorized to submit the request for an allocation is required.

Western's Consideration of Applications

Upon receiving the APD, Western will verify that the applicant meets the eligibility criteria contained in the 2012 Conformed Criteria and that the application contains all information requested in the APD.

a. Western may request, in writing, additional information from any applicant whose APD is determined to be deficient. The applicant will have 15 calendar days from the date on Western's letter of request to provide the information.

b. If Western determines the applicant does not meet the eligibility criteria, Western will send a letter explaining why the applicant did not qualify.

c. If the applicant has met the eligibility criteria, Western, through the public process, will determine the amount of power, if any, to allocate in accordance with the marketing criteria. Western will send a draft contract to the applicant that identifies the terms and conditions of the offer and the amount of power allocated to the applicant.

Regulatory Procedure Requirements

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Environmental Compliance

In accordance with the DOE National Environmental Policy Act Implementing Procedures (10 CFR 1021), Western has determined that these actions fit within a class of action B4.1 Contracts, policies, and marketing and allocation plans for electric power, in Appendix B to Subpart D to Part 1021—Categorical Exclusions Applicable to Specific Agency Actions.

Dated: December 17, 2013

Mark A. Gabriel,

Administrator.

[FR Doc. 2013–31214 Filed 12–27–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Loveland Area Projects—2025 Power Marketing Initiative

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Final 2025 Power Marketing Initiative.

SUMMARY: Western Area Power Administration (Western), Rocky Mountain Region, a Federal power marketing agency of the Department of Energy (DOE), announces the 2025 Power Marketing Initiative (2025 PMI). The 2025 PMI provides the basis for marketing the long-term firm hydroelectric resources of the Loveland Area Projects (LAP) beginning with the Federal fiscal year 2025. Western's Firm Electric Service (FES) contracts associated with the current marketing plan expire September 30, 2024. The 2025 PMI extends the current marketing plan, with amendments to key marketing plan principles.

Western's proposed 2025 PMI was published in the **Federal Register** on October 17, 2011. Responses to public comments are included in this notice. This **Federal Register** notice is published to announce Western's decisions for the 2025 PMI.

DATES: The 2025 PMI will become effective January 29, 2014.

ADDRESSES: Information regarding the 2025 PMI, including comments, letters, and other supporting documents made

or retained by Western for the purpose of developing this 2025 PMI, are available for public inspection and copying at Western Area Power Administration, Rocky Mountain Region, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986.

FOR FURTHER INFORMATION CONTACT: Mr. John C. Gierard, Hydraulic Engineer, Western Area Power Administration, Rocky Mountain Region, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986, telephone (970) 461–7445, email *gierard@wapa.gov.*

SUPPLEMENTARY INFORMATION:

Current Marketing Plan Background

The Post-1989 General Power Marketing and Allocation Criteria (Post-1989 Plan) for the Pick-Sloan Missouri Basin Program-Western Division and the Fryingpan-Arkansas Project (collectively known as Loveland Area Projects or LAP) was published in the **Federal Register** (51 FR 4012, January 31, 1986) and provided the marketing plan principles used to market LAP firm hydropower resources. The FES contracts associated with the Post-1989 Plan were initially to expire September 30, 2004. Subpart C of the Energy Planning and Management Program (EPAMP) final rule, published in the **Federal Register** (60 FR 54151, October 20, 1995), extended and amended the Post-1989 Plan. EPAMP authorized extending the FES contracts associated with the Post-1989 Plan through September 30, 2024, and established the Post-2004, Post-2009, and Post-2014 resource pools. The current marketing plan is inclusive of the Post-1989 Plan as extended and amended by EPAMP and the Post-2004, Post-2009, and Post-2014 power marketing initiatives.

2025 PMI

Western initiated informal 2025 PMI discussions with LAP FES customers in the summer of 2011 by holding meetings in the Rocky Mountain Region. In addition, Western held meetings with Native American tribal governments in Kansas and Wyoming to initiate government-to-government consultation with tribal FES customers. The meetings provided customers the opportunity to review current marketing plan principles and provide informal input to Western for consideration in the 2025 PMI proposal. Key marketing plan principles discussed with FES customers included: Contract Term, Resource Pools, Marketable Resource, Hydrology and River Operations Withdrawal Provision, Marketing Area, and Mt. Elbert Pumped-Storage. Customer input for the 2025 PMI proposal supported Western extending the current marketing plan with amendments to the Contract Term and Resource Pool principles.

Western published its proposed 2025 PMI in the **Federal Register** (76 FR 64083, October 17, 2011) and initiated a 106-day public comment period. Public information and comment forums on the proposed 2025 PMI were held on November 29, 2011, in Loveland, Colorado, and November 30, 2011, in Topeka, Kansas. Western received no oral comments during the public comment forums and nine comment letters during the public comment period, which closed at 4 p.m. M.S.T., January 30, 2012.

Western's responses to the comments contained in the public comment letters are included in this notice. After consideration of public comments received, Western has decided to finalize the proposed 2025 PMI as published in the **Federal Register** (76 FR 64083, October 17, 2011).

Response to Comments Regarding the Proposed 2025 PMI

The public comments below regarding the proposed 2025 PMI are paraphrased for brevity when not affecting the meaning of the statement(s).

2025 PMI General Comment

Comment: All comments received supported the 2025 PMI proposal. Further, the comments indicated the 2025 PMI proposal provided certainty in planning and a sense of energy security.

Response: Western appreciates the support for the 2025 PMI proposal published in the Federal Register (76 FR 64083, October 17, 2011).

Amended Marketing Plan Principles and Comments

1. Proposed Contract Term: A 30-year contract term would be used for FES contracts. The FES contract term would begin October 1, 2024, and expire September 30, 2054.

Comment: All comments Western received supported the proposed 30-year contract term, although one comment also suggested Western consider a 40-year contract term. Commenters stated a 30-year contract term would provide assurance that the customers who have funded needed capital investments would receive the benefits of that commitment. Comments further indicated the 30-year contract term would provide certainty in customer planning; not adversely affect Western's Federal power program responsibilities; and extend the long standing tradition of working together.

Response: Western considered a 40-year contract term; however, it agrees with the comments above and believes the 30-year contract term strikes the best balance between the customers' need for assurance and Western's need for flexibility. Western clarifies it will execute contracts prior to October 1, 2024, committing the LAP resource for a 30-year period from October 1, 2024, and continuing through September 30, 2054.

Western also recognizes and appreciates the customers' unique contribution in providing funding for needed capital investments in support of the Federal power program.

2. Proposed Resource Pools: The proposed 2025 PMI provides for three resource pools of up to 1 percent of the marketable resource under contract at the time of each reallocation to be available for eligible new preference entities. Reallocations would occur at the beginning of the October 1, 2024, contract term and again every 10 years thereafter on October 1, 2034, and October 1, 2044.

Comment: Customers supported the proposed structure and timing of resource pools stating they will ensure that eligible entities not currently receiving the benefits of LAP hydropower will be able to seek an allocation in the future. It also will ensure fairness among entities through an equitable process.

Response: Western appreciates the customers' support of the proposed resource pools. The resource pools allow Western to market allocations of firm power to eligible new preference entities in such a manner as to promote the most widespread use, in accordance with Federal Reclamation law.

Extended Marketing Plan Principles and Comments

1. Proposed Marketable Resource: Extend the existing contract rates of delivery commitments, with associated energy, to existing long-term FES customers reduced by up to 1 percent for each new resource pool on October 1, 2024, October 1, 2034, and October 1, 2044.

Comment: Two commenters specifically supported continuation of the current marketable resource, noting Western worked with the United States Bureau of Reclamation in analyzing historic hydrologic data to affirm the viability of the current marketable resource.

Response: Western appreciates the customers' support of its determination of marketable resource.

2. Proposed Hydrology and River Operations Withdrawal Provision:

Western would reserve the right to adjust, at its discretion and sole determination, the contract rate of delivery on 5 years advance written notice in response to changes in hydrology and river operations.

Comment: It was noted Western's proposed withdrawal provision fairly reflects the variety of forces that could impact Western's administration of LAP and would provide Western with the tools to address any substantial changes in hydrology and river operations.

Response: Western appreciates the customers' support of flexibility for Western to adjust contract rates of delivery in response to changes in hydrology and river operations.

3. Proposed Marketing Area: Western would continue the current LAP marketing area which is the portion of Colorado east of the Continental Divide; Mountain Parks Electric, Inc.'s service territory in Colorado west of the Continental Divide; the portion of Kansas located in the Missouri River Basin; the portion of Kansas west of the eastern borders of the counties intersected by the 100th Meridian; the portion of Nebraska west of the 101st Meridian; and Wyoming east of the Continental Divide.

Comment: Customers supported continuing the current LAP marketing area and commented that since LAP is a finite and defined resource, expansion of the marketing area is impracticable.

Response: Western appreciates the customers' support of the proposed LAP marketing area.

4. Proposed Mt. Elbert Pumped-Storage: Western would extend the current Mt. Elbert Pumped-Storage contract provisions, which provide for pumped-storage energy.

Comment: Western received no comments on the proposed Mt. Elbert Pumped-Storage.

Final 2025 PMI

Western will extend the current marketing plan with amendments to the Contract Term and Resource Pool principles. The marketing plan principles that are amended as well as the marketing plan principles that are extended are as follows:

Amended Marketing Plan Principles

1. Contract Term: Western extends its commitment of the LAP resource for a 30-year period beginning October 1, 2024, and continuing through September 30, 2054.

2. Resource Pools: The 2025 PMI provides resource pools of up to 1 percent of the marketable resource under contract at the time for eligible new preference entities. Reallocations will occur beginning October 1, 2024, and again every 10 years thereafter (October 1, 2034, and October 1, 2044).

Extended Marketing Plan Principles

Extension of the current marketing plan includes all provisions and principles not specifically addressed in the preceding section entitled ''Amended Marketing Plan Principles.'' The following key principles of the current LAP marketing plan were discussed with FES customers during the proposed 2025 PMI informal customer input phase and the formal public information forums and are included below for reference purposes.

1. Marketable Resource: The contractually committed contract rate of delivery and associated energy in effect on September 30, 2024, will be extended subject to up to 1 percent reduction for each of the resource pools taking effect on October 1, 2024, October 1, 2034, and October 1, 2044.

2. Hydrology and River Operations Withdrawal Provision: Western reserves the right to adjust, at its discretion and sole determination, the contract rate of delivery on 5 years advance written notice in response to changes in hydrology and river operations.

3. Marketing Area: The LAP marketing area will be the portion of Colorado east of the Continental Divide; Mountain Parks Electric, Inc.'s service territory in Colorado west of the Continental Divide; the portion of Kansas located in the Missouri River Basin; the portion of Kansas west of the eastern borders of the counties intersected by the 100th Meridian; the portion of Nebraska west of the 101st Meridian; and Wyoming east of the Continental Divide.

4. Mt. Elbert Pumped-Storage: The full 200 MW of Mt. Elbert capacity is included in the LAP capacity allocations. Only flow-through generation is included in LAP energy allocations, and customers may schedule capacity without energy. Off-peak energy must be returned to Western commensurate with any on-peak energy taken.

2025 PMI Procedures Requirements

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321–4347 (2007)); the Council on Environmental Quality Regulations for Implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021), Western has determined this action is categorically excluded from further NEPA review.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: December 20, 2013.

Mark A. Gabriel,

Administrator.

[FR Doc. 2013–31220 Filed 12–27–13; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and further ways to reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid Control Number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before February 28, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of

time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Leslie F. Smith, Federal Communications Commission (FCC), via the Internet at *Leslie.Smith@fcc.gov.* To submit your PRA comments by email, send them to *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information, contact Leslie F. Smith at (202) 418–0217, or via the Internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0971.

Title: Section 52.15, Request for ''For Cause'' Audits and State Commission's Access to Numbering Resource Application Information.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and state, local or tribal government.

Number of Respondents and Responses: 2,105 respondents; 63,005 responses.

Estimated Time per Response: 0.166 hours to 3 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 153, 154, 201–205, 207–209, 218, 225–227, 251–252, 271 and 332.

Total Annual Burden: 10,473 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Carrier numbering resource applications and audits of carrier compliance will be treated as confidential and will be exempt from public disclosure under 5 U.S.C. 552(b)(4).

Needs and Uses: There are two Paperwork Reduction Act related obligations under this OMB Control Number:

1. The North American Numbering Plan Administrator (NANPA), the Pooling Administrator, or a state commission may draft a request to the auditor stating the reason for the request, such as misleading or inaccurate data, and attach supporting documentation; and

2. Requests for copies of carriers' applications for numbering resources may be made directly to carriers.

The information collected will be used by the FCC, state commissions, the NANPA and the Pooling Administrator to verify the validity and accuracy of such data and to assist state commissions in carrying out their numbering responsibilities, such as area code relief.

OMB Control Number: 3060–0972.

Title: Multi-Association Group (MAG) Plan Order, Parts 54 and 69 Filing Requirements for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers (LECs) and Interexchange Carriers (IXCs).

Form Number(s): FCC Forms 507, 508 and 509.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents and Responses: 1,258 respondents; 10,849 responses.

Estimated Time per Response: 0.166 hours to 3 hours.

Frequency of Response: On occasion, annual, quarterly, one time and every three years reporting requirements, and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 1–4, 10, 154(i), 154(j), 201–205, 254, and 403.

Total Annual Burden: 46,885 hours.

Total Annual Cost: $48,900.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission does not require that respondents submit confidential information to the Commission. If the Commission does request applicants to submit information that the respondents believe is confidential, respondents may do so under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: There are 14 Paperwork Reduction Act (PRA) related information collection requirements under this OMB Control Number.

Following the passage of the Telecommunications Act of 1996, the Commission adopted interstate access charge and universal service support reforms. The reforms were designed to establish a ''pro-competitive, deregulatory national policy framework'' for the United States telecommunications industry, and to carry out the universal service policies embodied in the 1996 Act. Specifically, the Commission aligned the interstate access rate structure more closely with the manner in which costs are incurred, and created a universal service support mechanism for rate-of-return carriers (Interstate Common Line Support (ICLS)) to replace implicit support in interstate access charges with explicit support that is portable to all eligible telecommunications carriers. The Commission's actions were also tailored to the needs of small and mid-sized local telephone companies serving rural and high-cost areas, and help to provide certainty and stability for rate-of-return carriers, encourage investment in rural America, and provide important consumer benefits. To administer the ICLS mechanism, the Administrator must collect certain data. Specifically, the Administrator must collect from each rate-of-return carrier projected cost and revenue data for the July 1–June 30 funding year to accurately distribute prospective ICLS to those carriers. Line count data is reported on FCC Form 507. Projected cost data, including cost and revenue data is filed on FCC Form 508. And, the actual data, including cost and revenue data is reported on FCC Form 509.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–31180 Filed 12–27–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and further ways to reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid Control Number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before February 28, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Leslie F. Smith, Federal Communications Commission (FCC), via the Internet at *Leslie.Smith@fcc.gov.* To submit your PRA comments by email, send them to *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information, contact Leslie F. Smith at (202) 418–0217, or via the Internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0741.

Title: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96–98, *Second Report and Order and Memorandum Opinion and Order; Second Order on Reconsideration;* CC Docket No. 99–273, *First Report and Order.*

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 5,907 respondents; 573,767 responses.

(The respondents are now more likely to be using advanced IT software, automation, and standardized business practices to respond to a request for the sharing of directory listings, which accounts for their ability to provide a greater number of responses each year with a reduced incremental burden.)

Estimated Time per Response: 1 hour to 547,500 hours.

Frequency of Response: Annual, on occasion, and one time reporting requirements, recordkeeping requirement, and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 153, 154, 201, 222 and 251.

Total Annual Burden: 574,448 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information to the Commission. If the Commission requests that carriers or providers submit information which they believe is confidential, the carriers or providers may request confidential treatment of their information under 47 CFR Section 0.459 of the Commission's rules.

Needs and Uses: In April 1996, the Commission issued a *Notice of Proposed Rulemaking (NPRM)* concerning certain provisions in the Telecommunications Act of 1996 (''the Act''), including section 251. Section 251 is designed to accelerate private sector development and deployment of telecommunications technologies and services by spurring competition. The Commission adopted rules and regulations designed to implement certain provisions of section 251, and to eliminate operational barriers to competition in the telecommunications services markets.

OMB Control Number: 3060–0823.

Title: Part 64, Pay Telephone Reclassification.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 400 respondents; 16,820 responses.

Estimated Time per Response: 2.66 hours (average).

Frequency of Response: On occasion, quarterly and monthly reporting requirements and third party disclosure requirements.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154, 201–205, 218, 226 and 276.

Total Annual Burden: 44,700 hours.

Total Annual Cost: $652,000.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Confidentiality concerns are not relevant to these types of disclosures. The Commission is not requesting carriers or providers to submit confidential information to the Commission. If the Commission requests that carriers or providers submit information which they believe is confidential, the carriers or providers may request confidential treatment of their information under 47 CFR Section 0.459 of the Commission's rules.

Needs and Uses: The Commission established a plan to ensure that payphone service providers (PSPs) were compensated for certain non-coin calls originated from their payphones. As part of this plan, the Commission required that by October 7, 1997, local exchange carriers were to provide payphone-specific coding digits to PSPs, and that PSPs were to provide those digits from their payphones to interexchange carriers. The provision of payphone-specific coding digits was a prerequisite to payphone per-call compensation payments by IXCs to PSPs for subscriber 800 and access code calls. The Commission's Wireline Competition Bureau subsequently provided a waiver until March 9, 1998, for those payphones for which the necessary coding digits were not provided to identify calls. The Bureau also on that date clarified the requirements established in the Payphone Orders for the provision of payphone-specific coding digits and for tariffs that LECs must file pursuant to the Payphone Orders.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–31179 Filed 12–27–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of

information technology; and further ways to reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid Control Number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before February 28, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Leslie F. Smith, Federal Communications Commission (FCC), via the Internet at *Leslie.Smith@fcc.gov.* To submit your PRA comments by email, send them to *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information, contact Leslie F. Smith at (202) 418–0217, or via the Internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1186.

Title: Rural Call Completion, WC Docket No. 13–39.

Form Number: N/A.

Type of Review: Revision to a currently pre-approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents and Responses: 225 respondents; 940 responses.

Estimated Time per Response: 12 hours (average).

Frequency of Response: Quarterly and one-time reporting requirements and recordkeeping.

Obligation to Respond: Required to obtain or retain benefit. The statutory authority for the information collection requirements are contained in section contained in 47 U.S.C. 151, 154(i), 201(b), 202(a), 218, 220(a), 251(a), 403.

Total Annual Burden: 11,280 hours.

Total Annual Cost: $793,750.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals. If the FCC requests that respondents submit information which respondents believe is confidential, respondents may request confidential treatment of such information pursuant to Section 0.459 of the FCC's rules, 47 CFR Section 0.459.

Needs and Uses: The rules adopted in the *Rural Call Completion Report and Order (''Order''),* WC Docket No. 13–39, FCC 13–135, require covered providers to record, retain and report call completion data. Covered providers are providers of long-distance voice service that make the initial long-distance call path choice for more than 100,000 domestic retail subscriber lines. These providers generally must collect call completion data, retain such data for six months, and file quarterly reports with the Commission. The collection of this data will give the Commission the information it needs to investigate rural call completion problems. In addition to the recordkeeping, retention, and reporting obligations described above, the *Order* also requires certain providers to file a one-time letter in the docket explaining that they do not make the initial long-distance call path choice and identifying the long-distance provider or providers to which they hand off their end-user customers' calls. Finally, the *Order* encourages rural incumbent local exchange carriers to report quarterly on the number of incoming long-distance call attempts received, the number answered on its network, and the call answer rate calculation for each of the previous three months.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–31177 Filed 12–27–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority, Comments Requested

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden(s) and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate(s); ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and further ways to reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB Control Number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before February 28, 2014. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at: (202) 395–5167 or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Leslie F. Smith, Office of Managing Director (OMD), Federal Communications Commission (FCC), via the Internet at *Leslie.Smith@fcc.gov.* To submit your PRA comments by email, send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Leslie F. Smith, Office of Managing Director (OMD), Federal Communications Commission (FCC), (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1043.

Title: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03–123, FCC 04–137.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 7 respondents; 8 responses.

Estimated Time per Response: 8 hours.

Frequency of Response: Annual reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for the information collection requirement is contained in section 225 of the Communications Act of 1934, as amended [47 U.S.C. 225], Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals; The Americans with Disabilities Act of 1990 (ADA), Public Law 101–336, 104 Stat. 327, 366–69, was enacted on July 26, 1990.

Total Annual Burden: 64 hours.

Total Annual Cost: No cost(s).

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals. While the Commission does not require that respondents submit confidential information to the Commission, if the Commission does request applicants to submit information that the respondents believe is confidential, respondents may do so under 47 CFR Section 0.459 of the Commission's rules.

Needs and Uses: These reporting requirements enable the Commission to collect waiver reports from Telecommunications Relay Service (TRS) providers requesting waivers from certain TRS mandatory minimum standards. On June 30, 2004, the Commission released a *Report and Order* and *Order on Reconsideration* in Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, FCC 04–137, published at 69 FR 53346, September 1, 2004, and at 69 FR 53382, September 1, 2004. In the *Report and Order,* the Commission harmonized the expiration dates of waivers for Video Relay Service and Internet-Protocol (IP) Relay providers of the following TRS mandatory minimum requirements, amongst others: (1) 47 CFR Section 64.604(a)(3)(vi)–call release; and (2) 47 CFR Section 64.604(b)(3)–equal access to interexchange carriers. The Commission also conditioned these waivers on providers submitting annual reports to the Commission, in a narrative form, detailing: (1) The provider's plan or general approach to meet the waived standards; (2) any additional costs that would be required to meet the standards; (3) the development of any new technology that may affect the particular waivers; (4) the progress made by the provider to meet the standards; (5) the specific steps taken to resolve any technical problems that prohibit the provider from meeting the standards; and (6) any other factors relevant to whether the waiver should continue in effect. On January 11, 2007, the Commission released a *Declaratory Ruling* in Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Internet-based Captioned Telephone Service, FCC 06–182, published at 72 FR 6960, February 14, 2007. The ruling applied several of the waivers to IP captioned telephone relay service, also conditioned on the filing of annual reports, as described above.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–31181 Filed 12–27–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority, Comments Requested

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden(s) and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate(s); ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and further ways to reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB Control Number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before February 28, 2014. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at: (202) 395–5167 or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Leslie F. Smith, Office of Managing Director (OMD), Federal Communications Commission (FCC), via the Internet at *Leslie.Smith@fcc.gov.* To submit your PRA comments by email, send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Leslie F. Smith, Office of Managing Director (OMD), Federal Communications Commission (FCC), (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0370.

Title: Part 32, Uniform System of Accounts for Telecommunications Companies.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 859 respondents; 859 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 11, 151, 154, 161, 201–205, 215, and 218–220.

Total Annual Burden: 859 hours.

Total Annual Cost: No cost(s).

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the Commission. If the Commission requests applicants to submit information that the respondents believe is confidential, respondents may request confidential treatment of such information under 47 CFR Section 0.459 of the Commission's rules.

Needs and Uses: The Commission, in 2004, adopted the Joint Conference's recommendations to reinstate the following Part 32 accounts:

Account 5230, Directory revenue;

Account 6621, Call completion services;

Account 6622, Number services;

Account 6623, Customer services;

Account 6561, Depreciation expense-telecommunications plant in service;

Account 6562, Depreciation expense-property held for future telecommunications use;

Account 6563, Amortization expense-tangible;

Account 6564, Amortization expense-intangible; and

Account 6565, Amortization expense-other.

These accounting changes are mandatory only for Class A Incumbent Local Exchange Carriers (ILECs). The reinstatement of these accounts imposed a minor increase in burden only Class A ILECs only. The Commission also established a recordkeeping requirement that Class A ILECs maintain subsidiary record categories for unbundled network element revenues, resale revenues, reciprocal compensation revenues, and other interconnection revenues in the accounts in which these revenues are currently recorded. The use of subsidiary record categories allows carriers to use whatever mechanisms they choose, including those currently in place, to identify the relevant amounts as long as the information can be made available to state and federal regulators upon request. The use of subsidiary record categories for interconnection revenue does not require massive changes to the ILECs' accounting systems and is a far less burdensome alternative than the creation of new accounts and/or subaccounts. The information submitted to the Commission by carriers provides the necessary detail to enable the Commission to fulfill its regulatory responsibilities.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–31178 Filed 12–27–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL TRADE COMMISSION

[File No. 131 0163]

Service Corporation International, and Stewart Enterprises, Inc.; Analysis of Agreement Containing Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis of Agreement Containing Consent Orders to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent orders—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 22, 2014.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/scistewartconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Service Corporation International and Stewart Enterprises, Inc.—Consent Agreement; File No. 131 0163'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/scistewartconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jill Frumin, Bureau of Competition, (202–326–2758), 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 23, 2013), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 22, 2014. Write ''Service Corporation International and Stewart Enterprises, Inc.—Consent Agreement; File No. 131 0163'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

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

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/scistewartconsent* by following the instructions on the web-based form. If this Notice appears at *http://*

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

www.regulations.gov/#!home, you also may file a comment through that Web site.

If you file your comment on paper, write ''Service Corporation International and Stewart Enterprises, Inc.—Consent Agreement; File No. 131 0163'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 22, 2014. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Orders To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from Service Corporation International (''SCI'') and Stewart Enterprises, Inc. (''Stewart''). The purpose of the proposed Consent Agreement is to remedy the anticompetitive effects that would otherwise result from SCI's acquisition of Stewart. Under the terms of the proposed Consent Agreement, SCI and Stewart are required to divest 53 funeral homes in 29 local funeral services markets and 38 cemeteries in 30 local cemetery markets to acquirers who receive the approval of the Commission. The proposed Consent Agreement also requires SCI and Stewart to divest all related assets and real property necessary to ensure that the buyer(s) of the divested facilities will be able to quickly and fully replicate the competition that would have been eliminated by the merger. Finally, the Commission, SCI, and Stewart have agreed to an Order to Hold Separate and Maintain Assets (''Hold Separate Order'') that requires SCI and Stewart to maintain and hold separate certain facilities to be divested pending their final divestiture pursuant to the Consent Agreement.

The proposed Consent Agreement has been placed on the public record for thirty days (''Public Comment Period''). During this period, interested persons can review the proposed Consent Agreement and file comments with respect to the competitive effects of the Merger and the proposed remedy. At the end of the Public Comment Period, the Commission will review and afford appropriate consideration to all comments filed. The Commission may then determine whether to modify the proposed Consent Agreement, issue the Consent Agreement as final without modifications, or withdraw the Consent Agreement in its entirety.

On May 29, 2013, SCI and Stewart executed a definitive merger agreement pursuant to which SCI agreed to acquire Stewart in an all-cash transaction valued at approximately $1.4 billion (the ''Merger''). The Commission's complaint alleges that the proposed Merger, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, removing an actual, direct, and substantial competitor from 29 funeral services markets, and 30 cemetery services markets. The proposed Consent Agreement would remedy the alleged violations by requiring divestitures to replace the competition that otherwise would be lost in these markets as a result of the Merger.

II. The Parties

SCI is the largest funeral and cemetery services provider in North America. SCI owns and operates more than 1,449 funeral-services locations and 374 cemeteries (including 213 combined funeral-services/cemetery locations), and 100 crematories in 44 states and the District of Columbia. SCI's 2012 revenue from all operations totaled approximately $2.41 billion.

Stewart is the second largest funeral and cemetery services provider in the United States. Stewart owns and operates 217 funeral homes and 141 cemeteries in 24 states and Puerto Rico. For the 12 months ending October 31, 2013, Stewart's total revenues were approximately $524.1 million.

III. Funeral and Cemetery Services

SCI's proposed acquisition of Stewart presents substantial antitrust concerns in two relevant product markets: (1) Funeral services; and (2) cemetery services. Funeral services include all activities relating to the promotion, marketing, sale, and provision of funeral services and goods, including, but not limited to, goods and services used to remove, care for, and prepare bodies for burial. Funeral services do not include cremation services because consumers generally do not substitute cremation services for burial services based upon price. Since many consumers primarily choose their final disposition based on their personal or religious views, these consumers do not view cremation services as a viable substitute for funeral services. Thus, a hypothetical monopolist of funeral services could profitably impose a small but significant and non-transitory increase in price (''SSNIP'') because most consumers would not switch to cremation services. Further, the competitive conditions for cremation services are substantially different than for funeral services.

Cemetery services include all activities relating to the promotion, marketing, sale, and provision of property, goods, and services to provide for the disposition of human remains in a cemetery, whether by burial, entombment in a mausoleum or crypt, disposition in a niche, or scattering cremated remains on cemetery grounds.

In some local markets, certain funeral-service and cemetery-service locations cater to specific populations by focusing on the customs and rituals associated with one or more religious, ethnic, or cultural heritage groups. In such situations, the provision of funeral or cemetery services targeted to such populations may constitute distinct and relevant product markets. Thus, in Los Angeles, California, for example, the provision of funeral services to Catholic consumers constitutes a relevant product market in which to analyze the competitive effects of the Merger. Likewise, in South Dallas, Texas, the provision of cemetery services to the African-American community constitutes a relevant product market in which to analyze the competitive effects of the Merger.

The 29 funeral services markets and 30 cemetery services markets at issue in this transaction are relatively local in nature. Indeed, data analysis and evidence gathered from market participants indicate that purchasers of both ''preneed'' and ''atneed'' funeral and cemetery services typically choose a local funeral home or cemetery in order to make the memorial service, burial, and subsequent visitation more convenient.

The 29 geographic markets in which to analyze the effects of the Merger with respect to funeral services are: (1) Mobile, Alabama; (2) Auburn, California; (3) East Los Angeles County, California (Catholic); (4) Los Angeles (Long Beach), California (Catholic); (5) Los Angeles (San Fernando Valley),

California (Catholic); (6) Palmdale/Lancaster, California; (7) Northern San Diego, California; (8) Southern and Eastern San Diego, California; (9) Clearwater, Florida; (10) Jacksonville, Florida; (11) Miami-Dade County (Homestead), Florida; (12) Miami-Dade County (Miami), Florida; (13) Ocala, Florida; (14) Orlando, Florida; (15) Port St. Lucie, Florida; (16) Tampa, Florida (Hispanic); (17) Overland Park, Kansas; (18) South Kansas City, Kansas/Missouri; (19) New Orleans, Louisiana; (20) West Jackson, Mississippi; (21) North Kansas City, Missouri; (22) New Bern, North Carolina; (23) Raleigh, North Carolina; (24) Columbia, South Carolina; (25) Nashville, Tennessee; (26) Dallas, Texas; (27) Southeast Fort Worth, Texas; (28) Arlington-Alexandria, Virginia; and (29) Washington, DC/Maryland suburbs (Jewish).

The 30 geographic markets in which to analyze the effects of the Merger with respect to cemetery services are: (1) South San Diego, California; (2) Jacksonville, Florida; (3) Miami-Dade County, Florida; (4) Ocala, Florida; (5) West Orlando, Florida; (6) Port St. Lucie, Florida; (7) Spring Hill/Hudson, Florida; (8) St. Petersburg/Largo, Florida; (9) Tampa, Florida; (10) Atlanta (Cobb County), Georgia; (11) Atlanta (Fairburn/College Park), Georgia; (12) Atlanta (Henry County), Georgia; (13) New Orleans, Louisiana; (14) Annapolis, Maryland; (15) Baltimore, Maryland; (16) North Kansas City, Missouri; (17) South Kansas City, Kansas/Missouri; (18) High Point, North Carolina; (19) Raleigh, North Carolina; (20) Philadelphia, Pennsylvania; (21) Greenville, South Carolina; (22) Kingsport, Tennessee; (23) Knoxville, Tennessee; (24) Dallas, Texas; (25) South Dallas, Texas (African American); (26) Southeast Fort Worth, Texas; (27) Houston, Texas; (28) Northwest Richmond, Virginia; (29) South Richmond, Virginia; and (30) Kearneysville, West Virginia.

Each of the relevant funeral and cemetery services markets is highly concentrated, and the proposed Merger would significantly increase market concentration and eliminate substantial direct competition between two significant funeral and cemetery services providers. Under the Herfindahl-Hirschman Index (''HHI''), which is the standard measure of market concentration under the 2010 Department of Justice and Federal Trade Commission Merger Guidelines, an acquisition is presumed to create or enhance market power or facilitate its exercise if it increases by more than 200 points and results in a post-acquisition HHI that exceeds 2,500 points. SCI's merger with Stewart creates market concentration levels well in excess of these thresholds in the local markets listed above.

The anticompetitive implications of such significant increases are reinforced by evidence of intense head-to-head competition that would be eliminated by the proposed Merger. This competition between SCI and Stewart benefits consumers in the form of lower prices, improved products, and better service. Left unremedied, the proposed Merger likely would cause anticompetitive harm by enabling SCI to profit by unilaterally raising the prices of funeral and cemetery services, as well as reducing its incentive to improve quality and provide better service.

The high levels of concentration also increase the likelihood of competitive harm through coordinated interaction. In several funeral and cemetery services markets, coordinated interaction or tacit collusion may be likely due to the transparency of important competitive information, high concentration, and relatively small number of competitors.

New entry is unlikely to deter or counteract the anticompetitive effects of the proposed Merger. Among other entry barriers, both heritage (the consumer's tendency to use the same funeral home or cemetery for multiple generations) and reputation pose substantial barriers to entrants attempting to establish new funeral-services locations. The availability of suitable land and local zoning, health, and environmental regulations significantly hinder the ability of firms to enter into new cemetery-services locations. As a result, new entry sufficient to achieve a significant market impact is unlikely to occur.

IV. The Proposed Consent Agreement

The proposed Consent Agreement remedies completely the anticompetitive effects of the Merger by requiring the divestiture of SCI or Stewart funeral homes, cemeteries, and related assets in each relevant geographic market to a Commission-approved buyer (or buyers) within 180 days of SCI acquiring Stewart. Specifically, the proposed Consent Agreement requires the divestiture of 53 funeral-services facilities and 38 cemeteries, as well as related equipment, customer and supplier contracts, commercial trade names, and real property in the funeral and cemetery services markets at issue in this transaction. The assets to be divested include all of the associated assets and real property necessary for a Commission-approved buyer to independently and effectively operate each facility. See Appendix A to the proposed Decision and Order for a complete list of the divestiture assets.

The proposed Consent Agreement contains several provisions designed to ensure that the divestitures are successful. First, the Commission will evaluate the suitability of the proposed purchasers of the divested assets to ensure that the competitive environment that would have existed but for the transaction is replicated by the required divestitures. If SCI fails to divest the assets within the 180 day time period to a Commission-approved buyer, the Consent Agreement permits the Commission to appoint a divestiture trustee to divest the assets. Second, SCI is required to provide transitional services to the Commission-approved acquirer. These transitional services will facilitate a smooth transition of the assets to the acquirer, and ensure continued and uninterrupted operation of the assets during the transition. Third, the Consent Agreement requires SCI to remove any contractual impediments that may deter the current employees of the divested facilities from accepting offers of employment from any Commission-approved acquirer and to obtain all consents necessary to transfer the required assets. The Agreement also appoints a Hold Separate Trustee to monitor SCI's compliance with the terms of the Agreement. Finally, the Commission will have an opportunity to review any attempt by SCI to acquire any funeral or cemetery services asset in any of the geographic markets at issue, as well as certain markets where any future acquisition by SCI would likely cause substantial competitive harm. This prior notice provision has a term of ten years.

The Hold Separate Order requires the parties to maintain the viability of the divestiture assets as competitive operations until each facility is transferred to a Commission-approved acquirer. After SCI acquires Stewart, the Hold Separate Order requires that SCI segregate the 91 locations to be divested separate and apart from SCI's own death services business, and maintain these assets as independent competitive enterprises pending divestiture. To facilitate this process, the Hold Separate Order allows Paul A. Houston, the proposed Hold Separate Trustee, to appoint one or more Hold Separate Managers to assist with the management the daily operations of the held separate businesses in an effort to ensure competition in the relevant geographic markets. Additionally, the Hold Separate Order obligates SCI to provide sufficient working capital to the held

separate businesses and to provide continued support services as needed in the interim. Overall, the Hold Separate Order and the Consent Agreement are designed to safeguard competition in the provision of death care services in these markets immediately post-acquisition.

The sole purpose of this analysis is to facilitate public comment on the Consent Agreement. This analysis does not constitute an official interpretation of the Consent Agreement or modify its terms in any way.

By direction of the Commission.

Janice Podoll Frankle,

Acting Secretary.

[FR Doc. 2013–31153 Filed 12–27–13; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0292; Docket No. 2013–0001; Sequence 12]

Information Collection; OMB Control No. 3090–0292; FFATA Subaward and Executive Compensation Reporting Requirements

AGENCY: Office of the Integrated Award Environment, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB information collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of the currently approved information collection requirement regarding FFATA Subaward and Executive Compensation Reporting Requirements.

DATES: Submit comments on or before February 28, 2014.

ADDRESSES: Submit comments identified by Information Collection 3090–0292, FFATA Subaward and Executive Compensation Reporting Requirements by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching ''Information Collection 3090–0292, FFATA Subaward and Executive Compensation Reporting Requirements'' under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0292, FFATA Subaward and Executive Compensation Reporting Requirements''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0292, FFATA Subaward and Executive Compensation Reporting Requirements'' on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: IC 3090–0292.

Instructions: Please submit comments only and cite Information Collection 3090–0292, FFATA Subaward and Executive Compensation Reporting Requirements, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Berry, Program Analyst, Office of the Integrated Award Environment, GSA, at telephone number 703–605–2984; or via email at *stephen.berry@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Funding Accountability and Transparency Act (Pub. L. 109–282, as amended by section 6202(a) of P.L. 110–252), known as FFATA or the Transparency Act requires information disclosure of entities receiving Federal financial assistance through Federal awards such as Federal contracts, sub-contracts, grants and sub-grants, FFATA 2(a), (2), (i), (ii). Beginning October 1, 2010, the currently approved Paperwork Reduction Act submission directed compliance with the Transparency Act to report prime and first-tier sub-award data. Specifically, Federal agencies and prime awardees of grants were to ensure disclosure of executive compensation of both prime and subawardees and sub-award data pursuant to the Transparency Act. This information collection requires reporting of only the information enumerated under the Transparency Act.

B. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FFATA Subaward and Executive Compensation Reporting Requirements, whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

C. Annual Reporting Burden

Sub-award Responses: 252,382.
Hours per Response: .5.
Total Burden Hours: 126,191.
Executive Compensation Responses: 44,596.
Hours per Response: 1.
Total Burden Hours: 44,596.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0292, FFATA Subaward and Executive Compensation Reporting Requirements, in all correspondence.

Dated: December 18, 2013.

Casey Coleman,

Chief Information Officer.

[FR Doc. 2013–31169 Filed 12–27–13; 8:45 am]

BILLING CODE 6820–WY–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0291; Docket No. 2013–0001; Sequence 11]

Information Collection; FSRS Registration Requirements for Prime Grant Awardees

AGENCY: Office of the Integrated Award Environment, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance information collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of the currently approved information collection requirement regarding FSRS Registration Requirements for Prime Grant Awardees. The title of the approved information collection is FSRS Registration and Prime Awardee Entity-

Related Information Reporting Requirements. To clarify the purpose of the information collection, the updated title is FSRS Registration Requirements for Prime Grant Awardees.

DATES: Submit comments on or before February 28, 2014.

ADDRESSES: Submit comments identified by Information Collection 3090–0291, FSRS Registration Requirements for Prime Grant Awardees by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching ''Information Collection 3090–0291, FSRS Registration Requirements for Prime Grant Awardees'' under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0291, FSRS Registration Requirements for Prime Grant Awardees.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0291, FSRS Registration Requirements for Prime Grant Awardees on your attached document.

• *Fax:* 202–501–4067.

• *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: IC 3090–0291.

Instructions: Please submit comments only and cite Information Collection 3090–0291, FSRS Registration Requirements for Prime Grant Awardees, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Berry, Program Analyst, Office of the Integrated Award Environment, GSA, at telephone number 703–605–2984; or via email *stephen.berry@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Funding Accountability and Transparency Act (Pub. L. 109–282, as amended by section 6202(a) of P.L. 110–252), known as FFATA or the Transparency Act, requires information disclosure of entities receiving Federal financial assistance through Federal awards such as Federal contracts, sub-contracts, grants and sub-grants, FFATA 2(a),(2),(i),(ii). The system that collects this information is called the FFATA Sub-award Reporting System (FSRS, *www.fsrs.gov*). This information collection requires information necessary for prime awardee registration in FSRS to create a user log-in and enable sub-award reporting for their entity. To register in FSRS for a user log-in, an entity is required to provide their Data Universal Numbering System (DUNS) number. FSRS then pulls core data about the entity from their System for Award Management (SAM) registration to include the legal business name, physical address, mailing address and Commercial and Government Entity (CAGE) code. The entity completes the FSRS registration by providing contact information within the entity for approval.

If a prime awardee has already registered in FSRS to report contracts-related Transparency Act financial data, a new log-in will not be required. In addition, if a prime awardee had a user account in the Electronic Subcontract Reporting System (eSRS), a new log-in will not be required.

B. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FSRS Registration Requirements for Prime Grant Awardees, whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

C. Annual Reporting Burden

Respondents: 1,844.

Responses per Respondent: 1.

Total annual responses: 1,844.

Hours per Response: .5.

Total Burden Hours: 922.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0291, FSRS Registration Requirements for Prime Grant Awardees, in all correspondence.

Dated: December 18, 2013.

Casey Coleman,

Chief Information Officer.

[FR Doc. 2013–31171 Filed 12–27–13; 8:45 am]

BILLING CODE 6820–XY–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0290; Docket No. 2013–0001; Sequence No. 10]

Information Collection; System for Award Management Registration Requirements for Prime Grant Recipients

AGENCY: Office of the Integrated Award Environment, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB information collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of the currently approved information collection requirement regarding the pre-award registration requirements for Prime Grant Recipients. The title of the approved information collection is Central Contractor Registration Requirements for Prime Grant Recipients (OMB Control Number 3090–0290). The updated information collection title, based on the migration of the Central Contractor Registration system to the System for Award Management in late July 2012, is System for Award Management Registration Requirements for Prime Grant Recipients.

DATES: Submit comments on or before February 28, 2014.

ADDRESSES: Submit comments identified by Information Collection 3090–0290, System for Award Management Registration Requirements for Prime Grant Recipients by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching ''Information Collection 3090–0290, System for Award Management Registration Requirements for Prime Grant Recipients''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0290 System for Award Management Requirements for Prime Grant Recipients''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your

name, company name (if any), and ''Information Collection 3090–0290, System for Award Management Registration Requirements for Prime Grant Recipients'' on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: IC 3090–0290.

Instructions: Please submit comments only and cite Information Collection 3090–0290, System for Award Management Registration Requirements for Prime Grant Recipients, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Berry, Program Analyst, Office of the Integrated Award Environment, at telephone number 703–605–2984; or via email *stephen.berry@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection requires information necessary for prime applicants and recipients, excepting individuals, of Federal financial assistance to register in the System for Award Management (SAM) and maintain an active SAM registration with current information at all times during which they have an active Federal award or an application or plan under consideration by an agency pursuant to 2 CFR Subtitle A, Chapter I, and Part 25 (75 FR 5672). This facilitates prime awardee reporting of sub-award and executive compensation data pursuant to the Federal Funding Accountability and Transparency Act (Pub. L. 109–282, as amended by section 6202(a) of Pub. L. 110–252). This information collection requires that all prime grant awardees, subject to reporting under the Transparency Act register and maintain their registration in SAM.

B. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the System for Award Management Registration Requirements for Prime Grant Recipients, whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

C. Annual Reporting Burden

Respondents: 204,726.
Responses per Respondent: 1.
Total annual responses: 204,726.
Hours per Response: 2.
Total Burden Hours: 409,452.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0290, System for Award Management Registration Requirements for Prime Grant Recipients, in all correspondence.

Dated: December 18, 2013.

Casey Coleman,

Chief Information Officer.

[FR Doc. 2013–31170 Filed 12–27–13; 8:45 am]

BILLING CODE 6820–WY–P

GENERAL SERVICES ADMINISTRATION

[Notice–GTAC–2013–04; Docket No. 2013–0002; Sequence 43]

Government-Wide Travel Advisory Committee (GTAC); Public Advisory Committee Meetings

AGENCY: Office of Government-Wide Policy, General Services Administration (GSA).

ACTION: Notice.

SUMMARY: This notice announces the rescheduled date of the cancelled GTAC meeting December 10, 2013 due to the closure of Federal buildings and winter weather conditions in the Washington Metropolitan Area. This notice announces the next two meeting dates: January 22, 2014 and February 19, 2014. The meetings are open to the public via teleconference.

DATES: The next meeting will be held on Wednesday, January 22, 2014, beginning at 9:00 a.m. and ending no later than 4:00 p.m. Eastern Standard Time. The February meeting will be held on Wednesday, February 19, 2014, beginning at 9:00 a.m. and ending no later than 4:00 p.m. Eastern Standard Time.

FOR FURTHER INFORMATION CONTACT: Ms. Marcerto Barr, Designated Federal Officer (DFO), Government-wide Travel Advisory Committee (GTAC), Office of Government-Wide Policy, General Services Administration, 1800 F Street NW., Washington, DC 20405, 202–208–7654 or by email to: *gtac@gsa.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the GTAC is to conduct public meetings, submit reports and to make recommendations to existing travel policies, processes and procedures, including the per diem methodology to assure that official travel is conducted in a responsible manner with the need to minimize costs.

Authority: The GSA Office of Asset and Transportation Management, Travel and Relocation Division, establishes policy that governs travel by Federal civilian employees and others authorized to travel at Government expense on temporary duty travel through the Federal Travel Regulation (FTR).

Agenda: The January meeting will discuss Meals and Incidental Expenditures Allowances. The February meeting will discuss rental cars (passenger vehicles) and sustainability of federal travel.

Meeting Access: The meeting is open to the public via teleconference. Members of the public wishing to listen in on the GTAC discussion are recommended to visit the GTAC Web site at: *www.gsa.gov/gtac* to obtain registration details. Members of the public will not have the opportunity to ask questions or otherwise participate in the meeting. However, members of the public wishing to comment on the discussion or topics outlined in the agenda should follow the steps detailed in Procedures for Providing Public Comments.

Availability of Materials for the Meeting: Please see the GTAC Web site *www.gsa.gov/gtac* for any available materials and detailed meeting notes after the meeting.

Procedures for Providing Public Comments: In general, public comments will be posted to *www.gsa.gov/gtac.* Non-electronic documents will be made available for public inspection and copying at GSA, 1800 F Street NW., Washington, DC 20405, on official business days between the hours of 10:00 a.m. Eastern Standard Time and 4:00 p.m. Eastern Standard Time. The public can make an appointment to inspect comments by telephoning the DFO at 202–208–7654. All comments, including attachments and other supporting materials received, are part of the public record and subject to public disclosure. Any comments submitted in connection with the GTAC

meeting will be made available to the public under the provisions of the Federal Advisory Committee Act.

The public is invited to submit written comments within 7 business days after each meeting by either of the following methods and cite Meeting Notice–GTAC–2013–04.

Electronic or Paper Comments: (1) submit electronic comments to *gtac@gsa.gov;* or

(2) submit paper comments to the attention of Ms. Marcerto Barr at GSA, 1800 F Street NW., Washington, DC 20405.

Dated: December 19, 2013.

Carolyn Austin-Diggs,

Acting Deputy Associate Administrator, Office of Asset and Transportation Management, Office of Government-Wide Policy.

[FR Doc. 2013–31167 Filed 12–27–13; 8:45 am]

BILLING CODE 6820–14–P

GENERAL SERVICES ADMINISTRATION

[Notice–CIB–2013–06; Docket No. 2013–0002; Sequence No. 33]

Privacy Act of 1974; Notice of an Updated System of Records

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The U.S. General Services Administration (GSA) reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, and covered by the appropriate legal or regulatory authority.

DATES: *Effective date:* January 29, 2014.

FOR FURTHER INFORMATION CONTACT: Call or email the GSA Privacy Act Officer: Telephone 202–208–1317; email *gsa.privacyact@gsa.gov.*

ADDRESSES: GSA Privacy Act Officer (ISP), U.S. General Services Administration, 1800 F Street NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA completed an agency-wide review of its Privacy Act systems of records. As a result of the review, the GSA is publishing an updated Privacy Act system of records notice (SORN). A new routine use was added under the Routine Use Section (Item d) to allow GSA to send reports, data, and information directly to a client agency's contract employees. Nothing in the revised system notice indicates a change in authorities or practices regarding the collection and maintenance of information, and the changes do not affect individuals' rights to access or amend their records in the system of records.

Dated: December 19, 2013.

James L. Atwater,

Director, Policy and Compliance Division, Office of the Chief Information Security Officer.

GSA/PPFM–9

SYSTEM NAME:

Payroll Accounting and Reporting (PAR) System.

SYSTEM LOCATION:

The system is located in the Office of the Chief Financial Officer, U.S. General Services Administration (GSA) in Kansas City, Missouri; in commissions, committees, and small agencies serviced by GSA; and in administrative offices throughout GSA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those covered are present and former employees of GSA and of commissions, committees, and small agencies serviced by GSA; and persons in intern, youth employment, and work/study programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The PAR system provides complete functionality for an employee's entire service life from initial hire through final payment and submission of retirement records to the U.S. Office of Personnel Management (OPM). The system holds payroll records, and includes information received by operating officials as well as personnel and finance officials administering their program areas, including information regarding nonsupport of dependent children. The system also contains data needed to perform detailed accounting distributions and provide for tasks such as mailing checks and bonds and preparing and mailing tax returns and reports. The record system may contain:

a. Employee's name, Social Security Number, home address, date of birth, sex, work schedule, and type of appointment.

b. Service computation date for assigning leave, occupational series, position, grade, step, salary, award amounts, and accounting distribution.

c. Time, attendance, and leave; Federal, State, and local tax; allotments; savings bonds; and other pay allowances and deductions.

d. Tables of data for editing, reporting, and processing personnel and pay actions, which include nature-of-action code, organization table, and salary table.

e. Information regarding court-ordered payments to support dependent children, including amounts in arrears.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Part III, Subparts D and E; 26 U.S.C. Chapters 24 and 25; and E.O. 9397, as amended.

PURPOSE:

To maintain an automated information system to support the day-to-day operating needs of the payroll program. The system can provide payroll statistics for all types of Government organizations and allows many uses for each data element entered. The system has a number of outputs. For the payroll office, outputs include. comprehensive payroll reports; accounting distribution of costs; leave data summary reports; each employee's statement of earnings, deductions, and leave every payday; State, city, and local unemployment compensation reports; Federal, State, and local tax reports; Forms W–2, Wage and Tax Statement; and reports of withholding and contributions.

For the Office of Human Resources Services, outputs include data for reports of Federal civilian employment. The system also provides data to GSA staff and administrative offices to use for management purposes.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSE FOR USING THE SYSTEM:

a. To disclose information to a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order, where the agency becomes aware of a violation or potential violation of civil or criminal law or regulation.

b. To disclose requested information to a court or other authorized agency regarding payment or nonpayment of court-ordered support for a dependent child.

c. To disclose information to Congressional staff in response to a request from the person who is the subject of the record.

d. To disclose information to an expert, consultant, or contractor of the GSA in the performance of a Federal duty to which the information is relevant; to a board, committee, commission, or small agency receiving administrative services from the GSA to which the information relates; or an expert, consultant, or contractor of a board, committee, commission, or small agency receiving administrative services from the GSA to which the information relates in the performance of a Federal duty to which the information is relevant.

e. To disclose information to a Federal, State, or local agency

maintaining civil, criminal, enforcement, or other information to obtain information needed to make a decision on hiring or retaining an employee, issuing a security clearance, letting a contract, or issuing a license, grant, or other benefit.

f. To disclose requested information to a Federal agency in connection with hiring or retaining an employee, issuing a security clearance, reporting an employee investigation, or clarifying a job.

g. To disclose information to an appeal, grievance, or formal complaints examiner; equal employment opportunity investigator; arbitrator; union official or other official engaged in investigating or settling a grievance, complaint, or appeal filed by an employee.

h. To disclose information to the Office of Management and Budget (OMB) for reviewing private relief legislation at any stage of the clearance process.

i. To provide a copy of the U.S. Department of the Treasury Internal Revenue Service (IRS) Form W–2, Wage and Tax Statement, to the State, city, or other local jurisdiction that is authorized to tax the employee's compensation. The record is provided by a withholding agreement between the State, city, or other local jurisdiction and the Department of the Treasury under 5 U.S.C. 5516, 5517, and 5520.

j. To disclose information to the Office of the Chief People Officer in reporting civilian employment.

k. To disclose information to agency administrative offices who may restructure the data for management purposes.

l. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are kept in file folders, within locked power files; microfiches in cabinets; and computer records within a computer and attached equipment. All paper records are secured with the National Payroll Branch (NPB), which is a secured area at the GSA NPB in Kansas City, Missouri.

RETRIEVAL:

Records are filed by name or Social Security Number at each location.

SAFEGUARDS:

Records are stored in locked power files, within the NPB in Kansas City, when not in use by an authorized person. Electronic records are protected by a password system and other appropriate security measures. The NPB is a secured access facility.

RETENTION AND DISPOSAL:

The Financial and Payroll Services Division disposes of the records by shredding or burning, as scheduled in the handbook GSA Records Maintenance and Disposition System (CIO P 1820.1).

SYSTEM MANAGER AND ADDRESS:

Deputy Chief Financial Officer, Office of Financial Policy and Operations, U.S. General Services Administration, 1800 F Street NW., Washington, DC 20405.

NOTIFICATION PROCEDURE:

An individual inquiry should be addressed to the system manager.

RECORD ACCESS PROCEDURES:

An individual request should be addressed to the system manager. Furnish full name, Social Security Number, address, telephone number, approximate dates and places of employment, and nature of the request.

CONTESTING RECORD PROCEDURES:

The GSA rules for contesting the content of a record and appealing an initial decision are in 41 CFR 105–64.

RECORD SOURCE CATEGORIES:

The sources are the individuals themselves, other employees, supervisors, officials of other agencies, State governments, record systems including GSA/PPFM–8, OPM/GOVT–1, and private firms.

[FR Doc. 2013–31166 Filed 12–27–13; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

[Notice-CIB–2013–07; Docket No. 2013–0002; Sequence No. 34]

Privacy Act of 1974; Notice of an Updated System of Records

AGENCY: General Services Administration.

ACTION: Update Notice.

SUMMARY: The U.S. General Services Administration (GSA) reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, and covered by the appropriate legal or regulatory authority. This notice is an updated Privacy Act system of records notice.

DATES: *Effective date:* January 29, 2014.

FOR FURTHER INFORMATION CONTACT: Call or email the GSA Privacy Act Officer: telephone 202–208–1317; email *gsa.privacyact@gsa.gov.*

ADDRESSES: Privacy Act Officer (ISP), U.S. General Services Administration, 1800 F Street NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA completed an agency-wide review of its Privacy Act systems of records. As a result of the review, GSA is publishing an updated Privacy Act system of records notice. A new routine use was added under the Routine Use Section (Item j) to allow GSA to send reports, data, and information directly to a client agency's contract employees. Nothing in the revised system notice indicates a change in authorities or practices regarding the collection and maintenance of information, and the changes do not affect individuals' rights to access or amend their records in the system of records.

Dated: December 19, 2013.

James L. Atwater,

Director, Policy and Compliance Division, Office of the Chief Information Security Officer.

GSA/PPFM–8

SYSTEM NAME:

Comprehensive Human Resources Integrated System (CHRIS)

SYSTEM LOCATION:

The record system is an Oracle Web-based application used by GSA Services and Staff Offices, Presidential Boards and Commissions, and small agencies serviced by GSA, at the addresses below:

GSA Central Office, 1800 F Street, NW., Washington, DC 20405.

National Capital Region, 7th & D Streets, SW., Washington, DC 20407.

New England Region, 10 Causeway Street, Boston, MA 02222.

Northeast and Caribbean Region, 26 Federal Plaza, New York, NY 10278.

Mid-Atlantic Region, 20 N. Eighth Street, Philadelphia, PA 19107.

Southeast Sunbelt Region, 77 Forsyth Street, Atlanta, GA 30303.

Great Lakes Region, 230 South Dearborn Street, Chicago, IL 60604.

The Heartland Region, 1500 East Bannister Road, Kansas City, MO 64131.

Greater Southwest Region, 819 Taylor Street, Fort Worth, TX 76102.

Rocky Mountain Region, 1 Denver Federal Center, Denver, CO 80225.

Pacific Rim Region, 450 Golden Gate Avenue, San Francisco, CA 95102.

OPM, 1900 E Street NW., Washington, DC 20415.

OPM, 1137 Branchton Road, Boyers, PA 16020.

RRB, 844 N. Rush, Chicago, IL 60611.

NCUA, 1775 Duke Street, Alexandria, VA 22314.

Export-Import Bank of the US, 811 Vermont Ave NW., Washington DC 20571.

USIP, 2301 Constitution Avenue NW Washington, DC 20037.

OCFO Business Objects—Ft Worth, TX.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of GSA, Presidential Boards and Commissions, and small agencies serviced by GSA, including persons in intern, youth employment, and work-study programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains personnel and training records. The records include information collected by operating officials and personnel officials administering programs for or about employees. The system has data needed to update the Central Personnel Data File (CPDF), the Enterprise Human Resources Integration (EHRI), and the Electronic Official Personnel Folder (eOPF) at the U.S. Office of Personnel Management (OPM), as well as process and document personnel actions. It may include, but is not limited to, the data maintained in each employee's Official Personnel Folder, including:

a. Employee's name, Social Security Number, date of birth, gender, work schedule, type of appointment, education, veteran's preference, military service, and race or national origin.

b. Employee's service computation date for leave, date probationary period began, and date of performance rating.

c. Pay data such as pay plan, occupational series, grade, step, salary, and organizational location.

d. Performance rating and types and amounts of awards.

e. Position description number, special employment program, and target occupational series and grade.

f. Training records that show what classes employees have taken.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., pt. III, is the authority for maintaining personnel information. Authorities for recording Social Security Numbers are E.O. 9397, as amended; 26 CFR 31.6011(b)–2; and 26 CFR 31.6109–1.

PURPOSE:

To maintain a computer-based information system supporting the day-to-day operating needs of human resource operations and management. The system is designed to meet information and statistical needs of all types of Government organizations and provides a number of outputs. For GSA's Office of the Chief People Officer, the system tracks, produces and stores personnel actions, and supplies HR data used to generate reports (organizational rosters, retention registers, retirement calculations, Federal civilian employment, length-of-service lists, award lists, etc.). It also provides reports for monitoring personnel actions to determine the impact of GSA policies and practices on minorities, women, and disabled persons, analyzing their status in the work force, and for establishing affirmative action goals and timetables. Other reports can be created using the web based Business Objects tool. Access to the tool allows users to create their own reports within their access and eliminates the need for CHRIS to create and distribute these reports. The system also provides management data for administrative and staff offices.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSE FOR USING THE SYSTEM:

The information in the system is used by GSA employees and designated client agency representatives in the performance of their official duties as authorized by law and regulation and for the following routine uses:

a. To disclose information to OPM for the Central Personnel Data File (CPDF) and the Enterprise Human Resources Integration (EHRI).

b. To authorized GSA users of the Business Objects tool and the Personnel Information Database (PID) to disclose information to sources outside GSA, including other agencies and persons, for employees seeking employment elsewhere; and for documenting adverse actions, conducting counseling sessions, and preparing biographical sketches on employees for release to other agencies and persons.

c. To disclose information in the personnel file to GSA's Office of the Chief People Officer.

d. To disclose information to agency staff and administrative offices who may restructure the data for management purposes.

e. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

f. To authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

g. To a Federal agency in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation, the letting of a contract, or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

h. To OPM, the Office of Management and Budget (OMB), or the U.S. Government Accountability Office (GAO) when the information is required for program evaluation purposes.

i. To a Member of Congress or staff on behalf of and at the request of the individual who is the subject of the record.

j. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant; to a board, committee, commission, or small agency receiving administrative services from GSA to which the information relates; or an expert, consultant, or contractor of a board, committee, commission, or small agency receiving administrative services from GSA to which the information relates in the performance of a Federal duty to which the information is relevant.

k. To the National Archives and Records Administration (NARA) for records management purposes.

l. To appropriate agencies, entities, and persons when (1) the agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure

made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING RECORDS IN THE SYSTEM:

STORAGE:

Computer records are stored on a secure server and accessed over the web using encryption software. Paper records, when created, are kept in file folders and cabinets in secure rooms.

RETRIEVABILITY:

Records are retrieved by name, Social Security Number, or Applicant or Employee ID. In the Business Objects tool, records can be retrieved and sorted by any category as long as the category is in the user's access rights.

SAFEGUARDS:

Computer records are protected by a password system. Paper output is stored in locked metal containers or in secured rooms when not in use. Information is released to authorized officials based on their need to know. All users who have access to CHRIS are required to complete the following training courses before gaining access to the system: IT Security Awareness Training, Privacy Training 101.

RETENTION AND DISPOSAL:

Records are disposed of by shredding or burning as scheduled in the handbook, GSA Records Maintenance and Disposition System (CIO P 1820.1).

SYSTEM MANAGER AND ADDRESS:

CHRIS Program Manager, Office of the Chief Information Officer, Office of Human Resources Information Technology (HRIT) Services Division, U.S. General Services Administration, 1800 F Street NW., Washington, DC 20405.

NOTIFICATION PROCEDURE:

Address inquiries to: Director of Human Resources Services (CP), Office of the Chief People Officer, U.S. General Services Administration, 1800 F Street NW., Washington, DC 20405; or, for regional personnel records, to the regional Human Resources Officer at the addresses listed above under System Location.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to their records should be addressed to the system manager.

CONTESTING RECORD PROCEDURES:

Rules for contesting the content of a record and appealing a decision are contained in 41 CFR 105–64.

RECORD SOURCE CATEGORIES:

The sources for the system information are the individuals themselves, other employees, supervisors, management officials, officials of other agencies, and record systems GSA/HRO–37, OPM/GOVT–1, and EEOC/GOVT–1.

[FR Doc. 2013–31165 Filed 12–27–13; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

[Notice–BB–2013–1; Docket No. 2013–0002; Sequence No. 41]

Notification of GSA Strategic Plan

AGENCY: Office of the Chief Financial Officer, U.S. General Services Administration (GSA).

ACTION: Notice of Availability; request for public comments.

SUMMARY: GSA is announcing the availability of the *Draft FY 2014–2018 GSA Strategic Plan* for public review and comment, as part of the periodic update required by the Government Performance and Results Act (GPRA) Modernization Act of 2010. The agency anticipates the final *Strategic Plan* will be submitted to Congress with the submission of the FY 2015 President's Budget. The *Strategic Plan* provides the Agency's long-term direction and strategies for providing real estate, acquisition, and technology services to the Federal government. For this notice, the GSA is seeking comment from individual citizens, states, local government, industry, non-governmental organizations, and all other interested parties. The draft GSA FY 2014–2018 Strategic Plan can be accessed at *http://www.gsa.gov/portal/content/183023*.

DATES: Submit comments on or before January 14, 2014.

ADDRESSES: Submit comments via Electronic mail to *perform@gsa.gov;* or via the U.S. Postal Service to: ATTN: Mr. Harold Hendrick, Strategic Planning and Performance Management Division, Office of the Chief Financial Officer, 1800 F Street NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Harold Hendrick, Strategic Planning and Performance Management Division, Office of the Chief Financial Officer at *perform@gsa.gov* or telephone 202–208–1752.

