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# Presidential Documents

**Title 3—**

## The President

**Executive Order 13632 of December 7, 2012**

## Establishing the Hurricane Sandy Rebuilding Task Force

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

**Section 1.** *Purpose.* Hurricane Sandy made landfall on October 29, 2012, resulting in major flooding, extensive structural damage, and significant loss of life. A dangerous nor'easter followed 9 days later causing additional damage and undermining the recovery effort. As a result of these events, thousands of individuals were displaced and millions lost power, some for an extended period of time. Over 1,600 stores were closed, and fuel distribution was severely disrupted, further complicating the recovery effort. New York and New Jersey—two of the Nation's most populous States—were especially hard hit by these storms.

The Federal Emergency Management Agency (FEMA) in the Department of Homeland Security is leading the recovery efforts to assist the affected region. A disaster of Hurricane Sandy's magnitude merits a comprehensive and collaborative approach to the long-term rebuilding plans for this critical region and its infrastructure. Rebuilding efforts must address economic conditions and the region's aged infrastructure—including its public housing, transportation systems, and utilities—and identify the requirements and resources necessary to bring these systems to a more resilient condition given both current and future risks.

This order establishes the Hurricane Sandy Rebuilding Task Force (Task Force) to provide the coordination that is necessary to support these rebuilding objectives. In collaboration with the leadership provided through the National Disaster Recovery Framework (NDRF), the Task Force will identify opportunities for achieving rebuilding success, consistent with the NDRF's commitment to support economic vitality, enhance public health and safety, protect and enhance natural and manmade infrastructure, and ensure appropriate accountability. The Task Force will work to ensure that the Federal Government continues to provide appropriate resources to support affected State, local, and tribal communities to improve the region's resilience, health, and prosperity by building for the future.

**Sec. 2.** *Establishment of the Hurricane Sandy Rebuilding Task Force.* There is established the Hurricane Sandy Rebuilding Task Force, which shall be chaired by the Secretary of Housing and Urban Development (Chair).

(a) In addition to the Chair, the Task Force shall consist of the head of each of the following executive departments, agencies, and offices, or their designated representatives:

(i) the Department of the Treasury;

(ii) the Department of the Interior;

(iii) the Department of Agriculture;

(iv) the Department of Commerce;

(v) the Department of Labor;

(vi) the Department of Health and Human Services;

(vii) the Department of Transportation;

(viii) the Department of Energy;

(ix) the Department of Education;

(x) the Department of Veterans Affairs;

(xi) the Department of Homeland Security;

(xii) the Environmental Protection Agency;

(xiii) the Small Business Administration;

(xiv) the Army Corps of Engineers;

(xv) the Office of Management and Budget;

(xvi) the National Security Staff;

(xvii) the Domestic Policy Council;

(xviii) the National Economic Council;

(xix) the Council on Environmental Quality;

(xx) the Office of Science and Technology Policy;

(xxi) the Council of Economic Advisers;

(xxii) the White House Office of Public Engagement and Intergovernmental Affairs;

(xxiii) the White House Office of Cabinet Affairs; and

(xxiv) such other agencies and offices as the President may designate.

(b) The Chair shall regularly convene and preside at meetings of the Task Force and determine its agenda as the Task Force exercises the functions set forth in section 3 of this order. The Chair's duties shall also include:

(i) communicating and engaging with States, tribes, local governments, Members of Congress, other stakeholders and interested parties, and the public on matters pertaining to rebuilding in the affected region;

(ii) coordinating the efforts of executive departments, agencies, and offices related to the functions of the Task Force; and

(iii) specifying the form and subject matter of regular reports to be submitted concurrently to the Domestic Policy Council, the National Security Staff, and the Chair.

**Sec. 3.** *Functions of the Task Force.* Consistent with the principles of the NDRF, including individual and family empowerment, leadership and local primacy, partnership and inclusiveness, public information, unity of effort, timeliness and flexibility, resilience and sustainability, and psychological and emotional recovery, the Task Force shall:

(a) work closely with FEMA in the coordination of rebuilding efforts with the various intergovernmental activities taken in conjunction with the NDRF;

(b) describe the potentially relevant authorities and resources of each member of the Task Force;

(c) identify and work to remove obstacles to resilient rebuilding in a manner that addresses existing and future risks and vulnerabilities and promotes the long-term sustainability of communities and ecosystems;

(d) coordinate with entities in the affected region in efforts to:

(i) ensure the prompt and orderly transition of affected individuals and families into safe and sanitary long-term housing;

(ii) plan for the rebuilding of critical infrastructure damaged by Hurricane Sandy in a manner that accounts for current vulnerabilities to extreme weather events and increases community and regional resilience in responding to future impacts;

(iii) support the strengthening of the economy; and

(iv) understand current vulnerabilities and future risks from extreme weather events, and identify resources and authorities that can contribute to strengthening community and regional resilience as critical infrastructure is rebuilt and ecosystem functions are restored;

(e) prior to the termination of the Task Force, present to the President a Hurricane Sandy Rebuilding Strategy (Strategy) as provided in section 5 of this order;

(f) engage local stakeholders, communities, the public, Members of Congress, and other officials throughout the areas affected by Hurricane Sandy to ensure that all parties have an opportunity to share their needs and viewpoints to inform the work of the Task Force, including the development of the Strategy; and

(g) communicate with affected tribes in a manner consistent with Executive Order 13175 of November 6, 2000, regarding the consultation and coordination with Indian tribal governments.

**Sec. 4.** *Task Force Advisory Group.* The Chair shall, at his discretion, establish an Advisory Group to advise the Task Force and invite individuals to participate in it. Participants shall be elected State, local, and tribal officials and may include Governors, Mayors, County Executives, tribal elected officials, and other elected officials from the affected region as the Chair deems appropriate. Members of the Advisory Group, acting in their official capacity, may designate employees with authority to act on their behalf. The Advisory Group shall generally advise the Task Force as requested by the Chair, and shall provide input on each element of the Strategy described in section 5 of this order.

**Sec. 5.** *Hurricane Sandy Rebuilding Strategy.* (a) Within 180 days of the first convening of its members, the Task Force shall prepare a Strategy that includes:

(i) a summary of Task Force activities;

(ii) a long-term rebuilding plan that includes input from State, local, and tribal officials and is supported by Federal agencies, which is informed by an assessment of current vulnerabilities to extreme weather events and seeks to mitigate future risks;

(iii) specific outcomes, goals, and actions by Federal, State, local, and tribal governments and the private sector, such as the establishment of permanent entities, as well as any proposed legislative, regulatory, or other actions that could support the affected region's rebuilding; and

(iv) a plan for monitoring progress.

(b) The executive departments, agencies, and offices listed in section 2(a) of this order shall, as appropriate and to the extent permitted by law, align their relevant programs and authorities with the Strategy.

**Sec. 6.** *Administration.* (a) The Task Force shall have a staff, headed by an Executive Director, which shall provide support for the functions of the Task Force.

(b) The Executive Director shall be selected by the Chair and shall supervise, direct, and be accountable for the administration and support of the Task Force.

(c) At the request of the Chair, other executive departments and agencies shall serve in an advisory role to the Task Force on issues within their expertise.

(d) The Task Force may establish technical working groups of Task Force members, their representatives, and invited Advisory Group members and elected officials, or their designated employees, as necessary to provide advice in support of their function.

(e) The Task Force shall terminate 60 days after the completion of the Strategy described in section 5 of this order, after which FEMA and the lead agencies for the Recovery Support Functions, as described in the NDRF, shall continue the Federal rebuilding coordinating roles described in section 3 of this order to the extent consistent with the NDRF.

**Sec. 7.** *General Provisions.* (a) For purposes of this order, ''affected tribe'' means any Indian tribe, band, nation, pueblo, village, or community that

the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a), located or with interests in the affected area.

(b) To the extent permitted by law, and subject to the availability of appropriations, the Department of Housing and Urban Development shall provide the Task Force with such administrative services, facilities, staff, equipment, mobile communications, and other support services as may be necessary for the Task Force to carry out its functions, using funds provided from the Disaster Relief Fund by agreement with FEMA and any other available and appropriate funding.

(c) Members of the Task Force, Advisory Group, and any technical working groups shall serve without any additional compensation for their work on the Task Force, Advisory Group, or technical working group.

(d) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof, or the status of that department or agency within the Federal Government; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(e) This order shall be implemented consistent with applicable law, and subject to the availability of appropriations.

(f) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
*Washington, December 7, 2012.*

[FR Doc. 2012–30310
Filed 12–13–12; 8:45 am]
Billing code 3295–F3

# Presidential Documents

**Proclamation 8915 of December 10, 2012**

## Human Rights Day and Human Rights Week, 2012

**By the President of the United States of America**

**A Proclamation**

Sixty-four years ago, a group of nations emerging from the shadow of war joined together to light a path toward lasting peace. They adopted the Universal Declaration of Human Rights—a revolutionary document that recognized the inherent dignity and inalienable rights of all people as the ''foundation of freedom, justice, and peace in the world.'' As we mark the anniversary of that historic act, we celebrate the rights the Declaration recognized and recommit to strengthening them in the 21st century.

The United States was built on the promise that freedom and fairness are not endowed only to some—they are the birthright of all. Ordinary Americans have fought to fully realize that vision for more than two centuries, courageously forging a democracy that empowers each of us equally and affords every citizen due process under the law. Just as we have cultivated these rights here at home, so have we worked to promote them abroad. Societies across the globe are reaching toward a future where leaders are fairly and duly elected; where everyone can get an education and make a good living; where women and girls are free from violence, as well as free to pursue the same opportunities as men and boys; and where the voice of the people rings clear and true. As they do, the United States stands with them, ready to uphold the basic decency and human rights that underlie everything we have achieved and all our progress yet to come.

Men and women everywhere long for the freedom to determine their destiny, the dignity that comes with work, the comfort that comes with faith, and the justice that exists when governments serve their people. These dreams are common to people all around the world, and the values they represent are universal. This week, we rededicate ourselves to fortifying civil rights in America, while reaffirming that all people around the world should live free from the threat of extrajudicial killing, torture, oppression, and discrimination. And we renew our promise that the United States will be a partner to any nation, large or small, that will contribute to a world that is more peaceful and more prosperous, more just and more free.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim December 10, 2012, as Human Rights Day and the week beginning December 10, 2012, as Human Rights Week. I call upon the people of the United States to mark these observances with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of December, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2012–30312
Filed 12–13–12; 8:45 am]
Billing code 3295–F3

# Rules and Regulations

Federal Register

Vol. 77, No. 241

Friday, December 14, 2012

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

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

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

**RIN 3206–AM59**

### Prevailing Rate Systems; Abolishment of the Washington, DC, Special Wage Schedule for Printing Positions

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Office of Personnel Management is issuing a final rule to abolish the Washington, DC, Federal Wage System (FWS) special wage schedule for printing and lithographic positions. Printing and lithographic employees in the Washington, DC, wage area will now be paid from the regular Washington, DC, appropriated fund FWS wage schedule. This change is necessary because Federal employment in printing and lithographic occupations in the Washington, DC, wage area has declined sharply in recent years, and a separate wage schedule is no longer viable or beneficial to employees.

**DATES:** *Effective date:* This regulation is effective on December 14, 2012.

**FOR FURTHER INFORMATION CONTACT:** Madeline Gonzalez, (202) 606–2838; email *pay-leave-policy@opm.gov;* or FAX: (202) 606–4264.

**SUPPLEMENTARY INFORMATION:** On July 13, 2012, the U.S. Office of Personnel Management (OPM) issued an interim rule (77 FR 41247) to abolish the Washington, DC, Federal Wage System (FWS) special wage schedule for printing and lithographic positions. This change is necessary because Federal employment in printing and lithographic occupations in the Washington, DC, wage area has declined sharply in recent years, and a separate wage schedule is no longer viable or beneficial to employees. Agencies will place employees who are paid from the Washington, DC, special wage schedule on the Washington, DC, regular wage schedule on the first day of the first applicable pay period beginning on or after October 21, 2012.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee that advises OPM on FWS pay matters, reviewed and concurred by consensus with this change. The interim rule had a 30-day comment period, during which OPM received no comments.

#### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

#### List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

**John Berry,**

*Director.*

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule published on July 13, 2012 (77 FR 41427), amending 5 CFR part 532, is adopted as final without change.

[FR Doc. 2012–30132 Filed 12–13–12; 8:45 am]

**BILLING CODE 6325–39–P**

## COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY

### 5 CFR Chapter XCVIII

### Freedom of Information Act Regulations

**AGENCY:** Council of the Inspectors General on Integrity and Efficiency.

**ACTION:** Final rule.

**SUMMARY:** The Council of the Inspectors General on Integrity and Efficiency (CIGIE) issues this regulation establishing its Code of Federal Regulations chapter to provide the procedures and guidelines under which CIGIE will implement the Freedom of Information Act (FOIA). The final rule describes the policies and procedures for public disclosure of information required to be disclosed under FOIA.

**DATES:** This regulation is effective December 14, 2012.

**FOR FURTHER INFORMATION CONTACT:** Mark D. Jones, Executive Director, Council of the Inspectors General on Integrity and Efficiency, (202) 292–2600, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street NW., Suite 825 Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:** The Council of the Inspectors General on Integrity and Efficiency (CIGIE) is issuing this regulation to provide the procedures and guidelines under which CIGIE will implement the Freedom of Information Act (FOIA) (5 U.S.C. 552). On July 20, 2012, CIGIE published a proposed rule implementing the Freedom of Information Act (FOIA) (U.S.C. 552) in the **Federal Register**. See 77 FR 42673, July 20, 2012. CIGIE provided interested persons with an opportunity to participate in the rulemaking through submission of written comments on the proposed rule. The comment period closed on September 18, 2012. CIGIE did not receive any comments during the 60-day comment period.

In issuing this regulation, CIGIE adhered to the regulatory philosophy and the applicable principles of regulation as set forth in Section 1 of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735. This regulation has not been reviewed by the Office of Management and Budget under the Executive Order since it is not a significant regulatory action within the meaning of the Executive Order. For purposes of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), CIGIE certifies that the final regulations in this part do not contain any new reporting or record-keeping requirements.

#### List of Subjects in 5 CFR Part 9800

Appeals, Freedom of Information Act, Information, Privacy, Records.

Accordingly, as set forth in the preamble, the Council of the Inspectors General on Integrity and Efficiency establishes 5 CFR Chapter XCVIII, consisting of parts 9800 through 9899, to read as follows:

**Chapter XCVIII—Council of the Inspectors General on Integrity and Efficiency**

## PART 9800—FREEDOM OF INFORMATION ACT REGULATIONS

**§ 9801–9899 [Reserved]**

## PART 9800—FREEDOM OF INFORMATION ACT REGULATIONS

Sec.

9800.1 Purpose.
9800.2 CIGIE organization.
9800.3 Definitions.
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9800.13 Handling commercial information obtained from a private business.
9800.14 Extension of administrative deadlines.
9800.15 Fees.
9800.16 Interest charges.
9800.17 Aggregating requests.
9800.18 Fee waivers and reductions.

**Authority:** Pub. L. 110–409, 122 Stat. 4302; 5 U.S.C. App; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; E.O. 13392, 70 FR 75373–75377, 3 CFR, 2006 Comp., p. 216–200.

### § 9800.1 Purpose.

This part implements the provisions of The Freedom of Information Act (FOIA) (5 U.S.C. 552), as amended, for CIGIE records. These regulations should be read in conjunction with the FOIA, which explains in more detail requesters' rights and the records CIGIE may release. This regulation should also be read with CIGIE's FOIA Reference Guide, available on CIGIE's Web site, *http://www.ignet.gov,* and the FOIA fee guidance provided by the Office of Management and Budget (OMB), Uniform Freedom of Information Act Fee Schedule and Guidelines.

### § 9800.2 CIGIE organization.

(a) CIGIE has a centralized FOIA Program, with one office receiving and coordinating the processing of all requests made to CIGIE. The Integrity Committee (IC) is the single exception to CIGIE's centralized FOIA Program. For FOIA purposes, the IC is a separate entity that follows its own FOIA policies and regulations, and manages its own FOIA resources, structure and processing procedures. By statute, all records received or created by the IC in fulfilling its responsibilities are collected and maintained separately as IC records by the Federal Bureau of Investigation (FBI) in its Central Records System. See Title 28, CFR Part 16, Subpart A. Accordingly, the regulations published below do not apply to requests or appeals for records maintained by the IC.

(b) CIGIE will accept requests or appeals for all CIGIE records—including IC records—at official mailboxes. Requests for IC records will be forwarded to the IC for processing and direct response to the requester.

### § 9800.3 Definitions.

The following definitions apply to this part:

*Appeal* means a requester's written disagreement with an adverse determination under the FOIA.

*CIGIE* means the Council of the Inspectors General on Integrity and Efficiency and includes its predecessor agencies, the Executive Council on Integrity and Efficiency (ECIE) and the President's Council on Integrity and Efficiency (PCIE).

*Confidential commercial information* means records obtained by CIGIE from a business submitter that may contain information exempt from release under Exemption 4 of FOIA, 5 U.S.C. 552(b)(4).

*Days,* unless stated as ''calendar days,'' are working days and do not include Saturdays, Sundays, and Federal holidays.

*Employee,* for the purposes of this regulation, means any person currently or formerly holding an appointment to a position of employment with CIGIE, or any agent or independent contractor acting on behalf of or performing work for CIGIE.

*FOIA Officer* and *Chief FOIA Officer* are persons designated by the CIGIE Chairperson to grant or deny requests for records under FOIA.

*IC* means the CIGIE Integrity Committee established under section 11(d) of the Inspector General Act of 1978 (5 U.S.C. App), as amended.

*Perfected request* means a written FOIA request that meets all of the criteria set forth in § 9800.6.

*Reading room* means a location where records are available for review pursuant to 5 U.S.C. 552(a)(2).

*Record* means a document or documentary material maintained in any form, which CIGIE:

(1) Created or received under Federal law or in connection with the transaction of public business;

(2) Preserved or determined is appropriate for preservation as evidence of operations or activities of CIGIE, or due to the value of the information it contains; and

(3) Controls at the time it receives a FOIA request.

*Requester* means any person, partnership, corporation, association, or foreign or State or local government, which has made a demand to access a CIGIE record under FOIA.

*Submitter* means any person or entity providing confidential commercial information to the Federal Government.

*Unusual circumstances* means CIGIE must:

(1) Search for or collect records from agencies, offices, facilities, or locations that are separate from the office processing the request;

(2) Search, review, or duplicate a voluminous number of records in order to process a single request; or

(3) Consult with another agency or component that has a substantial interest in the determination of a request.

### § 9800.4 General provisions.

(a) CIGIE prohibits employees from releasing or disclosing confidential or otherwise nonpublic information that CIGIE possesses, except as authorized by this regulation or by the CIGIE Chairperson, when the disclosure is necessary for the performance of official duties.

(b) CIGIE has designated a FOIA Public Liaison to assist in the resolution of disputes between the agency and the requester. Contact information for CIGIE's FOIA Public Liaison can be found on CIGIE's Web site, *http://www.ignet.gov*.

(c) CIGIE is required to prepare an annual report regarding its FOIA activities in accordance with 5 U.S.C. 552(e). CIGIE's annual report contains information about agency FOIA requests and appeals. The annual report is posted on the CIGIE's Web site, *http://www.ignet.gov*.

### § 9800.5 Public reading room.

CIGIE maintains an electronic public reading room on its Web site, *http://www.ignet.gov,* which contains the records that the FOIA requires be regularly made available for public inspection and copying, as well as additional records of interest to the public.

### § 9800.6 Requirements for making requests.

(a) Requesters may make a request for CIGIE records by writing directly to the CIGIE FOIA Officer through electronic mail, mail, delivery service, or facsimile. The electronic mail address is: *FOIASTAFF@cigie.gov*. For mail or delivery service, the mailing address is: FOIA Officer, Council of the Inspectors

General on Integrity and Efficiency, 1717 H Street NW., Suite 825, Washington, DC 20006. The facsimile number is: (202) 254–0162. CIGIE's FOIA Reference Guide, which is available on CIGIE's Web site, *http://www.ignet.gov,* provides additional information regarding submitting a request.

(b) Requests must be sent to the official CIGIE FOIA mailboxes that are established for the purpose of receiving requests. A request that is sent to an individual employee's mailbox or directly to a CIGIE standing committee address—other than for IC records—will not be considered a perfected request. Mailbox addresses designated to receive requests are identified in paragraph (a) of this section.

(c) CIGIE will not consider an improperly addressed request to have been received for purposes of the 20-day time limit of § 9800.7 until it is actually received by CIGIE at one of the locations specified in paragraph (a) of this section.

(d) Requests must be made in writing, and should contain the phrase ''FOIA Request'' on the front of the envelope or on the cover sheet of the facsimile transmittal.

(e) Requests must include the requester's full name and a legible return address. Requesters may include other contact information as well, such as a telephone number and an electronic mail address.

(f) A request must describe the records sought in enough detail to enable CIGIE personnel to locate them with reasonable effort. A requester should include as much specific information as possible regarding dates, titles, names of individuals, and names of agencies or other organizations that may help identify the records. Wide ranging requests that lack specificity or that contain broad descriptions of subject matters without reference to specific records, may be considered ''not reasonably described'' and therefore not subject to further processing.

(g) If CIGIE determines that a request does not reasonably describe the records, the agency will inform the requester and provide the requester with an opportunity to modify the request. The ''date of receipt'' in such cases shall be the date of receipt of the modified request.

(h) The time limit for processing the request will be tolled while any fee issue is not resolved. If CIGIE anticipates that the fees for processing the request will exceed the amount that the requester has stated he or she is willing to pay, or will amount to more than $25.00, the agency will notify the requester. In such cases, the agency will require the requester to agree in writing to pay the estimated fee.

(i) The requester must meet all of the requirements of this section in order for the request to be perfected. CIGIE will only process perfected requests.

**§ 9800.7 Agency response to requests for records.**

(a) With the exception of IC records, the CIGIE FOIA Officer, the Chief FOIA Officer, and persons designated by the CIGIE Chairperson are solely authorized to grant or deny any request for CIGIE records.

(b) When a request for records is submitted in accordance with § 9800.6, CIGIE shall inform the requester of its determination concerning that request within 20 working days (excepting Saturdays, Sundays, and Federal holidays), plus any extension authorized under § 9800.14. If CIGIE grants the request, CIGIE will inform the requester of any conditions surrounding the granting of the request. If CIGIE grants only a portion of the request, the portion not granted will be treated as a denial. If CIGIE denies the request in whole or in part, CIGIE will inform the requester of that decision and of the following:

(1) The reason for the denial;

(2) The name and title or position of the person responsible for denial of the request;

(3) The requester's right to appeal any such denial and the title and address of the official to whom such appeal is to be addressed; and

(4) The requirement that such appeal be received within 45 days of the date of the denial.

(c) If CIGIE cannot fulfill a request because the records requested are in the custody of another agency outside CIGIE, CIGIE will inform the requester and will forward the request to that agency or department for processing in accordance with this regulation.

**§ 9800.8 Multitrack processing.**

(a) CIGIE processes requests using a multitrack processing system. There are four processing tracks: An expedited track, if the request qualifies; a simple track for relatively simple requests; a complex track for more complex and lengthy requests; and a remanded track, when a FOIA appeal is granted.

(b) CIGIE processes requests on a ''first-in, first-out'' basis for each track, unless there are unusual circumstances as referenced in § 9800.14, or the requester is entitled to expedited processing as described in § 9800.11.

**§ 9800.9 General provisions respecting release of records.**

(a) CIGIE will provide the records in the form or format specified by the requester, if the records are readily reproducible in that form or format.

(b) If the request concerns documents involving a personal privacy interest or documents protected by another confidentiality statute, the requester must provide either a notarized statement or a statement signed under penalty of perjury, declaring that the requester is actually the person he or she claims to be. Original signatures are required.

**§ 9800.10 Appeals.**

(a) Requesters may appeal the denial of a request by writing directly to the CIGIE FOIA Officer through electronic mail, mail, delivery service, or facsimile. The electronic mail address is *FOIASTAFF@cigie.gov*. For mail or delivery service, the mailing address is: FOIA Officer, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street NW., Suite 825, Washington, DC 20006. The facsimile number is: (202) 254–0162. CIGIE's FOIA Reference Guide, which is available on CIGIE's Web site, *http://www.ignet.gov*, provides additional information regarding submitting an appeal.

(b) Appeals must be sent to official CIGIE FOIA mailboxes that are established for the purpose of receiving appeals. An appeal that is sent to an individual CIGIE employee's mailbox or directly to a CIGIE standing committee address—other than for IC records—will not be considered a perfected appeal. Mailbox addresses designated to receive appeals are identified in paragraph (a) of this section.

(c) CIGIE will not consider an improperly addressed appeal to have been received for purposes of the 20-day time limit of paragraph (h) of this section until it is actually received by CIGIE at one of the locations specified in paragraph (a) of this section.

(d) FOIA appeals must be in writing, and should contain the phrase ''FOIA Appeal'' on the front of the envelope or on the cover sheet of the facsimile transmittal.

(e) Appeals must include the requester's full name and a legible return address. Requesters may include other contact information as well, such as a telephone number and an electronic mail address.

(f) Requesters submitting an administrative appeal of a denial of a request for records must ensure that the appeal is received by CIGIE within 45 days of the date of the denial letter.

(g) CIGIE provides for review of appeals by an official different from the official or officials designated to make initial denials.

(h) Upon receipt of an appeal, CIGIE shall inform the requester of its determination concerning that appeal within 20 working days (excepting Saturdays, Sundays, and Federal holidays), plus any extension authorized by § 9800.14. If CIGIE grants the appeal, the agency will inform the requester of any conditions surrounding the granting of the request and the approximate date the response will be in effect. If CIGIE grants only a portion of the appeal, the agency will treat the portion not granted as a denial. If CIGIE denies the appeal in whole or in part, CIGIE will inform the requester of that decision and of the following:

(1) The reason for denial;

(2) The name and title or position of the person responsible for denial of the appeal; and

(3) The right to judicial review of the denial in accordance with 5 U.S.C. 552(a)(4).

(i) A requester may seek judicial review under 5 U.S.C. 552(a)(4) if the denial of his or her request for records was upheld in whole or in part or if a determination respecting an appeal has not been sent within the statutory time limit in paragraph (h) of this section.

(j) A determination by the designated FOIA appeals official pertaining to CIGIE records will be final agency action.

**§ 9800.11 Expedited processing.**

(a) A requester may apply for expedited processing when submitting an initial request for records. Within 10 calendar days of receipt of a request for expedited processing, CIGIE will decide whether to grant it and will notify the requester of the decision. If a request for expedited treatment is granted, CIGIE will process the request as soon as practicable. If CIGIE denies a request for expedited processing, CIGIE will act expeditiously on any appeal respecting that decision.

(b) A request or appeal will be taken out of order and given expedited treatment when CIGIE determines that the requester has established one of the following criteria:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(2) An urgency to inform the public about an actual or alleged Federal Government activity, if made by an individual primarily engaged in disseminating information;

(3) The loss of substantial due process rights;

(4) A matter of widespread and exceptional media interest raising possible questions about the Federal Government's integrity which affects public confidence; or

(5) A substantial humanitarian need or interest.

(c) A requester who seeks expedited processing must include a written statement that the requester has certified to be true and correct to the best of the requester's knowledge, explaining in detail the reasons for requesting expedited processing. CIGIE will not consider the request for expedited processing to have been received unless accompanied by such a certified statement, and CIGIE is under no obligation to consider the request for expedited processing until it receives a certified statement.

(d) These procedures apply to requests for expedited processing of administrative appeals.

**§ 9800.12 Date of receipt of requests or appeals.**

The date of receipt of a request or appeal shall be the date it is received by the CIGIE FOIA office.

**§ 9800.13 Handling commercial information obtained from a private business.**

When CIGIE cannot readily determine whether the information in its records is privileged or confidential commercial information, it is CIGIE's policy to obtain and consider the views of the submitter of the information and to provide an opportunity to object to any decision prior to disclosure of the information. If CIGIE receives a request for information that has been submitted by a business, CIGIE shall:

(a) Provide the submitter of commercial information with notification of a FOIA request for that information, unless CIGIE readily determines that the information requested should not be disclosed or, alternately, that the information is not exempt from disclosure by law;

(b) Afford the submitter reasonable time in which to object to the disclosure of any specified portion of the information. The submitter must fully explain all grounds for objecting to disclosure of any specified portion of the information. For example, if the submitter maintains that disclosure is likely to cause it substantial competitive harm, the submitter must explain on an item-by-item basis why disclosure would cause such harm. Information provided by a submitter pursuant to this part may itself be subject to disclosure under FOIA;

(c) Notify the FOIA requester of the need to inform the submitter of a request for the submitted commercial information;

(d) Determine whether the records requested are exempt from disclosure or must be released after carefully considering all reasons provided by a submitter for objecting to disclosure;

(e) Prior to the disclosure date, notify submitters of any determination to disclose such records so that the matter may be considered for possible judicial intervention; and

(f) Notify submitters promptly in all cases in which FOIA requesters bring suit seeking to compel disclosure of submitted information.

**§ 9800.14 Extension of administrative deadlines.**

In unusual circumstances, CIGIE may extend the 20 working day response time for no more than 10 additional working days for initial requests or appeals and shall notify requesters of:

(a) The reason for the extension; and

(b) The estimated date of completion.

**§ 9800.15 Fees.**

(a) The current schedule of fees is maintained on CIGIE's Web site, *http://www.ignet.gov.*

(b) Under FOIA, as amended, there are four categories of requesters: Commercial use requesters, educational and non-commercial scientific institutions; representatives of the news media; and all other requesters.

(c) For commercial us requesters, CIGIE assesses charges which recover the full direct costs of searching for, reviewing, and duplicating the records requested. Commercial use requesters are not entitled to receive free search time or duplication referenced in paragraphs (d), (e), and (f) of this section. CIGIE may recover the cost of searching for and reviewing records for commercial use requesters even if no records are ultimately disclosed.

(1) A commercial use requester is considered to be a person who seeks information for a use or purpose that furthers a commercial, trade, or profit interest of the requester or the person on whose behalf the request is made.

(2) In order to determine whether a requester properly belongs in this category, CIGIE must consider whether the requester will put the documents to a commercial use. In cases where CIGIE has reasonable cause to doubt a requester's use of the records sought, or where that use is not clearly identified in the request itself, CIGIE may seek additional clarification from the requester.

(d) Fees for educational and non-commercial scientific institution

requesters are limited to the cost of providing standard duplication services alone, without charge for the first 100 pages reproduced. To qualify for this category, requesters must show that the request made is authorized by and under the auspices of an eligible institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly research (if the request is from an educational institution) or scientific research (if the request is from a non-commercial scientific institution).

(1) The term ''educational institution'' refers to preschools, public or private elementary or secondary schools, institutions of graduate or undergraduate higher education, institutions of professional education, and institutions of vocational education operating one or more programs of scholarly research.

(2) The term ''non-commercial scientific institution'' refers to an institution that is not operated on a ''commercial'' basis, and which is operated solely for the purpose of conducting scientific research.

(e) For requesters who are representatives of the news media, fees will also be limited to the cost of providing duplication services alone, without charge for the first 100 pages reproduced. No fee will be charged for providing search or review services.

(1) The term ''representative of the news media'' refers to a person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.

(2) The term ''news'' means information that is about current events or that would be of current interest to the public.

(3) Examples of news media entities include television or radio stations broadcasting to the public, and publishers of periodicals which disseminate news and who make their products available for purchase or subscription by the general public.

(4) Freelance journalists may be regarded as working for a news organization if they can demonstrate a sufficient basis for expecting publication through that organization, even though not actually employed by it.

(f) Fees for all other requesters who do not fit into any of the above categories will be assessed for the full reasonable direct cost of searching for and duplicating documents that are responsive to a request. No charge will be made to requesters in this category for the first 100 pages reproduced or for the first two hours of search time.

(g) CIGIE will assess fees for searches which fail to locate records or which locate records which are exempt from disclosure at the same rate as searches which result in disclosure of records.

(h) If a fee is incurred in connection with a request or an appeal in accordance with this section, CIGIE will inform the requester of the amount owed and the basis for the fee amount.

(i) Payment for outstanding fees incurred will be billed to the fullest extent possible at the time the requested records are forwarded to the requester. Payments must be made by requesters within 30 days of the date of the billing.

(j) In cases where the estimated fees to be charged exceed $250.00, CIGIE may require payment of the entire fee or a portion of the fee before it provides any of the requested records.

(k) CIGIE shall require full payment of any delinquent fee owed by the requester plus any applicable interest prior to releasing records on a subsequent request or appeal. If a requester declines to remit payment in advance, CIGIE may refuse to process the request or appeal with written notice to that effect provided to the requester. The ''date of receipt'' appeal for which advance payment has been required shall be the date CIGIE receives payment.

**§ 9800.16 Interest charges.**

For requests that result in fees assessed, CIGIE may begin levying interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. Interest will be assessed at the rate prescribed under 31 U.S.C. 3717, and will accrue from the date of the billing.

**§ 9800.17 Aggregating requests.**

If CIGIE reasonably believes that a requester, or group of requesters acting in concert, is attempting to break down a request into a series of requests for the purpose of evading the assessment of fees, CIGIE may aggregate any such requests and charge accordingly.

**§ 9800.18 Fee waivers and reductions.**

(a) CIGIE may waive or reduce fees if disclosure of the information sought is deemed to be in the public interest. A request is made in the public interest if it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government, and is not primarily in the commercial interest of the requester.

(b) When determining fee waiver requests, CIGIE will consider the following six factors:

(1) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the Federal Government;

(2) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of Federal Government operations or activities;

(3) The contribution to an understanding of the subject by the public likely to result from the disclosure: Whether the disclosure will contribute to the public understanding;

(4) The significance of the contribution to the public understanding: Whether the disclosure is likely to significantly contribute to the public understanding of Federal Government operations or activities;

(5) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the disclosure of the requested records; and

(6) The primary interest in disclosure: Whether the magnitude of an identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(c) CIGIE may, in its discretion, waive or reduce fees associated with a records request, regardless of whether a waiver or reduction has been requested, if the agency determines that disclosure will primarily benefit the general public.

(d) CIGIE will waive fees without discretion in all circumstances where the amount of the fee is $25.00 or less.

(e) CIGIE will notify the requester regarding whether the fee waiver has been granted. A requester may appeal a denial of a fee waiver request only after a final decision has been made on the initial FOIA request.

Dated: December 4, 2012.

**Phyllis K. Fong,**

*Chairperson of the Council of the Inspectors General on Integrity and Efficiency.*

[FR Doc. 2012–30131 Filed 12–13–12; 8:45 am]

BILLING CODE 6820–C9–M

## COMMODITY FUTURES TRADING COMMISSION

## 17 CFR Part 1

## Fees for Reviews of the Rule Enforcement Programs of Designated Contract Markets and Registered Futures Associations

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of FY 2012 schedule of fees.

**SUMMARY:** The Commission charges fees to designated contract markets and registered futures associations to recover the costs incurred by the Commission in the operation of its program of oversight of self-regulatory organization rule enforcement programs, specifically National Futures Association, a registered futures association, and the designated contract markets. The calculation of the fee amounts charged for FY 2012 by this notice is based upon an average of actual program costs incurred during FY 2009, 2010, and 2011.

**DATES:** *Effective Date:* Each SRO is required to remit electronically the fee applicable to it on or before February 12, 2013.

**FOR FURTHER INFORMATION CONTACT:** Mark Carney, Chief Financial Officer, Commodity Futures Trading Commission, (202) 418–5477, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. For information on electronic payment, contact Jennifer Fleming, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, (202) 418–5034.

**SUPPLEMENTARY INFORMATION:**

## I. Background Information

### *A. General*

This notice relates to fees for the Commission's review of the rule enforcement programs at the registered futures associations [1] and designated contract markets (DCM) each of which is a self-regulatory organization (SRO) regulated by the Commission. The Commission recalculates the fees charged each year to cover the costs of operating this Commission program.[2] All costs are accounted for by the Commission's Budget Program Activity Codes (BPAC) system, formerly the Management Accounting Structure Codes (MASC) system, which records each employee's time for each pay period. The fees are set each year based on direct program costs, plus an overhead factor. The Commission calculates actual costs, then calculates an alternate fee taking volume into account, then charges the lower of the two.[3]

### *B. Overhead Rate*

The fees charged by the Commission to the SROs are designed to recover program costs, including direct labor costs and overhead. The overhead rate is calculated by dividing total Commission-wide overhead direct program labor costs into the total amount of the Commission-wide overhead pool. For this purpose, direct program labor costs are the salary costs of personnel working in all Commission programs. Overhead costs consist generally of the following Commission-wide costs: indirect personnel costs (leave and benefits), rent, communications, contract services, utilities, equipment, and supplies. This formula has resulted in the following overhead rates for the most recent three years (rounded to the nearest whole percent): 147 percent for fiscal year 2009, 153 percent for fiscal year 2010, and 145 percent for fiscal year 2011.

### *C. Conduct of SRO Rule Enforcement Reviews*

Under the formula adopted by the Commission in 1993, the Commission calculates the fee to recover the costs of its rule enforcement reviews and examinations, based on the three-year average of the actual cost of performing such reviews and examinations at each SRO. The cost of operation of the Commission's SRO oversight program varies from SRO to SRO, according to the size and complexity of each SRO's program. The three-year averaging computation method is intended to smooth out year-to-year variations in cost. Timing of the Commission's reviews and examinations may affect costs—a review or examination may span two fiscal years and reviews and examinations are not conducted at each SRO each year.

As noted above, adjustments to actual costs may be made to relieve the burden on an SRO with a disproportionately large share of program costs. The Commission's formula provides for a reduction in the assessed fee if an SRO has a smaller percentage of United States industry contract volume than its percentage of overall Commission oversight program costs. This adjustment reduces the costs so that, as a percentage of total Commission SRO oversight program costs, they are in line with the pro rata percentage for that SRO of United States industry-wide contract volume.

The calculation is made as follows: The fee required to be paid to the Commission by each DCM is equal to the lesser of actual costs based on the three-year historical average of costs for that DCM or one-half of average costs incurred by the Commission for each DCM for the most recent three years, plus a pro rata share (based on average trading volume for the most recent three years) of the aggregate of average annual costs of all DCMs for the most recent three years. The formula for calculating the second factor is: 0.5a + 0.5 vt = current fee. In this formula, ''a'' equals the average annual costs, ''v'' equals the percentage of total volume across DCMs over the last three years, and ''t'' equals the average annual costs for all DCMs. NFA has no contracts traded; hence, its fee is based simply on costs for the most recent three fiscal years. This table summarizes the data used in the calculations of the resulting fee for each entity:

[1] NFA is the only registered futures association.

[2] *See* section 237 of the Futures Trading Act of 1982, 7 U.S.C. 16a, and 31 U.S.C. 9701. For a broader discussion of the history of Commission fees, see 52 FR 46070, Dec. 4, 1987.

[3] 58 FR 42643, Aug. 11, 1993 and 17 CFR part 1, app. B.

| | Actual Total Costs | | | 3-year average actual costs | 3-year % of volume | volume adjusted costs | FY 2012 Assessed Fee |
|---|---|---|---|---|---|---|---|
| | FY 2009 | FY 2010 | FY 2011 | | | | |
| CBOE Futures | $ 519 | $ - | $ 98,556 | $ 33,025 | 0.16% | $ 17,611 | $ 17,611 |
| Chicago Board of Trade | 142,446 | 87,953 | 5,260 | $ 78,553 | 27.40% | 222,868 | $ 78,553 |
| Chicago Climate Exchange | 2,129 | - | - | $ 710 | 0.02% | 497 | $ 497 |
| Chicago Mercantile Exchange | 341,186 | 882,542 | 422,837 | $ 548,855 | 52.55% | 626,531 | $ 548,855 |
| ICE Futures U.S. | 286,289 | 94,043 | 17,624 | $ 132,652 | 3.26% | 88,143 | $ 88,143 |
| Kansas City Board of Trade | 2,888 | 227,296 | 30,976 | $ 87,053 | 0.17% | 44,642 | $ 44,642 |
| Minneapolis Grain Exchange | 123,566 | - | 88,790 | $ 70,786 | 0.05% | 35,730 | $ 35,730 |
| New York Mercantile Exchange | 15,948 | 596,767 | 136,565 | $ 249,760 | 15.34% | 227,640 | $ 227,640 |
| New York LIFFE | - | - | 416,069 | $ 138,690 | 0.26% | 71,111 | $ 71,111 |
| SUBTOTAL | **914,972** | **1,888,601** | **1,216,678** | **1,340,083** | **100%** | **1,334,772** | **1,112,781** |
| National Futures Association | 109,639 | 1,206,393 | 416,615 | 577,549 | | | 577,549 |
| TOTAL | **1,024,611** | **3,094,994** | **1,633,293** | **1,917,632** | | | **1,690,330** |

An example of how the fee is calculated for one exchange, the Chicago Board of Trade, is set forth here:

a. Actual three-year average costs equal $78,553.

b. The alternative computation is: (.5) ($78,553) + (.5) (.274) ($1,340,083) = $222,868.

c. The fee is the lesser of a or b; in this case $78,553.

As noted above, the alternative calculation based on contracts traded is not applicable to NFA because it is not a DCM and has no contracts traded. The Commission's average annual cost for conducting oversight review of the NFA rule enforcement program during fiscal years 2009 through 2011 was $577,549 (one-third of $1,732,647). The fee to be paid by the NFA for the current fiscal year is $577,549.

## II. Schedule of Fees

Therefore, fees for the Commission's review of the rule enforcement programs at the registered futures associations and DCMs regulated by the Commission are as follows:

| | 2012 fee lesser of actual or calculated fee |
|---|---|
| CBOE Futures | $17,611 |
| Chicago Board of Trade | 78,553 |
| Chicago Climate Exchange | 497 |
| Chicago Mercantile Exchange | 548,855 |
| ICE Futures U.S. | 88,143 |
| Kansas City Board of Trade | 44,642 |
| Minneapolis Grain Exchange | 35,730 |
| New York Mercantile Exchange | 227,640 |
| New York LIFFE | 71,111 |
| Subtotal | 1,112,781 |
| National Futures Association | 577,549 |
| Total | 1,690,330 |

## III. Payment Method

The Debt Collection Improvement Act (DCIA) requires deposits of fees owed to the government by electronic transfer of funds (See 31 U.S.C. 3720). For information about electronic payments, please contact Jennifer Fleming at (202) 418–5034 or *jfleming@cftc.gov,* or see the CFTC Web site at *www.cftc.gov,* specifically, *www.cftc.gov/cftc/cftcelectronicpayments.htm.*

Issued in Washington, DC on this 11th day of December 2012, by the Commission.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2012–30224 Filed 12–13–12; 8:45 am]

BILLING CODE P

## PENSION BENEFIT GUARANTY CORPORATION

## 29 CFR Part 4022

## Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe interest assumptions under the regulation for valuation dates in January 2013. The interest assumptions are used for paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC. As discussed below, PBGC will publish a separate final rule document dealing with interest assumptions under its regulation on Allocation of Assets in Single-Employer Plans for the first quarter of 2013.

**DATES:** Effective January 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** Catherine B. Klion (*Klion.Catherine@pbgc.gov*), Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

**SUPPLEMENTARY INFORMATION:** PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulation are also published on PBGC's Web site (*http://www.pbgc.gov*).

PBGC uses the interest assumptions in Appendix B to Part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to Part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for January 2013.

PBGC normally updates the assumptions under the benefit payments regulation for January at the same time as PBGC updates assumptions for the first quarter of the year under its regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) in a single rulemaking document. Because of delays in obtaining data used in setting assumptions under Part 4044 for the first quarter of 2013, PBGC is publishing two separate rulemaking documents to update the benefit payments regulation for January 2013 and the allocation regulation for the first quarter of 2013.

The January 2013 interest assumptions under the benefit payments regulation will be 0.75 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for December 2012, these interest assumptions are unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during January 2013, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

**List of Subjects in 29 CFR Part 4022**

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

## PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

**Authority:** 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 231 is added to the table to read as follows:

**Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments**

* * * * *

| Rate set | For plans with a valuation date | | Immediate annuity rate (percent) | Deferred annuities (percent) | | | | |
|---|---|---|---|---|---|---|---|---|
| | On or after | Before | | $i_1$ | $i_2$ | $i_3$ | $n_1$ | $n_2$ |
| * | * | * | * | * | * | * | * | |
| 231 | 1–1–13 | 2–1–13 | 0.75 | 4.00 | 4.00 | 4.00 | 7 | 8 |

■ 3. In appendix C to part 4022, Rate Set 231 is added to the table to read as follows:

**Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments**

* * * * *

| Rate set | For plans with a valuation date | | Immediate annuity rate (percent) | Deferred annuities (percent) | | | | |
|---|---|---|---|---|---|---|---|---|
| | On or after | Before | | $i_1$ | $i_2$ | $i_3$ | $n_1$ | $n_2$ |
| * | * | * | * | * | * | * | * | |
| 231 | 1–1–13 | 2–1–13 | 0.75 | 4.00 | 4.00 | 4.00 | 7 | 8 |

Issued in Washington, DC, on this 11th day of December 2012.

**Laricke Blanchard,**

*Deputy Director for Policy, Pension Benefit Guaranty Corporation.*

[FR Doc. 2012–30202 Filed 12–13–12; 8:45 am]

BILLING CODE 7709–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R09–OAR–2011–0589; FRL–9726–4]**

### Approval of Air Quality Implementation Plans; California; San Joaquin Valley; Attainment Plan for the 1997 8-Hour Ozone Standards; Technical Amendments

**AGENCY:** U.S. Environmental Protection Agency (EPA).

**ACTION:** Final rule; technical amendments.

**SUMMARY:** EPA is making a technical amendment to the Code of Federal Regulations (CFR) to reflect the Agency's March 1, 2012 final approval of the California State Implementation Plan for attainment of the 1997 8-hour ozone National Ambient Air Quality Standards in the San Joaquin Valley. This technical amendment corrects the CFR to properly codify the California Air Resources Board's commitment to update the air quality modeling in the San Joaquin Valley 8-Hour Ozone SIP by December 31, 2014.

**DATES:** This technical amendment is effective on December 14, 2012.

**FOR FURTHER INFORMATION CONTACT:** Frances Wicher, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region 9, (415) 972–3957, *wicher.frances@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we'', ''us'' and ''our'' refer to EPA.

On March 1, 2012, EPA fully approved the California State Implementation Plan (SIP) for attainment of the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) in the San Joaquin Valley and included provisions of this SIP in the Code of Federal Regulations (CFR) at 40 CFR 52.220(c). See 77 FR 12652 (March 1, 2012).

The regulatory text for this final action included paragraph (c)(396)(ii)(A)(*2*)(*ii*) of 40 CFR 52.220. This paragraph contains CARB's commitment to update the air quality modeling in the San Joaquin Valley 8-Hour Ozone SIP to reflect emissions inventory improvements and any other new information by December 31, 2014 or the date by which state implementation plans are due for the expected revision to the Federal 8-hour ozone standard whichever comes first, as provided on page 3 of CARB Resolution No. 11–22 (dated July 21, 2011). CARB Resolution 11–22 documents CARB's adoption of the *8-Hour Ozone State Implementation Plan Revisions and Technical Revisions to the $PM_{2.5}$ State Implementation Plan Transportation Conformity Budgets for the South Coast and San Joaquin Valley Air Basins* (dated June 20, 2011). However, the amendatory language at the beginning of this regulatory text (77 FR 12672) did not identify this paragraph and as a result this paragraph is not currently in the CFR. We are issuing this technical amendment to 40 CFR 52.220 to correct this oversight. This technical amendment makes no change to the substance of our March 1, 2012 approval of the SJV 8-Hour Ozone SIP.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen Dioxide, Ozone, Volatile organic compounds.

Dated: December 4, 2012.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

### PART 52 [AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

### Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(396)(ii)(A)(*2*)(*ii*) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(396) * * *

(ii) * * *

(A) * * *

(*2*) * * *

(*ii*) Commitment to update the air quality modeling in the SJV 2007 Ozone Plan to reflect the emissions inventory improvements and any other new information by December 31, 2014 or the date by which state implementation plans are due for the expected revision to the Federal 8-hour ozone standard whichever comes first, as provided on page 3.

* * * * *

[FR Doc. 2012–30245 Filed 12–13–12; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R08–OAR–2011–0114; FRL–9751–6]**

### Approval, Disapproval and Promulgation of State Implementation Plans; State of Utah; Regional Haze Rule Requirements for Mandatory Class I Areas Under 40 CFR 51.309

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is partially approving and partially disapproving a State Implementation Plan (SIP) revision submitted by the State of Utah on May 26, 2011 that addresses regional haze. EPA is also approving specific sections of a State of Utah SIP revision submitted on September 9, 2008 to address regional haze. These SIP revisions were submitted to address the requirements of the Clean Air Act (CAA or Act) and our rules that require states to prevent any future and remedy any existing man-made impairment of visibility in

mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program''). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. EPA is taking this action pursuant to section 110 of the CAA.

**DATES:** This final rule is effective January 14, 2013.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2011–0114. All documents in the docket are listed on the *www.regulations.gov* Web site. Publicly available docket materials are available either electronically through *www.regulations.gov,* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if, at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Laurel Dygowski, Air Program, Mailcode 8P–AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6144, *dygowski.laurel@epa.gov.*

**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 initials *BART* mean or refer to Best Available Retrofit Technology.

iii. The initials *CAC* mean or refer to clean air corridors.

iv. The initials *CEED* mean or refer to the Center for Energy and Economic Development.

v. The initials *EGUs* mean or refer to electric generating units.

vi. The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

vii. The initials *GCVTC* mean or refer to the Grand Canyon Visibility Transport Commission.

viii. The initials *MRR* mean or refer to monitoring, recordkeeping, and reporting.

ix. The initials *LNB* mean or refer to low $NO_X$ burner.

x. The initials $NO_X$ mean or refer to nitrogen oxides.

xi. The initials *NSR* mean or refer to new source review.

xii. The initials *OFA* mean or refer to overfire air.

xiii. The initials $PM_{2.5}$ mean or refer to particulate matter with an aerodynamic diameter of less than 2.5 micrometers.

xiv. The initials $PM_{10}$ mean or refer to particulate matter with an aerodynamic diameter of less than 10 micrometers.

xv. The initials *PSD* mean or refer to prevention of significant deterioration.

xvi. The initials *RHR* mean or refer to the Regional Haze Rule.

xvii. The initials *SIP* mean or refer to State Implementation Plan.

xviii. The initials $SO_2$ mean or refer to sulfur dioxide.

xix. The initials *SOFA* mean or refer to separated overfire air.

xx. The words *Utah* or *State* mean or refer to the State of Utah.

xxi. The initials *UAR* mean or refer to the Utah Administrative Rules.

xxii. The initials *WESP* mean or refer to wet electrostatic precipitator.

xxiii. The initials *WRAP* mean or refer to the Western Regional Air Partnership.

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## I. Background

The CAA requires each state to develop plans, referred to as SIPs, to meet various air quality requirements. A state must submit its SIPs and SIP revisions to us for approval. Once approved, a SIP is enforceable by EPA and citizens under the CAA, also known as being federally enforceable. If a state fails to make a required SIP submittal or if we find that a state's required submittal is incomplete or unapprovable, then we must make a finding to that effect. This action involves the requirement that states have SIPs that address regional haze.

### *A. Regional Haze*

In 1990, Congress added section 169B to the CAA to address regional haze issues, and we promulgated regulations addressing regional haze in 1999. 64 FR 35714 (July 1, 1999), codified at 40 CFR part 51, subpart P. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in our visibility protection regulations at 40 CFR 51.300–309. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia and the Virgin Islands. States were required to submit a SIP addressing regional haze visibility impairment no later than December 17, 2007. 40 CFR 51.308(b).

Utah submitted SIPs addressing regional haze on September 9, 2008 and May 26, 2011. (These superseded and replaced prior SIP submittals dated December 12, 2003 and August 8, 2004).

### *B. Lawsuits*

In a lawsuit in the U.S. District Court for the District of Colorado, environmental groups sued us for our failure to take timely action with respect to the regional haze requirements of the CAA and our regulations for the State of Utah. As a result of this lawsuit, we entered into a consent decree. The consent decree requires that we sign a notice of final rulemaking addressing the regional haze requirements for Utah by October 31, 2012. We are meeting that requirement with the signing of this notice of final rulemaking.

### *C. Our Proposal*

We published our notice of proposed rulemaking in the **Federal Register** on May 16, 2012 (77 FR 28825). In that notice, we provided a detailed description of the various regional haze requirements. We are not repeating that description here; instead, the reader should refer to our notice of proposed rulemaking for further detail.

In our proposal, we proposed to approve all sections of the May 26, 2011 SIP submittal as meeting the requirements under 40 CFR 51.309, with the exception of the requirements under 40 CFR 51.309(d)(4)(vii) pertaining to nitrogen oxides ($NO_X$) and particulate matter (PM) best available retrofit technology (BART). EPA proposed to disapprove the State's $NO_X$ and PM BART determinations and limits in section D.6.d of the SIP for the following four subject-to-BART electric generating units (EGUs): PacifiCorp Hunter Unit 1, PacifiCorp Hunter Unit 2, PacifiCorp Huntington Unit 1, and PacifiCorp Huntington Unit 2. EPA proposed to disapprove these BART determinations because they do not comply with our

regulations under 40 CFR 51.308(e)(1)[1] pertaining to the factors that need to be considered as part of a BART determination. EPA also proposed to disapprove the State's SIP because it does not contain the provisions necessary to make BART limits practically enforceable as required by section 110(a)(2) of the CAA and Appendix V to part 51.

We proposed to approve specific sections of the State's September 9, 2008 SIP submittal. Specifically, we proposed to approve Utah Administrative Rules (UAR) R307–250—*Western Backstop Sulfur Dioxide Trading Program* and R307–150—*Emission Inventories.* R307–250, in conjunction with the SIP, implements the backstop trading program provisions in accordance with the requirements of the regional haze rule (RHR) under 40 CFR 51.309. The purpose of R305–150 is to establish consistent emission inventory reporting requirements for stationary sources in Utah to determine whether sulfur dioxide ($SO_2$) emissions are below the $SO_2$ milestones established for the trading program.

*D. Public Participation*

We requested comments on all aspects of our proposed action and provided a sixty-day comment period, with the comment period closing on July 16, 2012. We received comments on our proposed rule that supported our proposed action and that were critical of our proposed action. In this action, we are responding to the comments we have received, taking final rulemaking action, and explaining the bases for our action.

## II. Final Action

We are approving all sections of the May 26, 2011 SIP submittal as meeting the requirements under 40 CFR 51.309, with the exception of the requirements under 40 CFR 51.309(d)(4)(vii) pertaining to $NO_X$ and PM BART. EPA is disapproving the State's $NO_X$ and PM BART determinations and limits in section D.6.d of the SIP for the following four subject-to-BART EGUs: PacifiCorp Hunter Unit 1, PacifiCorp Hunter Unit 2, PacifiCorp Huntington Unit 1, and PacifiCorp Huntington Unit 2. EPA is disapproving these BART determinations because they do not comply with our regulations under 40 CFR 51.308(e)(1). EPA is also disapproving the State's SIP because it does not contain the provisions necessary to make BART limits practically enforceable as required by section 110(a)(2) of the CAA and Appendix V to part 51.

We are approving specific sections of the State's September 9, 2008 SIP submittal. Specifically, we are approving UAR R307–250—*Western Backstop Sulfur Dioxide Trading Program* and R307–150—*Emission Inventories.* We are taking no action on the rest of the September 9, 2008 submittal as the May 26, 2011 submittal supersedes and replaces the remaining sections of the September 9, 2008 SIP submittal. The State also submitted SIPs on December 12, 2003 and August 8, 2004 to meet the requirements of the RHR. These submittals have been superseded and replaced by the September 9, 2008 and May 26, 2011 submittals. We are taking no action on section G—*Long-Term Strategy for Fire Programs* of the May 26, 2011 submittal as we have proposed approval of this section in a separate notice (76 FR 69217, November 8, 2011).

## III. Basis for Our Final Action

We have fully considered all significant comments on our proposal and have concluded that no changes from our proposal are warranted. Our action is based on an evaluation of Utah's regional haze SIP submittal against the regional haze requirements at 40 CFR 51.300–51.309 and CAA sections 169A and 169B. All general SIP requirements contained in CAA section 110, other provisions of the CAA, and our regulations applicable to this action were also evaluated. The purpose of this action is to ensure compliance with these requirements. Our authority for action on Utah's SIP submittal is based on CAA section 110(k).

We are approving most of the State's regional haze SIP provisions because they meet the relevant RHR requirements and disapproving others because they do not meet the requirements of the RHR or other requirements of the CAA. Most of the adverse comments we received concerning our proposed approval of the regional haze SIP pertained to our proposed approval of the $SO_2$ backstop trading program and disapproval of the BART determinations for PacifiCorp Hunter Unit 1 and Unit 2, and PacifiCorp Huntington Unit 1 and Unit 2. However, the comments have not convinced us that the State did not meet the requirements of 40 CFR 51.309 that we proposed to approve or that the State met the requirements of the RHR or the CAA for which we proposed disapproval.

## IV. Issues Raised by Commenters and EPA's Responses

*A. Backstop Trading Program*

EPA has proposed to approve the $SO_2$ backstop trading program components of the RH SIPs for all participating States and has done so through four separate proposals: for the Bernalillo County proposal see 77 FR 24768 (April 25, 2012); for the Utah proposal see 77 FR 28825 (May 15, 2012); for the Wyoming proposal see 77 FR 30953 (May 24, 2012); finally, for the New Mexico proposal see 77 FR 36043 (June 15, 2012). National conservation organizations paired with organizations local to each state have together submitted very similar, if not identical, comments on various aspects of EPA's proposed approval of these common program components. These comment letters may be found in the docket for each proposal and are dated as follows: May 25, 2012 for Bernalillo County; July 16, 2012 for Utah; July 23, 2012 for Wyoming; and July 16, 2012 for New Mexico. Each of the comment letters has attached a consultant's report dated May 25, 2012, and titled: ''Evaluation of Whether the $SO_2$ Backstop Trading Program Proposed by the States of New Mexico, Utah and Wyoming and Albuquerque-Bernalillo County Will Result in Lower $SO_2$ Emissions than Source-Specific BART.'' In this section, we address and respond to those comments we identified as being consistently submitted and specifically directed to the component of the published proposals dealing with the submitted $SO_2$ backstop trading program. For our organizational purposes, any additional or unique comments found in the conservation organization letter that is applicable to this proposal (*i.e.,* for the State of Utah) will be addressed in the next section where we also address all other comments received.

*Comment:* The commenter acknowledges that prior case law affirms EPA's regulatory basis for having ''better than BART'' alternative measures, but nevertheless asserts that it violates Congress' mandate for an alternative trading program to rely on emissions reductions from non-BART sources and electric generating units (EGUs) from compliance with BART.

*Response:* The CAA requires BART ''as may be necessary to make reasonable progress toward meeting the national goal'' of remedying existing impairment and preventing future impairment at mandatory Class I areas. See CAA Section 169A(b)(2) (emphasis added). In 1999, EPA issued regulations allowing for alternatives to BART based

[1] 40 CFR 51.309(d)(vii) provides that ''The implementation plan must contain any necessary long term strategies and BART requirements for stationary source PM and $NO_X$ emissions. Any such BART provisions may be submitted pursuant to either § 51.308(e)(1) or § 51.308(e)(2).''

on a reading of the CAA that focused on the overarching goal of the statute of achieving progress. EPA's regulations provided states with the option of implementing an emissions trading program or other alternative measure in lieu of BART so long as the alternative would result in greater reasonable progress than BART. We note that this interpretation of CAA Section 169A(B)(2) was determined to be reasonable by the D.C. Circuit in *Center for Energy and Economic Development* v. *EPA,* 398 F.3d 653, 659–660 (D.C. Cir. 2005) in a challenge to the backstop market trading program under Section 309, and again found to reasonable by the D.C. Circuit in *Utility Air Regulatory Group* v. *EPA,* 471 F.3d 1333, 1340 (D.C. Cir. 2006)(''* * * [W]e have already held in *CEED* that EPA may leave states free to implement BART-alternatives so long as those alternatives also ensure reasonable progress.''). Our regulations for alternatives to BART, including the provisions for a backstop trading program under Section 309, are therefore consistent with the CAA and not in issue in this action approving a SIP submitted under those regulations. We have reviewed the submitted 309 trading program SIPs to determine whether each has the required backstop trading program (see 40 CFR 51.309(d)(4)(v)), and whether the features of the program satisfy the requirements for trading programs as alternatives to BART (see 40 CFR 51.308(e)(2)). Our regulations make clear that any market trading program as an alternative to BART contemplates market participation from a broader list of sources than merely those sources that are subject to BART. See 40 CFR 51.308(e)(2)(i)(B).

*Comment:* The submitted 309 trading program is defective because only three of nine transport states remain in the program. The Grand Canyon Visibility Transport Commission (GCVTC) Report clearly stated that the program must be ''comprehensive.'' The program fails to include the other western states that account for the majority of sulfate contribution in the Class I areas of participating states, and therefore Class I areas on the Colorado Plateau will see little or no visibility benefit. Non-participation by other transport region states compounds the program's deficiencies.

*Response:* We disagree that the 309 trading program is defective because only three States remain in the program. EPA's regulations do not require a minimum number of Transport Region States to participate in the 309 trading program, and there is no reason to believe that the limited participation by the nine Transport States will limit the effectiveness of the program in the three States that have submitted 309 SIPs. The commenter's argument is not supported by the regional haze regulations and is demonstrably inconsistent with the resource commitments of the Transport Region States that have worked for many years in the WRAP to develop and submit SIPs to satisfy 40 CFR 51.309. At the outset, our regulations affirm that ''certain States * * * may choose'' to comply with the 40 CFR 51.309 requirements and conversely that ''[a]ny Transport Region State [may] elect not to submit an implementation plan'' to meet the optional requirements. 40 CFR 51.309(a); see also 40 CFR 51.309(f). We have also previously observed how the WRAP, in the course of developing its technical analyses as the framework for a trading program, ''understood that some States and Tribes may choose not to participate in the optional program provided by 40 CFR 51.309.'' 68 FR 33769 (June 5, 2003). Only five of nine Transport Region States initially opted to participate in the backstop trading program in 2003, and of those initial participants only Oregon and Arizona later elected not to submit 309 SIPs.

We disagree with the commenter's assertion that Class I areas on the Colorado Plateau will see little or no visibility benefit. Non-participating states must account for sulfate contributions to visibility impairment at Class I areas by addressing all requirements that apply under 40 CFR 51.308. To the extent Wyoming, New Mexico and Utah sources ''do not account for the majority of sulfate contribution'' at the 16 class I areas on Colorado Plateau, there is no legal requirement that they account for $SO_2$ emissions originating from sources outside these participating states. Aside from this, the modeling results detailed in the proposed rulemaking show projected visibility improvement for the 20 percent worst days in 2018 and no degradation in visibility conditions on the 20 percent best days at all 16 of the mandatory Class I areas under the submitted 309 plan.

Finally, we do not agree with the commenter's characterization of the GCVTC Report, which used the term ''comprehensive'' only in stating the following: ''It is the intent of [the recommendation for an incentive-based trading program] that [it] include as many source categories and species of pollutants as is feasible and technically defensible. This preference for a 'comprehensive' market is based upon the expectation that a comprehensive program would be more effective at improving visibility and would yield more cost-effective emission reduction strategies for the region as a whole.'' [2]

It is apparent that the GCVTC recommended comprehensive source coverage to optimize the market trading program. This does not necessitate or even necessarily correlate with geographic comprehensiveness as contemplated by the comment. We note that the submitted backstop trading program does in fact comprehensively include ''many source categories,'' as may also be expected for any intrastate trading program that any state could choose to develop and submit under 40 CFR 51.308(e)(2). As was stated in our proposal, section 51.309 does not require the participation of a certain number of states to validate its effectiveness.

*Comment:* The submitted 309 trading program is defective because the pollutant reductions from participating states have little visibility benefit in each other's Class I areas. The states that have submitted 309 SIPs are ''largely non-contiguous'' in terms of their physical borders and their air shed impacts. Sulfate emissions from each of the participating states have little effect on Class I areas in other participating states.

*Response:* We disagree. The 309 program was designed to address visibility impairment for the sixteen Class I areas on the Colorado Plateau. New Mexico, Wyoming and Utah are identified as Transport Region States because the GCVTC had determined they could impact the Colorado Plateau class I areas. The submitted trading program has been designed by these transport region states to satisfy their requirements under 40 CFR 51.309 to address visibility impairment at the sixteen Class I areas. The strategies in these plans are directed toward a designated clean-air corridor that is defined by the placement of the 16 Class I areas, not the placement of state borders. ''Air sheds'' that do not relate to haze at these Class I areas or that relate to other Class I areas are similarly not relevant to whether the requirements for an approvable 309 trading program are met. As applicable, any transport region state, with Class I areas not on the Colorado Plateau, implementing the provisions of section 309 must also separately demonstrate reasonable progress for any additional mandatory Class I areas other than the 16 Class I areas located within the state. See 40 CFR 51.309(g). More broadly, the state must submit a long-term strategy to

[2] The Grand Canyon Visibility Transport Commission, *Recommendations for Improving Western Vistas* at 32 (June 10, 1996).

address these additional Class I areas as well as those Class I areas located outside the state, which may be affected by emissions from the state. 40 CFR 51.309(g) and 51.308(d)(2). In developing long-term strategies, the Transport Region States may take full credit for visibility improvements that would be achieved through implementation of the strategies required by 51.309(d). A state's satisfaction of the requirements of 51.309(d), and specifically the requirement for backstop trading program, is evaluated independently from whether a state has satisfied the requirements of 51.309(g). In neither case, however, does the approvability inquiry center on the location or contiguousness of state borders.

*Comment:* The emission benchmark used in the submitted 309 trading program is inaccurate. The ''better-than-BART'' demonstration needs to analyze BART for each source subject to BART in order to evaluate the alternative program. The submitted 309 trading program has no BART analysis. The ''better-than-BART'' demonstration does not comply with the regional haze regulations when it relies on the presumptive $SO_2$ emission rate of 0.15 lb/MMBtu for most coal-fired EGUs. The presumptive $SO_2$ limits are inappropriate because EPA has elsewhere asserted that ''presumptive limits represented control capabilities at the time the BART Rule was promulgated, and that [EPA] expected that scrubber technology would continue to improve and control costs would continue to decline.'' 77 FR 14614 (March 12, 2012).

*Response:* We disagree that the submitted 309 trading program requires an analysis that determines BART for each source subject to BART. Source specific BART determinations are not required to support the better-than-BART demonstration when the ''alternative measure has been designed to meet a requirement other than BART.'' See 40 CFR 51.308(e)(2)(i)(C). The requirements of Section 309 are meant to implement the recommendations of the Grand Canyon Visibility Transport Commission and are regulatory requirements ''other than BART'' that are part of a long-term strategy to achieve reasonable progress. As such, in its analysis, the State may assume emission reductions ''for similar types of sources within a source category based on both source-specific and category-wide information, as appropriate.'' See id. The 309 States used this approach in developing their emission benchmark, and we view it to be consistent with what we have previously stated regarding the establishment of a BART benchmark. Specifically, we have explained that states designing alternative programs to meet requirements other than BART ''may use simplifying assumptions in establishing a BART benchmark based on an analysis of what BART is likely to be for similar types of sources within a source category.'' 71 FR 60619 (October 13, 2006).

We also previously stated that ''we believe that the presumptions for EGUs in the BART guidelines should be used for comparisons to a trading program or other alternative measure, unless the State determines that such presumptions are not appropriate.'' Id. Our reasoning for this has also long been clear. While EPA recognizes that a case-by-case BART analysis may result in emission limits more stringent than the presumptive limits, the presumptive limits are reasonable and appropriate for use in assessing regional emissions reductions for the better than BART demonstration. See 71 FR 60619 (''the presumptions represent a reasonable estimate of a stringent case BART because they would be applied across the board to a wide variety of units with varying impacts on visibility, at power plants of varying size and distance from Class I areas''). The submitted SIP revisions from the 309 states have accordingly and appropriately, followed our advice that the presumptions for EGUs in the BART guidelines, generally ''should'' be used for comparisons to the trading program unless the state determines otherwise.

EPA's expectation that scrubber technology would continue to improve and that control costs would continue to decline is a basis for not regarding presumptive limits as a default or safe harbor BART determination when the BART Guidelines otherwise call for a complete, case-by-case analysis. We believe it was reasonable for the developers of the submitted trading program to use the presumptive limits for EGUs in establishing the emission benchmark, particularly since the methodology used to establish the emission benchmark was established near in time to our promulgation of the presumptive limits as well as our guidance that they should be used. We do not think the assumptions used at the time the trading program was developed, including the use of presumptive limits, were unreasonable. Moreover, the commenter has not demonstrated how the use of presumptive limits as a simplifying assumption at that time, or even now, would be flawed merely because EPA expects that scrubber technology and costs will continue to improve.

*Comment:* The presumptive $SO_2$ emission rate overstates actual emissions from sources that were included in the BART benchmark calculation. In addition, states in the transport region have established or proposed significantly more stringent BART limits for $SO_2$. Using actual $SO_2$ emission data for EGUs, $SO_2$ emissions would be 130,601 tpy, not the benchmark of 141,859 tpy submitted in the 309 trading program. Using a combination of actual emissions and unit-specific BART determinations, the $SO_2$ emissions would be lower still at 123,529 tpy. Finally, the same data EPA relied on to support its determination that reductions under the Cross State Air Pollution Rule are ''better-than-BART'' would translate to $SO_2$ emissions of 124,740 tpy. These analyses show the BART benchmark is higher than actual $SO_2$ emissions reductions achievable through BART. It follows that the submitted 309 trading program is flawed because it cannot be deemed to achieve ''greater reasonable progress'' than BART.

*Response:* The BART benchmark calculation does not overstate emissions because it was not intended to assess actual emissions at BART subject sources nor was it intended to assess the control capabilities of later installed controls. Instead, the presumptive $SO_2$ emission rate served as a necessary simplifying assumption. When the states worked to develop the 309 trading program, they could not be expected to anticipate the future elements of case-by-case BART determinations made by other states (or EPA, in the case of a BART determination through any federal implementation plan), nor could they be expected to anticipate the details of later-installed $SO_2$ controls or the future application of enforceable emission limits to those controls. The emissions projections by the WRAP incorporated the best available information at the time from the states, and utilized the appropriate methods and models to provide a prediction of emissions from all source categories in this planning period. In developing a profile of planning period emissions to support each state's reasonable progress goals, as well as the submitted trading program, it was recognized that the final control decisions by all of the states were not yet complete, as decisions as they may pertain to emissions from BART eligible sources. Therefore, we believe it is appropriate that the analysis and demonstration is based on data that was available to the states at the time they worked to construct the $SO_2$

trading program. The states did make appropriate adjustments based on information that was available to them at the time. Notably, the WRAP appropriately adjusted its use of the presumptive limits in the case of Huntington Units 1 and 2 in Utah, because those units were already subject to federally enforceable $SO_2$ emission rates that were lower than the presumptive rate. The use of actual emissions data after the 2006 baseline is not relevant to the demonstration that has been submitted.

*Comment:* $SO_2$ emissions under the 309 trading program would be equivalent to the $SO_2$ emissions if presumptive BART were applied to each BART-subject source. Because the reductions are equivalent, the submitted 309 trading program does not show, by ''the clear weight of the evidence,'' that the alternative measure will result in greater reasonable progress than would be achieved by requiring BART. In view of the reductions being equivalent, it is not proper for EPA to rely on ''non-quantitative factors'' in finding that the $SO_2$ emissions trading program achieves greater reasonable progress.

*Response:* We recognize that the 2018 $SO_2$ milestone equals the BART benchmark and that the benchmark generally utilized the presumptive limits for EGUs, as was deemed appropriate by the states who worked together to develop the trading program. If the $SO_2$ milestone is exceeded, the trading program will be activated. Under this framework, sources that would otherwise be subject to the trading program have incentives to make independent reductions to avoid activation of the trading program. We cannot discount that the 2003 309 SIP submittal may have already influenced sources to upgrade their plants before any case-by-case BART determination under Section 308 may have required it. In addition, the trading program was designed to encourage early reductions by providing extra allocations for sources that made reductions prior to the program trigger year. Permitting authorities that would otherwise permit increases in $SO_2$ emissions for new sources would be equally conscious of the potential impacts on the achievement of the milestone. We note that the most recent emission report for the year 2010 shows a 35% reduction in emissions from 2003. The 309 trading program is designed as a backstop such that sources would work to accomplish emission reductions through 2018 that would be superior to the milestone and the BART benchmark. If instead the backstop trading program is triggered, the sources subject to the program would be expected to make any reductions necessary to achieve the emission levels consistent with each source's allocation. We do not believe that the ''clear weight of the evidence'' determination referenced in 40 CFR 51.308(e)(2)(E)—in short, a determination that the alternative measure of the 309 trading program achieves greater reasonable progress than BART—should be understood to prohibit setting the $SO_2$ milestone to equal the BART benchmark. Our determination that the 2018 $SO_2$ milestone and other design features of the 309 SIP will achieve greater reasonable progress than would be achieved through BART is based on our understanding of how the SIP will promote and sustain emission reductions of $SO_2$ as measured against a milestone. Sources will be actively mindful of the participating states' emissions inventory and operating to avoid exceeding the milestone, not trying to maximize their emissions to be equivalent to the milestone, as this comment suggests. We note the 2018 milestone constitutes an emissions cap that persists after 2018 unless the trading program can be replaced via future SIP revisions submitted for EPA approval that will meet the BART and reasonable progress requirements of 40 CFR 51.308. See 40 CFR 51.309(d)(4)(vi)(A).

*Comment:* In proposing to find that the $SO_2$ trading program achieves greater reasonable progress than BART, EPA's reliance on the following features of the 309 trading program is flawed: non-BART emission reductions, a cap on new growth, and a mass-based cap on emissions. The reliance on non-BART emission reductions is ''a hollow promise'' because there is no evidence that the trading program will be triggered for other particular emission sources, and if the program is never triggered there will be no emission reductions from smaller non-BART sources. The reliance on a cap on future source emissions is also faulty because there is no evidence the trading program will be triggered, and thus the cap may never be implemented. Existing programs that apply to new sources will already ensure that $SO_2$ emissions from new sources are reduced to the maximum extent. EPA's discussion of the advantages of a mass-based cap is unsupported and cannot be justified. EPA wrongly states that a mass-based cap based on actual emissions is more stringent than BART. There should not be a meaningful gap between actual and allowable emissions under a proper BART determination. A mass-based cap does not effectively limit emissions when operating at lower loads and, as an annual cap, does not have restrictive compliance averaging. EPA's argument implies that BART limits do not apply during startup, shutdown or malfunction events, which is not correct. The established mass-based cap would allow sources to operate their $SO_2$ controls less efficiently, because some BART-subject EGUs already operate with lower emissions than the presumptive $SO_2$ emission rate of 0.15 lb/MMBtu and because some EGUs were assumed to be operating at 85% capacity when their capacity factor (and consequently their $SO_2$ emissions in tpy) was lower.

*Response:* We disagree that it is flawed to assess the benefits found in the distinguishing features of the trading program. The backstop trading program is not specifically designed so that it will be activated. Instead, sources that are covered by the program are on notice that it will be triggered if the regulatory milestones are not achieved. Therefore, the backstop trading program would be expected to garner reductions to avoid its activation. It also remains true that if the trading program is activated, all sources subject to the program, including smaller non-BART sources would be required to secure emission reductions as may be necessary to meet their emission allocations under the program.

We also disagree that the features of the 2018 milestone as a cap on future source emissions and as a mass-based cap has no significance. As detailed in our proposal, the submitted SIP is consistent with the requirement that the 2018 milestone does indeed continue as an emission cap for $SO_2$ unless the milestones are replaced by a different program approved by EPA as meeting the BART and reasonable progress requirements under 51.308. Future visibility impairment is prevented by capping emissions growth from those sources not eligible under the BART requirements, BART sources, and from entirely new sources in the region. The benefits of a milestone are therefore functionally distinct from the control efficiency improvements that could be gained at a limited number of BART subject sources. While BART-subject sources may not be operating at 85% capacity today, we believe the WRAP's use of the capacity assumption in consideration of projected future energy demands in 2018 was reasonable for purposes of the submitted demonstration. While BART requires BART subject sources to operate $SO_2$ controls efficiently, this does not mean that an alternative to BART thereby

allows, encourages, or causes sources to operate their controls less efficiently. On the contrary, we find that the SIP, consistent with the well-considered 309 program requirements, functions to the contrary. Sources will be operating their controls in consideration of the milestone and they also remain subject to any other existing or future requirements for operation of $SO_2$ controls.

We also disagree with the commenter's contention that existing programs are equivalent in effect to the emissions cap. EPA's new source review programs are designed to permit, not cap, source growth, so long as the national ambient air quality standards and other requirements can be achieved. Moreover, we have not argued that BART does not apply at all times or that emission reductions under the cap are meant to function as emission limitations that are made to meet the definition of BART (40 CFR 51.301). The better-than-BART demonstration is not, as the comment would have it, based on issues of compliance averaging or how a BART limit operates in practice at an individual facility. Instead, it is based on whether the submitted SIP follows the regulatory requirements for the demonstration and evidences comparatively superior visibility improvements for the Class I areas it is designed to address.

*Comment:* The submitted 309 SIP will not achieve greater reasonable progress than would the requirement for BART on individual sources. The BART program ''if adequately implemented'' will promote greater reasonable progress, and EPA should require BART on all eligible air pollution sources in the state. EPA's proposed approval of the 309 trading program is ''particularly problematic'' where the BART sources cause or contribute to impairment at Class I areas which are not on the Uniform Rate of Progress (URP) glide-path towards achieving natural conditions. EPA should require revisions to provide for greater $SO_2$ reductions in the 309 program, or it should require BART reductions on all sources subject to BART for $SO_2$.

*Response:* We disagree with the issues discussed in this comment. As discussed in other response to comments, we have found that the state's SIP submitted under the 309 program will achieve greater reasonable progress than source-by-source BART. As the regulations housed within section 309 make clear, states have an opportunity to submit regional haze SIPs that provide an alternative to source-by-source BART requirements. Therefore, the commenter's assertion that we should require BART on all eligible air pollution sources in the state is fundamentally misplaced. The commenter's use of the URP as a test that should apparently be applied to the adequacy of the 309 trading program as a BART alternative is also misplaced, as there is no requirement in the regional haze rule to do so.

*Comment:* The 309 trading program must be disapproved because it does not provide for ''steady and continuing emissions reductions through 2018'' as required by 40 CFR 51.309(d)(4)(ii). The program establishes its reductions through milestones that are set at three-year intervals. It would be arbitrary and capricious to conclude these reductions are ''steady'' or ''continuous.''

*Response:* We disagree and find that the reductions required at each milestone demonstrate steady and continuing emissions reductions. The milestones do this by requiring regular decreases. These decreases occur in intervals ranging from one to three years and include administrative evaluation periods with the possibility of downward adjustments of the milestone, if warranted. The interval under which ''steady and continuing emissions reductions through 2018'' must occur is not defined in the regional haze rule. We find the milestone schedule and the remainder of the trading program submitted by Utah does in fact reasonably provide for ''steady and continuing emissions reductions through 2018.''

*Comment:* The WRAP attempts to justify the $SO_2$ trading program because $SO_2$ emissions have decreased in the three transport region states relying on the alternative program by 33% between 1990–2000. The justification fails because the reductions were made prior to the regional haze rule. The reliance on reductions that predate the regional haze rule violates the requirement of 40 CFR 51.308(e)(2)(iv) that BART alternatives provide emission reductions that are ''surplus'' to those resulting from programs implemented to meet other CAA requirements.

*Response:* We did not focus on the WRAP's discussion of early emission reductions in our proposal. However, we do not understand commenters claim or agree with this comment. The WRAP's statements regarding past air quality improvements are not contrary to the requirement that reductions under a trading program be surplus. Instead, the WRAP was noting that forward-planning sources had already pursued emission reductions that could be partially credited to the design of the 309 SIP. We note that the most recent emission report for the year 2010 shows a 35% reduction in emissions from 2003. Sources that make early reductions prior to the program trigger year may acquire extra allocations should the program be triggered. This is an additional characteristic feature of the backstop trading program that suggests benefits that would be realized even without triggering of the program itself. The surplus emission reduction requirement for the trading program is not an issue, because the existence of surplus reductions is studied against other reductions that are realized ''as of baseline date of the SIP.'' The 1990–2000 period plainly falls earlier than the baseline date of the SIP, so we disagree that the WRAP's discussion of that period was problematic or violates 40 CFR 51.308(e)(2)(iv), regarding surplus reductions.

*Comment:* EPA must correct discrepancies between the data presented in the 309 SIPs.[3] There are discrepancies in what has been presented as the results of WRAP photochemical modeling. The New Mexico regional haze SIP proposal shows, for example, that the 20% worst days at Grand Canyon National Park have visibility impairment of 11.1 deciviews, while the other proposals show 11.3 deciviews. The discrepancy appears to be due to the submittals being based on different modeling scenarios developed by the WRAP. EPA must explain and correct the discrepancies and ''re-notice'' a new proposed rule containing the correct information.

*Response:* We agree that there are discrepancies in the numbers in Table 1 of the notices. The third column of the table below shows the modeling results presented in Table 1 of the Albuquerque, Wyoming and Utah proposals. The modeling results in the New Mexico proposal Table 1 are shown in the fourth column. The discrepancies come from New Mexico using different preliminary reasonable progress cases developed by the WRAP. The Wyoming, Utah and Albuquerque proposed notices incorrectly identify the Preliminary Reasonable Progress (PRP) case as the PRP18b emission inventory instead of correctly identifying the presented data as modeled visibility based on the ''PRP18a'' emission inventory. The PRP18a emission inventory is a predicted 2018 emission inventory with

[3] This particular comment was not submitted in response to the proposal to approve Albuquerque's 309 trading program, the earliest published proposal. It was consistently submitted in the comment periods for the proposals to approve the 309 trading programs for NM, WY and UT, which were later in time.

all known and expected controls as of March 2007. The preliminary reasonable progress case (''PRP18b'') used by New Mexico is the more updated version produced by the WRAP with all known and expected controls as of March 2009. Thus, we are correcting Table 1, column 5 in the Wyoming, Utah and Albuquerque of our proposed notices to include model results from the PRP18b emission inventory, consistent with the New Mexico proposed notice and the fourth column in the table below. We are also correcting the description of the Preliminary Reasonable Progress Case (referred to as the PRP18b emission inventory and modeled projections) to reflect that this emission inventory includes all controls ''on the books'' as of March 2009.

| Class I area | State | 2018 Preliminary reasonable progress PRP18a case (deciview) | 2018 Preliminary reasonable progress PRP18b case (deciview) |
|---|---|---|---|
| Grand Canyon National Park | AZ | 11.3 | 11.1 |
| Mount Baldy Wilderness | AZ | 11.4 | 11.5 |
| Petrified Forest National Park | AZ | 12.9 | 12.8 |
| Sycamore Canyon Wilderness | AZ | 15.1 | 15.0 |
| Black Canyon of the Gunnison National Park Wilderness | CO | 9.9 | 9.8 |
| Flat Tops Wilderness | CO | 9.0 | 9.0 |
| Maroon Bells Wilderness | CO | 9.0 | 9.0 |
| Mesa Verde National Park | CO | 12.6 | 12.5 |
| Weminuche Wilderness | CO | 9.9 | 9.8 |
| West Elk Wilderness | CO | 9.0 | 9.0 |
| San Pedro Parks Wilderness | NM | 9.8 | 9.8 |
| Arches National Park | UT | 10.9 | 10.7 |
| Bryce Canyon National Park | UT | 11.2 | 11.1 |
| Canyonlands National Park | UT | 10.9 | 10.7 |
| Capitol Reef National Park | UT | 10.5 | 10.4 |
| Zion National Park | UT | 13.0 | 12.8 |

We are not re-noticing our proposed rulemaking as the discrepancies do not change our proposed conclusion that the SIP submitted by Utah contains reasonable projections of the visibility improvements expected at the 16 Class I areas at issue. The PRP18a modeling results show projected visibility improvement for the 20 percent worst days from the baseline period to 2018. The PRP18b modeling results show either the same or additional visibility improvement on the 20 percent worst days beyond the PRP18a modeling results. We also note there are two discrepancies in New Mexico's Table 1, column four compared to the other participating States' notices. The 2018 base case visibility projection in the New Mexico proposed notice for Black Canyon of the Gunnison National Park Wilderness and Weminuche Wilderness should be corrected to read 10.1 deciview rather than 10.0. Notwithstanding the discrepancies described above, we believe that Utah's SIP adequately project the improvement in visibility for purposes of Section 309.

*B. Legal Issues*

*Comment:* EPA informally announced in the section 114 request letter that it had already decided, before publishing the partial disapproval, to reject certain parts of the Utah regional haze SIP.[4] EPA also concluded, before publishing the partial disapproval that Utah had improperly failed to submit a five-factor BART analysis for the PacifiCorp units as part of the Utah SIP. PacifiCorp believes that EPA's actions have prejudiced the process for properly considering the issues that EPA raised in the partial disapproval.

*Response:* We disagree with this comment. Contrary to commenter's assertions, EPA's October 20, 2011 letter to PacifiCorp ''noted that the SIP did not contain analyses for the sources determined by the state to be subject-to-BART''. Therefore, the letter did not contain EPA conclusions, we requested the information from PacifiCorp, as explained in the letter relying on our authority under section 114(a) of the CAA to assist in ''the development of, or in reviewing, a regional haze SIP,'' in developing a Federal Implementation Plan (FIP), or ''in carrying out the other responsibilities or actions under the CAA''.

1. EPA Authority

*Comment:* We received comments that courts have consistently held that states are primarily responsible for SIP development and that EPA's role is ministerial. One commenter went on to point out that recently, the Fifth Circuit Court of Appeals described the federal and state roles: ''The [Clean Air] Act assigns responsibility to the EPA for identifying air pollutants and establishing National Ambient Air Quality Standards (NAAQS). 42 U.S.C. 7408–7409. The states, by contrast, bear the primary responsibility for implementing those standards * * *. To implement the NAAQS, the states must adopt and administer State Implementation Plans (SIPs) that meet certain statutory criteria. § 7410. The states have wide discretion in formulating their plans.'' *Luminant Generation Co.* v. *EPA,* 675 F.3d 917, 921 (5th Cir. 2012) (*citations and quotations omitted*); *see also Train* v. *Natural Resources Defense Council,* 421 U.S. 60, 78 (''Congress intended the States to retain [a] significant degree of control over the manner in which they attain and maintain national standards.'')

Commenters asserted that EPA's partial disapproval fails to account for the significant discretion granted to Utah under the CAA. Commenters pointed out that based on the language in the CAA, the RHR, EPA's own guidance, and case law; the states have significant discretion when creating their regional haze SIPs, and EPA failed to properly account for that discretion in analyzing the Utah regional haze SIP.

*Response:* Congress crafted the CAA to provide for states to take the lead in developing implementation plans, but balanced that decision by requiring EPA to review the plans to determine whether a SIP meets the requirements of

[4] See letter dated October 20, 2011 from Stephen Tuber, Assistant Regional Administrator, EPA Region 8, to Cathy Woollums, MidAmerican Energy Holdings Company included in the docket.

the CAA. EPA has the authority to disapprove a SIP if it doesn't meet with minimum requirements. Our action today is consistent with the statute.

Our action does not contradict the Supreme Court's decision in *Train.* States have significant responsibilities in implementation of the CAA and meeting the requirements of the RHR. We recognize that states have the primary responsibility of drafting an implementation plan to address the requirements of the CAA Visibility Program. We also recognize that we have the responsibility of ensuring that the state plans, including RH SIPs, conform to the CAA requirements. We cannot approve a RH SIP that fails to address the BART requirements.

Our action in large part approves the RH SIP submitted by Utah. The disapproval is not intended to encroach on state authority. This action is only intended to ensure that CAA requirements are satisfied using our authority under the CAA.

2. Presumptive Limits

*Comment:* We received numerous comments that EPA's proposed disapproval of Utah's BART determinations and ''EPA's RH FIP'' is improper because the BART units are meeting the presumptive limits in the BART guidelines based on the installation of combustion controls. Commenters went to assert that the BART Guidelines only require the installation of low $NO_X$ burners (LNBs) with overfire air (OFA) and that EPA determined in the guidelines that SCR was generally not cost-effective for BART. One commenter noted that EPA has completely ignored the presumptive BART limits in our proposed action and that this is contrary to the express requirements in both the RHR and the BART Rule. The commenter goes on to say that EPA's attempt to completely ignore the presumptive BART limits makes the presumptive BART limits meaningless and this is contrary to the requirements of the CAA and the clear intent of the BART Rule. Commenters asserted that the BART rule on its face, shows that an alternative analysis is required only when a source cannot meet the presumptive limits, and that while a state may choose to establish a limit that is more stringent than the BART limit, there is nothing in the BART rule that would require a state to do so.

Commenters asserted that EPA adopted the presumptive BART limits to establish the specific control levels required for EGUs. Commenters point out that EPA has not repealed the presumptive limits from the promulgated BART rule, but in this action EPA does not acknowledge the existence of the presumptive limits, as if the presumptive BART limits were no longer a binding regulation. Instead, commenters pointed out that EPA focused on the five-factor analysis and ignores the presumptive limits. Commenters argued that unless and until EPA goes through notice and comment rulemaking to remove the presumptive emissions limits and establish other requirements consistent with the CAA, then EPA must approve a state's BART determination that meets the presumptive regulatory limits.

One commenter went on to say that as the Utah 2008 regional haze SIP explains, ''[t]he technical analysis conducted by EPA to determine presumptive BART limits for $SO_2$ and $NO_X$ is in effect a BART determination analysis for 419 EGUs including Hunter Units 1 and 2 and Huntington Units 1 and 2.'' The commenter asserted that Utah then followed what EPA had done in developing Appendix Y and thus did a five-factor analysis. Because EPA found presumptive BART controls for PacifiCorp's Units to be ''cost effective'' and to provide a ''substantial degree of visibility improvement,'' the commenter stated it is evident that two key elements of the five-factor test are met.