SUPPLEMENTARY INFORMATION: The GPRA Modernization Act holds federal agencies accountable for using resources wisely and achieving program results. Specifically, the GPRA Modernization Act requires agencies to develop: *Strategic Plans,* which include a mission statement, set out long-term goals, objectives, and strategic measures, and describe strategies to achieve them over a four-year time horizon; *Annual Performance Plans,* which provide annual performance measures and activities toward the long-term *Strategic Plan;* and *Annual Performance Reports,* which evaluate an agency's success in achieving the annual performance measures.

The *Draft FY 2014–2018 GSA Strategic Plan* defines GSA's mission, strategic goals, strategic and management objectives, strategies, and priority goals. The *Strategic Plan* links objectives to GSA programs and presents the key performance indicators by which GSA will hold itself accountable.

Dated: December 20, 2013.

Michael Casella,

Chief Financial Officer, Office of the Chief Financial Officer.

[FR Doc. 2013–31168 Filed 12–27–13; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Baoyan Xu, M.D., Ph.D., National Heart, Lung, and Blood Institute, National Institutes of Health: Based on allegations made by readers of a published paper,[1] additional review by the National Institutes of Health (NIH) and ORI, and a limited admission by the Respondent that ''some better looking strips were repeatedly used as representatives for several times [sic],'' ORI found that Dr. Baoyan Xu, formerly a Postdoctoral Fellow, Hematology Branch, Systems Biology Center,

[1] Xu, B., Zhi, N., Hu, G., Wan, Z., Zheng, X., Liu, X., Wong, S., Kajigaya, S., Zhao, K., Mao, Q., & Young, N.S. ''Hybrid DNA virus in Chinese patients with seronegative hepatitis discovered by deep sequencing.'' *Proc. Natl. Acad. Sci. (US)* 110(25):10264–10269; hereafter referred to as the ''*PNAS* paper.''

National Heart, Lung, and Blood Institute (NHLBI), NIH, and currently at the Institute of Infectious Diseases, Southwest Hospital, Third Military Medical University, Chonqing, China, engaged in research misconduct in research supported by intramural research at NHLBI, NIH.

The questioned research involves a Western blot analysis of IgM and IgG antibodies from Chinese subjects in patients with non-A–E hepatitis and control subjects to test reactivity towards a newly discovered virus. Analysis of Figure 6 of the published paper and Figure S4 of the online supplemental information identified thirteen pairs of Western blot bands which had a common origin yet were labeled as from different subjects and usually as detecting a different class of immunoglobulin. Specifically the following pairs were shown to match using forensically useful tools in Photoshop. Each represent a falsification in one or both of the figures as indicated in the table:

Identity of strips	Located in:
A1 IgM/F1 IgG	Fig. 6 & Fig. S4.
B6 IgM/E1 IgM	Fig. 6 & Fig. S4.
D7 IgM/A11 IgG	Fig. 6 & Fig. S4.
G3 IgM/H4 IgG	Fig. S4.
H9 IgM/F4 IgG	Fig. S4.
A4 IgM/E2 IgG	Fig. S4.
A5 IgM/B9 IgM	Fig. S4.
C9 IgG/C6 IgM	Fig. S4.
D11 IgM/H11 IgG	Fig. S4.
D5 IgM/A1 IgG	Fig. S4.
A10 1gM/F7 IgG	Fig. S4.
C11 1gM/E9 IgG	Fig. 6.
F3 IgG/E9 IgM	F3 in S4/E9 in Fig. 6.

The Respondent agreed to correction of Figures 6 and S4 of the *PNAS* paper.

Dr. Xu has entered into a Voluntary Settlement Agreement and has voluntarily agreed for a period of three (3) years, beginning on December 6, 2013:

(1) That prior to the submission of an application for U.S. Public Health Service (PHS) support (including NIH support) for a research project on which the Respondent's participation is proposed, and prior to Respondent's participation in any capacity on PHS-supported research, Respondent shall ensure that a plan for supervision of her duties is submitted to ORI for approval; the supervision plan must be designed to ensure the scientific integrity of Respondent's research contribution; Respondent agrees that she shall not participate in any PHS-supported research until such a supervision plan is submitted to and approved by ORI; Respondent agrees to maintain responsibility for compliance with the agreed-upon supervision plan;

(2) That any institution employing her shall submit, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived, that the data procedures, and methodology are accurately reported in the application, report, manuscript, or abstract, and that the text in such submission is her own or properly cites the source of copied language and ideas; and

(3) To exclude herself voluntarily from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

David E. Wright,

Director, Office of Research Integrity.

[FR Doc. 2013–31160 Filed 12–27–13; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1155]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Food Labeling Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 29, 2014.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0381. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Food Labeling Regulations—21 CFR Parts 101, 102, 104, and 105 (OMB Control Number 0910–0381)—Revision to Include Collections Previously Approved By OMB, But Currently in Use Without Approval

Our food labeling regulations require food producers to disclose to consumers and others specific information about themselves or their products on the label or labeling of their products. Related regulations require that food producers retain records establishing the basis for the information contained in the label or labeling of their products and provide those records to regulatory officials. Finally, certain regulations provide for the submission of food labeling petitions to us. We issued our food labeling regulations under parts 101, 102, 104, and 105 (21 CFR parts 101, 102, 104, and 105) under the authority of sections 4, 5, and 6 of the Fair Packaging and Labeling Act (FPLA) (15 U.S.C. 1453, 1454, and 1455) and sections 201, 301, 402, 403, 409, 411, 701, and 721 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 321, 331, 342, 343, 348, 350, 371, and 379e). Most of these regulations derive from section 403 of the FD&C Act, which provides that a food product shall be deemed to be misbranded if, among other things, its label or labeling fails to bear certain required information concerning the food product, is false or misleading in any particular, or bears certain types of unauthorized claims. The disclosure requirements and other collections of information in the regulations in parts 101, 102, 104, and 105 are necessary to ensure that food products produced or sold in the United States are in compliance with the labeling provisions of the FD&C Act and FPLA.

Upon review of the information collection requests supporting these food labeling regulations, FDA found that the third-party disclosure burdens associated with the requirements found in §§ 101.9(c)(2)(ii) and 101.36(b)(2) to

declare the amount of *trans* fatty acids present in a food, and with the voluntary declaration of the quantitative amount and the percent of Daily Value of a dietary ingredient on a ''per day'' basis in addition to the required ''per serving'' basis are in use without current OMB approval. These collections of information were previously approved by OMB under control numbers 0910–0595 and 0910–0395 respectively; however, the approval period for these collections has expired. To remedy this oversight, to most appropriately streamline these information collections, and to eliminate redundancy in its information collection requests, we seek to revise the instant collection to include these third-party disclosure elements and have included them in the burden estimates and discussion in this document in support of our approval request for OMB control number 0910–0381.

Section 101.3 of our food labeling regulations requires that the label of a food product in packaged form bear a statement of identity (i.e., the name of the product), including, as appropriate, the form of the food or the name of the food imitated. Section 101.4 prescribes requirements for the declaration of ingredients on the label or labeling of food products in packaged form. Section 101.5 requires that the label of a food product in packaged form specify the name and place of business of the manufacturer, packer, or distributor and, if the food producer is not the manufacturer of the food product, its connection with the food product. Section 101.9 requires that nutrition information be provided for all food products intended for human consumption and offered for sale, unless an exemption in § 101.9(j) applies to the product. In particular, § 101.9(c)(2)(ii) requires that the amount of *trans* fatty acids present in a food must be declared on the nutrition label on a separate line immediately under the line for the declaration of saturated fat. Section 101.9(g)(9) provides that interested parties may submit to us requests for alternative approaches to nutrition labeling requirements. Finally, § 101.9(j)(18) provides that firms claiming the small business exemption from nutrition labeling must submit notice to us supporting their claim exemption. We developed Form FDA 3570 to assist small businesses in claiming the small business exemption from nutrition labeling. The form contains all the elements required by § 101.9(j)(18).

Section 101.10 requires that restaurants provide nutrition information, upon request, for any food or meal for which a nutrient content claim or health claim is made. Section 101.12(b) provides the reference amount that is used for determining the serving sizes for specific products, including baking powder, baking soda, and pectin. Section 101.12(e) provides that a manufacturer that adjusts the reference amount customarily consumed (RACC) of an aerated food for the difference in density of the aerated food relative to the density of the appropriate non-aerated reference food must be prepared to show us detailed protocols and records of all data that were used to determine the density-adjusted RACC. Section 101.12(g) requires that the label or labeling of a food product disclose the serving size that is the basis for a claim made for the product if the serving size on which the claim is based differs from the RACC. Section 101.12(h) provides for the submission of petitions requesting that we change the reference amounts defined by regulation.

Section 101.13 requires that nutrition information be provided in accordance with § 101.9 for any food product for which a nutrient content claim is made. Under some circumstances, § 101.13 also requires the disclosure of other types of information as a condition for the use of a nutrient content claim. For example, under § 101.13(j), if the claim compares the level of a nutrient in the food with the level of the same nutrient in another ''reference'' food, the claim must also disclose the identity of the reference food, the amount of the nutrient in each food, and the percentage or fractional amount by which the amount of the nutrient in the labeled food differs from the amount of the nutrient in the reference food. It also requires that when this comparison is based on an average of food products, this information must be provided to consumers or regulatory officials upon request. Section 101.13(q)(5) requires that restaurants document and provide to appropriate regulatory officials, upon request, the basis for any nutrient content claims they have made for the foods they sell.

Section 101.14(d)(2) and (d)(3) provides for the disclosure of nutrition information in accordance with § 101.9 and, under some circumstances, certain other information as a condition for making a health claim for a food product. Section 101.15 provides that, if the label of a food product contains any representation in a foreign language, all words, statements, and other information required by or under authority of the FD&C Act to appear on the label must appear in both the foreign language and in English. Section 101.22 contains labeling requirements for the disclosure of spices, flavorings, colorings, and chemical preservatives in food products. Section 101.22(i)(4) sets forth disclosure and recordkeeping requirements pertaining to certifications for flavors designated as containing no artificial flavors. Section 101.30 specifies the conditions under which a beverage that purports to contain any fruit or vegetable juice must declare the percentage of juice present in the beverage and the manner in which the declaration is to be made.

Section 101.36 requires that nutrition information be provided for dietary supplements offered for sale, unless an exemption in § 101.36(h) applies. In particular, § 101.36(b)(2) requires that the amount of *trans* fatty acids present in dietary supplements must be declared on the nutrition label on a separate line immediately under the line for the declaration of saturated fat. Section 101.36(e) permits the voluntary declaration of the quantitative amount and the percent of Daily Value of a dietary ingredient on a ''per day'' basis in addition to the required ''per serving'' basis, if a dietary supplement label recommends that the dietary supplement be consumed more than once per day. Section 101.36(f)(2) cross-references the provisions in § 101.9(g)(9) for the submission to us of requests for alternative approaches to nutrition labeling requirements. Also, § 101.36(h)(2) cross-references the provisions in § 101.9(j)(18) for the submission of small business exemption notices. As noted previously, we developed Form FDA 3570 to assist small businesses in claiming the small business exemption from nutrition labeling. The form contains all the elements required by § 101.36(h)(2).

Section 101.42 requests that food retailers voluntarily provide nutrition information for raw fruit, vegetables, and fish at the point of purchase and § 101.45 contains guidelines for providing such information. Also, § 101.45(c) provides for the submission to us of nutrient databases and proposed nutrition labeling values for raw fruit, vegetables, and fish for review and approval.

Sections 101.54, 101.56, 101.60, 101.61, and 101.62 specify information that must be disclosed as a condition for making particular nutrient content claims. Section 101.67 provides for the use of nutrient content claims for butter, and cross-references requirements in other regulations for information declaration (§ 101.4) and disclosure of information concerning performance characteristics (§ 101.13(d)). Section 101.69 provides for the submission of a

petition requesting that we authorize a particular nutrient content claim by regulation. Section 101.70 provides for the submission of a petition requesting that we authorize a particular health claim by regulation. Section 101.77(c)(2)(ii)(D) requires the disclosure of soluble fiber per serving in the nutrition labeling of a food bearing a health claim about the relationship between soluble fiber and a reduced risk of coronary heart disease. Section 101.79(c)(2)(iv) requires the disclosure of the amount of folate in the nutrition label of a food bearing a health claim about the relationship between folate and a reduced risk of neural tube defects.

Section 101.100(d) provides that any agreement that forms the basis for an exemption from the labeling requirements of section 403(c), (e), (g), (h), (i), (k), and (q) of the FD&C Act be in writing and that a copy of the agreement be made available to us upon request. Section 101.100 also contains reporting and disclosure requirements as conditions for claiming certain labeling exemptions (e.g., 101.100(h)).

Section 101.105 specifies requirements for the declaration of the net quantity of contents on the label of a food in packaged form and prescribes conditions under which a food whose label does not accurately reflect the actual quantity of contents may be sold, with appropriate disclosures, to an institution operated by a Federal, State or local government. Section 101.108 provides for the submission to us of a written proposal requesting a temporary exemption from certain requirements of §§ 101.9 and 105.66 for the purpose of conducting food labeling experiments with our authorization.

Regulations in part 102 define the information that must be included as part of the statement of identity for particular foods and prescribe related labeling requirements for some of these foods. For example, § 102.22 requires that the name of a protein hydrolysate will include the identity of the food source from which the protein was derived.

Part 104, which pertains to nutritional quality guidelines for foods, cross-references several labeling provisions in part 101 but contains no separate information collection requirements.

Part 105 contains special labeling requirements for hypoallergenic foods, infant foods, and certain foods represented as useful in reducing or maintaining body weight.

The purpose of our food labeling requirements is to allow consumers to be knowledgeable about the foods they purchase. Nutrition labeling provides information for use by consumers in selecting a nutritious diet. Other information enables a consumer to comparison shop. Ingredient information also enables consumers to avoid substances to which they may be sensitive. Petitions or other requests submitted to us provide the basis for us to permit new labeling statements or to grant exemptions from certain labeling requirements. Recordkeeping requirements enable us to monitor the basis upon which certain label statements are made for food products and whether those statements are in compliance with the requirements of the FD&C Act or FPLA.

Description of Respondents: Respondents to this information collection are manufacturers, packers, and distributors of food products. Because of the existence of exemptions and exceptions, not all of the requirements apply to all food producers or to all of their products. Some of the regulations affect food retailers, such as supermarkets and restaurants.

In the **Federal Register** of November 1, 2013 (78 FR 65663), FDA published a 60-day notice requesting public comment on the proposed collection of information. Several comments were received in response to the notice. Many were generally supportive of the necessity of our food labeling regulations. Other comments were beyond the scope of the four collections of information topics on which the notice solicits comments and will therefore not be discussed in this document.

A number of comments referenced our **Federal Register** notice published on November 8, 2013 (78 FR 67169) (''the November 8, 2013, notice''), announcing the tentative determination that partially hydrogenated oils (PHOs) are no longer ''generally recognized as safe'' (GRAS). Some comments supported this determination while others opposed it. Supportive comments suggested that labels should be placed on food packaging warning consumers of the negative health effects of the *trans* fatty acid component of PHOs. FDA notes that it does not require warning labels on food containing *trans* fatty acid, but we agree that *trans* fatty acid content should be provided in the nutrition labeling of food. In the **Federal Register** of July 11, 2003 (68 FR 41434), we issued a final rule (''the July 2003 final rule'') amending our nutrition labeling regulations to require declaration of the *trans* fatty acid content of food in the nutrition label of conventional foods and dietary supplements (§ 101.9(c)(2)(ii)). This requirement was effective January 1, 2006. The November 8, 2013, notice seeks comments on our preliminary determination that PHOs are not GRAS and we have submitted comments relevant to this topic to that docket as well. If FDA makes a final determination that PHOs are not GRAS, the food industry would be required to phase out the use of PHOs in food over time, not place warning labels on their food products.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
101.3, 101.22, 102, and 104; statement of identity labeling requirements	25,000	1.03	25,750	0.5	12,875
101.4, 101.22, 101.100, 102, 104, and 105; ingredient labeling requirements	25,000	1.03	25,750	1	25,750
101.5; requirement to specify the name and place of business of the manufacturer, packer, or distributor and, if the food producer is not the manufacturer of the food product, its connection with the food product	25,000	1.03	25,750	0.25	6,438
101.9, 101.13(n), 101.14(d)(3), 101.62, and 104; labeling requirements for disclosure of nutrition information	25,000	1.03	25,750	4	103,000
101.9(g)(9) and 101.36(f)(2); alternative means of compliance permitted	12	1	12	4	48

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]—Continued

21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
101.10; requirements for nutrition labeling of restaurant foods	300,000	1.5	450,000	0.25	112,500
101.12(b); RACC for baking powder, baking soda, and pectin	29	2.3	67	1	67
101.12(e); adjustment to the RACC of an aerated food permitted	25	1	25	1	25
101.12(g); requirement to disclose the serving size that is the basis for a claim made for the product if the serving size on which the claim is based differs from the RACC	5,000	1	5,000	1	5,000
101.13(d)(1) and 101.67; requirements to disclose nutrition information for any food product for which a nutrient content claim is made	200	1	200	1	200
101.13(j)(2), 101.13(k), 101.54, 101.56, 101.60, 101.61, and 101.62; additional disclosure required if the nutrient content claim compares the level of a nutrient in one food with the level of the same nutrient in another food	5,000	1	5,000	1	5,000
101.13(q)(5); requirement that restaurants disclose the basis for nutrient content claims made for their food	300,000	1.5	450,000	0.75	337,500
101.14(d)(2); general requirements for disclosure of nutrition information related to health claims for food products	300,000	1.5	450,000	0.75	337,500
101.15; requirements pertaining to prominence of required statements and use of foreign language	160	10	1,600	8	12,800
101.22(i)(4); supplier certifications for flavors designated as containing no artificial flavors	25	1	25	1	25
101.30 and 102.33; labeling requirements for fruit or vegetable juice beverages	1,500	5	7,500	1	7,500
101.36; nutrition labeling of dietary supplements	300	40	12,000	4.025	48,300
101.42 and 101.45; nutrition labeling of raw fruits, vegetables, and fish	1,000	1	1,000	0.5	500
101.45(c); databases of nutrient values for raw fruits, vegetables, and fish	5	4	20	4	80
101.79(c)(2)(i)(D); disclosure requirements for food labels that contain a folate/neural tube defect health claim	1,000	1	1,000	0.25	250
101.79(c)(2)(iv); disclosure of amount of folate for food labels that contain a folate/neural tube defect health claim	100	1	100	0.25	25
101.100(d); disclosure of agreements that form the basis for exemption from the labeling requirements of section 403(c), (e), (g), (h), (i), (k), and (q) of the FD&C Act	1,000	1	1,000	1	1,000
101.105 and 101.100(h); disclosure requirements for food not accurately labeled for quantity of contents and for claiming certain labeling exemptions	25,000	1.03	25,750	0.5	12,875
Total					1,029,258

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
101.12(e); recordkeeping to document the basis for density-adjusted RACC	25	1	25	1	25
101.13(q)(5); recordkeeping to document the basis for nutrient content claims	300,000	1.5	450,000	0.75	337,500
101.14(d)(2); recordkeeping to document nutrition information related to health claims for food products	300,000	1.5	450,000	0.75	337,500
101.22(i)(4); recordkeeping to document supplier certifications for flavors designated as containing no artificial flavors	25	1	25	1	25
101.100(d)(2); recordkeeping pertaining to agreements that form the basis for an exemption from the labeling requirements of section 403(c), (e), (g), (h), (i), (k), and (q) of the FD&C Act	1,000	1	1,000	1	1,000

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]—Continued

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
101.105(t); recordkeeping pertaining to disclosure requirements for food not accurately labeled for quantity of contents	100	1	100	1	100
Total					676,150

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 3—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section/Form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
101.9(j)(18) and 101.36(h)(2); procedure for small business nutrition labeling exemption notice using Form FDA 3570	10,000	1	10,000	8	80,000
101.12(h); petitions to establish or amend a RACC	5	1	5	80	400
101.69; petitions for nutrient content claims	3	1	3	25	75
101.70; petitions for health claims	5	1	5	80	400
101.108; written proposal for requesting temporary exemptions from certain regulations for the purpose of conducting food labeling experiments	1	1	1	40	40
Total					80,915

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated annual third-party disclosure, recordkeeping, and reporting burdens are based on our communications with industry and our knowledge of and experience with food labeling and the submission of petitions and requests to us.

As noted, we are revising this collection to include previously approved third-party disclosure burdens associated with the requirement to declare the amount of *trans* fatty acids present in a food, including dietary supplements. The third-party disclosure burden hours formerly associated with OMB control number 0910–0515 (collection entitled, ''Food Labeling: Trans Fatty Acids in Nutrition Labeling'') are represented by the citation to § 101.9 on line 4 of table 1 and the citation to § 101.36 on line 17 of table 1. For this revision, we have not added burden hours to line 4 or line 17 of table 1 because, based on our experience with food labeling, the 4 hours estimated for meeting the labeling requirements of § 101.9 and the 4 hours estimated for meeting the labeling requirements of § 101.36 are appropriate estimates of the total time it takes a respondent to meet our requirements for nutrition labeling in §§ 101.9 and 101.36.

We are also revising this collection to include previously approved third-party disclosure burdens associated with the voluntary declaration of the quantitative amount and the percent of Daily Value of a dietary ingredient on a ''per day'' basis in addition to the required ''per serving'' basis. The third-party disclosure burden hours formerly associated with OMB control number 0910–0395 (collection entitled, ''Food Labeling: Nutrition Labeling of Dietary Supplements on a 'Per Day' Basis'') are represented by the citation to § 101.36 on line 17 of Table 1 and the addition of 300 hours to our previous estimate of 48,000 hours. For this revision, we added 300 burden hours to line 17 of table 1 because voluntary labeling on a ''per day'' basis is in addition to the required ''per serving'' basis. We estimate that ''per day'' information would generally be placed on, at most, 10 percent of the estimated 12,000 disclosures, for a total of 1,200 annual disclosures, and that a respondent will spend 15 minutes (0.25 hours) per disclosure, for a total of 300 hours. Thus, the total estimated burden on line 17 of table 1 is 48,300 hours and average burden per disclosure on line 17 of table 1 has been increased from 4.0 to 4.025 hours, to represent an averaging of the burden hours across all of the estimated 12,000 disclosures.

We expect that the burden hours for submissions under § 101.108 will be insignificant. Section 101.108 was originally issued to provide a procedure whereby we could grant exemptions from certain food labeling requirements. Exemption petitions have infrequently been submitted in the recent past; none have been submitted since publication on January 6, 1993, of the final regulations implementing section 403(q) and (r) of the FD&C Act. Thus, in order to maintain OMB approval of § 101.108 to accommodate the possibility that a food producer may propose to conduct a labeling experiment on its own initiative, we estimate that we will receive one or fewer submissions under § 101.108 in the next 3 years.

Dated: December 23, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–31215 Filed 12–27–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1676]

International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; Tapentadol; Tramadol; Ketamine; gamma-Butyrolactone; 22 Additional Substances; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting

interested persons to submit comments concerning abuse potential, actual abuse, medical usefulness, trafficking, and impact of scheduling changes on availability for medical use of 26 drug substances. These comments will be considered in preparing a response from the United States to the World Health Organization (WHO) regarding the abuse liability and diversion of these drugs. WHO will use this information to consider whether to recommend that certain international restrictions be placed on these drugs. This notice requesting comments is required by the Controlled Substances Act (CSA).

DATES: Submit written or electronic comments by January 29, 2014.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: James R. Hunter, Center for Drug Evaluation and Research, Controlled Substance Staff, Food and Drug Administration, Bldg. 51, Rm. 5150, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–3156, email: *james.hunter@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: The United States is a party to the 1971 Convention on Psychotropic Substances. Article 2 of the Convention on Psychotropic Substances provides that if a party to the convention or WHO has information about a substance, which in its opinion may require international control or change in such control, it shall so notify the Secretary General of the United Nations and provide the Secretary General of the United Nations with information in support of its opinion.

Section 201 of the CSA (21 U.S.C. 801 et seq.) (Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970) provides that when WHO notifies the United States under Article 2 of the Convention on Psychotropic Substances that it has information that may justify adding a drug or other substances to one of the schedules of the convention, transferring a drug or substance from one schedule to another, or deleting it from the schedules, the Secretary of State must transmit the notice to the Secretary of Health and Human Services (the Secretary of HHS). The Secretary of HHS must then publish the notice in the **Federal Register** and provide opportunity for interested persons to submit comments that will be considered by HHS in its preparation of the scientific and medical evaluations of the drug or substance.

I. WHO Notification

The Secretary of HHS received the following notices from WHO:

Ref.: C.L.29.2013

The World Health Organization (WHO) presents its compliments to Member States and Associate Members and has the pleasure of informing that the Thirty-sixth Expert Committee on Drug Dependence (ECDD) will meet in June 2014 to review a number of substances with potential for misuse in order to make recommendations to the Director-General, on the need for and level of international control of these substances.

At its 126th session in January 2010, the Executive Board approved the publication ''Guidance on the WHO review of psychoactive substances for international control'' (EB126/2010/REC1, Annex 6) which requires the Secretariat to request relevant information from Ministers of Health in Member States to prepare a report for submission to the ECDD. For this purpose, a questionnaire was designed to gather information on the legitimate use, harmful use, status of national control and potential impact of international control for each substance under evaluation. Member States are invited to collaborate, as in the past, in this process by providing pertinent information mentioned in the questionnaire concerning substances under review.

It would be appreciated if a person from the Ministry of Health could be designated as the focal point responsible for coordinating and answering the questionnaire. It is requested that the email address of the focal point be shared with the Secretariat * * *. Upon receipt of the email of the designated person, the focal point will receive a unique user name, password and link for accessing the questionnaire and responding to questions. Further instructions on answering the questionnaire will be provided, along with the questionnaire, online. Further clarification on the above items can be obtained from the Secretariat by emailing: *ecdd_secretariat@who.int*. Replies to the questionnaire must reach the Secretariat by 1 February 2014 in order to facilitate analyses and preparation of the report before the planned meeting. Where there is a Competent National Authority under the International Drug Control Treaties, it is kindly requested that the questionnaire be completed in collaboration with such body. The summary information from the questionnaire will be published online as part of the report at the Web site for the Thirty-sixth ECDD linked to the Department of Essential Medicines and Health Products (EMP): *http://www.who.int/medicines/areas/quality_safety/ECDD/en/index.html*.

The World Health Organization takes this opportunity to renew to Member States and Associate Members the assurance of its highest consideration.

GENEVA, 11 November 2013

* * * * *

ENCL.: (1)

Substances Identified for Evaluation During the 36th Expert Committee on Drug Dependence

Tapentadol
N-benzylpiperazine (BZP)
Gamma-Butyrolactone (GBL)
1,4-Butanediol (I,4BD)
Synthetic cannabinoids
- JWH–018
- JWH–073
- AM–2201
- UR–144
- APINACA (AKB 48)
- RCS–4
- JWH–250

Synthetic Cathinones
- Mephedrone 4-methylmethcathinone (4–MMC)
- 3,4-Methylenedioxypyrovalerone (MDPV)
- Methylone (bk-MDMA)
- 4-Methylethcathinone (4–MEC)
- 4-Fluoromethcathinone (flephedrone; 4–FMC)

Miscellaneous
- 25 B NBOMe
- 25 C NBOMe
- 25 I NBOMe
- Alpha-methyltryptamine (AMT)
- AH–7921
- Methoxetamine (MXE)
- Methiopropamine (MPA)

Lisdexamphetamine
Tramadol
Ketamine

* * * * *

WHO Questionnaire for the 36th Meeting of Expert Committee on Drug Dependence: Substance

Definitions:

(Def. 1) Legitimate use is use of a substance for legally valid purposes such as medical scientific and industrial.

(Def. 2) Harmful use is defined as a pattern of psychoactive substance use that increases the risk of harmful physical, mental, and social consequences for the user or to others. Harmful use of drugs by an individual has potential for adverse effects on the substance user's family, the community and society in general.

Substance* (Insert name of substance)

—Do you have any information on this substance on legitimate use, recreational/harmful use or control status in your country? * (Yes/No)

A. LEGITIMATE MEDICAL OR OTHER SCIENTIFIC USE OF THE SUBSTANCE (Def. 1)

—Is the substance currently authorized or in the process of being authorized/registered as a medical product in your country? (Yes/No)

If ''yes,'' since when has it been on the market? (input year)

—Please state registered indications for this medicine:

—Please mention other, if any, medical use not included in the approved indications (off label use):

—Please indicate dosage form(s) and strength(s) available in your country; also

indicate special properties such as slow release, etc.:

	Dosage form	Strength	Remarks
1. 2. 3.			

—Please list alphabetically the brand names available in your country (there is no need for dosage forms, strengths, etc.):
—Are there any other uses for the substance in health care (such as for diagnostic tests) in your country? (Yes/No)
If ''yes,'' what is the use?
—Is the chemical used for medical or scientific research in your country? (Yes/No)
If ''yes,'' please specify:
—Is the substance used for animal care (veterinary use)? (Yes/No)
—Is there any other legitimate (Def. 1) use of the substance (e.g. industry uses)? (Yes/No)
If ''yes,'' please state the purpose:
—If there is any legitimate (Def. 1) use of the substance, how is the substance sourced? (Manufactured in country/Imported)
—What is the estimated approximate amount needed for its legitimate use in your country per year?
—Is the substance used for cultural or ceremonial purposes? (Yes/No)
If ''yes,'' specify why it is used:
Who uses it (the group using)?
How is it used? (route of administration):
What is its source?

B. HARMFUL USE OF THE SUBSTANCE (Def. 2)

—Is there recreational/harmful use of this substance in your country? (Def. 2) (Yes/No/Unknown)
If ''yes,'' please specify how the substance is used and the extent of use by answering the following questions:
Common route(s) of administration (Oral/Injection/Inhaling or sniffing)
How is it obtained? (Diversion/Trafficking/Clandestine manufacturing)
Common formulation(s) available: (Powder/Tablet/Liquid)
—Any other information on recreational/harmful use:
—Quantity of substance used by an average misuse per sitting (average dose used):
—Is it used by special population(s)? (Club use/General population)

	Club use (percent)	General population (percent)
Estimated proportion of the population using the substance		

—Please provide any information on the extent/magnitude of public health or social harm from the use of the substance (Def. 2) in your country:

	Overdose deaths reported	Addiction programme enrolment from the use of this substance	Emergency room visits resulting from the use of this substance	Dependence to this substance
Numbers in 2012				

—Are there reports of withdrawal, tolerance, other adverse effects or medical illnesses caused by this substance in your country? (Yes/No)
If ''yes,'' please provide details:
—Any other relevant information on harm to individuals or the society:
—Please indicate the sources of information on harm:
—If actual data are not available, please provide a short description on harm caused by this substance:

C. CONTROL OF THE SUBSTANCE

—Is the substance controlled under legislation that is intended to regulate its availability in the country? (Yes/No)
If ''yes,'' please select which one: (Controlled substances act/Medicines law/Poisons acts/Consumer protection acts/Generic legislation/Analogue legislation/Temporary ban/Other legislation (name))
—How is this law enforced? Please provide a short description:
—Are there challenges to implementation? (Yes/No)
If ''yes,'' please specify (e.g. laboratory capacity, resources to implement and/or enforce, expertise):
—Are there illicit activities involving the substance? (Yes/No)
Clandestine manufacture? (Yes/No)
The manufacture (synthesis) of the chemical itself (Yes/No)
The processing into the consumer product, i.e. adding it to herbal material, packaging (Yes/No)
Trafficking (Yes/No)
Diversion (Yes/No)
Internet market (Yes/No)
Other (please specify):
—Please provide any other relevant information on illicit activities:
—Data on seizures

Year	Number of seizures	Kilograms	Litres	Number of ampoules	Number of tablets/pills	Other type (quantity)
2011 ..... 2012						

D. IMPACT OF SCHEDULING

—If this substance is placed under international control, does your country have the lab capacity to identify the substance? (Yes/No/Unknown)
—If this substance is placed under international control, do you think its availability for medical use will be affected? (Yes/No)
If ''yes,'' please explain (consider both human and veterinary needs): How could control impact its medical availability? Please identify specific population groups that may be affected, and describe the implications of increased control.
—Any additional information on impact of scheduling:

* * * * *

II. Background

Tapentadol is a central nervous system active analgesic agent that has mu (μ) opioid agonist properties and inhibits the reuptake of norepinephrine. Tapentadol is approved for marketing in the United States for the treatment of moderate to severe acute pain.

Tapentadol is controlled in Schedule II under the CSA in the United States. Tapentadol was pre-reviewed by the WHO Expert Committee on Drug Dependence at its 35th meeting and recommended for critical review at its 36th meeting.

N-benzylpiperazine (BZP) is used as an intermediate in chemical synthesis but has been taken orally as either powder or tablets and by other routes, including smoking or snorting. It has no medical use in the United States. BZP is controlled in Schedule I under the CSA in the United States. BZP is not controlled internationally under the Convention on Psychotropic Substances or the Single Convention on Narcotic Drugs. BZP was pre-reviewed by the WHO Expert Committee on Drug Dependence at its 35th meeting and recommended for critical review at its 36th meeting.

Gamma-Butyrolactone (GBL) is used as an industrial solvent. GBL can be converted in the body to the central nervous system depressant drug gamma-hydroxybutyric acid (GHB). GBL is controlled as a List I chemical in the United States under the CSA. It is not controlled internationally under the Convention on Psychotropic Substances or the Single Convention on Narcotic Drugs. GBL was pre-reviewed by the WHO Expert Committee on Drug Dependence at its 35th meeting and recommended for critical review at its 36th meeting.

1,4-Butanediol is used as an industrial solvent for manufacturing and also used for the synthesis of GBL. 1,4-Butanediol can also be converted to the central nervous depressant drug GHB. It has no medical use in the United States. 1,4-Butanediol is not controlled under the CSA in the United States, but it is subject to controls in several states under state law. 1,4-Butanediol was pre-reviewed by the WHO Expert Committee on Drug Dependence at its 35th meeting and recommended for critical review at its 36th meeting.

The following substances are classified as synthetic cannabinoids with pharmacological properties like tetrahydrocannabinol: (1-pentyl-1H-indol-3-yl)-1-naphthalenyl-methanone (JWH–018), (1-butyl-1H-indol-3-yl)-1-naphthalenyl-methanone (JWH–073), 1-(1-pentyl-1H-indol-3-yl)-2-(2-methoxyphenyl)-ethanone (JWH–250), [1-(5-fluoropentyl)-1H-indol-3-yl]-1-naphthalenyl-methanone (AM–2201), (1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)-methanone (UR–144), 1-pentyl-N-tricyclo[3.3.1.13,7]dec-l-yl-1H-indazole-3-carboxamide (APINACA; AKB48), and (4-methoxyphenyl)(1-pentyl-1H-indol-3-yl)methanone (RCS–4). JWH–018, JWH–073, JWH–250, AM–2201, and RCS–4 are controlled in Schedule I under the CSA in the United States. On May 16, 2013, UR–144 and AKB 48 were temporarily placed in Schedule I under the CSA pursuant to the temporary scheduling provisions of section 201(h) of the CSA (21 U.S.C. 811(h)).

4-Methylmethcathinone (4–MMC; mephedrone), 3,4-methylenedioxypyrovalerone (MDPV), 3,4-methylenedioxy-N-methylcathinone (bk-MDMA; Methylone), 4-methylethcathinone (4–MEC), and 4-fluoromethcathinone (flephedrone; 4–FMC) are classified as synthetic cathinones in the phenethylamine class and are structurally and pharmacologically similar to amphetamine, 3,4-methylenedioxymethamphetamine (MDMA), cathinone and other related substances. 4–MMC, MDPV, and Methylone are controlled in Schedule I under the CSA in the United States. 4–MEC and 4–FMC are not controlled under the CSA in the United States.

2-(4-bromo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (25B–NBOMe), 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C–NBOMe), and 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (25I–NBOMe) are synthetic 2C phenethylamine substances and were developed for use in mapping and investigating the serotonin receptors in the mammalian brain. On November 15, 2013, 25B–NBOMe, 25C–NBOMe, and 25I–NBOMe were temporarily placed in Schedule I of the CSA pursuant to the temporary scheduling provision of section 201(h) of the CSA.

Alpha-Methyltryptamine (AMT) is a tryptamine (indoleethylamine) derivative and shares several similarities with the Schedule I tryptamine hallucinogens, such as alpha-ethyltryptamine (AET) and N,N-dimethyltryptamine (DMT). AMT is controlled in Schedule I under the CSA in the United States.

AH–7921, or 1-(3,4-dichlorobenzamidomethyl) cyclohexyldimethylamine, is an opioid analgesic drug selective for the μ-opioid receptor and is not controlled under the CSA in the United States.

Methoxetamine (MXE), or 2-(ethylamino)-2-(3-methoxyphenyl)-cyclohexanone, is an arylcyclohexamine and is not controlled under the CSA in the United States. MXE can be considered as a controlled substance analogue of eticyclidine (PCE) under the CSA if intended for human consumption.

Methiopropamine (MPA) is a thiophene analog of methamphetamine and is not controlled under the CSA in the United States.

Lisdexamphetamine is an amide ester conjugate comprised of the amino acid L-lysine covalently bound to the amino group of d-amphetamine. Lisdexamphetamine was approved for marketing in the United States in 2007 and is used for the treatment of Attention Deficit Hyperactivity Disorder. Lisdexamphetamine was placed in Schedule II of the CSA in June 2007.

Tramadol is an opioid analgesic that produces its primary opioid-like action through an active metabolite referred to as the M1 metabolite·(O-desmethyltramadol). Tramadol was first approved for marketing in the United States in 1995 and is available in immediate-release, extended-release, and combination product for the treatment of moderate to moderately-severe pain. In November 2013, Tramadol was proposed to be placed in Schedule IV of the CSA. The Secretariat indicates that additional safety information on this substance is available, thus an updated review for Tramadol is necessary for presentation at the 36th meeting of the WHO Expert Committee on Drug Dependence.

Ketamine is classified as a rapid-acting general anesthetic agent used for short diagnostic and surgical procedures that do not require skeletal muscle relaxation. It is marketed in the United States as an injectable. Ketamine is controlled in Schedule III of the CSA in the United States. It is not controlled internationally under the Convention on Psychotropic Substances or the Single Convention on Narcotic Drugs. The WHO Expert Committee on Drug Dependence reviewed ketamine at its 34th and 35th meetings. The Secretariat indicates that additional safety information on this substance is available, thus an updated review for ketamine is necessary for presentation at the 36th meeting of the WHO Expert Committee on Drug Dependence.

III. Opportunity To Submit Domestic Information

As required by section 201(d)(2)(A) of the CSA, FDA, on behalf of the Department of Health and Human Services (HHS), invites interested persons to submit comments regarding the 26 named drugs. Any comments received will be considered by HHS when it prepares a scientific and medical evaluation of these drugs. HHS will forward a scientific and medical

evaluation of these drugs to WHO, through the Secretary of State, for WHO's consideration in deciding whether to recommend international control/decontrol of any of these drugs. Such control could limit, among other things, the manufacture and distribution (import/export) of these drugs and could impose certain recordkeeping requirements on them.

HHS will not now make any recommendations to WHO regarding whether any of these drugs should be subjected to international controls. Instead, HHS will defer such consideration until WHO has made official recommendations to the Commission on Narcotic Drugs, which are expected to be made in early 2015. Any HHS position regarding international control of these drugs will be preceded by another **Federal Register** notice soliciting public comments, as required by section 201(d)(2)(B) of the CSA.

IV. Comments

Interested persons may submit either electronic comments regarding the drugs to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**) by January 29, 2014. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this notice. 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: December 24, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–31212 Filed 12–27–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0001]

Strategies To Address Hemolytic Complications of Immune Globulin Infusions; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled ''Strategies to Address Hemolytic Complications of Immune Globulin Infusions.'' The purpose of the public workshop is to identify and discuss potential risk mitigation strategies for Immune Globulin (Ig)-associated hemolysis and to identify and discuss important research questions related to patient risk and product characteristics. The workshop has been planned in partnership with the National Heart, Lung, and Blood Institute, National Institutes of Health, and the Plasma Protein Therapeutics Association. The workshop will include presentations and panel discussions by experts from academic institutions, industry, and government agencies.

Dates and Times: The public workshop will be held on January 28, 2014, 8:30 a.m. to 5 p.m. and January 29, 2014, 8:30 a.m. to 12 noon.

Location: The public workshop will be held at Lister Hill Center Auditorium, National Institutes of Health Campus, Building 38A, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Chris Nguyen, Center for Biologics Evaluation and Research (HFM–49), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–2000, FAX: 301–827–3079, email: *CBERPublicEvents@fda.hhs.gov.*

Registration: Mail or fax your registration information (including name, title, firm name, address, telephone, and fax numbers) to Chris Nguyen (see Contact Person) or email to *CBERPublicEvents@fda.hhs.gov* (subject line: IG Hemolysis Workshop Registration) by January 10, 2014. There is no registration fee for the public workshop. Early registration is recommended because seating is limited. Registration on the day of the public workshop will be provided on a space available basis beginning at 7:30 a.m. Pre-registered participants will receive additional information on security procedures, parking, and public transportation with their email registration confirmation.

If you need special accommodations due to a disability, please contact Chris Nguyen (see Contact Person) at least 7 days in advance.

SUPPLEMENTARY INFORMATION: Clinically significant hemolysis is a long-recognized complication of Immune Globulin Intravenous (IGIV) (Human) infusion. Complications of hemolysis include severe anemia requiring transfusion, renal failure, and disseminated intravascular coagulation. Ig-associated hemolysis has been generally thought to be caused by the presence of Immunoglobulin G (IgG) antibodies against major red blood cell antigens. All FDA-licensed Ig products are tested and have upper limit release specifications for antibodies against blood group antigens A, B, and Rho(D). However, IGIV-associated hemolysis occurs despite adherence to these specifications. In addition, there are factors that may increase a patient's risk for hemolysis. Known patient risk factors for hemolysis include: (1) High doses of IGIV; (2) recipient blood type A, AB, or B; and (3) other factors, such as history of hemolysis and possibly underlying inflammatory disease.

The goals of the workshop are to identify and discuss potential risk mitigation strategies for Ig-associated hemolysis, including improved identification of patients at high risk for hemolysis; changes in product specifications, tests, or test methods; and modifications to manufacturing to lower product risk. In addition, this workshop is intended to identify and discuss important outstanding research questions related to patient risk and product characteristics.

The first day of this workshop will include presentations and panel discussions on the following topics: (1) Pathogenesis and epidemiology of IGIV-associated hemolysis; (2) patient risk factors; and (3) possible product risk factors, including the presence of Anti-A and Anti-B hemagglutinins.

The second day of the workshop will include presentations and panel discussions on the following topics: (1) Immune globulin manufacturing and risk mitigation strategies and (2) workshop summary and conclusions.

Transcripts: Please be advised that as soon as possible after a transcript of the public workshop is available, it will be accessible at: *http://www.fda.gov/BiologicsBloodVaccines/NewsEvents/WorkshopsMeetingsConferences/TranscriptsMinutes/default.htm.* Transcripts of the public workshop may also be requested in writing from the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857.

Dated: December 23, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–31213 Filed 12–27–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Health Resources and Services Administration (HRSA) has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received within 30 days of this notice.

ADDRESSES: Submit your comments, including the Information Collection Request Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Understanding and Monitoring Funding Streams in Ryan White Clinics

OMB No:. 0915–xxxx—New

Abstract: HRSA's HIV/AIDS Bureau (HAB) administers the Ryan White HIV/AIDS Program (RWHAP) authorized under Title XXVI of the Public Health Service Act as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009. Established in 1990, the RWHAP is a federally funded program designed to provide HIV-related medical care and treatment, as well as support services for individuals and families affected by the disease who are uninsured or underinsured. The program consists of several ''Parts,'' corresponding to sections of the statute, through which funding is provided to states, cities, providers, and other organizations. Part A provides emergency relief for areas with substantial need for HIV/AIDS care and support services that are most severely affected by the HIV/AIDS epidemic, including eligible metropolitan areas (EMAs) and transitional grant areas (TGAs). Part B provides grants to states and U.S. territories to improve the quality, availability, and organization of HIV/AIDS health care and support services. Part B grants include a base grant; the AIDS Drug Assistance Program (ADAP) award; ADAP Supplemental Drug Treatment Program funds; and supplemental grants to states with ''emerging communities,'' defined as jurisdictions reporting between 500 and 999 cumulative AIDS cases over the most recent 5 years. The Part C Early Intervention Services (EIS) component of the Ryan White HIV/AIDS Program funds comprehensive primary health care in outpatient settings for people living with HIV disease. Part D grantees provide outpatient or ambulatory family-centered primary medical care for women, infants, children, and youth with HIV/AIDS.

In 2010, the Patient Protection and Affordable Care Act (ACA) was enacted into law. The ACA is expansive and will likely impact the RWHAP. Some of the reforms have already been implemented (including the creation of Pre-Existing Condition Insurance Plans) and the barring of insurance carriers from denying coverage to children with pre-existing conditions, such as HIV/AIDS; cancelling coverage for adults with health conditions because of unintentional mistakes on the application; and imposing lifetime dollar caps on essential health benefits. Effective January 2014, states will have the option to expand Medicaid to individuals younger than 65 years of age with incomes up to 133 percent of the federal poverty level (FPL). On October 1, 2013, insurance marketplaces (exchanges) from which individuals can purchase health insurance, began open enrollment, with coverage to begin as early as January 1, 2014. Individuals with incomes up to 400 percent FPL may be eligible for tax credits to reduce premium costs. Individuals with lower incomes may also be eligible for reductions in cost-sharing.

The proposed study will provide HAB and policymakers with a better understanding of how the RWHAP currently provides primary outpatient health care and essential support services to both uninsured and underinsured clients. It will identify what types of core medical services and subservices and support services are currently not covered or not fully covered by Medicaid, Medicare, and private insurance, which are needed to provide high quality HIV/AIDS care. The study also will provide information on how grantees monitor patient healthcare coverage (e.g., payer source, type of insurance) and the cost of care. Together, this information will help HAB understand the abilities of Part C and Part D grantees to support and track expanded health insurance enrollment for their clients and to adapt to the changing funding landscape. The study will also collect information on what processes are used and what types of data are stored within their data information systems. Information about data information systems will be used to support the development of a technical assistance tracker for RWHAP grantees to monitor and assess changes in the mix of funding sources used to pay for primary health care and essential support services to people living with HIV/AIDS (PLWHA) as the ACA is fully implemented.

Lastly, the study will gather information regarding Part C and Part D grantees' levels of participation in state-sponsored initiatives for the development of health homes, their relationship with managed care organizations, and their status regarding recognition as a Patient Centered Medical Home. This information will provide some basic information regarding grantees' abilities to continue to service PLWHA as the ACA is implemented differently among the states.

The Ryan White Funding Streams Survey (Survey) will be used to collect this information. The survey will collect both qualitative and quantitative data and will be administered online to program directors from a representative sample of Part C and Part D grantees. The Survey contains 32 questions that capture information about the different funding streams used for the provision of services to PLWHA; grantees' abilities to track health insurance, funding sources, and costs of care; and their relationship with managed care organizations. The data provided through the survey will not contain individual or personally identifiable information. This information will inform HAB in the development of future RWHAP policy. It will also assist HAB in the final development of the technical assistance tracking tool for grantees.

Need and Proposed Use of the Information: The information collected will help HAB understand how the RWHAP currently provides primary outpatient health care and essential support services to both uninsured and underinsured clients and which of these are currently not covered or not fully covered by Medicaid, Medicare, and private insurance. It will help HAB understand how grantees monitor

patient healthcare coverage (e.g., payer source, type of insurance) and the cost of care. Together, this information will help HAB gain knowledge on the abilities of Part C and Part D grantees to support and track expanded health insurance enrollment for their clients and to adapt to the changing funding landscape. This will inform HAB in the development of future RWHAP policies.

In addition, information about data information systems will be used to support the development of a technical assistance tracker for RWHAP grantees to monitor and assess changes in the mix of funding sources used to pay for primary health care and essential support services to PLWHA as the ACA is fully implemented. Information about Part C and Part D grantees' levels of participation in state-sponsored initiatives will provide some basic information regarding grantees' abilities to continue to service PLWHA as the ACA is implemented differently among the states.

Likely Respondents: The survey will be administered online to program directors from a representative sample of Part C and Part D grantees.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

Total Estimated Annualized Burden—Hours

Form	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Survey	120	1	120	4.7	564

Dated: December 23, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–31158 Filed 12–27–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Discretionary Advisory Committee on Heritable Disorders in Newborns and Children; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, codified at 5 U.S.C. App.), notice is hereby given of the following meeting:

Name: Discretionary Advisory Committee on Heritable Disorders in Newborns and Children.

Dates and Times: January 16, 2014, 10:30 a.m. to 2:30 p.m., January 17, 2014, 10:00 a.m. to 3:30 p.m.

Place: Virtual via Webinar.

Status: The meeting is open to the public. For more information on registration and webinar details, please visit the Advisory Committee's Web site: *http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders.*

The registration deadline is Wednesday, January 8, 2014, 11:59 p.m. Eastern Standard Time (EST).

Purpose: The Discretionary Advisory Committee on Heritable Disorders in Newborns and Children (Committee), as authorized by Public Health Service Act (PHS), 42 U.S.C. 217a: Advisory councils or committees, was established to advise the Secretary of the Department of Health and Human Services about the development of newborn screening activities, technologies, policies, guidelines, and programs for effectively reducing morbidity and mortality in newborns and children having, or at risk for, heritable disorders. Note: the Committee's recommendations regarding additional conditions/inherited disorders for screening that have been adopted by the Secretary are included in the Recommended Uniform Screening Panel and constitutes part of the comprehensive guidelines supported by the Health Resources and Services Administration. Pursuant to section 2713 of the Public Health Service Act, codified at 42 U.S.C. 300gg–13, non-grandfathered health plans are required to cover screenings included in the HRSA-supported comprehensive guidelines without charging a co-payment, co-insurance, or deductible for plan years (i.e., policy years) beginning on or after the date that is one year from the Secretary's adoption of the condition for screening.

Agenda: The meeting will include: (1) The Nomination and Prioritization Workgroup's review on X-linked Adrenoleukodystrophy (ALD); (2) an update on Mucopolysaccharidosis type 1 (MPS–1) from the Condition Review Workgroup; (3) an update on the HRSA-funded Newborn Screening Technical Assistance Center; (4) a presentation on the impact of the rapid implementation of electronic health records on the Early Hearing Detection and Intervention State Programs; (5) an introduction to the HRSA-funded Long Term Follow-up Program; and (6) updates from the Committee's subcommittees and ad-hoc workgroups including Laboratory Standards and Procedures, Follow-up and Treatment, and Education and Training subcommittees. Tentatively, the Committee is expected to review and/or vote on whether to refer the ALD nomination to the Condition Review Workgroup. This vote does not involve a proposed addition of a condition to the Recommended Uniform Screening Panel.

Agenda items may be subject to change as necessary or appropriate. The agenda, webinar information, Committee Roster, Charter, presentations, and other meeting materials are located on the Advisory Committee's Web site at *http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders.*

Public Comments: Members of the public may register to present oral comments and/or submit written comments. All comments, whether oral or written, are part of the official Committee record and will be available on the Committee's Web site. Advance registration is required to present oral comments. The public comment period is scheduled for the morning of January 16, 2014. Written comments may be emailed to Lisa Vasquez at *lvasquez@hrsa.gov* by Wednesday, January 8, 2014, 11:59 p.m. EST. Written comments should identify the individual's name, address, email,

telephone number, professional or business affiliation, type of expertise (i.e., parent, researcher, clinician, public health, etc.), and the topic/subject matter of comment. Individuals who wish to make oral comments are required to email Lisa Vasquez at *lvasquez@hrsa.gov* by Wednesday, January 8, 2014, 11:59 p.m. EST. *https://www.blsmeetings.net/SACHDNC/index.cfm.* To ensure that all individuals who have registered to make oral comments can be accommodated, the allocated time may be limited. Individuals who are associated with groups or have similar interests may be requested to combine their comments and present them through a single representative. No audiovisual presentations are permitted. For additional information or questions on public comments, please contact Lisa Vasquez, Maternal and Child Health Bureau, Health Resources and Services Administration; telephone: (301) 443–1080; email: *lvasquez@hrsa.gov.*

FOR FURTHER INFORMATION CONTACT: Anyone interested in obtaining other relevant information should contact Debi Sarkar, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18A–19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: (301) 443–1080; email: *dsarkar@hrsa.gov.*

More information on the Advisory Committee is available at *http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders.*

Dated: December 23, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–31161 Filed 12–27–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request: Generic Clearance To Support the Safe to Sleep Campaign at the Eunice Kennedy Shriver National Institute for Child Health and Human Development

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the *Eunice Kennedy Shriver* National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) The quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and For Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Dr. Sarah L. Glavin, Deputy Director, Office of Science Policy, Analysis and Communication, *Eunice Kennedy Shriver* National Institute of Child Health and Human Development, National Institutes of Health, 31 Center Drive, Room 2A18, Bethesda, Maryland 20892, or call a non-toll free number (301) 496–1877 or Email your request, including your address to *glavins@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

DATES: *Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: Generic Clearance to Support the Safe to Sleep Campaign at the *Eunice Kennedy Shriver* National Institute for Child Health and Human Development (NICHD), 0925—NEW, *Eunice Kennedy Shriver* National Institute of Child Health and Human Development (NICHD), National Institutes of Health (NIH).

Need and Use of Information Collection: This is a request for a new generic clearance that would be used for submissions specific to the *Eunice Kennedy Shriver* National Institute of Child Health and Human Development (NICHD) Safe to Sleep (STS) public education campaign. Submissions for the STS campaign will be used to assess the understanding and reach of STS campaign materials and messages, and to monitor and improve campaign activities such as training workshops and overall implementation. The purpose of this information collection is to monitor and modify campaign activities, to plan future campaign activities, to develop messages and materials, and to develop distribution and outreach strategies that are effective at communicating their message to bring about the intended response, awareness, and/or behavioral change for the target audiences. This generic clearance will enable the NICHD to: (1) More efficiently assess the implementation of campaign activities; (2) better understand the target audiences' knowledge, attitudes, and beliefs toward STS messages and materials; (3) better understand how the campaign activities have influenced the target audiences' behaviors and practices; and (4) monitor and improve activities such as trainings, and material/message development. Having a way to gather feedback on the STS campaign activities is critical to assessing the reach and effect of campaign efforts. Data collected for the campaign can inform where future STS campaign resources can produce the most meaningful results.

Data collected for the STS campaign generic clearance will be used by a number of audiences, including STS campaign staff, NICHD leadership, STS campaign collaborators, Federal Sudden and Unexpected Infant Deaths (SUID)/Sudden Infant Death Syndrome (SIDS) Workgroup members, SUID/SIDS stakeholders, clinical and maternal/child health professionals, parents and caretakers, and the general public. These audiences may use the information collections to: (1) Develop new campaign messages, materials, and/or training curricula; (2) monitor and improve campaign activities; (3) make decisions about campaign activities; (4) inform current campaign activities; and (5) inform and/or change practices and behaviors of program participants.

Examples of the types of information collections that could be included under this generic clearance include: *Focus groups and in-depth interviews* with parents/caregivers and/or health professionals to get feedback on distribution and outreach activities, and/or campaign messages; and *Surveys* with parents/caregivers and/or health professionals to: (1) assess the usefulness of the new STS campaign materials, including print and on-line materials and a video, (2) track outreach experiences of program participants, (3) assess training participants' changes in

knowledge related to safe infant sleep behavior and implementation of outreach methods taught, and (4) assess program participants' resource needs.

The sub-studies for this generic will be small scale, designed to obtain results frequently and quickly to guide campaign development and implementation, inform campaign direction, and be used internally for campaign management purposes. NICHD's current scope and capacity for STS generic sub-studies is non-existent and this request would fill this gap.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 3,000.

Estimated Annualized Burden Hours

TABLE 1—ESTIMATES FOR ANNUAL BURDEN HOURS

Type of data collection instrument	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Focus Groups	500	1	1	500
Pre/Post Test	2,500	1	15/60	625
Survey	2,500	1	15/60	625
Interview	500	1	1	500
Tracking/Feedback Form	1,500	1	30/60	750
Total	7,500			3,000

Dated: December 19, 2013.

Sarah L. Glavin,

Deputy Director, Office of Science Policy, Analysis, and Communications, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health.

[FR Doc. 2013–31159 Filed 12–27–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5689–N–13]

60 Day Notice of Proposed Information Collection for Public Comment: Reporting for HUD Research, Evaluation, and Demonstration Cooperative Agreements

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of proposed information collection.

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. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* February 28, 2014.

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: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Proposal: Reporting for HUD Research, Evaluation, and Demonstration Cooperative Agreements.

OMB Control Number: Pending.

Description of the Need for the Information and Proposed Use: PD&R intends to establish cooperative agreements with qualified for-profit and nonprofit research organizations and universities to conduct research, demonstrations, and data analysis. PD&R will issue a Notice of Funding Availability (NOFA) describing the cooperative research program. Management of PD&R cooperative agreements for research and demonstrations will require periodic reporting of progress. This information collection will be limited to recipients of cooperative agreements.

Agency Form Numbers: No agency forms will be used. The quarterly reporting will be accomplished through a short narrative report.

Members of the Affected Public: For-profit and nonprofit organizations that apply to participate under the cooperative research agreements NOFA. HUD anticipates that approximately 8–10 organizations will be selected for cooperative agreement award. Recipients of the cooperative agreements will be the sole members of the affected public for the reporting requirement.

Estimate of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: HUD anticipates that a maximum of 10 organizations will receive cooperative agreements. Quarterly progress reporting, other mandatory federal reporting and recordkeeping requirements are estimated at 36 labor hours annually for each awardee during the life of the agreement. The total estimated burden for progress reporting by all participants is 360 hours annually.

	Respondents (awardees)	Responses per respondent-year	Hours per response	Total hours
Quarterly Reports	10	4	4	160
Other Reports	10	1	4	40

	Respondents (awardees)	Responses per respondent-year	Hours per response	Total hours
Recordkeeping	10	1	16	160
Annual paperwork burden	n/a	n/a	n/a	360

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) 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) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(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 those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 20, 2013.

Jean Lin Pao,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2013–31260 Filed 12–27–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–N–106]

30-Day Notice of Proposed Information Collection: Father's Day

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* January 29, 2014.

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: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on October 25, 2013.

A. Overview of Information Collection

Title of Information Collection: Father's Day.

OMB Approval Number: 2577–New.

Type of Request: New collection.

Form Number: None.

Description of the need for the information and proposed use: Collection of information is necessary in order to determine how successful PHAs' events are. This information will be included in the Executive Summary.

Respondents (i.e. affected public): State, Local & Tribal Governments.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Total	400	1	400	1	400	$20	$8,000

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) 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) The accuracy of the agency's estimate of the burden of the proposed collection of information; (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 those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapters 35.

Dated: December 24, 2013.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–31256 Filed 12–27–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–N–107]

30-Day Notice of Proposed Information Collection: The Impact of Housing and Services Interventions on Homeless Families—36-Month Follow-Up Data Collection

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* January 29, 2014.

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: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette. Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 16, 2013.

A. Overview of Information Collection

Title of Information Collection: The Impact of Housing and Services Interventions on Homeless Families—36-month Follow-up Data Collection.

OMB Approval Number: 2528–0259.

Type of Request: Revision of a currently approved collection.

Form Number: None.

Description of the need for the information and proposed use:

The 36-Month Head of Household Follow-up Survey Instrument and the 36-Month Child Data Collection Instruments will support the collection of data from families enrolled in the Family Options Study. The Family Options Study, formerly referred to as The Impact of Housing and Services Interventions on Homeless Families, was launched by HUD in 2008 in response to Senate Report 109–109 for the FY 2006 Transportation, Treasury, the Judiciary, Housing and Urban Development and Related Agencies Appropriations Bill, which directed HUD to ''undertake research to ascertain the impact of various service and housing interventions in ending homelessness for families.'' The Family Options Study is comparing several combinations of housing assistance and services in a rigorous, multi-site experiment to determine which interventions work best to promote housing stability, family preservation, child well-being, adult well-being, and self-sufficiency. Between 2010 and 2012, over 2,300 families in twelve communities enrolled in the study. Prior rounds of data collection from the adult head of household have been conducted at the point of study enrollment/random assignment, and eighteen (18) months following the date of study enrollment/random assignment. Extensive data collection from a sample of children within study families has also been conducted by the research team with funding from the Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD). This next phase of data collection in the Family Options Study will support the continued collection of data from study families 36 months following the date of study enrollment/random assignment. Given the length of time which families are eligible to remain in the interventions being tested (one of the four interventions being studied can serve families for up to 18 months, and a second can serve families for up to 24 months), this final wave of data is critical to understanding how families fare after an intervention ends, and whether the same interventions that are effective in the short-term (18 months), are also effective in the longer-term (36 months).

Respondents (i.e. affected public): Study households.

Form	Respondent sample	Number of respondents	Average time to complete (minimum, maximum) in minutes	Frequency	Total burden (hours)
36-Month Head of Household Follow-up Survey Instrument.	All enrolled study families (N=2,307)	2,307	65 (55–75	1	2,500
36-Month Child Data Collection	Up to two children per family	2,800	60 (50–70)	1	2,800
Total	.....	.....	.....	.....	5,300

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) 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) The accuracy of the agency's estimate of the burden of the proposed collection of information; (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 those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapters 35.

Dated: December 24, 2013.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–31251 Filed 12–27–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5689–N–14]

60-Day Notice of Proposed Information Collection for Public Comment: Applications for HUD Research, Evaluation, and Demonstration Cooperative Agreements

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of proposed information collection.

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. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* February 28, 2014.

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: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

FOR FURTHER INFORMATION CONTACT: HUD will submit the proposed extension of 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 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; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of information collection 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.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Proposal: Applications for HUD Research, Evaluation, and Demonstration Cooperative Agreements.

OMB Control Number: Pending.

Description of the Need for the Information and Proposed Use: PD&R intends to establish cooperative agreements with qualified for-profit and nonprofit research organizations and universities to conduct research, demonstrations, and data analysis. PD&R will issue a Notice of Funding Availability (NOFA) describing the cooperative research program. To assess qualified organizations for cooperative research, PD&R must collect information about the qualifications and capacity of organizations that apply under the NOFA.

Agency Form Numbers:

Members of the Affected Public: For-profit and nonprofit organizations that apply to participate under the cooperative research agreements NOFA. HUD anticipates that approximately 18 organizations will apply.

Estimate of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: HUD anticipates that 18 organizations will apply, and it will take each organization an average of 66.5 hours to prepare an application, including the narrative and the mandatory forms. The total estimated burden for application by all participants is 1,197 hours.

	Respondents (applicants)	Responses per respondent	Hours per response	Total hours
Application narrative	18	1	60.0	1,080
Application forms	18	1	6.5	117
Paperwork burden	n/a	n/a	66.5	1,197

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) 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) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(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 those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 20, 2013.

Jean Lin Pao,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2013–31259 Filed 12–27–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5700–FA–18]

Announcement of Funding Awards, Choice Neighborhoods Grant Program, Fiscal Year 2013

AGENCY: Office of the Assistant Secretary for Public and Indian Housing and Office of Multifamily Programs, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Fiscal Year 2013 (FY2013) Notice of Funding Availability (NOFA) for the Choice Neighborhoods Planning Grants. This announcement contains the consolidated names and addresses of these award recipients under the Choice Neighborhoods Grant Program for FY2013.

FOR FURTHER INFORMATION CONTACT: For questions concerning the Choice Neighborhoods Grant Program awards, contact Ms. Mindy Turbov, Director of the Choice Neighborhoods Program, Office of Public Housing Investments, 451 7th Street, SW., Room 4130, Washington, DC 20410, telephone (202) 401–8812. Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Choice Neighborhoods Program employs a comprehensive approach to community development centered on housing transformation. The program aims to transform neighborhoods of poverty into viable mixed-income neighborhoods with access to economic opportunities by revitalizing severely distressed public and assisted housing and investing and leveraging investments in well-functioning services, effective schools and education programs, public assets, public transportation, and improved access to jobs. Choice Neighborhoods Planning Grants support the development of comprehensive neighborhood revitalization plans which focused on directing resources to address three core goals: Housing, People and Neighborhoods. To achieve these core goals, communities must develop and implement a comprehensive neighborhood revitalization strategy, or Transformation Plan. The Transformation Plan will become the guiding document for the revitalization of the public and/or assisted housing units while simultaneously directing the transformation of the surrounding neighborhood and positive outcomes for families.

The FY2013 Choice Neighborhoods Planning Grant awards totaled $4,374,000 and nine applicants were selected for funding in a competition, the results of which were announced on November 22, 2013. At that time, and in addition to the applicant and Congressional notification processes, the grantees were posted to the HUD Web site at: *http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2013/HUDNo.13–175* and *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/cn/planninggrants*. Applications were scored and selected for funding based on the selection criteria in the FY2013 Choice Neighborhoods Planning Grant NOFA.

In accordance with Section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat.1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the Choice Neighborhoods awards made under the competition in Appendix A to this document.

Dated: December 17, 2013.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

Appendix A

Choice neighborhoods planning lead grantee name and contact information	Amount funded	Target public or assisted housing	Neighborhood
City of Baton Rouge/Parish of East Baton Rouge, 222 Saint Louis Street, Baton Rouge, LA 70802–5817.	$500,000.00	Ardenwood Village	Melrose East-Smiley Heights.
Housing Authority of the City and County of Denver, 777 Grant Street, Denver, CO 80203–3501.	500,000.00	Sun Valley Homes; Sun Valley Annex.	Sun Valley.
Youth Policy Institute, 634 South Spring Street, Los Angeles, CA 90014–3912.	500,000.00	Las Palmas Gardens; Castle Argyle Apartments.	Los Angeles Choice Neighborhood (Hollywood).
Housing Authority of the City of Meriden, 22 Church Street, Meriden, CT 06451–3209.	500,000.00	Mills Memorial Apartments	Mills Memorial/Central Business Neighborhood.
Housing Authority of the City of New Bern, 837 S. Front Street, New Bern, NC 28562–5650.	500,000.00	Craven Terrace and Trent Court	Greater Five Points.
Philadelphia Housing Authority, 12 South 23rd Street, Philadelphia, PA 19103–3014.	500,000.00	Norman Blumberg Apartments	Sharswood/Blumberg.
Housing Authority of the City of Sacramento, 801 12th Street, Sacramento, CA 95814–2947.	500,000.00	Alder Grove; Marina Vista	Upper Land Park—Broadway.
County of St. Louis, 41 South Central Avenue, 5th Floor, Clayton, MO 63105–1725.	474,000.00	Wellston public housing	North Wellston.
Housing Authority of the City of Winston-Salem, 500 West Fourth Street, Winston-Salem, NC 27101–2782.	500,000.00	Cleveland Avenue Homes	Cleveland Avenue.
Total	4,374,000		

[FR Doc. 2013–31248 Filed 12–27–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–CONC–ABSV–14051: PPWOBSADC0, PPMVSCS1Y.Y00000]

Notice of Extension of Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

SUMMARY: The National Park Service hereby gives public notice that it proposes to extend the following expiring concession contracts until the dates shown:

CONCID	Concessioner	Extend until:
CC–GRTE024–03	Jackson Hole Mountain Resort Corporation	October 31, 2014.
CC–GRTE032–03	The Hole Hiking Experience, Inc.	October 31, 2014.

DATES: *Effective Date:* November 1, 2013.

FOR FURTHER INFORMATION CONTACT: Ben Erichsen, Chief, Commercial Services Program, National Park Service, 1201 Eye Street NW., 11th Floor, Washington, DC 20005, Telephone (202) 513–7156.

SUPPLEMENTARY INFORMATION: Pursuant to 36 CFR 51.23, the National Park Service has determined the proposed extension is necessary to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption.

Dated: September 12, 2013.

Lena McDowall,

Associate Director, Business Services.

[FR Doc. 2013–31221 Filed 12–27–13; 8:45 am]

BILLING CODE 4312–53–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX14EN05ESB0500]

Advisory Committee on Climate Change and Natural Resource Science

AGENCY: U.S. Geological Survey, Interior.

ACTION: Meeting notice.

SUMMARY: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 2, we announce that the Advisory Committee on Climate Change and Natural Resource Science will hold a meeting.

DATES: *Meeting:* The meeting will be held as follows: Wednesday, January 22, 2014, from 8:30 a.m. to 5:30 p.m.; and Thursday, January 23, 2014 from 9:00 a.m. to 4:00 p.m. (All times Eastern).

ADDRESSES: JC Raulston Arboretum, 4415 Beryl Road, Raleigh, NC 27606, Main Meeting Room (Room 109).

FOR FURTHER INFORMATION CONTACT: Mr. Robin O'Malley, Designated Federal Officer, Policy and Partnership Coordinator, National Climate Change and Wildlife Science Center, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 400, Reston, VA 20192, *romalley@usgs.gov,* (703) 648–4086.

SUPPLEMENTARY INFORMATION: Chartered in May 2013, the Advisory Committee on Climate Change and Natural Resource Science (ACCCNRS) advises the Secretary of the Interior on the establishment and operations of the U.S. Geological Survey (USGS) National Climate Change and Wildlife Science Center (NCCWSC) and the Department of the Interior (DOI) Climate Science Centers (CSCs). ACCCNRS members represent federal agencies; state and local governments; American Indian tribes and other Native American entities; nongovernmental organizations; academic institutions; and the private sector. Duties of the committee include: (A) Advising on the contents of a national strategy identifying key science priorities to advance the management of natural resources in the face of climate change; (B) advising on the nature, extent, and quality of relations with and engagement of key partners at the regional/CSC level; (C) advising on the nature and effectiveness of mechanisms to ensure the identification of key priorities from management partners and to effectively deliver scientific results in useful forms; (D) advising on mechanisms that may be employed by the NCCWSC to ensure high standards of scientific quality and integrity in its products, and to review and evaluate the performance of individual CSCs, in advance of opportunities to re-establish expiring agreements; and (E) coordinating as appropriate with any Federal Advisory Committee established for the DOI Landscape Conservation Cooperatives. More information about the ACCCNRS is available at *https://nccwsc.usgs.gov/acccnrs.*

Meeting Agenda: The objectives of this meeting are to: (1) Hear reports on progress of the five ACCCNRS Work Groups and provide input to the groups; (2) learn about the decision-driven science approach of the Southeast Climate Science Center; (3) agree upon a process for providing feedback on the NCCWSC Science Strategy. The final agenda will be posted on *https://nccwsc.usgs.gov/acccnrs* prior to the meeting.

Public Input: All 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. The public will be able to make comment on Wednesday, January 22, 2014, from approximately 1:45 p.m. to 2:15 p.m. and on Thursday, January 23, 2014, from approximately 10:30 a.m. to 10:50 a.m.

Individuals or groups requesting to make comment at the public Committee meeting will be limited to 2 minutes per speaker. The Committee will endeavor to provide adequate opportunity for all speakers, within available time limits. Speakers who wish to expand upon 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.

Written comments should be submitted, prior to, during, or after the meeting, to Mr. Robin O'Malley, Designated Federal Officer, by U.S. Mail to: Mr. Robin O'Malley, Designated Federal Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 400, Reston, VA 20192, or via email, at *romalley@usgs.gov.*

The meeting location is open to the public. Space is limited, so all interested in attending should pre-register. Please submit your name, time of arrival, email address and phone number to Mr. Robin O'Malley via email at *romalley@usgs.gov,* or by phone at (703) 648–4086, by close of business on January 15, 2014. Persons with

disabilities requiring special services, such as an interpreter for the hearing impaired, should contact Mr. O'Malley at (703) 648–4086 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: December 20, 2013.

Robin O'Malley,

Designated Federal Officer.

[FR Doc. 2013–31175 Filed 12–27–13; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLID100000–L10200000–PH0000–LXSSD0090000]

Notice of Public Meeting, Idaho Falls District Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Idaho Falls District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The RAC will meet in Idaho Falls, Idaho on January 28, 2014 for a one day meeting. New member orientation will begin at 8:00 a.m. at the BLM Idaho Falls Office, 1405 Hollipark Drive, Idaho Falls, Idaho. Following the orientation, the entire RAC will convene and elect a new chairman, vice chairman and secretary. After elections, the recreation RAC will assemble to discuss various fee proposals on the Salmon-Challis National Forest, which include several proposed fee increases from $5.00 to $10.00 per night at: Boundary Creek, Dagger Falls, Iron Bog, Park Creek, Phi Kappa, Starhope, Corn Creek, Spring Creek and Twin Creek Campgrounds in the Middle Fork, Lost River and North Fork Ranger Districts. A new $20.00 per use fee is being proposed for the Twin Creek Group Picnic Site in the North Fork Ranger District. The Challis-Yankee Fork Ranger District is also proposing a new fee of $5.00 per night at sites at the Custer #1 and Flat Rock Extension campgrounds. Following the recreation RAC meeting the group will discuss other topics including the Thompson Creek Mine EIS, Sage-grouse EIS and Pocatello travel management plan updates. Other topics will be scheduled as appropriate. The meeting is expected to conclude at 4:00 p.m.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the BLM Idaho Falls District (IFD), which covers eastern Idaho.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments (10:45–11:15 a.m.). Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Sarah Wheeler, RAC Coordinator, Idaho Falls District, 1405 Hollipark Dr., Idaho Falls, ID 83401; telephone: (208) 524–7550; email: *sawheeler@blm.gov*.

Dated: December 18, 2013.

Joe Kraayenbrink,

District Manager, Idaho Falls District.

[FR Doc. 2013–31231 Filed 12–27–13; 8:45 am]

BILLING CODE 4310–GG–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Standard Cell Libraries, Products Containing or Made Using the Same, Integrated Circuits Made Using the Same, and Products Containing Such Integrated Circuits,* DN 2994; 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 Tela Innovations, Inc. on December 23, 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 standard cell libraries, products containing or made using the same, integrated circuits made using the same, and products containing such integrated circuits. The complaint names as respondents Taiwan Semiconductor Manufacturing Company, Limited of Hsinchu, Taiwan and TSMC North America of San Jose, CA. The complainant requests that the Commission issue a general and/or limited exclusion order, cease and desist orders, and a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

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

[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.*

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. 2994'') 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)).

Issued: December 24, 2013.

By order of the Commission.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–31187 Filed 12–27–13; 8:45 am]

BILLING CODE 7020–02–P

[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

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 Vision-Based Driver Assistance System Cameras and Components Thereof,* DN 2993; 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 Magna Electronics Inc. on December 23, 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 vision-based driver assistance system cameras and components thereof. The complaint names as respondent TRW Automotive U.S., LLC of Livonia, Michigan. The complainant requests that the Commission issue a limited exclusion order and cease and desist orders.

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;

[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*

(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. 2993'') 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: December 24, 2013.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–31163 Filed 12–27–13; 8:45 am]

BILLING CODE 7020–02–P

[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

Summary of Commission Practice Relating to Administrative Protective Orders

AGENCY: U.S. International Trade Commission.

ACTION: Summary of Commission practice relating to administrative protective orders

SUMMARY: Since February 1991, the U.S. International Trade Commission (''Commission'') has issued an annual report on the status of its practice with respect to violations of its administrative protective orders (''APOs'') under title VII of the Tariff Act of 1930, in response to a direction contained in the Conference Report to the Customs and Trade Act of 1990. Over time, the Commission has added to its report discussions of APO breaches in Commission proceedings other than under title VII and violations of the Commission's rules including the rule on bracketing business proprietary information (''BPI'') (the ''24-hour rule''), 19 CFR 207.3(c). This notice provides a summary of breach investigations completed during calendar year 2012. This summary addresses two proceedings under section 337 of the Tariff Act of 1930. There were no breach investigations in title VII proceedings or rules violation investigations completed in 2012. The Commission intends that this report inform representatives of parties to Commission proceedings as to some specific types of APO breaches encountered by the Commission and the corresponding types of actions the Commission has taken.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3088. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810. General information concerning the Commission can also be obtained by accessing its Web site (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: Representatives of parties to investigations or other proceedings conducted under title VII of the Tariff Act of 1930, section 337 of the Tariff Act of 1930, the North American Free Trade Agreement (NAFTA) Article 1904.13, and safeguard-related provisions such as section 202 of the Trade Act of 1974, may enter into APOs that permit them, under strict conditions, to obtain access to BPI (title VII) and confidential business information (''CBI'') (safeguard-related provisions and section 337) of other parties. *See, e.g.,* 19 U.S.C. 1677f; 19 CFR 207.7; 19 U.S.C. 1337(n); 19 CFR 210.5, 210.34; 19 U.S.C. 2252(i); 19 CFR 206.17; and 19 U.S.C. 1516a(g)(7)(A); 19 CFR 207.100, *et seq.* The discussion below describes APO breach investigations that the Commission has completed during calendar year 2012, including a description of actions taken in response to these breaches.

Since 1991, the Commission has published annually a summary of its actions in response to violations of Commission APOs and the 24-hour rule. *See* 56 FR 4846 (February 6, 1991); 57 FR 12335 (April 9, 1992); 58 FR 21991 (April 26, 1993); 59 FR 16834 (April 8, 1994); 60 FR 24880 (May 10, 1995); 61 FR 21203 (May 9, 1996); 62 FR 13164 (March 19, 1997); 63 FR 25064 (May 6, 1998); 64 FR 23355 (April 30, 1999); 65 FR 30434 (May 11, 2000); 66 FR 27685 (May 18, 2001); 67 FR 39425 (June 7, 2002); 68 FR 28256 (May 23, 2003); 69 FR 29972 (May 26, 2004); 70 FR 42382 (July 25, 2005); 71 FR 39355 (July 12, 2006); 72 FR 50119 (August 30, 2007); 73 FR 51843 (September 5, 2008); 74 FR 54071 (October 21, 2009); 75 FR 54071 (October 27, 2010), 76 FR 78945 (December 20, 2011), and 77 FR 76518 (December 28, 2012). This report does not provide an exhaustive list of conduct that will be deemed to be a breach of the Commission's APOs. APO breach inquiries are considered on a case-by-case basis. As part of the effort to educate practitioners about the Commission's current APO practice, the Commission Secretary issued in March 2005 a fourth edition of *An Introduction to Administrative Protective Order Practice in Import Injury Investigations* (Pub. No. 3755). This document is available upon request from the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, tel. (202) 205–2000 and on the Commission's Web site at *http://www.usitc.gov.*

I. In General

The current APO form for antidumping and countervailing duty investigations, which was revised in March 2005, requires the applicant to swear that he or she will:

(1) Not divulge any of the BPI disclosed under this APO or otherwise obtained in this investigation and not otherwise available to him or her, to any person other than—

(i) Personnel of the Commission concerned with the investigation,

(ii) The person or agency from whom the BPI was obtained,

(iii) A person whose application for disclosure of BPI under this APO has been granted by the Secretary, and

(iv) Other persons, such as paralegals and clerical staff, who (a) are employed or supervised by and under the direction and control of the authorized applicant or another authorized applicant in the same firm whose application has been granted; (b) have a need thereof in connection with the investigation; (c) are not involved in competitive decision making for an interested party which is a party to the investigation; and (d) have signed the acknowledgment for clerical personnel in the form attached hereto (the authorized applicant shall also sign such acknowledgment and will be deemed responsible for such persons' compliance with this APO);

(2) Use such BPI solely for the purposes of the above-captioned Commission investigation or for judicial or binational panel review of such Commission investigation;

(3) Not consult with any person not described in paragraph (1) concerning BPI disclosed under this APO or otherwise obtained in this investigation without first having received the written consent of the Secretary and the party or the representative of the party from whom such BPI was obtained;

(4) Whenever materials *e.g.,* documents, computer disks, etc. containing such BPI are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container (N.B.: storage of BPI on so-called hard disk computer media is to be avoided, because mere erasure of data from such media may not irrecoverably destroy the BPI and may result in violation of paragraph C of this APO);

(5) Serve all materials containing BPI disclosed under this APO as directed by the Secretary and pursuant to section 207.7(f) of the Commission's rules;

(6) Transmit each document containing BPI disclosed under this APO:

(i) with a cover sheet identifying the document as containing BPI,

(ii) with all BPI enclosed in brackets and each page warning that the document contains BPI,

(iii) if the document is to be filed by a deadline, with each page marked ''Bracketing of BPI not final for one business day after date of filing,'' and

(iv) if by mail, within two envelopes, the inner one sealed and marked ''Business Proprietary Information—To be opened only by [name of recipient]'', and the outer one sealed and not marked as containing BPI;

(7) Comply with the provision of this APO and section 207.7 of the Commission's rules;

(8) Make true and accurate representations in the authorized applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (*e.g.,* change in personnel assigned to the investigation);

(9) Report promptly and confirm in writing to the Secretary any possible breach of this APO; and

(10) Acknowledge that breach of this APO may subject the authorized applicant and other persons to such sanctions or other actions as the Commission deems appropriate, including the administrative sanctions and actions set out in this APO.

The APO further provides that breach of an APO may subject an applicant to:

(1) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;

(2) Referral to the United States Attorney;

(3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association;

(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of, or striking from the record any information or briefs submitted by, or on behalf of, such person or the party he represents; denial of further access to business proprietary information in the current or any future investigations before the Commission, and issuance of a public or private letter of reprimand; and

(5) Such other actions, including but not limited to, a warning letter, as the Commission determines to be appropriate.

APOs in investigations other than those under title VII contain similar, though not identical, provisions.

Commission employees are not signatories to the Commission's APOs and do not obtain access to BPI through APO procedures. Consequently, they are not subject to the requirements of the APO with respect to the handling of CBI and BPI. However, Commission employees are subject to strict statutory and regulatory constraints concerning BPI and CBI, and face potentially severe penalties for noncompliance. *See* 18 U.S.C. 1905; title 5, U.S. Code; and Commission personnel policies implementing the statutes. Although the Privacy Act (5 U.S.C. 552a) limits the Commission's authority to disclose any personnel action against agency employees, this should not lead the public to conclude that no such actions have been taken.

II. Investigations of Alleged APO Breaches

Upon finding evidence of an APO breach or receiving information that there is a reason to believe one has occurred, the Commission Secretary notifies relevant offices in the agency that an APO breach investigation has commenced and that an APO breach investigation file has been opened. Upon receiving notification from the Secretary, the Office of the General Counsel (''OGC'') prepares a letter of inquiry to be sent to the possible breacher over the Secretary's signature to ascertain the possible breacher's views on whether a breach has occurred.[1] If, after reviewing the response and other relevant information, the Commission determines that a breach has occurred, the Commission often issues a second letter asking the breacher to address the questions of mitigating circumstances and possible sanctions or other actions. The Commission then determines what action to take in response to the breach. In some cases, the Commission determines that, although a breach has occurred, sanctions are not warranted, and therefore finds it unnecessary to issue a second letter concerning what sanctions might be appropriate. Instead, it issues a warning letter to the individual. A warning letter is not considered to be a sanction.

Sanctions for APO violations serve two basic interests: (a) Preserving the confidence of submitters of BPI/CBI that the Commission is a reliable protector of BPI/CBI; and (b) disciplining breachers and deterring future violations. As the Conference Report to the Omnibus Trade and Competitiveness Act of 1988 observed, ''[T]he effective enforcement of limited disclosure under administrative protective order depends in part on the extent to which private parties have confidence that there are effective sanctions against violation.'' H.R. Conf. Rep. No. 576, 100th Cong., 1st Sess. 623 (1988).

The Commission has worked to develop consistent jurisprudence, not only in determining whether a breach has occurred, but also in selecting an appropriate response. In determining the appropriate response, the Commission generally considers mitigating factors such as the unintentional nature of the breach, the lack of prior breaches committed by the breaching party, the corrective measures taken by the breaching party, and the promptness with which the breaching party reported the violation to the Commission. The Commission also considers aggravating circumstances, especially whether persons not under

[1] Procedures for inquiries to determine whether a prohibited act such as a breach has occurred and for imposing sanctions for violation of the provisions of a protective order issued during NAFTA panel or committee proceedings are set out in 19 CFR 207.100–207.120. Those investigations are initially conducted by the Commission's Office of Unfair Import Investigations.

the APO actually read the BPI/CBI. The Commission considers whether there have been prior breaches by the same person or persons in other investigations and multiple breaches by the same person or persons in the same investigation.

The Commission's rules permit an economist or consultant to obtain access to BPI/CBI under the APO in a title VII or safeguard investigation if the economist or consultant is under the direction and control of an attorney under the APO, or if the economist or consultant appears regularly before the Commission and represents an interested party who is a party to the investigation. 19 CFR 207.7(a)(3)(B) and (C); 19 CFR 206.17(a)(3)(B) and (C). Economists and consultants who obtain access to BPI/CBI under the APO under the direction and control of an attorney nonetheless remain individually responsible for complying with the APO. In appropriate circumstances, for example, an economist under the direction and control of an attorney may be held responsible for a breach of the APO by failing to redact APO information from a document that is subsequently filed with the Commission and served as a public document. This is so even though the attorney exercising direction or control over the economist or consultant may also be held responsible for the breach of the APO.

The records of Commission investigations of alleged APO breaches in antidumping and countervailing duty cases, section 337 investigations, and safeguard investigations are not publicly available and are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552. *See* 19 U.S.C. 1677f(g), 19 U.S.C. 1333(h).

The two types of breaches most frequently investigated by the Commission involve the APO's prohibition on the dissemination of BPI or CBI to unauthorized persons and the APO's requirement that the materials received under the APO be returned or destroyed and that a certificate be filed indicating which action was taken after the termination of the investigation or any subsequent appeals of the Commission's determination. The dissemination of BPI/CBI usually occurs as the result of failure to delete BPI/CBI from public versions of documents filed with the Commission or transmission of proprietary versions of documents to unauthorized recipients. Other breaches have included the failure to bracket properly BPI/CBI in proprietary documents filed with the Commission, the failure to report immediately known violations of an APO, and the failure to adequately supervise non-lawyers in the handling of BPI/CBI.

Occasionally, the Commission conducts APOB investigations that involve members of a law firm or consultants working with a firm who were granted access to APO materials by the firm although they were not APO signatories. In many of these cases, the firm and the person using the BPI mistakenly believed an APO application had been filed for that person. The Commission determined in all of these cases that the person who was a non-signatory, and therefore did not agree to be bound by the APO, could not be found to have breached the APO. Action could be taken against these persons, however, under Commission rule 201.15 (19 CFR 201.15) for good cause shown. In all cases in which action was taken, the Commission decided that the non-signatory was a person who appeared regularly before the Commission and was aware of the requirements and limitations related to APO access and should have verified his or her APO status before obtaining access to and using the BPI. The Commission notes that section 201.15 may also be available to issue sanctions to attorneys or agents in different factual circumstances in which they did not technically breach the APO, but when their actions or inactions did not demonstrate diligent care of the APO materials even though they appeared regularly before the Commission and were aware of the importance the Commission placed on the care of APO materials.

Counsel participating in Commission investigations have reported to the Commission potential breaches involving the electronic transmission of public versions of documents. In these cases, the document transmitted appears to be a public document with BPI or CBI omitted from brackets. However, the confidential information is actually retrievable by manipulating codes in software. The Commission has found that the electronic transmission of a public document containing BPI or CBI in a recoverable form was a breach of the APO.

Counsel have been cautioned to be certain that each authorized applicant files within 60 days of the completion of an import injury investigation or at the conclusion of judicial or binational review of the Commission's determination a certificate that to his or her knowledge and belief all copies of BPI/CBI have been returned or destroyed and no copies of such material have been made available to any person to whom disclosure was not specifically authorized. This requirement applies to each attorney, consultant, or expert in a firm who has been granted access to BPI/CBI. One firm-wide certificate is insufficient.

In addition, attorneys who are signatories to the APO representing clients in a section 337 investigation should send a notice to the Commission if they stop participating in the investigation or the subsequent appeal of the Commission's determination. The notice should inform the Commission about the disposition of CBI obtained under the APO that was in their possession or they could be held responsible for any failure of their former firm to return or destroy the CBI in an appropriate manner.

III. Specific Investigations

APO Breach Investigations

Case 1: Two attorneys and a translator for a respondent breached the APO in a section 337 investigation when they discussed information with their client that included CBI belonging to the complainant. The discussions were based on draft rebuttal statements, drafted by the lead attorney from confidential witness statements, and used by the second attorney and the translator in their discussions with the client. The lead attorney received a private letter of reprimand; the second attorney and the translator received warning letters.

In reaching its decision about sanctions, the Commission considered the mitigating factors that the lawyers and the translator had not been found to have violated a Commission APO in the past two years and that the breach had already been sanctioned by the presiding administrative law judge by removing the rebuttal statements from the record of the section 337 investigation.

A private letter of reprimand was issued to the lead attorney because that attorney prepared the draft rebuttal statements which contained CBI and represented to the second attorney and the translator that all CBI had been redacted. The second attorney and the translator, relying on the representation of the lead attorney that all CBI had been redacted from the rebuttal statements, used the information in discussions with officials of their client, persons who were not authorized to have access to the CBI. Moreover, the lead attorney unilaterally determined that the CBI included in the rebuttal statements was not or should not have been labeled confidential. The Commission found this to be an aggravating factor since it circumvented

the appropriate procedure to challenge the redaction of public information.

Warning letters were issued to the second attorney and to the translator. Although the Commission found that unauthorized persons had access to CBI, it found among other mitigating factors that this attorney and the translator had relied upon the representation of the first attorney that all CBI had been redacted from the draft rebuttal statements.

Case 2: Two attorneys breached the APO in an appeal of the Commission's final determination in a section 337 investigation, before the U.S. Court of Appeals for the Federal Circuit, when they disclosed CBI in a publicly filed document. The attorneys each received warning letters.

Several mitigating factors were present. The attorneys immediately remedied the breach of the APO, before any member of the public viewed the CBI. Neither attorney had previously committed an APO breach in the past two years.

Although the Commission noted an aggravating factor in that the discovery of the breach was by a person other than the breacher, the Commission did not find any significant aggravating circumstances.

Issued: December 24, 2013.

By order of the Commission.

William R. Bishop,

Supervisory Hearing and Information Officer.

[FR Doc. 2013–31202 Filed 12–27–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), the Clean Water Act (''CWA''), and the Missouri Rev. Stat. of the Missouri Clean Water Law

On December 20, 2013, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Eastern District of Missouri, Southeast Division, in the lawsuit entitled *United States of America and the State of Missouri* v. *Teck American, Incorporated and DII Industries, LLC,* Civil Action 1:13–cv–00188–LMB.

This is a civil action for the recovery of damages, for injury to, destruction of and loss of use of natural resources and their services resulting from the release and threat of a release of hazardous substances by Defendants Teck American, Incorporated and DII Industries, LLC at and from the former Magmont Mine and Mill in Bixby, Missouri, in the Viburnum Trend in Southeast Missouri.

The publication of this notice opens a period for public comment on the Proposed Consent Decree. The Department of Justice will receive comments concerning the settlement for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division and should refer to *United States of America and the State of Missouri* v. *Teck American, Incorporated and DII Industries, LLC,* 1:13–cv–00188–LMB, Department of Justice # 90–11–3–09424.

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.

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 $5.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Susan M. Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–31124 Filed 12–27–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On December 24, 2013, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District of Indiana in the lawsuit entitled *United States of America and the State of Indiana* v. *City of Crawfordsville, Montgomery County, Indiana* 1:13–cv–1964.

The complaint in this matter alleges that the City of Crawfordsville (''City'') has violated the Clean Water Act, because discharges from the City's wastewater treatment plant have violated conditions of the National Pollutant Discharge Elimination System permit (''Permit'') issued by the Indiana Department of Environmental Management. The Permit imposes effluent limitations on copper and other pollutants and includes requirements for proper operation, maintenance, and monitoring of the treatment plant. The Consent Decree requires the City to undertake general improvements at the treatment plant, including measures involving the pretreatment of wastewater. The Consent Decree also requires the City to pay a total penalty of $96,000, to be split evenly between the State and the federal government.

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 of America and the State of Indiana* v. *City of Crawfordsville, Montgomery County, Indiana,* D.J. Ref. No. 90–5–1–1–09648.

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	Acting Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

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 $10.75 (25 cents per page

reproduction cost) payable to the United States Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–31199 Filed 12–27–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Gannett Co., Inc., Belo Corp., and Sander Media LLC; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Gannett Co., Inc., Belo Corp., and Sander Media LLC,* Civil Action No. 1:13–cv–01984. On December 16, 2013, the United States filed a Complaint alleging that Gannett's proposed acquisition of Belo, the sale of KMOV–TV in St. Louis to Sander, and Sander's operation of KMOV–TV subject to various agreements between Sander and Gannett would violate Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 1 of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment, filed the same time as the Complaint, requires Gannett Co., Inc., Belo Corp., and Sander Media LLC to divest KMOV–TV.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street NW., Suite 1010, Washington, DC, 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://justice.gov/atr*, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the U.S. Department of Justice, Antitrust Division's internet Web site, filed with the Court and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Scott A. Scheele, Chief, Telecommunications and Media Section, Antitrust Division, Department of Justice, 450 Fifth Street NW., Suite 7000, Washington, DC 20530 (telephone: 202–514–5621).

Patricia A. Brink,

Director of Civil Enforcement.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Department of Justice, Antitrust Division, 450 5th Street, NW., Suite 7000, Washington, D.C. 20530, Plaintiff, v. *GANNETT CO., INC., 7950 Jones Branch Drive, McLean, Virginia 22107, BELO CORP., 400 South Record Street, Dallas, Texas 75202,* and *SANDER MEDIA LLC, 28150 N. Alma School Parkway #103, PBM 509, Scottsdale, Arizona 85262*, Defendants.

Case No. 1:13–cv–01984–RBW

Judge: Reggie B. Walton

Filed: 12/16/2013

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the proposed acquisition of Belo Corp. (''Belo'') by Gannett Co., Inc. (''Gannett''), and the simultaneous implementation of related agreements between Gannett and Sander Holdings Co. LLC, a wholly owned subsidiary of Sander Media LLC (''Sander''), pursuant to which broadcast television station KMOV–TV in St. Louis, Missouri, along with certain other broadcast television stations owned by Belo, will be transferred to and operated by Sander (collectively ''the Transaction''), and to obtain other equitable relief. The Transaction likely would lessen competition substantially and would restrain trade in the sale of broadcast television spot advertising in the St. Louis Designated Market Area (''DMA''), which includes parts of Missouri and Illinois, in violation of Section 1 of the Sherman Act and Section 7 of the Clayton Act, 15 U.S.C. §§ 1 and 18. The United States alleges as follows:

I. NATURE OF THE ACTION

1. Pursuant to the June 12, 2013, Agreement and Plan of Merger, Gannett will acquire all outstanding stock of Belo for approximately $1.5 billion, with a total transaction value of $2.2 billion including assumed debt. Gannett owns 23 broadcast television stations and numerous newspapers throughout the United States. Consummation of Gannett's acquisition of Belo would give Gannett ownership of Belo's 20 broadcast television stations; however, Federal Communications Commission (''FCC'') rules prohibit Gannett from owning Belo stations in five DMAs where Gannett already owns broadcast television stations or newspapers. To comply with these ownership rules, Gannett has entered into an Asset Purchase Agreement and other related agreements with Sander Holdings Co., LLC, a wholly owned subsidiary of Sander, which would transfer ownership of six Belo stations in five DMAs, including KMOV–TV in St. Louis, to Sander. Sander will pay Gannett approximately $101 million for the six stations, significantly less than their actual market value. The agreements between Gannett and Sander are mutually contingent on and intended to close simultaneously with the merger between Gannett and Belo.

2. Gannett owns and operates KSDK–TV, the NBC affiliate in the St. Louis DMA. As the owner and operator of that station, Gannett sells KSDK–TV's advertising time. Based on advertising sales revenues, KSDK–TV is one of the three largest commercial broadcast television stations in St. Louis.

3. Belo owns and operates KMOV–TV, the CBS affiliate in the St. Louis DMA. As the owner and operator of that station, Belo sells KMOV–TV's advertising time. Based on advertising sales revenues, KMOV–TV is one of the three largest commercial broadcast television stations in St. Louis.

4. Currently, Gannett's KSDK–TV and Belo's KMOV–TV vigorously compete for the business of local and national companies that seek to purchase local spot advertisements on broadcast television stations in St. Louis. This competition benefits advertisers by reducing prices and improving the quality of services advertisers receive from the stations.

5. Although Gannett will transfer ownership of six stations to Sander, the agreements between Gannett and Sander include: (1) eight-year assignable option agreements that permit Gannett to reacquire any of the stations (should existing FCC prohibitions be eliminated) or to transfer the options to a third party; (2) eight-year Shared Services Agreements under which Gannett will provide a variety of services to help Sander operate the stations, excluding joint advertising sales and negotiation of retransmission consent rights in DMAs such as St. Louis where Gannett also has television stations, in return for substantial payments from Sander to Gannett; (3) a financing guarantee obligating Gannett to repay, should Sander default, the balance of the $101 million loan Sander is obtaining to purchase the stations; and (4) Joint Sales Agreements in DMAs where Gannett

owns newspapers but not television stations giving Gannett control of advertising sales at these Sander stations. Together, these agreements give Gannett significant influence over Sander's conduct in operating the stations, including KMOV–TV, and also diminish Gannett's and Sander's incentives to compete vigorously with each other in sales of broadcast television advertising in St. Louis.

6. If consummated, the Transaction would result in Gannett owning one of the top three commercial broadcast television stations in St. Louis and having significant influence over a second top three station serving the same area. Together, KMOV–TV and KSDK–TV have approximately a 50% market share of gross broadcast television advertising revenues in the St. Louis DMA. The St. Louis Fox affiliate is the only significant advertising competitor to those stations, while the next strongest stations, an ABC affiliate and a CW affiliate, are much weaker.

7. The Transaction would eliminate or greatly reduce the head-to-head competition between KSDK–TV and KMOV–TV in St. Louis and so eliminate or greatly reduce the benefits of that competition. Unless blocked, the Transaction is likely to lead to higher prices for broadcast television spot advertising in the St. Louis DMA in violation of Section 1 of the Sherman Act and Section 7 of the Clayton Act, 15 U.S.C. §§ 1 and 18.

II. JURISDICTION AND VENUE

8. The United States brings this action pursuant to Section 4 of the Sherman Act and Section 15 of the Clayton Act, as amended, 15 U.S.C. §§ 4 and 25, to prevent and restrain Defendants from violating Section 1 of the Sherman Act and Section 7 of the Clayton Act, 15 U.S.C. §§ 1 and 18.

9. Gannett and Belo sell broadcast television spot advertising in the St. Louis DMA, a commercial activity that substantially affects, and is in the flow of, interstate commerce. The Court has subject-matter jurisdiction over this action pursuant to Section 4 of the Sherman Act and Section 15 of the Clayton Act, 15 U.S.C. §§ 4 and 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

10. Gannett transacts business and is found in the District of Columbia, where it owns and operates broadcast television station WUSA–TV, and is subject to the personal jurisdiction of this Court. All Defendants have consented to venue and personal jurisdiction in this District. Therefore, venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1391(b) and (c).

III. THE DEFENDANTS

11. Gannett is a Delaware corporation, with its headquarters in McLean, Virginia. Gannett reported revenues of over $5.3 billion in 2012. Gannett owns 23 commercial broadcast television stations in 19 markets in the United States, as well as 82 daily newspapers in markets throughout the United States. The broadcast television stations that Gannett owns include KSDK–TV, the NBC affiliate in St. Louis, Missouri.

12. Belo is a Delaware corporation, with its headquarters in Dallas, Texas. Belo reported revenues of over $714 million in 2012. Belo owns 20 commercial broadcast television stations in 15 markets throughout the United States, including KMOV–TV, the CBS affiliate in St. Louis, Missouri.

13. Sander is a Delaware limited liability company, with its headquarters in Scottsdale, Arizona. Sander Holdings Co. LLC (''Sander Holdings'') is a wholly owned subsidiary of Sander. Sander is also the owner of proposed license assignees of six commercial broadcast television stations, including KMOV–TV in St. Louis, Missouri, to be acquired pursuant to agreements between Gannett and Belo and between Gannett and Sander Holdings that are part of the Transaction. Sander has no current business activity apart from this planned acquisition.

IV. THE TRANSACTION WOULD LIKELY SUBSTANTIALLY LESSEN COMPETITION AND UNREASONABLY RESTRAIN INTERSTATE TRADE AND COMMERCE

A. Broadcast Television Spot Advertising Is a Relevant Product Market

14. Broadcast television stations attract viewers through their programming, which is delivered for free over the air or retransmitted to viewers, mainly through wired cable or other terrestrial television systems and through satellite television systems. Broadcast television stations then sell advertising time to businesses that want to advertise their products to television viewers. Broadcast television ''spot'' advertising, which comprises the majority of a television station's revenues, is sold directly by the station itself or through its national representative on a localized basis and is purchased by advertisers who want to target potential customers in specific geographic areas. Spot advertising differs from network and syndicated television advertising, which are sold by television networks and producers of syndicated programs on a nationwide basis and broadcast in every market where the network or syndicated program is aired.

15. Broadcast television spot advertising possesses a unique combination of attributes that set it apart from advertising using other types of media. Television combines sight, sound, and motion, thereby creating a more memorable advertisement. Moreover, of all media, broadcast television spot advertising reaches the largest percentage of all potential customers in a particular target geographic area and is therefore especially effective in introducing and establishing the image of a product. For a significant number of advertisers, broadcast television spot advertising, because of its unique combination of attributes, is an advertising medium for which there is no close substitute. Other media, such as radio, newspapers, or outdoor billboards, are not desirable substitutes for broadcast television advertising. None of these media can provide the important combination of sight, sound, and motion that makes television unique and impactful as a medium for advertising.

16. Like broadcast television, cable television and satellite television channels combine elements of sight, sound, and motion, but they are not a desirable substitute for broadcast television spot advertising for two important reasons. First, satellite, cable, and other landline content delivery systems do not have the ''reach'' of broadcast television. Typically, broadcast television can reach well-over 90% of homes in a DMA, while cable television often reaches much less, e.g., 50% or fewer of the homes in the St. Louis DMA. As a result, an advertiser can achieve greater audience penetration through broadcast television spot advertising than through cable television. Second, because cable and satellite television may offer more than 100 channels, they fragment the audience into small demographic segments. Because broadcast television programming typically has higher rating points than cable television programming, it is much easier and more efficient for an advertiser to reach its target demographic on broadcast television. Media buyers often buy cable television and satellite television not so much as a substitute for broadcast television, but rather to supplement a broadcast television message, to reach a narrow demographic with greater frequency (e.g., 18–24 year olds) or to target narrow geographic areas within a DMA. A small but significant price

increase by broadcast television spot advertising providers would not be made unprofitable by advertisers switching to cable and satellite advertising.

17. Internet-based media is not currently a substitute for broadcast television spot advertising. Although Online Video Distributors (''OVDs'') such as Netflix and Hulu are important sources of video programming, as with cable television advertising, the local video advertising of OVDs lacks the reach of broadcast television spot advertising. Non-video Internet advertising, e.g., Web site banner advertising, lacks the important combination of sight, sound, and motion that gives television its impact. Consequently, local media buyers currently purchase Internet-based advertising primarily as a supplement to broadcast television spot advertising, and a small but significant price increase by broadcast television spot advertising providers would not be made unprofitable by advertisers switching to Internet-based advertising.

18. Broadcast television stations generally can identify advertisers with strong preferences for using broadcast television advertising. Broadcast television stations negotiate prices individually with advertisers and consequently can charge different advertisers different prices. During the individualized negotiations on price and available advertising slots that commonly occur between advertisers and broadcast television stations, advertisers provide stations with information about their advertising needs, including their target audience. Broadcast television stations could profitably raise prices to those advertisers who view broadcast television as a necessary advertising medium, either as their sole means of advertising or as a necessary part of a total advertising plan.

19. Accordingly, the sale of broadcast television spot advertising is a line of commerce under Section 7 of the Clayton Act and a relevant product market for purposes of analyzing the Transaction under Section 7 of the Clayton Act and Section 1 of the Sherman Act.

B. The St. Louis DMA Is the Relevant Geographic Market

20. DMAs are geographic units defined by A.C. Nielsen Company, a firm that surveys television viewers and furnishes broadcast television stations, advertisers, and advertising agencies in a particular area with data to aid in evaluating audience size and composition. DMAs are ranked according to the number of households therein, and the St. Louis DMA is the 21st largest in the United States, containing over 1.2 million television households. The St. Louis DMA is centered on the city of St. Louis, Missouri, and encompasses 31 counties in the states of Illinois and Missouri. Signals from broadcast television stations located in St. Louis reach viewers throughout the DMA, but signals from broadcast television stations located outside the DMA reach few viewers within the DMA. DMAs are used to analyze revenues and shares of broadcast television stations in the *Investing In Television BIA Market Report 2013* (1st edition), a standard industry reference.

21. Advertisers use broadcast television stations within the St. Louis DMA to reach the largest possible number of viewers across the DMA. Some of these advertisers are located in the St. Louis DMA and need to reach customers there; others are regional or national businesses that want to target consumers in the St. Louis, DMA. Advertising on television stations outside the St. Louis DMA is not an alternative for these advertisers because such stations cannot be viewed by a significant number of potential customers within the DMA. Thus, if there were a small but significant increase in broadcast television spot advertising prices within the St. Louis DMA, an insufficient number of advertisers would switch advertising purchases to television stations outside the St. Louis DMA to render the price increase unprofitable.

22. Accordingly, the St. Louis DMA is a section of the country under Section 7 of the Clayton Act and a relevant geographic market for the sale of broadcast television spot advertising for purposes of analyzing the Transaction under Section 7 of the Clayton Act and Section 1 of the Sherman Act.

C. The Transaction Would Harm Competition in the St. Louis DMA

23. Broadcast television stations compete for advertisers through programming that attracts viewers to their stations. In developing their own programming and in considering the programming of the networks with which they may be affiliated, broadcast television stations try to select programs that appeal to the greatest number of viewers and also try to differentiate their stations from others in the same DMA by appealing to specific demographic groups. Advertisers, in turn, are interested in using broadcast television spot advertising to reach a large audience, as well as to reach a high proportion of the type of viewers that are most likely to buy their products.

24. Broadcast station ownership in the St. Louis DMA is already significantly concentrated. Three stations, each affiliated with a major network, had more than 80% of gross advertising revenues in 2012, with Gannett's KSDK–TV having a revenue share of nearly 30% and Belo's KMOV–TV having a revenue share of nearly 20%. Together, the Gannett and Belo stations have approximately 50% of all television station gross advertising revenues in the St. Louis DMA.

25. After the Transaction, even though KSDK–TV and KMOV–TV will continue to have different owners and maintain separate sales forces, the various agreements between Gannett and Sander create an ongoing relationship between Gannett and Sander that did not exist between competitors Gannett and Belo. These long-term agreements are likely to align Gannett's and Sander's incentives in the St. Louis DMA:

a. With the eight-year assignable option, Gannett will be able to sell to a third party the ability to buy KMOV–TV at any time, giving Gannett influence over Sander's future in the market and the power to choose its competitor in the St. Louis DMA;

b. Under its financing guarantee to Sander, Gannett is obligated to repay the balance of the loan financing Sander's purchase of the Belo stations and thus will have an incentive to avoid competing aggressively and forcing Sander into a position where it might default; and

c. Pursuant to the eight-year Shared Services Agreements, Sander will be dependent upon Gannett for key services necessary to run KMOV–TV and its other stations successfully and thus will be in a close ongoing business relationship with a key competitor.

Taken together, these agreements are likely to give Gannett significant influence over Sander and over Sander's operation of KMOV–TV. The agreements give each the ability and incentive to work cooperatively with the other to maximize their joint profits, to the detriment of their customers.

26. If KSDK–TV and KMOV–TV were to coordinate their competitive behavior, the market structure would operate as if the two stations were commonly owned. Using the Herfindahl-Hirschman Index (''HHI''), a standard measure of market concentration (defined and explained in Appendix A), a combination of KSDK–TV and KMOV–TV in the St. Louis DMA would result both in high

concentration and a large change in concentration, increasing the HHI by 1161 points from 2431 to 3592. Under the Horizontal Merger Guidelines issued by the Department of Justice and Federal Trade Commission, mergers resulting in highly concentrated markets (with an HHI in excess of 2500) and with an increase in the HHI of more than 200 points are presumed to be likely to enhance market power.

27. In addition to increasing concentration in the St. Louis DMA, the Transaction involves two stations that are close substitutes for one another in a market with limited alternatives. KMOV–TV and KSDK–TV appeal to similar demographic groups, making them close substitutes for many viewers and advertisers. Only one other station in the St. Louis DMA, a Fox affiliate, has a comparable gross advertising revenue share. The St. Louis ABC and CW affiliates, which each have gross advertising revenue shares of less than 10%, are much less acceptable substitutes for many advertisers. The CW affiliate's programming tends to appeal to a different demographic, and neither the ABC nor the CW affiliate has strong local news programming, an important differentiator to advertisers in the St. Louis DMA.

28. In the St. Louis DMA, KMOV–TV and KSDK–TV compete head-to-head in the sale of broadcast television spot advertising and are close substitutes for a significant number of advertisers. Advertisers benefit from this competition. During individual price negotiations between advertisers and television stations in the St. Louis DMA, advertisers are able to ''play off'' the stations against each other and obtain competitive rates from programs targeting similar demographics.

29. After the Transaction, advertisers in the St. Louis DMA would likely find it more difficult to ''buy around'' both KMOV–TV and KDSK–TV in response to higher advertising rates, than to buy around either one individually as they could have done before. The presence of the Fox affiliate alone would not be sufficient to enable enough advertisers to ''buy around'' KMOV–TV and KSDK–TV to defeat a price increase. Because a significant number of advertisers would likely be unable to reach their desired audiences as effectively unless they advertise on at least one station that is controlled or significantly influenced by Gannett, their bargaining positions will be weaker after the Transaction, and the advertising rates they pay would be likely to increase.

30. Accordingly, the Transaction is likely to substantially reduce competition and will restrain trade in the sale of broadcast television spot advertising in the St. Louis DMA.

D. Lack of Countervailing Factors

1. Entry and Expansion Are Unlikely

31. De novo entry into the St. Louis DMA is unlikely because the FCC regulates entry through the issuance of broadcast television licenses, which are difficult to obtain because the availability of spectrum is limited and the regulatory process associated with obtaining a license is lengthy. Even if a new signal became available, commercial success would come, at best, over a period of many years. In the St. Louis DMA, all of the major broadcast networks (CBS, NBC, ABC, Fox) are already affiliated with a licensee, the contracts last for many years, and the broadcast networks rarely switch licensees when the contracts expire. Thus, entry into the St. Louis DMA broadcast television advertising spot market would not be timely, likely, or sufficient to deter Gannett and Sander, acting together, from anticompetitive increases in price or other anticompetitive conduct after the Transaction occurs.

32. Other broadcast television stations in the St. Louis DMA could not readily increase their advertising capacity or change their programming sufficiently in response to a price increase by KSDK–TV and KMOV–TV. The number of 30-second spots in a DMA are largely fixed. More slots cannot be created. This fact makes the pricing of spots very responsive to changes in demand. During so-called political years, for example, political advertisements crowd out commercial advertising and makes the spots available for commercial advertisers more expensive than they would be in nonpolitical years. Adjusting programming in response to a pricing change is risky, difficult, and time-consuming. Network affiliates are often committed to the programming provided by the network with which they are affiliated, and it often takes years for a station to build its audience. Programming schedules are complex and carefully constructed, taking many factors into account, such as audience flow, station identity, and program popularity. In addition, stations typically have multi-year contractual commitments for individual shows. Accordingly, a television station is unlikely to change its programming sufficiently or with sufficient rapidity to overcome a small but significant price increase imposed by KSDK–TV and KMOV–TV.

2. The Alleged Efficiencies Do Not Offset the Harm

33. Although Defendants assert that the Transaction would produce efficiencies, they cannot demonstrate acquisition-specific and cognizable efficiencies that would be sufficient to offset the Transaction's anticompetitive effects.

V. VIOLATIONS ALLEGED

34. The United States hereby repeats and realleges the allegations of paragraphs 1 through 33 as if fully set forth herein.

35. The Transaction likely would lessen competition substantially in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and also constitute entry into contracts and combinations that would unreasonably restrain interstate trade and commerce, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. These acquisitions and agreements likely would have the following effects, among others:

a. competition in the sale of broadcast television spot advertising in the St. Louis DMA would be lessened substantially;

b. actual and perceived competition between KMOV–TV and KSDK–TV in the sale of broadcast television spot advertising in the St. Louis DMA would be diminished; and

c. the prices for spot advertising time on broadcast television stations in the St. Louis DMA would likely increase, and the quality of services likely would decline.

36. Unless restrained, the acquisition will violate Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 7 of the Clayton Act, 15 U.S.C. § 18.

VI. REQEST FOR RELIEF

37. The United States requests:

a. that the Court adjudge the proposed acquisition to violate Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 7 of the Clayton Act, 15 U.S.C. § 18;

b. that the Court permanently enjoin and restrain Defendants from carrying out the Transaction, or entering into any other agreement, understanding, or plan by which Belo would be acquired by Gannett, unless Defendants divest KMOV–TV in accordance with the proposed Final Judgment and Asset Preservation Stipulation and Order filed concurrently with this Complaint;

c. that the proposed Final Judgment giving effect to the divestiture be entered by the Court after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16;

d. that the Court award the United States the costs of this action; and

e. that the Court award such other relief to the United States as the Court may deem just and proper.
Respectfully submitted,

For Plaintiff United States:

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** Attorney of Record*
Dated: December 16, 2013

APPENDIX A

Herfindahl-Hirschman Index

The term ''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases. Markets in which the HHI is between 1,500 and 2,500 points are considered to be moderately concentrated, and markets in which the HHI is in excess of 2,500 points are considered to be highly concentrated. *See* U.S. Department of Justice & FTC, *Horizontal Merger Guidelines* § 5.3 (2010). Transactions that increase the HHI by more than 200 points in highly concentrated markets presumptively raise antitrust concerns under the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission. *See id.*

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff,
v.
GANNETT CO., INC., BELO CORP., and SANDER MEDIA LLC, Defendants.

Case No. 1:13-cv-01984–RBW

Judge: Reggie B. Walton

Filed: 12/16/2013

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. § 16(b)–(h), plaintiff United States of America (''United States'') files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

Defendants Gannett Co., Inc. (''Gannett''), and Belo Corp. (''Belo'') entered into an Agreement and Plan of Merger, dated June 12, 2013, pursuant to which Gannett will acquire Belo for approximately $1.5 billion, with a total transaction value of $2.2 billion, including assumed debt. Gannett has also entered into an Asset Purchase Agreement and other related agreements with Sander Holdings Co. LLC, a wholly-owned subsidiary of defendant Sander Media LLC (''Sander''), which would sell KMOV–TV in St. Louis, Missouri, and five other Belo broadcast television stations to Sander for considerably below market price and would create a close, ongoing business relationship between Gannett and Sander. This merger, asset purchase, and other related agreements are referred to herein collectively as ''the Transaction.''

The United States filed a civil antitrust Complaint on December 16, 2013, seeking to prevent the Transaction. The Complaint alleges that the Transaction's likely effect would be to increase broadcast television spot advertising prices in the St. Louis Designated Market Area (''DMA'') in violation of Section 1 of the Sherman Act and Section 7 of the Clayton Act, 15 U.S.C. §§ 1, 18.

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order (''Hold Separate'') and proposed Final Judgment designed to eliminate the anticompetitive effects of the Transaction. The proposed Final Judgment, which is explained more fully below, requires Defendants to divest KMOV–TV to an Acquirer approved by the United States in a manner that preserves competition in the St. Louis DMA. The Hold Separate requires Defendants to take certain steps to ensure that KMOV–TV is operated as a competitively independent, economically viable business that is uninfluenced by Gannett so that competition is maintained until the required divestiture occurs.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendants and the Proposed Transaction

1. The Defendants

Gannett, a Delaware corporation with headquarters in McLean, Virginia, owns and operates 23 broadcast television stations nationwide, 12 in top-25 markets. Belo, a Delaware corporation with headquarters in Dallas, Texas, owns and operates 20 broadcast television stations nationwide, 9 in top-25 markets. Sander, a Delaware limited liability company with headquarters in Scottsdale, Arizona, has no current business activity other than preparing to acquire six Belo stations, including KMOV–TV in St. Louis, as part of the Transaction.

2. The Proposed Transaction

Federal Communications Commission (''FCC'') rules prohibit Gannett from acquiring the Belo stations in five markets where Gannett already owns television stations or newspapers. To comply with these rules, Gannett has agreed to transfer six Belo stations in five DMAs, including KMOV–TV in St. Louis, to Sander simultaneously with the merger of Gannett and Belo. Although Gannett will formally transfer KMOV–TV to Sander, the Transaction includes additional agreements between

Gannett and Sander that would likely give Gannett significant influence over Sander's operation of the stations, including KMOV–TV, and would likely diminish Gannett's incentives to compete vigorously against Sander in the sale of broadcast television spot advertising in St. Louis. These agreements include: (1) eight-year assignable options permitting Gannett to reacquire any of the stations (should existing FCC prohibitions be eliminated) or to transfer the options to a third party; (2) eight-year Shared Services Agreements under which Gannett will provide a variety of services (excluding joint advertising sales and negotiation of retransmission consent rights in DMAs such as St. Louis where Gannett also has television stations) to help Sander operate the stations, in return for substantial payments from Sander to Gannett; (3) a financing guarantee obligating Gannett to repay the balance of the $101 million loan Sander is obtaining to purchase the stations should Sander default; and (4) Joint Sales Agreements (only in DMAs where Gannett does not own television stations) giving Gannett control of advertising sales.

The Transaction, as initially agreed to by Defendants on June 12, 2013, and as subsequently amended, would lessen competition substantially and restrain trade in the sale of broadcast television spot advertising in the St. Louis DMA, which includes parts of Missouri and Illinois. This Transaction is the subject of the Complaint and proposed Final Judgment filed by the United States on December 16, 2013.

B. Anticompetitive Consequences of the Transaction

1. The Relevant Product

The Complaint alleges that the sale of broadcast television spot advertising constitutes a relevant product market for analyzing this acquisition under the Clayton and Sherman Acts. Television stations attract viewers through their programming and then sell advertising time to businesses wanting to advertise their products to those television viewers. Broadcast television ''spot'' advertising is purchased by advertisers seeking to target potential customers in specific geographic markets. It differs from network and syndicated television advertising, which are sold on a nationwide basis by major television networks and by producers of syndicated programs and are broadcast in every market where the network or syndicated program is aired.

Broadcast television spot advertising possesses a unique combination of attributes that sets it apart from advertising using other types of media. Television combines sight, sound, and motion, thereby creating a more memorable advertisement. Broadcast television spot advertising reaches the largest percentage of potential customers in a targeted geographic market and is therefore especially effective in introducing and establishing a product's image.

Because of this unique combination of attributes, broadcast television spot advertising has no close substitute for a significant number of advertisers. Cable television spot advertising and Internet-based video advertising lack the same reach; radio spots lack the visual impact; and newspaper and billboard ads lack sound and motion, as do many internet search engine and Web site banner ads. Through information provided during individualized price negotiations, stations can readily identify advertisers with strong preferences for using broadcast television advertising and ultimately can charge different advertisers different prices. Consequently, a small but significant increase in the price of broadcast television spot advertising is unlikely to cause enough advertising customers to switch enough advertising purchases to other media to make the price increase unprofitable.

2. The Relevant Market

The Complaint alleges that the St. Louis DMA constitutes a relevant geographic market for analyzing this acquisition under the Clayton and Sherman Acts. DMAs are geographic units defined by A.C. Nielsen Company for advertising purposes. The St. Louis DMA is the 21st largest in the United States, containing over 1.2 million television households. Signals from full-powered television stations in the St. Louis area reach viewers throughout that DMA, so advertisers use television stations in the St. Louis DMA to target the largest possible number of viewers within the entire DMA. Some of these advertisers are located in the St. Louis area and trying to reach customers there; others are regional or national businesses wanting to target consumers in the St. Louis area. Advertising on television stations outside the St. Louis DMA is not an alternative for either group, because signals from television stations outside the St. Louis DMA reach few viewers in the St. Louis DMA. Thus, advertising on those stations does not reach a significant number of potential customers in the St. Louis DMA.

3. Harm to Competition in the St. Louis DMA

The Complaint alleges that the Transaction likely would lessen competition substantially in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and unreasonably restrain interstate trade and commerce, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Based on advertising sales revenues, Gannett's NBC-affiliated KSDK–TV and Belo's CBS-affiliated KMOV–TV are two of the three largest commercial broadcast television stations in the St. Louis DMA. Broadcast station ownership in the St. Louis DMA is already significantly concentrated, with more than 80% of gross advertising revenues in 2012 attributable to only three stations. Together, KMOV–TV and KSDK–TV have approximately 50% of all television station gross advertising revenues in the St. Louis DMA. The St. Louis Fox affiliate is the only significant advertising competitor to these stations. The St. Louis ABC and CW affiliates each have gross advertising revenue shares of less than 10%. If KSDK–TV and KMOV–TV were to coordinate their competitive behavior, then the market structure would operate as if the two stations were commonly owned in a highly concentrated market.[1]

KMOV–TV and KSDK–TV are not only two of the largest stations in St. Louis, they are also close substitutes for one another in this concentrated market with its limited alternatives. KMOV–TV and KSDK–TV appeal to similar demographic groups, making them close substitutes for many viewers and advertisers. The programming on the CW affiliate tends to appeal to a younger demographic, and neither the ABC nor the CW affiliate has strong local news programming, which is an important differentiator to advertisers in the St. Louis DMA. As a result, advertisers view the St. Louis ABC and CW affiliates as much less acceptable substitutes for KDSK–TV and KMOV–TV. The presence of the Fox affiliate alone would not be sufficient to enable enough advertisers to ''buy around'' KMOV–TV and KSDK–TV to defeat any price increase imposed by these two stations through coordinated action.

[1] Using the Herfindahl-Hirschman Index (''HHI''), a standard measure of market concentration, the post-acquisition HHI (combining KMOV–TV's and KDSK–TV's shares) would be about 3592, an increase of about 1161 points. Under the Horizontal Merger Guidelines issued by the Department of Justice and Federal Trade Commission, mergers resulting in highly concentrated markets (i.e., HHI over 2500) with an increase in the HHI of more than 200 points are presumed to be likely to enhance market power.

After the Transaction closes, KSDK–TV and KMOV–TV will continue to have different owners and maintain separate sales forces. Still, the Transaction would alter the competitive landscape in the St. Louis DMA and likely harm competition there by creating an ongoing, intertwined relationship between Gannett and Sander that did not exist between Gannett and Belo. In this new relationship, Gannett will have significant influence over Sander and Sander's operation of KMOV–TV. This could reduce competition between KSDK–TV and KMOV–TV in at least three ways:

1. Through the eight-year assignable option, which gives Gannett the practical ability to sell KMOV–TV to any other person, Gannett can displace Sander at any time. Losing KMOV–TV would end Sander's income stream from the station, so Sander's knowledge that Gannett could exercise the option would create an incentive for Sander not to upset Gannett by competing vigorously with KSDK–TV going forward. Exercising the option also effectively lets Gannett choose its competitor in St. Louis.

2. Through the financing guarantee, which requires Gannett to repay the loan financing Sander's purchase of the Belo stations if Sander defaults, Gannett has a reduced incentive to compete aggressively with Sander. Aggressive competition from Gannett could push Sander into default, in which case Gannett would have to pay off the loan.

3. Through the eight-year Shared Services Agreements, Sander will be dependent on a competitor for key services that Sander needs to run KMOV–TV successfully. This dependence on Gannett creates an incentive for Sander not to compete too strongly with KSDK–TV.

In sum, the sale of KMOV–TV to Sander does not adequately address the competitive problem that would exist in the St. Louis DMA from the Gannett-Belo merger without the sale to Sander. With these entanglements, Sander is not sufficiently separate from Gannett to be an effective competitor. The agreements give both Gannett and Sander the incentive and the means to work together cooperatively to maximize their joint profits at the expense of their customers.

Currently, KSDK–TV and KMOV–TV vigorously compete for the business of local, regional, and national firms seeking to advertise on St. Louis television stations. Advertisers benefit from this competition. During individual price negotiations between advertisers and St. Louis television stations, advertisers are able to ''play off'' KSDK–TV and KMOV–TV against each other and obtain competitive rates for programs that target similar demographics. The Transaction is likely to attenuate this competition and thereby adversely affect a substantial volume of interstate commerce. It likely would have the following effects, among others:

a. Competition in the sale of broadcast television spot advertising in the St. Louis DMA likely would be lessened substantially;

b. Actual and perceived potential competition between Gannett and Sander in the sale of broadcast television spot advertising time in the St. Louis DMA likely would be diminished; and

c. Prices for spot advertising time on television stations in the St. Louis DMA likely would increase, and the quality of services likely would decline.

After the Transaction, a significant number of St. Louis DMA advertisers would not be able to reach their desired audiences with equivalent efficiency without advertising on stations controlled or significantly influenced by Gannett. The Transaction, therefore, is likely to enable Gannett to raise prices unilaterally.

4. Lack of Countervailing Factors

The Complaint alleges that entry or expansion in the St. Louis DMA broadcast television spot advertising market would not be timely, likely, or sufficient to prevent anticompetitive effects. New entry in the St. Louis DMA is unlikely since a new station would require an FCC license, which is difficult to obtain. Even if a new station became operational, commercial success would come over a period of many years at best. Other television stations in the St. Louis DMA could not readily increase their advertising capacity or change their programming in response to a price increase by KDSD–TV and KMOV–TV. The number of 30-second spots available at a station is generally fixed, and additional slots cannot be created. Adjusting programming in response to a pricing change is risky, difficult, and time-consuming. Programming schedules are complex and carefully constructed, and television stations often have multi-year contractual commitments for individual shows or are otherwise committed to programming provided by their affiliated network.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestiture requirement of the proposed Final Judgment will eliminate the anticompetitive effects of the Transaction in the St. Louis DMA by maintaining KMOV–TV as an independent, economically viable competitor. The proposed Final Judgment requires Defendants to divest KMOV–TV to an Acquirer selected by Defendants and approved by the United States. To achieve this result, Gannett will divest its option on KMOV–TV to the Acquirer, and Sander will divest its interests in the station and the assets used to operate KMOV–TV.

The ''Divestiture Assets'' are defined in Paragraph II.G of the proposed Final Judgment to cover all assets used primarily in the operation of KMOV–TV. These assets include real property, equipment, FCC licenses, contracts, intellectual property rights, programming materials, and customer lists maintained by Belo or Sander in connection with KMOV–TV. These do not include assets that are not primarily used in the operation of KMOV–TV, but are maintained at the corporate level and used to support multiple stations. Thus, Defendants will be able to retain back-office systems or other assets and contracts used at the corporate level to support multiple broadcast television stations, which they would need to conduct their remaining operations, and which an Acquirer experienced in operating broadcast television stations could supply for itself. The Shared Services Agreement between Gannett and Sander, which Paragraph IV.A of the proposed Final Judgment requires to be terminated with respect to KMOV–TV upon divestiture, is also excluded from the Divestiture Assets.