*Response:* We disagree with the commenters. First, for each source subject to BART, the RHR, at 40 CFR 51.308(e)(1)(ii)(A), requires that states identify the level of control representing BART after considering the factors set out in CAA section 169A(g), as follows: ''States must identify the best system of continuous emission control technology for each source subject to BART taking into account the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use at the source, the remaining useful life of the source, and the degree of visibility improvement that may be expected from available control technology.'' 70 FR 39158. In other words, the presumptive BART limits do not obviate the need to identify the best system of continuous emission control technology on a case-by-case basis considering the five factors. A state may not simply ''stop'' its evaluation of potential control levels at a slightly lower limit than the presumptive level of control if more stringent control technologies or limits are technically feasible. We do not read the BART guidelines in appendix Y to contradict the requirement in our regulations to determine ''the degree of reduction achievable through the application of the best system of continuous emission reduction'' ''on a case-by-case basis,'' considering the five factors. 40 CFR 51.301 (definition of Best Available Retrofit Technology); 40 CFR 51.308(e).

Also, our position is supported by the following language in our BART guidelines: ''While these levels may represent current control capabilities, we expect that scrubber technology will continue to improve and control costs continue to decline. You should be sure to consider the level of control that is currently best achievable at the time that you are conducting your BART analysis.'' 70 FR 39171.

While the presumptive limits are meaningful as indicating a level of control that EPA generally considered achievable and cost effective at the time it adopted the BART guidelines in 2005, mere consideration of the presumptive limits does not eliminate the state's obligation to consider each of the five statutory factors in section 169A. As we wrote in our proposal, ''[t]he presumptive limits accordingly are the starting point in a BART determination * * * unless the state determines that the general assumptions underlying EPA's analysis are not applicable in a particular case.'' 77 FR 28841. Nothing in the State's record supports such a conclusion. Finally, our proposed notice did not contain a FIP.

3. Compliance With the Requirements of 40 CFR 51.308

*Comment:* In its proposed partial disapproval, EPA stated that ''neither the State nor PacifiCorp have completed a BART analysis that considers the statutory factors under 40 CFR 51.308(e)(1)(ii)(A),'' and that the requirement to conduct this analysis ''is found in section 51.308(e)(1)(ii)(A) of the RHR,'' However, as set forth below, EPA's reliance upon section 51.308 is misplaced.

EPA's RHR provides two regulatory paths to address regional haze. By meeting the requirements under 40 CFR 51.309, states are making reasonable progress toward the national goal of achieving natural visibility conditions for the 16 Class I areas on the Colorado Plateau. Utah submitted its regional haze SIP under section 51.309. Therefore, the requirements of section 51.308 only apply to the extent required by section 51.309.

Importantly, PM and $NO_X$ emissions and controls under section 51.309 are treated differently than PM and $NO_X$ emissions and controls under section 51.308, primarily because these emissions have a significantly smaller impact on visibility on the Colorado Plateau. WRAP has estimated ''that

stationary source emissions of PM probably cause less than 2 percent of the region's visibility impairment, whereas stationary source $NO_X$ emissions result in nitrates that probably cause about 2 to 5 percent of the impairment on the Colorado Plateau.'' See ''Stationary Source $NO_X$ and PM Emissions in the WRAP Region: An Initial Assessment of Emissions, Controls, and Air Quality Impacts,'' October 1, 2003, at 1_3.13. Several illustrations in the WRAP $NO_X$ report show that nitrate emissions have very little impact on Class I areas in or near Utah and Wyoming. The WRAP report also explains that ''controls on point source emissions of $NO_X$ and PM will have a relatively limited effect on visibility in much of the West, all else being equal.''

Section 51.309 understandably is intended to focus on $SO_2$ due to the greater visibility impact. Indeed, the GCVTC and WRAP focused their efforts primarily on sulfur dioxide emissions because the research indicated this pollutant had the greatest impact on visibility. The partial disapproval acknowledges that Utah has complied with the Section 51.309's $SO_2$ requirements and made great progress towards improving and protecting visibility as a result. For all of these reasons, section 51.309 takes a different approach to PM and $NO_X$ emissions than does section 51.308, placing much less emphasis on the need for significant reductions in PM and $NO_X$ emissions and instead focusing almost all attention and resources in the western U.S. on reducing $SO_2$ emissions.

As a result of the lesser emphasis in section 51.309 on PM and $NO_X$ emissions, section 51.309(d)(4)(vii) states that a regional haze SIP ''must contain any necessary long-term strategies and BART requirements for stationary source PM and $NO_X$ emissions.'' Section 51.308, by contrast, does not contain a similar ''necessary'' threshold for BART. In other words, if a BART requirement is not ''necessary'' for a section 51.309 state, such as Utah, to make ''reasonable progress,'' then it is not required as part of the regional haze SIP. EPA's partial disapproval fails to acknowledge the importance of the ''necessary'' threshold in its own rules, and fails to identify how Utah's BART determinations do not meet this ''necessary'' threshold.

*Response:* We disagree with the comment. As explained in our proposed rulemaking for Section 51.309(d)(4)(viii) we explained that the provision ''is intended to clarify that if EPA determines that the $SO_2$ emission reductions milestones and backstop trading program submitted in the Section 51.309 SIP makes greater reasonable progress than BART for $SO_2$, this will *not* constitute a determination that BART for PM or $NO_X$ is satisfied for any sources which would otherwise be subject to BART for those pollutants'' (emphasis added). 70 FR 44169 (Aug. 1, 2005). EPA does not interpret this statement to mean that there are different BART requirements for Section 308 and 308 RH SIPs. EPA's proposed rulemaking made no finding that BART determinations conducted for a state submitting a RH SIP under Section 51.309 should be conducted any differently than a state submitting a RH FIP under only Section 308. The use of the word ''necessary'' in Section 51.309(d)(4)(viii) was to explain that some states may have BART NOx emission limitations, while others may not. As already explained elsewhere in our proposal on the Utah SIP and our response to other comments, Utah did not conduct a proper evaluation of the five statutory factors, as required by 40 CFR 51.308(e)(1)(ii)(A) and section 169A(g) of the CAA.

EPA also disagrees with commenter's assertion that a BART submission is discretionary. 30 CFR 51.309(d)(4)(viii) is clear in that the implementation plan ''must'' contain BART requirements. The proposed regional haze rulemaking explained that the provision that provides that ''[a]ny such BART provisions may be submitted pursuant to either § 51.308(e)(1) or 51.308(e)(2),'' was included to ''allow States the flexibility to address these BART provisions either on a source-by-source basis under Section 51.308(e)(1), or through an alternative strategy under Section 51.308(e)(2).'' 70 FR 44169 (August 1, 2005).

Moreover, EPA's proposed regional haze rule made clear that ''[i]n limited circumstances, it may be possible for a State to demonstrate that an alternative program which controls only emissions from $SO_2$ could achieve greater visibility improvement than application of source-specific BART controls on emissions of $SO_2$, $NO_X$ and/or PM. We nevertheless believe that such a showing will be quite difficult to make in most geographic areas, given that controls on $SO_2$ emissions alone in most cases will result in increased formation of ammonium nitrate particles.'' 70 FR 44169 (Aug. 1, 2005). Utah's RH SIP does *not* include a demonstration that the backstop $SO_2$ trading program under Section 51.309 achieves greater visibility improvement than application of source-specific PM BART controls. Therefore, Utah's Section 51.309 SIP does not provide the adequate level of visibility improvement to meet the BART requirements.

*Comment:* Utah was not required to comply with subsection 51.308(e)(1)(ii)(A) because it had complied with subsection 51.308(e)(l)(ii)(B). Subsection 51.308(e)(1) provides, ''To address the requirements for BART, the State must submit an implementation plan containing the following plan elements and include documentation for all required analyses.'' One of these elements is a ''determination of BART for each BART-eligible source,'' which may be ''based on an analysis'' of the five-factor test, § 51.308(e)(1)(ii)(A), or, in the case of ''fossil-fuel fired power plants having a total generating capacity greater than 750 megawatts,'' ''must be made pursuant to the guidelines in appendix Y of this part,'' § 51.308(e)(l)(ii)(B). Because Utah's regional haze SIP properly relied on Appendix Y, and thus satisfied subsection (B), it was incorrect for EPA to reject Utah's analysis as not complying with subsection (A).

*Response:* We disagree with this comment. The State must comply at all times with the requirements of 40 CFR 51.308(e)(1)(ii)(A). In addition, the State must comply with the requirements of 40 CFR 51.308(e)(1)(ii)(B) for sources that are greater than 750 MW. As we have stated in our proposed notice and elsewhere in our response to comments, the State did not perform an analysis pursuant to the five factors required by the RHR and BART Guidelines, thus the State's SIP does not meet the requirements of 40 CFR 51.308(e)(1)(ii)(A) or 40 CFR 51.308(e)(1)(ii)(B).

4. Utah's Permitting Process

*Comment:* EPA is overlooking how Utah's permitting program supports the decisions it made in Utah's regional haze SIP. In this instance, EPA's comment disregards the review that Utah completed through its new source review (NSR) program. That review established the emission limits and monitoring, recordkeeping, and reporting (MRR) requirements for $NO_X$ and PM.

The notice of intent (NOI) for the pollution control project at Huntington Unit 2 was submitted in October 2004 and the approval order (AO) was issued in 2005. Because all four BART eligible units are essentially identical,[5] this AO established the requirements that were used for all four units. The NOI for the pollution control projects at Hunter

[5] The four units are PacifiCorp Hunter Units 1 and 2 and Huntington Units 1 and 2.

Units 1 and 2 was submitted in June 2006 and the AO was issued in April, 2008. The NOI for the pollution control project at Huntington Unit 1 was submitted in April 2008 and the AO issued in August 2009.

When BART was evaluated for $NO_X$ in the 2008 SIP, Utah relied on the technical review that had been completed through the NSR program to justify the emission limits and MRR requirements in the AO. These limits were then evaluated to determine whether the existing controls satisfied the requirement for BART. Utah, in its regional haze SIP, determined that the existing controls met the BART requirement, and therefore no additional controls were required. It is a complete misrepresentation of the extensive process Utah undertook to say that the State determined the BART limit without any analysis.

*Response:* We disagree with this comment. While Utah may have considered BART controls through its NSR permitting program, as we have pointed out in our proposed notice and in our responses above, the State did not perform the required five-factor BART analysis pursuant to 40 CFR 51.308(e)(1).

5. Enforceability of BART Emission Limits

*Comment:* The applicable requirements in the AOs for the Hunter and Huntington plants have been incorporated into the operating permits for these plants under authority of R307–415. The operating permit program was designed to ensure that applicable requirements are clear and are enforceable. A source that violates one or more enforceable permit conditions is subject to an enforcement action including, but not limited to, penalties and corrective action. Enforcement actions may be initiated by the local permitting authority, EPA or, in many cases, through citizen suits.

Utah's operating permit rule requires detailed monitoring, reporting, and recordkeeping (MRR) (see R307–415–6a(3)) to ensure that all emission limits are practically enforceable. If MRR provisions are changed in the AO, the operating permit rules provide a backstop to ensure that appropriate MRR occurs for each emission limit. R307–415–8, *Permit Review by EPA and Affected States,* describes the process by which EPA may veto the operating permit: ''If EPA objects to the issuance of a permit in writing within 45 days of receipt of the proposed permit and all necessary supporting information, then the Executive Secretary shall not issue the permit. If the Executive Secretary fails, within 90 days after the date of an objection by EPA, to revise and submit a proposed permit in response to the objection, EPA may issue or deny the permit in accordance with the requirements of the Federal program promulgated under Title V of the Act. R307–415–8(3).''

In disapproving Utah's regional haze SIP because ''EPA does not consider operating permit conditions adequate to meet the MRR and enforceability requirement'', EPA is thwarting the purpose of the Title V program, as enacted under the 1990 Amendments to the CAA. Taking EPA's position would require a SIP revision when an individual source desires to make a change to its AO and Title V permit. The drafters of the 1990 Amendments thought otherwise: ''The concept behind this new [Title V] permit program is to minimize, if not eliminate, the degree to which decisions relating to individual major sources require SIP actions. Individual source issues should be resolved in the permit process, consistent with the SIP. EPA must avoid duplication between the SIP and permit processes.'' Utah's rule is consistent with the purpose of Title V as enacted in the 1990 Amendments to the CAA and with Part 70 rules adopted there under. Moreover, if there are inadequate monitoring requirements in a source's Title V permit, the State, consistent with 40 CFR 70.6(c)(1), may supplement those requirements to rectify the inadequacy. *Sierra Club* v. *EPA,* 536 F.3d 675, 680 (D.C. Cir. 2008).

EPA is attempting to do through its partial disapproval of Utah's SIP what the D.C. Court of Appeals struck down in *Sierra Club.* After reversing course numerous times, in 2006 EPA adopted Part 70 rules prohibiting state and local authorities from supplementing inadequate monitoring requirements; instead EPA proposed to remedy such inadequacies by undertaking a ''programmatic'' strategy. See 71 FR 75422 (Dec. 15, 2006). At the same time as EPA announced its prohibition, it failed to correct monitoring deficiencies in Title V permits through a programmatic fix, which resulted in thousands of Title V permits containing inadequate monitoring requirements. In *Sierra Club,* the Court held ''if Congress meant that potentially thousands of permits could be issued without adequate monitoring requirements then it would not have said 'each permit shall set forth monitoring requirements to assure compliance with the permit terms and conditions.'' *Sierra Club,* 535 F.3d at 678 (citing 42 U.S.C. 7661c(c). The Court concluded that permitting authorities may supplement inadequate monitoring requirements. *Id.*

EPA has ample means of federally enforcing whether the four EGUs in Utah either now or in the future abide by adequate MMR requirements through EPA's Title V authority and through Utah's other air permitting program. EPA should not resort to imposing draconian requirements on the State's SIP program and making the State's permit program practically unworkable by insisting that MRR requirements be contained in the regional haze SIP.

*Response:* EPA disagrees with this comment. EPA's approach in this action is entirely consistent with section 169A(b)(2) which, as we wrote when we promulgated the BART Guidelines, ''provides that *EPA must require SIPs to contain emission limits,* schedules of compliance, and other measures as may be necessary to make reasonable progress towards meeting the goal'' (emphasis added). 70 FR 39120 (July 6, 2005). The regulations require that the states ''must submit an implementation plan containing emission limitations representing BART.'' 40 CFR 51.308(e). The Guidelines require that states ''must establish an enforceable emission limit for each subject emission unit at the source and for each pollutant subject to review that is emitted from the source.'' 70 FR 39172 (July 6, 2005). CAA section 110(a)(2) also requires that SIPs shall ''include enforceable emission limitations.''

Furthermore, Appendix V to 40 CFR part 51 sets forth the minimum criteria for determining whether a state implementation plan submitted for consideration by EPA is an official submission for purposes of review. The Appendix V criteria include ''[e]vidence that the plan contains emission limitations, work practice standards and recordkeeping/reporting requirements, where necessary, to ensure emission levels'' and ''[c]ompliance/enforcement strategies, including how compliance will be determined in practice''. Appendix V, Sections 2.2(g) and (h). Therefore, EPA disagrees that the use of title V permits to implement the MRR necessary to ensure compliance with BART emission limitations is adequate under the Clean Air Act.

While the commenter suggests the title V permit program replaces SIP requirements, this simply is not the case. In fact, the Congressional Report cited by the commenter is clear that while the title V permit program provides for ''harmonization'' of the Clean Air Act requirements, ''title V does not change, and gives EPA no authority to modify, the substantive provisions of these other titles.''

CONFERENCE REPORT ON—CLEAN AIR ACT AMENDMENTS, 136 Cong. Rec. E3673–01, 1990 WL 206959.

Finally, the *Sierra Club* case cited by the commenter in support of its contentions did not involve challenges to SIP monitoring requirements and therefore is not applicable here. The commenter's claim that title V permits are adequate to meet SIP and regional haze statutory and regulatory requirements is unfounded and not supported by the case law cited or the CAA.

*Comment:* Utah's SIP and the permits that are issued under that plan are enforceable under state law and become federally enforceable when EPA approves the plan and incorporates it into 40 CFR part 52, Subpart TT.

In addition to a federally enforceable SIP, AOs issued by the State are also federally enforceable. AOs become federally enforceable through R307–401 *Permits: New and Modified Sources,* and R307–405 *Permits: Major Sources in Attainment or Unclassified Areas (PSD),* when those rules are approved by EPA as part of Utah's SIP and codified in 40 CFR 52.2320 and 40 CFR 52.2346. Region 8's Web site recognizes the role that state permits play in the SIP process: ''SIPs contain state air regulations that, for example, allow states to permit the construction and operation of stationary sources, establish specific requirements for categories of stationary sources, and identify open burning requirements.''

AOs issued by the State under authority of R307–401 and R307–405 to the Hunter and Huntington plants, including provisions to make the pollution control projects enforceable, contain enforceable emission limits for $NO_X$ and PM, as well as MRR requirements to ensure that the emission limits are continuously met. EPA has discretion to federally enforce the provisions of these AOs under authority of the federally approved Utah SIP. There is no doubt that such AOs are federally enforceable, as evidenced by lawsuits brought previously by EPA against other sources in Utah.

Commenters also explain that Utah's NSR program for major and minor sources is part of the federally approved SIP. If PacifiCorp seeks to relax or modify the emission limitations in the AOs for the Hunter or Huntington plants at some point in the future, the company would be required to obtain a new AO and apply BACT under either Utah's major source (R307–405) or minor source (R307–401) rules. A modification may potentially trigger other requirements. As has been evident throughout the federal CAA programs that EPA has delegated to Utah, there are substantial federally enforceable requirements in the broad air program in Utah to ensure that the emission reductions achieved through the pollution control projects are maintained (through state or federal enforcement if necessary) into the future. If the emission limits in the AO were revised in the future, EPA has the opportunity to review the changes and provide comments through the NSR process. EPA could then veto the operating permit in the unlikely circumstance that the emission limits for $NO_X$ or PM became less stringent.

Commenters also suggest that EPA has proposed to disapprove the BART determination for $NO_X$ and PM in part because EPA believes that the emission limits and MRR requirements in the AOs and operating permits are not federally enforceable enough. It is not clear what additional enforcement action EPA would take due to a violation of a SIP condition versus a violation of a permit condition.

*Response:* We disagree. See our response above. EPA does not have the option of approving a RH SIP where BART emission limits are implemented only through construction or operating permits.

*Comment:* We received a comment that the BART emission limits must be included in the Utah SIP and be fully enforceable and that the commenter supported EPA's disapproval of the Utah regional haze SIP because it ''does not contain provisions necessary to make BART limits practically enforceable as required by section 110(a)(2) of the CAA and Appendix V to part 51.'' The commenter went on to say that the BART emission limits must be permanent, unalterable, and federally enforceable by both EPA and citizens.

*Response:* As our proposed notice and responses above indicate, we agree with the commenter on the need for the BART emission limits to be included in the SIP along with appropriate MRR requirements. Although we are not approving any BART determinations in this action, when Utah submits revised BART determinations, the State must include provisions in the SIP to make the emission limits federally enforceable.

*C. Applicability of the BART Guidelines*

*Comment:* We received comments that EPA made a mistake when it said in its proposal that because the PacifiCorp units have a 430 MW generating capacity, the State is not required to follow the BART Guidelines in making BART determinations for the units. Commenters went on to say that applicability of the BART guidelines is determined by the total generating capacity of the fossil fuel fired electric generating plant, not the size of the individual units. Commenters went on to say that the total generating capacity of the two units subject to BART at each facility is 960 MW, and as such, the total generating capacity of the Hunter and Huntington power plants both exceed the 750 MW trigger for applicability of the BART guidelines.

*Response:* We agree with this comment. EPA erred by stating that the State is not required to follow the BART Guidelines in making BART determinations for these units. Because of the generating capacity for the EGUs is above 750 MW, the State must follow the BART Guidelines when making its BART determinations. 70 FR 39158 (July 6, 2005).

*D. PM BART*

*Comment:* We received numerous comments that Utah relied on the BART regulations when making its PM BART determinations for these Units. Commenters pointed out that EPA acknowledges in the proposed rule, ''[t]here are no presumptive limits established for PM.'' With there being no presumptive limit for PM, commenters state that Utah undertook its own analysis and reasonably determined that the PM limit for the Hunter and Huntington Units is the current operating permit level of 0.015.[6]

Commenters asserted that because Utah determined that PM BART for the Hunter and Huntington units is the installation and operation of fabric filter baghouses, which is the most stringent PM control technology for EGUs, the State did not have to complete a comprehensive five-factor analysis.

One commenter asserted that EPA's position is in derogation of Executive Order 13563. In January 2011, President Obama signed Executive Order 13563—Improving Regulation and Regulatory Review. The commenter went on to say that the President described the goals of this order in an op-ed article published in the Wall Street Journal: ''This order requires that federal agencies ensure that regulations protect our safety, health and environment while promoting economic growth * * *. Where necessary, we won't shy away from addressing obvious gaps: new safety rules for infant formula; procedures to stop preventable infections in hospitals; efforts to target

[6] In comments from the State, the State recognized that the emission rates listed in the SIP for PM for all four BART units of 0.05 lb/MMBtu were incorrect. The correct limits are 0.015 lb/MMBtu (30-day rolling average).

chronic violators of workplace safety laws. But we are also making it our mission to root out regulations that conflict, that are not worth the cost, or that are just plain dumb * * *. We're also getting rid of absurd and unnecessary paperwork requirements that waste time and money. We're looking at the system as a whole to make sure we avoid excessive, inconsistent and redundant regulation.'' The commenter concluded that EPA should recognize that any further analysis of PM is ''absurd and unnecessary paperwork'' that is irrational, as well as a waste of time and money.

*Response:* The BART Guidelines state ''[i]f you find that a BART source has controls already in place which are the most stringent controls available (note that this means that all possible improvements to any control devices have been made), then it is not necessary to comprehensively complete each following step of the BART analysis in this section. As long as these most stringent controls available are made federally enforceable for the purpose of implementing BART for that source, you may skip the remaining analyses in this section, including the visibility analysis in step 5. Likewise, if a source commits to a BART determination that consists of the most stringent controls available, then there is no need to complete the remaining analyses in this section.'' 70 FR 39165 (July 6, 2005). While we agree that baghouses may well be the most stringent control equipment for controlling PM emissions, the State has not provided a demonstration that the BART PM emission limits at the Utah BART sources represent the most stringent controls. Thus, it may be possible for the State to provide an abbreviated BART determination for PM if it can demonstrate that the emission limits represent the most stringent level of control.

*E. General Comments on BART*

*Comment:* EPA is aware that the State of Utah, in cooperation with PacifiCorp, currently is conducting another five-factor BART analysis for the Units identified in EPA's section 114 request dated October 20, 2011 (see footnote 4). Until that BART analysis is completed and the results are incorporated into the Utah regional haze SIP, there is no reason for EPA to continue processing the partial disapproval. Therefore, EPA should ''withdraw its FIP''.

In that way, EPA can focus its resources on the upcoming Utah regional haze SIP version that Utah has committed will contain the BART analysis information EPA has requested be included. Until then, continuing the administrative review process for the partial disapproval is a waste of taxpayer funds and other resources.

*Response:* We disagree with this comment. We are under a consent decree with Wild Earth Guardians to take final action on the Utah regional haze SIP by October 31, 2012. Under the consent decree, we must either approve or disapprove all the State's regional haze SIP. The consent decree does not allow us to delay action in determining whether the SIP meets the requirements of the RHR. Furthermore, we had a statutory obligation to act on SIPs within 12 months after they have been determined to be or deemed complete, and that date has passed. Moreover, Utah will not be submitting the additional information referenced above until after October 31, 2012, thus EPA is forced to take action on the SIP in its entirety. Finally, contrary to commenter's assertion, our proposed notice did not contain a FIP.

*F. Reasonable Progress*

*Comment:* We received comments that the Utah SIP fails to comply with 40 CFR 51.309(g) or 40 CFR 51.308(d)(1)–(4), which require that SIPs address impacts to Class I areas not located on the Colorado plateau. Commenters went on to point out that sources in Utah have been shown to impact Class I areas outside of the Colorado Plateau.

Commenters pointed out that under both 40 CFR 51.309(g) and 40 CFR 51.308(d)(1)–(4), a long-term strategy must include such emission limits, schedules of compliance and other measures as may be necessary to achieve reasonable progress goals, and that for Class I areas outside a state's borders, the State has an obligation to adopt controls necessary to ensure it achieves its share of the pollution reductions that are required to meet the reasonable progress goals set for the subject Class I area. Since the requirements of 40 CFR 51.308(d)(1)–(4) apply to Utah, commenters assert that EPA must require Utah to develop a long-term strategy under 40 CFR 51.308(d)(3).

*Response:* We do not agree with this comment. States adopting the requirements of 40 CFR 51.309 are deemed to have met the requirements for reasonable progress for the Class I areas on the Colorado Plateau. 40 CFR 51.309(a). For such states, the requirements of 40 CFR 51.308(d)(1) and (d)(2) only apply to Class I areas within their state not on the Colorado Plateau. See 40 CFR 51.309(g)(2); 40 CFR 51.308(d)(1), (2). All of the Class I areas in Utah are on the Colorado Plateau. Therefore, the State met all reasonable progress requirements for the Class I areas in Utah.

With regard to Class I areas in other states, the State must satisfy the requirements of 40 CFR 51.308(d)(3). See 40 CFR 51.309(g)(2). In particular, 40 CFR 51.308(d)(3)(ii) requires that if emissions from Utah sources cause or contribute to impairment in another state's Class I area, Utah must demonstrate that it has included in its regional haze SIP all measures necessary to obtain its share of the emission reductions needed to meet the progress goal for that Class I area. Section 51.308(d)(3)(ii) also requires that, since Utah participated in a regional planning process, it must ensure it has included all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process. As we state in the RHR, Utah's commitments to participate in WRAP bind it to secure emission reductions agreed to as a result of that process.

Under 40 CFR 51.308(d)(3)(iii), a state must document the technical basis on which the state is relying to determine its apportionment of emission reduction obligations necessary to achieve reasonable progress in each mandatory Class I area the state affects. States may rely on technical analyses developed by regional planning organizations and approved by all state participants. Utah analyzed the WRAP modeling and inventories and determined that emissions from the State do not significantly impact or will not significantly impact other states' Class I areas. The State's analysis is summarized below and included in Section XX.K of the SIP. Inventories developed by the WRAP show a significant decrease in stationary source $NO_X$ and $SO_2$ emissions. The urban area in northern Utah that may impact Class I areas in Idaho, Nevada and Wyoming will have a significant reduction in $NO_X$ emissions from mobile sources as described in Section XX.F of the State's SIP. The State SIP shows that the contribution to nitrate on the 20% worst days from sources in Utah decreases substantially between 2002–2018 at Craters of the Moon in Idaho, Bridger and Fitzpatrick Wilderness Areas in Wyoming, and Jarbidge Wilderness Area in Nevada. The contribution to sulfates is not significant at any of the sites.

As described in Section XX.D.6 of the State's SIP plan, two BART-eligible plants in central Utah are projected to decrease $SO_2$ emissions by 13,200 tons and $NO_X$ emissions by 6,200 tons between 2002 and 2018. The State also

shows that in general the impact from sources in Utah is not significant at La Garita Wilderness Area and Great Sand Dunes National Monument in Colorado, Bandelier National Monument in New Mexico and Mazatal and Pine Mountain Wilderness Areas in Arizona.

Utah accepted and incorporated the WRAP-developed visibility modeling into its regional haze SIP, and the State's regional haze SIP includes the controls assumed in the modeling. Utah satisfied the RHR's requirements and included controls in the SIP sufficient to address the relevant requirements of the RHR related to impacts on Class I areas in other states.

*Comment:* We received a comment that Utah still must comply with reasonable progress requirements to address visibility impairment attributable to Utah sources of $NO_X$ and PM with respect to all affected Class I areas including the 16 Class I areas within the Colorado Plateau, and that Utah first must establish reasonable progress goals for all Utah Class I areas.

*Response:* We do not agree with this comment. Pursuant to 40 CFR 51.309(a), if a state adopts the requirements under 40 CFR 51.309 it will be deemed to comply with the requirements for reasonable progress with respect to the Colorado Plateau Class I areas through 2018. As stated above, all of the Class I areas in Utah are on the Colorado Plateau, so Utah does not have to separately establish reasonable progress goals for them. As explained above, Utah has also met the requirements for Class I areas outside the state.

*Comment:* We received a comment from the NPS that, under 40 CFR 51.309(g), Utah should have developed a long-term strategy that evaluated $NO_X$, PM, and $SO_2$ controls on large non-BART stationary sources of emissions such as PacifiCorp Hunter Unit 3 to meet reasonable progress requirements with respect to non-Colorado Plateau Class I areas. In particular, the NPS cited our notice proposing action on the Utah regional haze SIP. The NPS also referenced modeling results to argue that $NO_X$ emissions from certain non-BART stationary sources cause or contribute to visibility impairment at both Capitol Reef NP and at certain Class I areas outside Utah and off the Colorado Plateau. The NPS states that emission controls should be considered for these sources in order to meet reasonable progress requirements.

*Response:* We do not agree with these comments. As explained above, with respect to in-state Class I areas, our approval of the Utah SIP deems it as meeting reasonable progress requirements for the in-state Class I areas, as they are all on the Colorado Plateau. With respect to non-Colorado Plateau Class I areas, in this case 40 CFR 51.309(g) does not impose any separate obligations on Utah to analyze or impose emissions controls on non-BART sources to demonstrate reasonable progress at such areas. Instead, at most, Utah must show that it has included all measures needed to achieve its apportionment of emission reduction obligations agreed upon through the WRAP process. See 40 CFR 51.308(d)(3)(ii). As discussed above, Utah has met that requirement, and the commenter has not provided any information to the contrary.

*G. Clean Air Corridors (CACs)*

*Comment:* Approximately 75% of Utah is located in a CAC. Utah has a legal duty to protect that CAC from new sources of air pollution both inside and outside of CACs. Specifically, Utah must identify significant emissions growth that ''could begin'' to impair visibility within any CAC and include ''an analysis of the effects of increased emissions, including provisions for the identification of the need for additional emission reductions measures, and implementation of the additional measures where necessary.''

Utah's regional haze SIP fails to identify several new and proposed significant air pollution sources that ''could begin'' to adversely impact visibility in the Utah CAC and nearby Class I areas. For example, the Alton coal mine in southern Utah is located within the CAC and may adversely impact visibility in the corridor and in nearby Class I areas, such as Zion National Park. The Alton coal mine will emit visibility-impairing emissions, including $SO_2$, $NO_X$ and PM. In addition, the Viresco coal gasification facility has been proposed for the City of Kanab. The Viresco coal gasification plant will burn coal from the Alton coal mine. Kanab is very close to Zion National Park and is also located inside Utah's CAC. A local citizen organization has requested that the State require an approval order regulating emissions from the Viresco coal plant. To date, the State has refused to regulate the Viresco coal gasification plant and failed to impose any air pollution limitations or controls on the plant. The EPA should require Utah to regulate the Viresco coal plant to limit emissions from the plant in order to protect CACs in Utah, as well as Class I areas.

Finally, the Deseret Power Electric Cooperative has proposed to add an additional coal-fired electric generating unit to the Bonanza plant in northeast Utah. This plant would be located outside of Utah's CAC, but has the potential to adversely impact visibility in the corridor and in neighboring Class I areas.

EPA may not approve the Utah regional haze SIP until the State identifies all potential sources of pollution; assesses the impact of these sources on visibility in CACs; and imposes air pollution control equipment and emission limitations on such sources consistent with 40 CFR 51.309(d)(3)(iii)–(iv).

*Response:* We disagree with this comment. Utah relied on the *WRAP's Policy on Clean Air Corridors* to determine if emissions within or outside of the CAC that could impair visibility within the CAC. The report concluded: ''[p]]ursuant to 40 CFR 51.309(d)(3)(ii), the WRAP has examined patterns of growth in the corridor and finds that they are not causing significant emission increases that could have or are having visibility impacts at one or more of the 16 Class I areas. Nor, at this time, are such emission increases expected during the first planning period (2003–2018). Analyses performed by the Grand Canyon Visibility Transport Commission found that an increase of 25% in weighted emissions would result in a 0.7 dv reduction in visibility, whereas the weighted emission increase expected by 2018 is only 4%. Pursuant to 40 CFR 51.309(d)(3)(iii), the WRAP has examined emissions growth in areas outside the corridor and finds that significant emissions growth is not occurring that could begin or is beginning to impair the quality of the air in the corridor and thereby lead to visibility degradation for the least impaired days in one or more of the 16 Class I areas.''

In addition, Utah is using a comprehensive emissions tracking system established by WRAP to track emissions within portions of Oregon, Idaho, Nevada and Utah that have been identified as part of the CAC. The emission tracking system ensures that visibility does not degrade on the least-impaired days in any of the 16 Class I areas of the Colorado Plateau. If the emissions tracking system identifies emissions in or outside of the CAC that are causing visibility impairment, the State will be required to address these emissions in accordance with 40 CFR 51.309(d)(3) in the periodic plan revisions that the State is required to submit in 2013 and 2018. Therefore, should any of the project emissions highlighted in the comment degrade visibility on the least-impaired days in any of the 16 Class I areas, the State will be required to address those impacts.

*H. General SIP Comments*

*Comment:* Utah's technical arguments supporting a weak regional haze program should be rejected. The State has prepared a Powerpoint presentation arguing that its weak and illegal regional haze program should be approved by EPA. In support of Utah's weak BART determinations the State argues: 1) that $NO_X$ reductions are not creating expected visibility improvements; and, 2) that wintertime visibility problems should be ignored due to lower tourist visits in Utah's national parks.

*Response:* We note the commenter's concerns regarding consideration of these two factors. These two factors are outside the scope of the RH regulation and were not considered by EPA in its proposed partial approval and partial disapproval of the State's BART determinations. As discussed in detail elsewhere in this action, EPA finds that the State's trading program meets the regulatory requirements.

*Comment:* The State supports EPA's proposed approval of the projected visibility improvement in Part K of the Utah SIP. 77 FR 28833–34. As EPA has noted, the modeling results show projected visibility improvement for the best 20% days and no degradation for the 20% best days at the 16 Class I areas on the Colorado Plateau. In fact, the projected improvement is greater than described in EPA's proposed approval. The visibility results in Table 24 of Utah's SIP were adopted in 2008 based on the PRP18a modeling that was the most current modeling available at the time, not PRP18b as described in EPA's proposal. Table 1 shows the additional improvement shown by the WRAP's PRP18b modeling.

*Response:* We recognize the commenter's support of our proposed approval of the projected visibility improvement.

*Comment:* The GCVTC evaluated haze at Class I Areas on the Colorado Plateau, and determined that stationary source reductions should be focused on sulfur dioxide because this is the pollutant that has the most significant impact on haze. Utah's BART determination was developed within the context of the overall SIP and reflected this focus on $SO_2$. The sulfate impact is much more significant than the nitrate impact, especially on the middle and best 20% days. Fire (organic carbon) is the second most significant component on the worst days). In addition, sulfate is a problem year round, while the nitrate impact is most significant during the winter months when visitation is low at Utah's national parks. PacifiCorp has already made significant reductions in $NO_X$ at the Hunter and Huntington plants. The nitrate component of haze in Class I areas on the Colorado Plateau does not justify going beyond the presumptive BART level for $NO_X$ established in EPA's BART rule.

*Response:* We do not agree with this comment. States are required to meet the requirements of 40 CFR 51.308(e)(1) and do a BART determination on a source-by-source basis in accordance with the BART Guidelines for EGUs over 750 MW. A regional scale modeling exercise does not obviate the requirement that the state perform such an analysis and that ''States must identify the best system of continuous emission control technology for each source subject to BART * * *'' 70 FR 39158.

*Comment:* We received 1,873 comments from members of National Parks and Conservation Association generally supportive of our disapproval and encouraging strict controls on the BART units. We also received comments from the general public and medical community generally in support of our action.

*Response:* We note the commenters' support of our proposed action.

*I. Additional Comments Pertaining to BART*

We are not responding to the following comments on BART that pertain to cost effectiveness, control effectiveness, visibility improvement, and other factors. We are not responding because we are disapproving the State's BART determinations and will consider such comments when we take proposed action on BART determinations for the four Utah subject to BART EGUs. The following is a summary of the comments:

(1) Numerous retrofit technologies are available for the control of $NO_X$ from Hunter and Huntington Units 1 and 2. The suite of available retrofit control technologies for $NO_X$ control from coal boilers similar to these units is well known, and includes: selective catalytic reduction (SCR), LNBs, and separated overfire air (SOFA).

(2) SCR is technically feasible for all the units.

(3) SCR is a highly effective control technology that can achieve 90% reductions or higher and meet limits of 0.05 lbs/MMBtu or lower.

(4) The costs of SCR along with upgraded LNBs and SOFA at Hunter Units 1 and 2 and Huntington Units 1 and 2 are reasonable. The commenter estimated that costs for LNBs with SOFA and SCR at a $NO_X$ rate of 0.05 lb/MMBtu range from $1,700–$2,000/ton in 2010 dollars.

(5) The commenter went on to describe the methodology that they used to come to their cost effectiveness conclusions: ''[t]oo [sic] summarize, we calculated cost effectiveness of $NO_X$ controls at Hunter Units 1 and 2 and Huntington Units 1 and 2 as follows. Based on the Sargent & Lundy SCR IPM Cost Module modified to be consistent with the Control Cost Manual methodology and to be more realistic of the costs for these units, as discussed above, we estimated the capital and O&M costs of SCR at Hunter Units 1 and 2 and Huntington Units 1 and 2. Costs were estimated in 2010 dollars. We estimated the capital and O&M costs of new LNBs and SOFA based on the cost estimates for the same controls provided by PacifiCorp to Wyoming DEQ for the similar but somewhat larger Jim Bridger Unit 1. We converted those costs to 2010 dollars so that these $NO_X$ controls could be readily compared to the SCR controls and so we could evaluate the cost effectiveness of the combination of LNBs/SOFA plus SCR at the Hunter and Huntington BART units. Annualized capital costs were based on the real cost of capital to PacifiCorp and a 20-year life of the pollution controls. Cost effectiveness was based on the total annual costs (annualized capital + annual O&M) divided by the tons per year $NO_X$ emissions reductions expected from the average baseline emissions over 2002–2004. The assumed controlled $NO_X$ emission rates were 0.26 lb/MMBtu for LNBs/SOFA and 0.05 lb/MMBtu for LNBs/SOFA plus SCR.''

(6) A proper $NO_X$ BART determination for Hunter Units 1 and 2 and Huntington Units 1 and 2 must be based on a baseline period from the 2001 to 2004 timeframe. This timeframe also reflects emissions prior to any $NO_X$ upgrades that have already been completed at the Hunter and Huntington units.

(7) According to the Utah regional haze plan, PacifiCorp has received permits to install new LNBs and two elevations of SOFA. Because these upgrades were intended to meet presumed regional haze requirements, these upgrades should be considered in a $NO_X$ BART analysis as part of the suite of controls to meet $NO_X$ BART requirements.

(8) The energy and non-air quality environmental impacts of SCR are standard, limited, and can be mitigated. In addition to monetary costs, SCR typically has several associated impacts that may be noted in a BART analysis, including increased auxiliary power requirements, waste associated with catalyst replacement and disposal,

ammonia slip, and the partial conversion of $SO_2$ to sulfuric acid. The scope of these collateral impacts is nowhere near the scale that would outweigh the benefits provided by SCR. Thus, there are no energy or non-air quality environmental impacts that would preclude the application of SCR at these units.

(9) The visibility benefit of applying SCR and LNB/SOFA will likely be significant. A complete BART analysis also evaluates the projected visibility benefits associated with the implementation of the discussed controls. Utah did not provide any modeling analyses in the Utah regional haze plan that evaluated $NO_X$ BART options. Utah did include data on the results of the modeling to determine which units were subject to BART in its regional haze plan, and the results show that each unit has significant impacts in all of the Class I areas located within 300 km of each unit, including Capitol Reef, Canyonlands, Bryce Canyon, Zion, Grand Canyon, and Black Canyon of the Gunnison National Parks as well as Mesa Verde National Monument.

However, the subject-to BART modeling results provided in the Utah regional haze plan very likely understate the true baseline case visibility impacts of these units because the $SO_2$ emission rates modeled are much lower than the maximum 24-hour pound per hour $SO_2$ emission rates based on actual emissions data submitted by PacifiCorp to EPA's Clean Air Markets Database.

(10) Lower PM limits are achievable and appropriate. EPA must revise PM emission limits for Hunter Units 1 and 2 and Huntington Units 1 and 2 to reflect PM emission rates achievable with BART. We note that Utah's proposed PM BART limits are unclear. Utah's SIP submittal to EPA described (presumably filterable) PM limits of 0.05 lbs/MMBtu, which is echoed by EPA in its proposal. However, the underlying administrative orders appear to require this limit only until the LNBs, baghouse, and wet FGD are installed, at which point it drops to a limit of 0.015 lbs/MMBtu. Further, EPA's proposal states that this is a rolling 30-day limit, where the administrative orders specify stack testing once per year. At a minimum, EPA must establish PM BART limits that reflect the most stringent level of control that the existing and proposed baghouses are capable of, and must account for the different types of particulate matter that are emitted.

Consideration should be given to the following permit limits, which demonstrate achievable limits at or below 0.015 lbs/MMBtu. Three prevention of significant deterioration (PSD) permits have been issued with total $PM_{10}$ limits of 0.010 lb/MMBtu based on installation of a fabric filter baghouse, including for Plant Washington, Longleaf, and Desert Rock. A PSD permit issued to the Intermountain Power Services Corporation sets BACT emissions limits of 0.013 lb/MMBtu for filterable PM and 0.012 lb/MMBtu for filterable $PM_{10}$. Similarly, a permit issued for the Comanche Generating Station Unit 3 in Colorado included BACT limits of 0.013 lb/MMBtu for filterable PM and 0.012 lb/MMBtu for filterable $PM_{10}$.

There is no reason that the Utah units could not achieve PM emission rates comparable to a new unit with a properly designed and operated baghouse. Other states have made low PM BART determinations as well. For example, U.S. EPA Region 9 adopted BART filterable particulate limits for the Four Corners power plant, Navajo Nation at Units 1–3 of 0.012 lb/MMBtu for each unit and at Units 4 and 5, 0.015 lb/MMBtu. South Dakota adopted and EPA approved as BART for the Big Stone power plant a PM limit of 0.012 lb/MMBtu, applicable at all times including startup, shutdown, and malfunction.

Further, at the baghouses that are already installed, the limits should also be informed by the existing emissions, as determined by appropriate stack testing or CEMS. According to the available permits, this testing should already be completed and available for at least two units.

For any unit that has not yet installed a baghouse, an important option to consider in BART particulate matter analyses is the selection of filtration media. The filtration media determines the control efficiency of a baghouse for very small particles, which makes the largest contribution visibility. As both $PM_{10}$ and $PM_{2.5}$ are regulated as BART pollutants, it is important to select a filtration media that optimizes the removal of these two fractions. There is a wide range of media that can be used, most of which are much more efficient for larger particles than smaller particles.

Finally, at all units, methods to remove the condensable particulate matter, a major contributor to $PM_{2.5}$ and visibility impairment, should be considered. The primary condensable particulate matter removal devices are $SO_2$ scrubbers and wet electrostatic precipitators (WESPs). These have an achievable level of 99.99% PM control. A WESP could be installed either as a conversion of the outlet field of the existing electrostatic precipitator as a separate housing downstream of the primary electrostatic precipitator, or integrated into the scrubber, if one is present. The WESP would enhance the removal of both filterable $PM_{2.5}$ and condensables.

(11) EPA must evaluate BART for all PM. BART requires the evaluation of control technology for filterable $PM_{10}$ and $PM_{2.5}$ as well as condensable particulate matter. Because these sources are subject to BART for particulate matter, BART limits for both $PM_{10}$ and $PM_{2.5}$, including condensables, should be developed.

## V. 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).

### *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).

### *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 final 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 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. This final rule will not impose any requirements on small entities because small entities are not subject to the requirements of this rule. We continue to be interested in the potential impacts of the final 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 one 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 final 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 one year. In addition, this final 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 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 obligation to prohibit emissions from interfering with other States measures to protect visibility established in the CAA. Thus, Executive Order 13132 does not apply to this action.

*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 final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

*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 implements specific standards established by Congress in statutes. However, to the extent this rule will limit emissions of $NO_X$, $SO_2$, and PM, 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 final rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

*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.

We have determined that this final action 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 population.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Incorporation by reference, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 30, 2012.

**Howard M. Cantor,**

*Acting Regional Administrator, Region 8.*

For the reasons stated in the preamble, 40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

## Subpart TT—Utah

■ 2. Section 52.2320 is amended by adding paragraph (c)(71) to read as follows:

**§ 52.2320 Identification of plan.**

* * * * *

(c) * * *

(71) On May 26, 2011 and September 29, 2011, the State of Utah submitted revisions to its State Implementation Plan to incorporate the requirements of the regional haze program.

(i) Incorporation by reference

(A) Title R307 of the Utah Administrative Code—*Environmental Quality, Air Quality,* Rule R307–150—*Emission Inventories,* sections -1, *Purpose and General Requirements,* -2, *Definitions,* -3, *Applicability,* -5, *Sources Identified in R307–150(3)(2), Large Major Source Inventory Requirements,* -6, *Sources Identified in R307–150–3(3),* -7, *Sources Identified in R307–150–3(4), Other Part 70 Sources,* and -8, *Exempted Hazardous Air Pollutants.* Effective December 31, 2003; as published in the Utah State Bulletin December 1, 2003 and January 15, 2004.