To ensure that KMOV–TV is operated as an independent competitor after the divestiture, Paragraph IV.A and Section XI of the proposed Final Judgment prohibit Defendants from entering into any agreements during the term of the Final Judgment that create a long-term relationship with the Divestiture Assets after the divestiture is completed. Examples of prohibited agreements include options to repurchase or assign interests in KMOV–TV; agreements to provide financing or guarantees for financing; local marketing agreements, joint sales agreements, or any other cooperative selling arrangements; shared services agreements; and agreements to jointly conduct any business negotiations with the Acquirer with respect to KMOV–TV. Any such agreements that may exist between Gannett and Sander shall be terminated

with respect to the KMOV–TV upon divestiture. This shared services prohibition does not preclude agreements limited to helicopter sharing and stock video pooling in the form that are customary in the industry. Gannett and Belo currently have a helicopter sharing agreement in St. Louis, and the Acquirer and Gannett may continue this arrangement after the divestiture. These limited exceptions do not permit Defendants to enter into broader news sharing agreements with respect to KMOV–TV. To the extent the Acquirer needs Defendants to provide any transitional services that facilitate continuous operation of KMOV–TV until the Acquirer can provide such capabilities independently, the United States retains discretion to approve such arrangements.

Defendants are required to take all steps reasonably necessary to accomplish the divestiture quickly and to cooperate with prospective purchasers. Because transferring the KMOV–TV license requires FCC approval, Defendants are specifically required to use their best efforts to obtain all necessary FCC approvals as expeditiously as possible. This divestiture of KMOV–TV must occur within 120 calendar days after the filing of the Complaint in this matter (i.e., by April 15, 2013) or 5 days after notice that the Court has entered the Final Judgment, whichever is later. The United States, in its sole discretion, may agree to one or more extensions of this time period, not to exceed ninety (90) calendar days in total, and shall notify the Court in such circumstances.

If the divestiture does not occur within this prescribed timeframe, the proposed Final Judgment provides that the Court, upon application of the United States, will appoint a trustee selected by the United States to sell KMOV–TV. Gannett will pay all costs and expenses of the trustee. The trustee's commission will be structured to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. The trustee would file monthly reports with the Court and the United States describing efforts to divest KMOV–TV. If the divestiture has not been accomplished after 6 months, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, to carry out the purpose of the trust.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the United States Department of Justice, Antitrust Division's Internet Web site and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to: Scott A. Scheele, Chief, Telecommunications and Media Enforcement Section, Antitrust Division, United States Department of Justice, 450 5th Street NW., Suite 7000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and Defendants may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against consummation of the Transaction. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the sale of broadcast television spot advertising in the St. Louis DMA. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States v. Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United*

States v. SBC Commc'ns, Inc., 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v. InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.'').[2]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States v. BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States v. Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States v. Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[3] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States v. Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States v. Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland v. United States,* 460 U.S. 1001 (1983); *see also United States v. Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court recently confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[4]

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the

[2] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004) *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[3] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States v. Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

[4] *See United States v. Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: December 16, 2013

Respectfully submitted,

/s/

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**Attorney of Record*

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. GANNETT CO., INC., BELO CORP., and SANDER MEDIA LLC, Defendants.

Case No. 1:13–cv–01984–RBW

Judge: Reggie B. Walton

Filed: 12/16/2013

CERTIFICATE OF SERVICE

I, Anupama Sawkar, hereby certify that on December 16, 2013, I caused copies of the Complaint, Competitive Impact Statement, Hold Separate Stipulation and Order, Proposed Final Judgment, and Plaintiff's Explanation of Consent Decree Procedures to be served upon defendants Gannett Corporation, Inc., Belo Corporation, and Sander Media LLC, by mailing the documents electronically to the duly authorized legal representatives of Defendants as follows:

Counsel for Defendant Gannett Co., Inc.:

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Gordon L. Lang (DC Bar #932731), Nixon Peabody LLP, 401 9th Street NW., Suite 900, Washington, DC 20004, Telephone: (202) 585–8319, Facsimile: (866) 947–3542, Email: *glang@nixonpeabody.com.*

Elizabeth A. Allen (DC Bar #121403), Gannett Co., Inc., 7950 Jones Branch Drive, McLean, VA 22107, Telephone: (703) 854–6953, Facsimile: (703) 854–2031, Email: *eaallen@gannett.com.*

Counsel for Defendant Belo Corp.:

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Counsel for Defendant Sander Media LLC:

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/s/

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**Attorney of Record*

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. *GANNETT CO., INC., BELO CORP., and SANDER MEDIA LLC,* Defendants.

Case No. 1:13–cv–01984–RBW

Judge: Reggie B. Walton

Filed: 12/16/2013

PROPOSED FINAL JUDGMENT

WHEREAS, plaintiff, the United States of America, filed its Complaint on December 16, 2013, and plaintiff and Defendants Gannett Co., Inc. (''Gannett''), Belo Corp. (''Belo''), and Sander Media LLC (''Sander''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

AND WHEREAS, Defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights and assets by the Defendants to assure that competition is not substantially lessened;

AND WHEREAS, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to the United States that the divestitures required below can and will be made, and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 1 of the Sherman Act, and Section 7 of the Clayton Act, as amended, 15 U.S.C. §§ 1 and 18.

II. DEFINITIONS

As used in this Final Judgment:

A. ''Acquirer'' means the entity to which the Defendants divest the Divestiture Assets.

B. ''Gannett'' means defendant Gannett Co., Inc., a Delaware corporation, with its headquarters in McLean, Virginia, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

C. ''Belo'' means defendant Belo Corp., a Delaware corporation, with its headquarters in Dallas, Texas, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

D. ''Sander'' means defendant Sander Media LLC, a Delaware limited liability company, with its headquarters in Scottsdale, Arizona, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, owners, officers, managers, agents, and employees.

E. ''DMA'' means Designated Market Area as defined by A.C. Nielsen Company based upon viewing patterns and used by the *Investing In Television BIA Market Report 2013* (1st edition). DMAs are ranked according to the number of households therein and are used by broadcasters, advertisers, and advertising agencies to aid in evaluating television audience size and composition.

F. ''KMOV–TV'' means the CBS-affiliated broadcast television station located in the St. Louis DMA owned by Belo and being sold to Sander as part of the Transaction.

G. ''Divestiture Assets'' means all of the assets, tangible or intangible, used in the operation of KMOV–TV, including,

but not limited to, all real property (owned or leased) used in the operation of the station, all broadcast equipment, office equipment, office furniture, fixtures, materials, supplies, and other tangible property used in the operation of the station; all licenses, permits, authorizations, and applications therefore issued by the Federal Communications Commission (''FCC'') and other government agencies related to that station; all contracts (including programming contracts and rights), agreements, network affiliation agreements, leases and commitments and understandings of Belo or Sander relating to the operation of KMOV–TV; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials, and promotional materials relating to KMOV–TV; all customer lists, contracts, accounts, and credit records; and all logs and other records maintained by Belo or Sander in connection with KMOV–TV, provided, however, that Divestiture Assets does not include physical assets located outside of the St. Louis DMA (e.g., corporate infrastructure), group-wide corporate records, employee benefit plans, group-wide insurance policies, group-wide service contracts, group-wide software licenses and digital systems, the trademarks ''Belo'' or ''Sander,'' or the Shared Services Agreement or other agreements referenced in the Asset Purchase Agreement dated June 12, 2013, and its subsequent amendments.

H. ''Transaction'' means the merger and acquisition contemplated by the Agreement and Plan of Merger, dated June 12, 2013, by and among Belo, Gannett, and Delta Acquisition Corp. and all related agreements, including Sander's acquisition of certain Belo stations and all agreements entered into between Gannett and Sander contemplated by the Asset Purchase Agreement, dated June 12, 2013, and its subsequent amendments.

I. ''Shared Services Agreement'' means the Shared Services Agreement between Gannett and Sander contemplated by the Transaction in substantially the same form as Exhibit C(2) to the Agreement and Plan of Merger dated June 12, 2013, by and among Belo, Gannett, and Delta Acquisition Corp.

III. APPLICABILITY

A. This Final Judgment applies to Gannett, Belo, and Sander as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Sections IV and V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Defendants' Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer of the assets divested pursuant to the Final Judgment.

IV. DIVESTITURES

A. Defendants are ordered and directed to divest the Divestiture Assets to an Acquirer acceptable to the United States in its sole discretion, in a manner consistent with this Final Judgment and the Hold Separate Stipulation and Order in this case. Such divestiture shall include all ownership interests and options to acquire or to transfer to others any ownership interests in the Divestiture Assets, and Defendants shall not retain any options to acquire or transfer to others ownership interests in the Divestiture Assets after completing the divestiture required by this Final Judgment. Defendants shall not enter into any agreements to provide financing, guarantees of financing or services to, or to conduct any sales or any business negotiations jointly with, the Acquirer with respect to the Divestiture Assets, and any such agreements that may exist between Gannett and Sander shall be terminated with respect to the Divestiture Assets upon divestiture, except to the extent that the United States in its sole discretion approves in writing any transitional services that may be necessary to facilitate continuous operation of the Divestiture Assets until the Acquirer can provide such capabilities independently. The divestiture pursuant to this section shall take place within one hundred and twenty (120) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later. The United States, in its sole discretion, may agree to one or more extensions of this time period, not to exceed ninety (90) calendar days in total, and shall notify the Court in such circumstances. Defendants shall use their best efforts to accomplish the divestiture ordered by this Final Judgment, including using their best efforts to obtain all necessary FCC approvals, as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process, except such information or documents subject to the attorney-client privilege or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirer and the United States information relating to the personnel involved in the operation and management of the Divestiture Assets to enable the Acquirer to make offers of employment. Defendants shall not interfere with any negotiations by the Acquirer to employ or contract with any employee of any defendant whose primary responsibility relates to the operation or management of the Divestiture Assets.

D. Defendants shall permit prospective acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of KMOV–TV; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to the Acquirer that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

G. Defendants shall warrant to the Acquirer that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

H. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include the entire Divestiture Assets, and be accomplished in such a way as to satisfy the United

States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing commercial television broadcasting business, and the divestiture of such assets will achieve the purposes of this Final Judgment and remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment:

(1) shall be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the television broadcasting business in the St. Louis DMA; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between the Acquirer and Defendants gives Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. APPOINTMENT OF TRUSTEE

A. If the Defendants have not divested the Divestiture Assets within the time period specified in Paragraph IV(A), Defendants shall notify the United States of that fact in writing.

B. If (a) the Defendants have not divested the Divestiture Assets within the time period specified by Paragraph IV(A), or (b) the United States decides in its sole discretion that the Acquirer is likely to be unable to complete the purchase of the Divestiture Assets, upon application of the United States in its sole discretion, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

C. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer, and in a manner acceptable to the United States in its sole discretion, at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Paragraph V(D) of this Final Judgment, the trustee may hire at the cost and expense of Gannett any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture. Defendants shall inform any person making an inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment and contact information for the trustee.

D. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objection by Defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

E. The trustee shall serve at the cost and expense of Gannett, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

F. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

G. After its appointment, the trustee shall file monthly reports with the United States setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

H. If the trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth: (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent that such report contains information that the trustee deems confidential, such report shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. NOTICE OF PROPOSED DIVESTITURE

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer, any other third party, or the trustee if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within

twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to Defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture in its sole discretion. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Paragraph V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under Paragraph V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. FINANCING

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. HOLD SEPARATE

Until the divestiture required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. AFFIDAVITS

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V of this Final Judgment, Defendants shall deliver to the United States an affidavit as to the fact and manner of their compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address and telephone number of each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for and complete the sale of the Divestiture Assets, including efforts to secure FCC or other regulatory approvals, and to provide required information to prospective acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, each Defendant shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as the Hold Separate Stipulation and Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copies or electronic copies of, all books, ledgers, accounts, records, data and documents in the possession, custody or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. NO REACQUISITION OR OTHER PROHIBITED ACTIVITIES

Defendants may not (1) reacquire any part of the Divestiture Assets, (2) acquire any option to reacquire any part of the Divestiture Assets or to assign the Divestiture Assets to any other person, (3) enter into any local marketing agreement, joint sales agreement, other cooperative selling arrangement, or shared services agreement, or conduct other business negotiations jointly with the Acquirer with respect to the Divestiture Assets, or (4) provide financing or guarantees of financing with respect to the Divestiture Assets, during the term of this Final Judgment. The shared services prohibition does not preclude Defendants from continuing or entering into agreements in a form customarily used in the industry to (1) share news helicopters or (2) pool generic video footage that does not include recording a reporter or other on-air talent.

XII. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XIV. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon, and the United States' responses to comments. Based on the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

United States District Judge

[FR Doc. 2013–31182 Filed 12–27–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—OpenDaylight Project, Inc.

Notice is hereby given that, on November 13, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), OpenDaylight Project, Inc. (''OpenDaylight'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, A10 Networks, San Jose, CA; and Midokura, Lausanne, SWITZERLAND, have been added as parties to this venture.

In addition, Versa Networks, Santa Clara, CA, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OpenDaylight intends to file additional written notifications disclosing all changes in membership.

On May 23, 2013, OpenDaylight filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 1, 2013 (78 FR 39326).

The last notification was filed with the Department on August 14, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 16, 2013 (78 FR 56939).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–31244 Filed 12–27–13; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on November 22, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. (''IMS Global'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Carson-Dellosa Publishing, Greensboro, NC; Data Recognition Group, Maple Grove, MN; Nelson Education Ltd., Toronto, Ontario, CANADA; The Northwest Evaluation Association, Portland, OR; Pacific Metrics, Monterey, CA; and The Constitution Foundation dba The Saylor Foundation, Washington, DC, have been added as parties to this venture.

Also, Ucompass.com, Inc., Tallahassee, FL; Tegrity, Santa Clara, CA; Utah State Office of Education, Salt Lake City, UT; Rhode Island Department of Elementary and Secondary Education Office of Instruction, Assessment, and Curriculum, Providence, RI; and State of Michigan Dept. of Education, Bureau of Assessments and Accountability, Lansing, MI, have withdrawn as parties to this venture.

In addition, Department of Education, Employment and Workplace Relations has changed its name to Australian Government Department of Education, Canberra City, AUSTRALIA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on August 16, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 16, 2013 (78 FR 56939).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–31228 Filed 12–27–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open-IX Association

Notice is hereby given that, on December 3, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Open-IX Association (''Open-IX'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: Open-IX Association, Cambridge, MA. The nature and scope of Open-IX's standards development activities are: to encourage the creation and development of, and the investment in, internet exchanges by developing minimum standards of performance and common and uniform specifications for incoming and outgoing data, as well as physical connectivity and the real estate which houses or on which the exchange is located; and to improve the performance of internet exchanges by developing criteria and methods of measurement, leading to the establishment of minimum criteria and methods for certifying the satisfaction of such criteria.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–31249 Filed 12–27–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Heterogeneous System Architecture Foundation

Notice is hereby given that, on November 26, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Heterogeneous System Architecture Foundation (''HSA Foundation'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Oracle, Redwood Shores, CA; Huawei Technologies Co., Ltd., San Diego, CA; General Processor Technologies, Nanjing City, PEOPLE'S REPUBLIC OF CHINA; Optimum Semiconductor Technologies, Inc. (dba General Processor Technologies), Tarrytown, NY; Lawrence Livermore National Laboratory, Livermore, CA; UChicago Argonne, LLC, Operator of Argonne National Laboratory, Chicago, IL; and Linaro Limited, Cambridge, UNITED KINGDOM, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and HSA Foundation intends to file additional written notifications disclosing all changes in membership.

On August 31, 2012, HSA Foundation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 11, 2012 (77 FR 61786).

The last notification was filed with the Department on September 3, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 28, 2013 (78 FR 64248).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–31234 Filed 12–27–13; 8:45 am]

BILLING CODE 4410–11–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 78 FR 22916, and one comment was received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission (including comments) may be found at: *http://www.reginfo.gov/public/do/PRAMain.* Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions f 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: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, Virginia 22230 or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

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 703–292–7556.

NSF 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.

SUPPLEMENTARY INFORMATION:

Comments: As required by 5 CFR 1320.8(d), comments on the information collection activities as part of this study were solicited through publication of a 60-Day Notice in the **Federal Register** on April 17, 2013, at 78 FR 22916. We received one comment, to which we here respond.

Commenter: The Council on Governmental Relations (COGR) raised a general concern that additional reporting requirements presented added burden on their members.

Response: The reporting requirements and estimates on the hourly burden were discussed with the management of the Centers. Center Directors and their management staff, the primary respondents to this data collection, were consulted for feedback on the availability of data, frequency of data collection, the clarity of instructions, and the data elements. Their feedback confirmed that the frequency of data collection was appropriate and that they did not provide these data in other data collections. After consideration of this comment, we are moving forward with our submission to OMB.

Title of Collection: Grantee Reporting Requirements for National user facilities managed by the NSF Division of Materials Research.

OMB Approval Number: 3145–NEW.

Type of Request: Intent to seek approval to establish an information collection.

Abstract: The NSF Division of Materials Research (DMR) supports a number of National user facilities that provide specialized capabilities and instrumentation to the scientific community on a competitive proposal basis. In addition to the user program, these facilities support in-house research, development of new instrumentation or techniques, education, and knowledge transfer.

The facilities integrate research and education for students and post-docs involved in experiments, and support extensive K–12 outreach to foster an interest in Science Technology Engineering and Mathematics (STEM) and STEM careers. Facilities capitalize on diversity through participation in center activities and demonstrate leadership in the involvement of groups underrepresented in science and engineering. National User Facilities will be required to submit annual reports on progress and plans, which will be used as a basis for performance review and determining the level of continued funding. User facilities will be required to develop a set of management and performance indicators for submission annually to NSF via the Research Performance Project Reporting (RPPR) module in Research.gov. These indicators are both quantitative and descriptive and may include, for example, lists of successful proposal and users, the characteristics of facility personnel and students; sources of financial support and in-kind support; expenditures by operational component; research activities; education activities; knowledge transfer activities; patents, licenses; publications; degrees granted to students supported through the facility or users of the facility; descriptions of significant advances and other outcomes of this investment. Such reporting requirements are included in the cooperative agreement, which is binding between the academic institution and the NSF.

Each facility's annual report will address the following categories of activities: (1) Research, (2) education, (3) knowledge transfer, (4) partnerships, (5) diversity, (6) management, and (7) budget issues. For each of the categories the report will describe overall objectives and metrics for the reporting period, challenges or problems the facility has encountered in making progress towards goals, anticipated problems in the following year, and specific outputs and outcomes. Facilities are required to file a final report through the RPPR. Final reports contain similar information and metrics as annual reports, but are retrospective.

Use of the Information: NSF will use the information to continue funding of the DMR national user facilities, and to evaluate the progress of the program.

Estimate of Burden: 790 hours per facility for three national user facilities for a total of 2,370 hours.

Respondents: Non-profit institutions.

Estimated Number of Responses per Report: One from each of the DMR user facilities.

Dated: December 20, 2013.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2013–31126 Filed 12–27–13; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2013–0279]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 19, Notices, Instructions, and Reports to Workers: Inspection and Investigations.

2. *Current OMB approval number:* 3150–0044.

3. *How often the collection is required:* As necessary in order that adequate and timely reports of radiation exposure be made to individuals involved in NRC-licensed activities.

4. *Who is required or asked to report:* Licensees authorized to receive, possess, use, or transfer material licensed by the NRC.

5. *The number of annual respondents:* 700.

6. *The number of hours needed annually to complete the requirement or request:* 213,517.5

7. *Abstract:* Title 10 of the *Code of Federal Regulations,* Part 19, requires licensees to advise workers on an annual basis of any radiation exposure in excess of 1mSv (100 mrem) they may have received as a result of NRC-licensed activities or when certain conditions are met. These conditions apply during termination of the worker's employment, at the request of the workers, former workers, or when the worker's employer (the NRC licensee) must report radiation exposure information on the worker to the NRC. Part 19 also establishes requirements for instructions by licensees to individuals participating in licensed activities and options available to these individuals in connection with Commission inspections of licensees to ascertain compliance with the provisions of the Atomic Energy Act of 1954, as amended, Title II of the Energy Reorganization Act of 1974, and regulations, orders and licenses there under regarding radiological working conditions.

The worker should be informed of the radiation dose he or she receives because: (a) That information is needed by both a new employer and the individual when the employee changes jobs in the nuclear industry; (b) the individual needs to know the radiation dose received as a result of the accident or incident (if this dose is in excess of the 10 CFR Part 20 limits) so that he or she can seek counseling about future work involving radiation, medical attention, or both, as desired; and (c) since long-term exposure to radiation may be an adverse health factor, the individual needs to know whether the accumulated dose is being controlled within NRC limits. The worker also needs to know about health risks from occupational exposure to radioactive materials or radiation, precautions or procedures to minimize exposure, worker responsibilities and options to report any licensee conditions which may lead to or cause a violation of Commission regulations, and individual radiation exposure reports which are available to him.

Submit, by February 28, 2014, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine and have copied for a fee publicly available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2013–0279. You may submit your comments by any of the following methods: Electronic comments go to *http://www.regulations.gov* and search for Docket No. NRC–2013–0279. Mail comments to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone at 301–415–6258, or by email to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 24th day of December, 2013.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2013–31154 Filed 12–27–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–014 AND 52–015; NRC–2008–0043]

Tennessee Valley Authority, Exemption From the Requirement To Submit an Annual Update to the Final Safety Analysis Report Included in a Combined License Application

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to an October 28, 2013, request from Tennessee Valley Authority (TVA). On September 29, 2010, TVA requested that the NRC suspend review of its combined license (COL) application until further notice. On October 28, 2013, TVA requested an exemption from certain regulatory requirements that require them to submit updates to the Final Safety Analysis Report (FSAR) included in their COL Application until requesting the NRC to resume its review of their COL application. The NRC staff reviewed this request and determined that it is appropriate to grant the exemption, but stipulated that the updates to the FSAR must be submitted prior to requesting the NRC resume its review of the COL application or by December 31, 2014, whichever comes first.

ADDRESSES: Please refer to Docket ID NRC–2008–0043 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0043. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that the document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Anthony Minarik, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; telephone: 301–415–6185; email: *Anthony.Minarik@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The following sections include the text of the exemption in its entirety as issued to TVA.

1.0 Background

On October 30, 2007 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML073110527) Tennessee Valley Authority (TVA), submitted to the U.S. Nuclear Regulatory Commission (NRC) a Combined License (COL) application for two units of Westinghouse Electric Company's AP1000 advanced pressurized water reactors to be constructed and operated at the Bellefonte site, located near the cities of Hollywood and Scottsboro in Jackson County in northeast Alabama. (Docket numbers 052000–14 and 052000–15). The NRC docketed the Bellefonte Nuclear Plant, Units 3 and 4 (BLN 3&4) COL application on January 28, 2008. On September 29, 2010 (ADAMS Accession No. ML10274076) TVA requested that the NRC defer the review of the BLN 3&4 COL application. In a letter dated November 24, 2010 (ADAMS Accession No. ML102930207), the NRC granted TVA's request to defer the review and stated it was in a suspended status, meaning all review activities related to the BLN 3&4 COL application were eventually suspended after a closeout period while the application remained docketed. On October 28, 2013 (ADAMS Accession No. ML13325B058) TVA requested an exemption from the Title 10 of the *Code of Federal Regulations* (10 CFR) 50.71(e)(3)(iii) requirements to submit COL application Final Safety Analysis Report (FSAR) updates.

2.0 Request/Action

10 CFR 50.71(e)(3)(iii) requires that an applicant for a COL under Subpart C of 10 CFR Part 52, submit updates to their FSAR annually during the period from docketing the application to the Commission making its 52.103(g) finding.

Pursuant to 10 CFR 50.71(e)(3)(iii) the next annual update of the FSAR included in the BLN 3&4 COL application would be due in January of 2014 as TVA's application was docketed on January 28, 2008 and TVA had submitted Revision 3 to its FSAR on December 22, 2010 (ADAMS Accession No. ML110040748). In a letter dated, September 29, 2010 (ADAMS Accession No. ML10274076) TVA requested that the NRC suspend review of the BLN 3&4

COL application. The NRC granted TVA's request for suspension (ADAMS Accession No. ML102930207) and all review activities related to the BLN 3&4 COL application were eventually suspended after a closeout period while the application remained docketed. In a letter dated December 19, 2011 (ADAMS Accession No. ML11356A068) TVA stated that they were still deferred and had no updates to their FSAR. In a letter dated, October 28, 2013 (ADAMS Accession No. ML13325B058), TVA requested that the BLN 3&4 COL application be exempt from the 50.71(e)(3)(iii) requirements until requesting the NRC to resume the review of the BLN 3&4 COL application.

TVA's requested exemption is interpreted as a one-time schedule change from the requirements of 10 CFR 50.71(e)(3)(iii). In its request, TVA asked the NRC to grant the exemption from 10 CFR 50.71(e)(3)(iii), until they had asked the NRC to resume the review of the BLN 3&4 COL application. Because such a request is seen as open-ended, the NRC included an imposed December 31, 2014 deadline as part of its review of the exemption request. The exemption would allow TVA to submit the next FSAR update at a later date, but still in advance of NRC's reinstating its review of the application and in any event, by December 31, 2014. The current requirement to submit an FSAR update could not be changed, absent the exemption.

3.0 Discussion

Pursuant to 10 CFR 50.12 the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, including 10 CFR 50.71(e)(3)(iii) when: (1) the exemption(s) are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present. As relevant to the requested exemption, special circumstances exist if: ''[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)).

The purpose of 10 CFR 50.71(e)(3)(iii) is to ensure that the NRC has the most up to date information regarding the COL application, in order to perform an efficient and effective review. The rule targeted those applications that are being actively reviewed by the NRC. Because TVA requested the NRC suspend its review of the BLN 3&4 COL application, compelling TVA to submit its FSAR on an annual basis is not necessary as the FSAR will not be changed or updated until the review is restarted. The purpose of 50.71(e)(3)(iii) would still be achieved if the update is submitted prior to restarting the review and in any event by December 31, 2014.

For the reasons stated above, the application of 50.71(e)(3)(iii) in this particular circumstance can be deemed unnecessary in order to achieve the underlying purpose of the rule, therefore special circumstances are present.

Authorized by Law

The exemption is a one-time schedule exemption from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow TVA to submit the next BLN 3&4 COL application FSAR update on or before December 31, 2014 in lieu of the required scheduled submittal in January 2014. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50 . The NRC staff has determined that granting TVA the requested one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to provide for a timely and comprehensive update of the FSAR associated with a COL application in order to support an effective and efficient review by the NRC staff and issuance of the NRC staff's safety evaluation report. The requested exemption is solely administrative in nature, in that it pertains to the schedule for submittal to the NRC of revisions to an application under 10 CFR Part 52, for which a license has not been granted. In addition, since the review of the application has been suspended, any update to the application submitted by TVA will not be reviewed by the NRC at this time. Based on the nature of the requested exemption as described above, no new accident precursors are created by the exemption thus, neither the probability, nor the consequences of postulated accidents are increased. Therefore, there is no undue risk to public health and safety. Plant construction cannot proceed until the NRC review of the application is completed, a mandatory hearing is completed, and a license is issued. Additionally, based on the nature of the requested exemption as described above, no new accident precursors are created by the exemption; thus neither the probability, nor the consequences of postulated accidents are increased. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The requested exemption would allow TVA to submit the next FSAR update prior to requesting the NRC to resume the review and, in any event, on or before December 31, 2014. This schedule change has no relation to security issues. Therefore, the common defense and security is not impacted.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii) are present ''[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)). The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to ensure that the NRC has the most up-to date information in order to perform its review of a COL application efficiently and effectively. Because the requirement to annually update the FSAR was intended for active reviews and BLN 3&4 COL application review is now suspended, the application of this regulation in this particular circumstance is unnecessary in order to achieve its underlying purpose. If the NRC were to grant this exemption, and TVA were then required to update its FSAR by December 31, 2014, or prior to any request to restart of their review, the purpose of the rule would still be achieved.

Therefore, since the underlying purpose of the rule is not served by application of the rule in this circumstance, the special circumstances required by 10 CFR 50.12(a)(2)(ii) and 50.12(a)(2)(v) for the granting of an exemption from 10 CFR 50.71(e)(3)(iii) exist.

Eligibility for Categorical Exclusion From Environmental Review

With respect to the exemption's impact on the quality of the human environment, the NRC has determined that this specific exemption request is eligible for categorical exclusion as identified in 10 CFR 51.22(c)(25) and justified by the NRC staff as follows:

(c) The following categories of actions are categorical exclusions:

(25) Granting of an exemption from the requirements of any regulation of this chapter, provided that—

(i) There is no significant hazards consideration;

The criteria for determining whether there is no significant hazards consideration are found in 10 CFR 50.92. The proposed action involves only a schedule change regarding the submission of an update to the application for which the licensing review has been suspended. Therefore, there is no significant hazards consideration because granting the proposed exemption would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

(ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;

The proposed action involves only a schedule change which is administrative in nature, and does not involve any changes to be made in the types or significant increase in the amounts of effluents that may be released offsite.

(iii) There is no significant increase in individual or cumulative public or occupational radiation exposure;

Since the proposed action involves only a schedule change which is administrative in nature, it does not contribute to any significant increase in occupational or public radiation exposure.

(iv) There is no significant construction impact;

The proposed action involves only a schedule change which is administrative in nature; the application review is suspended until further notice, and there is no consideration of any construction at this time, and hence the proposed action does not involve any construction impact.

(v) There is no significant increase in the potential for or consequences from radiological accidents; and

The proposed action involves only a schedule change which is administrative in nature, and does not impact the probability or consequences of accidents.

(vi) The requirements from which an exemption is sought involve:

(B) Reporting requirements;

The exemption request involves submitting an updated FSAR by TVA and

(G) Scheduling requirements;

The proposed exemption relates to the schedule for submitting FSAR updates to the NRC.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also special circumstances are present. Therefore, the Commission hereby grants TVA a one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) pertaining to the BLN 3&4 COL application to allow submittal of the next FSAR update prior to any request to the NRC to resume the review, and in any event, no later than December 31, 2014.

Pursuant to 10 CFR 51.22, the Commission has determined that the exemption request meets the applicable categorical exclusion criteria set forth in 10 CFR 51.22(c)(25), and the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 19th day of December 2013.

For the Nuclear Regulatory Commission.

Lawrence Burkhart,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2013–31232 Filed 12–27–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–014 and 52–015; NRC–2008–0043]

Tennessee Valley Authority, Combined License Application for Bellefonte Units 3 and 4 Exemption from the Requirements to Submit an Update to the Departures Report Submitted With a Combined License Application

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to an October 28, 2013, request from Tennessee Valley Authority (TVA). On September 29, 2010, TVA requested that the NRC suspend review of its combined license (COL) application until further notice. On October 28, 2013, TVA requested an exemption from certain regulatory requirements that require them to submit a departures report that describes the generic changes and plant-specific departures from the generic Design Certification Document (DCD) (departures report) until requesting the NRC to resume its review of their COL application. The NRC staff reviewed this request and determined that it is appropriate to grant the exemption, but stipulated that the departures report must be submitted prior to requesting the NRC resume its review of the COL application or by December 31, 2014, whichever comes first.

ADDRESSES: Please refer to Docket ID NRC–2008–0043 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0043. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that the document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Anthony Minarik, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6185; email: *Anthony.Minarik@nrc.gov*.

SUPPLEMENTARY INFORMATION: The following sections include the text of the exemption in its entirety as issued to TVA.

1.0 Background

On October 30, 2007 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML073110527), Tennessee Valley Authority (TVA), submitted to the U.S. Nuclear Regulatory Commission (NRC) a Combined License (COL) Application for two units of Westinghouse Electric Company's AP1000 advanced

pressurized water reactors (AP1000) to be constructed and operated at the Bellefonte site, located near the cities of Hollywood and Scottsboro in Jackson County in northeast Alabama. (Docket Numbers 052000–14 and 052000–15). The NRC docketed the Bellefonte Nuclear Plant, Units 3 and 4 (BLN 3&4) COL application on January 28, 2008. On September 29, 2010 (ADAMS Accession No. ML102740476), TVA requested that the NRC defer the review of the BLN 3&4 COL application. In a letter dated November 24, 2010 (ADAMS Accession No. ML102930207), the NRC granted TVA's request to defer the review and stated it was in a suspended status, meaning all review activities related to the BLN 3&4 COL application were eventually suspended after a closeout period while the application remained docketed. On October 28, 2013 (ADAMS Accession No. ML13325B058), TVA requested an exemption from the Title 10 of the *Code of Federal Regulations* (10 CFR) 10 CFR Part 52, Appendix D, Paragraph X.B.2 and X.B.3.b requirements to submit a report that describes the departures from the generic D.C.D which reflect the generic changes and plant-specific departures from the certified design referenced in the application. These reports are required to be submitted semi-annually and may be submitted along with updates to the COL application.

2.0 Request/Action

10 CFR Part 52, Appendix D, Paragraphs X.B.2 and X.B.3.b require that an applicant for a COL under Subpart C of 10 CFR Part 52, submit a departures report on a semi-annual basis. The departures report details the differences between the application and the certified design it references, in the case of Bellefonte that is the AP1000 design, during the period from docketing the application to the Commission making its 52.103(g) finding.

Pursuant to 10 CFR Part 52, Appendix D, Paragraph X.B.2 and X.B.3.b the next departures report submittal would be due in January 2014 as TVA's application was docketed on January 28, 2008, and TVA had submitted Revision 3 to its Departures and Exemption Request Updates on December 22, 2010 (ADAMS Accession No. ML110040464), as part of Revision 3 to the BLN 3&4 COL application. In a letter dated September 29, 2010 (ADAMS Accession No. ML102740476), TVA requested that the NRC suspend review of the BLN 3&4 COL application. The NRC granted TVA's request for suspension (ADAMS Accession No. ML102930207) and all review activities related to the BLN 3&4 COL application were eventually suspended after a closeout period while the application remained docketed. In a letter dated December 19, 2011 (ADAMS Accession No. ML11356A068), TVA stated that they were still deferred and had no updates to their plant-specific D.C.D. In a letter dated October 28, 2013 (ADAMS Accession No. ML13325B058), TVA requested that the BLN 3&4 COL application be exempt from the 10 CFR Part 52, Appendix D, Paragraph X.B.2 and X.B.3.b requirements until requesting the NRC to resume the review of the BLN 3&4 COL application.

TVA's exemption request is interpreted as a one-time schedule change from the requirements of 10 CFR Part 52, Appendix D, Paragraph X.B.2 and X.B.3.b. In its request, TVA asked the NRC to grant the exemption from 10 CFR Part 52, Appendix D, Paragraph X.B.2 and X.B.3.b, until they had asked the NRC to resume the review of the BLN 3&4 COL application. Because such a request is seen as open-ended, the NRC included an imposed December 31, 2014, deadline as part of its review of the exemption request. The exemption would allow TVA to submit the next departures report at a later date, but still in advance of NRC's reinstating its review of the application and in any event, by December 31, 2014. The current requirement to submit a departures report semi-annually could not be changed, absent the exemption.

3.0 Discussion

Pursuant to 10 CFR 52.7 and the requirements listed in 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 52, including 10 CFR Part 52, Appendix D, Paragraph X.B.2 and X.B.3.b when: (1) the exemption(s) are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present. As relevant to the requested exemption, special circumstances exist if: ''[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)).

The purpose of 10 CFR Part 52, Appendix D, Paragraph X.B.2 and X.B.3.b is to ensure that the NRC has the most up to date information regarding the site-specific differences between the application and the certified design it references, in order to perform an efficient and effective review. The rule targeted those applications that are being actively reviewed by the NRC. Because TVA requested the NRC suspend its review of the BLN 3&4 COL application, compelling TVA to submit the departures report on a semi-annual basis is not necessary as the information will not be changed or updated until the review is restarted. The purpose of 10 CFR Part 52, Appendix D, Paragraph X.B.2 and X.B.3.b would still be achieved if the departures report is submitted prior to restarting the review and in any event by December 31, 2014.

For the reasons stated above, the application of 10 CFR Part 52, Appendix D, Paragraph X.B.2 and X.B.3.b in this particular circumstance can be deemed unnecessary in order to achieve the underlying purpose of the rule, therefore special circumstances are present.

Authorized by Law

The exemption is a one-time schedule exemption from the requirements of 10 CFR Part 52, Appendix D, Paragraph X.B.2 and X.B.3.b. The exemption would allow TVA to submit the next departures report related to the BLN 3&4 COL application on or before December 31, 2014, in lieu of the required scheduled submittal in January 2014. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50. The NRC staff has determined that granting TVA the requested one-time exemption from the requirements of 10 CFR Part 52, Appendix D, Paragraph X.B.2 and X.B.3.b will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purposes of 10 CFR Part 52, Appendix D, Paragraph X.B.2 and X.B.3.b, is to alert the NRC of any plant-specific differences from the application and the certified design associated with a COL application in order to support an effective and efficient review by the NRC staff and issuance of the NRC staff's safety evaluation report. The requested exemption is solely administrative in nature, in that it pertains only to the schedule for submittal to the NRC of the departures report related to the BLN 3&4 COL application. In addition, since the review of the application has been suspended, any update to the application submitted by TVA will not be reviewed by the NRC at this time. Plant construction cannot proceed until the NRC review of the application is

completed, a mandatory hearing is completed, and a license is issued. Additionally, based on the nature of the requested exemption as described above, no new accident precursors are created by the exemption; thus, neither the probability nor the consequences of postulated accidents are increased. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The requested exemption would allow TVA to submit the next departures report related to the BLN 3&4 COL application prior to requesting the NRC to resume the review and, in any event, on or before December 31, 2014. This schedule change has no relation to security issues. Therefore, the common defense and security is not impacted.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii) are present ''[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(A)(2)(ii)). The underlying purpose of 10 CFR Part 52, Appendix D, Paragraph X.B.2 and X.B.3.b is to ensure that the NRC is fully aware and alerted of any application specific differences between the COL application and the certified design it may reference (in this case BLN 3&4 COL application and the AP1000 certified design) in order to perform its review of a COL application efficiently and effectively. Because the requirement to submit a departures report semi-annually as it relates to the referenced certified design was intended for active reviews and BLN 3&4 COL application review is now suspended, the application of this regulation in this particular circumstance is unnecessary in order to achieve its underlying purpose. If the NRC were to grant this exemption, and TVA were then required to submit the departures report related to the BLN 3&4 COL application by December 31, 2014, or prior to any request to restart of their review, the purpose of the rule would still be achieved.

Therefore, since the underlying purpose of the rule is not served by application of the rule in this circumstance, the special circumstance required by 10 CFR 50.12(a)(2)(ii) for the granting of an exemption from 10 CFR Part 52, Appendix D, Paragraph X.B.2 and X.B.3.b exists.

Eligibility for Categorical Exclusion From Environmental Review:

With respect to the exemption's impact on the quality of the human environment, the NRC has determined that this specific exemption request is eligible for categorical exclusion as identified in 10 CFR 51.22(c)(25) and justified by the NRC staff as follows:

(c) The following categories of actions are categorical exclusions:

(25) Granting of an exemption from the requirements of any regulation of this chapter, provided that—

(i) There is no significant hazards consideration;

The criteria for determining whether there is no significant hazards consideration are found in 10 CFR 50.92. The proposed action involves only a schedule change regarding the submission of a departures report related to the application for which the licensing review has been suspended. Therefore, there is no significant hazards consideration because granting the proposed exemption would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

(ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;

The proposed action involves only a schedule change which is administrative in nature, and does not involve any changes to be made in the types or significant increase in the amounts of effluents that may be released offsite.

(iii) There is no significant increase in individual or cumulative public or occupational radiation exposure;

Since the proposed action involves only a schedule change which is administrative in nature, it does not contribute to any significant increase in occupational or public radiation exposure.

(iv) There is no significant construction impact;

The proposed action involves only a schedule change which is administrative in nature; the application review is suspended until further notice, and there is no consideration of any construction at this time, and hence the proposed action does not involve any construction impact.

(v) There is no significant increase in the potential for or consequences from radiological accidents; and

The proposed action involves only a schedule change which is administrative in nature, and does not impact the probability or consequences of accidents.

(vi) The requirements from which an exemption is sought involve:

(B) Reporting requirements;

The exemption request involves submitting a departures report related to the BLN 3&4 COL application by TVA and

(G) Scheduling requirements;

The proposed exemption relates to the schedule for submitting departures report related to the BLN 3&4 COL application by TVA.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 52.7 and the requirements listed in 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also special circumstances are present. Therefore, the Commission hereby grants TVA a one-time exemption from the requirements of 10 CFR Part 52, Appendix D, Paragraph X.B.2 and X.B.3.b pertaining to the BLN 3&4 COL application to allow submittal of the next departures report related the BLN 3&4 COL application prior to any request to the NRC to resume the review, and in any event, no later than December 31, 2014.

Pursuant to 10 CFR 51.22, the Commission has determined that the exemption request meets the applicable categorical exclusion criteria set forth in 10 CFR 51.22(c)(25), and the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 19th day of December 2013.

For the Nuclear Regulatory Commission.

Lawrence J. Burkhart,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2013–31235 Filed 12–27–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–014 and 52–015; NRC–2008–0043]

Tennessee Valley Authority: Exemption From Requirements To Revise Combined License Application To Address Enhancements to Emergency Preparedness Rules

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to an October 28, 2013, request from Tennessee Valley Authority (TVA). On September 29, 2010, TVA requested that the NRC suspend review of its combined license application until further notice. On October 28, 2013 TVA requested an exemption from certain regulatory requirements which, if granted, would allow them to revise their combined license (COL) application in order to address enhancements to the Emergency Preparedness (EP) rules at the same time as requesting the NRC to resume the review of their COL application rather than by December 31, 2013 as the regulations currently require. The NRC staff reviewed this request and determined that it is appropriate to grant the exemption but stipulated that the revised application must be submitted prior to requesting the NRC resume its review of the COL application or by December 31, 2014 whichever comes first.

ADDRESSES: Please refer to Docket ID NRC–2008–0043 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0043. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select *''ADAMS Public Documents''* and then select *''Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that the document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Anthony Minarik, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington DC, 20555–0001; telephone: 301–415–6185; email: *Anthony.Minarik@nrc.gov.*

SUPPLEMENTARY INFORMATION: The following sections include the text of the exemption in its entirety as issued to TVA

1.0 Background

On October 30, 2007 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML073110527) Tennessee Valley Authority (TVA), submitted to the U.S. Nuclear Regulatory Commission (NRC) a Combined License (COL) application for two units of Westinghouse Electric Company's AP1000 advanced pressurized water reactors to be constructed and operated at the Bellefonte site, located near the cities of Hollywood and Scottsboro in Jackson County in northeast Alabama. (Docket numbers 052000–14 and 052000–15). The NRC docketed the Bellefonte Nuclear Plant, Units 3 and 4 (BLN 3&4) COL application on January 28, 2008. On September 29, 2010 (ADAMS Accession No. ML102740476) TVA requested that the NRC defer the review of the BLN 3&4 COL application. In a letter dated November 24, 2010 (ADAMS Accession No. ML102930207), the NRC granted TVA's request to defer the review and stated it was in a suspended status, meaning all review activities related to the BLN 3&4 COL application were eventually suspended after a closeout period while the application remained docketed. On October 28, 2013 (ADAMS Accession No. ML13325B058) TVA requested an exemption from the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50 Appendix E, Section I.5 as referenced by 10 CFR 52.79(a)(21), to submit an update to the COL application, addressing the enhancements to the Emergency Preparedness (EP) rules by December 31, 2013.

2.0 Request/Action

10 CFR Part 50 Appendix E, Section I.5 requires that an applicant for a COL under Subpart C of 10 CFR Part 52 whose application was docketed prior to December 23, 2011, must revise their COL application to comply with the EP rules published in the **Federal Register** (76 FR 72560) on November 23, 2011. An applicant that does not receive a COL before December 31, 2013 shall revise its COL application to comply with these changes no later than December 31, 2013.

Because TVA will not hold a COL prior to December 31, 2013, it is therefore, required to revise its application to be compliant with the new EP rules by December 31, 2013. By letter dated September 29, 2010 (ADAMS Accession No. ML10274076), TVA requested that the NRC suspend review of the BLN 3&4 COL application. The NRC granted TVA's request for suspension and TVA reaffirmed its suspended status in a letter dated December 19, 2011 (ADAMS Accession Number ML11356A068). In a letter dated, October 28, 2013 (ADAMS Accession No. ML13325B058), TVA requested an exemption from the requirements of 10 CFR Part 50 Appendix E, Section I.5 until the time that TVA requests the NRC to resume the review of the BLN 3&4 COL application. TVA's requested exemption is interpreted as a one-time schedule change from the requirements of 10 CFR 50 Appendix E, Section I.5. In its request, TVA asked the NRC to grant the exemption from 10 CFR Part 50 Appendix E, Section I.5 until it asked the NRC to resume the review of the BLN 3&4 COL application. Because such a request is seen as open-ended, the NRC included an imposed December 31, 2014, deadline as part of its review of the exemption request. The exemption would allow TVA to comply with the new EP rule at a later date, but still in advance of the NRC resuming its review of the application and in any event, by December 31, 2014. The current requirement to comply with the new EP rule by December 31, 2013 could not be changed, absent the exemption.

3.0 Discussion

Pursuant to 10 CFR 50.12 the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, including 10 CFR 50 Appendix E Section I.5 when: (1) the exemption(s) are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common

defense and security; and (2) special circumstances are present. As relevant to the requested exemption, special circumstances exist if: ''[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)).

The purpose of 10 CFR Part 50 Appendix E, Section I.5 was to ensure that applicants and new COL holders updated their COL applications or Combined License to allow the NRC to review them efficiently and effectively, and to bring the applicants or licensees into compliance prior to receiving a license, or, for licensees, prior to operating the plant. The targets of Section I.5 of the rule were those applications that were being actively reviewed by the NRC Staff when the rule came into effect on November 23, 2011. Because TVA requested the NRC suspend its review of the BLN 3&4 COL application, compelling TVA to revise its COL application in order to meet the December 31, 2013 compliance deadline would result in unnecessary burden and hardship for the applicant to meet the compliance date. So long as it is recognized that the COL application must be updated to comply with the enhancements to the EP rules, prior to the NRC approving their COL application, it makes no difference if they revise the COL application now, when they request the review be restarted, or December 31, 2014. For this reason the application of 10 CFR Part 50 Appendix E, Section I.5, for the suspended BLN 3&4 COL application is deemed unnecessary, and therefore special circumstances are present.

Authorized by Law

The exemption is a one-time schedule exemption from the requirements of 10 CFR Part 50 Appendix E, Section I.5. The exemption would allow TVA to revise its COL application, and comply with the new EP rules on or before December 31, 2014 in lieu of December 31, 2013, the date required by 10 CFR Part 50 Appendix E, Section I.5. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50 . The NRC staff has determined that granting TVA the requested one-time exemption from the requirements of 10 CFR 50 Appendix E, Section I.5 will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of the enhancements to Emergency Preparedness found in 10 CFR Part 50, Appendix E, is to amend certain EP requirements to enhance protective measures in the event of a radiological emergency; address, in part, enhancements identified after the terrorist events of September 11, 2001; clarify regulations to effect consistent EP implementation among licensees; and modify certain requirements to be more effective and efficient. Since plant construction cannot proceed until the NRC review of the application is completed, a mandatory hearing is completed and a license is issued, the exemption does not increase the probability of postulated accidents. Additionally, based on the nature of the requested exemption as described above, no new accident precursors are created by the exemption; thus neither the probability, nor the consequences of postulated accidents are increased. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The requested exemption would allow TVA to submit the revised COL application prior to requesting the NRC to resume the review and, in any event, on or before December 31, 2014. This schedule change has no relation to security issues. Therefore, the common defense and security is not impacted.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii) are present whenever ''[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)). The underlying purpose of 10 CFR part 50 Appendix E, Section I.5 is to ensure that applicants are in compliance with the new EP rules in a time that allows the NRC to effectively review their revised COL application prior to issuance of the license. Because the BLN 3&4 COL application review is now suspended, the application of this regulation in this particular circumstance is unnecessary in order to achieve its underlying purpose. If the NRC were to grant this exemption, and TVA were then required to comply by December 31, 2014 or prior to any request to restart of their review, the purpose of the rule would still be achieved. Therefore, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of an exemption from 10 CFR Part 50, Appendix E, Section I.5 exist.

Eligibility for Categorical Exclusion From Environmental Review

With respect to the exemption's impact on the quality of the human environment, the NRC has determined that this specific exemption request is eligible for categorical exclusion as identified in 10 CFR 51.22(c)(25) and justified by the NRC staff as follows:

(c) The following categories of actions are categorical exclusions:

(25) Granting of an exemption from the requirements of any regulation of this chapter, provided that—

(i) There is no significant hazards consideration;

The criteria for determining whether there is no significant hazards consideration are found in 10 CFR 50.92. The proposed action involves only a schedule change regarding the submission of an update to the application for which the licensing review has been suspended. Therefore, there are no significant hazards considerations because granting the proposed exemption would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

(ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;

The proposed action involves only a schedule change which is administrative in nature, and does not involve any changes to be made in the types or significant increase in the amounts of effluents that may be released offsite.

(iii) There is no significant increase in individual or cumulative public or occupational radiation exposure;

Since the proposed action involves only a schedule change which is administrative in nature, it does not contribute to any significant increase in occupational or public radiation exposure.

(iv) There is no significant construction impact;

The proposed action involves only a schedule change which is administrative in nature; the application review is suspended until further notice, and there is no consideration of any construction at this time, and hence

the proposed action does not involve any construction impact.

(v) There is no significant increase in the potential for or consequences from radiological accidents; and

The proposed action involves only a schedule change which is administrative in nature, and does not impact the probability or consequences of accidents.

(vi) The requirements from which an exemption is sought involve:

(B) Reporting requirements;

The exemption request involves submitting an updated COL application by TVA

and

(G) Scheduling requirements;

The proposed exemption relates to the schedule for submitting a COL application update to the NRC.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also special circumstances are present. Therefore, the Commission hereby grants TVA a one-time exemption from the requirements of 10 CFR 10 CFR Part 50, Appendix E, Section I.5 pertaining to the BLN 3&4 COL application to allow submittal of the revised COL application that complies with the enhancements to the EP rules prior to any request to the NRC to resume the review, and in any event, no later than December 31, 2014.

Pursuant to 10 CFR 51.22, the Commission has determined that the exemption request meets the applicable categorical exclusion criteria set forth in 10 CFR 51.22(c)(25), and the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 19th day of December 2013.

For The Nuclear Regulatory Commission

Lawrence Burkhart,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors,

[FR Doc. 2013–31210 Filed 12–27–13; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2014–19; Order No. 1924]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an additional Global Expedited Package Services (GEPS) 3 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 30, 2013.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Background
III. Contents of Filing
IV. Commission Action
V. Ordering Paragraphs

I. Introduction

On December 20, 2013, the Postal Service filed Notice that it has entered into an additional Global Expedited Package Services (GEPS) 3 negotiated service agreement (Agreement).[1] The Postal Service seeks inclusion of the Agreement within the GEPS 3 product. *Id.* at 2.

II. Background

The Commission approved the addition of the GEPS Contracts product to the competitive product list following consideration of a Postal Service filing in Docket No. CP2008–5 based on Governors' Decision No. 08–7.[2] The Commission later added GEPS 3 to the competitive product list and authorized the agreement filed in Docket No. CP2010–71 to serve as the baseline agreement for comparison of potentially functionally equivalent agreements.[3]

Effective date; term. The Postal Service will notify its contracting partner of the effective date no later than 30 days after receiving approval from oversight entities. Notice, Attachment 1 at 7 (Article 12). The term of the Agreement is for one calendar year from the effective date or the last day of the month which falls one calendar year from the effective date, unless terminated sooner pursuant to contractual terms. *Id.*

III. Contents of Filing

The Notice includes a public Excel file consisting of financial workpapers and the following attachments:

- Attachment 1—a redacted copy of the Agreement;
- Attachment 2—a redacted copy of the certified statement required by 39 CFR 3015.5(c)(2);
- Attachment 3—a redacted copy of Governors' Decision No. 08–7, which establishes prices and classifications for GEPS Contracts; and
- Attachment 4—an application for non-public treatment of materials to be filed under seal.

Unredacted versions of Attachments 1 and 2 and the Excel file were also filed under seal. Notice at 2.

The Notice lists and summarizes differences between the Agreement and the baseline agreement. These include differences in two of the introductory paragraphs of the Agreement; revisions to numerous existing articles; and new, deleted, and renumbered articles. *Id.* at 4–7. The Postal Service states that these differences affect neither the fundamental service being offered under the Agreement nor the Agreement's fundamental structure, and that nothing detracts from the conclusion that the Agreement is ''functionally equivalent in all pertinent respects'' to the baseline agreement. *Id.* at 7. It therefore seeks the inclusion of the Agreement within the GEPS 3 product. *Id.*

IV. Commission Action

The Commission establishes Docket No. CP2014–19 for consideration of matters raised by the Notice. Interested persons may submit comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and subpart B of 39 CFR part 3020. Comments are due no later than December 30, 2013. The public portions of the Postal Service's filing can be accessed via the Commission's Web site, *http://www.prc.gov.* Information concerning access to non-public material is located in 39 CFR part 3007.

The Commission appoints James F. Callow to serve as Public Representative in this proceeding.

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, December 20, 2013 (Notice).

[2] See Docket No. CP2008–5, Order No. 86, Order Concerning Global Expedited Package Services Contracts, June 27, 2008.

[3] See Docket Nos. MC2010–28 and CP2010–71, Order No. 503, Order Approving Global Expedited Package Services 3 Negotiated Service Agreement, July 29, 2010.

V. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2014–19 for consideration of the matters raised by the Postal Service's Notice.

2. Comments by interested persons in this proceeding are due no later than December 30, 2013.

3. Pursuant to 39 U.S.C. 505, the Commission appoints James F. Callow to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2013–31104 Filed 12–27–13; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2014–18; Order No. 1923]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an additional Global Expedited Package Services (GEPS) 3 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 30, 2013.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
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V. Ordering Paragraphs

I. Introduction

On December 20, 2013, the Postal Service filed Notice that it has entered into an additional Global Expedited Package Services (GEPS) 3 negotiated service agreement (Agreement).[1] The Postal Service seeks inclusion of the Agreement within the GEPS 3 product. *Id.* at 2.

II. Background

The Commission approved the addition of the GEPS Contracts product to the competitive product list following consideration of a Postal Service filing in Docket No. CP2008–5 based on Governors' Decision No. 08–7.[2] The Commission later added GEPS 3 to the competitive product list and authorized the agreement filed in Docket No. CP2010–71 to serve as the baseline agreement for comparison of potentially functionally equivalent agreements.[3]

Effective date; term. The Postal Service will notify its contracting partner of the effective date no later than 30 days after receiving approval from oversight entities. Notice, Attachment 1 at 7 (Article 12). The term of the Agreement is for one calendar year from the effective date or the last day of the month which falls one calendar year from the effective date, unless terminated sooner pursuant to contractual terms. *Id.*

III. Contents of Filing

The Notice includes a public Excel file consisting of financial workpapers and the following attachments:

- Attachment 1—a redacted copy of the Agreement;
- Attachment 2—a redacted copy of the certified statement required by 39 CFR 3015.5(c)(2);
- Attachment 3—a redacted copy of Governors' Decision No. 08–7, which establishes prices and classifications for GEPS Contracts; and
- Attachment 4—an application for non-public treatment of materials to be filed under seal.

Unredacted versions of Attachments 1 and 2 and the Excel file were also filed under seal. Notice at 2.

The Notice lists and summarizes differences between the Agreement and the baseline agreement. These include differences in two of the introductory paragraphs of the Agreement; revisions to numerous existing articles; and new, deleted, and renumbered articles. *Id.* at 4–7. The Postal Service states that these differences affect neither the fundamental service being offered under the Agreement nor the Agreement's fundamental structure, and that nothing detracts from the conclusion that the Agreement is ''functionally equivalent in all pertinent respects'' to the baseline agreement. *Id.* at 7. It therefore seeks the inclusion of the Agreement within the GEPS 3 product. *Id.*

IV. Commission Action

The Commission establishes Docket No. CP2014–18 for consideration of matters raised by the Notice. Interested persons may submit comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and subpart B of 39 CFR part 3020. Comments are due no later than December 30, 2013. The public portions of the Postal Service's filing can be accessed via the Commission's Web site, *http://www.prc.gov.* Information concerning access to non-public material is located in 39 CFR part 3007.

The Commission appoints Lyudmila Y. Bzhilyanskaya to serve as Public Representative in this proceeding.

V. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2014–18 for consideration of the matters raised by the Postal Service's Notice.

2. Comments by interested persons in this proceeding are due no later than December 30, 2013.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Lyudmila Y. Bzhilyanskaya to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2013–31103 Filed 12–27–13; 8:45 am]

BILLING CODE 7710–FW–P

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[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, December 20, 2013 (Notice).

[2] See Docket No. CP2008–5, Order No. 86, Order Concerning Global Expedited Package Services Contracts, June 27, 2008.

[3] See Docket Nos. MC2010–28 and CP2010–71, Order No. 503, Order Approving Global Expedited Package Services 3 Negotiated Service Agreement, July 29, 2010.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 13e–3 (Schedule 13E–3), OMB Control No. 3235–0007, SEC File No. 270–1.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 13e–3 and Schedule 13E–3 (17 CFR 240.13e–3 and 240.13e–100)—Rule 13e–3 prescribes the filing, disclosure and dissemination requirements in connection with a going private transaction by an issuer or an affiliate. Schedule 13E–3 provides shareholders and the marketplace with information concerning going private transactions that is important in determining how to respond to such transactions. The information collected permits verification of compliance with securities laws requirements and ensures the public availability and dissemination of the collected information. We estimate that Schedule 13E–3 is filed by approximately 600 issuers annually and it takes approximately 137.42 hours per response. We estimate that 25% of the 137.42 hours per response (34.355 hours) is prepared by the filer for a total annual reporting burden of 20,613 hours (34.355 hours per response × 600 responses).

Written 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: December 23, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–31138 Filed 12–27–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–30841]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

December 20, 2013.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of December 2013. A copy of each 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. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 14, 2014, and should be accompanied by proof of service on the applicant, 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 Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE., Washington, DC 20549–8010.

BlackRock Alternatives Allocation Portfolio LLC [File No. 811–22642]

BlackRock Alternatives Allocation FB Portfolio LLC [File No. 811–22643]

BlackRock Alternatives Allocation TEI Portfolio LLC [File No. 811–22644]

BlackRock Alternatives Allocation FB TEI Portfolio LLC [File No. 811–22645]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Between November 26, 2013, and December 10, 2013, each applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $15,000, $15,000, $25,000 and $25,000, respectively, incurred in connection with the liquidations were paid by applicants. Applicants have retained $49,042, $59,671, $76,452 and $77,063, respectively, in cash to pay certain outstanding liabilities.

Filing Date: The applications were filed on December 12, 2013.

Applicants' Address: 100 Bellevue Pkwy., Wilmington, DE 19809.

BlackRock High Income Shares [File No. 811–5495]

BlackRock Corporate High Yield Fund, Inc. [File No. 811–7634]

BlackRock Corporate High Yield Fund III, Inc. [File No. 811–8497]

BlackRock High Yield Trust [File No. 811–8991]

BlackRock Corporate High Yield Fund V, Inc. [File No. 811–10521]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicants transferred their assets to BlackRock Corporate High Yield Fund VI, Inc., and on November 18, 2013, made final distributions to their shareholders based on net asset value. Expenses of approximately $301,229, $314,259, $303,043, $244,919 and $329,737, respectively, incurred in connection with the reorganizations were paid by applicants or BlackRock Advisors, LLC, investment adviser to each applicant.

Filing Date: The applications were filed on December 6, 2013.

Applicants' Address: 100 Bellevue Pkwy., Wilmington, DE 19809.

Calvert Cash Reserves [File No. 811–3418]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has transferred its assets to Calvert Ultra-Short Income Fund, a series of The Calvert Fund, and on September 27, 2013, made a final distribution to its shareholders based on net asset value.

Expenses of approximately $24,737 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on November 21, 2013.

Applicant's Address: 4550 Montgomery Ave., Suite 1125N, Bethesda, MD 20814.

UBS Eucalyptus Fund, L.L.C. [File No. 811–9583]

UBS Willow Fund, L.L.C. [File No. 811–9841]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On October 21, 2013, and November 18, 2013, respectively, applicants made final liquidating distributions to their shareholders, based on net asset value. Each applicant was responsible for expenses of $11,000 incurred in connection with the liquidations.

Filing Date: The applications were filed on November 27, 2013.

Applicants' Address: 677 Washington Blvd., Stamford, CT 06901.

Old Field Fund, LLC [File No. 811–811–21946]

Old Field Master Fund, LLC [File No. 811–21947]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 3, 2013, applicants made final liquidating distributions to their shareholders, based on net asset value. Applicants paid $27,100 and $40,900, respectively, for expenses incurred in connection with the liquidations.

Filing Date: The applications were filed on December 5, 2013.

Applicants' Address: 733 Third Ave., 11th Floor, New York, NY 10017.

RiverSource Government Income Series, Inc. [File No. 811–4260]

RiverSource International Series, Inc. [File No. 811–4075]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. Applicants transferred their assets to corresponding series of Columbia Funds Series Trust, and on June 1, 2011, and April 5, 2011, respectively, made final distributions to their shareholders based on net asset value. Expenses of $232,239 and $267,688, respectively, incurred in connection with the reorganization were paid by applicants and Columbia Management Investment Advisers, LLC, applicants' investment adviser.

Filing Date: The applications were filed on December 5, 2013.

Applicants' Address: 901 Marquette Ave. South, Suite 2810, Minneapolis, MN 55402–3268.

RiverSource Market Advantage Series, Inc. [File No. 811–5897]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant transferred its assets to Columbia Funds Series Trust, and on August 9, 2011, made a final distribution to its shareholders based on net asset value. Expenses of $38,190 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on December 5, 2013.

Applicant's Address: 901 Marquette Ave. South, Suite 2810, Minneapolis, MN 55402–3268.

PC&J Performance Fund [File No. 811–3906]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 28, 2013, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $4,050 incurred in connection with the liquidation were paid by PC&J Service Corp., applicant's transfer agent.

Filing Dates: The application was filed on December 2, 2013, and amended on December 17, 2013.

Applicant's Address: 7812 McEwen Rd., Suite 400, Dayton, OH 45459.

Dreyfus Pennsylvania Municipal Money Market Fund [File No. 811–6126]

Dreyfus Massachusetts Municipal Money Market Fund [File No. 811–6273]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On December 21, 2012, and December 20, 2012, respectively, applicants made a liquidating distribution to their shareholders, based on net asset value. Each applicant incurred $2,087 in expenses in connection with its liquidation.

Filing Date: The applications were filed on November 18, 2013.

Applicants' Address: c/o The Dreyfus Corporation, 200 Park Ave., New York, NY 10166.

PC&J Preservation Fund [File No. 811–4204]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. All of applicant's shareholders redeemed their shares by August 28, 2013. Expenses of $4,050 incurred in connection with the liquidation were paid by PC&J Service Corp., applicant's transfer agent.

Filing Dates: The application was filed on September 18, 2013 and amended on November 22, 2013.

Applicant's Address: 7812 McEwen Rd., Suite 400, Dayton, OH 45459.

NRM Investment Co. [File No. 811–2955]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 24, 2012, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant has retained approximately $2,268 for liquidating expenses. Applicant incurred expenses of approximately $17,085 in connection with the liquidation.

Filing Dates: The application was filed on March 20, 2013 and amended on December 19, 2013.

Applicant's Address: 288 Lancaster Ave., Malvern, PA 19355–1800.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–31135 Filed 12–27–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30843; File No. 812–14053]

IndexIQ ETF Trust, et al.; Notice of Application

December 23, 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 (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) certain open-end management investment companies or series thereof 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. The order would supersede the applicants' prior order.[1]

Applicants: IndexIQ ETF Trust (the ''Trust''); IndexIQ Advisors LLC (''IndexIQ Advisors''); and ALPS Distributors Inc. (''Distributor).

DATES: *Filing Dates:* The application was filed on July 3, 2012, and amended on November 21, 2012, May 15, 2013, September 19, 2013, December 18, 2013, December 20, 2013 and December 23, 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 January 17, 2014, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: the Trust and IndexIQ Advisors, c/o David Fogel, 800 Westchester Avenue, Suite N–611, Rye Brook, NY 10573; the Distributor, c/o Thomas A. Carter, 1290 Broadway, Suite 1100, Denver, CO 80203.

FOR FURTHER INFORMATION CONTACT: Mark N. Zaruba, Senior Counsel at (202) 551–6878, or Dalia O. Blass, Assistant Director, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series. The Trust currently offers a number of series (''Current Fund''), each of which operates as an exchange-traded fund (''ETF'') and tracks a specified index comprised of domestic or foreign equity and/or fixed income securities (''Underlying Index'').

2. Applicants request that the order apply to the Current Funds and any additional series of the Trust and any other open-end management investment company or series thereof that may be created in the future (''Future Funds'') and that tracks an Underlying Index.[2] Any Future Fund will be (a) advised by IndexIQ Advisors, or an entity controlling, controlled by, or common control with IndexIQ Advisors (included in the term ''Adviser'') and (b) comply with the terms and conditions of the application. The Current Fund and any Future Funds together are the ''Funds.''

3. Certain of the Funds will be based on Underlying Indexes which will be comprised of equity and/or fixed income securities issued by domestic issuers or non-domestic issuers meeting the requirements for trading in U.S. markets (''Domestic Indexes''). Other Funds will be based on Underlying Indexes which will be comprised of foreign and domestic or solely foreign equity and/or fixed income securities (''Foreign Indexes''). Funds which track Domestic Indexes are referred to as ''Domestic Funds'' and Funds which track Foreign Indexes are referred to as ''Foreign Funds.'' Underlying Indexes that include both long and short positions in securities are referred to as ''Long/Short Indexes.'' Funds based on Long/Short Indexes are ''Long/Short Funds.'' Underlying Indexes that use a 130/30 investment strategy are referred to as ''130/30 Indexes.'' Funds based on 130/30 Indexes are ''130/30 Funds.''

4. An Adviser registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') will serve as investment adviser to the Funds. The Adviser may enter into sub-advisory agreements with one or more investment advisers to act as a sub-adviser to a Fund (each, a ''Sub-Adviser''). Each Sub-Adviser will be registered or not subject to registration under the Advisers Act. The Distributor is a broker-dealer registered under the Securities Exchange Act of 1934 (the ''Exchange Act'') and will act as the principal underwriter and distributor for the Funds.[3]

5. Each Fund will hold certain securities and other instruments selected to correspond to the performance of its Underlying Index (''Portfolio Securities'').[4] Except with respect to Affiliated Index Funds (defined below), no entity that creates, compiles, sponsors or maintains an Underlying Index (''Index Provider'') will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, a Fund, the Adviser, any Sub-Adviser, or promoter of a Fund, or of the Distributor.

6. 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 substantially all of the Component Securities in its Underlying Index in the same approximate proportions as in the Underlying Index. A Fund using a representative sampling strategy will hold some, but may not hold all, of the Component Securities of its Underlying Index. Applicants state that use of the representative sampling strategy may prevent a Fund from tracking the performance of its Underlying Index with the same degree of accuracy as would a Fund that invests in every Component Security of 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 percent.

7. Each Fund will issue, on a continuous basis, Creation Units, which will typically consist of at least 25,000 Shares and have an initial price per Share of $5 to $400. All orders to

[1] Applicants previously received an order of exemption from the Commission with respect to the offering of funds based on indexes with an Affiliated Index Provider (defined below). See Investment Company Act Rel. Nos. 28638 (February 27, 2009) (notice) and 28653 (March 20, 2009) (order) (the ''Prior Order'').

[2] All entities that currently intend to rely on the 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. In addition, all of the applicants to the Prior Order have been named as applicants, and applicants will not continue to rely on the Prior Order if the requested order is issued. 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] Applicants request that the order also apply to future distributors that comply with the terms and conditions of the application.

[4] Applicants represent that each Fund will invest at least 80% of its total assets in the component securities that comprise its Underlying Index (''Component Securities'') or, as applicable, depositary receipts or TBA Transactions (as defined below) representing Component Securities. Each Fund also may invest up to 20% of its total assets (the ''20% Asset Basket'') 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.

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 delivering the Fund's prospectus to those persons acquiring 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. An Authorized Participant must be either (a) a ''Participating Party,'' (*i.e.,* a broker-dealer or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC''), a clearing house registered with the Commission, or (b) a participant in the Depository Trust Company (''DTC,'' and such participant, ''DTC Participant''), which, in either case, has signed a ''Participant Agreement'' with the Distributor.

8. 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'').[5] On any given Business Day [6] 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 a Fund's portfolio (including cash positions),[7] 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; [8] (c) ''to be announced'' transactions (''TBA Transactions''),[9] short positions, derivatives and other positions that cannot be transferred in kind [10] will be excluded from the Deposit Instruments and the Redemption Instruments; [11] (d) to the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio; [12] 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'').

9. 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, as described above; (b) if, on a given Business Day, a Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, a Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; [13] (d) if, on a given Business Day, a Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC; or (ii) in the case of Foreign Funds, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if a Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Foreign Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[14]

10. 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 the list of Redemption Instruments will apply until new lists are announced on the following Business Day, and there will be no intra-

[5] 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.

[6] A ''Business Day'' is defined as any day that the NYSE, the relevant Listing Exchange, 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.

[7] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for that Business Day.

[8] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[9] A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree on general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date.

[10] 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.

[11] 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 (defined below).

[12] A Fund may only use sampling for this purpose if the sample: (a) is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (b) consists entirely of instruments that are already included in the Fund's portfolio; and (c) is the same for all Authorized Participants on a given Business Day.

[13] 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 or Sub-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 considerations may warrant in-kind redemptions.

[14] 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).

day changes to the lists except to correct errors in the published lists.

11. For each Long/Short Funds and 130/30 Fund, the Adviser will provide full portfolio transparency on a daily basis on the Fund's publicly available Web site (''Web site'') by making available the identities and quantities of the Portfolio Securities, assets and other positions held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day (''Portfolio Holdings''). The information provided on the Web site will be formatted to be reader-friendly. Applicants state that any person can use this information to ascertain, in real time, the intraday value of the Long/Short Funds and the 130/30 Funds.[15] With respect to the Long/Short Funds and 130/30 Funds, the investment characteristics of any financial instruments and short positions used to achieve short and long exposures will be described in sufficient detail for market participants to understand the principal investment strategies of the Funds and to permit informed trading of their Shares.

12. Shares of each Fund will be listed and traded individually on an Exchange. It is expected that one or more member firms of an Exchange will be designated to act as a market maker (''Market Maker'') and maintain a market in Shares trading on the Exchange. Prices of Shares trading on an Exchange will be based on the current bid/ask market. Shares sold in the secondary market will be subject to customary brokerage commissions and charges.

13. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers also may purchase Creation Units for use in market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional investors and retail investors.[16] Applicants expect that 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.

14. Shares will not be individually redeemable. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption orders must be placed by or through an Authorized Participant.

15. An investor purchasing or redeeming a Creation Unit from a Fund will be charged a fee (''Transaction Fee'') to protect existing shareholders of the Funds from the dilutive costs associated with the purchase and redemption of Creation Units.[17]

16. Neither the Trust nor any Fund will be advertised, marketed or otherwise held out as a traditional open-end investment company or a mutual fund. Instead, each Fund will be marketed as an ETF. All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may purchase or redeem Shares from the Fund in Creation Units. The same approach will be followed in the shareholder reports issued or circulated in connection with the Shares. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to shareholders.

17. Applicants also request that the order allow them to offer Funds for which an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, a Fund, the Adviser, any Sub-Adviser, or promoter of a Fund, or of the Distributor will serve as the Index Provider (''Affiliated Index Fund''). The Index Provider to an Affiliated Index Fund (''Affiliated Index Provider'') will create a proprietary, rules based methodology (''Rules-Based Process'') to create Underlying Indexes for use by the Affiliated Index Funds and other investors (an ''Affiliated Index'').[18] The Affiliated Index Provider, as owner of the Underlying Indexes and all related intellectual property related thereto, will license the use of the Affiliated Indexes, their names and other related intellectual property to the Adviser for use in connection with the Trust and the Affiliated Index Funds. The licenses for the Affiliated Index Funds will state that the Adviser must provide the use of the Affiliated Indexes and related intellectual property at no cost to the Trust and the Affiliated Index Funds.

18. Applicants contend that the potential conflicts of interest arising from the fact that the Affiliated Index Provider will be an ''affiliated person'' of the Adviser will not have any impact on the operation of the Affiliated Index Funds because the Affiliated Indexes will maintain transparency, the Affiliated Index Funds' portfolios will be transparent, and the Affiliated Index Provider, the Adviser, any Sub-Adviser and the Affiliated Index Funds each will adopt policies and procedures to address any potential conflicts of interest (''Policies and Procedures''). The Affiliated Index Provider will publish in the public domain, including on its Web site and/or the Affiliated Index Funds' Web site, all of the rules that govern the construction and maintenance of each of its Affiliated Indexes. Applicants believe that this public disclosure will prevent the Adviser from possessing any advantage over other market participants by virtue of its affiliation with the Affiliated Index Provider, the owner of the Affiliated Indexes. Applicants note that the identity and weightings of the securities of any Affiliated Index will be readily ascertainable by any third party because the Rules-Based Process will be publicly available.

19. Like other index providers, the Affiliated Index Provider may modify the Rules-Based Process in the future. The Rules-Based Process could be modified, for example, to reflect changes in the underlying market tracked by an Affiliated 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 Personnel (defined below) has given (a) the Calculation Agent (defined below) reasonable prior written notice of such rule changes, and (b) the investing

[15] Each Listing Exchange or other major market data provider will disseminate, every 15 seconds during regular Exchange trading hours, through the facilities of the Consolidated Tape Association, an amount for each Fund representing the sum of (a) the estimated Balancing Amount and (b) the current value of the Deposit Instruments and any short positions, on a per individual Share basis.

[16] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. DTC or DTC Participants will maintain records reflecting beneficial owners of Shares.

[17] Where a Fund permits an in-kind purchaser to substitute cash in lieu of depositing one or more Deposit Instruments, the Transaction Fee imposed on a purchaser or redeemer may be higher.

[18] 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 and other pooled investment vehicles for which the Adviser acts as adviser or sub-adviser (''Affiliated Accounts'') as well as other such registered investment companies, separately managed accounts, privately offered funds and other pooled investment vehicles for which it does not act either as adviser or sub-adviser (''Unaffiliated Accounts''). The Affiliated Accounts and the Unaffiliated Accounts (collectively, ''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 index. Consistent with the relief requested from section 17(a), the Affiliated Accounts will not engage in Creation Unit transactions with a Fund.

public at least sixty (60) days published notice that such changes will be implemented. Affiliated Indexes may have reconstitution dates and rebalance dates that occur on a periodic basis more frequently than once yearly, but no more frequently than monthly.

20. As owner of the Affiliated Indexes, the Affiliated Index Provider will hire a calculation agent (''Calculation Agent''). The Calculation Agent will not be an affiliated person, as such term is defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Funds, the Adviser, any Sub-Adviser, any promoter of a Fund or the Distributor.

21. The Affiliated Index Provider initially applies the Rules-Based Process to the relevant universe of securities when it chooses the Component Securities comprising each Underlying Affiliated Index. The Affiliated Index Provider also determines the number, type, and weight of securities that will comprise each Underlying Affiliated Index and performs or causes to be performed all other calculations necessary to determine the proper make-up of the Underlying Affiliated Index. Thereafter, (i) the Calculation Agent is responsible for all such Underlying Affiliated Index maintenance and calculation in accordance with the Rules-Based Process and dissemination of the Underlying Affiliated Index values in accordance with Commission and Exchange requirements, and (ii) the Affiliated Index Provider is solely responsible for performing the reconstitution updates and rebalance updates for each Affiliated Index Fund.

22. The Adviser and the Affiliated Index Provider will adopt and implement Policies and Procedures to address any potential conflicts of interest. Among other things, the Policies and Procedures will be designed to limit or prohibit communication between employees of the Affiliated Index Provider and its affiliates who have responsibility for the Affiliated Indexes and the Rules Based Process, as well as those employees of the Affiliated Index Provider and its affiliates appointed to assist such employees in the performance of his/her duties (''Index Personnel'') and other employees of the Affiliated Index Provider. The Index Personnel (a) will not have any responsibility for the management of the Affiliated Index Funds or the Affiliated Accounts, (b) will be expressly prohibited from sharing this information with any employees of the Adviser or those of any Sub-Adviser, that have responsibility for the management of the Affiliated Index Funds or any Affiliated Account until such information is publicly announced, and (c) 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 and any Sub-Adviser will adopt and implement, 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 thereunder. Also, the Adviser has adopted a code of ethics pursuant to rule 17j–1 under the Act and rule 204A–1 under the Advisers Act (''Code of Ethics''). Any Sub-Adviser will be required to adopt a Code of Ethics and provide the Trust with the certification required by rule 17j–1 under the Act. In conclusion, Applicants submit that the Affiliated Index Funds will operate in a manner very similar to the other index-based ETFs which are currently traded.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of 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) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(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 provisions 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 owner, upon its presentation to the issuer, is entitled to receive approximately his 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 Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, investors should be able to buy and sell Shares in the secondary market at prices that do not vary materially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in 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.

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 Fund assets and will not 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 competitive forces will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e)

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 observe that the settlement of redemptions for the Foreign 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 the underlying foreign securities held by the Foreign Funds. Applicants believe that under certain circumstances, the delivery cycles for transferring Portfolio Securities to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to 15 calendar days.[19] Applicants therefore request relief from section 22(e) in order to provide for payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Securities of each Foreign Fund customarily clear and settle, but in all cases no later than 15 calendar days following the tender of a Creation Unit.[20] With respect to Future Funds that are Foreign Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances exist similar to those described in the application.

8. Applicants submit that section 22(e) was designed 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 to be made within a maximum of 15 calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants state the SAI will identify those instances in a given year where, due to local holidays, more than seven days will be needed to deliver redemption proceeds and will list such holidays and the maximum number of days, but in no case more than 15 calendar days. Applicants are only seeking relief from section 22(e) to the extent that the Foreign Funds effect creations and redemptions of Creation Units in-kind.

Section 12(d)(1)

9. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter or any other broker or dealer from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request 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 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 the Funds, the Distributor, and any broker-dealer that is registered under the Exchange Act to sell Shares to Investing Funds in excess of the limits of section 12(d)(1)(B).

11. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the ''Investing Fund's Adviser'') and may be sub-advised by one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each an ''Investing Fund's Sub-Adviser''). Any Investing Fund's Adviser or Investing Fund's Sub-Adviser will be registered or not subject to registration under the Advisers Act. Each Investing Trust will have a sponsor (''Sponsor'').

12. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in section 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.

13. Applicants believe that neither the Investing Funds nor any Investing Fund's Affiliate would be able to exert undue influence over the Funds or any Fund Affiliates.[21] To limit the control that an Investing Fund may have over a Fund, applicants propose a condition prohibiting an Investing Fund's Adviser or a Sponsor, any person controlling, controlled by, or under common control with the Investing Fund's Adviser or Sponsor, 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 that is advised or sponsored by the Investing Fund's Adviser or Sponsor, or any person controlling, controlled by, or under common control with the Investing Fund's Adviser or Sponsor (''Investing Fund's Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Investing Fund's Sub-Adviser, any

[19] In the past, settlement in certain countries, including Russia, has extended to 15 calendar days.

[20] Applicants acknowledge that relief obtained from the requirements of section 22(e) will not affect any obligations applicants may have under rule 15c6–1 under the Exchange Act. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade date.

[21] An ''Investing Fund's Affiliate'' is the Investing Fund's Adviser, Investing Fund's Sub-Adviser, Sponsor, promoter, and principal underwriter of an Investing Fund, and any person controlling, controlled by, or under common control with any of those entities. A ''Fund Affiliate'' is the investment adviser, promoter, or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of those entities.

person controlling, controlled by or under common control with the Investing Fund's 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 Fund's Sub-Adviser or any person controlling, controlled by or under common control with the Investing Fund's Sub-Adviser (''Investing Fund's Sub-Advisory Group''). Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Investing Fund or Investing Fund's 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 Fund's Adviser, Investing Fund's Sub-Adviser, employee or Sponsor of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund's Adviser, Investing Fund's Sub-Adviser, employee or Sponsor is an affiliated person (except that any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

14. Applicants do not believe that the proposed arrangement involves excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the disinterested 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 Acquiring Management Company may invest. In addition, under condition B.5, an Investing Fund's Adviser or an Investing Fund's trustee or Sponsor, 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–1 under the Act) received from a Fund by the Investing Fund's Adviser, trustee or Sponsor or an affiliated person of the Investing Fund's Adviser, trustee or Sponsor, other than any advisory fees paid to Investing Fund's Adviser, trustee or Sponsor or its affiliated person by a Fund, in connection with the investment by the Investing Fund in the Fund. Applicants state that any sales charges or service fees on shares of an Investing Fund will not exceed the limits applicable to a fund of funds set forth in NASD Conduct Rule 2830.[22]

15. Applicants submit that the requested 12(d)(1) Relief addresses concerns over overly complex structures. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

16. To ensure that an Investing Fund is aware of the terms and conditions of the requested order, the Fund of Fund must enter into an agreement with the respective Fund (''Investing Fund Participation Agreement''). The Investing Fund Participation Agreement will include an acknowledgment 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 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).

Sections 17(a)(1) and (2) of the Act

18. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (''second-tier affiliate''), from selling any security or other property to or acquiring any security or other property from the company. Section 2(a)(3) of the Act defines ''affiliated person'' of another person to include (a) 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 (c) 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 of policies of a company. It also 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 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 (an ''Affiliated Fund'').

19. Applicants request an exemption from section 17(a) of the Act pursuant to sections 17(b) and 6(c) of the Act to permit persons to effectuate in-kind purchases and redemptions with a Fund when they are affiliated persons or second-tier affiliates of the Fund solely by virtue of one or more of the following: (a) Holding 5% or more, or more than 25%, of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds.

20. Applicants assert that no useful purpose would be served by prohibiting these types of affiliated persons from acquiring or redeeming Creation Units through in-kind transactions. Except as described in Section II.J.2 of the application, the Deposit Instruments and Redemption Instruments will be the same for all purchasers and redeemers regardless of the their identity. The deposit procedures for both in-kind purchases and in-kind redemptions of Creation Units will be the same for all purchases and redemptions, regardless of size or number. Deposit Instruments and Redemption Instruments will be valued in the same manner as Portfolio Securities are valued for purposes of calculating NAV. Applicants submit that, by using the same standards for valuing Portfolio Securities as are used for calculating in-kind redemptions or purchases, the Fund will ensure that its NAV will not be adversely affected by such transactions. Applicants also believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Fund.

21. Applicants also seek relief from section 17(a) to permit a Fund that is an affiliated person or second-tier affiliate of an Investing Fund to sell its Shares to and redeem its Shares from an Investing Fund, and to engage in the

[22] Any references to NASD Conduct Rule 2830 include any successor or replacement rule to NASD Conduct Rule 2830 that may be adopted by the Financial Industry Regulatory Authority.

accompanying in-kind transactions with the Investing Fund.[23] Applicants state that the terms of the proposed transactions will be fair and reasonable and will not involve overreaching. Applicants note that any consideration paid by an Investing Fund 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] Further, as described in Section II.J.2 of the application, the Deposit Instruments and Redemption Instruments available for a Fund will be the same for all purchasers and redeemers, respectively and will correspond pro rata to the Fund's Portfolio Securities, except as describe above. 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 ETF Relief will be subject to the following conditions:

A. ETF Relief

1. 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 ETFs, except with respect to an portion of the requested relief that is not granted in such Commission rule.

2. As long as a Fund operates in reliance on the Order, the Shares of such Fund will be listed on an Exchange.

3. No Fund will be advertised or marketed as an open-end investment company or mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that 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.

4. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or the Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

B. Section 12(d)(1) Relief

Applicants agree that any order of the Commission granting the requested 12(d)(1) Relief will be subject to the following conditions:

1. The members of an Investing Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of Section 2(a)(9) of the Act. The members of an Investing Fund's 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 Fund's Advisory Group or the Investing Fund's 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 Fund's Sub-Advisory Group with respect to a Fund for which the Investing Fund's Sub-Adviser or a person controlling, controlled by or under common control with the Investing Fund's 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 Fund's 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 Investing Fund's 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 Fund's Adviser and Investing Fund's 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 Fund's Affiliate from a Fund or 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 of directors (''Board'') of the Fund, including a majority of the non-interested directors or trustees, will determine that any consideration paid by the Fund to the Investing Fund or an Investing Fund's 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 Fund's 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 Fund's Adviser, or trustee or Sponsor of the Investing Trust, or an affiliated person of the Investing Fund's Adviser, or trustee or Sponsor of the Investing Trust, other than any advisory fees paid to the Investing Fund's Adviser, 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 Fund's Sub-Adviser will waive fees otherwise payable to the Investing Fund's 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 Fund's Sub-Adviser, or an affiliated person of the Investing Fund's Sub-Adviser, other than any advisory fees paid to the Investing Fund's 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 Fund's Sub-Adviser. In the event that the Investing Fund's Sub-Adviser waives fees, the benefit of the waiver

[23] To the extent that purchases and sales of Shares 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. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to an Investing Fund and redemptions of those Shares. The requested relief also is intended to cover the in-kind transactions that may accompany such sales and redemptions. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person or second-tier affiliate of an Investing Fund because the Adviser provides investment advisory services to the Investing Fund.

[24] Applicants acknowledge that receipt of compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of Shares or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Investing Fund may be prohibited by section 17(e)(1) of the Act. The Investing Fund Participation Agreement also will include this acknowledgment.

will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund's 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 any Affiliated Underwriting.

7. The Board of a Fund, including a majority of the non-interested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, 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; (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), an Investing Fund and the Trust 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 Fund's 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 fully recorded in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/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 NASD Conduct Rule 2830.

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 the Fund acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Fund to acquire securities of one or more 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. 2013–31136 Filed 12–27–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30844; 812–14153]

IndexIQ ETF Trust, et al.; Notice of Application

December 23, 2013.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''1940 Act'') for exemptions from sections 12(d)(1)(A), (B), and (C) of the 1940 Act, under sections 6(c) and 17(b) of the 1940 Act for an exemption from section 17(a) of the 1940 Act, and under section 6(c) of the 1940 Act for an exemption from rule 12d1–2(a) under the 1940 Act.

SUMMARY: *Summary of the Application:* Applicants request an order that would (a) permit certain registered open-end management investment companies that operate as ''funds of funds'' to acquire shares of certain registered open-end management investment companies, registered closed-end management investment companies, business development companies as defined by section 2(a)(48) of the 1940 Act (''business development companies''), and registered unit investment trusts that are within or outside the same group of investment companies as the acquiring investment companies and (b) permit certain registered open-end management investment companies relying on rule 12d1–2 under the 1940 Act to invest in certain financial instruments.

Applicants: IndexIQ ETF Trust, IndexIQ Active ETF Trust (each, a ''Trust,'' and collectively, the ''Trusts''), IndexIQ Advisors LLC (''IndexIQ Advisors'') and ALPS Distributors Inc. (the ''Distributor'').

DATES: *Filing Dates:* The application was filed May 10, 2013, and amended on September 17, 2013, December 19, 2013 and December 23, 2013.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving

applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 17, 2014, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants, c/o David Fogel, 800 Westchester Avenue, Suite N–611, Rye Brook, NY 10573.

FOR FURTHER INFORMATION CONTACT: Mark N. Zaruba, Senior Counsel, at (202) 551–6878, or Dalia O. Blass, Assistant Director, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

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. Each Trust is an open-end management company registered under the 1940 Act and organized as a Delaware statutory trust. Each Trust has multiple series (''Funds'') which pursue distinct investment objectives and strategies.[1]

2. IndexIQ Advisors, a Delaware limited liability company, is a registered investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') and serves as the investment adviser to each of the Funds.[2] IndexIQ Advisors may enter into sub-advisory agreements with one or more additional investment advisors to act as ''Sub-Advisers'' with respect to particular Funds (each, a ''Sub-Adviser''). The Distributor is a Broker (as defined below) and serves as the existing Funds' principal underwriter and distributor.

3. Applicants request relief to the extent necessary to permit: (a) each Fund (each, a ''Fund of Funds,'' and collectively, the ''Funds of Funds'') to acquire shares of registered open-end management investment companies (each an ''Unaffiliated Open-End Investment Company''), registered closed-end management investment companies, business development companies (each registered closed-end management investment company and each business development company, an ''Unaffiliated Closed-End Investment Company'' and, together with the Unaffiliated Open-End Investment Companies, the ''Unaffiliated Investment Companies''), and registered unit investment trusts (''UITs'') (the ''Unaffiliated Trusts,'' collectively with the Unaffiliated Investment Companies, the ''Unaffiliated Funds''), in each case, that are not part of the same ''group of investment companies'' as the Funds of Funds;[3] (b) the Unaffiliated Funds, their principal underwriters and any broker or dealer registered under the Securities Exchange Act of 1934 (the ''1934 Act'') (''Broker'') to sell shares of such Unaffiliated Funds to the Funds of Funds; (c) the Funds of Funds to acquire shares of other registered investment companies, including open-end management investment companies and series thereof, closed-end management investment companies and UITs, as well as business development companies (if any), in the same group of investment companies as the Funds of Funds (collectively, the ''Affiliated Funds,'' and, together with the Unaffiliated Funds, the ''Underlying Funds'');[4] and (d) the Affiliated Funds, their principal underwriters and any Broker to sell shares of the Affiliated Funds to the Funds of Funds.[5] Applicants also request an order under sections 6(c) and 17(b) of the 1940 Act to exempt applicants from section 17(a) to the extent necessary to permit Underlying Funds organized as open-end investment companies (''Underlying Open-End Funds'') and UITs (''Underlying UITs'') to sell their shares to Funds of Funds and redeem their shares from Funds of Funds.

4. Applicants also request an exemption under section 6(c) from rule 12d1–2 under the 1940 Act to permit any existing or future Fund of Funds that relies on section 12(d)(1)(G) of the 1940 Act (''Section 12(d)(1)(G) Fund of Funds'') and that otherwise complies with rule 12d1–2 under the 1940 Act, to also invest, to the extent consistent with its investment objective(s), policies, strategies and limitations, in other financial instruments that may not be securities within the meaning of section 2(a)(36) of the 1940 Act (''Other Investments'').

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the 1940 Act, in relevant part, 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 1940 Act prohibits a registered open-end investment company, its principal underwriter, and any Broker from selling the investment company's shares to another investment company if the

[1] The Applicants request that the order apply not only to any existing series of the Trusts, but that the order also extend to any future series of the Trusts, and any other existing or future registered open-end management investment companies and any series thereof that are part of the same group of investment companies, as defined in Section 12(d)(1)(G)(ii) of the 1940 Act, as the Trusts and are, or may in the future be, advised by the Adviser or any other investment adviser controlling, controlled by, or under common control with the Adviser (together with the existing series of the Trusts, each series a ''Fund,'' and collectively, the ''Funds''). All entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

[2] All references to the term ''IndexIQ Advisors'' include any successors in interest to IndexIQ Advisors LLC. A successor is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[3] For purposes of the request for relief, the term ''group of investment companies'' means any two or more registered investment companies, including closed-end investment companies, that hold themselves out to investors as related companies for purposes of investment and investor services.

[4] Certain of the Underlying Funds may be registered under the 1940 Act as either UITs or open-end management investment companies and have obtained exemptions from the Commission necessary to permit their shares to be listed and traded on a national securities exchange at negotiated prices and, accordingly, to operate as exchange-traded funds (collectively, ''ETFs'' and each, an ''ETF''). In addition, certain of the Underlying Funds may in the future pursue their investment objectives through a master-feeder arrangement in reliance on section 12(d)(1)(E) of the 1940 Act. In accordance with condition 12, a Fund of Funds may not invest in an Underlying Fund that operates as a feeder fund unless the feeder fund is part of the same ''group of investment companies'' as its corresponding master fund or the Fund of Funds. If a Fund of Funds invests in an Affiliated Fund that operates as a feeder fund and the corresponding master fund is not within the same ''group of investment companies'' as the Fund of Funds and Affiliated Fund, the master fund would be an Unaffiliated Fund for purposes of the application and its conditions.

[5] Applicants state that they do not believe that investments in business development companies present any particular considerations or concerns that may be different from those presented by investments in registered closed-end investment companies.

sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally. Section 12(d)(1)(C) prohibits an investment company from acquiring any security issued by a registered closed-end investment company if such acquisition would result in the acquiring company, any other investment companies having the same investment adviser, and companies controlled by such investment companies, collectively, owning more than 10% of the outstanding voting stock of the registered closed-end investment company.

2. Section 12(d)(1)(J) of the 1940 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. Applicants request an exemption under section 12(d)(1)(J) of the 1940 Act from the limitations of sections 12(d)(1)(A), (B) and (C) to the extent necessary to permit: (i) the Funds of Funds to acquire shares of Underlying Funds in excess of the limits set forth in section 12(d)(1)(A) and (C) of the 1940 Act; and (ii) the Underlying Funds, their principal underwriters and any Broker to sell shares of the Underlying Funds to the Funds of Funds in excess of the limits set forth in section 12(d)(1)(B) of the 1940 Act.

3. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A), (B), and (C), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants submit that the proposed structure will not result in the exercise of undue influence by a Fund of Funds or its affiliated persons over the Underlying Funds. Applicants assert that the concern about undue influence does not arise in connection with a Fund of Funds' investment in the Affiliated Funds because they are part of the same group of investment companies. To limit the control a Fund of Funds or Fund of Funds Affiliate[6] may have over an Unaffiliated Fund, applicants propose a condition prohibiting IndexIQ Advisors and any person controlling, controlled by or under common control with IndexIQ Advisors, and any investment company and any issuer that would be an investment company but for section 3(c)(1) or section 3(c)(7) of the 1940 Act advised or sponsored by IndexIQ Advisors or any person controlling, controlled by or under common control with IndexIQ Advisors (collectively, the ''Group'') from controlling (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the 1940 Act. The same prohibition would apply to any Sub-Adviser and any person controlling, controlled by or under common control with the 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 1940 Act (or portion of such investment company or issuer) advised or sponsored by the Sub-Adviser or any person controlling, controlled by or under common control with the Sub-Adviser (collectively, the ''Sub-Adviser Group'').

5. With respect to closed-end Underlying Funds, applicants note that although closed-end funds may not be unduly influenced by a holder's right of redemption, closed-end Underlying Funds may be unduly influenced by a holder's ability to vote a large block of stock. To address this concern, applicants submit that, with respect to a Fund's investment in an Unaffiliated Closed-End Investment Company, (i) each member of the Group or Sub-Adviser Group that is an investment company or an issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the 1940 Act will vote its shares of the Unaffiliated Closed-End Investment Company in the manner prescribed by section 12(d)(1)(E) of the 1940 Act and (ii) each other member of the Group or Sub-Adviser Group will vote its shares of the Unaffiliated Closed-End Investment Company in the same proportion as the vote of all other holders of the same type of such Unaffiliated Closed-End Investment Company's shares. Applicants state that, in this way, an Unaffiliated Closed-End Investment Company will be protected from undue influence by a Fund of Funds through the voting of the Unaffiliated Closed-End Investment Company's shares.

6. Applicants propose other conditions to limit the potential for undue influence over the Unaffiliated Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting'').[7]

7. To further ensure that an Unaffiliated Investment Company understands the implications of a Fund of Funds' investment under the requested exemptive relief, prior to its investment in the shares of an Unaffiliated Investment Company in excess of the limit of section 12(d)(1)(A)(i) of the 1940 Act, a Fund of Funds and the Unaffiliated Investment Company will execute an agreement stating, without limitation, that each of their boards of directors or trustees (for any entity, the ''Board'') and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order (the ''Participation Agreement''). Applicants note that an Unaffiliated Investment Company (including an ETF or an Unaffiliated Closed-End Investment Company) would also retain its right to reject any initial investment by a Fund of Funds in excess of the limits in section 12(d)(1)(A)(i) of the 1940 Act by declining to execute the Participation Agreement with the Fund of Funds. In addition, an Unaffiliated Investment Company (other than an ETF or closed-end fund whose shares are purchased by a Fund of Funds in the secondary market) will retain its right at all times to reject any investment by a Fund of Funds. Finally, subject solely to the giving of notice to a Fund of Funds and the passage of a reasonable notice period, an Unaffiliated Fund (including an ETF or an Unaffiliated Closed-End Investment Company) could terminate a Participation Agreement with the Fund of Funds.

8. Applicants state that they do not believe that the proposed arrangement

[6] A ''Fund of Funds Affiliate'' is the Adviser, any Sub-Adviser, promoter or principal underwriter of a Fund of Funds, as well as any person controlling, controlled by or under common control with any of those entities. An ''Unaffiliated Fund Affiliate'' is an investment adviser(s), sponsor, promoter or principal underwriter of any Unaffiliated Fund or any person controlling, controlled by or under common control with any of those entities.

[7] An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, trustee, advisory board member, investment adviser, sub-adviser or employee of the Fund of Funds, or a person of which any such officer, director, trustee, investment adviser, sub-adviser, member of an advisory board or employee is an affiliated person. An Underwriting Affiliate does not include any person whose relationship to an Unaffiliated Fund is covered by section 10(f) of the 1940 Act.

will result in excessive layering of fees. The Board of each Fund of Funds, including a majority of the trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the 1940 Act (the ''Independent Trustees''), will find that the management or advisory fees charged under a Fund of Funds' advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. In addition, IndexIQ Advisors will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company under rule 12b–1 under the 1940 Act) received from an Unaffiliated Fund by IndexIQ Advisors, or an affiliated person of IndexIQ Advisors, other than any advisory fees paid to IndexIQ Advisors or an affiliated person of IndexIQ Advisors by the Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund.

9. Applicants further state that any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in in rule 2830 of the Conduct Rules of the NASD (''NASD Conduct Rule 2830'').[8]

10. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the 1940 Act in excess of the limits contained in section 12(d)(1)(A) of the 1940 Act, except in certain circumstances identified in condition 12 below.

B. Section 17(a)

1. Section 17(a) of the 1940 Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the 1940 Act defines an ''affiliated person'' of another person to include (a) 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; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that the Funds of Funds and the Affiliated Funds may be deemed to be under the common control of IndexIQ Advisors and, therefore, affiliated persons of one another. Applicants also state that the Funds of Funds and the Underlying Open-End Funds and Underlying UITs may also be deemed to be affiliated persons of one another if a Fund of Funds owns 5% or more of the outstanding voting securities of one or more of such Underlying Open-End Funds or Underlying UITs. Applicants state that the sale of shares by the Underlying Open-End Funds or Underlying UITs to the Funds of Funds and the purchase of those shares from the Funds of Funds by the Underlying Open-End Funds or Underlying UITs (through redemptions) could be deemed to violate section 17(a).[9]

3. Section 17(b) of the 1940 Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (i) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policies of each registered investment company concerned; and (iii) the proposed transaction is consistent with the general purposes of the 1940 Act. Section 6(c) of the 1940 Act permits the Commission to exempt any person or transactions from any provision of the 1940 Act if 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 1940 Act.

4. Applicants submit that the proposed transactions satisfy the standards for relief under sections 17(b) and 6(c) of the 1940 Act. Applicants state that the terms of the transactions are reasonable and fair and do not involve overreaching. Applicants state that the terms upon which an Underlying Open-End Fund will sell its shares to or purchase its shares from a Fund of Funds will be in accordance with the rules and regulations under the 1940 Act.[10] Applicants also state that the proposed transactions will be consistent with the policies of each Fund of Funds and any Underlying Fund, and with the general purposes of the 1940 Act.

C. Other Investments by Section 12(d)(1)(G) Funds of Funds

1. Section 12(d)(1)(G) of the 1940 Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) the acquiring company and acquired company are part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the 1940 Act; (ii) the acquiring company holds only securities of acquired companies that are part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the 1940 Act, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the 1940 Act by a securities association registered under section 15A of the 1934 Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered UITs in reliance on section 12(d)(1)(F) or (G) of the 1940 Act.

2. Rule 12d1–2 under the 1940 Act permits a registered open-end investment company or a registered UIT that relies on section 12(d)(1)(G) of the 1940 Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) securities issued by an investment company that is not in the same group of investment companies, when the

[8] Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA rule to NASD Conduct Rule 2830.

[9] Applicants acknowledge that receipt of any compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to a Fund of Funds may be prohibited by section 17(e)(1) of the 1940 Act. The Participation Agreement also will include this acknowledgement.

[10] Applicants note that a Fund of Funds generally would purchase and sell shares of an Underlying Fund that operates as an ETF or a closed-end fund through secondary market transactions rather than through principal transactions with the Underlying Fund. Applicants nevertheless request relief from sections 17(a)(1) and (2) to permit each Fund of Funds that is an affiliated person, or an affiliated person of an affiliated person, as defined in section 2(a)(3) of the 1940 Act, of an ETF or a closed-end fund to purchase or redeem shares from the ETF or closed-end fund. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where an ETF or a closed-end fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds because an investment adviser to the ETF or an entity controlling, controlled by or under common control with the investment adviser to the ETF or closed-end fund is also an investment adviser to the Fund of Funds

acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the 1940 Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the 1940 Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the 1940 Act.

3. Applicants state that the proposed arrangement would comply with rule 12d1–2 under the 1940 Act, but for the fact that the Section 12(d)(1)(G) Funds of Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the 1940 Act for an exemption from rule 12d1–2(a) to allow the Section 12(d)(1)(G) Funds of Funds to invest in Other Investments. Applicants assert that permitting a Section 12(d)(1)(G) Fund of Funds to invest in Other Investments as described in the application would not raise any of the concerns that section 12(d)(1) of the 1940 Act was intended to address.

4. Consistent with its fiduciary obligations under the 1940 Act, a Section 12(d)(1)(G) Fund of Funds' Board will review the advisory fees charged by the Section 12(d)(1)(G) Fund of Funds' investment adviser(s) to ensure that the fees are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Section 12(d)(1)(G) Fund of Funds may invest.

Applicants' Conditions

A. Investments by Funds of Funds in Underlying Funds

Applicants agree that the order granting the requested relief to permit Funds of Funds to invest in Underlying Funds shall be subject to the following conditions:

1. The members of the Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the 1940 Act. The members of a Sub-Adviser Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the 1940 Act. With respect to a Fund's investment in an Unaffiliated Closed-End Investment Company, (i) each member of the Group or Sub-Adviser Group that is an investment company or an issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the 1940 Act will vote its shares of the Unaffiliated Closed-End Investment Company in the manner prescribed by section 12(d)(1)(E) of the 1940 Act and (ii) each other member of the Group or Sub-Adviser Group will vote its shares of the Unaffiliated Closed-End Investment Company in the same proportion as the vote of all other holders of the same type of such Unaffiliated Closed-End Investment Company's shares. If, as a result of a decrease in the outstanding voting securities of any other Unaffiliated Fund, the Group or a Sub-Adviser Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of such Unaffiliated Fund, then the Group or the Sub-Adviser Group will vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares. This condition will not apply to a Sub-Adviser Group with respect to an Unaffiliated Fund for which the Sub-Adviser or a person controlling, controlled by, or under common control with the Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the 1940 Act (in the case of an Unaffiliated Investment Company) or as the sponsor (in the case of an Unaffiliated Trust).

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in an Unaffiliated Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Fund or an Unaffiliated Fund Affiliate.

3. The Board of each Fund of Funds, including a majority of the Independent Trustees, will adopt procedures reasonably designed to ensure that its Adviser and any Sub-Adviser to the Fund of Funds are conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or Fund of Funds Affiliate from an Unaffiliated Fund or an Unaffiliated Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the 1940 Act, the Board of the Unaffiliated Investment Company, including a majority of the Independent Trustees, will determine that any consideration paid by the Unaffiliated Investment Company to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Investment Company; (b) is within the range of consideration that the Unaffiliated Investment Company would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Unaffiliated Investment Company and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Unaffiliated Investment Company, including a majority of the Independent Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Investment Company in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of the Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the 1940 Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Unaffiliated Investment Company will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Unaffiliated Investment Company. The Board of the Unaffiliated Investment Company will consider, among other things: (a) whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Investment Company; (b) 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 (c) whether the amount of securities purchased by the Unaffiliated Investment Company in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of the Unaffiliated Investment Company 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.

7. Each Unaffiliated Investment Company 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 an Affiliated Underwriting once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the 1940 Act, setting forth (1) the party from whom the securities were acquired, (2) the identity of the underwriting syndicate's members, (3) the terms of the purchase, and (4) the information or materials upon which the determinations of the Board of the Unaffiliated Investment Company were made.

8. Prior to its investment in shares of an Unaffiliated Investment Company in excess of the limit set forth in section 12(d)(1)(A)(i) of the 1940 Act, the Fund of Funds and the Unaffiliated Investment Company will execute a Participation Agreement stating, without limitation, that their Boards and their investment advisers 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 an Unaffiliated Investment Company in excess of the limit set forth in section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated Investment Company of the investment. At such time, the Fund of Funds will also transmit to the Unaffiliated Investment Company a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Investment Company of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Investment Company and the Fund of Funds will maintain and preserve a copy of the order, the 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.

9. Before approving any advisory contract under section 15 of the 1940 Act, the Board of each Fund of Funds, including a majority of the Independent Trustees, shall find that the advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Fund of Funds.

10. IndexIQ Advisors will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company pursuant to rule 12b–1 under the 1940 Act) received from an Unaffiliated Fund by IndexIQ Advisors, or an affiliated person of IndexIQ Advisors, other than any advisory fees paid to IndexIQ Advisors or its affiliated person by the Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund. Any Sub-Adviser will waive fees otherwise payable to the Sub-Adviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received by the Sub-Adviser, or an affiliated person of the Sub-Adviser, from an Unaffiliated Fund, other than any advisory fees paid to the Sub-Adviser or its affiliated person by the Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund made at the direction of the Sub-Adviser. In the event that the Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in NASD Conduct Rule 2830.

12. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the 1940 Act, in excess of the limits contained in section 12(d)(1)(A) of the 1940 Act, except to the extent that such Underlying Fund: (a) acquires such securities in compliance with section 12(d)(1)(E) of the 1940 Act and is either an Affiliated Fund or is in the same ''group of investment companies'' as its corresponding master fund; (b) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the 1940 Act); or (c) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) acquire securities of one or more investment companies for short-term cash management purposes or (ii) engage in inter-fund borrowing and lending transactions.

B. Other Investments by Section 12(d)(1)(G) Funds of Funds

In addition, Applicants agree that the order granting the requested relief to permit Section 12(d)(1)(G) Funds of Funds to invest in Other Investments shall be subject to the following condition:

1. Applicants will comply with all provisions of rule 12d1–2 under the 1940 Act, except for paragraph (a)(2) to the extent that it restricts any Section 12(d)(1)(G) Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71176; File No. SR–NYSEArca–2013–107]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval to Proposed Rule Change To Establish a Retail Liquidity Program on a Pilot Basis for a Period of One Year From the Date of Implementation and Granting Request for a Limited Exemption From Rule 612 of Regulation NMS

December 23, 2013.

I. Introduction

On October 22, 2013, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a Retail Liquidity Program (''Program'') on a pilot basis for a period of one year from the date of implementation. The proposed rule change was published for comment in the **Federal Register** on November 13, 2013.[3] The Commission did not receive any comments on the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70824 (Nov. 6, 2013), 78 FR 68116 (''Notice'').

change. In connection with the proposal, the Exchange requested exemptive relief from Rule 612 of Regulation NMS,[4] which, among other things, prohibits a national securities exchange from accepting or ranking orders priced greater than $1.00 per share in an increment smaller than $0.01.[5]

This order approves the proposed rule change and grants the exemption from the Sub-Penny Rule sought by the Exchange in relation to the proposed rule change.

II. Description of the Proposals

Overview

The Exchange is proposing a 12-month pilot program to attract additional retail order flow to the Exchange, while also providing the potential for price improvement to this order flow. The Program would be limited to trades occurring at prices equal to or greater than $1.00 per share.[6] The Program would include NYSE Arca-listed securities and UTP Securities, but it would exclude NYSE-listed securities.

Under the proposed Program, a new class of market participants called Retail Liquidity Providers (''RLPs'') would be able to provide potential price improvement to designated retail orders by submitting a Retail Price Improvement Order (''RPI Order''), which would be a non-displayed order that is priced better than the Exchange's best protected bid or offer (''PBBO'').[7] RLPs could receive special execution fees for executing against retail orders in exchange for satisfying certain specified quoting obligations.[8] Other Exchange member organizations[9] would be allowed, but not required, to submit RPI Orders. When there is an RPI Order in a particular security, the Exchange would disseminate an indicator, called the Retail Liquidity Identifier, to indicate that such interest exists. In response to the indicator, a new class of market participants known as Retail Member Organizations (''RMOs'') could submit a new type of order, called a Retail Order, to the Exchange. A Retail Order would interact, to the extent possible, with available contra-side RPI Orders and then may interact with other liquidity on the Exchange or elsewhere, depending on the Retail Order's instructions. The Exchange would approve ETP Holders to be RLPs or RMOs.

Types of Orders and the Retail Liquidity Identifier

An RPI Order would be non-displayed interest in NYSE Arca-listed securities and UTP Securities, excluding NYSE-listed (Tape A) securities, that is priced more aggressively than the PBBO by at least $0.001 per share and that is identified as an RPI Order in a manner prescribed by the Exchange. RPI Orders would be entered at a single limit price, rather than being pegged to the PBBO, although an RPI Order could also be designated as a Mid-Point Passive Liquidity (''MPL'') Order, in which case the order would re-price as the PBBO changes.[10] RPI Orders would remain non-displayed and could only execute against Retail Orders.

When an RPI Order priced at least $0.001 better than the Exchange's PBBO for a particular security is available in the System, the Exchange would disseminate an identifier, known as the Retail Liquidity Identifier, indicating that such interest exists. The identifier would be disseminated through the Consolidated Quotation System (''CQS''), the UTP Quote Data Feed, and the Exchange's proprietary data feed. The identifier would reflect the symbol for a particular security and the side (buy or sell) of the RPI Order, but it would not include the price or size of such interest.

A Retail Order would be an agency or riskless principal[11] order that originates from a natural person and is submitted to the Exchange by an RMO, provided that no change is made to the terms of the order with respect to price (except in the case of a market order being changed to a marketable limit order) or side of market and provided that the order does not originate from a trading algorithm or any other computerized methodology. Retail Orders could be entered in sizes that are odd lots, rounds lots, or mixed lots.

Under the proposal, an RMO that submits a Retail Order could choose one of two designations to dictate how that order would interact with available contra-side interest.

First, a Retail Order could interact only with available contra-side RPI Orders, as well as other non-displayed liquidity[12] and displayable odd-lot interest priced better than the PBBO on the opposite side of the Retail Order, excluding contra-side Retail Orders. The Exchange would label this a Type 1 Retail Order, and such an order would not interact with available non-price-improving, contra-side interest in Exchange systems or route to other markets. Portions of a Type 1 Retail Order that are not executed would be cancelled immediately and automatically.

Second, a Retail Order could interact first with available contra-side RPI Orders and other price-improving liquidity, and any remaining portion would be eligible to interact with other interest in the System and, if designated as eligible for routing, would route to other markets in compliance with Regulation NMS. The Exchange would label this a Type 2 Retail Order. Type 2 orders could be marked as Immediate or Cancel, Day, or Market. A Type 2 IOC order would interact first with available contra-side RPI Orders and other price improving liquidity, excluding contra-side Retail Orders, and then any remaining portion of the Retail Order would be executed as a limit order marked as an IOC, pursuant to Exchange Rule 7.31(e)(2). For Type 2 Day orders, any shares that remain after executing against contra-side RPI Orders or other price-improving liquidity would

[4] 17 CFR 242.612 (''Sub-Penny Rule'').

[5] *See* Letter from Janet McGinness, EVP & Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission (Oct. 11, 2013) (''Request for Sub-Penny Rule Exemption'').

[6] The Exchange notes that certain orders submitted to the Program designated as eligible to interact with liquidity outside of the Program—Type 2 Retail Orders, which are discussed below—could execute at prices below $1.00 if they do in fact execute against liquidity outside of the Program.

[7] The terms protected bid and protected offer would have the same meaning as defined in Rule 600(b)(57) of Regulation NMS. Rule 600(b)(57) of Regulation NMS defines ''protected bid'' and ''protected offer'' as ''a quotation in an NMS stock that: (i) [i]s displayed by an automated trading center; (ii) [i]s disseminated pursuant to an effective national market system plan; and (iii) [i]s an automated quotation that is the best bid or best offer of a national securities exchange, the best bid or best offer of the Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of the Nasdaq Stock Market, Inc.'' 17 CFR 242.600(b)(57).

[8] The Exchange stated in its filing that it would submit a separate proposal to amend its Price List to reflect the fees and credits connected to the program.

[9] NYSE Arca refers to its members as Equity Trading Permit (''ETP'') Holders.

[10] RPI Orders not designated as MPL Orders would alternatively need to be designated as a PL Order. As noted above, *supra* note 12, MPL and PL Orders are defined in Exchange Rule 7.31(h).

[11] In order to qualify as a ''Retail Order,'' a ''riskless principal'' order must satisfy the criteria set forth in FINRA Rule 5320.03. RMOs that submit riskless principal orders as Retail Orders must maintain supervisory systems to reconstruct such orders in a time-sequenced manner, and the RMOs must submit reports, contemporaneously with the execution of the facilitated orders, that identify such trades as riskless principal.

[12] Such other non-displayed liquidity would include, for example, Passive Liquidity (''PL'') Orders and Mid-Point Passive Liquidity (''MPL'') Orders. These orders are defined in Exchange Rule 7.31(h). However, any Retail Order could be designated with a ''No Midpoint Execution'' modifier, pursuant to existing Exchange Rule 7.31(h)(5); an order so designated would not execute against resting MPL Orders but would execute against eligible RPIs that are also designated as MPL Orders.

execute against other liquidity available on the Exchange or be routed to other market centers for execution; any remaining portion of the order would thereafter post to the NYSE Arca Book.[13] Type 2 Market orders would execute first against RPI Orders or other price-improving liquidity, and they would then be executed as a typical Exchange Market Order.[14]

Priority and Allocation

Under proposed NYSE Arca Equities Rule 7.44(l), the Exchange would rank and allocate RPI Orders in a particular security together with all other non-displayed interest according to their price first and then, at any given price point, by their time of entry into the system.[15] Any displayable odd-lot interest priced between the PBBO would be ranked ahead of any RPIs and other non-displayed interest at a given price point.

Following execution against a Retail Order, any remaining unexecuted portion of an RPI Order would remain available to interact with other incoming Retail Orders if the remainder of the RPI Order were at an eligible price, *i.e.,* better than the PBBO by at least $0.001. Any remaining unexecuted portion of a Retail Order would cancel, execute, or post to the NYSE Arca Book in accordance with its order type designation, as explained above and set forth in proposed Exchange Rule 7.44(k).

Retail Member Organizations

In order to become an RMO, an ETP Holder must conduct a retail business or handle retail orders on behalf of another broker-dealer. Any ETP Holder that wishes to obtain RMO status would be required to submit: (1) An application form; (2) an attestation, in a form prescribed by the Exchange, that substantially all orders submitted by the ETP Holder as Retail Orders would meet the qualifications for such orders under proposed Exchange Rule 7.44; and (3) supporting documentation sufficient to demonstrate the retail nature and characteristics of the applicant's order flow.[16] If the Exchange disapproves the application, it would provide written notice to the ETP Holder. The disapproved applicant could appeal the disapproval as provided below or re-apply 90 days after the disapproval notice is issued by the Exchange. An RMO also could voluntarily withdraw from RMO status at any time by giving written notice to the Exchange.

The Exchange would require an RMO to have written policies and procedures reasonably designed to assure that it will only designate orders as Retail Orders if all the requirements of a Retail Order are met. Such written policies and procedures would have to require the ETP Holder to exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the proposed rule and to require the ETP Holder to monitor whether orders entered as Retail Orders meet the applicable requirements. If an RMO represents Retail Orders from another broker-dealer customer, the RMO's supervisory procedures must be reasonably designed to assure that the Retail Orders it receives from the broker-dealer customer meet the definition of a Retail Order. The RMO must obtain an annual written representation, in a form acceptable to the Exchange, from each broker-dealer customer that sends it orders to be designated as Retail Orders. The representation must state that entry of Retail Orders will be in compliance with the requirements of this rule. The RMO must also monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements.[17]

Retail Liquidity Provider Qualifications and Admission

To qualify as an RLP under proposed Exchange Rule 7.44(c), an ETP Holder must be approved as a Market Maker or Lead Market Maker[18] on the Exchange and demonstrate an ability to meet the requirements of a being an RLP (discussed below). Moreover, the ETP Holder must have the ability to accommodate Exchange-supplied designations that identify to the Exchange RLP trading activity in assigned RLP securities and must have adequate trading infrastructure and technology to support electronic trading.

An ETP Holder must submit an application with supporting documentation to the Exchange. Thereafter, the Exchange would notify the ETP Holder as to whether it was approved as an RLP. More than one member organization could act as an RLP for a security, and an ETP Holder could act as an RLP for more than one security. An ETP Holder could ask to be assigned certain securities. Once approved, an RLP must establish connectivity with relevant Exchange systems prior to trading.

The Exchange would notify an ETP Holder in writing if the Exchange does not approve that firm's application to become an RLP. The ETP Holder could then request an appeal as provided below. The ETP Holder could also reapply 90 days after the Exchange issues the disapproval notice.

Once approved, an RLP could withdraw by providing notice to the Exchange. The withdrawal would become effective when the Exchange reassigns the securities to another RLP, but no later than 30 days after the Exchange receives the withdrawal notice. In the event that the Exchange takes longer than 30 days to reassign the securities, the withdrawing RLP would have no further obligations.

Retail Liquidity Provider Requirements

The proposed rule changes would impose several requirements on RLPs. First, under proposed Rule 7.44(f), an RLP could enter, in its role as an RLP, an RPI Order electronically into Exchange systems only in its assigned securities.[19] In order to be eligible for special execution fees,[20] an RLP must maintain RPI Orders that are better than the PBBO at least 5% of the trading day for each assigned security. An RLP would not receive special execution fees during a month in which it had not satisfied its 5% quoting requirement.

To calculate the 5% quoting requirement, the Exchange would determine the average percentage of time an RLP maintains an RPI Order in each assigned security during the regular trading day on a daily and

[13] Exchange Rule 1.1(a) defines the ''NYSE Arca Book'' as ''the NYSE Arca Marketplace's electronic file of orders, which contains all the User's orders in each of the Directed Order, Display Order, Working Order and Tracking Order Processes.''

[14] The Exchange noted that Type 2 Market orders would be subject to the Exchange's trading collars. *See* NYSE Arca Equities Rule 7.31(a).

[15] The Exchange sets forth its price-time priority scheme in its Rule 7.36.

[16] For example, a prospective RMO could be required to provide sample marketing literature, Web site screenshots, other publicly disclosed materials describing the retail nature of its order flow, and such other documentation and information as the Exchange may require to obtain reasonable assurance that the applicant's order flow would meet the requirements of the Retail Order definition.

[17] The Exchange represents that it or another self-regulatory organization on behalf of the Exchange will review an RMO's compliance with these requirements through an exam-based review of the RMO's internal controls. *See* Notice, *supra* note 3, 78 FR at 68117 n.10.

[18] The requirements for Market Makers are generally set forth in NYSE Arca Equities Rule 7. The terms ''Market Maker'' and ''Lead Market Maker'' are defined in NYSE Arca Equities Rule 1.1 (v) and (ccc), respectively.

[19] An RLP could enter RPI Orders into Exchange systems and facilities for securities to which it was not assigned; however, it would be not be doing so in its role as RLP and thus would not be eligible for execution fees that are lower than non-RLP rates for securities to which it was not assigned.

[20] As noted above, *supra* note 8, the Exchange plans to submit a separate filing to establish the levels of fees and credits associated with the program.

monthly basis. The Exchange would use the following definitions. The ''Daily Bid Percentage'' would be calculated by determining the percentage of time an RLP maintains an RPI Order priced higher than the best protected bid during each trading day for a calendar month. The ''Daily Offer Percentage'' would be calculated by determining the percentage of time an RLP maintains an RPI Order priced lower than the best protected offer during each trading day for a calendar month. The ''Monthly Average Bid Percentage'' would be calculated for each security by summing the security's ''Daily Bid Percentages'' for each trading day in a calendar month, then dividing the resulting sum by the total number of trading days in that month. The ''Monthly Average Offer Percentage'' would be calculated for each security by summing the security's ''Daily Offer Percentages'' for each trading day in a calendar month, then dividing the resulting sum by the total number of trading days in that month.

The proposal specifies that only RPI Orders entered through the trading day would be used when determining compliance with the 5% quoting requirements. Further, an RLP would have an initial two-month grace period, so that the Exchange would impose the 5% quoting requirements on the first day of the third consecutive calendar month after the member organization began operation as an RLP.

Penalties for Failure To Meet Requirements

The proposal provides for penalties when an RLP or RMPO fails to meet the requirements of the rule.

If an RLP fails to meet the 5% quoting requirements in any assigned security for three consecutive months, the Exchange, in its sole discretion, may: (1) Revoke the assignment of any or all of the affected securities; (2) revoke the assignment of unaffected securities; or (3) disqualify the ETP Holder from its status as an RLP.[21] If the Exchange moves to disqualify an ETP Holder as an RLP, then the Exchange would notify the ETP Holder in writing one calendar month prior to the determination. Likewise, the Exchange would notify the ETP Holder in writing if the Exchange ultimately determined to disqualify the ETP Holder as an RLP. An RLP that is disqualified may appeal as provided below or reapply.

With respect to RMOs, the Exchange could disqualify an ETP Holder from its RMO status if the Retail Orders submitted by the RMO did not comply with the requirements of the proposed rule. The Exchange would have sole discretion to make such a determination. The Exchange would provide written notice to the RMO when a disqualification determination was made. Similar to a disqualified RLP, a disqualified RMO could appeal as provided below or reapply for RMO status.

Appeal Process

Under the proposal, the Exchange would establish a Retail Liquidity Program Panel to review disapproval or disqualification decisions. An affected ETP Holder would have five business days after notice to request review. If an ETP Holder is disqualified as an RLP and has appealed, the Exchange would stay the reassignment of securities pending completion of the appeal process.

The Panel would consist of the NYSE's Chief Regulatory Officer, or his or her designee, and two officers of the Exchange as designated by the co-head of U.S. Listings and Cash Execution. The Panel would review the appeal and issue a decision within a time frame prescribed by the Exchange. The Panel's decision would constitute final action by the Exchange, and the Panel could modify or overturn any Exchange determinations made under the proposed rule.

Comparison With Existing Retail Programs on Other Markets

As the Exchange noted in its filing, the proposal is based on the New York Stock Exchange's Retail Liquidity Program.[22] It is also shares features with similar retail programs adopted by BATS Y-Exchange (''BYX'')[23] and The NASDAQ Stock Market (''NASDAQ'').[24]

The Exchange's proposal differs from the NYSE RLP in three key ways. First, the Exchange's proposal would allow all incoming Retail Orders to execute against resting RPI Orders and other resting price improving liquidity, just as the BYX and NASDAQ retail programs do.[25] With the NYSE RLP, in contrast, a Type 1 Retail Order, will interact only with available contra-side RPI Orders and will not interact with other available contra-side interest in the NYSE's systems.[26] Second, the Exchange could provide price improvement to an incoming Retail Order at multiple price levels. This is similar to how the BYX and NASDAQ programs operate, and it differs from the NYSE RLP, which executes an incoming Retail Order at a single clearing price level.[27] Finally, because of technological limitations, the Exchange would not offer the ability for RLPs to enter RPI Orders that track the PBBO, as they often do in the NYSE RLP.[28]

III. Discussion and Commission Findings

After careful review of the proposal, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change, subject to its term as a pilot, is consistent with Section 6(b)(5) of the Act,[29] 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 foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect

[21] Additionally, as noted above, an RLP that failed to meet its quoting obligations in a given month would not be eligible to receive special execution fees for its RPI Orders for that month.

[22] *See* Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR–NYSE–2011–55; SR–NYSEAmex–2011–84) (''NYSE RLP Approval Order''). In the same order, the Commission also approved a nearly identical Retail Liquidity Program for NYSE MKT LLC (which was known as NYSE Amex LLC at the time it filed its proposal). The initial one-year term of the NYSE RLP pilot came to an end on July 31, 2013, and it was extended for a second pilot year, until July 31, 2014. *See* Securities Exchange Act Release No. 70096 (August 2, 2013), 78 FR 48535 (August 8, 2013).

[23] *See* Securities Exchange Act Release No. 68303 (Nov. 27, 2012), 77 FR 71652 (Dec. 3, 2012) (''BYX RPI Approval Order'').

[24] *See* Securities Exchange Act Release No. 69837 (Feb. 15, 2013), 78 FR 12397 (Feb. 22, 2013) (''NASDAQ RPI Approval Order'').

[25] *See* BYX Rules 11.24(f)(1) and (2) and NASDAQ Rules 4780(f)(1) and (2) (providing that Retail Orders may execute against both RPIs and other price improving interest).

[26] *See* NYSE Rule 107C(k)(1). Additionally, pursuant to NYSE Rules 107C(k)(2) and 107C(k)(3), a Type 2 Retail Order and a Type 3 Retail Order can interact with other non-RPI interest in the NYSE systems; however, such interaction only occurs after a Retail Order first executes against RPI Orders.

[27] *See* Notice, *supra* note 3, 78 FR at 68121 (explaining this distinction from the NYSE RLP and referencing the similarity with BYX); *see also* Nasdaq RPI Approval Order, *supra* note 24, 78 FR at 12398 (explaining that NASDAQ's program would execute potentially at multiple price levels, unlike the NYSE RLP).

[28] *See* Notice, *supra* note 3, 78 FR at 68121 (discussing the three key distinctions in greater detail). *See also supra* note 12 and accompanying text (noting that RPI Orders also designated as MPL Orders would re-price as the PBBO changes).

[29] 15 U.S.C. 78f(b)(5).

investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Commission finds that the Program, as it is proposed on a pilot basis, is consistent with the requirements of the Act because the Program is reasonably designed to benefit retail investors by providing price improvement to retail order flow.[30] The Commission also believes that the Program could promote competition for retail order flow among execution venues and that this could benefit retail investors by creating additional price improvement opportunities for their order flow.