(B) Title R307 of the Utah Administrative Code—*Environmental Quality, Air Quality,* Rule R307–150—*Emission Inventories,* section -4, *Sulfur Dioxide Milestone Emission Inventory Requirements.* Effective September 4, 2008; as published in the Utah State Bulletin July 1, 2008 and October 1, 2008.

(C) Title R307 of the Utah Administrative Code—*Environmental Quality, Air Quality,* Rule R307–250—*Western Backstop Sulfur Dioxide Trading Program,* sections -1, *Purpose,* -3, *WEB Trading Program Trigger,* -10, *Allowance Transfers,* -11, *Use of Allowances from a Previous Year,* and -13, *Special Penalty Provisions for the 2018 Milestone.* Effective December 31, 2003; as published in the Utah State Bulletin December 1, 2003 and January 15, 2004.

(D) Title R307 of the Utah Administrative Code—*Environmental Quality, Air Quality,* Rule R307–250—*Western Backstop Sulfur Dioxide Trading Program,* sections -2, *Definitions,* -4, *WEB Trading Program Applicability,* -5, *Account Representative for WEB Sources,* -6, *Registration,* -7, *Allowance Allocations,* -8, *Establishment of Accounts,* -9, *Monitoring, Recordkeeping, and Reporting,* and -12, *Compliance.* Effective November 10, 2008; as published in the Utah State Bulletin October 1, 2008 and December 1, 2008.

(ii) Additional materials

(A) Section XX of the Utah *Regional Haze State Implementation Plan.* Effective April 7, 2011. Published in the Utah State Bulletin February 1, 2011.

[FR Doc. 2012–29406 Filed 12–13–12; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R09–OAR–2011–0876; FRL–9736–6]**

## Revisions to the California State Implementation Plan, South Coast Air Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** In this action, EPA is finalizing approval of South Coast Air Quality Management District (SCAQMD) Rule 317, ''Clean Air Act Non-Attainment Fee,'' as a revision to SCAQMD's portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on January 12, 2012 and concerns volatile organic compounds (VOC) and oxides of nitrogen ($NO_X$). Rule 317 is a local fee rule submitted to address section 185 of the Clean Air Act (CAA or Act) with respect to the 1-hour ozone standard for anti-backsliding purposes. EPA is finalizing approval of Rule 317 as an alternative to the program required by section 185 of the Act. EPA has determined that SCAQMD's alternative fee-equivalent program is not less stringent than the program required by section 185, and, therefore, is approvable as an equivalent alternative program, consistent with the principles of section 172(e) of the Act.

**DATES:** This rule will be effective on January 14, 2013.

**ADDRESSES:** EPA has established docket number EPA–R09–OAR–2011–0876 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Lily Wong, EPA Region IX, (415) 947–4114, *wong.lily@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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## I. Proposed Action

EPA proposed to approve the following rule into the California SIP, in the **Federal Register** at 77 FR 1895, January 12, 2012.

| Local agency | Rule No. | Rule title | Adopted | Submitted |
|---|---|---|---|---|
| SCAQMD | 317 | Clean Air Act Non-Attainment Fee | 02/04/2011 | 04/22/2011 |

We proposed to approve this rule because we determined that it complies with the relevant CAA requirements and is approvable as an equivalent alternative to the program required by section 185 of the Act for the 1-hour ozone standard as an anti-backsliding measure. Our proposed action contains more information on the rule and our evaluation.

## II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from several parties. Most comments supported our proposed action; Earthjustice submitted comments opposing our proposed action. The comments and our responses are summarized below.

*A. Rule 317 and Section 185*

1. Rule 317 and Section 185 Generally

a. *Comment:* Earthjustice commented that Rule 317 does not impose fees on major stationary sources, but instead collects an equivalent amount from other sources including government grants.

*Response:* We agree that section 185 requires major stationary sources to pay fees; however, today's action is to approve SCAQMD Rule 317 in the context of the revoked 1-hour ozone NAAQS. We conclude that Rule 317 is approvable into the California SIP as the District's equivalent alternative program because we have determined that Rule 317 contains provisions that ensure that the fee equivalency account will reflect expenditures that are at least equal to the amount that would otherwise be collected under section 185, and they ensure that the funds will be used to reduce ozone pollution. Specifically, Rule 317 contains requirements to calculate the section 185 fee obligation, establish a ''section 172(e) fee equivalency account,'' track qualified expenditures on pollution control projects, annually demonstrate equivalency, and provide for a backstop if equivalency cannot be demonstrated. We have therefore determined that Rule 317 satisfies the requirements of CAA section 185, consistent with the principles of section 172(e).

2. Rule 317 and Baseline Issues

a. *Comment:* Earthjustice made several points relating to their general argument that the baseline used to determine the equivalent fee to be collected (and potentially to impose the fee if there is a shortfall) fails to comply with section 185. Another commenter supported Rule 317's alternative baseline provisions.

*Response:* Section 185(b)(2) authorizes EPA to issue guidance that allows the baseline to be the lower of average actuals or average allowables determined over more than one calendar year. Section 185(b)(2) further states that the guidance may provide that the average calculation for a specific source may be used if the source's emissions are irregular, cyclical or otherwise vary significantly from year to year. Pursuant to these provisions, EPA developed and issued a memorandum to EPA Regional Air Division Directors, ''Guidance on Establishing Emissions Baselines under Section 185 of the Clean Air Act (CAA) for Severe and Extreme Ozone Nonattainment Areas that Fail to Attain the 1-hour Ozone NAAQS by their Attainment Date,'' William T. Harnett, Director, Air Quality Division, March 21, 2008 (EPA's Baseline Guidance). EPA's Baseline Guidance suggests as an alternative baseline for sources whose annual emissions are ''irregular, cyclical, or otherwise vary significantly from year to year,'' the baseline calculation in EPA's Prevention of Significant Deterioration (PSD) regulations at 40 CFR 52.21(b)(48). As explained in EPA's Baseline Guidance, the PSD regulations allow a baseline to be calculated using ''any 24-consecutive month period within the past 10 years ('2-in-10' concept) to calculate an average actual annual emissions rate (tons per year).''

Rule 317 uses an alternative baseline to calculate the fees owed by all section 185 sources in the South Coast Air Basin.[1] Rather than calculating an alternative baseline for each source based on EPA's 2-in-10 PSD concept, Rule 317 sets an alternative baseline for all sources in the South Coast Air Basin by defining the term ''baseline emissions'' to mean the average of each source's actual emissions during a specific time period—fiscal years 2005–2006 and 2006–2007.[2]

Therefore, we agree that Rule 317's baseline for sources in the South Coast Air Basin differs from the attainment year baseline set forth in section 185. We note, however, that we are approving SCAQMD Rule 317 in the context of the revoked 1-hour ozone NAAQS and that Rule 317 satisfies the requirements of CAA section 185, consistent with the principles of section 172(e). We respond below to Earthjustice's specific points regarding baseline issues.

b. *Comment:* Earthjustice stated that the statute allows for an alternative baseline ''for a specific source'' if emissions are irregular, cyclical or otherwise vary significantly from year to year and allows for alternative baselines based on the nature of source-specific operations. The commenter stated that Rule 317 renders this source-specific test meaningless. The commenter contended that choosing the baseline should be a source-specific determination that accounts for the variability, cycle or irregularity of the emissions. The commenter stated that the District's response to variability is a ''blanket approach'' that has no connection to the source-specific findings required by the Act. The commenter stated that the District's analysis shows that ''all or nearly all'' sources had emissions that varied and so undermines the claim that the variability was significant.

*Response:* EPA disagrees with the commenter's assertion that Rule 317 is inconsistent with section 185 because it does not utilize a ''source-specific

[1] Rule 317 specifies that the baseline for existing major stationary sources in the Salton Sea Air Basin is the attainment year, which is consistent with the express language in CAA section 185. EPA's Technical Support Document (TSD) dated January 4, 2012 provides greater detail on the various terms used to refer to the geographic area of the Salton Sea Air Basin that is in the SCAQMD.

[2] Rule 317 specifies that the baseline will be programmatically adjusted to account for regulatory effects between 2006 through 2010 and that actual emissions used to calculate the alternative baseline cannot exceed allowable emissions.

determination.'' As described in EPA's proposed action, SCAQMD looked at available emissions data for all 234 sources subject to section 185 fees that reported actual emissions of at least 10 tons per year in 2010 and found that all 234 sources had some variability (see SCAQMD letter dated December 21, 2011, Exhibit D). In addition, SCAQMD conducted a more detailed analysis for 112 sources for which SCAQMD had ten consecutive years of actual emissions data. SCAQMD developed a mathematical formula to define and analyze variability.[3] Applying this formula, SCAQMD found that 107 of the 112 sources (or over 95% of the data set) had greater than 20 percent variability in emissions across a 10-year period.

EPA also disagrees with the commenter's argument that variability cannot be significant if it is experienced by all sources. The Act itself does not define the phrase ''otherwise vary significantly from year to year;'' therefore, EPA may supply a reasonable interpretation. SCAQMD separately considered the available information for each of the 234 sources and found that no source had consistent emissions. To the contrary, SCAQMD found that emissions for all sources varied from year to year. While some source's emissions varied more than others, all evidenced some variation. Moreover, SCAQMD's data shows that even sources with the smallest variation in emissions experienced a range of approximately 10 percent. As a practical matter, EPA notes that Rule 317's baseline definition makes little difference with respect to sources that have less emissions variability because, as a matter of course, less variation in emissions means that those sources owe essentially the same amount under either section 185's attainment year baseline or under Rule 317's universal alternative baseline using years 2006–2007.

c. *Comment:* Earthjustice stated that the District's justification of its approach based on the PSD regulations is arbitrary. The commenter further contended that Section 185 does not refer to the new source review program, so the baseline provisions in the PSD regulations are irrelevant to interpreting section 185.

*Response:* EPA disagrees with the comment that the District's justification of its approach based on EPA's PSD regulations is arbitrary because section 185 does not refer to the new source review program. In fact, to establish the default baseline for calculating emission fees, section 185 refers to ''the lower of the amount of actual VOC emissions ('actuals') or VOC emissions allowed under the permit applicable to the source * * * ('allowables') during the attainment year.'' SCAQMD's reference to the baseline established by EPA's PSD regulations is also valid because EPA's Baseline Guidance recommended the PSD 2-in-10 concept as an acceptable approach for states seeking to implement an alternative baseline in their section 185 fee programs. As explained in EPA's Baseline Guidance, EPA's rationale for the PSD 2-in-10 concept was that it would allow a source ''to consider a full business cycle in setting a baseline emissions rate that represents normal operation of the source for that time period.'' Lastly, we note that the commenter has not recommended, and we are not aware of, a superior alternative to basing the approach on EPA's PSD regulations.

d. *Comment:* Earthjustice commented that the District's analysis is not based on an assessment of the source itself and the nature of its operations, but on the broader impacts of the recession in the region. The commenter stated that the District's approach of raising the baseline from the atypical low production year is counter to the purpose of section 185's baseline requirement, which is to use the lowest level of emissions, whether actual or allowable. The commenter's reasoning is that if emissions at these levels are not low enough to attain the standard, the fee should be imposed to incentivize an additional 20 percent reduction. The commenter contended that Rule 317 undermines this objective—by raising the baseline level of emissions, a 20 percent reduction is less likely to result in attainment.

*Response:* EPA disagrees with the comment to the extent that it implies that the District inappropriately considered recessionary impacts on emissions when considering the appropriate baseline for Rule 317 or that the District acted inappropriately by not using the attainment year, 2010, as the baseline because it was an ''atypical low production year.'' Section 185 explicitly acknowledges the possibility that a fee program might need to adjust the baseline for emissions that are ''irregular, cyclical, or otherwise vary significantly from year to year.''

EPA also disagrees with the comment's implication that Rule 317 undermines section 185's objectives because it does not establish a baseline based on the lowest level of emissions and thus will not result in the same level of emissions reductions. Again, the comment fails to acknowledge that Congress explicitly authorized use of an alternative baseline based on emissions over a period of more than one year in cases where there are variations in emissions levels. It is reasonable to assume that Congress's objectives in establishing the section 185 program were to allow for some discretion on the part of the regulatory agencies to account for practical realities that could arise during program implementation, even if the result might affect fees owed.

Moreover, we believe that SCAQMD's alternative baseline will result in emission reductions that are at least as significant as those that could be achieved under a source-by-source approach using EPA's Baseline Guidance. As explained in our proposed action, SCAQMD had the reasonable expectation that since virtually all sources had significant variability, most if not all sources would request a different baseline than the attainment year. Instead of allowing each source to select its own alternative two-year baseline period (as would be allowed under EPA's Baseline Guidance), Rule 317 calculates the fee obligation based on each source's emissions during Fiscal years 2005–2006 and Fiscal years 2006–2007. SCAQMD's analysis showed that its alternative baseline should be expected to result in more emission reductions than a fee program that used EPA's Baseline Guidance because under the approach allowed by the Guidance, each individual source would likely choose the two-year period in which it had its highest emissions, thereby resulting in a higher threshold for triggering the assessment of section 185 fees. Given the assumption that a source would pick the two consecutive years with the highest emissions, SCAQMD calculated such baselines from the historic data. SCAQMD's analysis showed that the SCAQMD method resulted in aggregate baseline emissions that were 7,081 tons lower than that allowed under the EPA's Baseline Guidance. (See SCAQMD letter dated December 21, 2011, Exhibit D). SCAQMD's decision to establish an alternative baseline period for all sources is reasonable given that SCAQMD's approach is more stringent than that allowed under EPA's Baseline Guidance. Finally, we note that the commenter did not challenge EPA's Baseline Guidance.

[3] SCAQMD's formula for ''V'' (Variation in Emissions (or Irregularity)) = (Range of Emissions) ÷ (Median Emissions Value). SCAQMD calculated ''V'' for each of the 112 sources based on 10 years of actual emissions data.

*B. EPA's Authority To Approve Alternative Fee Rules That Differ From CAA Section 185*

1. Authority Under CAA and Case Law

a. *Comment:* Earthjustice commented that nothing in the plain language of the Act, the ''principles'' behind that language, or *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006) gives EPA the power to rewrite the terms of section 185. The commenter stated that EPA's argument that it can invent alternatives that fail to comply with the plain language of section 185 has no statutory basis. Other commenters stated that section 172(e) provides authority for EPA to approve Rule 317 and alternative fee programs generally.

*Response:* In a 2004 rulemaking governing implementation of the 1997 8-hour ozone standard, EPA revoked the 1-hour ozone standard effective June 15, 2005. See **Federal Register** at 69 FR 23858, April 30, 2004 and 69 FR 23951, April 30, 2004 (''2004 Rule''); see also, 40 CFR 50.9(b). EPA's revocation of the 1-hour standard was upheld by the Court of Appeals for the District of Columbia Circuit. *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006) reh'g denied, 489 F.3d. 1245 (D.C. Cir.) 2007) (clarifying that the vacatur was limited to the issues on which the court granted the petitions for review)(''*South Coast*''). Thus, the 1-hour ozone standard that the District failed to attain by its attainment date no longer exists and a different standard now applies.

Section 172(e) provides that, in the event of a relaxation of a primary NAAQS, EPA must promulgate regulations to require ''controls'' that are ''not less stringent'' than the controls that applied to the area before the relaxation. EPA's 8-hour ozone standard is recognized as a strengthening of the NAAQS, rather than a relaxation; however, EPA is applying the ''principles'' of section 172(e) to prevent backsliding of air quality in the transition from regulation of ozone pollution using a 1-hour metric to an 8-hour metric. Our application of the principles of section 172(e) in this context was upheld by the D.C. Circuit in the *South Coast* decision: ''EPA retains the authority to revoke the one-hour standard so long as adequate anti-backsliding provisions are introduced.'' *South Coast,* 472 F.3d at 899. Further, the court stated, that in light of the revocation, ''[t]he only remaining requirements as to the one-hour NAAQS are the anti-backsliding limitations.'' *Id.*

As stated above, section 172(e) requires State Implementation Plans to contain ''controls'' that are ''not less stringent'' than the controls that applied to the area before the NAAQS revision. EPA's 2004 Rule defined the term ''controls'' in section 172(e) to exclude section 185. *See* 2004 Rule, 69 FR at 24000. The D.C. Circuit ruled that EPA's exclusion of section 185 from the list of ''controls'' for Severe and Extreme non-attainment areas was improper and remanded that part of the rule back to EPA. *See South Coast,* 472 F.3d at 902–03. The court did not, however, address the specific issue of whether the principles of section 172(e) required section 185 itself or any other controls not less stringent, and section 172(e) clearly on its face allows such equivalent programs. Further, the court in *NRDC* v. *EPA,* 643 F.3d 311 (D.C. Cir. 2011), specifically noted with respect to equivalent alternative programs that, ''neither the statute nor our case law obviously precludes [the equivalent program alternative.]'' 643 F.3d at 321. In this rulemaking approving SCAQMD Rule 317, EPA is fully recognizing section 185 as a ''control'' that must be implemented through the application of the principles of section 172(e). As explained above, the D.C. Circuit stated that EPA must apply the principles of section 172(e) to non-attainment requirements such as section 185. Thus, we are following the D.C. Circuit's holding that the principles of section 172(e) apply in full to implement 185 obligations.

2. Applicability of Section 172(e)

a. *Comment:* Earthjustice commented that CAA section 172(e) does not apply to this situation because EPA has adopted a more health protective ozone standard. According to the commenter, EPA acknowledges that section 172(e) by its terms does not authorize EPA's action because the newer 8-hour ozone standard is not a relaxation of the prior 1-hour ozone standard. The commenter asserted that EPA claims that its authority to permit States to avoid the express requirements of section 185 derives from the ''principles'' of section 172(e), but the commenter contended that there is no principle in the CAA that Congress intended to give EPA authority to rewrite the specific requirements of section 185 when EPA finds that the health impacts related to ozone exposure are even more dangerous than Congress believed when it adopted the detailed requirements in the 1990 Clean Air Act Amendments. Other commenters stated that section 172(e) provides authority for EPA to approve Rule 317 and alternative fee programs generally.

*Response:* The *South Coast* court agreed with the application of the principles of section 172(e) despite the fact that section 172(e) expressly refers to a ''relaxation'' of a NAAQS, whereas the transition from 1-hour to 8-hour is generally understood as increasing the stringency of the NAAQS. As the court stated, ''Congress contemplated * * * the possibility that scientific advances would require amending the NAAQS. Section 109(d)(1) establishes as much and section 172(e) regulates what EPA must do with revoked restrictions * * * The only remaining requirements as to the one-hour NAAQS are the anti-backsliding limitations.'' *South Coast,* 472 F.3d at 899 (citation omitted).

3. Discretion in Title I, Part D, Subparts 1 and 2

a. *Comment:* Earthjustice commented that the Supreme Court in *Whitman* v. *Am. Trucking Assns,* interpreted the CAA as showing Congressional intent to limit EPA's discretion. The commenter claimed that the D.C. Circuit in SCAQMD also held that EPA's statutory interpretation maximizing agency discretion was contrary to the clear intent of Congress in enacting the 1990 amendments. The commenter stated that EPA's purported approach [with respect to 185] would allow EPA to immediately void the specific statutory scheme Congress intended to govern for decades. The commenter argued that where EPA has found that elevated 1-hour ozone exposures remain a serious concern, EPA cannot reasonably claim that Congress meant to give EPA the discretion to revise the carefully prescribed statutory requirements like section 185 that Congress intended to address such exposures. The commenter stated that EPA proposed to accept a program other than that provided by Congress in section 185. The commenter concluded that given that Congress provided a specific program, EPA has no discretion to approve an alternative. Other commenters stated that the Act provides EPA with discretion to approve Rule 317 and alternative fee programs generally.

*Response:* While one holding in *Whitman* v. *Am. Trucking Assns,* 531 U.S. 457 (2001) stands for the general proposition that Congress intended to set forth prescriptive requirements for EPA and states, particularly the requirements contained in Subpart 2, the D.C. Circuit has noted that the Court did not consider the issue of how to implement Subpart 2 for the 1-hour standard after revocation. *See, South Coast,* 472 F.3d at 893 (''when the Supreme Court assessed the 1997 Rule, it thought that the one- and eight-hour

standards were to coexist.''). Thus, the Court did not consider how section 172(e)'s anti-backsliding requirements might be applied in the current context of a revoked NAAQS.

We also believe that the commenter's reliance on *South Coast* to argue that it precludes EPA's use of section 172(e) principles to implement section 185 is similarly misplaced. The holding cited by the commenter relates to an entirely different issue than EPA's discretion and authority under section 172(e)—whether EPA had properly allowed certain eight-hour ozone non-attainment areas to comply with Subpart 1 in lieu of Subpart 2. In fact, the *South Coast* court not only upheld EPA's authority under section 109(d) to revise the NAAQS by revoking the 1-hour standard, it recognized its discretion and authority to then implement section 172(e):

> Although Subpart 2 of the Act and its table 1 rely upon the then-existing NAAQS of 0.12 ppm, measured over a one-hour period, elsewhere the Act contemplates that EPA could change the NAAQS based upon its periodic review of 'the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health' that the pollutant may cause. CAA sections 108(a), 109(d), 42 U.S.C. 7408(a), 7409(d). The Act provides that EPA may relax a NAAQS but in so doing, EPA must 'provide for controls which are not less stringent than the controls applicable to areas designated nonattainment before such relaxation.' CAA 172(e), 42 U.S.C. 7502(e).

*South Coast,* 472 F.3d at 888.

Further, as noted above, EPA believes that *South Coast* supports our reliance on section 172(e) principles to approve Rule 317 as fulfilling section 185 requirements for the revoked 1-hour standard. As the court stated, ''EPA was not, as the Environmental petitioners contend, arbitrary and capricious in withdrawing the one-hour requirements, having found in 1997 that the eight-hour standard was 'generally even more effective in limiting 1-hour exposures of concern than is the current 1-hour standard.' * * * The only remaining requirements as to the one-hour NAAQS are the anti-backsliding limitations.'' *Id.* (citation omitted).

*C. EPA's Proposed Action and Consistency With Section 172(e)*

1. Statutory Analysis for Alternatives to a Section 185 Program

a. *Comment:* Earthjustice commented that EPA's different and inconsistent tests for determining ''not less stringent'' undermine the reasonableness of these options as valid interpretations of the Act. The commenter stated that EPA's interpretation means that a program that achieves the same emission reductions as section 185 and a program that achieves fewer emission reductions than section 185 can both be considered ''not less stringent.'' However, stringency is either a measure of the emission reductions achieved or it is not. The commenter concluded that if it is, then a program that does not achieve equivalent reductions cannot pass the test. The commenter contended that EPA did not actually interpret the term ''stringent'' and that it offers no basis for claiming that Congress intended this term to have different meanings and allow for different metrics for guarding against backsliding. Other commenters stated that EPA's criteria for equivalency were reasonable and supported EPA's proposal with respect to the concept of alternative section 185 fee programs.

*Response:* We believe that the three alternatives we identified in our proposed action (i.e., same emission reductions; same amount of revenue to be used to pay for emission reductions to further improve ozone air quality; a combination of the two) are reasonable and consistent with Congress' intent. First, we note that Congress did not define the phrase ''not less stringent'' or the term ''stringent'' in the Act. EPA, therefore, may use its discretion and expertise to reasonably interpret section 172(e). Furthermore, we note that the D.C. Circuit, in *NRDC* v. *EPA,* 643 F.3d 311 (D.C. Cir. 2011), while finding that EPA's guidance document providing our initial presentation of various alternatives to section 185 [4] should have been promulgated through notice-and-comment rulemaking, declined to rule on whether the types of alternative programs we considered in connection with our proposed action on Rule 317 were illegal, stating, ''neither the statute nor our case law obviously precludes [the program alternative].'' *Id.* at 321.

We do not agree that evaluating a variety of metrics (e.g., fees, emissions reductions, or both) to determine whether a state's alternative program meets section 172(e)'s ''not less stringent'' criterion undermines our interpretation. On its face, section 185 results in assessing and collecting emissions fees, but the fact that section 185 is also part of the ozone nonattainment requirements of Part D, Subpart 2, suggests that Congress also anticipated that section 185 might lead to emissions reductions that would improve air quality, and ultimately facilitate attainment of the 1-hour ozone standard.[5] Thus, EPA believes it is reasonable to assess stringency of alternative programs on the basis of either the monetary or emissions-reduction aspects of section 185 or on the combination of both.

Lastly, as discussed in our proposal, SCAQMD has demonstrated that Rule 317 will result in a federally enforceable requirement to obtain funding for and make expenditures on air pollution reduction projects in amounts at least equal to the amounts that would otherwise be collected under section 185. In addition, it is reasonable to expect that in one respect SCAQMD's alternative program will achieve more emission reductions than direct implementation of section 185 because the funding that results from the District's alternative program must be used on programs intended to reduce emissions, while section 185 has no such direct requirement. The comment suggests that EPA's logic, if unreasonably extended, might theoretically lead it to approve a program that achieves fewer emission reductions than a program directly implemented under section 185. We are not doing that in this action, deciding whether to approve Rule 317 as it has been submitted to us. We also have no intention of doing so in the future.

2. ''Not Less Stringent'' and Target of Fees

a. *Comment:* Earthjustice commented that to be ''not less stringent,'' a control must be no less rigorous, strict, or severe and claimed that none of EPA's alternatives meets this definition. The commenter stated that EPA's description of the alternatives does not focus on ''stringency'' but on ''equivalency.'' The commenter contended that Section 172(e) does not allow for ''equivalent'' controls; it requires controls to be ''not less stringent.''

*Response:* EPA interprets the criterion set forth in section 172(e), ''not less stringent,'' to mean that, in the context of the revoked 1-hour ozone NAAQS, an alternative control that is as stringent as a previously applicable control should be considered approvable. An alternative control that is equivalent to the applicable control still meets section

[4] ''Guidance on Developing Fee Programs Required by Clean Air Act Section 185 for the 1-hour Ozone NAAQS, Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, Regions I–X, Jan. 5, 2010,'' vacated, *NRDC* v. *EPA,* 643 F.3d 311 (D.C. Cir. 2011).

[5] EPA previously articulated the dual nature of section 185 in its now-vacated section 185 guidance. *See id.* at 4. Although the section 185 guidance policy has been vacated, we agree with, and here in this notice and comment rulemaking adopt, its reasoning on this point.

172(e)'s criterion, ''not less stringent'' because it is as stringent, and therefore not less stringent, than the applicable control.

b. *Comment:* Earthjustice commented that Congress made deliberate choices as to which sources would be subject to penalties, the magnitude of those penalties and the duration of those penalties. The commenter stated that the purpose of Rule 317 is to avoid the stringent requirements of section 185 and dilute the severity of the 185 penalty on major industrial sources. The commenter averred that it is not possible to claim that Rule 317 is ''not less stringent'' than section 185 when that is the very purpose of the rule. Other commenters stated that Rule 317's focus on mobile sources rather than stationary sources is appropriate and more likely to lead to emission reductions and attainment with the one-hour ozone standard.

*Response:* We agree that section 185 requires major stationary sources to pay fees whereas Rule 317 does not; however, today's action is to approve SCAQMD Rule 317 in the context of the revoked 1-hour ozone NAAQS, consistent with the principles of section 172(e). By their very nature, the environmental outcomes that will be achieved by incentive-based programs (such as the fee programs envisioned by section 185) are difficult to predict with any precision, making the relative stringency of incentive-based programs difficult to evaluate. Thus, EPA's review focuses on whether the District provided a reasonable comparison of relative stringency. In particular, it is difficult to assess the relative stringency of section 185 and Rule 317 based on a comparison of where or how the funds associated with the 185 and the alternative program come from. We acknowledge as reasonable the District's decision, in developing an alternative fee program, to focus on mobile sources rather than stationary sources because emissions from mobile sources constitute approximately 90 percent of $NO_X$ emissions in SCAQMD.[6]

Moreover, it is clear that Rule 317, through the creation of a fee equivalency account that will be used to offset fees required under section 185, and a requirement to annually demonstrate and report equivalency, will result in a federally enforceable requirement to obtain funding for and make expenditures on air pollution reduction projects. Rule 317 contains provisions that ensure that the fee equivalency account will reflect expenditures that are at least equal to the amount that would otherwise be collected under section 185 and that ensure that the funds will be used to reduce ozone pollution. By one measure, Rule 317, which requires the expenditure of funds on projects that reduce ozone nonattainment, will be more effective than a section 185 fee program, which is not required to contain an enforceable requirement to spend funds to reduce air pollution, in producing actual air quality benefits.

3. ''Not Less Stringent'' and Equivalent Funding

a. *Comment:* Earthjustice commented that a program that raises an equivalent amount of money is not supported by section 185's structure and legislative history. The commenter stated that section 185 was not intended as a revenue generating provision. The commenter concluded that nothing in the legislative history indicates that Congress' intent was to collect a certain amount of money.

*Response:* Section 185 explicitly mandates a specific fee, requires that the fee be indexed for inflation, establishes a baseline for measuring such fees, and authorizes an alternative baseline for use in calculating that fee. For those reasons, and the additional reasons discussed above, we believe that section 185 has both monetary and emissions-related aspects and that it is reasonable for EPA to assess the stringency of alternative programs on the basis of either aspect of section 185 or on the combination of both.

Rule 317 will result in a federally enforceable requirement to obtain funding and to spend those funds on ozone pollution reduction projects. In addition, we note that the District's focus on alternative funding from programs that relate to mobile sources is reasonable in light of the fact that approximately 90 percent of $NO_X$ emissions in the District are attributable to mobile sources.[7] Thus, only 10 percent of $NO_X$ emissions are caused by stationary sources, most of which are already subject to either best available retrofit control technology or best available control technology or lowest achievable emission rate requirements.[8] Thus, Rule 317 by ensuring the expenditure of these funds on the primary causes of ozone nonattainment is likely to be more effective in producing real reductions in ozone pollution than a 185 fee program.

4. ''Not Less Stringent'' and Equivalent Emission Reductions

a. *Comment:* Earthjustice commented that the measure of equivalency should be section 185's emission reduction incentive. The commenter contended that penalties end if an area is redesignated to attainment or a source reduces its emissions by 20 percent. The commenter pointed out that the D.C. Circuit noted, ''[T]hese penalties are designed to constrain ozone pollution.'' The commenter stated EPA should assess how Rule 317 will create incentives for major stationary sources to reduce emissions. Many commenters stated that most stationary sources have already installed air pollution controls such as best available control technology or best available retrofit technology. As a result, installation of additional controls would not be feasible. According to these commenters, to avoid fees, sources would curtail production, which would be harmful to the economy. In addition, curtailing production is not a realistic option for sources such as hospitals and providers of essential services.

*Response:* Earthjustice correctly states that section 185 requires that fees must be paid until an area is redesignated to attainment for ozone and that section 185 does not require fees from sources that reduce emissions by 20 percent (compared to emissions during the baseline period). Thus, one consequence of a section 185 fee program may be a reduction in VOC and/or $NO_X$ emissions. However, EPA does not agree with Earthjustice's comment to the extent it is saying that emission reductions are inevitable or must be the sole basis for determining whether an alternative program is ''not less stringent'' than a section 185 program. As we stated above, we believe the prospective stringency of an alternative program may be evaluated by comparing either the assessed fees (which are in turn used here to pay for emissions reductions) or emission reductions projected to be achieved from the proposed alternative program to the fees or emissions reductions directly attributable to application of section 185 (or by comparing a combination of fees and reductions).

In addition, Earthjustice's comment does not acknowledge that section 185 allows major sources to pay fees and not reduce emissions; consequently, the actual impact of the ''incentive'' underlying section 185 is uncertain, and must be acknowledged in any comparison to the effect of Rule 317.

[6] California Air Resources Board's *California Emissions Projection Analysis Model (CEPAM): 2009 Almanac* found at: *http://www.arb.ca.gov/app/emsinv/fcemssumcat2009.php.*

[7] Ibid.

[8] SCAQMD Rule 317 Final Staff Report; page 317–1.

Nevertheless, we note that Rule 317 creates an incentive for the District to ensure that it obtains funding in an amount at least equal to the amount of fees that would be collected under section 185 and to use those funds to reduce ozone pollution, in order to annually demonstrate equivalency of the program.

In response to the comments in support of our approval of Rule 317, we acknowledge that Rule 317 avoids possibly substantial burdens on major stationary sources within the District, some of which may be small businesses because of the 10 tons/year threshold for major stationary sources in the South Coast Air Basin.

b. *Comment:* Section 185 is a market-based policy device to internalize the external costs of pollution and thereby incentivize emission reductions at major stationary sources. The commenter argued that EPA must assess how the incentives in Rule 317 compare to the incentives in section 185. The commenter stated that this analysis would look at how a pollution tax might drive sources to improve controls.

*Response:* We do not agree that the comparison of ''incentives'' or a pollution tax proposed by the commenter is the only approach to evaluating the relative stringency of an alternative program, as explained above. In addition, we note SCAQMD's observation that many of the sources subject to the section 185 fee are not necessarily able to internalize the costs of the fees. These sources, which the District identified as refineries, utilities and sewage treatment plants, ''are likely to have an inelastic response to fees * * * [and] are more likely to pass through any increased fee dollars to the consumer rather than curtail emissions.'' [9] Moreover, we anticipate that Rule 317 will reduce ozone pollution in the District because it creates a federally enforceable requirement to demonstrate on an annual basis that it has obtained funding and made expenditures on projects related to improving ozone air quality.

c. *Comment:* Earthjustice commented that Rule 317 severs the link between the fee and pollution levels by, for example, pre-funding the District's fee equivalency account with government subsidies. The commenter stated that using taxpayer dollars creates no incentive to reduce pollution. Other commenters stated that Rule 317 appropriately focuses on programs that will reduce emissions from mobile sources because they are primarily responsible for ozone pollution in the District.

*Response:* As stated above, it is difficult to quantitatively compare any incentives created by section 185 or Rule 317. Section 185 explicitly requires fees from major stationary sources in Severe and Extreme ozone nonattainment areas as a penalty for failure to reach attainment by their attainment deadlines, but does not directly mandate emissions reductions. Rule 317 replaces the uncertain effect of the fee incentive with a direct obligation for the District to annually invest fee-equivalent funding in projects designed to improve ozone levels. In the event the District fails to make this investment, Rule 317 includes a backstop provision requiring the District to adopt a rule to address any shortfall. In this context, we have determined that Rule 317 provides a ''not less stringent'' program structure.

5. ''Not Less Stringent'' and Process for Revenues To Be Spent on Air Quality Programs''

a. *Comment:* Earthjustice commented that EPA does not demonstrate that Rule 317 establishes a process for revenues to be used to improve ozone air quality. The commenter concluded that Rule 317 on its face includes no such process, and provides no detail or mechanism for assuring that the fees will result in actual emission reductions that will improve ozone air quality. The commenter stated that EPA has previously refused to give emission reduction credit for vague incentive programs and it is arbitrary for EPA to assume that Rule 317 will improve air quality without providing a basis for reaching a different conclusion.

*Response:* EPA disagrees with the comment based on our determination that Rule 317 contains adequate provisions to ensure that the alternative funding will be used on programs that will improve ozone air quality. Rule 317(c)(3) and (5) require the District to make an annual demonstration of equivalency and file an annual report with CARB and EPA that includes, among other things, a list of all facilities subject to section 185 and their fee obligations, and a listing of all programs and associated expenditures that were credited into the section 172(e) equivalency account. The listing of expenditures that were credited to the equivalency account must show the programs and program descriptions, a description of the funding, a certification of eligibility for each program and the expenditures themselves. In addition, Rule 317 contains provisions to ensure the integrity of the demonstration process. For example, Rule 317(c)(1)(A) specifies various criteria for the types of programs that are eligible for credit, including requirements that the projects be ''surplus to the SIP,'' designed to reduce VOC or $NO_X$ emissions, as well as a requirement that ''only monies actually expended from qualified programs during a calendar year shall be credited.''

In addition, the District's Staff Report for Rule 317, at Attachment A, contains a listing of programs that the District has already identified as appropriate for use as credits in the section 172(e) equivalency account. These programs include school bus retrofits and replacements, liquefied natural gas truck replacements, and funding under AB2766, a state law that authorizes the collection of an additional $4 per motor vehicle registration to be used for programs to reduce motor vehicle pollution.

Our basis for approving Rule 317 is that it is not less stringent than the requirements of section 185 because it will result in funds equal to the fees that would be collected under section 185. Additionally, we believe that SCAQMD's alternative program will result in improvements in air quality since the funds will be used on projects that will reduce $NO_X$ and VOC emissions in the District. This finding is consistent with our actions referenced in the comment regarding other incentive programs. In those cases, we acknowledged that incentive programs would result in some emission reductions but noted that the air district had not adequately demonstrated a specific amount of reductions. Similarly, SCAQMD has not demonstrated a specific amount of emission reductions from the use of funds identified in Rule 317, but there is no reason to expect that it would be less than the reductions that might result from direct implementation of section 185, which does not require sources to reduce emissions and does not require that collected fees be directed towards emission reductions.

Section 185 creates an incentive to reduce emissions but in some cases it may not work and may be punitive. In addition, section 185 does not require that the state use the funds collected for any particular purpose, making it unlikely that the funds will be used directly to reduce ozone formation. Rule 317 will result in a federally enforceable requirement to obtain funding for and make expenditures on air pollution reduction projects in amounts at least equal to the amounts that would otherwise be collected under section 185. In addition, it is reasonable to

[9] Ibid. pp. 5–6.

expect that in one respect SCAQMD's alternative program will achieve more emission reductions than direct implementation of section 185 because the funding that results from the District's alternative program must be used on programs intended to reduce emissions, while section 185 has no such direct requirement.

6. Surplus Reductions

a. *Comment:* Earthjustice commented that EPA's analysis that Rule 317 will improve air quality because the fees are ''surplus'' does not make sense. The commenter claimed that the District's 1-hour ozone SIP failed to result in attainment of the standard and the 9th Circuit Court of Appeals has held that EPA should have disapproved the plan. Further, the commenter claimed the District does not have a meaningful plan for attaining the 1-hour ozone standard and all existing sources of funding have failed to provide ''surplus'' reductions that are not required for attainment. The commenter stated that the District has collected those fees and yet sources continue to emit at levels that have not provided for attainment. The commenter concluded that ''Equivalent fees'' credited to the District's accounts do not improve air quality. One commenter stated that the programs that are surplus to the SIP are an appropriate part of an alternative fee program.

*Response:* As explained in our proposal, Rule 317 specifies that expenditures used to offset section 185 fee obligations via the Section 172(e) Fee Equivalency Account must be ''surplus'' to the 1-hour ozone SIP and must be used on programs intended to reduce ozone formation. We explained that ''surplus'' reductions are those that are not relied upon nor assumed by the SIP to provide for reasonable further progress (RFP) or attainment.[10] Our proposal also explained that we had reviewed the various funding sources identified by the District as ''surplus'' and confirmed that they were in fact surplus to the approved 1-hour ozone SIPs for the South Coast Air Basin (the 1997/1999 Air Quality Management Plan) and the Southeast Desert Air Quality Management Area (1994 Air Quality Management Plan).

We do not agree with the commenter's characterization of the court's holding in *Assoc'n of Irritated Residents* v. *EPA.* In particular, we disagree with the commenter's statement that, ''the Ninth Circuit Court of Appeals has held that EPA should have disapproved the plan's flawed attainment demonstration.'' In fact, the court's ruling concerned EPA's disapproval in 2009 of an attainment demonstration adopted by the District in 2003 as an update to the approved 1997/1999 SIP for the South Coast Air Basin. Because the District's 2003 attainment demonstration indicated that the 1997/1999 SIP was inadequate, the court held that EPA should take additional action to evaluate the adequacy of the 1997/1999 SIP. The court also stated that EPA's authority to evaluate the adequacy of the plan could arise either under CAA provisions for a Federal Implementation Plan or for a SIP call.[11] The court, however, did not state that EPA should have disapproved the 1997/1999 SIP or any part of it, nor did the court's ruling invalidate or affect the legal status of the 1997/1999 SIP. Therefore, the 1997/1999 SIP remains in place as the approved 1-hour SIP for the South Coast Air Basin.

We also disagree with the commenter's conclusion that the 1997/1999 SIP cannot be a basis to determine ''surplus'' reductions because the 1997/1999 SIP failed to result in attainment of the 1-hour standard. By extension, this argument would mean that a nonattainment area that fails to reach attainment by the applicable deadline would have no emissions that could ever be considered ''surplus.'' The loss of ''surplus'' emissions would result in potentially drastic consequences, such as the inability to issue or obtain offset credits and thus a virtual cessation of permitting activity for large industrial sources in nonattainment areas with missed attainment deadlines.[12] If Congress had intended such a significant consequence for failure to reach attainment by an applicable deadline, Congress could have explicitly provided for such a result.[13] [14] Because Congress did not provide for the loss of all surplus emissions upon a state's failure to attain a standard by an applicable attainment deadline, we believe that the 1997/1999 SIP, as the currently approved SIP, is a valid basis for determinations of ''surplus'' for purposes of the 1-hour ozone standard in the South Coast Air Basin.

Nevertheless, EPA recognizes that the 1997/1999 SIP did not result in attainment of the 1-hour ozone standard in the South Coast Air Basin.[15] Following the holding in *Assoc'n of Irritated Residents* v. *EPA* that EPA must review the adequacy of the 1997/1999 SIP, EPA initiated the SIP call process with a proposed finding of substantial inadequacy, as published at 77 FR 58072, September 19, 2012.[16] If finalized as proposed, the SIP call will require the District to submit, within 12 months, a plan providing for attainment of the 1-hour ozone standard (''1-hour ozone attainment plan''). Upon approval by EPA, the new 1-hour ozone attainment plan will become the new basis for determining what reductions are ''surplus.''

EPA believes that Rule 317 is drafted with sufficient flexibility that the District will be able to continue to implement the rule by making determinations of surplus based on the new 1-hour ozone attainment plan. Specifically, Rule 317(c)(1)(i) specifies that the Section 172(e) Fee Equivalency Account can offset section 185 fee obligations with expenditures from qualified programs that are ''surplus to the State Implementation Program for the federal 1-hour ozone standard. * * *'' Thus, Rule 317's requirements for crediting expenditures from qualified programs in the Section 172(e) Fee Equivalency Account, as well as the requirements for the annual demonstration and reporting of

[10] See, ''Improving Air Quality with Economic Incentive Programs,'' January 2001 (EPA–452/R–01–001), available at: *http://www.epa.gov/ttn/oarpg/t1/memoranda/eipfin.pdf.*

[11] As the court held, ''Specifically, EPA has an affirmative duty to ensure that California demonstrate attainment with the NAAQS, see 42 U.S.C. 7410(a)(2)(A), 7502(c)(6), either by promulgating a FIP or evaluating the necessity of a SIP call.'' *Assoc'n of Irritated Residents* v. *EPA,* 686 F.3d 668, 677 (9th Cir. 2012).

[12] Offsets are required by section 173(c) for the permitting of new and modified major stationary sources in nonattainment areas.

[13] We note that Congress did include specific provisions to address a state's failure to reach attainment by the applicable deadline, such as sections 172(c) (requiring contingency measures) and 179(d) (requiring plan revisions that include ''additional measures as the Administrator may reasonably prescribe, including all measures that that can be feasibly implemented in the area in light of technological achievability, costs, and any nonair quality and other air quality-related health and environmental impacts.'')

[14] EPA has explained that the failure to attain the revoked one-hour ozone standard does not trigger a requirement for a new attainment demonstration for the one-hour ozone standard under section 179(c) and (d). *See e.g.,* note 15 infra, and 76 FR 82138–82139.

[15] On December 30, 2011, EPA published in the **Federal Register** its ''Determinations of Failure to Attain the One-Hour Standard,'' for both the Los Angeles—South Coast Air Basin and the Southeast Desert Modified Air Quality Maintenance Area. 76 FR 82133. In this action, which also pertains to the San Joaquin Valley Area, we explained that our determination of failure to attain the revoked one-hour ozone standard does not trigger a requirement for a new attainment demonstration for the one-hour ozone standard under section 179(c) and (d). Rather, we explained that we made these determinations under our authority in sections 301(a) and 181(b)(2) to ensure implementation of measures we had previously identified as one-hour ozone anti-backsliding requirements, including contingency measures and section 185 fees. *See e.g.,* 76 FR 82138–82139.

[16] EPA's proposed SIP call explains in greater detail the legal basis for requiring the District to submit a new 1-hour ozone attainment plan.

equivalency, would accommodate a future 1-hour ozone attainment plan and the District will be able to continue to implement the equivalency program.

*D. Miscellaneous Comments*

a. *Comment:* One commenter recommended that EPA allow sources to apply the calculated section 185 fees to a number of projects at the major stationary source or at other sources in either the nonattainment area or upwind areas. The commenter suggested ten examples of eligible projects including installing emissions control technology, enhancing existing pollution control equipment, energy efficiency and renewable energy measures, lower emitting fuels, retirement or repowering of a higher emitting facility, mobile source retrofit program, clean vehicle fleets, and increasing mass transit ridership.

*Response:* EPA is acting on SCAQMD's Rule 317, which does not include these program features. If these program features are included in a specific SIP submittal for another alternative program, EPA would evaluate them at that time.

b. *Comment:* Numerous commenters expressed concerns that if fees were assessed in a direct application of section 185, the fees would have a devastating effect on small businesses, jobs, and the economy in Southern California. Consequently, they supported SCAQMD's approach in Rule 317 and urged EPA to approve the rule.

*Response:* We acknowledge the comments and the public's interest in this issue. No response needed to these comments that support our proposed action.

## III. EPA Action

EPA is finalizing approval of Rule 317, ''Clean Air Act Non-Attainment Fee,'' as a revision to SCAQMD's portion of the California SIP, and as a ''not less stringent'' alternative to the program required by section 185 of the Act for anti-backsliding purposes with respect to the revoked 1-hour ozone standard.

The comments submitted do not fundamentally change our assessment that Rule 317 complies with the relevant CAA requirements and associated EPA rules. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving Rule 317 into the California SIP as an equivalent alternative program, consistent with the principles of section 172(e) of the Act. Final approval of Rule 317 satisfies California's obligation under sections 182(d)(3), (e) and (f) to develop and submit a SIP revision for the South Coast Air Basin and the Riverside County portion of the Salton Sea Air Basin [17] 1-hour ozone nonattainment areas to meet the requirements for a program not less stringent than that of section 185. Final approval of Rule 317 also permanently terminates all sanctions and Federal Implementation Plan (FIP) implications associated with section 185 for the 1-hour ozone NAAQS and previous action (75 FR 232, January 5, 2010) regarding the South Coast Air Basin and the Riverside County portion of the Salton Sea Air Basin.

## IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 12, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

[17] See EPA's TSD dated January 4, 2012, which clarifies that the Riverside County portion of Salton Sea is the same geographic area as the Coachella Valley portion of the Southeast Desert Modified Air Quality Maintenance Area.

Dated: September 20, 2012.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

## Subpart F—California

■ 2. Section 52.220 is amended by adding and reserving paragraph (c)(417) and adding paragraph (c)(418) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(417) [Reserved]

(418) New and amended regulation for the following APCD was submitted on April 22, 2011, by the Governor's Designee.

(i) Incorporation by Reference

(A) South Coast Air Quality Management District

(*1*) Rule 317, ''Clean Air Act Non-Attainment Fees,'' amended on February 4, 2011.

[FR Doc. 2012–29385 Filed 12–13–12; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 82

**[EPA–HQ–OAR–2011–0111; FRL–9757–5]**

**RIN 2060–AQ84**

## Protection of Stratospheric Ozone: Listing of Substitutes for Ozone Depleting Substances—Fire Suppression and Explosion Protection

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Withdrawal in part of direct final rule.

**SUMMARY:** On September 19, 2012, the **Federal Register** published a direct final rule and a companion proposed rule issuing listings for three fire suppressants under EPA's Significant New Alternatives Policy program. Because EPA received adverse comment concerning C7 Fluoroketone, we are withdrawing that part of the direct final rule that listed C7 Fluoroketone acceptable subject to narrowed use limits as a substitute for halon 1211. Other listings in that direct final rule will take effect on December 18, 2012.

**DATES:** Effective December 14, 2012, EPA withdraws the entire entry for ''Streaming: C7 Fluoroketone as a substitute for Halon 1211'' in Appendix S to Subpart G of Part 82 in the direct final rule published at 77 FR 58035, September 19, 2012.

**FOR FURTHER INFORMATION CONTACT:** Bella Maranion, Stratospheric Protection Division, Office of Atmospheric Programs; Environmental Protection Agency, Mail Code 6205J, 1200 Pennsylvania Avenue NW., Washington DC 20460; telephone number (202) 343–9749, fax number, (202) 343–2338; email address at *maranion.bella@epa.gov.* The published versions of notices and rulemakings under the SNAP program are available on EPA's Stratospheric Ozone Web site at *http://www.epa.gov/ozone/snap/regs.*

**SUPPLEMENTARY INFORMATION:** On September 19, 2012, the **Federal Register** published a direct final rule and a companion proposed rule issuing listings for three fire suppressants under EPA's Significant New Alternatives Policy program (77 FR 58035). Because EPA received adverse comment concerning C7 Fluoroketone, we are withdrawing that part of the direct final rule that listed C7 Fluoroketone.

The listing would have found C7 Fluoroketone acceptable subject to narrowed use limits, as a substitute for halon 1211 for use as a streaming agent in portable fire extinguishers in nonresidential applications. We stated in that direct final rule that if we received adverse comment by October 19, 2012, that we would publish a timely withdrawal in the **Federal Register**. We subsequently received one adverse comment on that part of the direct final rule, but no comments on the other listings in the direct final rule. The other listings in that direct final rule, finding Powdered Aerosol F and Powdered Aerosol G acceptable subject to use conditions as substitutes for halon 1301 for use as a total flooding agent in normally unoccupied areas, will take effect on December 18, 2012. EPA intends to address the adverse comment concerning C7 Fluoroketone in a subsequent final action, which will be based on the parallel proposed rule published on September 19, 2012 (77 FR 58081). As stated in the direct final rule and the parallel proposed rule, we will not institute a second comment period on this action.

Dated: December 5, 2012.

**Gina McCarthy,**

*Assistant Administrator, Office of Air and Radiation.*

Accordingly, the entire entry for ''Streaming: C7 Fluoroketone as a substitute for Halon 1211'' in Appendix S to Subpart G of Part 82 in the direct final rule published on September 19, 2012 (77 FR 58035) is withdrawn as of December 14, 2012.

[FR Doc. 2012–29984 Filed 12–13–12; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Medicare & Medicaid Services

## 42 CFR Parts 438, 441, and 447

**[CMS–2370–CN]**

**RIN 0938–AQ63**

## Medicaid Program; Payments for Services Furnished by Certain Primary Care Physicians and Charges for Vaccine Administration Under the Vaccines for Children Program; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects technical errors that appeared in the final rule published in the November 6, 2012 **Federal Register** entitled ''Medicaid Program; Payments for Services Furnished by Certain Primary Care Physicians and Charges for Vaccine Administration under the Vaccines for Children Program.''

**DATES:** *Effective Date:* The provisions of this final rule are effective on January 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** Mary Cieslicki, (410) 786–4576, or Linda Tavener, (410) 786–3838, for issues related to payments for primary care physicians.

Mary Beth Hance, (410) 786–4299, for issues related to charges for the administration of pediatric vaccines.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In FR Doc. 2012–26507 of November 6, 2012 (77 FR 66670), there were a number of technical errors that are identified and corrected in the Correction of Errors section below. The provisions in this correction document are effective as if they had been included in the document published November 6, 2012. Accordingly, the corrections are effective January 1, 2013.

### II. Summary of Errors

In the November 6, 2012 final rule (77 FR 66670), we inadvertently published

technical errors in § 447.400(a) and § 447.405 listed on page 66701. One correction ensures consistency between two sentences in the same paragraph and the other restores text inadvertently omitted from the final rule that had been included in the May 11, 2012 notice of proposed rulemaking (77 FR 27671) on pages 26789–90. Thus, we are correcting page 66701 to reflect the correct information.

### III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. The policies expressed in final rule (77 FR 66670) have been previously subjected to notice and comment procedures. This notice merely provides a technical correction to the final rule and does not make substantive changes to the policies or methodologies that were expressed in the final rule. One technical correction ensures consistency of two sentences of the same paragraph, and the other restores text that had been present in the notice of proposed rulemaking (77 FR 27671) but inadvertently omitted from the final rule text. Therefore, we find it unnecessary to undertake further notice and comment procedures with respect to this correction notice and find good cause to waive notice and comment procedures and the 30-day delay in the effective date for this correction notice.

### IV. Correction of Errors

In FR Doc. 2012–26507 of November 6, 2012 (77 FR 66670), make the following corrections:

1. On page 66701, in the first column; in the last full sentence, in the first partial paragraph, the sentence reads, ''A physician self-attests that he/she:''. Correct the sentence to read, ''Such physician then attests that he/she:''.

2. On the same page, in the same column; in the last full paragraph, paragraph (a) reads, ''For CYs 2013 and 2014, a state must pay for physician services described in § 447.400 based on:''. Correct the sentence to read, ''For CYs 2013 and 2014, a state must pay for physician services described in § 447.400 based on the lower of:''.

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

Dated: December 3, 2012.

**Oliver Potts,**

*Deputy Executive Secretary to the Department, Department of Health and Human Services.*

[FR Doc. 2012–29640 Filed 12–13–12; 8:45 am]

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## DEPARTMENT OF ENERGY

## 48 CFR Parts 908, 945, 952, and 970

**RIN 1991–AB86**

## Acquisition Regulation: Department of Energy Acquisition Regulation, Government Property

**AGENCY:** Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to conform to the Federal Acquisition Regulation (FAR), remove out-of date government property coverage, and update references. This rule does not alter substantive rights or obligations under current law.

**DATES:** *Effective Date:* January 14, 2013.

**FOR FURTHER INFORMATION CONTACT:** Helene Abbott at (202) 287–1593 or via email: *helene.abbott@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Comment Resolution
III. Section-by-Section Analysis
IV. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12988
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under the National Environmental Policy Act
F. Review Under Executive Order 13132
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Review Under Executive Order 13211
J. Review Under the Treasury and General Government Appropriations Act, 2001
K. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996
L. Approval by the Office of the Secretary of Energy

### I. Background

DOE is amending Parts 908, Required Sources of Supplies and Services, 945, Government Property, 952, Solicitation Provisions and Contract Clauses, and 970, Management and Operating Contracts, to remove out-of-date coverage, to update references and to conform to the FAR.

This final rule contains several administrative changes that will not substantially change the content of the regulation. Changes include adding correct citations; correcting office names; updating vehicle license tag ordering procedures; correcting the excess personal property screening timeframe; revising the contractor's reporting of sensitive item listing; and retaining the definition of ''Capital Equipment'' which was included in the proposed rule for deletion. After further analysis, it is necessary to retain the ''Capital Equipment'' definition for the purpose of this rule. In addition, during the review of the final rule, it was discovered that section 952.245–5 referenced FAR 52.245–5 which is ''Reserved'' under the FAR rewrite.

### II. Comment Resolution.

This final rule follows a notice of proposed rulemaking published in the **Federal Register** on March 4, 2011, 76 FR 11985. There were no comments received as a result of that proposed rulemaking.

### III. Section-by-Section Analysis

DOE is amending the DEAR as follows:

1. Section 908.1102 is amended by redesignating paragraph (a) (4) as 908.1102–70 Vehicle leasing to conform to the FAR convention, and adding the phrase ''All subsequent lease renewals or extensions may be exercised only when General Service Administration (GSA) has advised that it cannot furnish the vehicle(s) as prescribed herein.''

2. Section 908.1104(f) is amended by removing ''Federal Property Management Regulation (FPMR) 41 CFR 101–38.6.'' and adding in its place ''Federal Management Regulation (FMR) 41 CFR 102–34.160, 102–34.175 and 102–34.80'' to provide the updated citation.

3. Section 908.7101–2 (a) is amended by removing ''FPMR 41 CFR 101–25.304, 101–26.501, and 101–38.13 and DOE–PMR 41 CFR 109–25.304, 109–

38.13, and 109–38.51'' and adding in its place ''Federal Property Management Regulations (FPMR) 41 CFR 101–26.501, and FMR 41 CFR 102–34, and Department of Energy-Property Management Regulations (DOE–PMR) 41 CFR 109–26.501'' to provide the updated citation.

4. Section 908.7101–2 paragraph (b) is amended by removing ''on GSA Form 1781, Motor Vehicle Requisition—Delivery Order—Invoice,'' and adding in its place ''utilizing GSA's on-line system (Auto Choice)'' to update the procedures.

5. Section 908.7101–3 is amended by removing in the second sentence ''Office of Property Management'' and adding in its place ''Personal Property Policy Division'' to update office name. Remove ''those'' in the third sentence and remove in the last sentence, ''(See DOE–PMR 41 CFR 109–38.5102–4)'' and add in its place 41 CFR 109–26.501–1 to correct grammar and to remove an out-of-date citation.

6. Section 908.7101–4 is amended in paragraph (a) by removing ''FMPR 101–38.9 and DOE–PMR 41 CFR 109–38.9'' and adding in its place ''41 CFR 102–34.270'' and 41 CFR 109–38.402 to update the citation.

7. Section 908.7101–5 is amended in the third sentence by removing ''DOE–PMR 41 CFR 38.5102'' and adding in its place ''41 CFR 109–26.501–50 and 109–26.501–51'', to update the citation.

8. Section 908.7101–6 is amended in paragraph (a) by removing in the second sentence ''Office of Property Management'' and replacing it with ''Personal Property Policy Division'' to update office name; and remove the last three sentences and adding in their place ''Such forecast shall be submitted to the Property Executive, or designee, when requested.

9. Section 908.7101–6 is amended in paragraph (b) by removing ''Sedans, station wagons, and light trucks requisitioned according to an approved forecast, but not contracted for by GSA until the subsequent fiscal year, will'' and adding in its place ''Approved sedans, station wagons, and light trucks requisitioned, but not contracted for by GSA until the subsequent fiscal year, shall'' to update the procedures.

10. Section 908.7101–7 is amended in paragraph (a) by removing ''FPMR 41 CFR 101–38.303'' and adding in its place ''41 CFR 102–34.140'' to update the citation.

11. Section 908.7101–7 is amended in paragraph (b) by removing in the second sentence ''Assignments of specific ''blocks'' of tag numbers and the maintenance of tag records are performed by the ''Director, Office of Property Management,'' within the Headquarters procurement organization. Assignments of additional ''blocks'' of tag numbers will be made upon receipt of written request from field offices'' and adding in its place ''Assignment of new tag numbers will be made by UNICOR via the UNICOR online vehicle license tag ordering data base. Contractors must obtain approval from their Federal fleet manager or OPMO for ordering authorization to utilize the UNICOR data base. Director, Personal Property Policy Division within the Headquarters procurement organization will maintain tag assignment records issued by UNICOR for new plates'' to correct punctuation, update office name and current tag ordering procedures.

12. Section 908.7101–7 is amended in paragraph (e) by removing the sentence and adding in its place ''See 41 CFR 109–38.202–2 and 109–38.202–3 for additional guidance.'' to update the citation.

13. Section 908.7102 is amended by removing the sentence and adding in its place ''Acquisition of aircraft shall be in accordance with 41 CFR 102–33, subpart B and DOE Order 440.2B latest revision.'' to update the citation.

14. Section 908.7103 is amended by removing ''41 CFR 101–25.302–3, 101–25.302–4, and 101–25.302–6, and 101–25.403, and 41 CFR 109–25.302–3 to delete outdated citations.

15. Section 908.7104 is amended by removing ''41 CFR 101–25.302–1 and 101–25.302–8, and 41 CFR 109–25.302–1 to delete outdated citations.

16. Section 908.7121 is revised to update the first paragraph to clarify that the contracting officers shall require authorized contractors to follow procedures set forth in paragraphs (a) through (c).

17. Section 908.7121(b) *Precious metals* is revised to update the responsible office in subparagraph (1) and add subparagraph (2) to reference 48 CFR 945.604–1 for contractor identification and reporting for contractor inventory containing precious metals or possessing precious metals excess.

18. Section 908.7121(c) is amended to state that lithium is available from The National Nuclear Security Administration (NNSA), Y–12 National Security Complex in Oak Ridge, TN (Y–12) and that the excess quantities at Y–12 are to be the first source of supply.

19. Part 945 is amended to simplify procedures, clarify language, and eliminate obsolete requirements related to the management and disposition of Government property in the possession of contractors to conform to 48 CFR part 45 Government Property regulation.

20. Section 945.000 is amended by lower casing the first letter of the word ''part''; by reversing ''operating and management'' to read ''management and operating''; and by removing the second sentence in its entirety.

21. Section 945.101 is amended adding a definition of sensitive property. For clarity, since the FAR definition of sensitive property was changed under FAC 2005–17 and for further emphasis by DOE, the FAR definition is incorporated by reference. The definition of capital equipment was removed in the proposed rule. However, after further analysis, it has been determined to retain the definition as it is necessary for the purpose of this rule. The definition is amended by removing ''a unit acquisition cost of $5,000'' and adding ''; dollar threshold for capital equipment is as established by the DOE Financial Management Handbook.''

22. Section 945.102–70 is revised in the first paragraph, first sentence, by removing ''Within 30 days after the end of each fiscal year,'' and adding in its place ''The Head of the Contracting Activity may be required to report'' (this language changes what was contained in the proposed rule and provides clarity); and by removing ''Director, Office of Property Management,'' and adding in its place ''Personal Property Policy Division''; in paragraph (e), by removing ''dollar'' and adding in its place ''acquisition''; and in paragraph (e), by removing ''as reported on last semiannual asset report (including date of report),''. These changes correct the reporting process and provide the correct title of the receiving activity. Changes pertain to the Property Information Database System (PIDS) which was created by the Idaho National Lab and has been in use since the late 1990's. The PIDS system is used by both DOE and Contractors alike.

23. Subpart 945.1 is revised to add the new section ''945.102–72 Reporting of contractor sensitive property inventory'' to reflect the current sensitive property policy. To further streamline approvals for sensitive property list, this section deleted in its entirety and replace with the following language ''The contractor must develop and maintain a list of personal property items considered sensitive. Sensitive Items List must be approved by the PA/OPMO annually.''

24. Section 945.3 is amended by redesignating subpart 945.3 and section 945.303–1 as section 945.170 and section 945.170–1, respectively and by reserving section 945.3 and by using lower case letters for ''property'' and ''contractors'' in the section 945.170 title, and by adding a period at the end

of ''contractors''. These changes are made to conform to the FAR.

25. Subpart 945.4 is amended by removing and reserving this subpart in its entirety to conform to the FAR.

26. Section 945.5 title is amended by removing ''Management of Government Property in the Possession of Contractors'' and adding in its place ''Support Government Property Administration'' to conform to the FAR.

27. Section 945.505–11 is removed in its entirety to conform to the FAR.

28. Subpart 945.5 is revised by changing its title to ''945.570 Management of Government property in the possession of contractors'' to conform to the FAR.

29. Section 945.506 is removed in its entirety.

30. Section 945.570–2 is redesignated as 945.570–1 and is amended at paragraph (c) the second sentence by removing ''(GSA Form 1781)'', and adding ''via GSA AutoChoice'' after ''should be processed''. The replaced information updates the DEAR to conform to GSA's current procedures.

31. Redesignated 945.570–1(f) is amended by removing ''Motor Vehicle Rental'' and adding in its place ''Leasing of Automobiles and Light Trucks''.

32. Section 945.570–7 is redesignated as 945.570–2.

33. Section 945.570–8 is redesignated as 945.570–3 and is revised in section (a) in the first sentence, by removing ''(on or before December 1)''.

34. Redesignated 945.570–3(b) is amended after ''DOE-owned'' by adding '', GSA leased''; before ''and/or'' and by adding ''electronically'' before ''submit''.

35. Redesignated 945.570–3(b)(1) is amended by removing ''DOE Report of Motor Vehicle Data (passenger vehicles)'' and adding in its place ''Annual Motor Vehicle Fleet Report''.

36. Redesignated section 945.570–3(b)(2) is amended by removing ''DOE Report of Truck Data'' and adding in its place ''Federal Fleet Report (41 CFR 102–34.335)''.

37. Subpart 945.6 is amended by removing the subpart title ''Reporting, Redistribution, and Disposal of Contractor Inventory'' and adding in its place ''Reporting, Reutilization, and Disposal''.

38. Subpart 945.6 is amended by adding a new section ''945.602 Reutilization of Government property.'' 945.602–3(a)(1) is amended in the second sentence by changing the screening period from 15 days to 12 days, to conform with current procedures.

39. Subpart 945.6 is amended by adding a new section ''945.602–70 Local screening''.

40. Section 945.603 is redesignated as 945.670, DOE disposal methods.

41. Section 945.603–70 is amended by redesignating this section as ''945.670–1''; and removing ''FAR Subpart 45.6'' and adding in its place ''48 CFR 45.606–3''. This amendment is to conform the DEAR to the FAR.

42. Section 945.603–71 is redesignated as ''945.670–2''; and is revised by adding ''or its successor'' after ''41 CFR 109–45.50.''

43. Subpart 945.6 is amended by adding a new section 945.603 Abandonment, destruction or donation of excess personal property which refers to 48 CFR 945.670 for disposal methods. These changes are made to conform to the FAR and move current DEAR information to a new section.

44. Subpart 945.6 is amended by adding a new section 945.604 Disposal of surplus property to conform to the FAR.

45. Section 945.607–2(b) is redesignated as 945.604–1 Recovering precious metals. The office name and address are updated. Paragraph (d) references 945.670 for DOE disposal methods. By adding the other precious metals, we are aligning the DEAR to FAR 46.101.

46. Section 945.608–2 is redesignated as ''945.602–3(a)'' and is amended by removing subparagraph (b)(1) in its entirety and adding in its place ''(a) *Standard screening.* (1) Prior to reporting excess property to GSA, all reportable property, as identified in Federal Management Regulation 41 CFR 102–36.220, shall be reported for centralized screening in the DOE Energy Asset Disposal System (EADS). Reportable excess personal property will be screened internally via the EADS system for a period of 12 days.'' These changes are made to update the DEAR to the current on-line reporting timeframe.

47. Redesignated section 945.602–3(a)(1)(i) [previously 945.608–2(b)(1)] is amended in the first sentence, by removing ''REAPS'' and adding in its place ''EADS''; in the first sentence, by removing ''address code'' and adding in its place ''Activity Address Code (AAC)''; by removing the second sentence in its entirety and adding in its place ''The AAC will be assigned by DOE Headquarters upon receipt of a formal letter of authorization signed by the DOE contracting officer,'', and by removing the third sentence in its entirety. These changes are made to update the current procedure.

48. Redesignated section 945.602–3(a)(1)(ii) is amended by removing the sentence in its entirety and adding a new sentence to indicate that any changes to an Activity Address code shall be submitted to the Office of Property Management, Personal Property Policy Division, within the Headquarters procurement organization.

49. The section designated as 945.608–3 is removed. Section 945.602–70 Local screening provides the correct process and title for property screening and disposal.

50. The section designated as 945.608–4 is removed.

51. Section 945.608–5 is redesignated as 945.602–3(b)(2) and is amended in the first paragraph, by adding ''(b) *Special screening requirements.* (2) *Special test equipment with commercial components—''* prior to the redesignated text.

52. Section 945.608–5(c) is redesignated as 945.602–3(b)(3).

53. Section 945.608–6 is redesignated as 945.670–3; and is amended in paragraph (a) after requirements, by removing ''in accordance with the provisions of FAR 45.608–6.''; in both paragraphs, by removing ''Office of Property Management Division'' and adding in its place ''Personal Property Policy Division''; and in paragraph (b) by removing ''HCA'' and adding in its place ''Procurement Directors''.

54. Section 945.610–4 is redesignated as 945.671; and is amended after ''41 CFR 109–43.5 and 45.51'' by adding ''or its successor'', and adding 48 CFR 45.302 to update correct FAR citation.

55. Section 970.5244–1(k) is amended by removing the paragraph in its entirety and adding in its place ''*Government Property*''. The Contractor shall establish and maintain a property management system that complies with criteria in 48 CFR 970.5245–1, Property, and 48 CFR 52.245–1, Government Property.''

56. Section 952.245–5 is modified to reference FAR 52.245–1(e)(3) to update citation.

57. Section 970.5244–1 (q)(13) is added to correct an error in the DEAR Final Rule [74 FR 36376–36378, dated July 22, 2009] which omitted ''Products made in Federal and penal and correctional institutions—41 CFR 101–26.702.''

58. Section 970.5245–1 is amended by removing and reserving paragraph (i)(1)(ii)(B). This amendment clarifies the contract conditions for property management systems approval.

## IV. Procedural Requirements

### *A. Review Under Executive Orders 12866 and 13563*

This regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, this final rule is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011 (76 FR 3281 (Jan. 21, 2011)). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. DOE believes that today's final rule is consistent with these principles, including the requirement that, to the extent permitted by law, agencies adopt a regulation only upon a reasoned determination that its benefits justify its costs and, in choosing among alternative regulatory approaches, those approaches maximize net benefits.

### *B. Review Under Executive Order 12988*

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

### *C. Review Under the Regulatory Flexibility Act*

This rule has been reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* which requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment and which is likely to have a significant economic impact on a substantial number of small entities. This rule would not have a significant economic impact on small entities because it imposes no significant burdens. Any costs incurred by DOE contractors complying with the rule would be reimbursed under the contract.

Accordingly, DOE certifies that this rule would not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis is required and none has been prepared.

### *D. Review Under the Paperwork Reduction Act*

This final rule contains no new information collection or recordkeeping requirements. Information collection or recordkeeping requirements mentioned in this rule relative to the collection of certain contractor data are the same as the previous rule. The clearance number is 1910–4100 with an expiration date of October 31, 2014.

### *E. Review Under the National Environmental Policy Act*

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the amendments to the DEAR are strictly procedural (categorical exclusion A6). Therefore, this rule does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

### *F. Review Under Executive Order 13132*

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

### *G. Review Under the Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal mandate with costs to State, local or tribal governments, or to the private sector of

$100 million or more in any single year. This rule does not impose a federal mandate on State, local or tribal governments or the private sector.

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

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any rulemaking or policy that may affect family well-being. This rule will have no impact on family well-being.

*I. Review Under Executive Order 13211*

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001), requires Federal agencies to prepare and submit to OIRA OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This final rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

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

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

*K. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996*

As required by 5 U.S.C. 801, the Department will report to Congress promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(3).

*L. Approval by the Office of the Secretary of Energy*

The Office of the Secretary of Energy has approved issuance of this final rule.

**List of Subjects in 48 CFR Parts 908, 945, 952 and 970**

Government procurement.

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

**Paul Bosco,**

*Director, Office of Acquisition and Project Management, Department of Energy.*

**Joseph W. Waddell,**

*Director, Office of Acquisition Management, National Nuclear Security Administration.*

For the reasons set out in the preamble, the Department of Energy (DOE) amends Chapter 9 of Title 48 of the Code of Federal Regulations as set forth below.

## PART 908—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 1. The authority citation for part 908 continues to read as follows:

**Authority:** 42 U.S.C. 7101, *et seq.;* 50 U.S.C. 2401, *et seq.*

■ 2. Section 908.1102 is revised to read as follows:

**908.1102 Presolicitation requirements.**

■ 3. Section 908.1102–70 is added to read as follows:

**908.1102–70 Vehicle leasing.**

(a)(4) Commercial vehicle lease sources may be used only when the General Services Administration (GSA) has advised that it cannot furnish the vehicle(s) through the Interagency Motor Pool System and it has been determined that the vehicle(s) are not available through the GSA Consolidated Leasing Program. All subsequent lease renewals or extensions may be exercised only when GSA has advised that it cannot furnish the vehicle(s) as prescribed herein.

**908.1104 [Amended]**

■ 4. Section 908.1104 is amended by removing ''(FPMR) 41 CFR 101–38.6'' in paragraph (f) and adding in its place ''Federal Management Regulation (FMR) 41 CFR 102–34.160, 102–34.175, and 102–34.180''.

■ 5. Section 908.7101–2 is amended by:

■ a. Revising paragraph (a); and

■ b. Removing ''on GSA Form 1781, Motor Vehicle Requisition—Delivery Order—Invoice,'' in paragraph (b), and adding in its place ''utilizing GSA's on-line system (Auto Choice)''.

The revision reads as follows:

**908.7101–2 Consolidated acquisition of new vehicles by General Services Administration.**

(a) New vehicles shall be procured in accordance with Federal Property Management Regulations (FPMR) 41 CFR 101–26.501, and 41 CFR 102–1 through 102–220, and Department of Energy Property Management Regulations (DOE–PMR) 41 CFR 109–26.501. Orders for all motor vehicles must be placed utilizing GSA's online vehicle purchasing system (AutoChoice).

* * * * *

**908.7101–3 [Amended]**

■ 6. Section 908.7101–3 is amended by:

■ a. Removing in the second sentence ''Office of Property Management'' and adding in its place ''Personal Property Policy Division.'';

■ b. Removing ''those'' in the third sentence; and

■ c. Removing ''(See DOE–PMR 41 CFR 109–38.5102–4)'' in the last sentence and adding in its place ''(See 41 CFR 109–26.501–1)''.

**908.7101–4 [Amended]**

■ 7. Section 908.7101–4 is amended by removing ''FPMR 41 CFR 101–38.9 and DOE–PMR 41 CFR 109–38.9'' in paragraph (a), and adding in its place ''41 CFR 102–34.270 and 109–38.402''.

**908.7101–5 [Amended]**

■ 8. Section 908.7101–5 is amended by removing ''DOE–PMR 41 CFR 109–38.5102,'' in the third sentence and adding in its place ''41 CFR 109–26.501–50 and 109–26.501–51,''.

**908.7101–6 [Amended]**

■ 9. Section 908.7101–6 is amended by:

■ a. Removing in paragraph (a), in the second sentence ''Office of Property Management'' and adding in its place ''Personal Property Policy Division''; and

■ b. Removing the last three sentences in paragraph (a), and adding one sentence in their place to read as set forth below;

■ c. Removing ''Sedans'' and adding ''Approved sedans'' at the beginning of the first sentence of paragraph (b);

■ d. Removing in paragraph (b) ''according to an approved forecast'' ; and

■ e. Removing in paragraph (b) ''will'' and adding in its place ''shall''.

**908.7101–6 Acquisition of fuel-efficient vehicles.**

(a) * * * Such forecast shall be submitted to the Property Executive, or designee.

* * * * *

■ 10. Section 908.7101–7 is amended by:

■ a. Removing ''FPMR 41 CFR 101–38.303.'' in paragraph (a) and adding in its place ''41 CFR 102–34.140.'';

■ b. Revising paragraph (b); and

■ c. Removing ''DOE–PMR 41 CFR 109–38.3 and 109–38.6'' in paragraph (e) and adding in its place ''41 CFR 109–38.202–2 and 109–38.202–3''.

The revision reads as follows:

**908.7101–7 Government license tags.**

* * * * *

(b) The letter ''E'' has been designated as the prefix symbol for all DOE official license tags. Assignment of new tag numbers will be made by UNICOR via the UNICOR online vehicle license tag ordering data base. Contractors must obtain approval from their Federal fleet manager or OPMO for authorization to utilize the UNICOR data base. Director, Personal Property Policy Division, within the Headquarters procurement organization will maintain tag assignment records issued by UNICOR.

* * * * *

■ 11. Section 908.7102 is revised to read as follows:

**908.7102 Aircraft.**

Acquisition of aircraft shall be in accordance with 41 CFR 102–33, subpart B and DOE Order 440.2B latest revision.

**908.7103 [Amended]**

■ 12. Section 908.7103 is amended by removing '' 41 CFR 101–25.302–3, 101–25.302–4, and 101–25.302–6, and 101–25.403,'', and ''109–25.302–3,''.

**908.7104 [Amended]**

■ 13. Section 908.7104 is amended by removing ''101–25.302–1,'', ''and 101–25.302–8,'' and ''109–25.302–1,''.

■ 14. Section 908.7121 is revised to read as follows:

**908.7121 Special materials.**

This section covers the purchase of materials peculiar to the DOE program. While purchases of these materials may be unclassified, the specific quantities, destination or use may be classified (see appropriate sections of the Classification Guide). Contracting officers shall require authorized contractors to obtain the special materials identified in the following subsections in accordance with the following procedures:

(a) *Heavy water.* The Senior Program Official or designee controls the acquisition and production of heavy water for a given program. Request for orders shall be placed directly with the cognizant Senior Program Official or designee.

(b) *Precious metals.* (1) NNSA, Y–12 National Security Complex in Oak Ridge, TN is responsible for maintaining the DOE supply of precious metals. These metals are platinum, palladium, iridium, osmium, rhodium, ruthenium, gold and silver. The NNSA Y–12 National Security Complex has assigned management of these precious metals to its Management and Operating (M&O) contractor. DOE and NNSA offices and authorized contractors shall coordinate with the Y–12 M&O contractor regarding the availability of these metals prior to purchasing in the open market.

(2) For contractor inventory containing precious metals or possessing precious metals excess, see 945.604–1 for contractor identification and reporting.

(c) *Lithium.* Lithium is available from Y–12 at no cost other than normal packing, handling, and shipping charges from Oak Ridge. The excess quantities at Y–12 are the first source of supply prior to procurement of lithium compounds from any other source.

■ 15. Part 945 is revised to read as follows:

## PART 945—GOVERNMENT PROPERTY

Sec.
945.000 Scope of part.

**Subpart 945.1—General**

945.101 Definitions.
945.102–70 Reporting of contractor-held property.
945.102–71 Maintenance of records.
945.102–72 Reporting of contractor sensitive property inventory.
945.170 Providing Government property to contractors.
945.170–1 Policy.

**Subpart 945.3—[Reserved]**

**Subpart 945.4—[Reserved]**

**Subpart 945.5—Support Government Property Administration**

945.570 Management of Government property in the possession of contractors.
945.570–1 Acquisition of motor vehicles.
945.570–2 Disposition of motor vehicles.
945.570–3 Reporting motor vehicle data.

**Subpart 945.6—Reporting, Reutilization, and Disposal**

945.602 Reutilization of Government property.
945.602–3 Screening.
945.602–70 Local screening.
945.603 Abandonment, destruction or donation of excess personal property.
945.604 Disposal of surplus property.
945.604–1 Disposal methods.
945.670 DOE disposal methods.
945.670–1 Plant clearance function.
945.670–2 Disposal of radioactively contaminated personal property.
945.670–3 Waiver of screening requirements.
945.671 Contractor inventory in foreign countries.

**Authority:** 42 U.S.C. 7101, *et seq.;* 50 U.S.C. 2401, *et seq.*

**945.000 Scope of part.**

This part and 48 CFR part 45 are not applicable to the management of property by management and operating contractors, unless otherwise stated.

### Subpart 945.1—General

**945.101 Definitions.**

*Capital equipment,* as used in this part, means personal property items having anticipated service life in excess of two years, regardless of type of funding, and having the potential for maintaining their integrity as capital items, i.e., not expendable due to use; dollar threshold for capital equipment is as established by the DOE Financial Management Handbook.

*Personal property,* as used in this part, means property of any kind or interest therein, except real property, records of the Federal Government, and nuclear and special source materials, atomic weapons, and by-product materials.

*Sensitive property,* as used in this part, has the meaning contained in 48 CFR 45.101.

**945.102–70 Reporting of contractor-held property.**

The Head of the Contracting Activity may be required to report the following information to the Personal Property Policy Division, within the Headquarters procurement organization:

(a) Name and address of each contractor with DOE personal property in their possession, or in the possession of their subcontractors (do not include grantees, cooperative agreements, interagency agreements, or agreements with state or local governments).

(b) Contract number of each DOE contract with Government personal property.

(c) Date contractor's property management system was approved and by whom (DOE office, Defense Contract

Management Command, or the Office of Naval Research).

(d) Date of most current appraisal of contractor's property management system, who conducted the appraisal, and status of the system (satisfactory or unsatisfactory).

(e) Total acquisition value of DOE personal property for each DOE contract administered by the contracting activity.

#### 945.102–71 Maintenance of records.

The contracting activity shall maintain records of approvals and reviews of contractors' property management systems, the dollar value of DOE property as reported on the most recent semiannual financial report, and records on property administration delegations to other Government agencies.

#### 945.102–72 Reporting of contractor sensitive property inventory.

The contractor must develop and maintain a list of personal property items considered sensitive. Sensitive Items List must be approved by the PA/OPMO annually.

#### 945.170 Providing Government property to contractors.

#### 945.170–1 Policy.

The DOE has established specific policies concerning special nuclear material requirements needed under DOE contracts for fabricating end items using special nuclear material, and for conversion or scrap recovery of special nuclear material. *Special nuclear material* means uranium enriched in the isotopes U233 or U235, and/or plutonium, other than PU238. The policies to be followed are:

(a) Special nuclear material will be furnished by the DOE for fixed-price contracts and subcontracts, at any tier, which call for the production of special nuclear products, including fabrication and conversion, for Government use. (The contractor or subcontractor must have the appropriate license or licenses to receive the special nuclear material. The Nuclear Regulatory Commission is the licensing agency.)

(b) Contracts and subcontracts for fabrication of end items using special nuclear material generally shall be of the fixed-price type. Cost-type contracts or subcontracts for fabrication shall be used only with the approval of the Head of the Contracting Activity. This approval authority shall not be further delegated.

(c) Contracts and subcontracts for conversion or scrap recovery of special nuclear material shall be of a fixed-price type, except as otherwise approved by the Head of the Contracting Activity.

## Subpart 945.3—[Reserved]

## Subpart 945.4—[Reserved]

## Subpart 945.5—Support Government Property Administration

#### 945.570 Management of Government property in the possession of contractors.

#### 945.570–1 Acquisition of motor vehicles.

(a) GSA Interagency Fleet Management System (GSA–IFMS) is the first source of supply for providing motor vehicles to contractors; however, contracting officer approval is required for contractors to utilize this service.

(b) Prior approval of GSA must be obtained before—

(1) Fixed-price contractors can use the GSA–IFMS;

(2) DOE-owned motor vehicles can be furnished to any contractor in an area served by GSA–IFMS; and

(3) A contractor can commercially lease a motor vehicle for more than 60 days after GSA has determined that it cannot provide the required vehicle.

(c) GSA has the responsibility for acquisition of motor vehicles for Government agencies. All requisitions shall be processed via GSA AutoChoice in accordance with 41 CFR 101–26.501.

(d) Contractors shall submit all motor vehicle requirements to the contracting officer for approval.

(e) The acquisition of sedans and station wagons is limited to small, subcompact, and compact vehicles which meet Government fuel economy standards. The acquisition of light trucks is limited to those vehicles which meet the current fuel economy standards set by Executive Orders 12003 and 12375.

(f) Cost reimbursement contractors may be authorized by the contracting officer to utilize GSA Federal Supply Schedule 751, Leasing of Automobiles and Light Trucks, for short term rentals not to exceed 60 days, and are required to utilize available GSA consolidated leasing programs for long term (60 continuous days or longer) commercial leasing of passenger vehicles and light trucks.

(g) The Personal Property Policy Division, within the Headquarters procurement organization shall certify all requisitions prior to submittal to GSA for the following:

(1) The acquisition of sedans and station wagons.

(2) The lease (60 continuous days or longer) of any passenger automobile.

(3) The acquisition or lease (60 continuous days or longer) of light trucks less than 8,500 GVWR.

(h) Purchase requisitions for other motor vehicles may be submitted directly to GSA when approved by the contracting officer.

(i) Contractors shall thoroughly examine motor vehicles acquired under a GSA contract for defects. Any defect shall be reported promptly to GSA, and repairs shall be made under terms of the warranty.

#### 945.570–2 Disposition of motor vehicles.

(a) The contractor shall dispose of DOE-owned motor vehicles as directed by the contracting officer.

(b) DOE-owned motor vehicles may be disposed of as exchange/sale items when directed by the contracting officer; however, a designated DOE official must execute the Title Transfer forms (SF–97).

#### 945.570–3 Reporting motor vehicle data.

(a) Contractors conducting motor vehicle operations shall forward annually to the contracting officer their plan for acquisition of motor vehicles for the next fiscal year for review, approval and submittal to DOE Headquarters. This plan shall conform to the fuel efficiency standards for motor vehicles for the applicable fiscal year, as established by Executive Orders 12003 and 12375 and as implemented by GSA and current DOE directives. Additional guidance for the preparation of the plan will be issued by the contracting officer, as required.

(b) Contractors operating DOE-owned, GSA leased and/or commercially leased (for 60 continuous days or longer) motor vehicles shall prepare and electronically submit the following annual year-end reports to the contracting officer:

(1) Annual Motor Vehicle Fleet Report.

(2) Federal Fleet Report (41 CFR 102–34.335).

## Subpart 945.6—Reporting, Reutilization, and Disposal

#### 945.602 Reutilization of Government property.

#### 945.602–3 Screening.

(a) *Standard screening.* (1) Prior to reporting excess property to GSA, all reportable property, as identified in Federal Management Regulations 41 CFR 102–36.220, shall be reported for centralized screening in the DOE Energy Asset Disposal System (EADS). Reportable excess personal property will be screened internally via the EADS system for a period of 12 days.

(i) EADS requires the inclusion of a six character Activity Address Code (AAC) which identifies the reporting contractor. The AAC will be assigned by DOE Headquarters upon receipt of a

formal letter of authorization signed by the DOE contracting officer.

(ii) Requests to establish, extend or delete an Activity Address Code shall be submitted by the contracting officer to the Office of Property Management, Personal Property Policy Division, within the Headquarters procurement organization.

(b) *Special screening requirements.* (2) *Special test equipment with commercial components.*—Prior to reporting the property to GSA in accordance with 48 CFR 45.604–1 (a), (b) and (c), the property shall be reported and screened within DOE in accordance with 945.602–3(a) and 945.602–70.

(3) *Printing equipment.* All printing equipment excess to requirements shall be reported to the Office of Administration at Headquarters.

**945.602–70 Local screening.**

Local screening shall be done using EADS.

**945.603 Abandonment, destruction or donation of excess personal property.**

See 945.670 for DOE disposal methods.

**945.604 Disposal of surplus property.**

**945.604–1 Disposal methods.**

(b)(3) *Recovering precious metals.* Contractors generating contractor inventory containing precious metals or possessing precious metals excess to their programmatic requirements, shall identify and promptly report such items to the contracting officer for review, approval and reporting to the DOE Business Center for Precious Metals Sales & Recovery (Business Center). This includes Gold, Silver, Platinum, Rhodium, Palladium, Iridium, Osmium, and Ruthenium in any form, shape, concentration, or purity. Report all RCRA contaminated precious metals, but not radiological contaminated. The Y–12 NNSA Site Office is responsible for maintaining the DOE Business Center. Precious metals scrap will be reported to the DOE Business Center.

(d) See 945.670 for DOE disposal methods.

**945.670 DOE disposal methods.**

**945.670–1 Plant clearance function.**

If the plant clearance function has not been formally delegated to another Federal agency, the contracting officer shall assume all responsibilities of the plant clearance officer identified in 48 CFR 45.606–3.

**945.670–2 Disposal of radioactively contaminated personal property.**

Special procedures regarding the disposal of radioactively contaminated property may be found at 41 CFR 109–45.50 and 45.51, or its successor.

**945.670–3 Waiver of screening requirements.**

(a) The Director of the Personal Property Policy Division, within the Headquarters procurement organization may authorize exceptions from screening requirements.

(b) A request to the Director of the Personal Property Policy Division, within the Headquarters procurement organization for the waiver of screening requirements must be submitted by the Procurement Directors with a justification setting forth the compelling circumstances warranting the exception.

**945.671 Contractor inventory in foreign countries.**

Contractor inventory located in foreign countries will be utilized and disposed of in accordance with 41 CFR 109–43.5 and 45.41, or its successor and 48 CFR 45.302.

## PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 16. The authority citation for part 952 continues to read as follows:

**Authority:** 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.*

**952.245–5 [Amended]**

■ 17. Section 952.245–5 is amended by removing ''FAR 52.245–5'' and adding in its place ''FAR 52.245–1''.

## PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

■ 18. The authority citation for part 970 continues to read as follows:

**Authority:** 42 U.S.C. 2201: 2282a: 2282b: 2282c: 42 U.S.C. 7101 *et seq.:* 50 U.S.C. 2401 *et seq.*

■ 19. Section 970.5244–1 is amended by:

■ a. Revising the clause date to read as set forth below;

■ b. Revising clause paragraph (k); and

■ c. Adding paragraph (q)(13).

The revisions and additions read as follows:

**970.5244–1 Contractor purchasing system.**

* * * * *

**CONTRACTOR PURCHASING SYSTEM (JAN 2013)**

* * * * *

(k) *Government Property.* The Contractor shall establish and maintain a property management system that complies with criteria in 48 CFR 970.5245–1, Property, and 48 CFR 52.245–1, Government Property.

* * * * *

(q) * * *

(13) Products made in Federal penal and correctional institutions—41 CFR 101–26.702.

* * * * *

■ 20. Section 970.5245–1 is amended by:

■ a. Revising the date of the clause to read as set forth below;

■ b. Removing and reserving paragraph (i)(1)(ii)(B).

The revision reads as follows:

**970.5245–1 Property.**

* * * * *

**PROPERTY (JAN 2013)**

* * * * *

(i) * * *

(1) * * *

(ii) * * *

(B) [Reserved];

* * * * *

[FR Doc. 2012–30189 Filed 12–13–12; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 622

**[Docket No. 100812345–2142–03]**

**RIN 0648–XC381**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2012 Commercial Accountability Measure and Closure for Atlantic Wahoo

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS implements accountability measures (AMs) for the commercial sector for Atlantic wahoo (wahoo) in the exclusive economic zone (EEZ) off the Atlantic states (Maine through the east coast of Florida). Commercial landings for wahoo, as estimated by the Science and Research Director, are projected to reach the commercial annual catch limit (ACL) on December 19, 2012. Therefore, NMFS closes the commercial sector for wahoo on December 19, 2012, for the remainder of the 2012 fishing year, through December 31, 2012. This action is necessary to protect the Atlantic wahoo resource.