Currently, most marketable retail order flow is executed in the OTC markets, pursuant to bilateral agreements, without ever reaching a public exchange. The Commission recently noted that ''a very large percentage of marketable (immediately executable) order flow of individual investors'' is executed, or ''internalized,'' by broker-dealers in the OTC markets.[31] A recent review of the order flow of eight retail brokers revealed that nearly 100% of their customer market orders were routed to OTC market makers.[32] The same review found that such routing is often done pursuant to arrangements under which retail brokers route their order flow to certain OTC market makers in exchange for payment.[33]

To the extent that the Program may provide price improvement to retail orders that equals what would be provided under OTC internalization arrangements, the Program could benefit retail investors. To better understand the Program's potential impact, data concerning investor benefits, including the level of price improvement provided by the Program, will be submitted by the Exchange [34] and would be reviewed by the Commission prior to any extension of the Program beyond the proposed one-year pilot term, or any permanent approval of the Program.

The Program proposes to create additional price improvement opportunities for retail investors by segmenting order flow on the Exchange and requiring liquidity providers that want to interact with such retail order flow to do so at a price at least $0.001 per share better than the PBBO. The Commission finds that, while the Program would treat retail order flow differently from order flow submitted by other market participants, such segmentation would not be inconsistent with Section 6(b)(5) of the Act, which requires that the rules of an exchange are not designed to permit unfair discrimination. The Commission previously has recognized that the markets generally distinguish between individual retail investors, whose orders are considered desirable by liquidity providers because such investors are presumed on average to be less informed about short-term price movements, and professional traders, whose orders are presumed on average to be more informed.[35] The Commission has further recognized that, because of this distinction, liquidity providers are generally more inclined to offer price improvement to less-informed retail orders than to more-informed professional orders.[36]

Absent opportunities for price improvement, retail investors may encounter wider spreads that are a consequence of liquidity providers interacting with informed order flow. By creating additional competition for retail order flow, the Program is reasonably designed to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better price that liquidity providers are willing to give their orders.

The Commission notes that the Program might also create a desirable opportunity for institutional investors to interact with retail order flow that they are not able to reach currently. ETP Holders that are not RLPs can seek to interact with Retail Orders by submitting RPI Orders. Today, institutional investors often do not have the chance to interact with marketable retail orders that are executed pursuant to internalization arrangements. Thus, by submitting RPI Orders, institutional investors may be able to reduce their possible adverse selection costs by interacting with retail order flow.

When the Commission is engaged in rulemaking or the review of a rule filed by a self-regulatory organization and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[37] As discussed above, the Commission believes this Program will promote competition for retail order flow by allowing ETP Holders, either as RLPs, or on an ad hoc basis, to submit RPI Orders to interact with Retail Orders. Such competition may promote efficiency by facilitating the price discovery process. Moreover, the Commission does not believe that the Program will have a significant effect on, or create any new inefficiencies in, current market structure. Finally, to the extent the Program is successful in attracting retail order flow, it may generate additional investor interest in trading securities, which may promote capital formation.

The Commission also believes that the Program is sufficiently tailored to provide the benefits of potential price improvement only to bona fide retail order flow originating from natural persons.[38] The Commission finds that the Program provides an objective process by which an ETP Holder could become an RMO and that it provides for appropriate oversight by the Exchange to monitor for continued compliance with the terms of these provisions. The Exchange has limited the definition of Retail Order to an agency or riskless principal order that originates from a natural person and not from a trading algorithm or any other computerized methodology. Furthermore, a Retail Order must be submitted by an RMO that is approved by the Exchange. In addition, RMOs would be required to maintain written policies and procedures to help ensure that they designate as Retail Orders only those orders that qualify under the Program. If an ETP Holder's application to become an RMO is denied by the Exchange, that member may appeal the determination or re-apply. The Commission believes that these standards should help ensure that order flow submitted into the Program is retail order flow, thereby promoting just and equitable principles of trade and protecting investors and the public interest, while also providing an

[30] As discussed above, *supra* notes 22 to 28 and accompanying text, the Commission recently approved similar programs for NYSE, NYSE MKT, BATS–Y Exchange, and The NASDAQ Stock Market.

[31] *See* Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594, 3600 (Jan. 21, 2010) (''Concept Release on Equity Market Structure'').

[32] *See id.*

[33] *See id.*

[34] The Exchange committed in the proposal to ''produce data throughout the pilot, which would include statistics about participation, the frequency and level of price improvement provided by the Program, and any effects on the broader market structure.'' *See* Notice, *supra* note 3, 78 FR at 68120.

[35] *See, e.g.,* Nasdaq RPI Approval Order, *supra* note 24; BATS RPI Approval Order, *supra* note 23; and NYSE RLP Approval Order, *supra* note 22.

[36] *See, e.g., id.*

[37] *See* 15 U.S.C. 78c(f).

[38] In addition, the Commission believes that the Program's provisions concerning the approval and potential disqualification of RMOs are not inconsistent with the Act. *See, e.g.,* NYSE RLP Approval Order, *supra* note 22, 77 FR at 40680 & n.77.

objective process through which ETP Holders may become RMOs.

In addition, the Commission finds that the Program's proposed dissemination of a Retail Liquidity Identifier would increase the amount of pricing information available to the marketplace and is consistent with the Act. The identifier would be disseminated through the consolidated public market data stream to advertise the presence of an RPI Order with which Retail Orders could interact. The identifier would reflect the symbol for a particular security and the side of the RPI Order interest, but it would not include the price or size of such interest. The identifier would alert market participants to the existence of an RPI Order priced better than the PBBO and should provide market participants with more information about the availability of price improvement opportunities for retail orders than is currently available.[39]

The Exchange stated that the proposed Program, which will operate similar to the retail programs in place at the NYSE, NYSE MKT, BYX, and NASDAQ, should encourage additional liquidity and competition among exchange venues, while providing the potential for price improvement to retail investors.[40] The Exchange also noted that the Program would differ from the existing NYSE RLP in that it would provide the maximum price improvement available to incoming Retail Orders by allowing them to interact with available contra-side RPI Orders and other price-improving, contra-side interest. Moreover, the Exchange's Program would allow Retail Orders to execute at multiple price levels, as opposed to a single clearing price level. The Commission finds that the Program is reasonably designed to enhance competition among market participants and encourage competition among exchange venues. The Commission finds further that the distinctions between the Exchange's Program and the other approved retail programs are reasonably designed to enhance the Program's price-improvement benefits to retail investors and, therefore, are consistent with the Act.

The Commission notes that it is approving the Program on a pilot basis. Approving the Program on a pilot basis will allow the Exchange and market participants to gain valuable practical experience with the Program during the pilot period. This experience should allow the Exchange and the Commission to determine whether modifications to the Program are necessary or appropriate prior to any Commission decision to approve the Program on a permanent basis. The Exchange also has agreed to provide the Commission with a significant amount of data that should assist the Commission in its evaluation of the Program. Specifically, the Exchange has represented that it ''will produce data throughout the pilot, which will include statistics about participation, the frequency and level of price improvement provided by the Program, and any effects on the broader market structure.'' [41] The Commission expects that the Exchange will monitor the scope and operation of the Program and study the data produced during that time with respect to such issues and that the Exchange will propose any modifications to the Program that may be necessary or appropriate.

The Commission also welcomes comments, and empirical evidence, on the Program during the pilot period to further assist the Commission in its evaluation of the Program. The Commission notes that any permanent approval of the Program would require a proposed rule change by the Exchange, and that the filing of a proposed rule change would provide an opportunity for public comment prior to further Commission action.

V. Exemption From the Sub-Penny Rule

Pursuant to its authority under Rule 612(c) of Regulation NMS,[42] the Commission hereby grants the Exchange a limited exemption from the Sub-Penny Rule to operate the Program. For the reasons discussed below, the Commission determines that such action is necessary or appropriate in the public interest and that it is consistent with the protection of investors. The exemption shall operate for a period of 12 months, beginning with the effectiveness of the proposed rule change approved today.

When the Commission adopted the Sub-Penny Rule in 2005, it identified a variety of problems caused by sub-penny prices that the Sub-Penny Rule was designed to address:

- If investors' limit orders lose execution priority for a nominal amount, investors may over time decline to use them, thus depriving the markets of liquidity.
- When market participants can gain execution priority for a nominal amount, important customer protection rules such as exchange priority rules and the Manning Rule could be undermined.
- Flickering quotations that can result from widespread sub-penny pricing could make it more difficult for broker-dealers to satisfy their best execution obligations and other regulatory responsibilities.
- Widespread sub-penny quoting could decrease market depth and lead to higher transaction costs.
- Decreasing depth at the inside could cause institutions to rely more on execution alternatives away from the exchanges, potentially increasing fragmentation in the securities markets.[43]

At the same time, the Commission ''acknowledge[d] the possibility that the balance of costs and benefits could shift in a limited number of cases or as the markets continue to evolve.'' [44] Therefore, the Commission also adopted Rule 612(c), which provides that the Commission may grant exemptions from the Sub-Penny Rule, either unconditionally or on specified terms and conditions, if it determined that such an exemption is necessary or appropriate in the public interest and is consistent with the protection of investors.

The Commission believes that the Exchange's proposal is such a case. As described above, under the current market structure, few marketable retail orders in equity securities are routed to exchanges. The vast majority of marketable retail orders are internalized by OTC market makers, who typically pay retail brokers for their order flow. Retail investors can benefit from such arrangements to the extent that OTC market makers offer them price improvement over the NBBO. Price improvement is typically offered in sub-penny amounts.[45] An internalizing

[39] As the Commission noted when approving the comparable retail programs of other exchanges, the Commission believes that the Program will not create any best execution challenges for brokers that are not already present in today's markets. A broker's best execution obligations are determined by a number of facts and circumstances, including: (1) the character of the market for the security (*e.g.,* price, volatility, relative liquidity, and pressure on available communications); (2) the size and type of transaction; (3) the number of markets checked; (4) accessibility of the quotation; and (5) the terms and conditions of the order which result in the transaction. *See, e.g.,* NYSE RLP Approval Order, *supra* note 22, 77 FR at 40680 n.75 (citing FINRA Rule 5310).

[40] *See* notice, *supra* note 3, 78 FR at 68122.

[41] *See supra* note 34.

[42] 17 CFR 242.612(c).

[43] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37551–52 (June 29, 2005).

[44] *Id.* at 37553.

[45] When adopting the Sub-Penny Rule, the Commission considered certain comments that asked the Commission to prohibit broker-dealers from offering sub-penny price improvement to their customers, but declined to do so. The Commission stated that ''trading in sub-penny increments does not raise the same concerns as sub-penny quoting''

Continued

broker-dealer can offer sub-penny executions, provided that such executions do not result from impermissible sub-penny orders or quotations. Accordingly, OTC market makers typically select a sub-penny price for a trade without quoting at that exact amount or accepting orders from retail customers seeking that exact price. Exchanges—and exchange member firms that submit orders and quotations to exchanges—cannot compete for marketable retail order flow on the same basis, because it would be impractical for exchange electronic systems to generate sub-penny executions without exchange liquidity providers or retail brokerage firms having first submitted sub-penny orders or quotations, which the Sub-Penny Rule expressly prohibits.

The limited exemption granted today should promote competition between exchanges and OTC market makers in a manner that is reasonably designed to minimize the problems that the Commission identified when adopting the Sub-Penny Rule. Under the Program, sub-penny prices will not be disseminated through the consolidated quotation data stream, which should avoid quote flickering and associated reduced depth at the inside quotation. Furthermore, while the Commission remains concerned about providing enough incentives for market participants to display limit orders, the Commission does not believe that granting this exemption (and approving the accompanying proposed rule change) will reduce such incentives. Market participants that display limit orders currently are not able to interact with marketable retail order flow because it is almost entirely routed to internalizing OTC market makers that offer sub-penny executions. Consequently, enabling the Exchange to compete for this retail order flow through the Program should not materially detract from the current incentives to display limit orders, while potentially resulting in greater order interaction and price improvement for marketable retail orders. To the extent that the Program may raise Manning and best execution issues for broker-dealers, these issues are already presented by the existing practices of OTC market makers.

The exemption being granted today is limited to a one-year pilot. The Exchange has stated that ''sub-penny trading and pricing could potentially result in undesirable market behavior,'' and, therefore, it will ''monitor the Program in an effort to identify and address any such behavior.'' [46] Furthermore, the Exchange has represented that it ''will produce data throughout the pilot, which will include statistics about participation, the frequency and level of price improvement provided by the Program, and any effects on the broader market structure.'' [47] The Commission expects to review the data and observations of the Exchange before determining whether and, if so, how to extend the exemption from the Sub-Penny Rule.[48]

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[49] that the proposed rule change (SR–NYSEArca–2013–107) be, and hereby is, approved on a one-year pilot basis.

It is also hereby ordered that, pursuant to Rule 612(c) of Regulation NMS, the Exchange is given a limited exemption from Rule 612 of Regulation NMS to allow it to accept and rank orders priced equal to or greater than $1.00 per share in increments of $0.001, in the manner described in the proposed rule changes above, on a one-year pilot basis beginning with the effectiveness of the proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[50]

Kevin O'Neill,

Deputy Secretary.

[FR Doc. 2013–31131 Filed 12–27–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71172; File No. SR–MIAX–2013–58]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing of a Proposed Rule Change To Amend the Exchange's By-Laws

December 23, 2013.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 9, 2013, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the Exchange's By-Laws.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to: (i) Amend certain sections of its By-Laws to correspond with an Equity Rights Program (''ERP'') recently established by the Exchange; [3] and (ii) make other non-substantive revisions to reflect changes since the Commission granted the Exchange's registration as a national securities exchange on December 3, 2012.[4]

The filing corresponds with the recently implemented ERP, pursuant to which units representing the right to

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and that ''sub-penny executions due to price improvement are generally beneficial to retail investors.'' *Id.* at 37556.

[46] *See* Request for Sub-Penny Rule Exemption, *supra* note 5, at 3, n.5.

[47] *See supra* note 34 and accompanying text.

[48] In particular, the Commission expects the Exchange to observe how maker/taker transaction charges, whether imposed by the Exchange or by other markets, might impact the use of the Program. Market distortions could arise where the size of a transaction rebate, whether for providing or taking liquidity, is greater than the size of the minimum increment permitted by the Program ($0.001 per share).

[49] 15 U.S.C. 78s(b)(2).

[50] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(83).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70498 (September 25, 2013), 78 FR 60348 (October 1, 2013) (SR–MIAX–2013–43).

[4] *See* Securities Exchange Act Release No. 68341 (December 3, 2012), 77 FR 73089 (December 7, 2012) (File No. 10–207).

acquire equity in the Exchange's parent holding company, Miami International Holdings (''LLM Member''),[5] were issued to participating Members in exchange for payment of an initial purchase price or the prepayment of certain transaction fees and the achievement of certain liquidity addition volume thresholds on the Exchange over a 23-month period. This filing amends the By-Laws to the extent necessary to incorporate rights to participating Members in an ERP to appoint representation to the MIAX Board.

Article I, Definitions

The Exchange proposes to amend the By-Laws to provide definitions for key terms used to incorporate provisions related to the ERP. Specifically, the Exchange proposes the following definitions:

- ''Effective Date'' means the date of effectiveness of these Amended and Restated By-Laws.
- ''ERP Agreement'' means the agreement pursuant to which Units were issued.
- ''ERP Director'' means an Industry Director who has been nominated by an ERP Member and appointed to the Board of Directors.
- ''ERP Member'' means an Exchange Member who acquired Units pursuant to an ERP Agreement sufficient to acquire an ERP Director or an Observer position.
- ''Exchange Contract'' means a contract that is then listed for trading by the Exchange or that is contemplated by the then current business plan of the Company to be listed for trading by the Exchange within ninety (90) days following such date.
- ''Measurement Period'' means the time period over which Units are vested.
- ''Observer'' has the meaning set forth in Article II, Section 2.2 of these By-Laws.
- ''Performance Criteria'' means the trades on MIAX in an amount equal to a percentage of the average daily volume of contracts traded on all options exchanges for all option classes listed on MIAX as reported to The Options Clearing Corporation for a specified Measurement Period in an amount such that the ERP Member earns Units during such specified Measurement Period.
- ''Specified Entity'' means (i) any U.S. securities option exchange (or facility thereof) or U.S. alternative trading system on which securities options are traded (other than the Company or any of its affiliates) that lists for trading any option contract that competes with an Exchange Contract, (ii) any person that owns or controls such U.S. securities option exchange or U.S. alternative trading system, and (iii) any affiliate of a person described in clause (i) or (ii) above.[6]
- ''Unit'' means a combination of securities or types of securities packaged together as one.

The Exchange will renumber the pre-existing definitions accordingly to accommodate the additions.

Article II, Section 2.2, Composition of the Board

The Exchange proposes to amend the Board of Directors composition provisions to provide that ERP Directors will be included in the number of Industry Directors for purposes of calculating the composition of the Board. In addition, the Exchange proposes to specify that Member Representative Directors will not include ERP Directors for purposes of calculating the Board composition.

The Exchange proposes to add a restriction to the qualifications of a Director so that after the effective date of the Amended and Restated By-Laws, in the event a Director becomes a member of the board of directors or similar governing body of a competing options exchange or alternative trading system that trades options, such individual shall immediately cease to be a Director of the Company and the resulting vacancy shall be filled by the standard nominating and appointment procedures.[7] Existing Directors that may be in violation would be grandfathered in and not subject to the new restriction.

In addition, the Exchange proposes to provide that an ERP Member has a right to nominate a Director or appoint an Observer to the Board of Directors. If the ERP Member is otherwise able to nominate an ERP Director, an Observer appointment would be in lieu of such ERP Director nomination.[8] As discussed below, the Nominating Committee shall formally nominate only those persons whose names have been approved and submitted by the applicable ERP Members. The LLC Member is then obligated to vote for the nominated ERP Director. The nominee shall be appointed at the first annual meeting of the Company following the effective date of the By-Law amendment.

Observers appointed by ERP Members will be subject to the same statutory disqualification restrictions as Directors. Similar to Directors, in the event an Observer appointed after the effective date of the Amended and Restated By-Laws becomes a member of the board of directors or similar governing body of a competing options exchange or alternative trading system that trades options, such individual shall immediately cease to be an Observer of the Company.[9] Observers will have the right to attend all meetings of the Board of Directors in a nonvoting observer capacity and, in this respect, the Company shall give such representative copies of all notices, minutes, consents, and other materials that it provides to its directors at the same time and in the same manner as provided to such Directors; provided, however, that such representative shall agree to hold in confidence and trust and to act in a fiduciary manner with respect to all information so provided; and provided further, that the Company reserves the right to withhold any information and to exclude such representative from any meeting or portion thereof if access to such information or attendance at such meeting could adversely affect the attorney-client privilege between the Company and its counsel or result in disclosure of trade secrets or a conflict of interest.

The Exchange believes these changes are reasonably designed to ensure that the Board of Directors maintains the appropriate composition after the ERP and that Directors and Observers are qualified to represent ERP Members on the Board. The changes will also help to ensure that Directors, ERP Directors, and Observers, are qualified and held to the same restrictions against statutory disqualification and conflicts of interests by being a member of the board of directors or similar body of a competitor. The Exchange notes that no substantive changes are being proposed to the Board's composition; the Board size will increase, but the current composition will remain.

[5] The Commission notes that the defined term ''LLM Member'' is a typographical error. The Commission understands that the Exchange meant ''LLC Member'' here, a term used throughout this notice.

[6] The Exchange notes that this definition is nearly identical to that used by another competing options exchange. *See* Limited Liability Company Agreement of NYSE Amex Options, Article I, 1.1. *See also* Securities Exchange Act Release No. 64742 (June 24, 2011), 76 FR 38436 (June 30, 2011) (SR–NYSEAmex–2011–018) (Exhibit 5A).

[7] The Exchange notes that this restriction is nearly identical to that used by another competing options exchange. *See* Limited Liability Company Agreement of NYSE Amex Options, Article VIII, 8.1(h). *See also* Securities Exchange Act Release No. 64742 (June 24, 2011), 76 FR 38436 (June 30, 2011) (SR–NYSEAmex–2011–018) (Exhibit 5A).

[8] At this time, an ERP Member may only have at most a Member Representative Director and an ERP Director, or a Member Representative Director and an Observer, but not an ERP Director and an Observer.

[9] *See id.*

Article II, Section 2.3, Terms of Office

The Exchange proposes to amend this Section to provide that in the event that an ERP Member who has the right to nominate an ERP Director and which fails to meet its Performance Criteria under the ERP Agreement for three consecutive Measurement Periods such that it only meets the required performance criteria of an ERP Member that may appoint an Observer, then the individual designated by the non-performing ERP Member shall immediately cease to be an ERP Director of the Company and such ERP Member shall cease to have the right to nominate an ERP Director. Such non-performing ERP Member shall continue to maintain Observer rights as set forth in the By-Laws. Notwithstanding the foregoing, in the event that the non-performing ERP Member satisfies the Performance Criteria for a subsequent Measurement Period, then such ERP Member may reappoint an ERP Director at the immediately following annual meeting of the Company. Additionally, in the event that an ERP Member who has the right to appoint an Observer and which fails to meet its Performance Criteria for three consecutive Measurement Periods, then the individual designated by the non-performing ERP Member shall immediately cease to be an Observer and such non-performing ERP Member shall cease to have the right to appoint an Observer. Notwithstanding the foregoing, in the event that the non-performing ERP Member satisfies the Performance Criteria for a subsequent Measurement Period, then such ERP Member may reappoint an Observer. The Exchange believes that it is fair and reasonable to treat non-performing ERP Member's that can nominate an ERP Director differently than non-performing ERP Member's that can only appoint Observers. ERP Members that can nominate ERP Directors have assumed greater performance obligations under the ERP Agreement, and thus even at the non-performing level are entitled to more protections to their representation on the Board than non-performing ERP Members that can only appoint Observers.

The Exchange also proposes to provide that an individual ERP Director or Observer position shall be immediately terminated following the transfer of common stock or warrants of the LLC Member acquired pursuant to the ERP Agreement by an ERP Member which, after giving effect to such transfer, results in such ERP Member holding less than 20% of the aggregate number of shares of common stock of the LLC Member issued or issuable pursuant to the Units acquired pursuant to the ERP Agreement collectively.

The Exchange believes these changes regarding Terms of Office are reasonably designed to account for the removal of Directors or Observers of non-performing ERP Members and Members that no longer have a controlling interest in the shares that provided them the right to such appointments.

Article II, Section 2.4, Nomination and Election

The Exchange proposes to provide that the Nominating Committee shall nominate to ERP Director positions only those persons whose names have been approved and submitted by the applicable ERP Members having the right to nominate such person. As mentioned above, the LLC Member is then obligated to vote for the nominated ERP Director. The nominee shall be appointed at the first annual meeting of the Company following September 30, 2013, which was the closing date of the ERP Program.

Article II, Section 2.8, Vacancies

The Exchange proposes to provide that in the event that an ERP Director position becomes vacant that the applicable ERP Member will retain the ability to nominate a person to fill the vacant ERP Director position. To eliminate any potential confusion between the treatment of true vacancies and the non-performance provisions in Article II, Section 2.3(c), the Exchange proposes to specify that Section 2.8(c) will not apply for a vacancy resulting from an ERP Director position becoming vacant due to a non-performing ERP Member. In the situation of non-performance of an ERP Member, the provisions of Article II, Section 2.3(c) would apply.

Article II, Section 2.9, Removal and Resignation

The Exchange proposes to provide that ERP Directors may only be removed for cause, which shall include, without limitation, such Director being subject to a statutory disqualification.

Article IV, Section 4.2, Board Committees

The Exchange proposes to provide that committee members will be subject to the same statutory disqualification restrictions as Directors and Observers. Similar to Directors and Observers, in the event a committee member appointed after the effective date of the Amended and Restated By-Laws becomes a member of the board of directors or similar governing body of a competing options exchange or alternative trading system that trades options, such individual shall immediately cease to be a committee member of the Company.[10] The Exchange believes these changes are reasonably designed to ensure that committee members are qualified and held to the same standards as Directors and Observers.

Article X, Sections 10.3 and 10.4

The Exchange proposes to provide that Observers will be subject to the same participation rights on the Board during meetings pertaining to the self-regulatory function of the Company as other members of the Board. In addition, Observers will be subject to the same requirements to maintain the confidentiality of all books and records of the Company reflecting confidential information pertaining to the self-regulatory function of the Company.

Miscellaneous Non-Substantive Changes.

In addition to the changes set forth above, the Exchange proposes to make the following non-substantive changes to the current By-Laws. The Exchange proposes to delete dated references to time periods and events that have expired since the proposal of the New By-Laws. Specifically, the Exchange proposes to delete provisions in Article II, Section 2.5, and Article III, Section 3.1(b), regarding Interim Directors and Interim Member Representative Directors since these appointments have already occurred. Consistent with this change, the Exchange proposes to remove references to Article II, Section 2.5 and Interim Directors and Interim Member Representative Directors from Article I(bb) and Article II, Section 2.2(b)(i).

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Sections 6(b)(1) and 6(b)(5) of the Act[12] in particular, in that it enables the Exchange to be so organized as to have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its Members and persons associated with its Members, with the provisions of the Act, the rules and regulations

[10] The Exchange notes that this restriction is nearly identical to that used by another competing options exchange. *See* Limited Liability Company Agreement of NYSE Amex Options, Article VIII, 8.3(d). *See also* Securities Exchange Act Release No. 64742 (June 24, 2011), 76 FR 38436 (June 30, 2011) (SR–NYSEAmex-2011–018) (Exhibit 5A).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

thereunder, and the rules of the Exchange; and that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In addition, the proposed change is consistent with Section 6(b)(3) of the Act,[13] in that it enables the Exchange to assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.

Specifically, the proposed amendments to the By-Laws are reasonably designed to incorporate provisions related to the ERP in a manner that ensures that the Exchange will remain so organized as to have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its Members and persons associated with its Members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The changes will also help to ensure that Directors, ERP Directors, Observers, and committee members are qualified and held to the same restrictions against statutory disqualification and conflicts of interests by being a member of the board of directors or similar body of a competitor. The proposed ERP Directors will be subject to the same restrictions as current Directors including evaluating proposals with the Company's self-regulatory status in mind, restricting participation in activities where there is a conflict of interest, and [sic] requirement to maintain the confidentiality of information related to the Company's self-regulatory function. The proposed Observers will be subject to the same restrictions as current Directors regarding maintain [sic] the confidentiality of information related to the Company's self-regulatory function. However, Observers will be not be subject to the same restrictions as current Directors regarding evaluating proposals with the Company's self-regulatory status in mind and restricting participation in activities where there is a conflict of interest. The Exchange believes that treating Observers differently than Directors in these circumstances is reasonable because Observers will not be affirmatively voting on any such proposals in their non-voting observer capacity.

In addition, the Exchange's proposed amendments address other non-substantive revisions to reflect changes since the Commission granted the Exchange's registration as a national securities exchange.

The proposal will continue to assure a fair representation of its Members in that ERP Directors will not affect the current Member Representation Director calculation or process in any way. The Exchange notes that no substantive changes are being proposed to the Board's composition; the Board size will increase, but the current composition will remain.

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. The proposed changes to the Exchange By-Laws are designed to enable the Exchange to be so organized as to have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its Members and persons associated with its Members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. As such, this is not a competitive filing and thus should not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2013–58 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–MIAX–2013–58. 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–MIAX–2013–58, and should be submitted on or before January 21, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–31128 Filed 12–27–13; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78f(b)(3).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71177; File No. SR–Phlx–2013–106]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Amend Rules 1064 and 1080 to More Specifically Address the Number and Size of Counterparties to a Qualified Contingent Cross Order

December 23, 2013.

On October 23, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rules 1064 and 1080 to more specifically address the number and size of counterparties to a Qualified Contingent Cross Order (''QCC Order''). The proposed rule change was published for comment in the **Federal Register** on November 13, 2013.[3] The Commission received two comment letters on this proposal.[4]

Section 19(b)(2) of the Act [5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is December 28, 2013. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change, so that it has sufficient time to consider this proposed rule change, including the Comment Letters that have been submitted in connection with this proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates February 11, 2013, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–Phlx–2013–106).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–31132 Filed 12–27–13; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70821 (November 6, 2013), 78 FR 68126.

[4] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Benjamin R. Londergan, Chief Executive Officer, Group One Trading, L.P., dated December 2, 2013 (''Group One Letter'') and Angelo Evangelou, Associate General Counsel, Chicago Board Options Exchange Incorporated, dated December 13, 2013 (''CBOE Letter'') (collectively, the ''Comment Letters'').

[5] 15 U.S.C. 78s(b)(2).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71178; File No. SR–CBOE–2013–107]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Amend Its Rules Regarding Option Orders That Include a Stock Component

December 23, 2013.

On October 31, 2013, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CBOE's rules regarding option orders that include a stock component. The proposed rule change was published for comment in the **Federal Register** on November 19, 2013.[3] The Commission received two comment letters regarding the proposed rule change.[4]

Section 19(b)(2) of the Act [5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is January 3, 2014. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change and the comment letters that have been submitted in connection with this proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates February 17, 2014, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CBOE–2013–107).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–31133 Filed 12–27–13; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70857 (November 13, 2013), 78 FR 69487.

[4] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Manisha Kimmel, Executive Director, Financial Information Forum, dated December 10, 2013; and Ellen Greene, Vice President, Securities Industry and Financial Markets Association, dated December 16, 2013.

[5] 15 U.S.C. 78s(b)(2).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71175; File Nos. SR–NYSE–2013–21; SR–NYSEMKT–2013–25]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE MKT LLC; Order Approving Proposed Rule Changes Amending NYSE Rule 104 and NYSE MKT Rule 104—Equities, Each as Modified by an Amendment No. 1, To Codify Certain Traditional Trading Floor Functions That May Be Performed by Designated Market Makers, To Make Exchange Systems Available to DMMs That Would Provide DMMs With Certain Market Information, To Amend the Exchanges' Rules Governing the Ability of DMMs To Provide Market Information to Floor Brokers, and To Make Conforming Amendments to Other Rules

December 23, 2013.

I. Introduction

On April 9, 2013, the New York Stock Exchange LLC (''NYSE'') and NYSE MKT LLC (''NYSE MKT'') (collectively, ''Exchanges'') each 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 (''Proposals'') to amend certain of their respective rules relating to Designated Market Makers (''DMMs'') [3] and Floor brokers.

The Proposals were published for comment in the **Federal Register** on April 29, 2013.[4] The Commission received two comment letters on the NYSE proposal.[5] On June 11, 2013, the Commission extended until July 26, 2013 the time period in which to approve, to disapprove, or to institute proceedings to determine whether to disapprove the Proposals.[6] On July 26, 2013, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the Proposals.[7] During the course of these proceedings, the Commission received one additional comment letter [8] and two responses from the Exchanges.[9] This order approves the Proposals.

II. Background

The Proposals seek to amend the Exchanges' rules in four ways. First, the Exchanges propose to codify certain trading floor functions that may be performed by DMMs. Second, the Exchanges propose to allow DMMs to access Exchange systems that would provide DMMs with additional order information about the securities in which they are registered. Third, the Exchanges propose to make certain conforming amendments to their rules to reflect the additional order information that would be available to DMMs through Exchange systems and to specify what information about Floor broker agency interest files (''e-Quotes'') is available to the DMM. Finally, the Exchanges propose to modify the terms under which DMMs would be permitted to provide market information to Floor brokers and others.[10]

A. Trading Floor Functions

The Exchanges propose to codify certain traditional Trading Floor functions that were formerly performed by specialists and were described in each Exchange's respective Floor Official Manual.[11] The proposed rules would specify four categories of trading floor functions that DMMs could perform: (1) Maintaining order among Floor brokers manually trading at the DMM's assigned panel, including managing trading crowd activity and facilitating Floor broker executions at the post; [12] (2) facilitating Floor broker interactions, including either participating as a buyer or seller, and appropriately communicating to Floor brokers the availability of other Floor broker contra-side interest; [13] (3) assisting Floor brokers with respect to their orders by providing information regarding the status of a Floor broker's orders, helping to resolve errors or questioned trades, adjusting errors, and cancelling or inputting Floor broker agency interest on behalf of a Floor broker; [14] and (4) researching the status of orders or questioned trades.[15]

B. DMM Access to Additional Order Information

Each Exchange proposes to make available to a DMM at his or her post Exchange systems that display the following types of information about securities in which the DMM is registered: (1) Aggregated information

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NYSE Rule 98(b)(1) defines the term ''DMM'' to mean any individual qualified to act as a DMM on the floor of the Exchange under NYSE Rule 103. ''DMM unit'' means any member organization, aggregation unit within a member organization, or division or department within an integrated proprietary aggregation unit of a member organization that (i) has been approved by NYSE Regulation pursuant to section (c) of NYSE Rule 98, (ii) is eligible for allocations under NYSE Rule 103B as a DMM unit in a security listed on the Exchange, and (iii) has met all registration and qualification requirements for DMM units assigned to such unit. NYSE Rule 98(b)(2). *See also* NYSE MKT Rule 2(i)—Equities (defining the term ''DMM'' to mean an individual member, officer, partner, employee, or associated person of a DMM unit who is approved by the Exchange to act in the capacity of a DMM); NYSE MKT Rule 2(j)—Equities (defining the term ''DMM unit'' as a member organization or unit within a member organization that has been approved to act as a DMM unit under NYSE MKT Rule 98—Equities).

[4] *See* Securities Exchange Act Release Nos. 69427 (Apr. 23, 2013), 78 FR 25118 (SR–NYSE–2013–21) (''NYSE Notice'') and 69428 (Apr. 23, 2013), 78 FR 25102 (SR–NYSEMKT–2013–25) (''NYSE MKT Notice'') (collectively ''Notices''). On April 18, 2013, each of the Exchanges filed a Partial Amendment No. 1 to its Proposal. The purpose of the amendments was to file Exhibit 3, which was not included in the Notices.

[5] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Daniel Buenza, Lecturer in Management, London School of Economics, and Yuval Millo, Professor of Social Studies of Finance, University of Leicester (May 20, 2013) (''LSE Letter I''); Letter to Commission from James J. Angel, Ph.D., CFA, Associate Professor of Finance, Georgetown University, McDonough School of Business (May 14, 2013) (''Angel Letter''). Although these comment letters addressed only the NYSE proposal explicitly, the Proposals are nearly identical. For this reason, this order addresses both Proposals when discussing these comment letters.

[6] *See* Securities Exchange Act Release Nos. 69736, 78 FR 36284 (June 17, 2013) (SR–NYSE–2013–21); and 69733, 78 FR 36284 (June 17, 2013) (SR–NYSEMKT–2012–25).

[7] *See* Securities Exchange Act Release No. 70047, 78 FR 46661 (Aug. 1, 2013).

[8] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Daniel Buenza, Lecturer in Management, London School of Economics, and Yuval Millo, Professor of Social Studies of Finance, University of Leicester (Aug. 22, 2013) (''LSE Letter II'').

[9] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Janet McGinness, EVP and Corporate Secretary, General Counsel, NYSE Markets, NYSE Euronext (Sept. 5, 2013) (''Response Letter I''); Letter to Elizabeth M. Murphy, Secretary, Commission, from Janet McGinness, EVP and Corporate Secretary, General Counsel, NYSE Markets, NYSE Euronext (Dec. 6, 2013) (''Response Letter II'') (together with Response Letter I, the ''Response Letters'').

[10] On October 31, 2011, NYSE and NYSE Amex LLC (the predecessor entity of NYSE MKT) (''NYSE Amex'') each filed with the Commission a proposed rule change to amend the exchange's Rule 104 (''2011 Proposals'') that proposed similar changes to the relevant rules as the Proposals. The 2011 Proposals were published for comment in the **Federal Register** on November 17, 2011. *See* Securities Exchange Act Release Nos. 65735 (Nov. 10, 2011), 76 FR 71405 (SR–NYSEAmex–2011–86) (''NYSE Amex Notice'') and 65736 (Nov. 10, 2011), 76 FR 71399 (SR–NYSE–2011–56) (''NYSE Notice''). The Commission received no comment letters on the Proposals. On December 22, 2011, the Commission extended to February 15, 2012 the time period in which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the 2011 Proposals. *See* Securities Exchange Act Release No. 66036, 76 FR 82011 (Dec. 29, 2011). The Commission received no comment letters on the 2011 Proposals during the extension. On February 15, 2012, the Commission issued an order instituting proceedings to determine whether to approve or disapprove the 2011 Proposals. *See* Securities Exchange Act Release No. 66397, 77 FR 10586 (Feb. 22, 2012). After instituting proceedings, the Commission received six comment letters supporting the 2011 Proposals. After the Commission issued a notice of designation of longer period for Commission action on May 14, 2012, *see* Securities Exchange Act Release No. 66981, 77 FR 29730 (May 18, 2012), the Commission disapproved the 2011 Proposals on July 13, 2012. *See* Securities Exchange Act Release No. 67437, 77 FR 42525 (July 13, 2012) (''Disapproval Order'').

[11] *NYSE 2004 Floor Official Manual, Market Surveillance,* Chapter Two, Sec. I. at 7–12 (June ed. 2004). Relevant excerpts of the *2004 Floor Official Manual* are attached as Exhibit 3 to the Exchanges' filings.

[12] *See id.* at Sec. I.A., p. 7 (noting that ''specialist helps ensure that such markets are fair, orderly, operationally efficient and competitive with all other markets in those securities'').

[13] *See id.* at Sec. I.B.3., pp. 10–11 (''In opening and reopening trading in a listed security, a specialist should . . . [s]erve as the market coordinator for the securities in which the specialist is registered by exercising leadership and managing trading crowd activity and promptly identifying unusual market conditions that may affect orderly trading in those securities, seeking the advice and assistance of Floor Officials when appropriate'' and ''[a]ct as a catalyst in the markets for the securities in which the specialist is registered, making all reasonable efforts to bring buyers and sellers together to facilitate the public pricing of orders, without acting as principal unless reasonably necessary.'').

[14] *See id.* at Sec. I.B.4., p. 11 (''In view of the specialist's central position in the Exchange's continuous two-way agency auction market, a specialist should . . . [e]qually and impartially provide accurate and timely market information to all inquiring members in a professional and courteous manner.'').

[15] *See id.* at Sec. I.B.5., p. 12 (providing that a specialist should ''[p]romptly provide information when necessary to research the status of an order or a questioned trade and cooperate with other members in resolving and adjusting errors'').

about buying and selling interest;[16] (2) disaggregated information about the price and size of any individual order or e-Quote and the entering and clearing firm information for these orders, except that Exchange systems would not make available to DMMs any disaggregated information about an order or e-Quote that a market participant has elected not to display to a DMM; and (3) post-trade information.[17] The disaggregated information to be made available to each DMM concerning the securities in which the DMM is registered would include: (a) The price and size of all displayable interest submitted by off-Floor participants (although off-Floor participants may submit non-displayable interest that is hidden from the DMM);[18] and (b) all e-Quotes, including reserve e-Quotes, that the Floor broker has not elected to exclude from availability to the DMM.[19] According to the Exchanges, the systems would not contain any information about the ultimate customer (*i.e.,* the name of the member or member organization's customer) in an order or transaction.

C. Conforming Amendments To Reflect the Additional Order Information To Be Made Available to DMMs Through Exchange Systems and to Specify Floor Broker e-Quote Information To Be Made Available to DMMs

The Exchanges also propose to make conforming amendments to their rules to reflect the additional order information that would be available to DMMs through Exchange systems and to specify what information about e-Quotes is available to the DMM in a given security. Specifically, the Exchanges propose to revise NYSE Rule 70 and NYSE MKT Rule 70—Equities governing e-Quotes to reflect that disaggregated order information regarding a given security would be available to the DMM for that security except as elected otherwise. The Exchanges would allow a Floor broker to enter an e-Quote with reserve interest (''Reserve e-Quote'') with or without a displayable portion.

A Reserve e-Quote with a displayable portion would participate in manual and automatic executions. Trading interest at each price point, including the reserve portion of the Reserve e-Quote, would be included in the aggregate interest available to the DMM. This trading interest at each price point would also be available to the DMM on a disaggregated basis, unless the Floor broker chooses to exclude the Reserve e-Quote with a displayable portion from the DMM.

A Reserve e-Quote with an undisplayable portion would also participate in manual and automatic executions. As with the Reserve e-Quote with a displayable portion, trading interest at each price point represented by the Reserve e-Quote with an undisplayable portion would be included in the aggregated and disaggregated interest available to the DMM, unless the Floor broker chooses to exclude the Reserve e-Quote from the DMM. If, however, the Floor broker chooses to exclude the Reserve e-Quote with an undisplayable portion from the DMM, then the DMM would not have access to the trading interest represented by the Reserve e-Quote on either an aggregated or disaggregated basis, and the Reserve e-Quote would not participate in manual executions.

In addition, the Exchanges propose to delete their existing rules that currently prohibit DMMs from using the Display Book system to access information about e-Quotes excluded from the aggregated agency interest and Minimum Display Reserve Order information except for the purpose of effecting transactions that are reasonably imminent and where the Floor broker agency and Minimum Display Reserve Order interest information is necessary to effect the transactions.[20]

D. Ability of DMMs To Provide Market Information on the Trading Floor

The Exchanges also propose to modify the circumstances under which DMMs would be permitted to provide market information to Floor brokers and visitors on the trading floor. Specifically, the proposed rules would permit a DMM to provide such information to: (1) A Floor broker in response to an inquiry in the normal course of business; or (2) a visitor to the trading floor for the purpose of demonstrating methods of trading. Accordingly, a Floor broker would be able to ask a DMM for disaggregated order information that market participants have not otherwise elected to be hidden from the DMM. A Floor broker would not be able to submit such an inquiry by electronic means, and the DMM's response containing market information could not be delivered through electronic means.

Because the Proposals expand on and incorporate the Exchanges' current rules regarding the disclosure of order information by DMMs, the Exchanges are proposing to delete those rules.[21] The current rules provide that a DMM may disclose market information for three purposes. First, a DMM may disclose market information for the purpose of demonstrating the methods of trading to visitors to the trading floor. This aspect of the current rules is replicated in the proposed rules. Second, a DMM may disclose market information to other market centers in order to facilitate the operation of the Intermarket Trading System (''ITS''). According to the Exchanges, this text is obsolete, as the ITS Plan has been eliminated, and therefore the Exchanges are proposing to delete it. Third, a DMM may, while acting in a market-making capacity and in response to an inquiry from a member conducting a market probe in the normal course of business, provide information about buying or selling interest in the market, including (a) aggregated buying or selling interest contained in Floor broker agency interest files, other than interest the broker has chosen to exclude from the aggregated buying and selling interest, (b) aggregated interest of Minimum Display Reserve Orders, and (c) the interest included in DMM interest files, excluding Capital Commitment Schedule (''CCS'') interest as described in Rule 1000(c).

The proposed rules would permit DMMs to provide Floor brokers not only with the same aggregated order information that DMMs are permitted to provide under current rules, but also with the disaggregated and post-trade

[16] Exchange systems currently make available to DMMs aggregate information about the following interest in securities in which the DMM is registered: (a) All displayable interest submitted by off-floor participants; (b) all Minimum Display Reserve orders, including the reserve portion; (c) all displayable floor broker agency interest files (''e-Quotes''); (d) all Minimum Display Reserve e-Quotes, including the reserve portion; and (e) the reserve quantity of Non-Display Reserve e-Quotes, unless the floor broker elects to exclude that reserve quantity from availability to the DMM.

[17] For the latter two categories, the DMM also would have access to entering and clearing firm information for each order and, as applicable, the badge number of the floor broker representing the order.

[18] *See* NYSE Rule 13 and NYSE MKT Rule 13—Equities, defining non-displayed order types.

[19] The Exchanges previously permitted DMMs to have access to Exchange systems that contained the disaggregated order information described above. The Exchanges stopped making such information available to DMMs in January 2011. *See* NYSE and NYSE Amex Information Memo 11–03 (Jan. 19, 2011).

[20] The rule provisions proposed to be deleted are NYSE Rule 104(a)(6) and NYSE MKT Rule 104(a)(b)—Equities. For the text to be deleted, *see, e.g.,* Form 19b–4, SR–NYSE–2013–21, at 73 (Apr. 9, 2013), *http://www.nyse.com/nysenotices/nyse/rule-filings/pdf;jsessionid=3D35E4095153B77CA82FA0BB9EBE1BC2?file-_no=SR-NYSE-2013-21&seqnum=1.*

[21] The Exchanges are also proposing conforming amendments to correct cross-references to the former rules.

order information described above.[22] The proposed rules would permit a DMM to provide market information to a Floor broker in response to a specific request by the Floor broker to the DMM at the post, rather than specifying that the information must be provided ''in response to an inquiry from a member conducting a market probe in the normal course of business,'' as currently provided in the Exchanges' rules. Under the Proposals, Floor brokers would not have access to Exchange systems that provide disaggregated order information, and Floor brokers would only be able to access such information through a direct manual interaction with a DMM at the post.

III. Initial Comment Letters and Responses

Following publication of the Proposals in the **Federal Register**, the Commission received two comment letters.[23] The first commenter offered several arguments in support of the Proposals. First, the commenter stated that, by permitting DMMs to use both pre- and post-trade information that is already present on the Exchanges' systems, the Proposals promote the legitimate Floor function of matching buyers and sellers,[24] which could promote just and equitable principles of trade and would be in the public interest.[25] According to this commenter, the Proposals would enable market participants to trade larger blocks of stock with minimal market impact and could improve execution quality, especially for large buy-side institutions such as mutual funds that trade on behalf of retail investors.[26] The commenter also stated that the Proposals contained sufficient safeguards to protect investors.[27] Specifically, the commenter stated that institutional investors monitor execution quality very closely and that, if the Proposals were to hurt execution quality on the Exchanges, market participants would migrate to other exchanges.[28] The commenter also stated that the Proposals do not permit unfair discrimination, as any market participant that wanted to avail itself of the sharing of order information on the Floor of the exchanges could route its orders to a Floor broker.[29]

The second commenter expressed qualified support for the proposal.[30] Citing its research, this commenter stated that communicating partially disaggregated order information from DMMs to Floor brokers would have a positive effect on price discovery, as it would assist DMMs and Floor brokers in finding the counterparties for certain trades.[31] In this way, the commenter believed, the Proposals could incentivize transactions and contribute to greater liquidity in the market.[32] However, the commenter also noted the importance of maintaining controls on the dissemination of such information, as the dissemination of excessive information may be detrimental to the investor that originated the order.[33] In that regard, the commenter noted that NYSE maintains a system of formal rules and sanctions, in addition to the informal discipline that exists on the Floor, to safeguard the disclosure of order information.[34] In contrast, however, the commenter noted that such controls did not exist outside the Floor.[35] Therefore, the commenter stated, disaggregated order information should not be made available to market participants outside the floor of the NYSE, as there would ''be no means to control the use that this information is put to.''[36]

IV. Institution of Proceedings to Determine Whether to Approve or Disapprove the Proposals

On July 26, 2013, the Commission instituted proceedings to determine whether to approve or disapprove the Proposals, raising concerns with respect to the Proposals.[37] Specifically, the Commission's Order Instituting Proceedings expressed concern that the Proposals would permit disaggregated order information to be made available to off-Floor market participants (*i.e.,* Floor broker customers) and stated that:

> The Exchanges * * * do not address why the dangers that would arise if disaggregated information were made available generally to off-floor market participants are not present when this same information is made available to off-floor market participants that are Floor broker customers. Nor have the Exchanges described any mechanism by which they would be able to assure that disaggregated information is not misused by Floor broker customers. Accordingly, the Commission is concerned that the Exchanges have not demonstrated why this aspect of the Proposals is designed to protect investors and [the] public interest, and is not designed to permit unfair discrimination, or impose an unnecessary or inappropriate burden on competition.[38]

After the institution of proceedings, the Commission received an additional comment letter from one of the commenters[39] and two responses from the Exchanges.[40] The commenter stated its unqualified support for the Proposals. The commenter noted that a Floor broker provides a substantial measure of control over the use that brokers and off-Floor members make of the information. The commenter also noted that direct electronic dissemination of disaggregated order information, which is not proposed by the Exchanges, would reach numerous off-Floor participants instantaneously and systemically, while manual dissemination of disaggregated order information, as proposed by the Exchanges, would be slower and would reach a selected number of off-Floor participants. The commenter stated its belief that the sharing of disaggregated order information by DMMs with Floor brokers would be superior to systematic electronic dissemination because it would be more targeted, more limited in reach, and less timely.

In Response Letter I, the Exchanges stated that dissemination of disaggregated order information under the Proposal would be practically useless to market participants employing high-speed, automated trading strategies because the proposed manner of dissemination is manual and occurs one stock at a time. The Exchanges stated their belief that the Proposals are designed to benefit only market participants looking to source large amounts of liquidity, not traders employing predatory trading strategies, because the dissemination of information is manual and thus slower than electronic dissemination. The Exchanges further stated their belief that competition among market venues would ensure that the disclosure of disaggregated order information would not be abused, as market participants concerned about possible misuse of such information could designate their orders as hidden from DMMs and Floor brokers or could route their orders to other venues.

[22] Because DMMs on the trading floor do not have access to CCS interest information, the proposed rule does not specify that DMMs would not be disseminating such information.

[23] *See supra* note 5.

[24] *See* Angel Letter, *supra* note 5.

[25] *See id.* at 7–8.

[26] *Id.* at 2.

[27] *Id.* at 7.

[28] *Id.* at 5.

[29] *Id.* at 6–7.

[30] *See* LSE Letter I, *supra* note 5.

[31] *Id.* at 2–3.

[32] *Id.* at 1–2.

[33] *Id.* at 2.

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] Securities Exchange Act Release No. 70047, *supra* note 7.

[38] *Id.* at 11–12, 78 FR at 46664.

[39] *See* LSE Letter II, *supra* note 8.

[40] *See* the Response Letters, *supra* note 9.

In Response Letter II, the Exchanges supplemented their initial response and more directly addressed the specific concerns raised by the Commission in the Order Instituting Proceedings. As to articulating a legitimate rationale for making disaggregated order information available to Floor broker customers, the Exchanges stated:

> [M]aking the disaggregated order information available to Floor brokers' customers would expand the possible points of contact with member organizations representing block trading interest since the customers may have networks of relationships that differ from and may extend beyond those of Floor brokers, thereby increasing opportunities for order interaction and reduced transaction costs for the investing public.[41]

As to the potential for misuse of disaggregated order information that is shared off the Floor, the Exchanges represented that they would address this concern in three ways. First, each Exchange would issue a Member Education Bulletin to its Floor brokers that would (1) underscore that the purpose of sharing disaggregated order information is to increase the potential points of contact for those seeking to source block trading interest and to increase the opportunities for interaction of larger orders and (2) stress the existing requirement that Floor brokers who share ''market look'' information with a customer have a reasonable belief that the customer is receiving the information in consideration of a transaction or potential transaction. Second, the Exchanges represent that they have engaged in extensive discussions with FINRA regarding the Proposals and the use of cross-market surveillance to detect the misuse of disaggregated order information by off-Floor market participants. Finally, each Exchange would issue an Information Memo to its member organizations providing notice of the proposed rule changes and what they mean for orders that are entered on the Exchange, and each Exchange would develop and provide notice of a complaint mechanism to report any potential misuse of disaggregated order information provided to a Floor broker customer.

V. Discussion and Findings

The Commission has carefully reviewed the Proposals, the comment letters, and the Response Letters, and finds that the Proposals are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. In particular, Section 6(b)(5) of the Act[42] requires, among other things, that the rules of an 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 and that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Additionally, Section 6(b)(8) of the Act[43] requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

The Proposals would allow a DMM at his or her post to have access to: (1) Aggregated buying and selling interest; (2) disaggregated information about the price and size of any individual order or e-Quote and the entering and clearing firm for such orders; and (3) post-trade information. The Proposals would further allow a DMM to disclose disaggregated order information to Floor brokers in response to an inquiry in the normal course of business,[44] and a Floor broker in receipt of such information would be able to transmit that information to his or her customer for the purpose of facilitating order interaction. If a market participant has elected not to display an order to a DMM, however, the DMM would not have access to information about that order.

As noted above, in its Order Instituting Proceedings to determine whether to approve or disapprove the Proposals, the Commission expressed concerns with the dissemination of disaggregated order information off the trading Floor. In Response Letter II, the Exchange made representations in response to these concerns. The Exchanges set forth their rationale for permitting such information sharing, arguing that the customers of Floor brokers may have networks of relationships that would increase interaction among large orders and decrease transaction costs. The Exchanges also made representations concerning the potential misuse of disaggregated order information that has been shared off the Floor. The Exchanges represented (1) that they would stress to Floor brokers that, in order to share disaggregated order information with customers, Floor brokers must have a reasonable belief that the customer is receiving the information in furtherance of a transaction or a potential transaction; (2) that trading will be monitored for evidence of front-running and that surveillance could potentially identify the misuse of disaggregated order information by off-Floor market participants,[45] and (3) that the Exchanges will educate their member organizations about the operation of the Proposals, the ability of member organizations to submit orders that would not be visible to DMMs or Floor brokers, and the existence of a complaint mechanism, to be established by the Exchanges, through which member organizations could report suspect misuse of order information.

The Commission believes that, on balance, the Exchanges have articulated in Response Letter II colorable arguments in response to the concerns expressed by the Commission in the Order Instituting Proceedings. The Commission believes that the Exchanges have met their burden to demonstrate that the Proposals are adequately designed to protect investors and the public interest and that the Proposals are not designed to permit unfair discrimination or to impose an unnecessary or inappropriate burden on competition.

VI. Conclusion

For the foregoing reasons, the Commission finds that the Proposals are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act[46] and Section 6(b)(8) of the Act.[47]

It is therefore ordered, pursuant the Section 19(b)(2) of the Act, that the Proposals (SR–NYSE–2013–21 and SR–NYSEMKT–2013–25), are hereby approved.

[41] *See* Response Letter II, *supra,* note 9.

[42] 15 U.S.C. 78f(b)(5). In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[43] 15 U.S.C. 78f(b)(8).

[44] A DMM would also be permitted to provide order information to visitors to the trading Floor for the purpose of demonstrating methods of trading.

[45] The Exchanges represented in Response Letter II that a Floor broker's wireless device and Exchange-provided portable phones would generate a record of outgoing messages and calls and that this information would be made available for investigations of suspected misuse of order information.

[46] 15 U.S.C. 78f(b)(5).

[47] 15 U.S.C. 78f(b)(8).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–31130 Filed 12–27–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71173; File No. SR–NASDAQ–2013–156]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Options Execution Algorithm With Priority Overlays

December 23, 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 December 16, 2013, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by 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 Chapter VI, Section 10, of the Rules of the NASDAQ Options Market (''NOM''). Specifically, NASDAQ proposes to add an additional execution algorithm and priority overlays to govern the priority of orders, as explained more fully below.

The text of the proposed rule change is below; proposed new language is in italics.

* * * * *

Chapter VI Trading Systems

* * * * *

Sec. 10 Book Processing

System orders shall be executed through the Nasdaq Book Process set forth below:

(1) Execution Algorithm—*The Exchange will determine to apply, for each option, one of the following execution algorithms described in paragraphs (A) or (B). The Exchange will issue an Options Alert specifying which execution algorithm will govern which options any time it is modified.*

(A) Price/Time—The System shall execute trading interest within the System in price/time priority, meaning it will execute all trading interest at the best price level within the System before executing trading interest at the next best price. Within each price level, *if there are two or more quotes or orders at the best price,* trading interest will be executed in time priority.

(B) Size Pro-Rata—The System shall execute trading interest within the System in price priority, meaning it will execute all trading interest at the best price level within the System before executing trading interest at the next best price. Within each price level, if there are two or more quotes or orders at the best price, trading interest will be executed based on the size of each Participant's quote or order as a percentage of the total size of all orders and quotes resting at that price. If the result is not a whole number, it will be rounded down to the nearest whole number. If there are residual contracts remaining after rounding, such contracts will be distributed one contract at a time to the remaining Participants in time priority.

(C) Priority Overlays Applicable to Size Pro-Rata Execution Algorithm: The Exchange will apply the following designated Participant priority overlays, which are always in effect when the Size Pro-Rata execution algorithm is in effect.

(i) Public Customer Priority: the highest bid and lowest offer shall have priority except that Public Customer orders shall have priority over non-Public Customer orders at the same price. If there are two or more Public Customer orders for the same options series at the same price, priority shall be afforded to such Public Customer orders in the sequence in which they are received by the System. For purposes of this Rule, a Public Customer order does not include a Professional Order.

(ii) Market Maker Priority: After all Public Customer orders have been fully executed, Options Market Makers shall have priority over all other Participant orders at the same price. If there are two or more Options Market Maker quotes and orders for the same options series at the same price, those shall be executed based on the Size Pro-Rata execution algorithm. If there are contracts remaining after all Market Maker interest has been fully executed, such contracts shall be executed based on the Size Pro-Rata execution algorithm.

(2)–(7) 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

NOM operates as an all-electronic system (''System'' or ''Trading System'') with no physical trading floor and provides for the electronic display and execution of orders in price/time priority without regard to the status of the entities that are entering orders. NOM now seeks to introduce a different priority rule in certain options in order to create additional incentives for firms to provide liquidity on NOM.

Currently, Chapter VI, Section 10, Book Processing, provides that the System will have a single execution algorithm based on price/time priority. The System and rules provide for the ranking, display, and execution of all orders in price/time priority without regard to the status of the entity entering an order. For each order, among equally-priced or better-priced trading interest, the System currently executes against available contra-side displayed contract amounts in full, in price/time priority.

At this time, the Exchange proposes to amend Chapter VI, Section 10, to provide for a Size Pro-Rata execution algorithm. In order to make clear that only one of the two execution algorithms is applicable to a particular option, NASDAQ proposes to add introductory language to Section 10(1) to state that the Exchange will determine to apply, for each option, one of the execution algorithms described in subparagraphs (A)[3] or (B). The

[48] *See* 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASDAQ is also proposing to amend subparagraph (A) to provide that, respecting the price/time execution algorithm, within each price level, if there are two or more quotes or orders at the best price, trading interest will be executed in time priority. This is intended to be clearer and match the new language in subparagraph (B).

Exchange will issue an Options Alert specifying which execution algorithm will govern which options any time a change is made.

Further, NASDAQ proposes to adopt new subparagraph (B) to provide that when the Size Pro-Rata execution algorithm is in effect the System shall execute trading interest in price priority, meaning it will execute all trading interest at the best price level within the System before executing trading interest at the next best price. Within each price level, if there are two or more quotes or orders at the best price, trading interest will be executed based on the size of each Participant's quote or order as a percentage of the total size of all orders and quotes resting at that price. If this is not a whole number, it will be rounded down to the nearest whole number. If there are residual contracts remaining after rounding, such contracts will be distributed one contract at a time to the remaining Participants in time priority.[4] The Size Pro-Rata execution algorithm will, initially, always operate with the priority overlays, as described further below.

Example 1—rounding approach Order 1: Buy 10 contracts for 1.84, Non-Market Maker broker-dealer
Order 2: Buy 10 contracts for 1.84, Public Customer
Quote: 1.84 (70) x 1.86 (10) MM1
Order 3: Buy 10 contracts for 1.84, Market Maker
Market: 1.84 (100 contracts total) x 1.86 (10 contracts)
Sell order received: Sell 25 contracts at 1.84
Execution:
Order 1 represents 10 of 100 (10%) total contracts at 1.84.
10% of 25 contracts (which is the sell order) execute = 2.5, rounds down to 2 contracts.
Order 2 represents 10 of 100 (10%) total contracts at 1.84.
10% of 25 contracts (which is the sell order) execute = 2.5, rounds down to 2 contracts.
MM1's quote represents 70 of 100 (70%) total contracts at 1.84.
Again, 70% of 25 contracts execute = 17.5, rounds down to 17 contracts.
Order 3 represents 10 of 100 (10%) total contracts at 1.84.
10% of 25 contracts (which is the sell order) execute = 2.5, rounds down to 2 contracts.
Total executed: 23. There are 2 residual contracts remaining from the 25 contract sell order.
The remaining 2 contracts are allocated one at a time based on time as follows:
Order 1 receives 1 additional residual contract.
Order 2 receives 1 additional residual contract.
The 25 contract sell order is now completely executed.

In addition, NASDAQ proposes to adopt two priority overlays. The new subparagraph (C), Priority Overlays Applicable to Size Pro-Rata Execution Algorithm, will provide that the Exchange may apply these priority overlays. NASDAQ plans to implement the Size Pro-Rata execution algorithm with both the Public Customer and Market Maker priority overlays.

The first priority overlay, Public Customer Priority, is proposed to be subparagraph (1)(C)(i). Under this priority overlay, interest at the highest bid and lowest offer shall have priority except that Public Customer orders shall have priority over non-Public Customer orders at the same price. If there are two or more Public Customer orders for the same options series at the same price, priority shall be afforded to such Public Customer orders in the sequence in which they are received by the System. For purposes of this Rule, a Public Customer order does not include a Professional Order. This is substantially similar to BX Options, Chapter VI, Section 10.

The second proposed priority overlay is contained in subparagraph (1)(C)(ii), Market Maker Priority. Under this priority overlay, the highest bid and lowest offer shall have priority except that Options Market Maker orders, after all Public Customer orders have been fully executed in time priority, shall have priority over all other Participant orders at the same price. The Public Customer priority is always a part of the Market Maker Priority overlay and both overlays will always apply to the Size Pro-Rata execution algorithm initially. If there are two or more Options Market Maker quotes and orders for the same options series at the same price, those orders shall be executed based on the Size Pro-Rata execution algorithm. If there are contracts remaining after all Market Maker interest has been fully executed (meaning, Non-Public Customer and Non-Market Maker), such contracts shall be executed based on the Size Pro-Rata execution algorithm.[5]

The following is an example of the Public Customer and Market Maker priority overlays applied to the proposed Size Pro-Rata execution algorithm:

Example 2:
Order 1: Buy 10 contracts for 1.84, Non-MM broker-dealer
Order 2: Buy 10 contracts for 1.84, Public Customer
Quote MM1: 1.84 (10) x 1.86 (10)
Order 3: Buy MM 1.84 (10)
Sell order received: Sell 21 contracts at 1.84
Execution:
Order 2 allocated 10 contracts because of Public Customer priority
Quote MM1 represents 10 of 20 (50%) total MM contracts at 1.84. 50% of 11 contracts to execute = 5.5, rounds down to 5 contracts.
Order 3 represents 10 of 20 (50%) total MM contracts at 1.84. 50% of 11 contracts to execute = 5.5, rounds down to 5 contracts.
Remaining 1 contract is allocated to MM1 based on time among MMs.
Order 1 is not executed because Market Makers have priority over non-Market Maker broker-dealers. Order 1 would only be executed if all interest at the Public Customer priority level and the Market Maker level was first completely executed.

In summary, this proposed rule change will allow for a different execution algorithm for NOM. To be clear, two different execution algorithms will not operate in the same option. In addition, when the Size Pro-Rata execution algorithm is selected by NASDAQ, the proposed new priority overlays will be applied first as part of the execution algorithm used to allocate the order. These additional priority overlays are Public Customer priority and Market Maker priority, which will only apply to the Size Pro-Rata execution algorithm. NASDAQ notes that the execution algorithm will be selected and communicated by NASDAQ to NOM Participants. The Public Customer and Market Maker priority overlays will always operate with the Size Pro-Rata execution algorithm.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest, because it will provide an additional execution algorithm with priority overlays on NOM. This additional execution algorithm with priority overlays should provide Participants with additional choices among the many competing exchanges with regard to their execution needs and strategies, which should promote just and equitable principles of trade. The Exchange believes that adding this flexibility to its rules will allow for greater customization, resulting in enhanced service to its customers and users, which would continue to be a purely objective method for allocating option trades. The Exchange is seeking to create additional incentives for firms

[4] This is substantially similar to BX Options, Chapter VI, Section 10(1)(B).