**DATES:** This rule is effective 12:01 a.m., local time, December 19, 2012, until 12:01 a.m., local time, January 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** Catherine Hayslip, telephone: 727–824–5305, email: *Catherine.Hayslip@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The dolphin and wahoo fishery off the Atlantic states is managed under the Fishery Management Plan for the Dolphin and Wahoo Fishery of the Atlantic (FMP). The FMP was prepared by the South Atlantic Fishery Management Council, in cooperation with the Mid-Atlantic and New England Fishery Management Councils, and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

## Background

The commercial ACL for wahoo is 64,147 lb (29,097 kg), round weight, as specified in 50 CFR 622.49(f)(1).

The AMs for wahoo, specified at 50 CFR 622.49(f)(1), require NMFS to close the commercial sector for wahoo when the commercial ACL for wahoo has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the **Federal Register**. NMFS has determined that the commercial ACL for Atlantic wahoo has been met. Accordingly, the commercial sector for wahoo in the EEZ off the Atlantic states (Maine through the east coast of Florida) is closed effective 12:01 a.m., local time, December 19, 2012, until 12:01 a.m., local time, January 1, 2013.

The operator of a vessel with a valid commercial vessel permit for Atlantic dolphin and wahoo having wahoo onboard must have landed and bartered, traded, or sold such wahoo prior to 12:01 a.m., local time, December 19, 2012. During this commercial closure, the bag and possession limit specified in 50 CFR 622.39(f) applies to all harvest or possession of wahoo in or from the Atlantic EEZ, and the sale or purchase of wahoo taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to the sale or purchase of wahoo that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, December 19, 2012, and were held in cold storage by a dealer or processor.

## Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of wahoo off the Atlantic states and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.49(f)(1) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately implement this action to close the commercial sector for wahoo constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule that implemented the Atlantic wahoo ACL and AMs has been subject to notice and comment (77 FR 15916, March 16, 2010), and all that remains is to notify the public of the closure. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the wahoo resource. The capacity of the fishing fleet allows for rapid harvest of the ACL and prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established commercial ACL.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: December 11, 2012.

**James P. Burgess,**

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

[FR Doc. 2012–30218 Filed 12–11–12; 4:15 pm]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 111220786–1781–01]**

**RIN 0648–XC391**

# Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Available for the State of New York To Reopen Fishery

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

**ACTION:** Temporary rule.

**SUMMARY:** NMFS announces that the 2012 summer flounder commercial fishery in the State of New York will be reopened to provide the opportunity for the fishery to fully harvest the available quota. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may land summer flounder in New York until the quota is fully harvested. Regulations governing the summer flounder fishery require publication of this notification to advise New York that quota remains available and the summer flounder fishery is open to vessel permit holders for landing summer flounder in New York and to inform dealer permit holders in New York that they may purchase summer flounder.

**DATES:** Effective at 0001 hr local time, December 12, 2012, through 2400 hr local time December 31, 2012.

**FOR FURTHER INFORMATION CONTACT:** Carly Bari, (978) 281–9224, or *Carly.Bari@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102.

The initial total commercial quota for summer flounder for the 2012 fishing year is 13,136,001 lb (5,958,490 kg) (76 FR 82189, December 30, 2011). The percent allocated to vessels landing summer flounder in New York is 7.64699 percent, resulting in a commercial quota of 1,004,509 lb (455,645 kg). The 2012 allocation was reduced to 922,705 lb (418,539 kg) after deduction of research set-aside and

adjustment for quota overages carried forward from 2011. However, NMFS determined on December 5, 2012, that this quota allocation was incorrect due to an error in determining the 2012 commercial summer flounder quota. The correct 2012 allocation to New York is 953,773 lb (432,624 kg).

The Administrator, Northeast Region, NMFS (Regional Administrator), monitors the state commercial quotas and has determined that, due to the error, there is commercial summer flounder quota available for harvest in New York. NMFS is required to publish notification in the **Federal Register** to reopen the fishery, advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, there is commercial quota available for landing summer flounder in that state.

Therefore, effective 0001 hours, December 12, 2012, vessels holding summer flounder commercial Federal fisheries permits can land summer flounder in New York until the corrected commercial state quota is fully harvested. Effective 0001 hours December 12, 2012, federally permitted dealers can also purchase summer flounder from federally permitted vessels that land in New York until the corrected commercial state quota is fully harvested.

## Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: December 10, 2012.

**Lindsay Fullenkamp,**

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

[FR Doc. 2012–30216 Filed 12–11–12; 4:15 pm]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 77, No. 241
Friday, December 14, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF EDUCATION

### 34 CFR Parts 75 and 77

**RIN 1890–AA14**

**[Docket ID ED–2012–OII–0026]**

## Direct Grant Programs and Definitions That Apply to Department Regulations

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the regulations in 34 CFR parts 75 and 77 of the Education Department General Administrative Regulations (EDGAR) in order to improve the Department's ability to promote projects supported by evidence; evaluate the performance of discretionary grant programs and grantee projects; review grant applications using selection factors that promote reform objectives related to project evaluation, sustainability, productivity, and capacity to scale; and reduce burden on grantees in selecting implementation sites, implementation partners, or evaluation service providers for their proposed projects. These proposed changes would allow the Department to be more effective and efficient when selecting discretionary grantees, provide higher-quality data to Congress and the public, and better focus applicants on the particular goals and objectives of the programs to which they apply for grants.

**DATES:** We must receive your comments on or before February 12, 2013.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How To Use This Site.''
- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed regulations, address them to Margo Anderson, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W313, Washington, DC 20202–5900.

**Privacy Note:** The Department's policy for comments received from members of the public is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** Erin McHugh, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W319, Washington, DC 20202. Telephone: (202) 401–1304 or by email: *erin.mchugh@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or text telephone (TTY), call the Federal Relay Service (FRS) toll free at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Invitation to Comment on Proposed Regulations

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

Because Executive Order 12866 and the presidential memorandum on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand, we invite you to comment on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 75.210 General selection criteria.
- Could the description of the proposed regulations in this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

### Retrospective Review of EDGAR

On January 21, 2011, President Obama issued Executive Order 13563, ''Improving Regulation and Regulatory Review'' (76 FR 3821). The order requires all Federal agencies to ''consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Accordingly, on August 22, 2011, the Department issued its Plan for Retrospective Analysis of Existing Regulations. (See *ed.gov/policy/gen/reg/retrospective-analysis/index.html*).

Our plan identified a number of regulatory initiatives for retrospective review and analysis. One of those initiatives, already begun in 2010, was a review of the Department's discretionary grants process. Part of that initiative was a close retrospective review of the Education Department General Administrative Regulations (EDGAR), which govern discretionary grantmaking and administration.

As part of this retrospective review of EDGAR, we identified key provisions that required substantive changes to improve transparency and the efficiency and effectiveness of our grant-making

functions. These included our regulations on establishing and collecting data on measures of grantee performance, the selection criteria that peer reviewers use to evaluate applications, and the procedures grantees must use to select research sites and evaluators. This notice is the result of the Department's regulatory review of those provisions.

On May 10, 2012, President Obama issued Executive Order 13610, ''Identifying and Reducing Regulatory Burdens.'' (77 FR 28469). Among other things and as part of their retrospective review, this order requires Federal agencies to invite ''public suggestions about regulations in need of retrospective review and about appropriate modifications to such regulations.''

Therefore, in addition to your comments on the specific regulations proposed in this notice, we seek input on other regulations within EDGAR that may be in need of modification and amendments to those regulations that you would suggest. We are particularly interested in your feedback on the following questions:

- Are the regulations achieving their intended outcomes, e.g., do they establish a fair and equitable process for selecting applications for funding while ensuring transparency in the selection process and enhancing accountability for funding decisions?
- Have changes in the economy or other external factors led to an increase or decrease in costs imposed on applicants for, and recipients of, discretionary grants?
- Are any of the regulations outmoded, unnecessary, or out of date?
- Do the regulations cause confusion or create other questions? If so, how could we amend the regulations to address this problem?
- What do relevant data show about the effectiveness and benefits of the regulations in comparison to their costs?

Although the Department may or may not respond to comments that we receive on the retrospective review of these other provisions of EDGAR, we will use that feedback to further inform and plan our retrospective review efforts.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments, in person, in Room 4W335, 400 Maryland Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record**

On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**Summary of Proposed Changes**

In this notice, the Secretary proposes amendments that would:

1. Allow the Secretary, in an application notice for a competition, to establish performance measurement requirements;
2. Revise requirements regarding project evaluations submitted to the Department by grantees;
3. Authorize applicants to use simplified procurement procedures to select implementation sites and procure services from implementation and evaluation service providers, but only if the site or service provider is named in the grant application;
4. Allow the Secretary, through an announcement in the **Federal Register**, to authorize grantees under particular programs to award subgrants to directly carry out programmatic activities. The subgrantees and programmatic activities must be identified and described in the grantees' applications;
5. Add one new selection criterion and revise two existing criteria that the Department could choose to use to evaluate applications. The new criterion would be used to assess the extent to which a proposed project could be brought to scale. We would add five new factors to the criterion ''Quality of the Project Evaluation'' that could be used to assess how well a proposed project evaluation would produce evidence about the project's effectiveness. Finally, we would revise one factor and add five new factors to the criterion ''Quality of the Project Design'';
6. Authorize program offices to consider the effectiveness of proposed projects under a new priority that could be used as either an absolute, competitive preference, or invitational priority; and
7. Allow the Secretary to fund data collection periods after the end of the substantive work of a project so that project outcomes could be assessed using data from the entire project period.

As discussed in more detail later in this notice, the proposed changes would strengthen the Secretary's authority to: (a) Evaluate grantee performance; (b) provide applicants and grantees with greater flexibility in selecting implementation sites, implementation partners, and evaluation service providers; (c) allow the Secretary to authorize subgrants for particular programs; (d) improve the targeting of selection criteria and factors so that applicants are better informed and able to focus their application narratives on specific program objectives; and (e) allow consideration of the strength of evidence supporting the proposed project when evaluating grant applications.

**Significant Proposed Regulations**

We group major issues according to subject, with appropriate sections of the proposed regulations referenced in parentheses. We discuss other substantive issues under the sections of the proposed regulations to which they pertain.

Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

**I. Performance Measurement**

*Background*

Congress passed the Government Performance and Results Act of 1993 (GPRA) (Pub. L. 103–62) in order to hold Federal agencies accountable for achieving program results. Under GPRA, agencies are required to report to Congress on the effectiveness of the programs they administer, based on performance measures established for those programs.

The purposes of GPRA are to improve Federal program effectiveness and accountability to the public by: Focusing on results, service quality, and customer satisfaction; giving Federal program managers information about program results and service quality; and providing objective information to Congress and the public on the relative effectiveness and efficiency of Federal programs and spending. The GPRA Modernization Act of 2010 (Pub. L. 111–352) supports additional improvements in Federal agencies' performance planning and reporting. Federal agencies are required to make their strategic and annual plans publicly available and post quarterly updates via a central, Government-wide Web site. The goal of the GPRA Modernization Act is to improve the use of data in

policy, budget, and management decision-making.

GPRA requires Federal agencies to establish performance measures and targets for programs they administer and to report annually to the Office of Management and Budget (OMB) on the extent to which those programs are meeting their targets. For discretionary (non-formula) grant programs, the Department establishes performance measures to address the extent to which the program as a whole is effective in achieving its goals through the projects it funds. However, we have found that grantees' performance data do not consistently correspond to overall program performance measures because grantees typically only report on and measure data related to project-specific outcomes.

The Secretary therefore proposes the following amendments to improve the Department's ability to collect reliable, valid, and meaningful data for evaluating the outcomes of Department programs and the performance of individual grantees.

**Proposed Regulatory Changes**

*34 CFR Part 75*

Section 75.110 Information Regarding Performance Measurement

*Current Regulations:* None.

*Proposed Regulations:* Proposed § 75.110 would allow the Secretary to establish performance measurement requirements in an application notice for a competition. These requirements could include performance measures, baseline data, performance targets, and performance data. This proposed section would also allow the Secretary to establish in an application notice a requirement that applicants propose performance measures for their projects, as well as the baseline data and performance targets for each proposed measure.

*Reasons:* To improve the likelihood that grantees collect and report data that effectively measure the outcomes of each grant, the proposed amendments would allow the Secretary to require discretionary grant applicants to include program-level and project-specific performance measures, baseline data, and targets in their applications. Requiring this information improves the ability of the Department to measure program effectiveness under GPRA performance measures, clarifies that grantees will be required to report on their project-specific performance measures, and stresses that the extent to which grantees meet performance targets will be considered in making continuation grants.

**II. Procurement and Subgrant Processes for Entities Named in Applications**

*Proposed Regulatory Changes*

34 CFR Part 75

*Background:*

From our experience, many applicants find it useful to describe elements of their proposed evaluations in their applications, including implementation sites or the provider that would conduct the project evaluation should the proposed project be funded. This information is often an important factor in the Department's peer review of discretionary grant applications, particularly in instances when the quality of the project evaluation is a selection criterion.

The Department's procurement regulations in 34 CFR 74.43 and 34 CFR 80.36(c) provide that a grantee must conduct its procurement transactions in a manner that provides, to the maximum extent practical, full and open competition. This requirement is intended to ensure that grantees consider contractor performance objectively and offer an opportunity for providers to compete for the contract. While the Department values full and open competition, the Department also recognizes that this requirement presents challenges for applicants whose applications would be strengthened by including details about the implementation sites and the evaluation service provider. The Secretary proposes to reduce this burden by simplifying the procurement process used to select implementation sites, implementation partners, and evaluation service providers.

Section 75.135 Competition Exception for Implementation Sites, Implementation Partners, or Evaluation Service Providers

*Current Regulations:* There is no current § 75.135. The Department's procurement regulations in 34 CFR 74.43 and 34 CFR 80.36(c) provide that a grantee must conduct its procurement transactions in a manner that provides full and open competition. In many cases, grantees must use formal competition procedures to select contractors. Under these current provisions, an applicant for a grant requiring an evaluation would need, in many cases, to conduct a formal bidding process to select implementation sites, implementation partners, or evaluation service providers before submitting its application to the Department or following award of the grant. These types of procurement requirements can be very costly and time consuming at a time when the applicant cannot be sure it will be selected for a grant. Because the selection of implementation sites or partners and evaluation service providers is often an important factor in designing a project and submitting a high-quality application, we propose an exception to the Department's procurement regulations for entities named in a grant application.

*Proposed Regulations:* The Secretary proposes to add a new § 75.135 that would exempt certain applicants from the full competitive contracting requirements in 34 CFR 74.43 and 80.36(c). Specifically, an applicant for a grant that must be conducted at multiple sites or that requires an external evaluation would not be required to comply with the applicable formal competition requirements in 34 CFR 74.43 and 80.36(c) when entering into a contract if—

(1) The contract is with an entity that agrees to provide a site or sites where the applicant would conduct the project activities under the grant or the contract is with the evaluation service provider that would conduct the project evaluation;

(2) The implementation sites, implementation partners, or evaluation service providers are identified in the application for the grant; and

(3) The implementation sites, implementation partners, or evaluation service providers are included in the application in order to meet a regulatory, statutory, or priority requirement related to the competition.

A successful applicant would need to certify that any employee, officer, or agent participating in the selection, award, or administration of a contract is free of any real or apparent conflict of interest.

In the case of a contract for a provider to conduct the project evaluation, the proposed amendment would permit the applicant or grantee to use the informal competition requirements for small purchases that are currently applicable only to governments under 34 CFR 80.36(d)(1), regardless of whether the applicant or grantee is a government entity and regardless of whether the purchase meets the small purchase threshold.

During the course of the grant, a successful applicant would be required to obtain the Department's permission to change any implementation site, implementation partner, or evaluation service provider that the applicant specified in the application and selected under proposed § 75.135. The exception also would not relieve an applicant of the obligation to conduct an informal review of evaluation service providers

in order to determine the best available provider or from its obligations under the Department's other procurement requirements.

A successful applicant that does not meet the three criteria above would not be exempt from complying with the applicable formal competition requirements in 34 CFR 74.43 and 80.36(c) when entering into a contract. For example, an applicant that does not identify its implementation sites, implementation partners, or evaluation service provider in its application would be required to comply with the applicable formal competition requirements in 34 CFR 74.43 and 80.36(c).

*Reasons:* This proposed new section addresses a difficulty many applicants face when selecting implementation sites, partners, and evaluation service providers prior to submitting their applications. Requiring grantees to use formal competitive procedures to select implementation sites and partners could significantly diminish both the ability of many applicants to compete for grants and the quality of project evaluations. For example, without this proposed regulation, a successful applicant would be limited in its ability to select implementation sites that include specific populations that it proposed to serve through the project or to work with the evaluation service provider that assisted in designing the applicant's evaluation plan.

Formal competition requirements also inhibit the ability of many applicants to select evaluators who would work with the applicants to design project evaluation plans. Some of the best evaluations of projects may be conducted by evaluation service providers that are involved in the initial design of a project. Such work generally takes place during the development of an application, before the applicant knows whether it will receive a grant. Thus, requiring an applicant to hold a formal competition involving sealed bids or competitive proposals in order to select an evaluation service provider (either before or after it receives a grant) can have major negative consequences. For example, an evaluation service provider would be excluded from the competition to select the project evaluator under the procurement requirements in parts 74 and 80 if it helped prepare an application and helped the applicant set up the standards used to select an evaluation service provider or contractor (see 34 CFR 74.42, 74.43, and 80.36). High-quality evaluation of a project funded by the Department may be hindered if an evaluation service provider that designed the evaluation strategy for an application is excluded from the evaluation procurement competition for that project. Given the uncertainty of the competitive process, the Secretary also believes that applicants should not be required to use formal competition procedures to select an evaluation service provider at the time they prepare their applications.

While the Secretary proposes to remove the competition requirement for selecting sites and implementation partners and thus permit applicants and grantees to use informal procedures instead, the Secretary would continue to require all applicants to comply with the other procurement requirements in parts CFR 74 and 80, including the requirements for cost price analysis, standards of conduct, conflicts of interest, and the prohibition of contingent payment for services. Additionally, the proposed amendment does not supersede any State laws regarding procurement.

Finally, based on the other procurement requirements in CFR parts 74 and 80, these exceptions would not relieve an applicant of its responsibility to document that it made genuine efforts to select the best implementation sites, implementation partners, or evaluation service providers for the project, considering qualifications, capabilities, availability, price, and other important factors.

§ 75.708 Prohibition on Subgrants.

*Current Regulations:* Section 75.708(a) prohibits grantees from awarding subgrants unless specifically authorized by statute.

*Proposed Regulations:* The Secretary proposes to revise the prohibition on subgrants in § 75.708(a) to allow subgrants when authorized by statute or as provided for by a new § 75.708(b). Under this proposed new § 75.708(b), the Secretary could, through an announcement in the **Federal Register**, authorize subgrants when necessary to meet the purposes of a particular program. In addition, the **Federal Register** announcement would identify the types of entities (e.g., State or local educational agencies, institutions of higher education, or non-profit organizations) that could receive subgrants under the program.

We would add § 75.708(c) to provide that subgrants, if authorized under § 75.708(b), could be awarded to entities identified in a grantee's application. The subgrant must be used to directly carry out activities described in the application.

We would add a new § 75.708(d), which would establish requirements grantees would have to follow in awarding subgrants authorized under § 75.708(b). We would re-designate the current § 75.708(b) as § 75.708(e).

*Reasons:* The revision of § 75.708(a) is necessary to provide grantees with flexibility to work with partners or other entities to carry out project activities. The prohibition on subgrants, in conjunction with the requirement on full and open competition for procurement transactions in 34 CFR 74.43 and 34 CFR 80.36(c), unduly restricts grantees from working with partners or other entities identified in their applications as being directly responsible for carrying out project-related activities.

In order to ensure appropriate subgranting by Department grantees, our proposed revision authorizes subgrants only when approved by the Secretary for a particular program and only to the types of entities (e.g., State or local educational agencies, institutions of higher education, or non-profit organizations) designated by the Secretary. In addition the proposed revision would limit the entities that may receive subgrants to those that: (1) Are identified in a grantee's application, or (2) are competitively selected using the grantee's procedures for selecting subgrants and, (3) will use the subgrant directly to carry out project activities described in the grantee's application. In all cases where a grantee is working with an organization or entity that is not identified in its application, not selected through a competitive process, or not an organization or entity directly responsible for carrying out an activity or activities described in the grantee's application, the grantee would be required to follow the procurement procedures set out in 34 CFR Parts 74 and 80. Additionally, the grantee—as the fiscal agent—would remain responsible to the Department for the proper use of all grant funds, including those subgranted to another entity.

In addition, we would add a new § 75.708(d) requiring grantees to ensure that: (1) Subgrants are awarded on the basis of an approved budget that is consistent with the grantee's approved application and all applicable Federal statutory, regulatory, and other requirements; (2) subgrants include all conditions required by Federal law; and (3) subgrantees are aware of requirements imposed upon them by Federal law, including the Federal anti-discrimination laws enforced by the Department.

This revision provides grantees, in programs and to entities designated by the Secretary, with the flexibility to award subgrants in specific

circumstances where necessary to ensure proper implementation of an approved project without diminishing accountability for Federal funds or project outcomes.

## III. Selection Criteria

*Background*

The regulations in subpart D of 34 CFR part 75 set forth the general requirements that govern the Department's selection of grantees for direct grant awards. For those direct grant programs that make discretionary grant awards, the Secretary uses selection criteria to evaluate applications submitted under those programs. The regulations specify certain selection criteria from which the Secretary may choose (general EDGAR criteria). They allow the Secretary to use program-specific selection criteria and the general EDGAR selection criteria, as well as to develop other criteria based on the statutory provisions for the funding program. However, some program regulations currently do not provide that the Secretary may use program-specific selection criteria in conjunction with EDGAR and statutory criteria. The regulations also describe how the Secretary determines which criteria and which factors within those criteria are used in a particular competition and how the Secretary may weight the criteria and factors.

As we have managed competitions under the general regulations governing selection criteria, we have found that some of the regulations on the selection of grantees do not provide the Department the discretion it needs, absent a lengthy rulemaking process, to conduct grant competitions closely aligned with Department, legislative, and program objectives and priorities that can change from year to year in response to new and unanticipated circumstances. These proposed regulations, therefore, would provide the Department additional flexibility to establish criteria based on program regulations, in addition to the current authority to base criteria on statutory provisions. The proposed regulations would also specifically authorize program offices to establish additional selection criteria in § 75.210 based on statutory and regulatory provisions.

These proposed regulations would also add new selection factors under the ''Quality of Project Design'' criterion on organizational and programmatic sustainability and organizational productivity. The proposed regulations would also add to the ''Quality of the Project Evaluation'' criterion five new selection factors on the types of evidence the evaluation designs would produce on the performance and implementation of the project. Finally, the proposed regulations would establish a new criterion to evaluate the extent to which an applicant proposes a project that could be brought to scale.

The addition of these selection factors would ensure that the Department's discretionary grant programs would more effectively promote the development and implementation of effective and sustainable practices, and support adoption and implementation of necessary reforms. These proposed regulations would not change the way the Secretary uses the current and new selection criteria and factors. The Secretary would continue to use those selection criteria and factors that are consistent with the purpose of the program and permitted under the applicable statutes and regulations.

## Proposed Regulatory Changes

*34 CFR Part 75*

Section 75.209 Selection Criteria Based on Statutory or Regulatory Provisions

*Current Regulations:* Current § 75.209 provides that the Secretary may evaluate applications by establishing selection criteria based on the statutory provisions for the authorized program. These provisions include, but are not limited to, those related to specific statutory selection criteria, allowable activities, application content requirements, and other pre-award and post-award conditions.

*Proposed Regulations:* We propose to revise § 75.209 to allow the Secretary to use selection criteria, the factors in program regulations, and those based on program statute, along with the selection criteria in § 75.210 (often referred to as the EDGAR selection criteria) to produce more focused selection criteria. Thus, § 75.209 would allow the Secretary to establish selection criteria, and factors for considering those criteria, based on statutory or regulatory provisions that apply to the authorized program, which may include, but are not limited to, criteria and factors that reflect:

- Criteria contained in the program statute or regulations;
- Criteria in § 75.210;
- Allowable activities specified in the program statute or regulations;
- Application content requirements specified in the program statute or regulations;
- Program purposes, as described in the program statute or regulations; or
- Other pre-award and post-award conditions specified in the program statute or regulations.

*Reasons:* The Secretary proposes amending this section so that the Department can establish selection criteria based both on a program's statute and regulations. Program regulations are used to help clarify and fill in the gaps of more general statutory requirements and provide further detail about authorized activities for a program.

Under this proposed amendment, the Secretary would be able to use the more specific regulatory provisions to establish selection criteria that are focused more closely on the intended outcomes of the competition and, thereby, help applicants to structure their applications so as to more accurately and concisely describe how they will achieve those outcomes. In addition to providing for establishment of criteria based on program regulations, this amendment would allow the Secretary to use a combination of criteria from the program statute, its established regulations, or the general selection criteria in § 75.210.

**§ 75.210 General Selection Criteria**

*Current Regulations:* Current § 75.210 contains a list of eight selection criteria: ''Need for Project'' in paragraph (a); ''Significance'' in paragraph (b); ''Quality of the Project Design'' in paragraph (c); ''Quality of Project Services'' in paragraph (d); ''Quality of Project Personnel'' in paragraph (e); ''Adequacy of Resources'' in paragraph (f); ''Quality of the Management Plan'' in paragraph (g); and ''Quality of the Project Evaluation'' in paragraph (h). Under each of these selection criteria, the Secretary may select from a number of factors to focus each criterion.

*Proposed Regulations:* The Secretary proposes to revise the introductory paragraph of § 75.210, add selection factors to the criteria in § 75.210(c) and (h), and add a new criterion as paragraph (i) to address the ability of an applicant to bring a project to scale.

*Introductory Text:* We propose to amend the introductory paragraph of § 75.210 so that the Secretary may select factors that could be considered under a criterion both from the factors listed under that criterion and factors listed under other criteria. For example, the proposed amendment would allow the Secretary to establish ''Quality of the Project Design'' as a selection criterion and include selection factors from ''Need for Project'' (§ 75.210(a)) or ''Significance'' (§ 75.210(b)) in the factors that will be considered under the ''Quality of the Project Design''

criterion. Currently, to use a single selection factor under the ''Need for Project'' criterion, the Department, in most cases, would need to include the ''Need for Project'' criterion, even if the factor in question could be appropriately grouped with factors from another selection criterion, such as ''Significance.''

*Reasons:* The purpose of this amendment is to provide the Secretary with the flexibility to choose and combine selection factors established in § 75.210 under various selection criteria. This would enable the Department to align the selection criteria and factors with the goals and objectives of a particular discretionary grant competition in a more coherent and effective fashion than is currently permitted. Selection criteria and factors that are concise and are aligned as closely as possible with the goals and objectives of a particular grant competition would more effectively guide applicants in preparing clearer and more focused applications that in turn can be more effectively evaluated and rated by peer reviewers. The current regulations, by contrast, do not allow this close focus. Including a greater number of selection criteria in application notices, solely to include particular selection factors, makes it more likely that applications will be less focused and more difficult for peer reviewers to accurately evaluate and score.

*Current Regulations:* Section 75.210(c) establishes the selection criterion ''Quality of the Project Design.'' The Secretary may consider one or more of the 23 factors listed under this criterion in determining the quality of the project design, including the extent to which the project design will build capacity that extends beyond the project period and establish linkages to services provided by other programs.

*Proposed Regulations:* The Secretary proposes to add new factors to the criterion in paragraph (c), (xxiv and xxv) relating to the sustainability of the proposed project after the end of the project period.

*Reasons:* Adding these selection factors would help ensure that the Department's discretionary grant programs effectively promote the development and implementation of effective and sustainable practices and support adoption and implementation of necessary reforms. By promoting the development of a multi-year plan for incorporation into the applicant's ongoing work, the proposed factors would better encourage applicants to develop sustainability plans than do the related selection factors in current § 75.210(c). The proposed factors also would allow the Secretary to consider a proposed project's potential for sustainability over time, including the extent to which the project has the support of various stakeholders and adequate resources to continue the project after the grant period ends.

*Proposed Regulations:* The Secretary proposes to revise § 75.210(c) to add a new selection factor (xxvi) regarding the extent to which the proposed project will increase efficiency in the use of time, staff, money, or other resources in order to improve results and increase productivity.

*Reasons:* Current § 75.210(c) does not include a factor that promotes increased productivity. Considering the budget challenges that State and local educational agencies, institutions of higher education, non-profit organizations, and other entities working in education face during economic downturns, and given the potential for new knowledge and capabilities to improve efficiency, the Department believes that it is appropriate to consider the potential for increasing productivity, i.e., the extent to which a proposed project includes a strategy to make more efficient use of time, money, and staff, when assessing an application.

*Proposed Regulations:* The Secretary proposes to revise § 75.210(c)(xvi) to read ''The extent to which the proposed project will integrate with or build on similar or related efforts to improve relevant outcomes, using existing funding streams from other programs or policies supported by community, State, and Federal resources.''

In addition, the Secretary proposes to add a new selection factor (xxvii) regarding the extent to which the proposed project will integrate with or build on similar or related efforts in order to improve relevant outcomes, using nonpublic funds or resources.

*Reasons:* Given the budget challenges facing State and local educational agencies, institutions of higher education, and other entities working in education, there is a need for strategies and practices to improve relevant outcomes while controlling costs. Moreover, ''silos'' within and between agencies at the local, State, and Federal levels often impede program integration and result in less efficient and effective efforts. The purpose of revising this selection factor and adding a factor focused on nonpublic investments is to improve levels of program integration, to facilitate shared agendas for actions focused on common outcomes, and to leverage public and private sector investments in education. In addition, the Department believes that leveraging existing programs and policies that are supported by other funds, including other Federal, State, local, or private funds, increases the likelihood that selected projects will be sustained beyond the grant period.

*Proposed Regulations:* The Secretary proposes to add two new selection factors (xxviii and xxix) regarding the extent to which the proposed project is supported by evidence of promise or strong theory. Later in this notice, we propose adding definitions to Part 77, including evidence of promise, strong theory, and other terms to ensure consistent understanding of the selection factors we propose in this notice.

*Reasons:* The Department recognizes that at the various stages of a proposed project's development, different types of evidence are available to assess the effectiveness of a project. The proposed selection factors would permit the Secretary to use strength of evidence as a selection factor in determining the projects the Department will fund while maintaining the flexibility to consider a wider variety of studies or data an applicant might present that is appropriate to the goals of the project. The flexibility provided by the proposed selection factor would be particularly beneficial for innovative areas where strong or moderate evidence of effectiveness is not yet available because it would allow the Secretary to consider strength of evidence appropriate to a project's stage of development.

*Current Regulations:* Section 75.210(h) establishes the selection criterion ''Quality of the Project Evaluation.'' The Secretary may consider one or more of the seven factors listed under this criterion in determining the quality of the project evaluation design, such as the extent to which the project proposes feasible and appropriate evaluation methods, uses objective performance measures, and permits periodic assessment.

*Proposed Regulations:* The Secretary proposes to revise § 75.210(h) to add five new selection factors. Two of the new selection factors address the extent to which the methods of evaluation will, if well-implemented, produce evidence about the project's effectiveness that would meet the What Works Clearinghouse Evidence Standards.[1] The other three proposed selection factors address the extent to which the methods of evaluation will produce

[1] *See* What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

evidence of promise about the grant-supported intervention, valid and reliable performance data on relevant outcomes of the project, and the extent to which the evaluation plan articulates key components as well as measureable thresholds for acceptable implementation of the project.

*Reasons:* Although current § 75.210(h) includes selection factors regarding proposed evaluation methods, it does not include a selection factor that promotes use of the strongest possible study designs for estimating a program's effect or a selection factor that assesses the extent to which the proposed evaluation will articulate information that can be used to assess whether the project was implemented with fidelity.

Linking two of the proposed new selection factors to the What Works Clearinghouse Evidence Standards [2] reflects the predominant view among research experts that the randomized controlled trial (also referred to as an experimental design study) is the most rigorous and defensible method for producing unbiased evidence of project effectiveness. Random assignment of entities (students, teachers, schools, or other units of analysis) to a treatment or control group is the most effective way to eliminate plausible competing explanations for observed differences between treated and non-treated individuals or groups (i.e., the estimated treatment effect). Adding these selection factors will allow the Secretary to consider the extent to which applicants propose evaluations that will contribute to a strong body of evidence on the effectiveness of the proposed project.

Additionally, the other three proposed selection factors allow the Secretary to consider evaluation methods that will produce data on a project's evidence of promise, performance on relevant outcomes, and fidelity of implementation. Each of these factors would improve the Department's ability to assess evaluation plans for projects at various stages of their development.

*Current Regulations:* None.

*Proposed Regulations:* The Secretary proposes to add selection criterion § 75.210(i), ''Strategy to Scale.'' ''Scale'' refers to expanding the use or implementation of a proposed practice, strategy, or program to provide services at a State, regional, or national level while maintaining the demonstrated effectiveness of the approach. Under the proposed new criterion, the Secretary would consider the applicant's strategy to scale the proposed project. In determining the applicant's strategy to scale the proposed project, the Secretary would consider one or more factors, including the extent to which the applicant's strategy to scale addresses a particular barrier or barriers that prevented the applicant, in the past, from reaching the level of scale that is proposed in the application; the applicant's capacity (e.g., in terms of qualified personnel, financial resources, or management capacity) to bring the proposed project to scale; and the extent to which the applicant demonstrates there is unmet demand for the proposed project that will enable the applicant to reach the level of scale that is projected in the application. In addition, the Secretary could consider the feasibility of replicating the project and the mechanisms for broadly disseminating information on the project so as to support further development or replication.

*Reasons:* It is important that successful best practices be shared and implemented more broadly. The addition of this selection criterion would allow the Secretary to consider the proposed scaling methodology and the feasibility of successfully replicating the proposed project in a variety of settings and with other populations. The proposed selection criterion would allow the Department to consider whether applicants have the potential to serve more groups in a variety of settings, which would be important in estimating the likelihood of a proposed project's success at scale and in considering applications for activities that include broad sharing of best practices. Additionally, Department programs could use the proposed criterion, in conjunction with the proposed priority regarding evidence of effectiveness, to encourage the field to focus its attention and resources on projects that are effective.

## IV. Evidence of Effectiveness

*Background*

To support effective projects and provide incentives to the field for building an evidence base on the effectiveness of interventions, the Secretary proposes a priority for projects that can cite and build upon an existing base of strong or moderate evidence of effectiveness. This priority would be a critical part of the Department's efforts to fund and increase the use of programs with evidence of effectiveness.

Section 75.226 Consideration of Applications Supported by Strong or Moderate Evidence of Effectiveness

*Current Regulations:* None.

*Proposed Regulations:* The Secretary proposes to establish procedures for giving special consideration to applications supported by strong or moderate evidence of effectiveness. Proposed § 75.226 would establish that if the Secretary determines to give special consideration to applications supported by strong or moderate evidence of effectiveness for a particular grant competition, the Secretary could either establish a separate competition or give a competitive preference to applications supported by strong or moderate evidence of effectiveness under the procedures in 34 CFR 75.105(c)(2).

*Reasons:* By expanding the number of Department programs awarding grants to those projects supported by strong or moderate evidence of effectiveness, the Department could better ensure that discretionary grant funds are used to support effective interventions and activities.

## V. Program Budgets

*Background*

So that the Department can learn as much as possible from successful discretionary grants and its programs as a whole, we propose amendments regarding budget periods. We would:

- Establish that a project may receive an extension of the funding period for the purpose of collecting, analyzing, and reporting performance data;
- Clarify that a multi-year data collection may be funded through separate budget periods; and
- Clarify that any information relevant to the grantee's performance during the project period should be considered when determining whether a grantee receives a continuation award.

## Proposed Regulatory Changes

*34 CFR Part 75*

Section 75.250 Maximum Funding Period

*Current Regulations:* Current § 75.250 is titled ''Project period can be up to 60 months.'' This section provides that the Secretary may approve a project period of up to 60 months, but it does not specifically authorize funding grants for periods longer than 60 months. Other regulations in part 75 prohibit the use of Federal funds for projects extending past 60 months. See current § 75.261, which addresses the circumstances under which a grantee may request a no-cost extension of a project period.

[2] *See* What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

*Proposed Regulations:* We propose to amend § 75.250 to provide that the Secretary may approve a data collection period of up to 72 months—if not inconsistent with any statutory limits on the grant award period—after the end of the project period and provide funding during this period for the sole purpose of collecting, analyzing, and reporting data regarding project performance. During a data collection period, a grantee could use the funds only for data collection, analysis, and reporting purposes. Section 75.250(b)(2) would give the Secretary discretion to notify applicants in the notice inviting applications for a competition or later, after grantees have started their projects of the intent to fund data collection periods.

Given these proposed changes, the Secretary also proposes to change the title of this section to ''Maximum funding period.''

*Reasons:* It is the Department's experience that the effectiveness of a project cannot always be determined on the date that the substantive work of the project is complete. For example, a four-year project designed to increase the ability of certain high school students to successfully complete college may require data collection for up to six years after the date the substantive work of the project ends. With the discretion to approve a data collection period after the end of a project period and offer continued funding for data collection, the Department could ensure that performance data are collected and are used to evaluate both the project and program performance. The Secretary would expect to fund any data collection period of a grant at a much lower level than the original substantive work of the grant.

Section 75.251 The Budget Period

*Current Regulations:* Current § 75.251 describes how the Secretary may fund multi-year projects through separate budget periods, generally of 12 months each.

*Proposed Regulations:* The Secretary proposes to add a new paragraph (c) to this section to clarify that multi-year data collection periods may be funded through budget periods in the same manner as project periods are funded.

*Reasons:* We are proposing to revise § 75.251 to correspond to the proposed revisions to § 75.250.

Section 75.253 Continuation of a Multi-Year Project After the First Budget Period

*Current Regulations:* Under current § 75.253(a), a grantee may only receive a continuation award if the grantee has met certain requirements, including the requirement that the grantee make substantial progress toward the objectives of the grant. If a grantee does not make substantial progress, it must obtain permission from the Department to make changes to the project that would help the grantee make substantial progress during the remainder of the project period.

*Proposed Regulations:* The Secretary proposes to amend § 75.253 by adding a new paragraph (b) to clarify that in deciding whether to make a continuation grant, the Secretary could consider any information relevant to the grantee's performance during the project period. This could include information relevant to the authorizing statute, a criterion, a priority, or a performance measure, or any financial or other requirement that applied to the selection of applications for new awards. While this proposed standard for granting continuation awards is implicit under the current regulations, the Secretary believes that this standard should be explicit so that grantees have a clearer understanding of how the Department decides to make a continuation award.

In addition, we propose to amend paragraph (a)(2) so that in making continuation awards, the Secretary could consider not only the extent to which a grantee has made substantial progress in achieving the goals and objectives of the project, but also whether a grantee met the performance targets in the approved application, if the Secretary established performance measurement requirements for the grant in the application notice. If a grantee fails to meet these targets, proposed paragraph (a)(2) would require the grantee to obtain the Secretary's approval for changes to the project that enable the grantee to achieve the project's goals, objectives, and performance targets, if any, without changing the project scope or objectives. The Secretary would retain the requirement in the current regulation that any such changes may not increase the amount of funds obligated to the project by the Department.

*Reasons:* Current § 75.253 does not describe the standards used to determine whether a grantee has made substantial progress on its grant. Therefore, we propose these amendments to clarify the standards that the Department considers when determining whether a grant will receive a continuation award. The proposed amendments would establish that the Secretary may also consider whether a grantee has met the performance targets in its approved application when making continuation awards.

Section 75.590 Evaluation by the Grantee

*Current Regulation:* Current § 75.590 requires a grantee to submit performance reports to the Department that evaluate at least annually the grantee's progress in achieving the objectives in its approved application, the effectiveness of the project in meeting the purposes of the program, and the effect of the project on participants being served by the project. This provision does not currently provide any standards for evaluating the progress in achieving performance targets.

*Proposed Regulation:* The Secretary proposes to revise § 75.590 to add a new paragraph (a) to provide that if an application notice for a competition requires applicants to describe how they would evaluate their projects, any evaluation must meet the standards set in the approved application for the project. The performance measurement data collected by the grantee and used in the evaluation must meet the performance measurement requirements in the approved application.

We also propose to designate the current regulatory text in § 75.590 as new paragraph (b) and revise that text to conform to the other changes we are proposing regarding performance measurement. Specifically, we propose that if the application notice for a competition did not require an applicant to submit an evaluation plan, the grantee must provide information in its performance report to the Department demonstrating (1) The progress made by the grantee in the most recent budget period; (2) the effectiveness of the project; and (3) the effect of the project on the participants served by the project. If the application notice required applicants to propose how they would meet performance requirements, the performance report would also need to address the extent to which the grantee met the project's performance targets and other performance measurement requirements for the budget period addressed by the performance report.

*Reasons:* The proposed revisions to § 75.590 strengthen the Department's authority to monitor the quality of grantees' project evaluations. Additionally, these revisions complement other proposed regulations in this notice regarding performance measurement requirements.

## VI. Definitions

*Background*

These proposed regulations include references to terms that are not currently defined in EDGAR. To ensure a common understanding of these terms, we propose establishing the following definitions.

## Proposed Regulatory Changes

*34 CFR Part 77*

Section 77.1 Definitions That Apply to All Department Programs

*Current Regulations:* Section 77.1(c) establishes definitions that unless a statute or regulation provides otherwise, apply to parts 34 CFR 74 and 80.

*Proposed Regulations:* The Secretary proposes to incorporate the definitions for the following terms into § 77.1(c): ''ambitious,'' ''baseline data,'' ''evidence of promise,'' ''large sample,'' ''logic model,'' ''moderate evidence of effectiveness,'' ''multi-site sample,'' ''national level,'' ''performance measure,'' ''performance target,'' ''randomized controlled trial,'' ''regional level,'' ''relevant outcome,'' ''quasi-experimental study,'' ''strong evidence of effectiveness,'' and ''strong theory.''

*Reasons:* The Secretary proposes establishing these definitions to ensure consistent understanding of the selection factors and priority we propose in this notice.

## Executive Orders 12866 and 13563

## Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement 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 stated in the Executive Order.

This proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

## Summary of Potential Costs and Benefits

Under the proposed regulations, applicants would have to use performance measures, baseline data, and performance targets established by the Department or establish their own performance measures, and determine baseline data performance targets for each performance measure. Although these proposed regulations would explicitly require such determinations and data collections, these requirements are implicit under the current regulations and grantees are already required to report on the extent to which they are meeting performance targets under the performance report ED 524B, which is approved under OMB control number 1894–0003. Therefore, we do not expect an increase in reporting burden on grantees under the proposed amendments.

The benefits of the proposed regulations would be that the Department would have explicit authority to collect meaningful data that we could use to assess the success of individual projects and report to Congress and OMB about the success of Department programs in achieving their legislative objectives. The ability to determine the success of Department programs could help improve the effectiveness of Department programs, without imposing additional costs on grantees or other parties.

The proposed regulations would also permit the Department to provide an exception for certain applicants from the full competitive contracting requirements in 34 CFR 74.43 and 80.36(c) for a grant that requires an external evaluation. Additionally, the proposed regulations would remove the prohibition on subgrants and allow for subgrants to any entity that is identified in a grantee's application and uses the subgrant directly to carry out activities described in the application. This action would reduce costs and increase benefits.

The benefits are that the proposed rule would remove a barrier for these grantees to contracting with the same evaluator both in the grant application

stage and after receiving a grant award (and similarly, to selecting evaluation sites and implementation partners both pre-grant award and post-award), and thereby potentially enhance the quality of these projects. At the same time the proposed regulations would relieve grantees of the costs of administering competitions without reducing accountability or increasing the risk of improper use of or accounting for grant expenditures.

Additionally, under the proposed regulations, the Department would have greater flexibility in conducting grant competitions to use selection criteria that (1) are closely aligned with program objectives and priorities, and (2) promote reform objectives related to project evaluation, sustainability, productivity, and capacity to scale. This change would benefit applicants as well as the Department because it allows the Secretary to establish selection criteria that are concise and closely aligned with the goals and objectives of a particular grant competition and are focused more closely and coherently on the intended outcomes of the competition. The regulations would generate these benefits without increasing the costs for applicants, grantees, or the Department that already exist for creating and reviewing grant applications.

Elsewhere in this section under the heading *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements.

**Clarity of the Regulations**

Executive Order 12866 and the Presidential memorandum on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 75.210 General selection criteria.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section of this preamble.

**Regulatory Flexibility Act Certification**

*Paperwork Reduction Act of 1995*

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities because the proposed regulations would affect only slightly the overall burden on applicants and grantees, as explained in the Paperwork Reduction Act of 1995 discussion in this **SUPPLEMENTARY INFORMATION**.

*Paperwork Reduction Act of 1995*

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Section 75.110 contains an information collection requirement. Under the PRA the Department has submitted a copy of this section to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final regulations we will display the control number assigned by OMB to any information collection requirement proposed in this NPRM and adopted in the final regulations.

*Collection of Information:* The proposed regulations would affect applicants and grantees of the Department's discretionary grant programs, including State, local, and tribal governments and non-profit organizations, such as institutions of higher education.

*Applications:* OMB has approved the Department's Generic Application Package under OMB Control number 1894–0006, which applies to those competitions that use the current EDGAR selection criteria in § 75.210 and statutory criteria that have been developed under the EDGAR procedures in § 75.209.

Regarding the burden imposed by the Generic Application Package, the Department proposes to add proposed § 75.110 to the other sections already identified as creating burden related to that package. While § 75.110 is new, it would not impose any new data collection requirements for the Generic Application Package because performance measurement burden for that package has already been calculated under the selection criteria in § 75.210. The amendments proposed in this NPRM would not increase the existing paperwork burdens under the Generic Application Package. The Secretary also proposes to cover the burden associated with the EDGAR selection criteria from § 75.209 and § 75.210 under § 75.200, which fully details the sources that program offices can use to establish selection criteria under EDGAR.

Each fiscal year, the Department receives over XX,000 applications under competitions covered by the Generic Application Package. Applicants that apply to programs that use the EDGAR criteria would be affected by the proposed changes to the selection criteria that would require applications to address evaluation and performance measurement more specifically.

The Department already has selection criteria that ask applicants to describe the evaluation plans for their projects; the burden associated with the proposed regulations is currently covered under § 75.210(h). However, an applicant for a discretionary grant would only have to respond once to provide the following information regarding the project: The performance baselines; the performance measures; the performance targets; and the methodology for collecting performance data. Thus, we do not expect greater burden under these proposed regulations and the Generic Application Package because that burden is already covered under existing criteria. Instead, we expect that

as a result of these proposed regulations, applicants would provide greater clarity on the methodologies they would use to collect and report data.

Because these proposed regulations would expand the number of programs that could use proposed § 75.209 to create criteria based on statutory and regulatory requirements, there is a potential under the proposed regulations that more program offices would use the EDGAR process to establish criteria for their competitions. If more competitions use the Generic Application Package, the overall hours of burden under the Generic Application Package and OMB Control number 1894–0006 would grow. However, any ''new'' burden covered by the Generic Application Package would result from fewer programs using program-specific application packages, so the total burden covered by program-specific application packages would be reduced in an amount equivalent to the burden increase associated with the Generic Application Package. If the amendments to the sections regarding the selection criteria become final, we would work closely with OMB to monitor the extent to which burden currently covered by separate program-specific application packages would shift to the Generic Application Package and request appropriate changes in the total burden covered by the Generic Application Package.

The current Generic Application Package was approved by OMB based on an estimate of 9,861 responses over three years and an estimate of 447,089 total hours required to prepare applications.

*Performance reports:* OMB has also approved the U.S. Department of Education Grant Performance Report (ED 524B) under OMB Control number 1894–0003.

Over three years, the Department receives ED 524B performance reports from approximately 5,900 discretionary grantees. A grantee would have to respond on an annual basis to prepare performance reports throughout the course of the project period, including any no-cost extensions of the grant or funded data collection extensions, and respond once to prepare a final performance and financial report. These burdens have already been accounted for under the ED 524B.

The number of reports estimated annually under the ED 524B is 5,900 and the estimated reporting burden-hours for that report is 132,200. We do not expect any change in burden under these proposed regulations. However, there is some potential that more programs might be able to use the ED 524B performance report as a result of more programs using the EDGAR selection criteria. We will monitor that potential and work with OMB to determine if the Department needs to revisit the total burden covered by the ED 524B performance report.

*Intergovernmental Review*

These proposed regulations affect Direct Grant programs of the Department that are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

*Assessment of Educational Impact*

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

*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.

**List of Subjects**

*34 CFR Part 75*

Accounting, Copyright, Education, Grant programs-education.

*34 CFR Part 77*

Education, Grant programs-education.

Dated: December 6, 2012.

**Arne Duncan,**

*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary proposes to amend parts 75 and 77 of title 34 of the Code of Federal Regulations as follows:

## PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for part 75 continues to read as follows:

**Authority:** 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

2. Add a new § 75.110 to read as follows:

### § 75.110 Information regarding performance measurement.

(a) The Secretary may establish in an application notice for a competition one or more performance measurement requirements, including requirements for performance measures, baseline data, or performance targets, and a requirement that applicants propose in their applications one or more of their own performance measures, baseline data, or performance targets.

(b) If an application notice requires applicants to propose project-specific performance measures, baseline data, or performance targets, the application must include the following, as required by the application notice:

(1) *Performance measures.* How each proposed performance measure would accurately measure the performance of the project and how the proposed performance measure would be consistent with the performance measures established for the program funding the competition.

(2) *Baseline data.* (i) Why each proposed baseline is valid; or

(ii) If the applicant has determined that there are no established baseline data for a particular performance measure, an explanation of why there is no established baseline and of how and when, during the project period, the applicant would establish a valid baseline for the performance measure.

(3) *Performance targets.* Why each proposed performance target is ambitious yet achievable compared to the baseline for the performance measure and when, during the project period, the applicant would meet the performance target.

(c) If the application notice establishes performance measurement requirements, the applicant must also describe in the application—

(1)(i) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data; and

(ii) If the Secretary requires applicants to collect data after the substantive work of a project is complete regarding the attainment of certain performance targets, the data collection and reporting methods the applicant would use during the post-performance period and why those methods are likely to yield reliable, valid, and meaningful performance data.

(2) The applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

(Authority: 20 U.S.C. 1221e–3 and 3474)

3. Add a new undesignated center heading ''Competition Exceptions'' in subpart C immediately before the undesignated center heading ''State Comment Procedures''.

4. Add a new § 75.135 to subpart C under the undesignated center heading ''Competition Exceptions'' to read as follows:

**S75.135 Competition exception for proposed implementation sites, implementation partners, or evaluation service providers.**

(a) When entering into a contract with implementation sites or partners, an applicant is not required to comply with the competition requirements in 34 CFR 74.43 or 80.36(c), as applicable, if—

(1) The contract is with an entity that agrees to provide a site or sites where the applicant would conduct the project activities under the grant;

(2) The implementation sites or partner entities that the applicant proposes to use are identified in the application for the grant; and

(3) The implementation sites or partner entities are included in the application in order to meet a regulatory, statutory, or priority requirement related to the competition.

(b) When entering into a contract for data collection, data analysis, or evaluation services, an applicant may select a provider using the informal, small-purchase procurement procedures in 34 CFR 80.36(d)(1), regardless of whether that applicant would otherwise be subject to that part or whether the evaluation contract would meet the standards for a small purchase order, if—

(1) The contract is with the data collection, data analysis, or evaluation service provider that would conduct the project services;

(2) The evaluation service provider that the applicant proposes to use is identified in the application for the grant; and

(3) The evaluation service provider is included in the application in order to meet a statutory, regulatory, or priority requirement related to the competition.

(c) If the grantee relied on the exceptions under paragraph (a) or (b) of this section, the grantee must certify that any employee, officer, or agent participating in the selection, award, or administration of a contract is free of any real or apparent conflict of interest.

(d) A grantee must obtain the Secretary's prior approval for any change to an implementation site, implementation partner, or evaluation service provider, if the grantee relied on the exceptions under paragraph (a) or (b) of this section to select the entity or evaluator.

(e) The exceptions in paragraphs (a) and (b) of this section do not extend to the other procurement requirements in 34 CFR part 74 and 34 CFR part 80 regarding contracting by grantees and subgrantees.

(Authority: 20 U.S.C. 1221e–3 and 3474)

5. Revise § 75.209 to read as follows:

**§ 75.209 Selection criteria based on statutory or regulatory provisions.**

The Secretary may establish selection criteria and factors based on statutory or regulatory provisions that apply to the authorized program, which may include, but are not limited to criteria and factors that reflect—

(a) Criteria contained in the program statute or regulations;

(b) Criteria in § 75.210;

(c) Allowable activities specified in the program statute or regulations;

(d) Application content requirements specified in the program statute or regulations;

(e) Program purposes, as described in the program statute or regulations; or

(f) Other pre-award and post-award conditions specified in the program statute or regulations.

(Authority: 20 U.S.C. 1221e–3 and 3474)

6. Amend § 75.210 by:

A. Revising the introductory text.

B. Revising paragraph (c)(2)(xvi).

C. Adding paragraphs (c)(2)(xxiv) through (xxix).

D. Adding paragraphs (h)(2)(viii) through (xii).

And

E. Adding a new paragraph (i).

The revisions and additions read as follows.

**§ 75.210 General selection criteria.**

In determining the selection criteria to evaluate applications submitted in a grant competition, the Secretary may select one or more of the following criteria and may select from among the list of optional factors under each criterion. The Secretary may define a selection criterion by selecting one or more specific factors within a criterion or assigning factors from one criterion to another criterion.

* * * * *

(c) * * *

(2) * * *

(xvi) The extent to which the proposed project will integrate with or build on similar or related efforts to improve relevant outcomes (as defined in 34 CFR 77.1(c)), using existing funding streams from other programs or policies supported by community, State, and Federal resources.

* * *

(xxiv) The extent to which the applicant demonstrates that it has the resources to operate the project beyond the length of the grant, including a multi-year financial and operating model and accompanying plan; the demonstrated commitment of any partners; evidence of broad support from stakeholders (e.g., State educational agencies, teachers' unions) critical to the project's long-term success; or more than one of these types of evidence.

(xxv) The potential and planning for the incorporation of project purposes, activities, or benefits into the ongoing work of the applicant beyond the end of the grant.

(xxvi) The extent to which the proposed project will increase efficiency in the use of time, staff, money, or other resources in order to improve results and increase productivity.

(xxvii) The extent to which the proposed project will integrate with or build on similar or related efforts in order to improve relevant outcomes (as defined in 34 CFR 77.1(c)), using nonpublic funds or resources.

(xxviii) The extent to which the proposed project is supported by evidence of promise (as defined in 34 CFR 77.1(c)).

(xxix) The extent to which the proposed project is supported by strong theory (as defined in 34 CFR 77.1(c)).

* * * * *

(h) * * *

(2) * * *

(viii) The extent to which the methods of evaluation will, if well-implemented,

produce evidence about the project's effectiveness that would meet the What Works Clearinghouse Evidence Standards without reservations.[3]

(ix) The extent to which the methods of evaluation will, if well-implemented, produce evidence about the project's effectiveness that would meet the What Works Clearinghouse Evidence Standards with reservations.[4]

(x) The extent to which the methods of evaluation will, if well-implemented, produce evidence of promise (as defined in 34 CFR 77.1(c)).

(xi) The extent to which the methods of evaluation will provide valid and reliable performance data on relevant outcomes.

(xii) The extent to which the evaluation plan clearly articulates the key components, mediators, and outcomes of the grant-supported intervention, as well as a measurable threshold for acceptable implementation.

(i) Strategy to Scale

(1) The Secretary considers the applicant's strategy to scale the proposed project.

(2) In determining the applicant's capacity to scale the proposed project, the Secretary considers one or more of the following factors:

(i) The applicant's capacity (e.g., in terms of qualified personnel, financial resources, or management capacity) to bring the proposed project to scale on a national or regional level (as defined in 34 CFR 77.1(c)) working directly, or through partners, during the grant period.

(ii) The applicant's capacity (e.g., in terms of qualified personnel, financial resources, or management capacity) to further develop and bring to scale the proposed process, product, strategy, or practice, or to work with others to ensure that the proposed process, product, strategy, or practice can be further developed and brought to scale, based on the findings of the proposed project.

(iii) The feasibility of successful replication of the proposed project, if favorable results are obtained, in a variety of settings and with a variety of populations.

(iv) The mechanisms the applicant will use to broadly disseminate information on its project so as to support further development or replication.

(v) The extent to which the applicant demonstrates there is unmet demand for the process, product, strategy, or practice that will enable the applicant to reach the level of scale that is proposed in the application.

(vi) The extent to which the applicant identifies a specific strategy or strategies that address a particular barrier or barriers that prevented the applicant, in the past, from reaching the level of scale that is proposed in the application.

7. Add § 75.266 to subpart D to read as follows:

**§ 75.266 What procedures does the Secretary use if the Secretary decides to give special consideration to applications supported by strong or moderate evidence of effectiveness?**

(a) As used in this section, ''strong evidence of effectiveness'' is defined in 34 CFR 77.1(c);

(b) As used in this section, ''moderate evidence of effectiveness'' is defined in 34 CFR 77.1(c); and

(c) If the Secretary determines that special consideration of applications supported by strong or moderate evidence of effectiveness is appropriate, the Secretary may establish a separate competition under the procedures in 34 CFR 75.105(c)(3), or provide competitive preference under the procedures in 34 CFR 75.105(c)(2), for applications supported by:

(1) Evidence of effectiveness that meets the conditions set out in paragraph (a) of the definition of ''strong evidence of effectiveness'' in 34 CFR 77.1;

(2) Evidence of effectiveness that meets the conditions set out in either paragraph (a) or (b) of the definition of ''strong evidence of effectiveness'' in 34 CFR 77.1; or

(3) Evidence of effectiveness that meets the conditions set out in the definition of ''moderate evidence of effectiveness.''

(Authority: 20 U.S.C. 1221e–3 and 3474)

8. Revise § 75.250 to read as follows:

**§ 75.250 Maximum funding period.**

(a) The Secretary may approve a project period to fund the substantive work of a grant and a data collection period to fund data collection, analysis, and reporting related to a grant after the end of the project period.

(b) The Secretary may approve a project period of up to 60 months to perform the substantive work of a grant.

(1) The Secretary may approve a data collection period for a grant for a period of up to 72 months after the end of the project period and provide funding for the data collection period for the sole purpose of collecting, analyzing, and reporting performance measurement data regarding the project.

(2) The Secretary may inform applicants of the Secretary's intent to approve data collection periods in the application notice published for a competition or may decide to fund data collection periods after grantees have started their project periods.

(Authority: 20 U.S.C. 1221e–3 and 3474)

9. Amend § 75.251 by adding a new paragraph (c) to read as follows:

**§ 75.251 Budget Periods.**

* * * * *

(c) If the Secretary funds a multi-year data collection period, the Secretary may fund the data collection period through separate budget periods and fund those budget periods in the same manner as those periods are funded during the project period.

10. Amend § 75.253 by—

A. Revising paragraph (a)(2).

B. Adding a new paragraph (a)(5).

C. Re-designating paragraphs (b) through (e) as paragraphs (c) through (f).

D. Adding a new paragraph (b).

And

E. Revising newly re-designated paragraph (f).

The revisions and additions read as follows:

**§ 75.253 Continuation of a multi-year project after the first budget period.**

(a) * * *

(2) The grantee has either—

(i) Made substantial progress in achieving—

(A) The goals and objectives of the project; and

(B) If the Secretary established performance measurement requirements for the grant in the application notice, the performance targets in the grantee's approved application; or

(ii) Obtained the Secretary's approval for changes to the project that—

(A) Do not increase the amount of funds obligated to the project by the Secretary; and

(B) Enable the grantee to achieve the goals and objectives of the project and meet the performance targets of the project, if any, without changing the scope or objectives of the project.

* * *

(5) The grantee has maintained financial and administrative management systems that meet the requirements in 34 CFR 74.21 or 80.20, as appropriate.

(b) In deciding whether a grantee has made substantial progress, the Secretary

[3] *See* What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

[4] *See* What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

may consider any information relevant to the authorizing statute, a criterion, a priority, or a performance measure, or to a financial or other requirement that applies to the selection of applications for new grants.

* * * * *

(f) Unless prohibited by the program statute or regulations, a grantee that is in the final budget period of its project period may seek continued assistance for the project as required under the procedures for selecting new projects for grants.

11. Revise § 75.590 to read as follows.

**§ 75.590 Evaluation by the grantee.**

(a) If the application notice for a competition required applicants to describe how they would evaluate their projects, each grantee under that competition must demonstrate to the Department that—

(1) The evaluation meets the standards of the evaluation in the approved application for the project; and

(2) The performance measurement data collected by the grantee and used in the evaluation meet the performance measurement requirements of the approved application.

(b) If the application notice for a competition did not require applicants to describe how they would evaluate their projects, each grantee must provide information in its performance report demonstrating—

(1) The progress made by the grantee in the most recent budget period, including progress based on the performance measurement requirements for the grant, if any;

(2) The effectiveness of the grant, including fulfilling the performance measurement requirements of the approved application, if any; and

(3) The effect of the project on the participants served by the project, if any.

(Authority: 20 U.S.C. 1221e–3 and 3474)

12. Amend § 75.708 by:

A. Revising paragraph (a).

B. Re-designating paragraph (b) as paragraph (e); and

C. Adding new paragraphs (b), (c) and (d).

The revision and additions read as follows.

**§ 75.708 Subgrants.**

(a) A grantee may not make a subgrant under a program covered by this part unless authorized by statute or by paragraph (b) of this section.

(b) The Secretary may, through an announcement in the **Federal Register,** authorize subgrants when necessary to meet the purposes of a program. In this announcement, the Secretary will—

(1) Designate the types of entities, e.g., State educational agencies, local educational agencies, institutions of higher education, and non-profit organizations, to which subgrants can be awarded; and

(2) Indicate whether subgrants can be made to entities identified in an approved application or, without regard to whether the entity is identified in an approved application, have to be selected through a competitive process set out in subgranting procedures established by the grantee.

(c) If authorized under paragraph (b) of this section, a subgrant is allowed if it will be used by that entity to directly carry out project activities described in that application.

(d) The grantee, in awarding subgrants under paragraph (b) of this section, must—

(1) Ensure that subgrants are awarded on the basis of an approved budget that is consistent with the grantee's approved application and all applicable Federal statutory, regulatory, and other requirements;

(2) Ensure that every subgrant includes any conditions required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation, including the Federal anti-discrimination laws enforced by the Department; and

* * * * *

## PART 77—DEFINITIONS THAT APPLY TO DEPARTMENT REGULATIONS

13. The authority citation for part 77 continues to read as follows:

**Authority:** 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

14. Amend § 77.1(c) by adding the following definitions in alphabetical order:

**§ 77.1 Definitions that apply to all Department programs.**

* * * * *

(c) * * *

*Ambitious* means promoting continued, meaningful improvement for program participants or for other individuals or entities affected by the grant, or representing a significant advancement in the field of education research, practices, or methodologies. When used to describe a performance target, whether a performance target is ambitious depends upon the context of the relevant performance measure and the baseline for that measure.

* * * * *

*Baseline* means the starting point from which performance is measured and targets are set.

* * * * *

*Evidence of promise* means there is empirical evidence to support the theoretical linkage(s) between at least one critical component and at least one relevant outcome presented in the logic model for the proposed process, product, strategy, or practice. Specifically, evidence of promise means the conditions in paragraphs (a) and (b) are met:

(a) There is at least one study that is a—

(1) Correlational study with statistical controls for selection bias;

(2) Quasi-experimental study that meets the What Works Clearinghouse Evidence Standards with reservations; [1] or

(3) Randomized controlled trial that meets the What Works Clearinghouse Evidence Standards with or without reservations.[2]

(b) The study referenced in paragraph (a) found a statistically significant or substantively important (defined as a difference of 0.25 standard deviations or larger), favorable association between at least one critical component and one relevant outcome presented in the logic model for the proposed process, product, strategy, or practice.

* * * * *

*Large sample* means an analytic sample of 350 or more students (or other single analysis units) who were randomly assigned to a treatment or control group or 50 or more groups (such as classrooms or schools) that contain 10 or more students (or other single analysis units) and that were randomly assigned to a treatment or control group.

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*Logic model* (also referred to as theory of action) means a well-specified conceptual framework that identifies key components of the proposed process, product, strategy, or practice (i.e., the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the relationships among the key

[1] *See* What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

[2] *See* What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

components and outcomes, theoretically and operationally.

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*Moderate evidence of effectiveness* means one of the following conditions is met:

(a) There is at least one study of the effectiveness of the process, product, strategy, or practice being proposed that meets the What Works Clearinghouse Evidence Standards without reservations,[3] found a statistically significant favorable impact on a relevant outcome (with no statistically significant unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), and includes a sample that overlaps with the populations or settings proposed to receive the process, product, strategy, or practice.

(b) There is at least one study of the effectiveness of the process, product, strategy, or practice being proposed that meets the What Works Clearinghouse Evidence Standards with reservations,[4] found a statistically significant favorable impact on a relevant outcome (with no statistically significant unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), includes a sample that overlaps with the populations or settings proposed to receive the process, product, strategy, or practice, and includes a large sample and a multi-site sample (**Note:** multiple studies can cumulatively meet the large and multi-site sample requirements as long as each study meets the other requirements in this paragraph).

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*Multi-site sample* means more than one site, where site can be defined as an LEA, locality, or State.

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*National level* describes the level of scope or effectiveness of a process, product, strategy, or practice that is able to be effective in a wide variety of communities, including rural and urban areas, as well as with different groups (e.g., economically disadvantaged, racial and ethnic groups, migrant populations, individuals with disabilities, English learners, and individuals of each gender).

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*Performance measure* means any quantitative indicator, statistic, or metric used to gauge program or project performance.

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*Performance target* means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project.

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*Quasi-experimental design study* means a study using a design that attempts to approximate an experimental design by identifying a comparison group that is similar to the treatment group in important respects. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards with reservations [5] (they cannot meet What Works Clearinghouse Evidence Standards without reservations).

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*Randomized controlled trial* means a study that employs random assignment of, for example, students, teachers, classrooms, schools, or districts to receive the intervention being evaluated (the treatment group) or not to receive the intervention (the control group). The estimated effectiveness of the intervention is the difference between the average outcome for the treatment group and for the control group. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards without reservations.[6]

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*Regional level* describes the level of scope or effectiveness of a process, product, strategy, or practice that is able to serve a variety of communities within a State or multiple States, including rural and urban areas, as well as with different groups (e.g., economically disadvantaged, racial and ethnic groups, migrant populations, individuals with disabilities, English learners, and individuals of each gender). For an LEA-based project, to be considered a regional-level project, a process, product, strategy, or practice must serve students in more than one LEA, unless the process, product, strategy, or practice is implemented in a State in which the State educational agency is the sole educational agency for all schools.

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*Relevant outcome* means the student outcome(s) (or the ultimate outcome if not related to students) the proposed process, product, strategy, or practice is designed to improve; consistent with the specific goals of a program.

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*Strong evidence of effectiveness* means one of the following conditions is met:

(a) There is at least one study of the effectiveness of the process, product, strategy, or practice being proposed that meets the What Works Clearinghouse Evidence Standards without reservations,[7] found a statistically significant favorable impact on a relevant outcome (with no statistically significant unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), includes a sample that overlaps with the populations and settings proposed to receive the process, product, strategy, or practice, and includes a large sample and a multi-site sample (**Note:** multiple studies can cumulatively meet the large and multi-site sample requirements as long as each study meets the other requirements in this paragraph).

(b) There are at least two studies of the effectiveness of the process, product, strategy, or practice being proposed, each of which: Meets the What Works Clearinghouse Evidence Standards with reservations,[8] found a statistically significant favorable impact on a relevant outcome (with no statistically significant unfavorable impacts on that outcome for relevant populations in the studies or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), includes a sample that overlaps with the populations and settings proposed to receive the process, product, strategy, or practice, and includes a large sample and a multi-site sample.

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[3] *See* What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

[4] *See* What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

[5] *See* What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

[6] *See* What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

[7] *See* What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

[8] *See* What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

*Strong theory* means a rationale for the proposed process, product, strategy, or practice that includes a logic model.

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## DEPARTMENT OF EDUCATION

### 34 CFR Subtitle A

**RIN 1855–AA09**

**[Docket No. ED 2012–OII–0027]**

## Proposed Priorities, Requirements, Definitions, and Selection Criteria—Investing in Innovation Fund

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.411A, 84.411B, and 84.411C

**AGENCY:** Office of Innovation and Improvement, Department of Education.

**ACTION:** Proposed priorities, requirements, definitions, and selection criteria.

**SUMMARY:** The Assistant Deputy Secretary for Innovation and Improvement proposes priorities, requirements, definitions, and selection criteria under the Investing in Innovation Fund (i3). The Assistant Deputy Secretary may use these priorities, requirements, definitions, and selection criteria for competitions in fiscal year (FY) 2013 and later years.

The U.S. Department of Education (Department) has conducted three competitions under the i3 program and awarded 92 i3 grants since the program was established under the American Recovery and Reinvestment Act of 2009 (ARRA). These proposed priorities, requirements, definitions, and selection criteria maintain the overall purpose and structure of the i3 program, which is discussed later in this document, and incorporate changes based on specific lessons learned from the first three competitions.

**DATES:** We must receive your comments on or before January 14, 2013.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How to Use This Site.''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Carol Lyons, U.S. Department of Education, 400 Maryland Avenue SW., room 4W203, LBJ, Washington, DC 20202–5930.

**Privacy Note:** The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** Carol Lyons. Telephone: (202) 453–7122. Or by email: *i3@ed.gov.* If you use a telecommunications device for the deaf (TDD) or text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** *Invitation to Comment:* We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priorities, requirements, definitions, and selection criteria, we urge you to identify clearly the specific proposed priority, requirement, definition, or selection criterion that each comment addresses. We make additional, specific requests for comment in the sections setting out the proposed priorities, requirements, definitions, and selection criteria elsewhere in this notice.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed priorities, requirements, definitions, and selection criteria. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice by accessing Regulations.gov. You may also inspect the comments in person in room 4W335, LBJ, 400 Maryland Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record:* On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Purpose of Program:* The i3 program addresses two related challenges. First, there are too few practices in education supported by rigorous evidence of effectiveness, despite national attention paid to finding practices that are effective at improving education outcomes in the decade since the establishment of the Department's Institute of Education Sciences (IES). Second, there are limited incentives to expand effective practices substantially and to use those practices to serve more students across schools, districts, and States. Student achievement suffers as a result.

The central innovation of the i3 program, and how it addresses these two challenges, is its multi-tier structure that links the amount of funding that an applicant may receive to the quality of the evidence supporting the efficacy of the proposed project. Applicants proposing practices supported by limited evidence can receive small grants that support the development and initial evaluation of promising practices and help to identify new solutions to pressing challenges; applicants proposing practices supported by evidence from rigorous evaluations, such as large randomized controlled trials, can receive sizable grants to support expansion across the Nation. This structure provides incentives for applicants to build evidence of effectiveness of their proposed projects and to address the barriers to serving more students across schools, districts, and States so that applicants can compete for more sizeable grants.

As importantly, all i3 projects are required to generate additional evidence of effectiveness. All i3 grantees must use part of their budgets to conduct independent evaluations (as defined in this notice) of their projects. This ensures that projects funded under the i3 program contribute significantly to improving the information available to practitioners and policymakers about which practices work, for which types of students, and in which contexts.

**Program Authority:** American Recovery and Reinvestment Act of 2009 (ARRA), Division A, Section 14007, Pub. L. 111–5.

**Background**

*The Statutory Context*

The ARRA established the i3 program to provide competitive grants to local educational agencies (LEAs) and nonprofit organizations with a record of improving student achievement in order to expand the implementation of, and investment in, innovative practices that are demonstrated to improve student achievement (as defined in this notice) or student growth (as defined in this notice), close achievement gaps, decrease dropout rates, increase high school graduation rates (as defined in this notice), or increase college enrollment and completion rates. The ARRA provided funding for the i3 program's first competition carried out during FY 2010; the FY 2011 and FY 2012 competitions were funded under the Department's annual appropriations. The Administration's reauthorization proposal for the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6301 et seq.) (ESEA) would authorize the i3 program under that act.

*Overview of the Investing in Innovation Fund (i3)*

As the Department's primary evidence-based grantmaking program, the i3 program is designed to generate and validate solutions to persistent educational challenges and support the expansion of effective solutions across the country to serve substantially larger numbers of students.

There are a number of features that make the i3 program different from many other Federal grant programs in education.

First, the i3 program builds a portfolio of different practices in critical priority areas. As the Proposed Priorities section of this document makes clear, the i3 program supports projects in a broad range of areas, from increasing teacher and principal effectiveness to turning around low-performing schools. We anticipate that after a number of i3 competitions, practices will emerge that can address challenges in each of these areas that are effective in improving student outcomes across the Nation.

Second, the i3 program links funding to the quality and extent of existing evidence showing the likelihood of a proposed practice improving student outcomes. Different tiers of grants, with increasing funding available at each tier, are linked to different levels of evidence.

Third, the i3 program supports the expansion (scaling) of effective programs by providing sufficient funding to build organizational capacity and to overcome barriers to reaching additional students. The different tiers of i3 grants comprise a funding continuum for effective programs that spans initial, localized development to implementation on a national scale, in the hope that more effective practices will displace less effective ones and lead to increases in student achievement and improvements in other student outcomes.

Fourth, the i3 program both requires and provides funding for an independent evaluation of each project to build understanding of ''what works'' in critical priority areas. An independent evaluation addresses issues such as for which populations or student subgroups particular practices are most effective and whether practices maintain their effectiveness as they expand to serve more students in more diverse contexts. An independent evaluation also provides an opportunity for grantees to generate the evidence needed to compete for funds at the next level of i3 funding (e.g., from a Development grant to a Validation grant; see description of the three types of grants that follows) if their projects are successful.

As in prior i3 competitions, in FY 2013 we intend to award three types of grants under this program: ''Development'' grants, ''Validation'' grants, and ''Scale-up'' grants. These grants differ in terms of the level of prior evidence of effectiveness required for consideration of funding, the level of scale the funded project should reach, and consequently the amount of funding available to support the project. We provide an overview to clarify the expectations for each grant type:

1. Development grants provide funding to support the development or testing of practices that are supported by evidence of promise (as defined in this notice) or strong theory (as defined in this notice) and whose efficacy should be systematically studied. We intend Development grants to support new or substantially more effective practices for addressing widely shared challenges. Development projects should be novel and significant nationally, not projects that simply implement existing practices in additional locations or support needs that are primarily local in nature.

All Development grantees must evaluate the effectiveness of the project at the level of scale proposed in the application. Development grant evaluations should assess whether the i3-supported practice is better than other approaches at increasing student achievement (as defined in this notice) or student growth (as defined in this notice), closing achievement gaps, decreasing dropout rates, increasing high school graduation rates (as defined in this notice), or increasing college enrollment and completion rates.

2. Validation grants provide funding to support expansion of projects supported by moderate evidence of effectiveness (as defined in this notice) to the national or regional level (as defined in this notice). Validation projects must further assess the effectiveness of the i3-supported practice through a rigorous evaluation, with particular focus on the populations for and the contexts in which the practice is most effective.

The outcomes of the first three i3 competitions have demonstrated that Validation grantees vary widely in their organizational maturity and capacity to expand significantly, far more than have Scale-up grantees. Given this history, we expect and consider it appropriate that each applicant would propose to use the Validation funding to build its capacity to deliver the i3-supported practice, particularly early in the funding period, to successfully reach the level of scale proposed in its application. The applicant would need to address any specific barriers to the growth or scaling of the organization or practice (including barriers related to cost-effectiveness) in order to deliver the i3-supported practice at the proposed level of scale and provide strategies to address these barriers as part of its proposed scaling plan.

All Validation grantees must evaluate the effectiveness of the practice that the supported project implements and expands. We expect that these evaluations will be conducted in a variety of contexts and for a variety of students, will identify the core elements of the practice, and will codify the practices to support adoption or replication by the applicant and other entities.

3. Scale-up grants provide funding to support expansion of projects supported by strong evidence of effectiveness (as defined in this notice) to the national level (as defined in this notice). In addition to improving outcomes for an increasing number of high-need students, we expect that Scale-up projects will generate information about the students and contexts for which a practice is most effective. We expect that Scale-up projects will increase understanding of strategies that allow organizations or practices to expand quickly and efficiently while maintaining their effectiveness.

A Scale-up grant may support the expansion of practices that have demonstrated through prior experience

and rigorous evaluation that they are effective at improving student achievement. An entity applying for a Scale-up grant should use the grant funding, at least in part, to address specific barriers to the growth or scaling up of an organization or practice (including barriers related to cost-effectiveness) in order to deliver the i3-supported practice at the proposed level of scale so that the entity is well-positioned to continue expansion following the expiration of Federal funding.

Similar to Validation grants, all Scale-up grantees must evaluate the effectiveness of the i3-supported practice that the project implements and expands; this is particularly important in instances in which the proposed project includes changing the i3-supported practice in order to more efficiently reach the proposed level of scale (for example, by developing technology-enabled training tools). We expect that these evaluations would be conducted in a variety of contexts and for a variety of students in order to determine the context(s) and population(s) for which the i3-supported practice is most effective. Regardless, the evaluation of a Scale-up grant must identify core elements of and codify the i3-supported practice that the project implements to support adoption or replication by other entities.

**Proposed Priorities**

This notice contains 10 proposed priorities. In addition, in any i3 competition we may include priorities from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637) (Supplemental Priorities). We are not proposing in this notice priorities in such areas as early learning or standards and assessments, which are already included in the Supplemental Priorities, because the language in the Supplemental Priorities adequately addresses those areas for the purposes of the i3 program.

**Proposed Priorities**

*Background*

The original set of four absolute priorities that the Department used for the FY 2010 i3 competition focused on the four assurances (or education reform areas) the Department used in implementing multiple programs funded under ARRA. We continue to consider these reform areas important and, thus, either include them in these proposed priorities or may include them in future competitions through the Supplemental Priorities.

The original i3 priorities were written broadly and generated a wide range of projects in the first three competitions. Now we are interested in supporting a more focused set of projects within areas of acute need and in more directly addressing particular challenges. Thus, we propose to modify our approach to the structure of the priorities so that each priority area includes the particular needs that the Secretary may address when establishing the priorities for a particular i3 competition. Our intent is to establish the flexibility to select from a variety of possible project focus areas within a given priority rather than using broad priorities as we have in the past; however, we expect to use only a subset of the priorities and the project focus areas within them in any particular future notice inviting applications. The Department will consider several factors when selecting the priorities to use in a given year, including the Administration's policy priorities, the need for new solutions in a particular priority area, other available funding for a particular priority area, and the results and lessons learned from prior i3 competitions. Further, the Department will consider the level of evidence or research available across the different priorities when determining which of the priorities would be most appropriate for the different types of grants under the i3 program. In a given year, the notice inviting applications will provide a concise list of the priorities that will be used for that year's i3 competition.

We propose that the Secretary may use any of the priorities established in the notice of final priorities, requirements, definitions, and selection criteria when establishing the priorities for each particular type of grant (Development, Validation, and Scale-up) in an i3 competition in FY 2013 and in subsequent years.

Proposed Priority 1—Improving the Effectiveness of Teachers or Principals

*Background:* Research indicates that teachers and principals are the most critical in-school factors in improving student achievement.[1] Proposed priority 1, therefore, focuses on improving the effectiveness of teachers and principals. Specifically, the proposed priority focuses on all dimensions of the teacher and principal career path and seeks to identify effective methods for recruiting, preparing, supporting, evaluating, and retaining effective principals and teachers, particularly at schools that serve high-needs students.

The proposed priority highlights the need for schools and districts to consider how to recruit effective teachers and principals, create distinct career pathways based on the strengths of its teachers and principals and the needs of its schools, and develop evaluation systems that provide information that can be used to provide timely and useful feedback for teachers and principals. Schools and districts can use these evaluation data to identify and provide necessary resources and tailored professional development in order to support the teachers and principals currently in the schools and to improve the processes for recruiting new talent. Providing teachers with tailored development and supports is important for improving teacher effectiveness and retaining teachers to ensure all schools have highly effective teachers and principals. Thus, the priority includes developing professional development supports and tools for teachers, including creating and implementing models that help teachers utilize time and resources more efficiently while maintaining or improving outcomes.

Finally, to ensure that all schools, especially those serving high-need students, benefit from projects funded under this priority, the priority also supports efforts to equitably distribute effective teachers and principals among schools.

Proposed Priority 1—Improving the Effectiveness of Teachers or Principals

Under this proposed priority, we would provide funding to projects that address one or more of the following priority areas:

(a) Developing new methods and sources for recruiting:

(1) Highly effective teachers (as defined in this notice);

(2) Highly effective principals (as defined in this notice); or

(3) Highly effective teachers and principals (as defined in this notice).

(b) Developing models for teacher preparation that deepen pedagogical knowledge and skills, such as

[1] Wright, S.P., Horn, S.P., Sanders, W.L. (1997). *Teacher and classroom context effects on student achievement: Implications for teacher evaluation.* Journal of Personnel Evaluation in Education 11:57–67; Rivkin, S.G., Hanushek, E.A., Kain, J.F. (2005). *Teachers, schools, and academic achievement.* Econometrica, 73(2):417–458.

Leithwood, K., Louis, K.S., Anderson, S., and Wahlstrom, K. (2004). *Review of research: How leadership influences student learning.* University of Minnesota, Center for Applied Research and Educational Improvement. Found at *www.cehd.umn.edu/carei/Leadership/ReviewofResearch.pdf.*

knowledge of instructional practices or knowledge and skills in classroom management, or that deepen pedagogical content knowledge, that have been demonstrated to improve student achievement.

(c) Developing models of induction and support for improving the knowledge and skills of novice teachers to increase teacher retention, improve teaching effectiveness, and accelerate student performance.

(d) Creating career pathways with differentiated opportunities and roles for teachers or principals, which may include differentiated compensation.

(e) Designing and implementing teacher or principal evaluation systems that provide clear, timely, and useful feedback, including feedback that identifies areas for improvement and that guides professional development for teachers and principals.

(f) Developing supports for ongoing development and improvement of teachers, principals, or instructional leaders, such as local and virtual communities, tools, training, and other mechanisms.

(g) Increasing the equitable distribution of effective teachers or principals across schools.

(h) Extending the reach of highly effective teachers to more students such as through developing and implementing school models that improve conditions for teaching and learning; or offering new opportunities for teachers to collaborate to accelerate student performance.

(i) Other projects addressing pressing needs related to improving teacher or principal effectiveness.

Proposed Priority 2—Improving Low-Performing Schools

*Background:* Approximately 10 percent of all high schools produce nearly half of the Nation's dropouts.[2] Proposed priority 2 addresses the pressing need to ensure all students receive a quality K–12 education by providing funding for activities that are designed to accelerate the performance of severely low-performing schools and the schools that feed students into them. Given the range of schools that this proposed priority aims to address, we are designing this priority to identify and support multiple approaches that can successfully turn around low-performing schools and improve outcomes for students in them.

Providing a combination of reform strategies, including effective teachers, strong school leadership, embedded professional development, greater use of data to inform instruction, increased learning time, and collaboration among teachers, can improve instruction and student outcomes in low-performing schools. Additionally, whole-school and ''wraparound'' reform strategies also can be used to improve the school environment and address other non-academic factors that affect student achievement. Thus, this proposed priority supports projects that would implement these strategies in low-performing schools.

Community engagement also is crucial to successfully turning around low-performing schools, so the proposed priority provides for enhancing the capacity of external partners to support these schools. Finally, to support States and districts specifically in their ongoing school reform efforts, the proposed priority supports projects designed to expand State and district capacity to turn around low-performing schools.

Proposed Priority 2—Improving Low-Performing Schools

Under this proposed priority, we would provide funding to projects that address one or more of the following priority areas:

(a) Designing whole-school models that incorporate such strategies as providing strong school leadership; strengthening the instructional program; embedding professional development that provides teachers with frequent feedback to increase the rigor and effectiveness of their instructional practice; redesigning the school day, week, or year; using data to inform instruction and improvement; establishing a school environment that promotes a culture of high expectations and addresses non-academic factors that affect student achievement; and providing ongoing mechanisms for parent and family engagement.

(b) Changing selected elements of the school's organizational design, such as by differentiating staff roles, changing student groupings, or enhancing instructional time.

(c) Recruiting, developing, or retaining highly effective staff, specifically teachers, principals, or instructional leaders, to work in low-performing schools.

(d) Implementing ''wraparound'' and social supports for students that address non-academic factors that impede student learning.

(e) Developing and enhancing the capacity of external partners to support efforts to turn around low-performing schools or districts.

(f) Expanding district- or State-level capacity to turn around low-performing schools by developing systems and processes to improve State and district support and oversight.

(g) Other projects addressing pressing needs related to improving low-performing schools.

Other Proposed Requirements Related to Proposed Priority 2

To meet this priority, a project must serve schools among (1) The lowest-performing schools in the State on academic performance measures; (2) schools in the State with the largest within-school performance gaps between student subgroups described in section 1111(b)(2) of the ESEA; or (3) secondary schools in the State with the lowest graduation rate over a number of years or the largest within-school gaps in graduation rates between student subgroups described in section 1111(b)(2) of the ESEA.

Proposed Priority 3—Improving Science, Technology, Engineering, and Mathematics (STEM) Education

*Background:* Ensuring that all students can access and excel in STEM fields is essential to our Nation's innovation economy and future prosperity. An increasing number of careers require an understanding of STEM concepts and the application of the skills and techniques of science, technology, engineering and mathematics; this proposed priority addresses this growing need.

The President's Council of Advisors on Science and Technology (PCAST)[3] has produced reports on K–12 and undergraduate STEM education that provided recommendations on increasing achievement and postsecondary enrollment in STEM fields. The recommendations include cultivating and recruiting STEM teachers, creating STEM-related experiences to inspire and engage students, and encouraging partnerships among stakeholders in order to diversify pathways to STEM careers. Proposed priority 3 supports projects that would address these recommendations by revising STEM courses, making STEM learning more engaging to a wider range of students, increasing the number of effective STEM teachers, and expanding STEM education and career opportunities for groups traditionally

[2] Balfanz, R., Bridgeland, J.M., Horning Fox, J., Moore, L.A. (2010). *Building a Grad nation: Progress and Challenge in Ending the High School Dropout Epidemic 2010–2011 Annual Update.* See *www.americaspromise.org/Our-Work/Grad-Nation/Building-a-Grad-Nation.aspx.*

[3] See *www.whitehouse.gov/administration/eop/ostp/pcast/docsreports.*

underrepresented in the STEM fields, including minorities, individuals with disabilities, and women and girls.

Proposed Priority 3—Improving Science, Technology, Engineering, and Mathematics (STEM) Education

Under this proposed priority, we would provide funding to projects that address one or more of the following priority areas:

(a) Providing students with increased access to rigorous and engaging coursework in STEM.

(b) Redesigning STEM course content and instructional practices to engage students and increase student academic success.

(c) Developing new methods and resources for recruiting individuals with content expertise in STEM subject areas into teaching.

(d) Increasing the opportunities for high-quality preparation of, or professional development for, teachers or other educators in STEM subjects, through activities that include building content and pedagogical content knowledge.

(e) Expanding opportunities for high-quality out-of-school and extended-day activities that provide students with opportunities for deliberate practice that increase STEM learning, engagement, and expertise.

(f) Increasing the number of individuals from groups traditionally underrepresented in STEM, including minorities, individuals with disabilities, and women and girls, who are provided with access to rigorous and engaging coursework in STEM and are prepared for postsecondary study in STEM.

(g) Increasing the number of individuals from groups traditionally underrepresented in STEM, including minorities, individuals with disabilities, and women, who are teachers or educators of STEM subjects and have increased opportunities for high-quality preparation or professional development.

(h) Other projects addressing pressing needs for improving STEM education.

Proposed Priority 4—Improving Academic Outcomes for Students With Disabilities

*Background:* One of the primary goals of the ESEA is to improve the quality of education for all students, including students with disabilities, and ensuring the provision of an appropriate education to students with disabilities is the primary objective of the Individuals with Disabilities Education Act. Proposed priority 4 would support activities focused on improving the instruction for and assessment of students with disabilities from early learning through postsecondary education. Thus, the proposed priority would support projects that coordinate technical assistance across programs serving infants, toddlers, or preschoolers with disabilities to ensure the operation of coherent systems supporting these children and their families. And, at the postsecondary level, the priority would support projects that collect data on academic and other outcomes for students with disabilities to better understand their transition into postsecondary education and how their secondary school education prepares them for higher education.

Consistent with our approach under proposed priority 1 and recognizing the critical importance of evaluating teacher effectiveness, this proposed priority also would support projects to design and implement teacher evaluation systems that measure the performance of special education teachers and related service providers.

Finally, because we know that students with differing abilities can learn and excel at high levels, provided they receive appropriate academic and non-academic supports, this priority would support projects designed to improve academic outcomes for students with disabilities in inclusive settings.

Proposed Priority 4—Improving Academic Outcomes for Students With Disabilities

Under this proposed priority, we would provide funding to projects that address one or more of the following priority areas:

(a) Coordinating technical assistance across programs that address the needs of infants, toddlers, or preschoolers with disabilities, in order to ensure the operation of coherent systems of support for those children and their families.

(b) Designing and implementing teacher evaluation systems that define and measure effectiveness of special education teachers and related service providers.

(c) Improving academic outcomes for students with disabilities in inclusive settings.

(d) Improving postsecondary data collection and tracking of academic and related outcomes for students with disabilities to understand their transition into postsecondary education and how their secondary school education prepared them for higher education.

(e) Other projects addressing pressing needs related to improving academic outcomes for students with disabilities.

Proposed Priority 5—Improving Academic Outcomes for English Learners (ELs)

*Background:* School districts across the country have experienced a substantial increase in the enrollment of students who cannot speak, read, or write English well enough to participate meaningfully in educational programs without appropriate support services. Proposed priority 5 would support activities that are designed to address the language-related limitations that can impede student learning.

A student's ability to master core academic subjects depends on the student's ability to understand academic language, including discipline-specific vocabulary. Therefore, proposed priority 5 aims to increase opportunities for ELs to develop their academic and literacy skills and for ELs to build their skills in using and understanding English language oral discourse, varying and complex text types, and discipline-specific vocabulary that are typical of core academic courses.