[5] This is substantially similar to BX Options, Chapter VI, Section 10(1)(C).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

to provide liquidity on NOM. The Exchange believes that, while the price/time execution algorithm encourages liquidity providers to set the price, the Size Pro-Rata execution algorithm encourages liquidity providers to add size to a bid/offer at a particular price, even if that Participant did not set the price. Rewarding liquidity providers who add size should encourage larger displayed markets, which should, in turn, benefit and protect investors and the public interest. The Exchange believes that the public customer priority overlay is designed to promote just and equitable principles of trade and to protect investors and the public interest, because it recognizes the unique status of customers in the marketplace and the role their orders play in price competition and adding depth to the marketplace. The Exchange believes that the market maker priority overlay is designed to promote just and equitable principles of trade and to protect investors and the public interest, because it strikes a reasonable balance between encouraging vigorous price competition and rewarding market makers for their unique obligations.[8] Overall, the overlays represent a careful balancing by the Exchange of the rewards and obligations of various types of market participants.

With respect to the proposed language in subparagraph (A) respecting the price/time execution algorithm, the Exchange believes that the clarification (that within each price level, if there are two or more quotes or orders at the best price, trading interest will be executed in time priority) is designed to promote just and equitable principles of trade and to protect investors and the public interest by making the rule clearer and structured in a way that is user-friendly.

(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. With respect to inter-market competition, the proposal should enhance NOM's competitive position, as NOM competes vigorously with many other options exchanges. With respect to intra-market competition, the Exchange believes that the proposal will encourage liquidity providers to compete based on the size of their bids/offers. The Exchange does not believe that this will impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act, because the size pro-rata allocation algorithms are prevalent on options exchanges, and liquidity providers can also choose to operate on price/time exchanges instead.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or

Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2013–156 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2013–156. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2013–156 and should be submitted on or before January 21, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–31129 Filed 12–27–13; 8:45 am]

BILLING CODE 8011–01–P

[8] *See* NOM Rules, Chapter VII, Sections 5 and 6.

[9] 15 U.S.C. 78s(b)(3)(a)(ii).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71179; File No. SR–FINRA–2013–025]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change To Adopt Rules Regarding Supervision in the Consolidated FINRA Rulebook, as Modified by Amendment No. 1

December 23, 2013.

I. Introduction

On June 21, 2013, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt consolidated FINRA supervision rules.[3] The proposed rule change was published for comment in the **Federal Register** on July 8, 2013.[4] The Commission received seventeen (17) individual comment letters in response to the proposed rule change and five hundred sixty (560) comments using a form comment letter (''Letter Type A'').[5] On October 2, 2013, FINRA responded to the comments [6] and filed Amendment No. 1 to the proposed rule change. On October 4, 2013, the Commission published notice of Amendment No. 1 to solicit comment from interested persons and instituted proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove FINRA's proposal as modified by Amendment No. 1.[7] The Commission received three comment letters in response to the Notice and Proceedings Order.[8] On November 12, 2013, FINRA responded to comments to the proposed rule change, as modified by Amendment No. 1.[9] The Commission is publishing this order (''Order'') to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.[10]

II. Description of Proposal

As further described in the Proposing Release, FINRA proposes to adopt consolidated FINRA broker-dealer supervision rules.[11] As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[12] the proposed rule change would (1) adopt FINRA Rules 3110 (Supervision) and 3120 (Supervisory Control System) to largely replace NASD Rules 3010 (Supervision) and 3012 (Supervisory Control System), respectively; (2) incorporate into FINRA Rule 3110 and its supplementary material the requirements of NASD IM–1000–4 (Branch Offices and Offices of Supervisory Jurisdiction), NASD IM–3010–1 (Standards for Reasonable Review), Incorporated NYSE Rule 401A (Customer Complaints), and Incorporated NYSE Rule 342.21 (Trade Review and Investigation); (3) replace NASD Rule 3010(b)(2) (often referred to as the ''Taping Rule'') with new FINRA Rule 3170 (Tape Recording of Registered

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On June 10, 2011, FINRA filed with the SEC a proposed rule change to adopt the consolidated FINRA supervision rules (''2011 Filing''), which addressed the comments received in response to FINRA's *Regulatory Notice* 08–24 (May 2008). *See* Exchange Act Release No. 64736 (June 23, 2011), 76 FR 38245 (June 29, 2011) (Notice of Filing No. SR–FINRA–2011–028). FINRA withdrew the 2011 Filing on September 27, 2011. *See* Exchange Act Release No. 65477 (October 4, 2011), 76 FR 62890 (October 11, 2011) (Notice of Withdrawal of File No. SR–FINRA–2011–028).

[4] *See* Exchange Act Release No. 69902 (July 1, 2013), 78 FR 40792 (July 8, 2013) (Notice of Filing of a Proposed Rule Change to Adopt Rules Regarding Supervision in the Consolidated FINRA Rulebook) (''Proposing Release''). The comment period closed on July 29, 2013.

[5] *See* letters from Steven B. Caruso, Esq., Maddox Hargett Caruso, P.C., to Elizabeth M. Murphy, Secretary, SEC, dated July 12, 2013 (''Caruso''); Norman B. Arnoff, Esq., to Elizabeth M. Murphy, Secretary, SEC, dated July 19, 2013 (''Arnoff''); J.S. Brandenburger, Registered Principal, FSC Securities Corporation, to Elizabeth M. Murphy, Secretary, SEC, dated July 25, 2013 (''Brandenburger''); Steve Putnam, Financial Advisor, Raymond James Financial Services, to Elizabeth M. Murphy, Secretary, SEC, dated July 25, 2013 (''Putnam''); Nina Schloesser McKenna, General Counsel, Cetera Financial Group, Inc., to Elizabeth M. Murphy, Secretary, SEC, dated July 29, 2013 (''Cetera''); Scott Cook, Senior Vice President and Chief Compliance Officer, Charles Schwab & Co., Inc., to Elizabeth M. Murphy, Secretary, SEC, dated July 29, 2013 (''Schwab''); Clifford Kirsch and Eric A. Arnold, Sutherland Asbill & Brennan LLP, on behalf of the Committee of Annuity Insurers, to Elizabeth M. Murphy, Secretary, SEC, dated July 29, 2013 (''CAI''); David T. Bellaire, Esq., Executive Vice President & General Counsel, Financial Services Institute, to Elizabeth M. Murphy, Secretary, SEC, dated July 29, 2013 (''FSI''); Howard Spindel, Senior Managing Director, and Cassondra E. Joseph, Managing Director, Integrated Management Solutions USA, LLC, to Elizabeth M. Murphy, Secretary, SEC, dated July 29, 2013 (''IMS''); Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, SEC, dated July 29, 2013 (''ICI''); Susanne Denby, Chief Compliance Officer, NFP Securities, Inc., to Elizabeth M. Murphy, Secretary, SEC, dated July 29, 2013 (''NFP''); A. Heath Abshure, President and Arkansas Securities Commissioner on behalf of the North American Securities Administrators Association, Inc., to Elizabeth M. Murphy, Secretary, SEC, dated August 6, 2013 (''NASAA''); Scott C. Ilgenfritz, President, Public Investors Arbitration Bar Association, to Elizabeth M. Murphy, Secretary, SEC, dated July 29, 2013 (''PIABA''); Ira D. Hammerman, Senior Managing Director and General Counsel, Securities Industry and Financial Markets Association, to Elizabeth M. Murphy, Secretary, SEC, dated July 29, 2013 (''SIFMA''); Pamela Albanese, Legal Intern, and Christine Lazaro, Esq., Acting Director, Securities Arbitration Clinic of St. John's University School of Law, to Elizabeth M. Murphy, Secretary, SEC, dated July 29, 2013 (''St. John's''); Brian P. Sweeney, Law Office of Brian P. Sweeney, to Elizabeth M. Murphy, Secretary, SEC, dated July 29, 2013 (''Sweeney''); Robert J. McCarthy, Director of Regulatory Policy, Wells Fargo Advisors, LLC, to Elizabeth M. Murphy, Secretary, SEC, dated July 29 2013 (''Wells Fargo''); *see also* Memorandum from the Division of Trading and Markets, SEC, dated August 29, 2013 (memorializing an August 5, 2013 conference call between SEC staff and Gary Goldsholle and Michael Post of the Municipal Securities Rulemaking Board (''MSRB'') to discuss FINRA's recently proposed rule change to adopt the proposed consolidated supervision rules) (''MSRB Memo''). The Notice and Proceedings Order, as defined in footnote 7, identified 555 comments as having been received using Letter Type A. This number has been updated to reflect 560 total number of submissions using Letter Type A.

[6] *See* letter from Patricia Albrecht, Assistant General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, SEC, dated October 2, 2013 (''October Response'').

[7] *See* Exchange Act Release No. 70612 (October 4, 2013), 78 FR 62831 (October 22, 2013) (Notice of Filing of Amendment No. 1 and Order Instituting Proceedings 2013–SR–FINRA–025) (''Notice and Proceedings Order''). The comment period closed on October 28, 2013.

[8] *See* letters from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, SEC, dated October 17, 2013 (''ICI's October Letter''); David T. Bellaire, Esq., Executive Vice President & General Counsel, Financial Services Institute, to Elizabeth M. Murphy, Secretary, SEC, dated October 28, 2013 (''FSI's October Letter''); Andrea Seidt, President and Ohio Securities Commissioner on behalf of the North American Securities Administrators Association, Inc., to Elizabeth M. Murphy, Secretary, SEC, dated November 5, 2013 (''NASAA's November Letter''); *see also* Memorandum from the Division of Trading and Markets, SEC, dated November 12, 2013 (memorializing a November 8, 2013 conference call between SEC staff and Tamara Salmon of the ICI to discuss FINRA's recently proposed rule change to adopt the proposed consolidated supervision rules (''ICI Memo'').

[9] *See* letter from Patricia Albrecht, Assistant General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, SEC, dated November 12, 2013 (''November Response'').

[10] The text of the proposed rule change, as modified by Amendment No. 1, is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, and at the Commission's Public Reference Room. The October Response and the November Response are available on the Commission's Web site at *http://www.sec.gov.*

[11] *See infra* Section III, describing sections of the proposed rule change in the context of comments received.

[12] The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from the New York Stock Exchange (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE. The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see* Information Notice, March 12, 2008 (Rulebook Consolidation Process).

Persons by Certain Firms); (4) replace NASD Rule 3110(i) (Holding of Customer Mail) with new FINRA Rule 3150 (Holding of Customer Mail); and (5) delete the following Incorporated NYSE Rules and NYSE Rule Interpretations: (i) NYSE Rule 342 (Offices—Approval, Supervision and Control) and related NYSE Rule Interpretations; (ii) NYSE Rule 343 (Offices—Sole Tenancy, and Hours) and related NYSE Rule Interpretations; (iii) NYSE Rule 351(e) (Reporting Requirements) and NYSE Rule Interpretation 351(e)/01 (Reports of Investigation); (iv) NYSE Rule 354 (Reports to Control Persons); and (v) NYSE Rule 401 (Business Conduct). FINRA modified its proposal in certain respects through Amendment No. 1, as described in the Notice and Proceedings Order.[13]

FINRA stated that it would announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The effective date will be no later than 365 days following Commission approval.

III. Discussion of Comments and FINRA's Response

On July 8, 2013, the Commission published in the **Federal Register** FINRA's proposed rule change to adopt consolidated FINRA supervision rules.[14] The comment period ended on July 29, 2013 and the Commission received the 17 individual comment letters listed above as well as 560 comments using a form comment letter.[15] A few commenters generally supported the proposal, but many commenters raised specific concerns, including, among other things, references to MSRB rules;[16] the scope of the definition of the term ''covered accounts;''[17] the application of a risk-based approach to supervision;[18] the conditions for establishing a one person office of supervisory jurisdiction (''OSJ'');[19] the requirements and presumptions relating to a single principal supervising multiple OSJs;[20] the documentation requirements relating to written and oral complaints;[21] and the lack of a cost benefit analysis. FINRA filed Amendment No. 1 to address commenter concerns and responded to comments in a letter dated October 2, 2013.[22]

On October 22, 2013, the Commission published in the **Federal Register** the Notice and Proceedings Order.[23] The comment period ended on October 28, 2013 and the Commission received the three comment letters listed above.[24] One commenter fully supported the proposal and the other two commenters restated concerns raised in their original letters.[25] One commenter raised an additional concern in response to Amendment No. 1.[26] FINRA responded to comments in a letter dated November 12, 2013.[27]

The sections below discuss: the comments received to the Proposing Release and the Notice and Proceedings Order; FINRA's October Response and November Response; and the Commission's findings.

A. General Comments

1. Support for Proposal

Several commenters to the Proposing Release expressed overall support for the proposed rule change[28] and specific changes FINRA made in response to comments on the 2011 Filing, including requiring that supervisory procedures and corresponding amendments be communicated to relevant associated persons rather than throughout the organization; eliminating the requirement that associated persons verify annually that they have reviewed their firm's written supervisory procedures; eliminating risk management from the additional content requirements under proposed FINRA Rule 3120; and clarifying that supplementary material is part of the rule and the location of language within the supplementary material does not affect the weight or significance of a provision.[29] Commenters also expressed support for FINRA's efforts to consolidate the existing NASD and Incorporated NYSE rules into the FINRA rulebook.[30]

In response to the Notice and Proceedings Order, one commenter expressed strong support for the proposed rule change, as modified by Amendment No. 1.[31] The commenter stated that the proposed rule change, as amended, ''will ensure that investors are protected by the robust supervision programs implemented by firms, and that firms can continue to effectively utilize their supervisory structures and procedures under clear regulatory requirements.''[32]

2. Opposition to Risk-Based Review Principles

Two commenters to the Proposing Release opposed the proposed rules' flexibility permitting members to rely on risk-based or principles-based review standards for specific obligations, such as the review of securities transactions and correspondence, arguing that such flexibility would result in reduced or diminished supervisory requirements that would not achieve the purpose of protecting the investing public.[33]

FINRA responded by explaining that the proposed rules' risk-based approach for certain aspects of a member's supervisory procedures is intended to further strengthen, not diminish, investor protection by allowing firms the flexibility to establish their supervisory programs in a manner that reflects their business models, and based on those models, focus on areas where heightened concern may be warranted.[34] FINRA also noted that the proposed rules further protect investors by retaining specific prescriptive requirements of NASD Rules 3010 and 3012, such as mandatory inspection cycles, prohibitions on who can conduct location inspections, and procedures for the monitoring of enumerated activities. FINRA also pointed to additional prescriptive requirements in the proposed rules, including special supervision for supervisory personnel rather than just the existing special supervision for producing managers, specific procedures to detect and investigate potential insider trading violations, and additional content requirements for specific firms' annual reports. FINRA noted that it understands concerns that additional guidance may be needed and intends to provide such guidance as circumstances warrant.

3. Reconsider Previously Proposed Supplementary Material

One commenter to the Proposing Release suggested that FINRA

[13] *See supra* note 7.

[14] *See supra* note 4.

[15] *See supra* note 5.

[16] ICI. *See also* MSRB Memo.

[17] Brandenburger, CAI, FSI, ICI, IMS, Letter Type A, Putnam, SIFMA.

[18] Cetera, ICI, IMS, SIFMA.

[19] Brandenburger, Cetera, IMS, Letter Type A, Putnam.

[20] CAI, Cetera, FSI, IMS, Wells Fargo.

[21] Caruso, NASAA, PIABA, St John's.

[22] *See supra* note 6.

[23] *See supra* note 7.

[24] *See supra* note 8. Due to a temporary closure of the **Federal Register,** the Notice and Proceedings Order was not published in the **Federal Register** until October 22, 2013.

[25] *See infra* note 32 and accompanying text; *see also supra* note 8.

[26] *See infra* Section III(A)(6)(C).

[27] *See supra* note 9.

[28] Cetera, NFP, Schwab, SIFMA, St. John's, Sweeney.

[29] Schwab, SIFMA.

[30] NASAA, PIABA, Wells Fargo.

[31] FSI's October Letter.

[32] *Id.*

[33] NASAA, PIABA.

[34] October Response.

reconsider its decision to delete supplementary material previously proposed in the 2011 Filing providing that for a member's supervisory system to be reasonably designed to achieve compliance with FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade), it must include supervision of all of a member's business lines irrespective of whether they require broker-dealer registration.[35] This commenter restated this concern in a second letter.[36] FINRA responded that it continues to believe that it was the best course to eliminate the proposed supplementary material from the proposed rule because of potential differences with the supervision requirements otherwise applicable to those business lines.[37] FINRA stated that it will continue to apply FINRA Rule 2010's standards to non-securities activities of members and their associated persons consistent with existing case law.

4. Cost Benefit Analysis

One commenter to the Proposing Release stated that the proposal's compliance costs would be minimal and outweighed by the benefits.[38] Other commenters suggested that the proposal lacked a sufficient cost benefit analysis,[39] with some commenters stating that FINRA had not provided any specific performance objectives or identified other metrics to which it may later refer to assess the effectiveness of the proposed changes.[40] One commenter acknowledged that it was not possible for FINRA to perform a thorough cost benefit analysis when the proposal was filed, but suggested that FINRA revisit the proposed rules within five years of their adoption to ensure they are achieving their stated purpose while avoiding unnecessary costs.[41]

FINRA responded that the proposed rule change, as amended, strives to minimize the membership's burden and cost of complying with the consolidated supervision rules, as consistent with their purposes.[42] FINRA noted that the consolidated supervision rules transfer many of the existing requirements in NASD Rules 3010 and 3012 relating to, among other things, supervisory systems, written procedures, internal inspections, review of correspondence, and supervisory controls. Thus, FINRA believes that transferring existing requirements does not raise additional costs or burdens for firms because firms have already developed the necessary procedures and supporting systems to comply with those requirements. FINRA further noted that the proposed rule change also would delete Incorporated NYSE Rule 342 and much of its supplementary material and interpretations as they are, in main part, either duplicative of, or not in alignment with, the proposed supervision requirements, thereby reducing potential costs to firms that are members of both FINRA and the NYSE.

In addition, FINRA noted that it has also applied a risk-based approach or similar flexibility for specified aspects of a member's supervisory procedures that is intended to allow firms the ability to establish their supervisory programs in a manner that reflects their business models, and based on those models, focus on areas where heightened concerns may be warranted. Those aspects include:

- Permitting risk-based review of all transactions relating to a member's investment banking or securities business;[43]
- Permitting risk-based review of a member's correspondence and internal communications that fall outside of the subject matters listed in proposed FINRA Rule 3110(b)(4);[44]
- Providing exceptions, based on a member's size, resources, and business model, from proposed FINRA Rule 3110's provisions regarding the supervision of a member's supervisory personnel and the persons prohibited from conducting a location's inspections;[45]
- Requiring that only members reporting $200 million or more in gross revenues in the preceding year (increased from the $150 million threshold originally proposed in the 2011 Filing) include in the annual report required by FINRA Rule 3120 supplemental information from Incorporated NYSE Rule 342.30's annual report content requirements;[46]
- Aligning proposed FINRA Rule 3110(d)'s definition of ''covered account'' with respect to detecting and investigating potential insider trading violations with existing NYSE guidance in response to commenters' concerns regarding compliance costs and burdens;[47]
- Replacing NASD Rule 3110(i) (Holding of Customer Mail) and its strict time limits for holding customer mail with proposed FINRA Rule 3150 (Holding of Customer Mail), which generally allows a member to hold a customer's mail for a specific time period in accordance with the customer's written instructions if the member meets specified conditions;[48] and
- Deleting proposed supplementary material, in response to commenters' concerns regarding compliance costs and burdens that would have required a senior principal to have a physical presence on a regular periodic schedule at a one-person office of supervisory jurisdiction (''OSJ'') where the one-person OSJ principal was conducting sales-related activities.[49]

FINRA stated that it agrees that the proposed consolidated supervision rules should be subject to a retrospective review process following an appropriate period after their implementation to determine whether they are achieving their intended purpose or have become overly burdensome[50] and would seek to consult with the membership, the public, and other stakeholders in analyzing the economic impact of the rules.

[35] NASAA (referring to the 2011 Filing's proposed FINRA Rule 3110.01 (Business Lines)).

[36] NASAA's November Letter.

[37] October Response. *See also* November Response, stating that FINRA continues to support its analysis of these issues as described above.

[38] St. John's.

[39] Brandenburger, FSI, IMS, Letter Type A, Putnam.

[40] Brandenburger, FSI, IMS, Letter Type A.

[41] FSI.

[42] October Response.

[43] *See* proposed FINRA Rule 3110(b)(2) and FINRA Rule 3110.05, discussed further at *infra* Section III(E); *see also* Section E, page 12 of FINRA's October Response and Section 2(C), page 5 of FINRA's November Response.

[44] *See* proposed FINRA Rule 3110(b)(4) and FINRA Rule 3110.06, discussed further at *infra* Section III(F); *see also* Section F, page 14 of FINRA's October Response and Section 2(E)(i), page 6 of FINRA's November Response.

[45] *See* proposed FINRA Rule 3110(b)(6)(C)(ii) and FINRA Rule 3110(c)(3)(C), discussed further at *infra* Section III(H); *see also* Section H, page 19 and Section K, page 24 of FINRA's October Response and Section 2(D), page 5–6 of FINRA's November Response.

[46] *See* proposed FINRA Rule 3120(b), discussed further at *infra* Section III(M); *see also* Section N, page 34 of FINRA's October Response and Section 2(G), page 11 of FINRA's November Response.

[47] *See* proposed FINRA Rule 3110(d)(1)(A) through (D), discussed further at *infra* Section III(K); *see also* Section L, page 29 of FINRA's October Response and Section 2(F)(ii), page 10 of FINRA's November Response.

[48] *See* proposed FINRA Rule 3150(a) and (b).

[49] *See* Section C, page 8 of FINRA's October Response and Section 3, page 12 of FINRA's November Response.

[50] On September 19, 2013, FINRA issued a public statement, ''Framework Regarding FINRA's Approach to Economic Impact Assessment for Proposed Rulemaking,'' outlining the core principles defining FINRA's approach to conducting economic impact assessments for rulemaking. The framework applies specifically to significant new rule proposals, and therefore would not cover the current proposal. However, as noted in the framework, FINRA has historically taken into account the costs and burdens of its rulemaking, including the changes proposed in the proposed consolidated supervision rule filing.

5. Include Other Supervisory-Related Requirements

Some commenters to the Proposing Release requested that FINRA revise the proposal to include provisions addressing other supervisory-related issues.[51] These issues include, for example, establishing a minimum ratio of producing representatives to compliance officers,[52] requiring heightened supervision for associated persons with a high volume of complaints,[53] identifying and supervising suspicious withdrawal patterns,[54] and requiring special supervisory procedures for senior investors and non-English speaking customers.[55] FINRA responded that it believes that these matters should be considered as part of a member's establishment of a supervisory system and procedures reasonably designed to achieve compliance with the federal securities laws and FINRA rules, and the testing and verification of such procedures under FINRA Rule 3120.[56] In this regard, FINRA noted that it has issued guidance addressing areas of concern, including supervision of associated persons with disciplinary history,[57] verification of emailed instructions to transmit or withdraw assets,[58] and obligations relating to senior investors.[59]

6. Additional General Comments

One commenter to the Proposing Release suggested that proposed FINRA Rule 3110 would require firms to have compliance departments that operate independently from their sales activity.[60] FINRA responded that it disagrees with this interpretation of proposed FINRA Rule 3110 and stated that proposed FINRA Rule 3110, which is based primarily on existing requirements in NASD Rule 3010 and Incorporated NYSE Rule 342 relating to, among other things, supervisory systems, written procedures, internal inspections, and review of correspondence, is intended to allow firms the flexibility to establish their supervisory programs in a manner that reflects their business, size, and organizational structure.[61] FINRA further noted that proposed FINRA Rule 3110 would not require a member to have an independent compliance department.

Another commenter to the Proposing Release suggested incorporating the proposed supplementary material into the body of the proposed rules.[62] FINRA responded that supplementary material is part of the rule and a provision's location as supplementary material is intended to improve the readability of the rule without affecting the weight, significance, or enforceability of the provision.[63]

B. Comments on Proposed FINRA Rule 3110(a)

As proposed, FINRA Rule 3110(a) (Supervisory System) would have required a member to have a supervisory system for the activities of its associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations and FINRA and the MSRB rules. One commenter to the Proposing Release requested that FINRA delete proposed FINRA Rule 3110(a)'s reference to the MSRB rules.[64] FINRA responded that the proposed reference to the MSRB rules was intended to clarify that members' supervisory systems must extend to compliance with MSRB rules and also to align FINRA's supervisory system requirement with the existing requirement under MSRB Rule G–27 (Supervision) to have a supervisory system that is reasonably designed to achieve compliance with applicable securities laws and regulations and MSRB rules.[65] In light of a member's separate obligation to comply with MSRB Rule G–27, however, FINRA deleted the proposal's references to the MSRB rules in Amendment No. 1.

C. Comments on Deleted Supplementary Material Regarding One-Person OSJs

As proposed, FINRA Rule 3110 would have included supplementary material clarifying the conditions a firm must satisfy to establish a one-person OSJ consistent with proposed FINRA Rule 3110(a)(4)'s requirement to have one or more appropriately registered principals in each OSJ with authority to carry out the supervisory responsibilities assigned to that office. Specifically, proposed FINRA Rule 3110.03 (One-Person OSJs) expressly provided that the registered principal at a one-person OSJ (each such person is referred to in this paragraph C as the ''on-site principal'') cannot supervise his or her own sales activities and must be under the effective supervision and control of another appropriately registered principal (''senior principal''). The proposed supplementary material would have required that the designated senior principal be responsible for supervising the activities of the on-site principal at the one-person OSJ and conduct on-site supervision of the one-person OSJ on a regular periodic schedule to be determined by the member. In determining the schedule, the proposed supplementary material would have required a member to consider, among other factors, the nature and complexity of the securities activities for which the location is responsible, the nature and extent of contact with customers, and the disciplinary history of the principal at the one-person OSJ.

One commenter to the Proposing Release supported the proposed supplementary material,[66] while another commenter suggested that FINRA revise proposed FINRA Rule 3110.03 to specify that ''no Registered Principal shall supervise his or her own sales activity.''[67] Numerous commenters raised concerns regarding the negative impact and costs of implementing the proposed requirement.[68] One commenter also stated that proposed FINRA Rule 3110.03 would create an inconsistency and serve little regulatory purpose by requiring the personal production of one-person OSJs to be supervised differently than an OSJ with multiple registered persons.[69] Several other commenters suggested that proposed FINRA Rule 3110.03 was unnecessary to ensure effective supervision[70] and could undermine many independent firms' overall supervisory structures[71]

[51] Sweeney, St. John's, PIABA. In addition, IMS suggested that FINRA include in the proposal a specific presumption that a member firm's supervisory procedures would be presumed acceptable to FINRA examiners if the firm's procedures are properly documented and reasonable in light of the scope of its business, the extent of its customer contact, and its disciplinary history. However, as FINRA has noted previously, members retain the responsibility to design and implement supervisory procedures that are appropriate for their specific businesses and structures. *See* Notice to Members 99–45 (June 1999).

[52] Sweeney.

[53] PIABA.

[54] PIABA.

[55] St. John's.

[56] October Response.

[57] *See, e.g.,* Notice to Members 97–19 (April 1997).

[58] *See Regulatory Notice* 12–05 (January 2012).

[59] *See, e.g., Regulatory Notice* 07–43 (September 2007).

[60] Sweeney.

[61] October Response.

[62] IMS.

[63] October Response.

[64] ICI. *See also* MSRB Memo.

[65] *See* MSRB Rule G–27(b) (Supervisory System).

[66] PIABA. PIABA also expressed overall support for proposed FINRA Rule 3110(a)(4) and the proposed supplementary material addressing the supervision of multiple OSJs by a single principal.

[67] FSI.

[68] Brandenburger, Cetera, FSI, IMS, Letter Type A, Putnam.

[69] Cetera.

[70] Brandenburger, IMS, Letter Type A, Putnam.

[71] Brandenburger, Cetera, IMS, Letter Type A.

where home office principals supervise the sales activities of multiple field-OSJ principals to prevent conflicts of interest from self-supervision, or use technology and annual inspections to augment their supervision.[72] Commenters also suggested that the requirement to have ''on-site supervision on a regular periodic schedule'' ignores firms' use of technology-based remote supervisory systems.[73] One commenter raised concerns that proposed FINRA Rule 3110.03 would require all necessary supervisory reviews of the one-person OSJ to be conducted by the senior principal and sought clarification that the proposed supplementary material does not limit comprehensive regional supervisory structures, where regional principals perform annual and unannounced inspections and a separate centralized supervisory unit within the home office is dedicated to overseeing specific functions that require specialized knowledge and experience such as correspondence, advertising, or trade review.[74]

FINRA responded that it believes that OSJs conduct critical functions and one-person OSJs present unique supervisory challenges. However, in light of commenters' continuing concerns regarding compliance costs and burdens, in Amendment No. 1, FINRA eliminated the proposed supplementary material from the proposed rule.[75] FINRA noted that, importantly, it believes that one-person OSJ locations where the on-site principal engages in sales-related activities that trigger OSJ designation should be subject to scrutiny, and firms should conduct focused reviews of such locations.[76] FINRA stated that such locations would be subject to the general provisions of proposed FINRA Rule 3110(a)(5) (requiring all registered persons to be assigned to an appropriately registered representative(s) or principal(s) who will be responsible for supervising that person's activities) and proposed FINRA Rule 3110(b)(6) (requiring procedures prohibiting associated persons who perform a supervisory function from, among other things, supervising their own activities).[77] In addition, FINRA noted that it would continue to monitor one-person OSJs for possible conflicts of interest or sales practice violations and may determine to address the matter further as part of a retrospective review process following an appropriate period after implementation of proposed FINRA Rule 3110.

One commenter to the Notice and Proceedings Order opposed the elimination of the previously proposed supplementary material that would have required a registered principal at a one-person OSJ to be under the effective supervision and control of another appropriately registered principal.[78] However, the commenter stated that ''the harm that may have resulted from its removal is remediated by further changes designed to make it clear that self-supervision is inappropriate, and [they] encourage FINRA to continue to follow up on its commitment to continue to examine the unique challenges posed by One-Person OSJs.'' [79] FINRA responded that, based on prior comments on and concerns with issues raised in the Proposing Release, it continues to believe that it was the best course to eliminate the proposed supplementary material from the proposed rule.[80]

D. Comments on Proposed FINRA Rule 3110.03

Proposed FINRA Rule 3110.03 (Supervision of Multiple OSJs by a Single Principal) would clarify the general requirement in proposed FINRA Rule 3110(a)(4) to have one or more appropriately registered principals in each OSJ with authority to carry out the supervisory responsibilities assigned to that office (an ''on-site principal''). Specifically, proposed FINRA Rule 3110.03 would clarify that the requirement to have an appropriately registered principal in each OSJ requires the designated on-site principal to have a physical presence, on a regular and routine basis, at the OSJ. FINRA stated that it strongly believes OSJs engage in critical functions, and the requirement to have on-site supervision by designating one or more on-site principals in each OSJ has been a long standing cornerstone in establishing a reasonable supervisory structure. As a result, proposed FINRA Rule 3110.03 sets forth a general presumption that a principal will not be designated and assigned to be the on-site principal pursuant to proposed FINRA Rule 3110(a)(4) to supervise more than one OSJ.

If a member determines it is necessary to assign one principal to be the designated on-site principal to supervise two or more OSJs, then the firm must consider, among other things, the following factors:

- Whether the on-site principal is qualified to supervise the activities and associated persons in each location;
- Whether the on-site principal has the capacity and time to supervise the activities and associated persons in each location;
- Whether the on-site principal is a producing registered representative;
- Whether the OSJ locations are in sufficiently close proximity to ensure that the on-site principal is physically present at each location on a regular and routine basis; and
- The nature of activities at each location, including size and number of associated persons, scope of business activities, nature and complexity of products and services offered, volume of business done, the disciplinary history of persons assigned to such locations, and any other indicators of irregularities or misconduct.

In the Proposing Release, the proposed supplementary material would have created a further general presumption that assigning a principal to be the on-site principal of more than two OSJs is unreasonable.

1. Clarification of Term ''On-Site Principal''

As originally proposed, FINRA Rule 3110.03 used the terms ''on-site supervisor'' and ''designated principal'' interchangeably throughout the provision. Commenters requested that FINRA clarify in the rule text whether proposed FINRA Rule 3110.03's terms ''on-site supervisor'' and ''designated principal'' refer to the same person.[81] In response, FINRA revised in Amendment No. 1 proposed FINRA Rule 3110.03 to use the term ''on-site principal'' consistently throughout the provision.

[72] Cetera.

[73] Brandenburger, IMS, Letter Type A, Putnam.

[74] FSI.

[75] The deletion of this proposed supplementary material has resulted in a change in numbering of the remaining supplementary material to proposed FINRA Rule 3110. For ease of reference, FINRA's responses to comments employ the new proposed numbers in all instances.

[76] *See* October Response (citing to SEC Division of Market Regulation, Staff Legal Bulletin No. 17: Remote Office Supervision (March 19, 2004) (reminding broker-dealers that small, remote offices require vigilant supervision and specifically noting that ''[n]o individual can supervise themselves''); NASD Regulatory & Compliance Alert, Volume 11, Number 2 (June 1997) (cited by Staff Legal Bulletin No. 17 as support for statement that individuals cannot supervise themselves); *see also* In re Stuart K. Patrick, 51 S.E.C. 419, 422 (May 17, 1993) (''[s]upervision, by its very nature, cannot be performed by the employee himself'') (SEC order sustaining application of the New York Stock Exchange's supervisory rule—also cited by Staff Legal Bulletin No. 17 as support for statement that individuals cannot supervise themselves)).

[77] October Response.

[78] NASAA's November Letter.

[79] NASAA's November Letter at p. 4.

[80] November Response.

[81] Cetera, FSI.

2. Home Office Principals; Costly and Burdensome Implementation

Two commenters to the Proposing Release raised concerns with proposed FINRA Rule 3110.03.[82] One commenter requested that FINRA either ''exclude 'up-the-chain' home office supervision of producing field OSJ principals'' or more clearly address how the ''physical presence'' requirement applies to home office employee supervisors. The commenter specifically raised concerns about whether a home office principal with supervisory responsibilities over a particular business line conducted in the OSJ becomes the ''on-site principal'' and therefore would be required to have a physical presence on a regular basis.[83] The second commenter stated that proposed FINRA Rule 3110.03 does not provide sufficient flexibility, is too costly and burdensome to implement, and fails to take into account firms' various business structures.[84]

FINRA responded that proposed FINRA Rule 3110(a)(4), which would require a firm to have an appropriately registered principal in each OSJ with authority to carry out the supervisory responsibilities assigned to that office by the member, is being transferred unchanged from current NASD Rule 3010(a)(4).[85] FINRA further stated that due to inquiries from firms asking if they could assign one principal to be the designated on-site principal to two or more OSJs consistent with the requirements of NASD Rule 3010(a)(4), FINRA staff developed informal guidance and interpretations under NASD Rule 3010(a)(4). FINRA stated that Proposed FINRA Rule 3110.03 reflects these interpretations and consolidates them in one rule.

FINRA further responded that it believes the proposed rule would continue to provide firms with the flexibility to design supervisory systems suited for their business models, by allowing some flexibility in the presence of on-site supervisors if the firm can determine that the on-site principal has sufficient time and resources to engage in meaningful supervision of the critical functions that occur at another OSJ.[86] FINRA noted that firms can designate more than one on-site principal at an OSJ to supervise activities at that OSJ based on particular business lines, and each such principal designated as an on-site principal is required to have a physical presence on a regular basis. FINRA further noted that the on-site principal(s) is one part of a firm's comprehensive supervisory chain and not all ''up the chain'' supervisors must be designated as the on-site principal.

3. Elimination of Presumption That More Than Two OSJs Is Unreasonable

In the proposal, FINRA expressly included two general presumptions in the rule: (1) one principal should be assigned to be the on-site principal at one OSJ; and (2) assigning one principal to be the on-site principal at more than two OSJs is unreasonable. Commenters to the Proposing Release expressed concern about the effect that the presumptions would have on smaller firms; and one commenter stated that the presumptions negated the flexibility that FINRA otherwise intends to provide.[87] FINRA stated that the general presumptions were intended to provide firms with clarity. FINRA noted that the presumptions established guidelines, not rules, and firms could overcome the presumptions by demonstrating that assigning one principal to supervise more than two OSJs is reasonable based on the relevant factors set forth in proposed FINRA Rule 3110.03.[88]

In response to comments, FINRA proposed in Amendment No. 1 to replace the presumption in the Proposing Release that assigning one principal to be the on-site principal at more than two OSJs is unreasonable with a general statement that assigning a principal to more than one OSJ will be subject to scrutiny.

E. Comments on Proposed FINRA Rule 3110(b)(2) and FINRA Rule 3110.05

Proposed FINRA Rule 3110(b)(2) (Review of a Member's Investment Banking and Securities Business) would require that a member have supervisory procedures for the review by a registered principal, evidenced in writing, of all transactions relating to the member's investment banking or securities business. Proposed FINRA Rule 3110.05 (Risk-based Review of Member's Investment Banking and Securities Business) permits a member to use a risk-based system to review these transactions.

1. Additional Clarification Regarding ''Risk-Based Review System''

Commenters to the Proposing Release requested additional clarification regarding how to comply with proposed FINRA Rule 3110(b)(2)'s requirement to review all transactions related to a member's investment banking and securities business if using a risk-based system to review transactions pursuant to proposed FINRA Rule 3110.05. Specifically, two commenters sought clarification as to whether a member's supervisory system must take into account ''all'' transactions, considering that a principal only is required to review a sample of transactions under a ''risk-based review system.''[89] Similarly, another commenter asked whether a member firm determining parameters for a technological-based review system that would cause a trade to be flagged for more intensive review would be a ''risk-based'' approach that would conform to proposed FINRA Rule 3110(b)(2).[90]

FINRA responded that proposed FINRA Rule 3110(b)(2) would transfer to the FINRA Rulebook NASD Rule 3010(d)(1)'s provision requiring principal review, evidenced in writing, of all transactions and clarifies that such review include all transactions relating to the member's investment banking or securities business.[91] FINRA stated that the term ''risk-based'' describes the type of methodology a member may use to identify and prioritize for review those areas that pose the greatest risk of potential securities laws and self-regulatory organization (''SRO'') rule violations. In response to commenters' requests for clarification on risk-based reviews, FINRA clarified in Amendment No. 1 that a member would not be required to conduct detailed reviews of each transaction if a member is using a reasonably designed risk-based review system that provides a member with sufficient information that permits the member to focus on the areas that pose the greatest numbers and risks of violation.

FINRA further responded that it understands that a member's procedures for the review of its transactions by a registered principal may include the use of technology-based review systems with parameters designed to assess which transactions merit further

[82] CAI, Cetera.

[83] Cetera.

[84] CAI.

[85] October Response.

[86] October Response.

[87] IMS, Wells Fargo.

[88] Cetera also stated that this presumption inappropriately shifts the burden of proof to the member and does not appear justified given the lower ''preponderance of the evidence'' standard of proof in FINRA disciplinary proceedings. FINRA stated that it disagrees with the commenter's statement. FINRA explained that Proposed FINRA Rule 3110(a) specifies the standard that a member's supervisory system be reasonably designed to achieve compliance with the applicable Federal securities laws and regulations and FINRA rules, and it is the member's responsibility to demonstrate that its supervisory system meets this standard. *See* October Response.

[89] IMS, SIFMA.

[90] Cetera.

[91] October Response.

review.[92] FINRA noted that the parameters would have to be reviewed by a principal and that review would have to be documented in writing. FINRA further noted, as is always the case with the exercise of supervision under FINRA rules, a principal's use of any automated supervisory system, aid, or tool for the discharge of supervisory duties represents a direct exercise of supervision by that principal, and the principal remains responsible for the discharge of supervisory responsibilities in compliance with the proposed rule. In addition, FINRA noted that a principal relying on a risk-based review system is responsible for any deficiency in the system's criteria that would result in the system not being reasonably designed.[93]

2. Exclude Specific Types of Broker-Dealers

One commenter requested that FINRA either exclude ''mutual fund underwriters'' and other members that do not have or maintain customer relationships or effect transactions with or for retail investors from proposed FINRA Rule 3110(b)(2) or explain how those members are expected to document compliance.[94] FINRA stated that the proposed rules would apply a risk-based approach or similar flexibility for specified aspects of a member's supervisory procedures to allow firms the ability to establish their supervisory programs in a manner that reflects their business models, such as members with limited broker-dealer activities.[95] As noted above, FINRA stated that proposed FINRA Rule 3110(b)(2) would transfer NASD Rule 3010(d)(1)'s provision and would require a principal to review and evidence in writing all transactions and that such review would include all transactions relating to the member's investment banking or securities business. Thus, members, regardless of their business activities, currently are required to have a principal review all of their transactions. FINRA noted that if mutual fund underwriters do not effect transactions, then the firms would have no review obligations pursuant to proposed FINRA Rule 3110(b)(2).[96] FINRA stated that it understands that some underwriters do have customer relationships that could involve customer transactions, in which case such member firms would need to review those transactions pursuant to proposed FINRA Rule 3110(b)(2).[97] FINRA further stated that proposed FINRA Rule 3110.05 would permit a mutual fund underwriter to use a risk-based approach to review its transactions.[98]

In response to the Notice and Proceedings Order, the same commenter restated its recommendation that mutual fund underwriters be excluded from the provision in Rule 3110(b)(2) that would require principal underwriters to have supervisory procedures that require the review of all customer transactions and evidence such review in writing. The commenter acknowledged FINRA's response to its original comment that ''if mutual fund underwriters do not effect transactions, then the firms would have no review obligations pursuant to proposed FINRA Rule 3110(b)(2);'' however, the commenter remained concerned that mutual fund underwriters would be required to create, maintain, implement, and review on an ongoing basis a procedure for reviewing transactions since the requirement to have such procedures is imposed on all FINRA members without regard to whether the member effects customer transactions.[99]

FINRA responded that, if a member does not engage in any transactions relating to its investment banking or securities business, it would be sufficient under proposed Rule 3110(b)(2) for the member to acknowledge in its supervisory procedures that it does not engage in any such transactions and that it must have supervisory policies and procedures in place before doing so.[100]

F. Comments on Proposed FINRA Rule 3110(b)(4) and Related Supplementary Materials

Proposed FINRA Rule 3110(b)(4) (Review of Correspondence and Internal Communications) would require a member to have procedures to review incoming and outgoing written (including electronic) correspondence and internal communications relating to its investment banking or securities business.[101] In particular, the supervisory procedures would require the member's review of: (1) incoming and outgoing written correspondence to properly identify and handle in accordance with firm procedures: customer complaints, instructions, funds and securities, and communications that are of a subject matter that require review under FINRA rules and federal securities laws; and (2) internal communications to properly identify communications that are of a subject matter that require review under FINRA rules and the federal securities laws.[102]

1. Risk-Based Review of Internal Communications

Proposed FINRA Rule 3110.06 (Risk-based Review of Correspondence and Internal Communications) would require a member to decide, by employing risk-based principles, the extent to which additional policies and procedures for the review of incoming and outgoing written correspondence and internal communications that fall outside of the subject matters listed in proposed FINRA Rule 3110(b)(4) are necessary for its business and structure.

Some commenters suggested that FINRA should further align proposed FINRA Rule 3110.06 with the guidance in *Regulatory Notice* 07–59.[103] One commenter stated that the proposed rule could be interpreted as requiring a member to review all internal communications.[104] Two commenters to the Proposing Release requested additional guidance on the appropriate scope of internal communications requiring review and methodology for identifying those communications.[105] Commenters further suggested that any firm that does not engage in activities that are of a subject matter that require review should not be required to review its internal communications for references to those activities.[106] One commenter stated that requiring such firms to review internal communications for reference to those activities would result in significant costs that are not justified by the limited additional investor protection

[92] *Id.*

[93] *See also Regulatory Notice* 07–53 (November 2007) (Deferred Variable Annuities) (discussing use of automated supervisory systems).

[94] ICI and ICI's October Letter.

[95] October Response.

[96] October Response and November Response.

[97] October Response.

[98] *Id.*

[99] *See* ICI's October Letter, page 5.

[100] November Response.

[101] In the Proposing Release, proposed FINRA Rule 3110(b)(4) transferred NASD Rule 3010(d)'s reference to ''correspondence with the public'' and used the term in related supplementary materials, proposed FINRA Rules 3110.06–.08. In Amendment No. 1, FINRA revised proposed FINRA Rule 3110(b)(4) and proposed FINRA Rules 3110.06–.08 to refer to ''correspondence'' to be consistent with FINRA Rule 2210's (Communications with the Public) definition and use of the term ''correspondence.'' *See also* FINRA Rule 2210(b)(2) (requiring that all correspondence be subject to the supervision and review requirements of existing NASD Rule 3010(d)).

[102] In Amendment No. 1, FINRA revised proposed FINRA Rule 3110(b)(4) and FINRA Rule 3110.06 to delete references to the MSRB rules, consistent with the deletion of such reference in proposed FINRA Rule 3110(a) discussed above.

[103] ICI, IMS, Schwab, SIFMA.

[104] ICI and ICI's October Letter.

[105] CAI, ICI.

[106] Brandenburger, FSI, IMS, Letter Type A, Putnam.

benefits.[107] Other commenters urged FINRA to further revise proposed FINRA Rule 3110.06 to state that ''[t]hrough the use of risk-based principles, firms can determine the extent to which the review of their internal communications is necessary.'' [108]

FINRA responded that, with respect to the review of internal communications, *Regulatory Notice* 07–59 states that ''with the exception of the enumerated areas requiring review by a supervisor, members may decide, employing risk-based principles, the extent to which review of any internal communications is necessary in accordance with the supervision of their business.'' [109] FINRA responded that it believes that proposed FINRA Rule 3110.06 would accurately reflect this guidance by stating that ''[b]y employing risk-based principles, a member must decide the extent to which additional policies and procedures for the review of . . . internal communications that are not of a subject matter that require review under FINRA rules and federal securities laws are necessary for its business and structure.'' FINRA stated that, consistent with this guidance, proposed FINRA Rule 3110.06 would not require the review of every internal communication.[110] For example, if a member does not engage in any activities that are of a subject matter that require review, the proposed rule would not require that the member review its internal communications for references to those activities, provided that its supervisory procedures acknowledge that factor as part of the member's determination that its procedures are reasonably designed to achieve compliance with applicable federal securities laws and FINRA rules. Accordingly, FINRA declined to amend the proposal in response to the comments.

2. Evidence of Review of Communications Using Lexicon-Based Screening Tools

Proposed FINRA Rule 3110.07 (Evidence of Review of Correspondence and Internal Communications) would clarify that merely opening a communication is not a sufficient review. Rather, a member must identify what communication was reviewed, the identity of the reviewer, the date of the review, and the actions taken by the member as a result of any significant regulatory issues identified during the review.

Commenters suggested that firms using lexicon-based screening tools as a risk-based means of reviewing communications should not need to maintain the documentation required by proposed FINRA Rule 3110.07 evidencing review for those communications that do not generate review alerts/hits for further review.[111] One commenter suggested that it should be sufficient for a member to demonstrate that it has reasonably designed controls in place to ensure that the screening tools are subject to review and are operating as intended,[112] while other commenters suggested revising proposed FINRA Rule 3110.07 to provide that ''[f]or those communications subjected to electronic review, the member must maintain documentation reasonably sufficient to demonstrate the parameters of such review.'' [113]

FINRA noted that it had previously declined to accept the suggestion that a member does not have to retain the specified information fields required by proposed FINRA Rule 3110.07 for communications reviewed through electronic review systems or lexicon-based screening tools if those messages do not generate review alerts.[114] FINRA stated that it believes that not only is the required documentation necessary to demonstrate that the communication was actually reviewed, but that failure to record and retain this information, such as the identity of the reviewer, could be inconsistent with a member's record retention obligations under FINRA and SEC rules.[115] FINRA further noted that, although proposed FINRA Rule 3110.07 would permit the use of lexicon-based screening tools and other automated systems, as noted in *Regulatory Notice* 07–59, members utilizing automated tools or systems in the course of their supervisory review of electronic communications must have an understanding of the limitations of those tools or systems and should consider what, if any, further supervisory review is necessary in light of those limitations.

With respect to communications reviewed by electronic surveillance tools that are not selected for further review, FINRA stated that, it would be sufficient to demonstrate compliance with proposed FINRA Rule 3110.07 if the electronic surveillance system has a means of electronically recording evidence that those communications have been reviewed by that system.[116] FINRA further stated that it would be permissible to use an electronic surveillance or reviewing tool that, with respect to communications that do not generate alerts, only captures the specified information fields to the extent necessary to comply with applicable FINRA and SEC rules.[117] Additionally, FINRA stated that, consistent with previous guidance discussing the use of any automated supervisory systems or tools to discharge supervisory duties, the use of electronic surveillance tools to review communications represents a direct exercise of supervision by the supervisor (including any use of such tools by the supervisor's delegate to review communications). FINRA noted that the supervisor remains responsible for the discharge of supervisory responsibilities in compliance with the rule and is responsible for any deficiency in the system's criteria that would result in the system not being reasonably designed.[118]

3. Retention of Correspondence and Internal Communications

Proposed FINRA Rule 3110.09 (Retention of Correspondence and Internal Communications) would require, among other things, that a member retain internal communications and correspondence of associated persons relating to the member's investment banking or securities business for the period of time and accessibility specified in Exchange Act Rule 17a–4(b) (not less than three years, the first two years in an easily accessible place).

[107] FSI.

[108] IMS, SIFMA.

[109] *See Regulatory Notice* 07–59 (December 2007), at 3, 9.

[110] *See id.* at 11 (specifically noting that the guidance neither created new supervisory requirements nor required the review of every communication, and that, ''[w]ith respect to the review of internal electronic communications, the guidance states that—with the exception of the enumerated areas requiring review by a supervisor—a firm may use risk-based principles, including an examination of existing review processes, to determine the extent to which review of any internal communications is necessary''); *see also* November Response (ICI raised the same issue in its October Letter and FINRA responded that it believes that its guidance set forth in Regulatory Notice 07–59, as codified in proposed FINRA Rule 3110.06, addresses this concern).

[111] ICI, ICI's October Letter, IMS, SIFMA.

[112] ICI and ICI's October Letter.

[113] IMS, SIFMA.

[114] October Response.

[115] *Id.,* citing proposed FINRA Rule 3110.09 (Retention of Correspondence and Internal Communications) and Exchange Act of 1934 Rule 17a–4(b)(4) (requiring, among other things, that a broker-dealer's retained communications records include any approvals of communications sent).

[116] October Response.

[117] November Response.

[118] November Response at page 8. *See* Regulatory Notice 07–53 (November 2007) (Deferred Variable Annuities) (discussing use of automated supervisory systems).

One commenter to the Proposing Release requested that FINRA expand the record retention period in proposed FINRA Rule 3110.09 to six years to match the record retention period in Exchange Act Rule 17a–4(c) (requiring broker-dealers to preserve for a period of not less than six years after the closing of any customer's account any account cards or records relating to the terms and conditions with respect to the opening and maintenance of the account) and to the eligibility provisions for customer arbitration disputes in FINRA Rule 12206 (Time Limits).[119] A second commenter restated this concern in a second letter.[120] FINRA responded that firms are already subject to very extensive record retention requirements regarding communications about firms' business as such.[121] In FINRA's view, the cost of extending the record retention period from three years to six years would unnecessarily raise costs and create recordkeeping inconsistencies. FINRA stated that the proposed supplementary material purposefully aligns the record retention period for communications with the SEC's record retention period for the same types of communications to achieve consistent regulation in this area.

G. Comments on Proposed FINRA Rule 3110(b)(5)

Proposed FINRA Rule 3110(b)(5) (Review of Customer Complaints) would require members to have supervisory procedures to capture, acknowledge, and respond to all written (including electronic) customer complaints.

1. Exclusion of Oral Complaints

Several commenters to the Proposing Release suggested that members should be required to reduce an oral complaint to writing or to provide the customer with a form.[122] Commenters also suggested that oral complaints should not be too difficult to capture,[123] with one commenter stating that NYSE members have been required to capture and assess oral complaints for a number of years.[124] One commenter restated its concern with regard to the exclusion of oral complaints from proposed FINRA Rule 3110(b)(5).[125] FINRA stated that it did not include oral complaints because they are difficult to capture and assess, whereas members can more readily capture and assess written complaints.[126] FINRA further stated that it continues to believe that proposed FINRA Rule 3110(b)(5) should include only written customer complaints. FINRA noted that it encourages members to provide customers with a form or other format that will allow customers to communicate their complaints in writing. FINRA further noted that the failure to address a valid customer complaint, written or oral, may be a violation of FINRA Rule 2010.[127]

FINRA further responded that this aspect of the proposed rules would not change existing rules, explaining that although Incorporated NYSE Rule 401A previously required firms to acknowledge and respond to specified customer complaints (both oral and written), to harmonize the NASD and NYSE rules in the interim period before completion of the Consolidated FINRA Rulebook, FINRA amended Incorporated NYSE Rule 351(d) (Reporting Requirements) to limit the definition of ''customer complaint'' to include only written complaints, thereby making the definition substantially similar to that in NASD Rule 3070(c) (Reporting Requirements).[128]

2. Require More Than Written Acknowledgement and Response

One commenter to the Proposing Release suggested that proposed FINRA Rule 3110(b)(5)'s requirement to capture, acknowledge, and respond to customer complaints was insufficient and that firms should be required to conduct an adequate and objective review and ongoing monitoring of claims that include, where appropriate, ''bona fide'' offers of resolution, including trade reversal and cancellation, good faith pre-arbitration or litigation discussion, or negotiation.[129]

FINRA responded that it understands the commenter's concerns that members have procedures in place to take appropriate and meaningful action with respect to customer complaints and expects that a member's supervisory procedures will be reasonably designed to respond to customer complaints.[130] In addition, FINRA noted that members have reporting and records preservation obligations for customer complaints that assist FINRA in monitoring whether a member's supervisory procedures for capturing, acknowledging, and responding to written customer complaints are reasonably designed.[131]

H. Comments on Proposed FINRA Rule 3110(b)(6) and FINRA Rule 3110.10

Proposed FINRA Rule 3110(b)(6) (Documentation and Supervision of Supervisory Personnel) is based largely on existing provisions in NASD Rule 3010(b)(3) requiring a member's supervisory procedures to set forth the member's supervisory system and to include a record of the member's supervisory personnel with such details as titles, registration status, locations, and responsibilities. In addition, the

[119] PIABA.

[120] NASAA's November Letter.

[121] *See* October Response citing generally Exchange Act Rule 17a–4(b)(4); *see also* November Response, stating that FINRA continues to support its analysis of these issues as described above.

[122] Caruso, NASAA, PIABA, St John's.

[123] Caruso, NASAA, PIABA.

[124] Caruso.

[125] NASAA's November Letter.

[126] October Response; *see also* November Response stating that FINRA continues to support its analysis of these issues as described above.

[127] FINRA also pointed to its investor education literature that advises customers to communicate any complaints to their broker-dealer in writing, especially if customers have lost money or there were any unauthorized trades made in the customers' accounts. *See* FINRA's pamphlet *Investor Complaint Program: What to Do When Problems Arise; see also* NASD Rule 2340(a) (Customer Account Statements) (requiring a customer account statement to, among other things, advise the customer that any oral communications should be re-confirmed in writing to further protect the customer's rights, including rights under the Securities Investor Protection Act (SIPA)).

[128] *See* Exchange Act Release No. 58533 (September 12, 2008), 73 FR 54652 (September 22, 2008) (Order Approving File No. SR–FINRA–2008–036). FINRA adopted FINRA Rule 4530 to replace NASD Rule 3070 and comparable provisions in Incorporated NYSE Rule 351. *See* Securities Exchange Act Release No. 63260 (November 5, 2010), 75 FR 69508 (November 12, 2010) (Notice of Filing of Amendments No. 1 and 2 and Order Granting Accelerated Approval of File No. SR–FINRA–2010–034). FINRA Rule 4530 became effective on July 1, 2011. *See* Regulatory Notice 11–06 (February 2011).

[129] Arnoff. This commenter also requested that it be mandatory for broker-dealers to pay for the customer's litigation and arbitration expenses if good faith and objectively sound procedures of supervision, compliance, inspection, and claims handling are not followed. FINRA responded that it considers the comment to be outside the scope of the proposed rule change. The *FINRA Dispute Resolution Arbitrator's Guide* discusses when arbitration fees and expenses may be waived or awarded.

[130] October Response.

[131] *See* FINRA Rule 4513 (Records of Written Customer Complaints) (requiring each member to keep and preserve in each OSJ either a separate file of all written customer complaints that relate to that office (including complaints that relate to activities supervised from that office) and action taken by the member, if any, or a separate record of such complaints and a clear reference to the files in that office containing the correspondence connected with such complaints); *see also* FINRA Rule 4530 (requiring each member to promptly report to FINRA, but in any event not later than 30 calendar days, after the member knows or should have known of whether the member or a member's associated person is the subject of any written customer complaint involving allegations of theft or misappropriation of funds or securities or of forgery, as well as report to FINRA statistical and summary information regarding written customer complaints in such detail as FINRA shall specify by the 15th day of the month following the calendar quarter in which customer complaints are received by the member).

proposed rule would include two new provisions as described in more detail in the Proposing Release:

• Proposed FINRA Rule 3110(b)(6)(C) would require a member to have procedures prohibiting its supervisory personnel from supervising their own activities and reporting to, or having their compensation or continued employment determined by, a person the supervisor is supervising (subject to a limited size and resources exception); and

• Proposed FINRA Rule 3110(b)(6)(D) would require a member to have procedures to prevent the standards of supervision required pursuant to proposed FINRA Rule 3110(a) from being reduced in any manner due to any conflicts of interest that may be present with respect to the associated person being supervised, such as the person's position, the amount of revenue such person generates for the firm, or any compensation that the supervisor may derive from the associated person being supervised.

Proposed FINRA Rule 3110.11 (Supervision of Supervisory Personnel) would indicate that the exception provided in proposed FINRA Rule 3110(b)(6)(C) is generally intended for a sole proprietor in a single-person firm or where a supervisor holds a very senior executive position within the firm.

1. Support for New Provisions

Several commenters to the Proposing Release supported proposed FINRA Rules 3110(b)(6)(C) and (D),[132] with one commenter stating that the provisions ''should never be diluted.'' [133] Specifically referring to conflict of interest proscriptions in proposed FINRA Rule 3110(b)(6)(D), one commenter stated that the provision eliminates the opportunity for activities going unchecked or supervision being more lenient on the basis of self-interest,[134] while another commenter agreed that conflicts of interest relating to the compensation of the supervisor and the person being supervised should not needlessly compromise the effectiveness of supervisory procedures.[135] Referring to the prohibitions against supervisory personnel supervising their own activities in proposed FINRA Rule 3110(b)(C), one commenter concurred that self-supervision is inappropriate.[136]

2. Heightened Supervision

As noted in the Proposing Release, proposed FINRA Rule 3110(b)(6)(C) regarding the prohibition of supervisory personnel from supervising their own activities and reporting to, or having their compensation or continued employment determined by a person the supervisor is supervising, would replace NASD Rule 3012(a)(2)'s provisions concerning the supervision of a producing manager's customer account activity and the requirement to impose heightened supervision when any producing manager generates 20 percent or more of the revenue of the business units supervised by the producing manager's supervisor. One commenter to the Proposing Release suggested that FINRA retain the heightened supervisory requirement for producing managers that meet the 20 percent threshold and apply FINRA Rule 3110(b)(6)(C) to producing managers that do not meet the 20 percent threshold.[137] This commenter restated this concern in a second letter.[138]

FINRA responded that, although it understands the commenter's concerns regarding the need for effective supervision of producing managers, FINRA believes that proposed FINRA Rule 3110(b)(6)(C)'s provisions addressing the supervision of all supervisory personnel, rather than just producing managers, would be better designed to prevent supervisory situations that would not lead to effective supervision.[139] In addition, FINRA noted that proposed FINRA Rule 3110(b)(6)(D)'s conflicts of interest provisions would be designed to further ensure effective supervision of supervisory personnel.

3. Review of Senior Executive's Activities

One commenter to the Proposing Release stated that proposed FINRA Rule 3110(b)(6)(C) could prevent compliance professionals in the firm from reviewing the firm's most senior person's activities when that senior person occasionally produces revenue, and might force a firm to hire a ''senior principal'' if the senior person in the firm determines the compliance professionals' compensation or continued employment with the firm.[140]

FINRA disagreed with the commenter's interpretation of proposed FINRA Rule 3110(b)(6)(C) and stated that although proposed FINRA Rule 3110(b)(6)(C)(ii) generally would require a member to have procedures prohibiting its supervisory personnel from, among other things, reporting to, or having their compensation or continued employment determined by, a person the supervisor is overseeing, the same provision specifically provides an exception if a member determines that compliance with the prohibition is not possible because of a member's size or a supervisor's position within the firm. FINRA further stated that a member relying on the exception must document the factors it used to reach its determination that it can rely on the exception and how the supervisory arrangement otherwise complies with proposed FINRA Rule 3110(a). FINRA noted that proposed FINRA Rule 3110.10 would further provide non-exclusive examples of situations when the exception would generally apply, including when a registered person is a senior executive officer (or holds a similar position) and that proposed FINRA Rule 3110(b)(6)(C) and FINRA Rule 3110.10 do not require a member to hire additional personnel.[141]

4. Limited Exception

One commenter requested that FINRA either delete proposed FINRA Rule 3110.10 or revise it to expand the list of situations in which a firm may rely on the exception to include situations where a person supervises a senior person for only a limited purpose or function.[142]

FINRA declined to make any revisions to proposed FINRA Rule 3110.10. FINRA explained that the exception in proposed FINRA Rule 3110(b)(6)(C) is specifically based on a member's inability to comply with the general supervisory requirements because of the member's size or supervisor's position within the firm.[143] FINRA stated that proposed FINRA Rule 3110.10 reflects its view that a member would generally rely on the exception for a sole proprietor in a single-person firm or when a supervisor holds a very senior executive position within the firm. FINRA noted that a member may rely on the exception in other instances where it cannot comply because of its size or the supervisor's position within the firm, provided the member

[132] Cetera, SIFMA, Sweeney, St. John's.

[133] Sweeney.

[134] St. John's.

[135] SIFMA.

[136] Cetera.

[137] NASAA.

[138] NASAA's November Letter.

[139] October Response; *see also* November Response, stating that FINRA continues to support its analysis of these issues as described above.

[140] IMS.

[141] October Letter.

[142] ICI and ICI's October Letter.

[143] October Response Letter (noting that Proposed FINRA Rule 3110(b)(6)(C)'s exception is based, in large part, on the exception in NASD Rule 3012 from the general supervisory requirement for a producing manager's customer account activity and citing to NASD Rule 3012(a)(2)(A)(ii) (''Limited Size and Resources'' Exception)).

documents the factors used to reach its determination and how the supervisory arrangement with respect to the supervisory personnel otherwise complies with proposed FINRA Rule 3110(a).[144] To clarify that proposed FINRA Rule 3110.10 would provide non-exclusive examples of situations where the exception would generally apply, FINRA revised the provision in Amendment No. 1 to delete the term ''only'' prior to providing the examples.

The same commenter restated this recommendation in its comments to the Notice and Proceedings Order and stated that FINRA's response to its previous comment did not sufficiently address the concerns or examples raised in its comments to the Proposing Release.[145] In response, FINRA re-emphasized that the revisions to proposed Rule 3110.10's list of examples where a member would need to rely on the exception is non-exclusive.[146] FINRA further stated that it continues to support the principle set forth in proposed Rule 3110(b)(6)(C) that supervisory personnel must not report to, or have their compensation or continued employment determined by, a person they are supervising unless the firm complies with the permitted exception.

5. Conflicts of Interest

Commenters to the Proposing Release expressed concern that requiring members to have procedures to prevent their supervision standards from being reduced in any manner due to any conflicts of interest that may be present was inconsistent with the existing ''reasonably designed'' standard in proposed FINRA Rule 3110(a) (and current NASD Rule 3010(a)) and the proposed rules' risk-based supervision principles.[147] One commenter questioned whether proposed FINRA Rule 3110(b)(6)(D) creates a strict liability standard with respect to eliminating conflicts of interest.[148] Commenters requested that FINRA revise proposed FINRA Rule 3110(b)(6)(D) to clarify that firms must mitigate conflicts of interest as part of designing and establishing a reasonable supervisory system.[149] Two commenters suggested that FINRA amend the proposed supplementary material to require a member to have '' . . . procedures reasonably designed to prevent the supervisory system required pursuant to paragraph (a) of this Rule from being reduced. . . .''[150]

In response, FINRA revised proposed FINRA Rule 3110(b)(6)(D) in Amendment No. 1 to clarify that the provision does not create a strict liability obligation requiring identification and elimination of all conflicts of interest. As revised, proposed FINRA Rule 3110(b)(6)(D) would require that a member have ''procedures reasonably designed to prevent the supervisory system required pursuant to paragraph (a) of this Rule from being compromised due to the conflicts of interest that may be present with respect to the associated person being supervised . . . .''[151]

I. Comments on Proposed FINRA Rule 3110(b)(7) and FINRA Rule 3110.11

Proposed FINRA Rule 3110(b)(7) (Maintenance of Written Supervisory Procedures) would require a member to retain and keep current a copy of the member's written supervisory procedures at each OSJ and at each location where supervisory activities are conducted on behalf of the member.

Proposed FINRA Rule 3110.11 (Use of Electronic Media to Communicate Written Supervisory Procedures) would permit a member to satisfy its obligation to communicate its written supervisory procedures, and any amendments to those procedures, using electronic media, provided that the written supervisory procedures have been promptly communicated to, and are readily accessible by, all associated persons to whom the supervisory procedures apply based on their activities and responsibilities.

Two commenters to the Proposing Release requested that FINRA permit firms the flexibility to determine who should receive which portions of their written supervisory procedures, if any, and not interpret proposed FINRA Rule 3110(b)(7) to require communication of written supervisory procedures and amendments to non-supervisory personnel.[152] The commenters stated that, at many firms, written supervisory procedures are intended solely for supervisors while other documents (*e.g.,* compliance policies) are intended for the broader audience of all associated persons. In addition, the commenters noted that there may be written supervisory procedures (*e.g.,* how employee correspondence and trading are reviewed) that member firms do not want to be disseminated because the broad dissemination of those procedures may undermine their effectiveness.

FINRA stated that it continues to believe that it is important that all associated persons have knowledge of the supervisory procedures relevant to their activities.[153] FINRA notes that proposed FINRA Rule 3110(b)(7) and related supplementary material would not prohibit a firm from providing only its supervisory personnel with the written supervisory procedures' parameters detailing how a firm monitors or reviews its associated persons' activities to detect and prevent potential violative conduct (*e.g.,* details about how a firm reviews an associated person's correspondence or trading).

J. Comments on Proposed FINRA Rule 3110(c) and Proposed FINRA Rules 3110.13 and 3110.14

Proposed FINRA Rule 3110(c)(1) (Internal Inspections), based largely on NASD Rule 3010(c)(1), would retain the existing requirements for each member to review, at least annually, the businesses in which it engages and inspect each office on a specified schedule. The provision would also retain the existing requirement that the member's annual review must be reasonably designed to assist the member in detecting and preventing violations of, and achieving compliance with, applicable securities laws and regulations and FINRA rules.[154]

1. Impose Additional Inspection Safeguards

Although one commenter to the Proposing Release supported proposed FINRA Rule 3110(c)(1),[155] another commenter suggested that firms should be required to conduct more frequent inspections to ensure that risks created by a firm's size, location, and resources are addressed.[156] The commenter also suggested requiring firms to hire third-party vendors to monitor their activities and conduct independent compliance

[144] *Id.*

[145] ICI's October Letter.

[146] November Response Letter.

[147] Cetera, IMS, Schwab, SIFMA.

[148] Schwab. NASAA raised similar concerns, asking whether proposed FINRA Rule 3110(b)(6)(C) requires a member's supervisory procedures to be designed to limit all conflicts of interest or solely be reasonably designed to eliminate conflicts of interest.

[149] IMS, Schwab, SIFMA.

[150] IMS, SIFMA.

[151] *See also* Section H(5), page 23 of the October Response.

[152] IMS, SIFMA.

[153] October Response Letter, referring to Notice to Members 99–45 (June 1999) (distinguishing between a member's compliance procedures and written supervisory procedures and specifying that ''[i]t is crucial that all persons associated with a member be informed of any changes in the supervisory system and applicable written procedures. [NASD Rule 3010(b)(3)], therefore, requires members to inform all associated persons of such changes.'').

[154] FINRA is revising proposed FINRA Rule 3110(c)(1) to delete references to the MSRB rules, consistent with the deletion of such reference in proposed FINRA Rule 3110(a) discussed above.

[155] St. John's.

[156] Arnoff.

audits, as well as to have a registered principal or compliance professional sign off on all compliance, supervisory, and inspection reports representing that to their knowledge and good faith belief, the report is true and correct.

FINRA responded that the proposed rule change would generally provide members with flexibility to conduct their inspections using only firm personnel.[157] This flexibility, in turn, would assist firms in managing compliance costs. FINRA stated that, with respect to addressing potential risk gaps, proposed FINRA Rule 3120 would require that firms test and verify, at least annually, that the member's supervisory procedures are reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable FINRA rules and, if necessary, create any additional or amended supervisory procedures in response to those test results. FINRA noted that this testing and verification would necessarily include any supervisory procedures regarding a member's inspections to ensure that inspections have not been compromised by any potential risks inherent to a member's size, location, or resources. Therefore, FINRA declined to make changes to proposed FINRA Rule 3110(c)(1) in response to comments.

2. Exclude Residences From Inspections

Two commenters to the Proposing Release requested that FINRA exclude residences from proposed FINRA Rule 3110(c)(1)'s required inspections of a firm's locations.[158] One of these commenters suggested that other types of review, such as review of a registered person's email would be a more effective way of identifying potential red flags.[159] One commenter repeated its request that FINRA not subject home offices to the inspection requirements for supervisory branch offices and non-branch locations.[160]

FINRA declined to adopt the commenters' suggestions to exclude residences from proposed FINRA Rule 3110(c)'s inspection requirements. FINRA stated that inspections are a crucial component of detecting and preventing regulatory and compliance problems of associated persons working at unregistered offices.[161] Some unregistered offices also operate as separate business entities under names other than those of the members. FINRA noted that while FINRA does not encourage or discourage such arrangements, a large number of geographically separate offices present the potential that sales practice problems will not be as quickly identified as would be the case for larger, centralized branch offices.[162] FINRA stated that remote supervision, such as reviewing email for ''red flags,'' would not be a sufficient substitution for an actual inspection, although red flags identified through such means could be helpful in determining whether to conduct unannounced location inspections.

3. Remove Presumption for Periodic Inspection Schedules

One commenter to the Proposing Release requested that FINRA delete proposed FINRA Rule 3110.13 (Presumption of Three-Year Limit for Periodic Inspection Schedules), which sets forth a general presumption of a three-year limit for periodic non-branch location inspection schedules, and allow each member to determine what would be an appropriate inspection period for their non-branch locations.[163] One commenter restated the same concerns and questioned the regulatory or public purpose to be served by FINRA presuming that all members should conduct an inspection of each home of a regional distributor or wholesaler at least every three years in accordance with proposed FINRA Rule 3110.13 (General Presumption of Three-Year Limit for Periodic Inspection Schedules) relating to non-branch locations.[164]

FINRA responded that it believes that the proposed annual inspection cycle in FINRA Rule 3110(c)(1)(A) remains appropriate for home offices of regional distributors where supervisory activities are occurring.[165] FINRA stated that it believes that home offices of regional distributors or wholesalers that are not registered branch office locations and from which no supervision is occurring, should remain subject to the proposed periodic inspection cycle in FINRA Rule 3110(c)(1)(C). FINRA noted that proposed FINRA Rule 3110.13 would provide members with the flexibility to use an inspection schedule period that is either shorter or longer than three years.[166] FINRA also noted that if a member chooses to use a periodic inspection schedule longer than three years, the proposed supplementary material would require the member to properly document in its written supervisory and inspection procedures the factors used in determining why a longer periodic inspection cycle is appropriate for that location.[167] Therefore, FINRA declined to make the changes suggested by the commenter.

4. Test and Verify Policies and Procedures Regarding Specified Activities

Proposed FINRA Rule 3110(c)(2)(A) would relocate provisions in NASD Rule 3012 regarding the review and monitoring of specified activities, such as transmittals of funds and securities and customer changes of address and investment objectives. Specifically, proposed FINRA Rule 3110(c)(2)(A) would require a member to test and verify a location's procedures for:

- Safeguarding of customer funds and securities;
- Maintaining books and records;
- Supervision of supervisory personnel;
- Transmittals of funds or securities from customers to third party accounts, from customer accounts to outside entities, from customer accounts to locations other than a customer's primary residence, and between customers and registered representatives, including the hand-delivery of checks; and
- Changes of customer account information, including address and investment objective changes and validation of such changes.

With respect to the transmittal of funds or securities from customers to third party accounts, the proposal would eliminate NASD Rule 3012's parenthetical text (''*i.e.,* a transmittal that would result in a change in beneficial ownership'') to clarify that all transmittals to an account where a customer on the original account is not a named account holder are included. One commenter to the Proposing Release objected to the deletion of the parenthetical, stating that it could expand application of the rule to transfers not currently captured by existing rule text, such as transfers from a joint account to an account of one of the joint account holders. The commenter suggested that the proposed change is inconsistent with contractual agreements involving joint account holders and member firms, potentially

[157] October Response.

[158] ICI, IMS.

[159] IMS.

[160] ICI October Letter.

[161] October Response; *see also* November Response, stating that it continues to support proposed FINRA Rule 3110's inspection requirements and believes that the proposed annual inspection cycle in FINRA Rule 3110(c)(1)(A) remains appropriate for home offices of regional distributors where supervisory activities are occurring.

[162] *See* Notice to Members 98–38 (May 1998).

[163] ICI.

[164] ICI's October Letter.

[165] October Response and November Response.

[166] October Response and November Response.

[167] October Response and November Response.

conflicts with applicable state and federal laws, and impacts member firms' operations.[168]

FINRA responded that the deletion of the reference to beneficial ownership would aid in preventing conflict of law issues, as the meaning of that term may vary depending on the context in which it is used and the law applying to that situation.[169] FINRA noted that the provision would not prohibit transfers to third-party accounts, but only requires a firm to have procedures for the monitoring of such transfers and a means of customer confirmation, notification, or follow-up that can be documented. FINRA stated that it believes that such follow-up procedures would provide an important investor protection function by verifying that the customer was aware of the transfer.

Another commenter to the Proposing Release asked whether proposed FINRA Rule 3110(c)(2)(A)'s requirement to review changes of customer account information, including address and investment objective changes, requires a member to review all changes of customer account information.[170] FINRA responded that, consistent with existing requirements,[171] a member must review all changes of customer account information and not only address and investment objective changes.[172] Examples of other changes to customer account information would include, without limitation, changes to a customer's name, marital status, telephone, email, or other contact information. FINRA noted that a firm may delegate reviews of such changes to an appropriately qualified person who is not a principal, unless another FINRA or SEC rule would require principal review (*e.g.,* FINRA Rule 4515 (Approval and Documentation of Changes in Account Name or Designation) prohibiting an account name or designation change unless authorized by a qualified and registered principal designated by the member).

Two commenters also requested that FINRA permit member firms to identify in their written supervisory or compliance procedures or other field manuals the activities enumerated in FINRA Rule 3110(c)(2)(A) that they do not engage in rather than requiring them to be documented in a location's written inspection report.[173] FINRA noted that it had originally proposed, in *Regulatory Notice* 08–24, that a member must document the enumerated activities in which it did not engage in its written supervisory procedures, and that, it had revised the proposed rule change in response to commenters' concerns to retain the requirement that a member identify in a location's written inspection report any enumerated activities the member does not engage in at that location and document in that location's report that the member must have in place at that location supervisory policies and procedures for those activities before the location can engage in them.[174]

In light of the continued comments, FINRA revised proposed Rule 3110(c)(2)(D), in Amendment No. 1, to require members to identify in their written supervisory procedures *or* in the location's written inspection report the activities enumerated in FINRA Rule 3110(c)(2)(A) the member does not engage in at a particular location and document in their written supervisory procedures *or* that location's written inspection report that supervisory policies and procedures must be in place for those activities at that location before the member can engage in them. In FINRA's view, this would provide firms with additional flexibility in meeting the requirement, while still allowing an examiner to readily determine what enumerated activities a location does not engage in by referencing the firm's written supervisory procedures or the location's most recent inspection report.[175]

5. Conflicts of Interest

Commenters to the Proposing Release expressed concern that proposed FINRA Rule 3110(c)(3)(A) could be interpreted to create a new strict liability standard that would require members to eliminate all conflicts of interest with respect to a location's inspections[176] and suggested revising the provision to provide more flexibility.[177] FINRA responded by revising proposed FINRA Rule 3110(c)(3)(A) in Amendment No. 1 to require that a member have ''procedures reasonably designed to prevent the effectiveness of the inspections required pursuant to paragraph (c)(1) of this Rule from being compromised due to the conflicts of interest that may be present with respect to the location being inspected, including but not limited to, economic, commercial, or financial interests in the associated persons and businesses being inspected.''[178]

One commenter to the Proposing Release also asked whether the requirement to consider the ''economic, commercial, or financial interests in the associated persons and businesses being inspected'' when determining if conflicts of interest have reduced inspection standards is intended to prohibit an OSJ principal from conducting inspections of branch and non-branch offices designated to that OSJ principal if he receives overrides from business conducted at that location.[179] In Amendment No. 1, FINRA clarified that a member's procedures must take into consideration factors such as economic, commercial, or financial interests in the associated persons and businesses being inspected, when determining if members have procedures reasonably designed to reduce conflicts of interest that may be present with respect to a location being inspected.[180] FINRA stated that the provision is not intended to address directly who a member may designate to inspect a location. FINRA further noted that a member assigning an OSJ principal to inspect a branch or non-branch office designated to that OSJ principal would need to ensure that it complies with proposed FINRA Rules 3110(c)(3)(B) (prohibitions regarding who may conduct inspections) and 3110(c)(3)(C) (limited exception from these prohibitions), which are discussed further below.

6. Associated Persons Conducting Inspections

Proposed FINRA Rule 3110(c)(3)(B) would generally prohibit an associated person from conducting a location's inspection if the person is either assigned to that location or is directly or indirectly supervised by someone assigned to that location. One commenter to the Proposing Release asked whether compliance personnel who operate independently from the branch office or OSJ to which they are assigned (and are supervised by the compliance manager and not by the branch office or OSJ manager) would be permitted to inspect such branch or OSJ.[181] FINRA noted that the proposed provision would not prohibit compliance personnel assigned to a member's separate compliance department and supervised solely by the compliance department from

[168] Schwab.
[169] October Response.
[170] ICI.
[171] *See, e.g.,* NASD Rule 3010(c)(2)(F).
[172] October Response.
[173] FSI, ICI.
[174] October Response.
[175] October Response Letter.
[176] Cetera, IMS, SIFMA.
[177] CAI, IMS, SIFMA.
[178] October Response.
[179] Cetera.
[180] October Response.
[181] ICI.

conducting a location's inspections.[182] In FINRA's view, such an arrangement helps to protect against the potential conflicts of interest the provision is designed to address.

7. Reliance on the Limited Size and Resources Exception

Proposed FINRA Rule 3110(c)(3)(C) would provide an exception for those members that cannot comply with proposed FINRA Rule 3110(c)(3)(B)'s restrictions prohibiting certain associated persons from conducting a location's inspection, either because of a member's size or its business model. Proposed FINRA Rule 3110.14 (Exception to Persons Prohibited from Conducting Inspections) would set forth the general view that a member with only one office or an independent contractor business model will need to rely upon the exception.

One commenter to the Proposing Release requested that FINRA amend proposed FINRA Rule 3110.14 to include home or administrative office personnel conducting home or administrative office inspections as one of the enumerated situations covered by proposed FINRA Rule 3110.14.[183] FINRA responded that proposed FINRA Rule 3110.14 would reflect FINRA's belief that a member will generally rely on the exception in instances where the member has only one office or has a business model where small or single-person offices report directly to an OSJ manager who is also considered the offices' branch office manager.[184] FINRA noted that a member may still rely on the exception in proposed FINRA Rule 3110(c)(3)(c) in other instances provided it documents the factors the member used in making its determination that it needs to rely on the exception.[185]

K. Comments on Proposed FINRA Rule 3110(d)

Proposed FINRA Rule 3110(d)(1) (Transaction Review and Investigation) would require a member to have supervisory procedures to review securities transactions that are effected for a member's or its associated persons' accounts, as well as any other ''covered account,'' to identify trades that may violate the provisions of the Act, its regulations, or FINRA rules prohibiting insider trading and manipulative and deceptive devices. The proposed rule would also require members to promptly conduct an internal investigation into any such trade to determine whether a violation has occurred, and would require firms engaged in ''investment banking services'' to report information regarding these investigations to FINRA.

Commenters to the Proposing Release expressed concerns related to the scope of the proposed definition of ''covered account'' and the extension of the reporting requirements to certain types of investment banking services that commenters asserted pose less risk of insider trading.

1. Definition of ''Covered Account''

As proposed, FINRA Rule 3110(d)(3)(A) would have defined ''covered account'' as: (i) the accounts of parents, siblings, fathers-in-law, mothers-in-law, and domestic partners if the account is held at or introduced by the member and (ii) accounts that are reported to the member pursuant to NASD Rule 3050 (Transactions for or by Associated Persons) or Incorporated NYSE Rule 407 (Transactions—Employees of Members, Member Organizations and the Exchange), as applicable.[186] Multiple commenters expressed concern about the breadth of the definition of ''covered account,'' and in particular the extension of the term to include more remote family members.[187] Several commenters noted that the proposed definition went beyond the terms of existing NYSE rules and guidance, on which proposed Rule 3110(d) is based, and would create unnecessary difficulty for firms in monitoring trading in the accounts of more distant relatives, with whom an associated person may not have regular contact. Multiple commenters suggested that FINRA harmonize the scope of the term ''covered account'' with existing NYSE guidance and with SEC rules addressing similar types of concerns (*e.g.,* the scope of the SEC's Code of Ethics rules for investment advisers).[188]

In response, FINRA revised the proposed rule in Amendment No. 1 to align the definition of ''covered account'' with existing NYSE guidance, which it noted has been in place since 1989.[189] FINRA specified that under the revised definition, the term ''covered account'' would include any account introduced or carried by the member that is held by: (1) The spouse of a person associated with the member; (2) a child of the person associated with the member or such person's spouse, provided that the child resides in the same household as or is financially dependent upon the person associated with the member; (3) any other related individual over whose account the person associated with the member has control; or (4) any other individual over whose account the associated person of the member has control and to whose financial support such person materially contributes.[190] In FINRA's view, the amended definition strikes an appropriate balance between ensuring that trading activity in the accounts that present the greatest risk of insider trading are reviewed while not imposing undue compliance burdens on firms.

2. Internal Investigation Reporting

a. Definition of ''Investment Banking Services''

As proposed, FINRA Rule 3110(d)(2) would impose reporting requirements for internal investigations undertaken by members that engage in ''investment banking services.'' Proposed FINRA Rule 3110(d)(3)(B) would define the term ''investment banking services'' to include, without limitation, acting as an underwriter, participating in a selling group in an offering for the issuer, or otherwise acting in furtherance of a public offering of the issuer; acting as a financial adviser in a merger or acquisition; and providing venture capital or equity lines of credit or serving as placement agent for the issuer or otherwise acting in furtherance of a private offering of the issuer. Two

[182] October Response.

[183] CAI.

[184] October Response.

[185] In Amendment No. 1, FINRA sought to clarify that proposed FINRA Rule 3110.14 provides non-exclusive examples of situations where the exception would generally apply, by revising the provision to delete the term ''only'' prior to providing the examples.

[186] One commenter sought to confirm that the proposed rule would not modify obligations imposed by NASD Rule 3050. *See* CAI. FINRA responded that nothing in proposed Rule 3110(d) would alter reporting obligations pursuant to other FINRA rules, including NASD Rule 3050.

[187] Brandenburger, CAI, FSI, ICI, IMS, Letter Type A, Putnam, SIFMA. Several commenters also expressed the view that the term ''domestic partner'' was vague. *See* Brandenburger, CAI, FSI, IMS, Letter Type A. Because FINRA is proposing to narrow the scope of the term, including removing the reference to domestic partners, FINRA did not address this comment.

[188] CAI, ICI, IMS, Schwab, SIFMA, Wells Fargo. Some commenters also expressed concerns that expanding the scope of the definition could raise potential privacy issues relating to personal financial information. *See* CAI, FSI, ICI, IMS, Schwab, SIFMA, Wells Fargo. FINRA stated that it believes that these concerns were addressed in Amendment No. 1; however, FINRA does not believe the initial definitions implicated privacy concerns since the accounts covered by the rule must be introduced or carried by the firm.

[189] *See* NYSE Information Memo 89–17 (April 4, 1989).

[190] In addition to ''covered accounts,'' the proposed rule also applies to accounts of the member, accounts introduced or carried by the member in which a person associated with the member has a beneficial interest or the authority to make investment decisions, and accounts of a person associated with the member that are disclosed to the member pursuant to NASD Rule 3050 or Incorporated NYSE Rule 407, as applicable.

commenters to the Proposing Release questioned the definition of ''investment banking services,'' noting that the term includes underwriting products that present less risk of insider trading, such as mutual funds and variable insurance products.[191]

FINRA acknowledged that both commenters repeated objections to which FINRA responded in the Proposing Release. FINRA further noted that it does not believe that any of the categories of activities identified by the commenters should be categorically excluded from the definition of ''investment banking services'' given its limited use for the purposes of proposed FINRA Rule 3110.[192]

FINRA disagreed with the commenters' assertions that FINRA failed to take into account the potential costs and burdens to firms associated with adopting policies and procedures and systems to ensure compliance with the rule. FINRA noted that these entities are already subject to Section 15(g) of the Act, which requires all broker-dealers to ''establish, maintain, and enforce written policies and procedures reasonably designed . . . to prevent the misuse . . . of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer.'' [193] FINRA stated that firms are permitted to use a risk-based approach to monitoring transactions that takes into account a firm's specific business model, which would include the type of underwriting activity performed by the firm. In fulfilling their obligations, FINRA noted that firms may determine that certain departments or employees pose a greater risk and examine trading in those accounts accordingly. FINRA further noted that there is no implied obligation on firms as to how best to conduct the reviews. Thus, FINRA responded that it would expect that firms with underwriting activity limited to mutual funds may adopt significantly different review procedures than a firm engaged in more traditional investment banking activity. FINRA proposed to amend the rule in Amendment No. 1 to include the phrase ''reasonably designed'' to acknowledge more clearly that firms with different business models may adopt different procedures and practices.[194] As amended, the proposed rule would require each member to include in its supervisory procedures a process for the review of securities transactions reasonably designed to identify trades that may violate the provisions of the Exchange Act, the rules thereunder, or FINRA rules prohibiting insider trading and manipulative and deceptive devices.[195]

In response to the Notice and Proceedings Order, one commenter restated its concern that mutual fund underwriters should be excluded from the definition of ''investment banking services.'' The commenter stated that FINRA disregarded or failed to consider ''the costs and burdens associated with members being required to establish, maintain, implement, and review on an ongoing basis policies and procedures to comply with each rule FINRA adopts, even those rules that do not apply to the member's business.[196] FINRA stated that it continues to believe that the primary costs and burdens associated with the proposed rule change would arise in developing and implementing policies and procedures for reviewing transactions and conducting investigations, not in reporting those investigations to FINRA. FINRA also noted that it believes that the type of ''investment banking services'' in which a firm engages, and the relative level of risk of insider trading those activities present, may be a factor in assessing the reasonableness of such a firm's procedures; however, FINRA stated that it does not believe that it should affect the analysis of whether a firm engaged in ''investment banking services'' has a reporting obligation once potentially violative trades have already been identified and internal investigations have begun.

b. Required Investigation Reports

One commenter to the Proposing Release stated that, in defining ''investment banking services'' broadly, FINRA disregarded the cumulative effect a ''misapplied'' rule can have on a firm's compliance obligations and has substantially underestimated ''the unnecessary questions and confusion surrounding the rule's implementation that the firm is likely to face.'' [197] FINRA noted that the commenter did not include examples of the types of questions or confusion that are likely to arise. FINRA responded that the reporting obligation is triggered only after an investigation has been initiated and that it believes that the primary costs and burdens associated with the proposed rule change would arise in developing and implementing policies and procedures and in conducting investigations, not in reporting those investigations to FINRA.[198] FINRA noted that that certain types of ''investment banking services'' may present less risk of insider trading than others, and firms are permitted to take these risks into account when developing their policies and procedures; however, FINRA stated that neither commenter offered an explanation as to why investigations should not be reported when the reports are only required after a firm has identified trades that may violate applicable laws or rules other than to note that these firms may pose less risk to begin with.[199]

FINRA maintained that it continues to believe that firms engaged in investment banking services should be required to report the results of their investigations to FINRA when these investigations are only required after a firm has already identified and begun investigating a trade that may violate the provisions of the Exchange Act, the rules thereunder, or FINRA rules prohibiting insider trading and manipulative and deceptive devices.[200] FINRA further noted that, although the fact that certain firms may present a lower risk of insider trading may be a factor in assessing the reasonableness of a firm's procedures, FINRA does not believe it should affect the analysis of whether a firm has a reporting obligation once potentially violative trades have already been identified and investigated.

One commenter to the Proposing Release stated that by not including any

[191] CAI, ICI.

[192] October Response. Although one commenter asserted that ''the proposed rule would require any member that engages in 'investment banking services' to file with FINRA each quarter, a written report that is signed by a senior officer of the member,'' FINRA responded that, ''if a member did not have an open internal investigation or either initiate or complete an internal investigation during a particular calendar quarter, the member would not be required to submit a report for that quarter.'' *See* October Response; *see also* ICI.

[193] See Section L(2), page 31 of the October Response.

[194] FINRA noted that the ''reasonably designed'' standard already applied to the transaction review procedures required by the provision pursuant to the overarching language applicable to all of a member's procedures in paragraph (b)(1) of the proposed rule change. FINRA is proposing to repeat the phrase in paragraph (d) to avoid an implication that it did not already apply to the procedures governing transaction review.

[195] *See* Section L(2), page 32 of the October Response.

[196] ICI's October Letter.

[197] SIFMA.

[198] October Response.

[199] One commenter questioned the need for the rule at all in light of FINRA Rule 4530. *See* ICI. FINRA pointed to its previous statement that proposed FINRA Rule 3110(d) would require more targeted and detailed reporting than FINRA Rule 4530(b), which requires reporting only where a member concludes or reasonably should have concluded a securities-related law or rule was violated. Moreover, FINRA noted that Rule 4530 does not require firms to report every instance of noncompliant conduct. *See Regulatory Notice* 11–06 (February 2011) (discussing scope of requirement to report internal conclusions of violation).

[200] October Response.

materiality or reasonableness standard, the reporting requirement seems unduly broad and likely to result in reports on activity that ultimately is determined to be lawful.[201] FINRA amended the proposed rule language in Amendment No. 1 to include the phrase ''reasonably designed'' to acknowledge more clearly that firms with different business models may adopt different procedures and practices. The same commenter restated its recommendation in a second letter requesting that FINRA more formally incorporate guidance from NYSE Information Memo 06–06 into the rule's supplementary material to address the scope of the rule's investigation and reporting requirements.[202] FINRA responded that it does not believe that it is necessary to adopt the guidance from NYSE IM 06–06 as supplementary material.[203]

FINRA noted that it agrees with the guidance from NYSE IM 06–06 that not all reviews will result in an internal investigation. FINRA further noted that it also agrees that, as part of implementing a firm's risk-based approach to these requirements, a firm's procedures should include establishing guidelines or criteria for taking reasonable follow-up steps to determine which trades are potentially violative trades and, therefore, merit further review through an internal investigation. Similar to the guidance set forth in NYSE IM 06–06, FINRA stated that it does not expect that every trade highlighted in an exception or other report would require a firm to conduct an internal investigation and FINRA would expect that ''firms that utilize such reports will maintain additional written procedures that set forth guidelines or criteria for reasonable follow-up steps for determining which trades initially highlighted merit further review.'' [204]

L. Comments on Proposed FINRA Rule 3110(e)

Proposed FINRA Rule 3110(e) (Definitions) retains, without change, the definition of ''branch office'' in NASD Rule 3010(g) (Definitions). The definition specifically excludes some locations from being considered a branch office, including an associated person's primary residence, if certain conditions are met. However, if any excluded location, including an associated person's residence, is responsible for supervising the activities of a member's associated persons at one or more non-branch locations, the location is considered a branch office.

Commenters to the Proposing Release suggested that FINRA either revise the branch office definition to exclude mutual fund regional distributors and wholesalers who operate out of their homes but conduct no retail business or have any interaction with retail customers at such locations [205] or eliminate the distinctions among OSJs, branch offices, and a registered person's home office and require annual audits for all offices other than the main office that are over a certain minimum business threshold (*e.g.,* $300,000 in annual sales).[206]

In response, FINRA noted that the branch office definition is being transferred unchanged from current NASD Rule 3010(g). FINRA explained that the uniform branch office definition was developed in 2005 after several years of discussions with the NYSE, NASAA, and NASD. In FINRA's view, the current definition provides appropriate exemptions from registration, and that those exemptions should not be expanded at this time. FINRA further explained that the OSJ definition, which industry members have relied upon for many years in designing their supervisory systems, is also being transferred unchanged from NASD Rule 3010(g). FINRA also noted that adopting a location audit requirement based solely on a specified sales threshold could exclude many offices engaging in activities enumerated in the OSJ definition from being inspected.

In response to the Notice and Proceedings Order, a commenter restated its request that FINRA revise proposed FINRA Rule 3110(e)(2)(B) to exclude from the definition of ''branch office'' the homes of regional distributors and wholesalers of mutual fund underwriters. The commenter suggested that FINRA revise the provision to include the statement that ''[t]he provisions of this subparagraph (2)(b) shall not apply to any location that qualifies for the exclusion in subparagraph (2)(a) if such location is used exclusively by an associated person of a member whose business qualifies for the exemption in SEA Rule 15c3–3(k)(1).'' [207] The commenter further suggested that FINRA not subject such home offices to the inspection requirements for supervisory branch offices and non-branch locations. In its comments to the Proposing Release, the commenter questioned the regulatory or public purpose to be served by FINRA presuming that all members should conduct an inspection of each home of a regional distributor or wholesaler at least every three years in accordance with proposed FINRA Rule 3110.13 (General Presumption of Three-Year Limit for Periodic Inspection Schedules) relating to non-branch locations.[208] The commenter indicated that FINRA's previous response did not sufficiently address its concerns regarding the treatment as branch offices of such personal residences that are not held out to the public and do not conduct a public securities business.

FINRA declined to amend proposed FINRA Rule 3110's branch office definition.[209] FINRA noted that the commenter's request to exclude from the branch office definition the homes of regional distributors and wholesalers of mutual fund underwriters based on the exemption provided in Rule 15c3–3(k)(1) of the Exchange Act would be over-broad as that exemption would extend beyond mutual fund underwriters. FINRA stated that when supervisory activities occur at such locations, it does not believe that an exclusion from the branch office definition is appropriate for regional distributors working from home offices and that such an exclusion would undermine the core principle underlying the registration of branch offices and OSJs that recognizes the critical nature of locations where supervision is occurring.

M. Comments on Proposed FINRA Rule 3120

Proposed FINRA Rule 3120 (Supervisory Control System) requires a member to test and verify its supervisory procedures and prepare and submit to its senior management a report at least annually summarizing the test results and any necessary amendments to those procedures. The proposed rule also requires a member that reported $200 million or more in gross revenue (total revenue less, if applicable, commodities revenue) on its FOCUS reports in the prior calendar year to include additional content in the report it submits to senior management. The required additional content includes a tabulation of the reports pertaining to the previous year's customer complaints and internal investigations made to FINRA. Also, the report must include a discussion of the preceding year's compliance efforts, including procedures and educational

[201] ICI.

[202] ICI's October Letter.

[203] November Response.

[204] *See* Section 2(F), page 11 of November Response.

[205] ICI.

[206] Sweeney.

[207] ICI's October Letter.

[208] *Id.*

[209] November Response.

programs, in each of the following areas: (1) Trading and marketing activities; (2) investment banking activities; (3) antifraud and sales practices; (4) finance and operations; (5) supervision; and (6) anti-money laundering.

One commenter requested that FINRA exclude mutual fund underwriters from the additional content requirements because those firms, which may meet the $200 million threshold solely through receipt of 12b–1 fees, are not the type of ''complex'' firms FINRA intended to address when proposing the additional content requirements.[210] FINRA responded that the additional content requirements are incorporated from the annual report content requirements of Incorporated NYSE Rule 342.30 (Annual Report and Certification) that provide valuable information for FINRA's regulatory program.[211] FINRA also stated that this information will be valuable compliance information for the senior management of the firm. FINRA noted that some content requirements relate to regulatory obligations, such as supervision and anti-money laundering, that apply to all member firms, regardless of their business activities. Because all the content requirements are not relevant to every firm, FINRA revised proposed FINRA Rule 3120, in Amendment No.1, to clarify that a member's report must include the additional content, to the extent applicable to the member's business.[212]

The same commenter restated its request for FINRA to revise proposed FINRA Rule 3120 to exclude mutual fund underwriters from the proposed rule's additional content requirement.[213] The commenter suggested that FINRA revise proposed FINRA Rule 3120 to avoid having 12b–1 fees (characterized by the commenter as pass-through revenues) counted as the member's gross revenue for purposes of calculating the additional content requirements' $200 million threshold. FINRA noted that the commenter did not indicate how a mutual fund underwriter's gross revenue calculation, which may vary depending on the amount of 12b–1 fees, is different from other members with gross revenue calculations that may vary significantly depending on the amount and nature of revenue received.[214] For these reasons, FINRA responded that it continues to believe the rule should require each member meeting the specified threshold to provide the additional content, to the extent applicable to its business.

N. Comments Outside the Scope of the Proposal

One commenter, while recognizing the statutory framework applicable to proposed SRO rulemaking, nonetheless requested additional time to review, analyze, and develop comment letters for more comprehensive FINRA rule changes.[215] Another commenter suggested that firms should make available to the ''public investor education facilities'' regarding their products, activities, and services.[216] One commenter suggested that a firm's compliance and ongoing oversight of its associated persons' outside business activities (''OBA'') could be further enhanced through updates of OBA information captured by FINRA's Central Registration Depository.[217] Another commenter suggested that, in addition to FINRA Rule 3270's (Outside Business Activities of Registered Persons) requirement that a registered person provide a firm with written notice prior to engaging in any OBA, that FINRA should require firms to supervise OBAs.[218] The same commenter also suggested that FINRA require firms to prevent the ''spoilation of evidence'' once it is reasonably foreseeable that an arbitration might be filed. One commenter suggested that FINRA draft standard, pro forma, baseline written supervisory procedures that firms can adapt to their businesses.[219] FINRA responded that it appreciates the commenters' input on these matters, but it considers these comments to be outside the scope of the current proposal.

IV. Commission Findings

The Commission has carefully reviewed the proposed rule change, the comments received, and FINRA's responses to comments, and finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[220] which, among other things, requires that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In addition, the Commission finds that the proposed rule change is consistent with Section 15A(b)(9) of the Act,[221] in that the proposed rules do not impose any unnecessary or inappropriate burden on competition.

The Commission believes that FINRA, through its responses and through proposed changes in Amendment No. 1, has addressed commenters' concerns, other than those that it determined are outside the scope of the current proposal. The proposed rule change was informed by FINRA's consideration of, and the incorporation of many suggestions made in comments on the 2011 Filing, the Proposing Release, and the Notice and Proceeding Order. Proposed Amendment No. 1 reflects FINRA's efforts to further address

[210] ICI. ICI alternatively suggested that FINRA exclude from proposed FINRA Rule 3120's ''gross revenue'' definition any 12b–1 revenues a mutual fund underwriter receives.

[211] *See* October Response; *see also Regulatory Notice* 08–24 (noting that the supplemental information in Incorporated NYSE Rule 342.30's annual report was a valuable tool for the NYSE regulatory program and would also be valuable information for FINRA's regulatory program going forward).

[212] In addition, FINRA is revising proposed FINRA Rule 3120 to delete references to the MSRB rules, consistent with the deletion of such reference in proposed FINRA Rule 3110(a) discussed above.

[213] ICI October Letter.

[214] November Response.

[215] CAI. *See* Exchange Act Section 19(b) for the statutory framework for SRO rulemaking.

[216] Arnoff. This commenter also suggested that the proposed consolidated supervision rules be tested for efficacy based on risk-based considerations in specified topical areas (*e.g.,* supervisory depth, avoidance of supervisory conflicts, suitability, best execution, prevention of unauthorized trading, systemic problems, defined responsibility and non-delegable duties, customer complaints). FINRA responded that it also considers this comment to be outside of the scope of the proposal, but that it would expect these matters to be considered as part of a member's establishment of a supervisory system and procedures reasonably designed to achieve compliance with the federal securities laws and FINRA rules, and the testing and verification of such procedures under FINRA Rule 3120.

[217] NFP.

[218] PIABA. FINRA Rule 3270.01 also requires that, upon receipt of a written notice, a firm must consider whether the proposed activity will: (1) interfere with or otherwise compromise the registered person's responsibilities to the firm and/or the firm's customers or (2) be viewed by customers or the public as part of the firm's business based upon, among other factors, the nature of the proposed activity and the manner in which it will be offered. In addition, based on the firm's review of such factors, the firm must evaluate the advisability of imposing specific conditions or limitations on a registered person's outside business activity, including where circumstances warrant, prohibiting the activity. A firm also must evaluate the proposed activity to determine whether the activity properly is characterized as an outside business activity or whether it should be treated as an outside securities activity subject to the requirements of NASD Rule 3040 (Private Securities Transactions of an Associated Person).

[219] IMS. FINRA noted that although it considers IMS's comment to be outside the scope of the proposal, FINRA's Tools Web page includes a ''WSP Checklist'' that members may consult when drafting or revising their written supervisory procedures.

[220] 15 U.S.C. 78o–3(b)(6).

[221] 15 U.S.C. 78o–3(b)(9).

commenter concerns and minimize burdens resulting from the proposed rule's requirements. Additionally, many of the amendments are designed to revert to existing requirements in the NASD and NYSE rules. For example, in Amendment No. 1, FINRA proposed to respond to commenter concerns by, among other things:

- Deleting references to MSRB rules, noting that members are separately obligated to comply with MSRB Rule G–27;
- Deleting proposed FINRA Rule 3110.03 (One-Person OSJs), in light of comments concerning the negative impact and costs of the proposed requirement, especially for independent firms; [222]
- Replacing the presumption in proposed FINRA Rule 3110.03 (Supervision of Multiple OSJs by a Single Principal) that assigning one principal to be the on-site principal at more than two OSJs is unreasonable with a general statement that assigning a principal to more than one OSJ will be subject to scrutiny;
- Modifying proposed Rule 3310.05 to incorporate additional clarification regarding a member's risk-based review system;
- Clarifying in proposed FINRA Rules 3110(b)(6)(D) and 3110(c)(3)(A) that the provisions do not create a strict liability obligation requiring identification and elimination of all conflicts of interest;
- Revising the definition of ''covered account'' in proposed FINRA Rule 3110(d) to align the definition with existing NYSE guidance; and
- Clarifying in proposed FINRA Rule 3120(b) that a firm must only comply with the requirement to include certain additional content in its report to senior management only to the extent applicable to the member's business, noting that not all the content requirements are relevant to every firm.

Additionally, in its responses, FINRA provided guidance and clarifications concerning the provisions noted above and other provisions, as well as general matters, about which commenters raised concerns. For example, FINRA responded to comments concerning costs,[223] the application of a risk-based approach,[224] review of correspondence and internal communications,[225] review of transactions,[226] review of customer complaints,[227] and maintenance and communication of written supervisory procedures,[228] among others.

In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation.[229] As discussed above, the Commission believes that the proposed rule change, as amended by Amendment No. 1, is consistent with Sections 15A(b)(6) and 15A(b)(9) of the Act. The Commission ''has long emphasized that the responsibility of broker-dealers to supervise their employees is a critical component of the federal regulatory scheme.'' [230] By harmonizing current NASD and NYSE supervisory rules into one consolidated FINRA rulebook, the proposed rule will protect investors and the public interest while also enhancing efficiency. Among other things, the proposed rule would incorporate additional flexibility in some instances by permitting firms to implement risk-based principles consistent with a firm's business model. The proposed rule also takes into account potential inefficiencies that firms could experience if FINRA adopted the expanded definition of ''covered accounts.'' As a result, FINRA amended the definition in Amendment No. 1 to align it with current guidance.

The Commission also believes that the proposed rule takes into account competitive concerns that could arise from different supervisory approaches for different product lines, business models, business size, and resources. Moreover, by permitting a risk-based principles approach when applying certain supervisory standards, the proposed rule is designed to allow firms to implement supervisory policies and procedures and programs in a manner consistent with their business models.

The Commission has reviewed the record for the proposed rule change and notes that the record does not contain any information to indicate that the proposed rule would have a significant effect on capital formation. The Commission believes that the effect of the proposed rule is beneficial and that the changes will enhance investor confidence by promoting robust supervisory policies and procedures, programs, and controls that can be flexibly applied to account for member firms' business models.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[231] that the proposed rule change (SR–FINRA–2013–025), as modified by Amendment No. 1 be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[232]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–31134 Filed 12–27–13; 8:45 am]

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[222] The Commission notes that FINRA urges firms to conduct focused reviews of one-person OSJs that conduct sales-related activity.

[223] *See supra* Sections III(D)(2), III(F)(1), and III(K)(2).

[224] *See supra* Sections III(E)(1), III(F)(1), and III(F)(2).

[225] *See supra* Section III(F).

[226] *See supra* Section III(E).

[227] *See supra* Section III(G).

[228] *See supra* Section III(I).

[229] *See* 15 U.S.C. 78c(f).

[230] SEC, Division of Market Regulation (now known as, Division of Trading and Markets), Staff Legal Bulletin No. 17: Remote Office Supervision (March 19, 2004).

[231] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 8578]

Culturally Significant Objects Imported for Exhibition Determinations: ''Miró: The Experience of Seeing''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Miró: The Experience of Seeing,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Seattle Art Museum, Seattle, WA, from on or about February 13, 2014, until on or about May 18, 2014, the Nasher Museum of Art at Duke University, from on or about August 28, 2014, until on or about February 22, 2015, the Denver Art Museum, from on or about March 22, 2015, until on or about June 28, 2015, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of

State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: December 18, 2013.

Evan M. Ryan,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–31087 Filed 12–27–13; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8579]

Culturally Significant Objects Imported for Exhibition Determinations: ''Khirbet el-Maqatir: History of a Biblical Site''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition, ''Khirbet el-Maqatir: History of a Biblical Site,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Dunham Bible Museum, Houston Baptist University, Houston, Texas, from on or about January 21, 2014, until on or about December 19, 2014, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: December 20, 2013.

Evan Ryan,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–31064 Filed 12–27–13; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice provides information regarding the FHWA's finding that a partial Buy America waiver is appropriate for the obligation of Federal-aid funds for 112 State requests regarding specific vehicle projects (including sedans, vans, pickups, SUVs, trucks, buses, and equipment, such as backhoes, street sweepers, tractors and low emission locomotives), including projects to retrofit vehicles with individual vehicle components, so long as they are assembled in the United States. The FHWA's Buy America requirements provide that 100 percent of all steel and iron comprising a predominantly steel and iron product that is permanently incorporated into a project must be domestically manufactured. With respect to vehicles, manufacturers typically assemble these products with many different components and subcomponents containing steel and iron. As a result, vehicles are typically referred to as being made where the final product rolls off the assembly line for delivery into the marketplace. The FHWA is unaware of any vehicle that is comprised of 100 percent domestically produced steel and iron, resulting in a need for a partial Buy America waiver for these projects to proceed.

DATES: The effective date of the waiver is December 31, 2013.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366–1562, or via email at *gerald.yakowenko@dot.gov*. For legal questions, please contact Mr. Michael Harkins, FHWA Office of the Chief Counsel, (202) 366–4928, or via email at *michael.harkins@dot.gov*. Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

The FHWA's Buy America requirements at 23 U.S.C. 313 require a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid project. The statute also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding the FHWA's finding that a partial Buy America waiver is appropriate for the obligation of Federal-aid funds for the purchase of 112 State requests regarding specific vehicle projects (including sedans, vans, pickups, SUVs, trucks, buses, and equipment, such as backhoes, street sweepers, and tractors and low emission locomotives).[1]

In accordance with Division A, section 122 of the ''Consolidated and Further Continuing Appropriations Act, 2012'' (Pub. L. 112–284), the FHWA published a notice of intent to issue a waiver on its Web site for 112 State requests regarding specific vehicle projects (including sedans, vans, pickups, SUVs, trucks, buses, and equipment, such as backhoes, street sweepers, and tractors) (*http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=93*) on November 15th. The FHWA received 20 comments in response to the publication. No commenter objected to the waiver, and one commenter expressed concern regarding FHWA's current process of approving a waiver for vehicle retrofit projects under the Congestion Mitigation Air Quality (CMAQ) Improvement Program. This commenter suggested that FHWA should make all diesel retrofit devices and components exempt from the Buy America requirements.

The FHWA appreciates the need to provide clear guidance concerning the application of Buy America requirements to vehicles and diesel engine retrofit projects; however, the issuance of guidance for that subject is outside of the scope of this Notice. The FHWA issued a **Federal Register** Notice and Request for Comment on various aspects of the Buy America requirements on July 10, 2013. The FHWA is currently evaluating all comments and assessing the need for additional guidance or clarification.

Based on all the information available to the agency, the FHWA concludes that

[1] See *http://www.fhwa.dot.gov/construction/contracts/cmaq131115.cfm*

there are no domestic manufacturers that could meet a 100 percent domestic steel and iron content for the 112 State requests regarding specific vehicle projects (including sedans, vans, pickups, SUVs, trucks, buses, and equipment, such as backhoes, street sweepers, and tractors and low emission locomotives).

The FHWA's Buy America requirement was initially established in 1983 when the acquisition of vehicles was not eligible for assistance under the Federal-aid highway program. As such, the FHWA's Buy America requirements were tailored to the types of products that are typically used in highway construction, which generally meet a 100 percent domestic steel and iron content requirement. Vehicles were not the types of products that were initially envisioned as being purchased with Federal-aid highway funds when Buy America was first enacted. In today's global industry, vehicles are assembled with components that are made all over the world. The FHWA is not aware of any vehicle on the market that can claim to incorporate 100 percent domestic steel and iron content. For instance, the Chevy Volt, which was identified by many commenters in a November 21, 2011, **Federal Register** Notice (76 FR 72027) as being a car that is made in the United States, comprises only 40 percent United States and Canada content according to the window sticker (*http://www.cheersandgears.com/uploads/1298005091/med_gallery_51_113_449569.png*). There is no indication of how much of this 40 percent United States/Canadian content is United States-made content. However, there is an indication on the window sticker concerning whether the Volt was assembled in the United States.

While the manufacture of steel and iron products that are typically used in highway construction (such as pipe, rebar, struts, and beams) generally refers to the various processes that go into actually making the entire product, the manufacture of vehicles typically refers to where the vehicle is assembled. Thus, given the inherent differences in the types of products that are typically used in highway construction and vehicles, we feel that simply waiving the Buy America requirement, which is based on the domestic content of the product, without any regard to where the vehicle is assembled would diminish the purpose of the Buy America requirement. Moreover, in today's economic environment, the Buy America requirement is especially significant in that it will ensure that Federal Highway Trust Fund (HTF) dollars are used to support and create jobs in the United States.

While the FHWA has not located a vehicle that meets a 100 percent domestic iron and steel content requirement, the FHWA does not find that a complete waiver based on non-availability pursuant to 23 U.S.C. 313(b)(2) is appropriate. However, the FHWA also recognizes that at least a partial waiver is necessary in order to permit the State DOTs to proceed with the projects. The FHWA believes that a partial waiver that allows the public agencies to purchase vehicles so long as the final assembly of the vehicle as the end product occurs in the United States is appropriate. This approach is similar to the partial waivers previously given for various vehicle projects.

In conclusion, and in light of the above, pursuant to 23 U.S.C. 313(b)(1), the FHWA finds that it is in the public interest to grant a partial waiver from the general 100 percent domestic content requirement that applies to Federal-aid highway projects under Buy America. Under this partial waiver, however, the final assembly of any vehicles purchased with HTF funds must occur in the United States. Thus, so long as the final assembly of the 112 vehicle projects (including sedans, vans, pickups, SUVs, trucks, buses, and equipment, such as backhoes, street sweepers, and tractors) occurs in the United States, applicants to this waiver request may proceed to purchase these vehicles and equipment consistent with the Buy America requirement.

In accordance with the provisions of section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572), the FHWA is providing this notice as its finding that a partial waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to the FHWA's Web site via the link provided to the waiver page noted above.

Authority: (Authority: 23 U.S.C. 313; Pub. L. 110–161, 23 CFR 635.410)

Issued on: December 23, 2013.

Victor M. Mendez,

Administrator.

[FR Doc. 2013–31236 Filed 12–27–13; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2013–0002 (Notice No. 13–22)]

Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requests (ICR) abstracted below will be forwarded to the Office of Management and Budget (OMB) for review and comments. The ICRs describe the nature of the information collections and their expected burden. A **Federal Register** Notice with a 60-day comment period soliciting comments on these collections of information was published in the **Federal Register** on October 25, 2013 [78 FR 64049] under Docket No. PHMSA–2013–0002 (Notice No. 13–14).

DATE: Interested persons are invited to submit comments on or before January 29, 2014.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget (OMB), Attention: Desk Officer for PHMSA, 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. A comment to OMB is most effective if OMB receives it within 30 days of publication.

Instructions: All submissions must include the agency name and docket number or Regulation Identification Number (RIN) for this notice. Internet users may access comments received by DOT at: *http://www.regulations.gov*. Note that comments received will be posted without change to: *http://*

www.regulations.gov including any personal information provided.

Requests for a copy of an information collection should be directed to Steven Andrews or T. Glenn Foster, Standards and Rulemaking Division (PHH–12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., East Building, 2nd Floor, Washington, DC 20590–0001, Telephone (202) 366–8553.

FOR FURTHER INFORMATION CONTACT: Steven Andrews or T. Glenn Foster, Standards and Rulemaking Division (PHH–12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., East Building, 2nd Floor, Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collection requests that PHMSA will be submitting to OMB for renewal and extension. These information collections are contained in 49 CFR 171.6 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180). PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a three-year term of approval for each information collection activity and, when approved by OMB, publish a notice of the approval in the **Federal Register**.

PHMSA requests comments on the following information collections:

Title: Inspection and Testing of Portable Tanks and Intermediate Bulk Containers.

OMB Control Number: 2137–0018.

Summary: This information collection consolidates provisions for documenting qualifications, inspections, tests, and approvals pertaining to the manufacture and use of portable tanks and intermediate bulk containers under various provisions of the HMR. It is necessary to ascertain whether portable tanks and intermediate bulk containers have been qualified, inspected, and retested in accordance with the HMR. The information is used to verify that certain portable tanks and intermediate bulk containers meet required performance standards prior to their being authorized for use, and to document periodic requalification and testing to ensure the packagings have not deteriorated due to age or physical abuse to a degree that would render them unsafe for the transportation of hazardous materials.

Affected Public: Manufacturers and owners of portable tanks and intermediate bulk containers.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 8,770.

Total Annual Responses: 86,100.

Total Annual Burden Hours: 66,390.

Frequency of collection: On occasion.

Title: Rulemaking and Special Permit Petitions.

OMB Control Number: 2137–0051.

Summary: This collection of information applies to rulemaking procedures regarding the HMR. Specific areas covered in this information collection include Part 105, Subpart A and Subpart B, ''Hazardous Materials Program Definitions and General Procedures''; Part 106, Subpart B, ''Participating in the Rulemaking Process''; Part 107, Subpart B, ''Special Permits''; and Part 107, Subpart C, ''Preemption.'' The Federal hazardous materials transportation law directs the Secretary of Transportation to prescribe regulations for the safe transportation of hazardous materials in commerce. We are authorized to accept petitions for rulemaking and appeals, as well as applications for special permits, preemption determinations, and waivers of preemption. The types of information collected include:

(1) *Petitions for Rulemaking:* Any person may petition PHMSA to add, amend, or delete a regulation in Parts 110, 130, 171 through 180, or may petition the Office of the Chief Counsel to add, amend, or delete a regulation in Parts 105, 106 or 107.

(2) *Appeals:* Except as provided in § 106.40(e), any person may submit an appeal to our actions in accordance with the Appeals procedures found in §§ 106.110 through 106.130.

(3) *Application for Special Permit:* Any person applying for a special permit must include the citation of the specific regulation from which the applicant seeks relief; specification of the proposed mode or modes of transportation; detailed description of the proposed special permit (e.g., alternative packaging, test, procedure or activity), including as appropriate, written descriptions, drawings, flow charts, plans and other supporting documents, etc.

(4) *Application for Preemption Determination:* With the exception of highway routing matters covered under 49 U.S.C. 5125(c), any person directly affected by any requirement of a State, political subdivision, or Indian tribe may apply to the Chief Counsel for a determination whether that requirement is preempted by § 107.202(a), (b) or (c). The application must include the text of the State or political subdivision or Indian tribe requirement for which the determination is sought; specify each requirement of the Federal hazardous materials transportation law, regulations issued under the Federal hazardous material transportation law, or hazardous material transportation security regulations or directives issued by the Secretary of Homeland Security with which the applicant seeks the State or political subdivision or Indian tribe requirement to be compared; explain why the applicant believes the State or political subdivision or Indian tribe requirement should or should not be preempted under the standards of § 107.202; and state how the applicant is affected by the State or political subdivision or Indian tribe requirement.

(5) *Waivers of Preemption:* With the exception of requirements preempted under 49 U.S.C. 5125(c), any person may apply to the Chief Counsel for a waiver of preemption with respect to any requirement that: (1) The State or political subdivision thereof or Indian tribe acknowledges to be preempted under the Federal hazardous materials transportation law, or (2) that has been determined by a court of competent jurisdiction to be so preempted. The Chief Counsel may waive preemption with respect to such requirement upon a determination that such requirement affords an equal or greater level of protection to the public than is afforded by the requirements of the Federal hazardous materials transportation law or the regulations issued thereunder, and does not unreasonably burden commerce.

The information collected under these application procedures is used in the review process by PHMSA in determining the merits of the petitions for rulemakings and for reconsideration of rulemakings, as well as applications for special permits, preemption determinations, and waivers of preemption to the HMR. The procedures governing these petitions for rulemaking and for reconsideration of rulemakings are covered in Subpart B of Part 106. Applications for special permits,

preemption determinations, and waivers of preemption are covered under Subparts B and C of Part 107. Rulemaking procedures enable PHMSA to determine if a rule change is necessary, is consistent with public interest, and maintains a level of safety equal to or superior to that of current regulations. Special permit procedures provide the information required for analytical purposes to determine if the requested relief provides for a comparable level of safety as provided by the HMR. Preemption procedures provide information for PHMSA to determine whether a requirement of a State, political subdivision, or Indian tribe is preempted under 49 U.S.C. 5125, or regulations issued thereunder, or whether a waiver of preemption should be issued.

Affected Public: Shippers, carriers, packaging manufacturers, and other affected entities.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 3,304.

Total Annual Responses: 4,294.

Total Annual Burden Hours: 4,899.

Frequency of Collection: On occasion.

Title: Radioactive (RAM) Transportation Requirements.

OMB Control Number: 2137–0510.

Summary: This information collection consolidates and describes the information collection provisions in the HMR involving the transportation of radioactive materials in commerce. Information collection requirements for RAM include: shipper notification to consignees of the dates of shipment of RAM; expected arrival; special loading/unloading instructions; verification that shippers using foreign-made packages hold a foreign competent authority certificate and verification that the terms of the certificate are being followed for RAM shipments being made into this country; and specific handling instructions from shippers to carriers for fissile RAM, bulk shipments of low specific activity RAM, and packages of RAM which emit high levels of external radiation. These information collection requirements help to establish that proper packages are used for the type of radioactive material being transported; external radiation levels do not exceed prescribed limits; and packages are handled appropriately and delivered in a timely manner, so as to ensure the safety of the general public, transport workers, and emergency responders.

Affected Public: Shippers and carriers of radioactive materials in commerce.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 3,817.

Total Annual Responses: 21,519.

Total Annual Burden Hours: 15,270.

Frequency of collection: On occasion.

Title: Hazardous Materials Public Sector Training and Planning Grants.

OMB Control Number: 2137–0586.

Summary: Part 110 of 49 CFR sets forth the procedures for reimbursable grants for public sector planning and training in support of the emergency planning and training efforts of States, Indian tribes, and local communities to manage hazardous materials emergencies, particularly those involving transportation. Sections in this part address information collection and recordkeeping with regard to applying for grants, monitoring expenditures, and reporting and requesting modifications.

Affected Public: State and local governments, Indian tribes.

Annual Reporting and Recordkeeping Burden:

Annual Respondents: 68.

Annual Responses: 68.

Annual Burden Hours: 5,290.

Frequency of collection: On occasion.

Title: Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service.

OMB Control Number: 2137–0595.

Summary: These information collection and recordkeeping requirements pertain to the manufacture, certification, inspection, repair, maintenance, and operation of certain Department of Transportation (DOT) specification and non-specification cargo tank motor vehicles used to transport liquefied compressed gases. These requirements are intended to ensure cargo tank motor vehicles used to transport liquefied compressed gases are operated safely, and to minimize the potential for catastrophic releases during unloading and loading operations. They include: (1) Requirements for operators of cargo tank motor vehicles in liquefied compressed gas service to develop operating procedures applicable to unloading operations and carry the operating procedures on each vehicle; (2) inspection, maintenance, marking, and testing requirements for the cargo tank discharge system, including delivery hose assemblies; and (3) requirements for emergency discharge control equipment on certain cargo tank motor vehicles transporting liquefied compressed gases that must be installed and certified by a Registered Inspector.

Affected Public: Carriers in liquefied compressed gas service, manufacturers and repairers.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 6,958.

Total Annual Responses: 920,538.

Total Annual Burden Hours: 200,914.

Frequency of collection: On occasion.

Delmer F. Billings,

Senior Regulatory Advisor, Standards and Rulemaking Division.

[FR Doc. 2013–31162 Filed 12–27–13; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0492]

Proposed Information Collection (VA MATIC Authorization); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments for information needed to deduct insurance premiums from policyholder's bank account.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 28, 2014.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0492'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct

or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: VA MATIC Authorization, VA Form 29–0532–1.

OMB Control Number: 2900–0492.

Type of Review: Extension of a currently approved collection.

Abstract: Veteran policyholders complete VA Form 29–0532–1 to authorize deduction of Government Life Insurance premiums from their bank account.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,500 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,000.

Dated: December 23, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2013–31067 Filed 12–27–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0131]

Proposed Information Collection (Request for Supplemental Information on Medical and Nonmedical Applications); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension without change of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments on information needed to determine the insured's eligibility to reinstate or change government life insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 28, 2014.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0131'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Request for Supplemental Information on Medical and Nonmedical Applications, VA Form Letter 29–615.

OMB Control Number: 2900–0131.

Type of Review: Extension without change of a currently approved collection.

Abstract: VA Form 29–615 used by the insured to apply for new issue, reinstatement or change of plan on Government Life Insurance policies.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,000 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 9,000.

Dated: December 23, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2013–31071 Filed 12–27–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Discontinuance of Annual Financial Assessments—Delay in Implementation

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) published a Notice in the **Federal Register** on October 25, 2013 (78 FR 64065) announcing that we intended to change financial reporting practices requiring annual financial assessments from veterans enrolled in the VA health care system. The purpose of this Notice is to notify interested parties that due to delays in modifying computer software, VA is postponing implementation of this change.

FOR FURTHER INFORMATION CONTACT: Kristin J. Cunningham, Director Business Policy, Chief Business Office, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; (202) 382–2508. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Certain veterans are enrolled in the VA health care system based on their income: Priority Groups 5, 7, and 8. VA requires these veterans to submit a financial assessment when initially enrolled and then requests resubmission of this information each year thereafter on the enrollment anniversary. VA verifies that self-reported financial information through a computer matching of income reported to the Internal Revenue Service (IRS) and Social Security Administration (SSA).

VA intends to eliminate this annual burden by changing the financial reporting practices. Veterans will be

requested to submit financial assessment information using a VA Form 10–10EZ only during the initial enrollment process. VA will continue to receive income information from IRS and SSA, which will then be compared to the information initially provided by the veteran. A veteran will be asked to provide further income and asset information, or to verify the data provided by IRS or SSA, only in those cases where VA identifies a change to the veteran's income that would result in a change to the veteran's priority group status.

As stated in VA's October 25, 2013, Notice, this change in policy will be implemented in phases because the policy change requires revision of current VA forms and processes including updating existing information technology. Phase I, which will eliminate the need for current enrollees to submit the annual financial assessment, was scheduled to be implemented by December 31, 2013. Due to delays in revising and updating supporting computer software, VA is postponing implementation of Phase I until a date to be determined. VA will publish a Notice in the **Federal Register** to announce the new implementation date.

Dated: December 24, 2013.

William F. Russo,

Deputy Director, Regulation Policy and Management, Office the General Counsel, Department of Veterans Affairs.

[FR Doc. 2013–31164 Filed 12–27–13; 8:45 am]

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H.R. 185/P.L. 113–58

To designate the United States courthouse located at 101 East Pecan Street in Sherman, Texas, as the ''Paul Brown United States Courthouse''. (Dec. 20, 2013; 127 Stat. 657)

H.R. 1402/P.L. 113–59

VA Expiring Authorities Extension Act of 2013 (Dec. 20, 2013; 127 Stat. 658)

H.R. 2251/P.L. 113–60

To designate the United States courthouse and Federal building located at 118 South Mill Street, in Fergus Falls, Minnesota, as the ''Edward J. Devitt UnitedStates Courthouse and Federal Building''. (Dec. 20, 2013; 127 Stat. 664)

H.R. 2871/P.L. 113–61

To amend title 28, United States Code, to modify the composition of the southern judicial district of Mississippi to improve judicial efficiency, and for other purposes. (Dec. 20, 2013; 127 Stat. 665)

H.R. 2922/P.L. 113–62

To extend the authority of the Supreme Court Police to protect court officials away from the Supreme Court grounds. (Dec. 20, 2013; 127 Stat. 666)

H.R. 3458/P.L. 113–63

Fallen Firefighters Assistance Tax Clarification Act of 2013 (Dec. 20, 2013; 127 Stat. 667)

H.R. 3588/P.L. 113–64

Community Fire Safety Act of 2013 (Dec. 20, 2013; 127 Stat. 668)

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Alicia Dawn Koehl Respect for National Cemeteries Act (Dec. 20, 2013; 127 Stat. 669)

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