Consistent with our approach under Proposed Priorities 1 and 4 and recognizing the critical importance of evaluating teacher effectiveness, this proposed priority also would support projects to design and implement teacher evaluation systems that measure the performance of teachers of ELs.

The proposed priority also aims to improve the high school graduation rates and college-readiness of ELs by supporting projects that would align the curriculum used in the language development and content courses in which they enroll with college- and career-ready standards as well as projects that would provide robust and targeted professional development to teachers, administrators, and other school personnel serving EL students.

Proposed Priority 5—Improving Academic Outcomes for English Learners (ELs)

Under this proposed priority, we would provide funding to projects that address one or more of the following priority areas:

(a) Increasing the number and proportion of ELs successfully completing courses in core academic subjects by developing, implementing, and evaluating new instructional approaches and tools that are sensitive to the language demands necessary to access challenging content, including technology-based tools.

(b) Aligning and implementing the curriculum and instruction used in grades 6–12 for language development and content courses to provide the academic vocabuarly and discourse skills necessary for preparing ELs to be college- and career-ready.

(c) Preparing young ELs to be on track to be college- and career-ready when they graduate from high school by developing comprehensive, developmentally appropriate, early learning programs (birth-grade 3) that are aligned with the State's high-quality early learning standards, designed to improve readiness for kindergarten, and support development of literacy and academic skills in English or in English and another language.

(d) Developing and implementing school-wide professional development for teachers, administrators, and other personnel in schools in which a significant percentage of students are ELs.

(e) Designing and implementing teacher evaluation systems that define and measure effectiveness of teachers of ELs.

(f) Other projects addressing pressing needs related to improving academic outcomes for ELs.

Proposed Priority 6—Improving Parent and Family Engagement

*Background:* Parents and families are instrumental in helping children improve their academic performance. Proposed priority 6 addresses the need for building parents' and families' awareness of their role in improving their children's educational outcomes and enhancing their ability to support student learning and school improvement through training. Additionally, the proposed priority addresses the corresponding need to provide professional development to school staff so that they have the skills needed to support and cultivate environments that are welcoming to parents and families and to build relationships that increase their capacity to support their children's educational needs.

Finally, to ensure that parents and families have the information they need to be full partners in their children's education, this proposed priority would support the development of tools and initiatives that provide them with ongoing access to data about their children's progress and performance.

Proposed Priority 6—Improving Parent and Family Engagement

Under this proposed priority, we would provide funding to projects that address one or more of the following priority areas:

(a) Developing and implementing initiatives that provide training for parents and families to learn skills and strategies that will support their students in improving academic outcomes.

(b) Implementing initiatives that are designed to enhance the skills and competencies of school and other administrative staff in building relationships and collaborating with families, particularly those who have been underengaged with the school(s) in the past, in order to support student achievement and school improvement.

(c) Implementing initiatives that cultivate sustainable partnerships and increase connections between parents and school staff in order to support student achievement and school improvement.

(d) Developing tools or practices that provide students and parents with improved, ongoing access to data and other information about the students' progress and performance.

(e) Other projects addressing pressing needs related to improving student outcomes by improving parent and family engagement.

Proposed Priority 7—Improving Cost-Effectiveness and Productivity

*Background:* It is essential for schools and LEAs to closely examine their spending practices and reallocate resources toward more efficient and more cost-effective strategies. Accordingly, through proposed priority 7, the Department continues to emphasize the importance of cost-effectiveness and productivity. Improvements in operational, organizational, and instruction processes and structures will allow organizations to achieve the best possible results in the most efficient manner.

With proposed priority 7, we continue and strengthen this focus by including specific requirements that applicants must address. These additional details clarify important elements to ensure that an applicant's proposed plan to improve productivity would provide sufficient detail about how the applicant aims to modify its processes and structures and how the applicant would evaluate whether the proposed project was cost-effective when implemented. A detailed budget, an examination of different types of costs, and a plan to monitor and evaluate the cost savings are essential to any reasoned attempt at improving productivity.

Proposed Priority 7—Improving Cost-Effectiveness and Productivity

Under this proposed priority, we would provide funding to projects that address one of the following areas:

(a) Substantially improving student outcomes without commensurately increasing per-student costs.

(b) Maintaining student outcomes while substantially decreasing per-student costs.

(c) Substantially improving student outcomes while substantially decreasing per-student costs.

Other Proposed Requirements Related to Proposed Priority 7

An application proposing to address this priority must provide—

(1) A clear and coherent budget that identifies expected student outcomes before and after the practice, the cost per student for the practice, and a clear calculation of the cost per student served;

(2) A compelling discussion of the expected cost-effectiveness of the practice compared with alternative practices;

(3) A clear delineation of one-time costs versus ongoing costs and a plan for sustaining the project, particularly ongoing costs, after the expiration of i3 funding;

(4) Identification of specific activities designed to increase substantially the cost-effectiveness of the practice, such as re-designing costly components of the practice (while maintaining efficacy) or testing multiple versions of the practice in order to identify the most cost-effective approach; and

(5) A project evaluation that addresses the cost-effectiveness of the proposed practice.

Proposed Priority 8—Effective Use of Technology

*Background:* Technology can improve student academic outcomes, often rapidly and in unprecedented ways. While there have been significant advances in the use of technology, the core operations of most schools and LEAs remain untouched. The Department's National Education Technology Plan 2010 [4] highlighted the potential of ''connected teaching'' to extend the reach of the most effective teachers by using online tools, and it also highlighted the need for high-quality learning resources that can reach learners wherever and whenever they are needed. Thus, proposed priority 8 supports strategies that address these needs.

[4] See *www.ed.gov/edblogs/technology/netp-2010/*.

Technological solutions also can be used effectively to assess the learning progress of individual students and to provide appropriate feedback to students and teachers. Proposed priority 8 would therefore support projects using instructional platforms that provide customized instruction for different learners, including integrated assessments and continuous feedback.

Proposed Priority 8—Effective Use of Technology

Under this proposed priority, we would provide funding to projects that use technology to address one or more of the following priority areas:

(a) Providing real-time access to learning experiences that are adaptive and self-improving in order to optimize the delivery of instruction to learners with a variety of learning needs.

(b) Providing students and teachers with ''anytime, anywhere'' access to academic content and learning experiences that they otherwise would not have access to, such as rigorous coursework that is not offered in a particular school, or effective professional development activities or learning communities enabled by technology.

(c) Developing new methods and resources for teacher preparation or professional development that increase a teacher's ability to utilize technology in the classroom to improve student outcomes.

(d) Assessing student proficiencies in complex skills, such as critical thinking and collaboration across academic disciplines.

(e) Developing and implementing technology-enabled strategies for teaching and learning, such as models and simulations, collaborative virtual environments, or ''serious games,'' especially for teaching concepts and content (e.g., systems thinking) that are difficult to teach using traditional approaches.

(f) Integrating technology with the implementation of rigorous college- and career-ready standards.

(g) Other projects that increase the use of technology for effective teaching and learning.

Proposed Priority 9—Formalizing and Codifying Effective Practices

*Background:* A primary goal of the i3 program is to identify and support the expansion of effective practices. The education field's knowledge management systems and dissemination of effective practices, particularly in instances where an effective practice could displace a less effective or ineffective practice, is underdeveloped. Proposed priority 9 aims to address these challenges and improve student outcomes by supporting strategies that identify key elements of effective practices and capturing lessons learned about the implementation of the practices. An applicant meeting this priority must commit to sharing knowledge about the practice broadly and supporting the implementation of the practice in other settings and locations in order to assess whether the practice can be successfully replicated.

Proposed Priority 9—Formalizing and Codifying Effective Practices

Under this proposed priority, we would provide funding to projects that formalize and codify effective practices. An application proposing to address this priority must, as part of its application:

(a) Identify the practice or practices that the application proposes to formalize (i.e., establish and define key elements of the practice) and codify (i.e., develop a guide or tools to support the dissemination of information on key elements of the practice) and explain why there is a need for formalization and codification.

(b) Evaluate different forms of the practice to identify the critical components of the practice that are crucial to its success and sustainability, including the adaptability of critical components to different teaching and learning environments.

(c) Provide a coherent and comprehensive plan for developing materials, training, toolkits, or other supports that other entities would need in order to implement the practice effectively and with fidelity.

(d) Commit to assessing the replicability and adaptability of the practice by supporting the implementation of the practice in a variety of locations during the project period using the materials, training, toolkits, or other supports that were developed for the i3-supported practice.

Proposed Priority 10—Serving Rural Communities

*Background:* Educational challenges and the corresponding solutions frequently are different in rural areas from those in urban or suburban areas. Proposed priority 10 recognizes this and would support projects that serve students from rural areas. In so doing, proposed priority 10 would help ensures that rural areas have access to and benefit from innovative education reforms that specifically address their needs.

Proposed Priority 10—Serving Rural Communities

Under this proposed priority, we would provide funding to projects that address one of the absolute priorities established for a particular i3 competition and under which the majority of students to be served are enrolled in rural local educational agencies (as defined in this notice).

*Specific Requests for Comment*

In addition to our general interest in receiving comment on the priorities proposed in this notice, we are particularly interested in comments related to proposed priority 7, Improving Cost-Effectiveness and Productivity, and proposed priority 5, Improving Academic Outcomes for ELs. We seek comments on whether the language of proposed priority 7 should establish a specific numeric target or threshold of cost-effectiveness or productivity improvement and, if we were to establish such a target, suggestions for what that target or threshold should be and how we should require that applicants or grantees measure progress toward and attainment of it. With regards to (c) of proposed priority 5, we seek comments on whether the Department should allow applicants to meet the priority by proposing processes, products, strategies, or practices that address instruction in English or in English and a language other than English.

We also recognize that the goals of supporting practices that are both innovative and evidence-based has the potential to limit the universe of applicants. Therefore, we are interested in receiving comments on whether we should establish a priority for applicants that have never received or partnered with an entity that has received a grant under the i3 program.

*Types of Priorities*

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

*Absolute priority:* Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)). In the i3 competition, each application must choose to address one of the absolute priorities and projects are grouped by that absolute priority for the purposes of peer review and funding determinations.

*Competitive preference priority:* Under a competitive preference priority,

we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

*Invitational priority:* Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

**Proposed Requirements**

*Background*

We propose to revise some of the nonstatutory i3 program requirements that the Department has previously established based on our experiences with the three i3 competitions the Department has held to date. For example, many existing, widespread practices in the field currently lack the evidence base to compete for Scale-up or Validation grants because of limited prior investments in rigorous, high-quality evaluations and limited internal capacity to conduct these evaluations. One of the primary goals of the i3 program is to increase knowledge of what works in education for i3 grantees and non-grantees alike. As such, we propose to strengthen the project evaluation requirement so that i3 grantees will produce high-quality evaluations that estimate the impact of the i3-supported practice (as implemented at the proposed level of scale) on a relevant outcome (as defined in this notice).

Evaluations might consider whether the i3-supported practice is more effective than other approaches or its effect on improving student achievement (as defined in this notice) or student growth (as defined in this notice), closing achievement gaps, decreasing dropout rates, increasing high school graduation rates (as defined in this notice), or increasing college enrollment and completion rates.

*Proposed Requirements*

The Assistant Deputy Secretary proposes the following requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

1. *Innovations that Improve Achievement for High-Need Students:* All grantees must implement practices that are designed to improve student achievement (as defined in this notice) or student growth (as defined in this notice), close achievement gaps, decrease dropout rates, increase high school graduation rates (as defined in this notice), or increase college enrollment and completion rates for high-need students (as defined in this notice).

2. *Innovations that Serve Kindergarten-through-Grade-12 (K–12) Students:* All grantees must implement practices that serve students who are in grades K–12 at some point during the funding period. To meet this requirement, projects that serve early learners (i.e., infants, toddlers, or preschoolers) must provide services or supports that extend into kindergarten or later years, and projects that serve postsecondary students must provide services or supports during the secondary grades or earlier.

3. *Eligible Applicants:* Entities eligible to apply for i3 grants include either of the following:

(a) An LEA.

(b) A partnership between a nonprofit organization and—

(1) One or more LEAs; or

(2) A consortium of schools.

*Statutory Eligibility Requirements:* Except as specifically set forth in the *Note about Eligibility for an Eligible Applicant that Includes a Nonprofit Organization* that follows, to be eligible for an award, an eligible applicant must—

(a)(1) Have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA (economically disadvantaged students, students from major racial and ethnic groups, students with limited English proficiency, students with disabilities); or

(2) Have demonstrated success in significantly increasing student academic achievement for all groups of students described in that section;

(b) Have made significant improvements in other areas, such as high school graduation rates (as defined in this notice) or increased recruitment and placement of high-quality teachers and principals, as demonstrated with meaningful data;

(c) Demonstrate that it has established one or more partnerships with the private sector, which may include philanthropic organizations, and that organizations in the private sector will provide matching funds in order to help bring results to scale; and

(d) In the case of an eligible applicant that includes a nonprofit organization, provide in the application the names of the LEAs with which the nonprofit organization will partner, or the names of the schools in the consortium with which it will partner. If an eligible applicant that includes a nonprofit organization intends to partner with additional LEAs or schools that are not named in the application, it must describe in the application the demographic and other characteristics of these LEAs and schools and the process it will use to select them.

**Note about LEA Eligibility:** For purposes of this program, an LEA is an LEA located within one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico.

**Note about Eligibility for an Eligible Applicant that Includes a Nonprofit Organization:** The authorizing statute specifies that an eligible applicant that includes a nonprofit organization meets the requirements in paragraphs (a) and (b) of the eligibility requirements for this program if the nonprofit organization has a record of significantly improving student achievement, attainment, or retention. For an eligible applicant that includes a nonprofit organization, the nonprofit organization must demonstrate that it has a record of significantly improving student achievement, attainment, or retention through its record of work with an LEA or schools. Therefore, an eligible applicant that includes a nonprofit organization does not necessarily need to include as a partner for its i3 grant an LEA or a consortium of schools that meets the requirements in paragraphs (a) and (b) of the eligibility requirements in this notice.

In addition, the authorizing statute specifies that an eligible applicant that includes a nonprofit organization meets the requirements of paragraph (c) of the eligibility requirements in this notice if the eligible applicant demonstrates that it will meet the requirement for private-sector matching.

4. *Cost-Sharing or Matching Funds:* To be eligible for an award, an applicant must demonstrate that one or more private sector organizations, which may include philanthropic organizations, will provide matching funds in order to help bring project results to scale. An eligible applicant must obtain matching funds or in-kind donations equal to an amount that the Secretary will specify in the notice inviting applications for the specific i3 competition. The Secretary will announce in the notice inviting applications when and how selected eligible applicants must submit evidence of the private-sector matching funds.

The Secretary may consider decreasing the matching requirement in the most exceptional circumstances. The Secretary will provide instructions for how to request a reduction of the matching requirement in the notice inviting applications.

5. *Evidence Standards:* To be eligible for an award, an application for a Development grant must be supported by one of the following:

(a) Evidence of promise (as defined in this notice);

(b) Strong theory (as defined in this notice); or

(c) Evidence of promise (as defined in this notice) or strong theory (as defined in this notice).

The Secretary will announce in the notice inviting applications which options will be used as the evidence standard for a Development grant in a given competition. Note that under (c), applicants must identify whether the application is supported by evidence of promise (as defined in this notice) or strong theory (as defined in this notice).

To be eligible for an award, an application for a Validation grant must be supported by moderate evidence of effectiveness (as defined in this notice);

To be eligible for an award, an application for a Scale-up grant must be supported by strong evidence of effectiveness (as defined in this notice).

6. *Funding Categories:* An applicant will be considered for an award only for the type of i3 grant (Development, Validation, or Scale-up grant) for which it applies. An applicant may not submit an application for the same proposed project under more than one type of grant.

7. *Limit on Grant Awards:* (a) No grantee may receive more than two new grant awards of any type under the i3 program in a single year; (b) In any two-year period, no grantee may receive more than one new Scale-up or Validation grant; and (c) No grantee may receive in a single year new i3 grant awards that total an amount greater than the sum of the maximum amount of funds for a Scale-up grant and the maximum amount of funds for a Development grant for that year. For example, in a year when the maximum award value for a Scale-up grant is $25 million and the maximum award value for a Development grant is $5 million, no grantee may receive in a single year new grants totaling more than $30 million.

8. *Subgrants:* In the case of an eligible applicant that is a partnership between a nonprofit organization and (1) one or more LEAs or (2) a consortium of schools, the partner serving as the applicant and, if funded, as the grantee, may make subgrants to one or more entities in the partnership.

9. *Evaluation:* The grantee must conduct an independent evaluation (as defined in this notice) of its project. This evaluation must estimate the impact of the i3-supported practice (as implemented at the proposed level of scale) on a relevant outcome (as defined in this notice). The grantee must make broadly available digitally and free of charge, through formal (e.g., peer-reviewed journals) or informal (e.g., newsletters) mechanisms, the results of any evaluations it conducts of its funded activities. For Scale-up and Validation grants, the grantee must also ensure that the data from its evaluation are made available to third-party researchers consistent with applicable privacy requirements.

In addition, the grantee and its independent evaluator must agree to cooperate with any technical assistance provided by the Department or its contractor and comply with the requirements of any evaluation of the program conducted by the Department. This includes providing to the Department, within 100 days of a grant award, an updated comprehensive evaluation plan in a format and using such tools as the Department may require. Grantees must update this evaluation plan at least annually to reflect any changes to the evaluation. All these updates must be consistent with the scope and objectives of the approved application.

10. *Communities of Practice:* Grantees must participate in, organize, or facilitate, as appropriate, communities of practice for the i3 program. A community of practice is a group of grantees that agrees to interact regularly to solve a persistent problem or improve practice in an area that is important to them.

11. *Management Plan:* Within 100 days of a grant award, the grantee must provide an updated comprehensive management plan for the approved project in a format and using such tools as the Department may require. This management plan must include detailed information about implementation of the first year of the grant, including key milestones, staffing details, and other information that the Department may require. It must also include a complete list of performance metrics, including baseline measures and annual targets. The grantee must update this management plan at least annually to reflect implementation of subsequent years of the project.

**Proposed Definitions**

*Background:* To ensure that terms used in the i3 program have clear and commonly understood meanings and are aligned with other Department programs, we propose the following definitions. The majority of these definitions are the same as, or substantially similar to, those we have established and used in prior i3 competitions. However, we are proposing some changes to those definitions related to evidence of effectiveness. In that regard, we are particularly interested in comments on the level of rigor required under the proposed definitions for ''strong evidence of effectiveness,'' ''moderate evidence of effectiveness,'' ''evidence of promise,'' and ''strong theory.'' We have attempted to clarify the definitions so that applicants can better understand what is required to meet each level of evidence. We have also narrowed the allowable evaluation methodologies at the strong and moderate evidence of effectiveness levels so that the allowable evaluation methodologies are those that are most likely to support causal conclusions. We welcome comments about whether the updated definitions are too restrictive or not restrictive enough and whether there are particular parts of the definitions that remain unclear or undefined.

*Proposed Definitions*

The Assistant Deputy Secretary proposes the following definitions for this program. We may apply one or more of these definitions in any year in which this program is in effect.

*Consortium of schools* means two or more public elementary or secondary schools acting collaboratively for the purpose of applying for and implementing an i3 grant jointly with an eligible nonprofit organization.

*Evidence of promise* means there is empirical evidence to support the theoretical linkage between at least one critical component and at least one relevant outcome presented in the logic model (as defined in this notice) for the proposed process, product, strategy, or practice. Specifically, evidence of promise means the following conditions are met:

(a) There is at least one study that is either a—

(1) Correlational study with statistical controls for selection bias;

(2) Quasi-experimental study (as defined in this notice) that meets the What Works Clearinghouse Evidence Standards with reservations; [5] or

(3) Randomized controlled trial (as defined in this notice) that meets the What Works Clearinghouse Evidence Standards with or without reservations; [6] and

(b) Such a study found a statistically significant or substantively important

[5] *See* What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

[6] *See* What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

(defined as a difference of 0.25 standard deviations or larger), favorable association between at least one critical component and one relevant outcome presented in the logic model for the proposed process, product, strategy, or practice.

*High-need student* means a student at risk of educational failure or otherwise in need of special assistance and support, such as students who are living in poverty, who attend high-minority schools (as defined in this notice), who are far below grade level, who have left school before receiving a regular high school diploma, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who have been incarcerated, who have disabilities, or who are English learners.

*High-minority school* is defined by a school's LEA in a manner consistent with the corresponding State's Teacher Equity Plan, as required by section 1111(b)(8)(C) of the ESEA. The applicant must provide, in its i3 application, the definition(s) used.

*High school graduation rate* means a four-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1) and may also include an extended-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1)(v) if the State in which the proposed project is implemented has been approved by the Secretary to use such a rate under Title I of the ESEA.

*Highly effective principal* means a principal whose students, overall and for each subgroup as described in section 1111(b)(3)(C)(xiii) of the ESEA (economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with disabilities, students with limited English proficiency, and students of each gender), achieve high rates (e.g., one and one-half grade levels in an academic year) of student growth. Eligible applicants may include multiple measures, provided that principal effectiveness is evaluated, in significant part, based on student growth. Supplemental measures may include, for example, high school graduation rates; college enrollment rates; evidence of providing supportive teaching and learning conditions, support for ensuring effective instruction across subject areas for a well-rounded education, strong instructional leadership, and positive family and community engagement; or evidence of attracting, developing, and retaining high numbers of effective teachers.

*Highly effective teacher* means a teacher whose students achieve high rates (e.g., one and one-half grade levels in an academic year) of student growth. Eligible applicants may include multiple measures, provided that teacher effectiveness is evaluated, in significant part, based on student academic growth. Supplemental measures may include, for example, multiple observation-based assessments of teacher performance or evidence of leadership roles (which may include mentoring or leading professional learning communities) that increase the effectiveness of other teachers in the school or LEA.

*Independent evaluation* means that the evaluation is designed and carried out independent of, but in coordination with, any employees of the entities who develop a process, product, strategy, or practice and are implementing it.

*Innovation* means a process, product, strategy, or practice that improves (or is expected to improve) significantly upon the outcomes reached with status quo options and that can ultimately reach widespread effective usage.

*Large sample* means a sample of 350 or more students (or other single analysis units) who were randomly assigned to a treatment or control group, or 50 or more groups (such as classrooms or schools) that contain 10 or more students (or other single analysis units) and that were randomly assigned to a treatment or control group.

*Logic model* (also referred to as theory of action) means a well-specified conceptual framework that identifies key components of the proposed process, product, strategy, or practice (i.e., the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the relationships among the key components and outcomes, theoretically and operationally.

*Moderate evidence of effectiveness* means one of the following conditions is met:

(a) There is at least one study of the effectiveness of the process, product, strategy, or practice being proposed that meets the What Works Clearinghouse Evidence Standards without reservations;[7] found a statistically significant favorable impact on a relevant outcome (as defined in this notice) (with no statistically significant unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse); and includes a sample that overlaps with the populations or settings proposed to receive the process, product, strategy, or practice.

(b) There is at least one study of the effectiveness of the process, product, strategy, or practice being proposed that meets the What Works Clearinghouse Evidence Standards with reservations,[8] found a statistically significant favorable impact on a relevant outcome (as defined in this notice) (with no statistically significant unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), includes a sample that overlaps with the populations or settings proposed to receive the process, product, strategy, or practice, and includes a large sample (as defined in this notice) and a multi-site sample (as defined in this notice) (**Note:** multiple studies can cumulatively meet the large and multi-site sample requirements as long as each study meets the other requirements in this paragraph).

*Multi-site sample* means more than one site, where site can be defined as an LEA, locality, or State.

*National level* describes the level of scope or effectiveness of a process, product, strategy, or practice that is able to be effective in a wide variety of communities, including rural and urban areas, as well as with different groups (e.g., economically disadvantaged, racial and ethnic groups, migrant populations, individuals with disabilities, English learners, and individuals of each gender).

*Quasi-experimental design study* means a study using a design that attempts to approximate an experimental design by identifying a comparison group that is similar to the treatment group in important respects. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards with reservations[9] (they cannot meet What Works Clearinghouse Evidence Standards without reservations).

*Randomized controlled trial* means a study that employs random assignment of, for example, students, teachers, classrooms, schools, or districts to receive the intervention being evaluated (the treatment group) or not to receive the intervention (the control group). The

[7] *See* What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

[8] *See* What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

[9] *See* What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

estimated effectiveness of the intervention is the difference between the average outcome for the treatment group and for the control group. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards without reservations.[10]

*Regional level* describes the level of scope or effectiveness of a process, product, strategy, or practice that is able to serve a variety of communities within a State or multiple States, including rural and urban areas, as well as with different groups (e.g., economically disadvantaged, racial and ethnic groups, migrant populations, individuals with disabilities, English learners, and individuals of each gender). For an LEA-based project to be considered a regional-level project, a process, product, strategy, or practice must serve students in more than one LEA, unless the process, product, strategy, or practice is implemented in a State in which the State educational agency is the sole educational agency for all schools.

*Relevant outcome* means the student outcome or outcomes (or the ultimate outcome if not related to students) that the proposed project is designed to improve, consistent with the specific goals of the project and the i3 program.

*Rural local educational agency* means a local educational agency (LEA) that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under Title VI, Part B of the ESEA. Eligible applicants may determine whether a particular LEA is eligible for these programs by referring to information on the Department's Web site at *www2.ed.gov/nclb/freedom/local/reap.html.*

*Strong evidence of effectiveness* means that one of the following conditions is met:

(a) There is at least one study of the effectiveness of the process, product, strategy, or practice being proposed that meets the What Works Clearinghouse Evidence Standards without reservations;[11] found a statistically significant favorable impact on a relevant outcome (as defined in this notice) (with no statistically significant unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse); includes a sample that overlaps with the populations and settings proposed to receive the process, product, strategy, or practice; and includes a large sample (as defined in this notice) and a multi-site sample (as defined in this notice) (**Note:** multiple studies can cumulatively meet the large and multi-site sample requirements as long as each study meets the other requirements in this paragraph).

(b) There are at least two studies of the effectiveness of the process, product, strategy, or practice being proposed, each of which meets the What Works Clearinghouse Evidence Standards with reservations,[12] found a statistically significant favorable impact on a relevant outcome (as defined in this notice) (with no statistically significant unfavorable impacts on that outcome for relevant populations in the studies or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), includes a sample that overlaps with the populations and settings proposed to receive the process, product, strategy, or practice, and includes a large sample (as defined in this notice) and a multi-site sample (as defined in this notice).

*Strong theory* means a rationale for the proposed process, product, strategy, or practice that includes a logic model (as defined in this notice).

*Student achievement* means—

(a) For grades and subjects in which assessments are required under ESEA section 1111(b)(3): (1) A student's score on such assessments and may include (2) other measures of student learning, such as those described in paragraph (b), provided they are rigorous and comparable across schools within an LEA.

(b) For grades and subjects in which assessments are not required under ESEA section 1111(b)(3): Alternative measures of student learning and performance such as student results on pre-tests, end-of-course tests, and objective performance-based assessments; student learning objectives; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools within an LEA.

*Student growth* means the change in student achievement (as defined in this notice) for an individual student between two or more points in time. An applicant may also include other measures that are rigorous and comparable across classrooms.

**Proposed Selection Criteria**

*Background*

The proposed selection criteria are designed to ensure that applications selected for funding have the potential to generate substantial improvements in student achievement and other key outcomes and include well-articulated plans for the implementation and evaluation of the proposed project. Peer reviewers will use these criteria to determine how well an applicant's proposed project aligns with our expectations for the Development, Validation, or Scale-up grant the applicant seeks. As such, although we are proposing these criteria as a single list, the criteria selected and the number of points that each may be worth would vary by the type of i3 grant (Development, Validation, or Scale-up grant).

The proposed selection criteria are similar to those used in prior i3 competitions; the revisions reflect our experiences with their use. In particular, the selection criteria used in prior competitions did not articulate as clearly as intended our expectations for scaling up projects and what peer reviewers should assess to determine whether a project could feasibly achieve its proposed scale. In the proposed selection criteria, we include several factors that address whether there is unmet demand for the services that a grantee would provide and whether an applicant has identified and will address barriers that prevent the applicant from reaching that scale at the time of its application.

*Proposed Selection Criteria*

The Secretary proposes the following selection criteria for evaluating an application under this program. We may apply one or more of these criteria in any year in which this program is in effect. We propose that the Secretary may use:

- One or more of the selection criteria established in the notice of final priorities, requirements, definitions, and selection criteria;
- Any of the selection criteria in 34 CFR 75.210; criteria based on the statutory requirements for the i3 program in accordance with 34 CFR 75.209; or
- Any combination of these when establishing selection criteria for each particular type of grant (Development,

[10] *See* What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

[11] *See* What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

[12] *See* What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

Validation, and Scale-up) in any i3 competition. We propose that the Secretary may further define each criterion by selecting specific factors for it. The Secretary may select these factors from any selection criterion in the list above. In the notice inviting applications, the application package, or both we will announce the specific selection criteria that apply to a competition and the maximum possible points assigned to each criterion.

(a) Significance

In determining the significance of the proposed project, the Secretary proposes to consider one or more of the following factors:

(1) The extent to which the proposed project addresses a national need.

(2) The extent to which the proposed project addresses a challenge for which there is a national need for solutions that are better than the solutions currently available.

(3) The extent to which the proposed project would implement a novel approach as compared with what has been previously attempted nationally.

(4) The extent of the expected impact of the project on relevant outcomes (as defined in this notice), including the estimated impact of the project on student outcomes (particularly those related to student achievement (as defined in this notice)) and the breadth of the project's impact, compared with alternative practices or methods of addressing similar needs.

(5) The extent to which the proposed project demonstrates that it is likely to have a meaningful impact on relevant outcomes (as defined in this notice), particularly those related to student achievement (as defined in this notice), if it were implemented and evaluated in a variety of settings.

(6) The extent to which the proposed project will substantially improve on the outcomes achieved by other practices, such as through better student outcomes, lower cost, or accelerated results.

(7) The importance and magnitude of the proposed project's expected impact on a relevant outcome (as defined in this notice), particularly one related to student achievement (as defined in this notice).

(8) The likelihood that the project will have the estimated impact, including the extent to which the applicant demonstrates that unmet demand for the proposed project or the proposed services will enable the applicant to reach the proposed level of scale.

(9) The feasibility of national expansion if favorable outcomes are achieved.

(b) Quality of the Project Design

In determining the quality of the project design, the Secretary proposes to consider one or more of the following factors:

(1) The extent to which the proposed project addresses the national need and priorities the applicant is seeking to meet.

(2) The extent to which the proposed project addresses the absolute priority the applicant is seeking to meet.

(3) The clarity and coherence of the project goals, including the extent to which the proposed project articulates an explicit plan or actions to achieve its goals (e.g., a fully developed logic model of the proposed project).

(4) The extent to which the proposed project has a clear set of goals and an explicit plan or actions to achieve the goals, including identification of any elements of the project logic model that require further testing or development.

(5) The extent to which the proposed project will produce a fully codified practice, including a fully articulated logic model of the project by the end of the project period.

(6) The clarity, completeness, and coherence of the project goals and whether the application includes a description of project activities that constitute a complete plan for achieving those goals, including the identification of potential risks to project success and strategies to mitigate those risks.

(7) The extent to which the applicant addresses potential risks to project success and strategies to mitigate those risks.

(8) The extent to which the applicant will use grant funds to address a particular barrier or barriers that prevented the applicant, in the past, from reaching the level of scale proposed in the application.

(9) The extent to which the project would build the capacity of the applicant to scale up and sustain the project or would create an organization capable of expanding if successful outcomes are achieved.

(10) The sufficiency of the resources to support effective project implementation, including the project's plan for ensuring funding after the period of the Federal grant.

(11) The sufficiency of the resources to support effective project implementation.

(c) Quality of the Management Plan

In determining the quality of the management plan, the Secretary proposes to consider one or more of the following factors:

(1) The extent to which the management plan articulates key responsibilities and well-defined objectives, including the timelines and milestones for completion of major project activities, the metrics that will be used to assess progress on an ongoing basis, and annual performance targets the applicant will use to monitor whether the project is achieving its goals.

(2) The clarity and coherence of the applicant's multi-year financial and operating model and accompanying plan to operate the project at a national level (as defined in this notice) during the project period.

(3) The clarity and coherence of the applicant's multi-year financial and operating model and accompanying plan to operate the project at a national or regional level (as defined in this notice) during the project period.

(4) The extent to which the applicant demonstrates that it will have the resources to operate the project at the proposed level of scale during the project period and beyond the length of the grant, including the demonstrated commitment of any partners and evidence of broad support from stakeholders critical to the project's long-term success (e.g., State educational agencies, teachers' unions).

(5) The extent of the demonstrated commitment of any key partners or evidence of broad support from stakeholders whose participation is critical to the project's long-term success.

(d) Personnel

When evaluating the personnel of the proposed project, the Secretary proposes to consider one or more of the following factors:

(1) The adequacy of the project's staffing plan, particularly for the first year of the project, including the identification of the project director and, in the case of projects with unfilled key personnel positions at the beginning of the project, that the staffing plan identifies how critical work will proceed.

(2) The qualifications and experience of the project director and other key project personnel and the extent to which they have the expertise to accomplish the proposed tasks.

(3) The extent to which the project director has experience managing large, complex, and rapidly growing projects.

(4) The extent to which the project director has experience managing large, complex projects.

(5) The extent to which the project director has experience managing projects of similar size and scope as the proposed project.

(e) Quality of the Project Evaluation

In determining the quality of the project evaluation, the Secretary proposes to consider one or more of the following factors:

(1) The clarity and importance of the key questions to be addressed by the project evaluation, and the appropriateness of the methods for how each question will be addressed.

(2) The extent to which the methods of evaluation will, if well implemented, produce evidence about the project's effectiveness that would meet the What Works Clearinghouse Evidence Standards without reservations.[13]

(3) The extent to which the methods of evaluation will, if well implemented, produce evidence about the project's effectiveness that would meet the What Works Clearinghouse Evidence Standards with or without reservations.[14]

(4) The extent to which the methods of evaluation will provide valid and reliable performance data on relevant outcomes, particularly student achievement outcomes.

(5) The extent to which the evaluation will study the project at the proposed level of scale, including, where appropriate, generating information about potential differential effectiveness of the project in diverse settings and for diverse student population groups.

(6) The extent to which the evaluation will study the project at the proposed level of scale, including in diverse settings.

(7) The extent to which the evaluation plan includes a clear and credible analysis plan, including a proposed sample size and minimum detectable effect size that aligns with the expected project impact, and an analytic approach for addressing the research questions.

(8) The extent to which the evaluation plan includes a clear, well-documented, and rigorous method for measuring implementation of the critical features of the project, as well as the intended outcomes.

(9) The extent to which the evaluation plan clearly articulates the key components and outcomes of the project, as well as a measurable threshold for acceptable implementation.

(10) The extent to which the evaluation plan will provide sufficient information on the project's effect as compared to alternative practices addressing similar need.

(11) The extent to which the proposed project plan includes sufficient resources to carry out the project evaluation effectively.

*Specific Requests for Comment*

We are particularly interested in comments about whether there are important aspects of identifying promising projects or assessing the likelihood of project success that the proposed selection criteria and factors do not address. In addition, we are interested in feedback about whether there is ambiguity in the language of specific criteria or factors that will make it difficult for applicants to respond to the criteria and peer reviewers to evaluate the applications with respect to the selection criteria.

*Final Priorities, Requirements, Definitions, and Selection Criteria*

We will announce the final priorities, requirements, definitions, and selection criteria in a notice in the **Federal Register**. We will determine the final priorities, requirements, definitions, and selection criteria after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

**Note:** This notice does *not* solicit applications. In any year in which we choose to use one or more of these priorities, requirements, definitions, and selection criteria, we invite applications through a notice in the **Federal Register**.

## Executive Orders 12866 and 13563

*Regulatory Impact Analysis*

Under Executive Order 12866, the Secretary must determine whether a regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or local 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 stated in the Executive order.

This proposed regulatory action would have an annual effect on the economy of more than $100 million because Department anticipates more than that amount will be appropriated for i3 and awarded as grants. Therefore, this proposed action is ''economically significant'' and subject to review by OMB under section 3(f)(1) of Executive Order 12866. Notwithstanding this determination, we have assessed the potential costs and benefits, both quantitative and qualitative, of this proposed regulatory action and have determined that the benefits would justify the costs.

The Department has also reviewed these proposed requirements under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account—among other things, and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including providing economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

[13] *See* What Works Clearinghouse Procedures and Standards Handbook. (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

[14] *See* What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed priorities, requirements, definitions, and selection criteria only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes these proposed regulations are consistent with the principles in Executive Order 13563.

We have also determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

Discussion of Costs and Benefits

The Secretary believes that the proposed priorities, requirements, definitions, and selection criteria would not impose significant costs on eligible LEAs, nonprofit organizations, or other entities that would receive assistance through the i3 program. The Secretary also believes that the benefits of implementing the proposals contained in this notice outweigh any associated costs.

The Secretary believes that the proposed priorities, requirements, definitions, and selection criteria would result in selection of high-quality applications to implement activities that are most likely to have a significant national impact on educational reform and improvement. The proposed priorities, requirements, definitions, and selection criteria in this notice clarify the scope of activities the Secretary expects to support with program funds and the expected burden of work involved in preparing an application and implementing a project under the program. The pool of possible applicants is very large, and there is great interest in the program. During the first 3 years of implementation the Department received over 3,000 applications. Potential applicants, both LEAs and nonprofit organizations, need to consider carefully the effort that will be required to prepare a strong application, their capacity to implement a project successfully, and their chances of submitting a successful application.

Program participation is voluntary. The Secretary believes that the costs imposed on applicants by the proposed priorities, requirements, definitions, and selection criteria would be limited to paperwork burden related to preparing an application and that the benefits of implementing these proposals would outweigh any costs incurred by applicants. The costs of carrying out activities would be paid for with program funds and with matching funds provided by private-sector partners. Thus, the costs of implementation would not be a burden for any eligible applicants, including small entities. However, under the proposed selection criteria the Secretary would assess the extent to which an applicant would be able to sustain a project once Federal funding through the i3 program is no longer available. Thus, eligible applicants should propose activities that they will be able to sustain without funding from the program and, thus, in essence, should include in their project plans the specific steps they will take for sustained implementation of the proposed project. The continued proposal for the three types of grants under i3—Development, Validation, or Scale-up grants—would allow potential applicants to determine which type of grant they are best suited to apply for, based on their own priorities, resources, and capacity to implement grant activities.

*Regulatory Flexibility Act Certification*

The Secretary certifies that this proposed regulatory action will not have a significant economic impact on a substantial number of small entities. The small entities that this proposed regulatory action will affect are small LEAs or nonprofit organizations applying for and receiving funds under this program. The Secretary believes that the costs imposed on applicants by the proposed priorities, requirements, definitions, and selection criteria would be limited to paperwork burden related to preparing an application and that the benefits of implementing these proposals would outweigh any costs incurred by applicants.

Participation in this program is voluntary. For this reason, the proposed priorities, requirements, definitions, and selection criteria would impose no burden on small entities in general. Eligible applicants would determine whether to apply for funds, and have the opportunity to weigh the requirements for preparing applications, and any associated costs, against the likelihood of receiving funding and the requirements for implementing projects under the program. Eligible applicants most likely would apply only if they determine that the likely benefits exceed the costs of preparing an application. The likely benefits include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application, such as the use of that application to spur educational reforms and improvements without additional Federal funding.

The U.S. Small Business Administration Size Standards defines as ''small entities'' for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000. The Urban Institute's National Center for Charitable Statistics reported that of 196,663 nonprofit organizations that had an educational mission and reported revenue to the IRS by March of 2012, 168,784 (or about 86 percent) had revenues of less than $5 million. In addition, there are approximately 16,000 LEAs in the country that meet the definition of small entity. However, the Secretary believes that only a small number of these entities would be interested in applying for funds under this program, thus reducing the likelihood that the proposals contained in this notice would have a significant economic impact on small entities. As discussed earlier, the number of applications received during the last 3 competitions from any type of applicant is approximately 3,000.

In addition, the Secretary believes that the proposed priorities, requirements, definitions, and selection criteria discussed in this notice do not impose any additional burden on small entities applying for a grant than they would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the regulatory action and the time needed to prepare an application would likely be the same.

Further, the proposed action may help small entities determine whether they have the interest, need, or capacity to implement activities under the program and, thus, prevent small entities that do not have such an interest, need, and capacity from absorbing the burden of applying, or assist those entities in determining whether they should seek a capable partner to pursue the application process.

This proposed regulatory action would not have a significant economic impact on small entities once they

receive a grant because they would be able to meet the costs of compliance using the funds provided under this program and with any matching funds provided by private-sector partners.

The Secretary invites comments from small nonprofit organizations and small LEAs as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, requests evidence to support that belief.

Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in the following table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this regulatory action. This table provides our best estimate of the changes in annual monetized transfers as a result of this regulatory action. Expenditures are classified as transfers from the Federal Government to LEAs and nonprofit organizations.

ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

| Category | Transfers |
|---|---|
| Annualized Monetized Transfers. | $140.9 million. |
| From Whom To Whom? | From the Federal Government to LEAs and nonprofit organizations. |

*Paperwork Reduction Act of 1995*

The requirements and selection criteria proposed in this notice will require the collection of information that is 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 burden associated with the i3 program was approved by OMB under OMB Control Number 1855–0021, which expires on October 31, 2013. These proposed priorities, requirements, definitions, and selection criteria would allow the Department to improve the design of the i3 program to better achieve its purposes and goals. However, the revisions do not change the number of applications an organization may submit or the burden that an applicant would otherwise incur in the development and submission of a grant application under the i3 program. Therefore, the Department expects that this proposed regulatory action will not affect the total burden of hours.

*Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

*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 feature at this site, you can limit your search to documents published by the Department.

Dated: December 11, 2012.

**James H. Shelton, III,**

*Assistant Deputy Secretary for Innovation and Improvement.*

[FR Doc. 2012–30199 Filed 12–13–12; 8:45 am]

BILLING CODE 4000–01–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R02–OAR–2010–0482; [FRL–9762–2]]**

## Approval and Promulgation of Air Quality Implementation Plans for $PM_{2.5}$; New Jersey; Attainment Demonstration, Reasonably Available Control Measures; Base and Projection Year Emission Inventories, and Motor Vehicle Emissions Budgets

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing action on New Jersey's State Implementation Plan (SIP) revision for attaining the 1997 fine particle ($PM_{2.5}$) national ambient air quality standards (NAAQS), which was submitted to EPA on April 1, 2009. EPA is proposing to fully approve elements of the New Jersey SIP for the New Jersey portion of two nonattainment areas in the State: The New York-N. New Jersey-Long Island, NY-NJ-CT, $PM_{2.5}$ nonattainment area, and the Philadelphia-Wilmington, PA-NJ-DE, $PM_{2.5}$ nonattainment area.

EPA is taking action on several elements of the SIP, including proposed approval of New Jersey's attainment demonstration and motor-vehicle emissions budgets used for transportation conformity purposes, as well as the Reasonably Available Control Technology and Reasonably Available Control Measures (RACT/RACM) analysis, and base-year and projection-year modeling emission inventories.

This action is being taken in accordance with the Clean Air Act and the Clean Air Fine Particle Implementation Rule issued by EPA.

**DATES:** Written comments must be received on or before January 14, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R02–OAR–2010–0482 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: Werner.Raymond@epa.gov.*
3. *Fax:* 212–637–3901.
4. *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
5. *Hand Delivery or Courier.* Deliver your comments to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official business hours is Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R02–OAR–2010–0482. 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 through at *www.regulations.gov,* or email, information that you consider to be CBI or otherwise protected. The at *www.regulations.gov* Web site is an ''anonymous access'' system, which means 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 at *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 and with any disk or CD–ROM you submit. 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, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., 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 in at *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests that if at all possible, you contact the contact 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 legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Raymond Forde (*forde.raymond@epa.gov*) concerning emission inventories and Kenneth Fradkin (*fradkin.kenneth@epa.gov*) concerning other portions of the SIP revision, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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## I. What action is EPA proposing?

The Environmental Protection Agency (EPA) is proposing to fully approve elements of New Jersey's SIP submission ($PM_{2.5}$ attainment plan), which the State submitted to EPA on April 1, 2009, for attaining the 1997 $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS) for the New Jersey portion of the New York-N. New Jersey-Long Island, NY-NJ-CT, $PM_{2.5}$ nonattainment area (Northern New Jersey $PM_{2.5}$ nonattainment area), and the New Jersey portion of the Philadelphia-Wilmington, PA-NJ-DE, $PM_{2.5}$ nonattainment area (Southern New Jersey $PM_{2.5}$ nonattainment area).

This $PM_{2.5}$ attainment plan includes New Jersey's attainment demonstration, motor-vehicle emissions budgets used for transportation conformity purposes, analysis of Reasonably Available Control Technology (RACT) and Reasonably Available Control Measures (RACM), base-year and projection-year modeling emission inventories, and contingency measures.

EPA is not making a determination at this time on whether the emission reductions from the contingency measures satisfy the requirements of section 172(c)(9) of the Clean Air Act (CAA). Because EPA has determined that the areas have attained by the required attainment date in separate actions (75 FR 69589 and 77 FR 28782), no contingency measures for failure to attain by this date need to be implemented and further EPA action is unnecessary.

New Jersey provided technical supplements to the attainment plan on December 17, 2009 and June 29, 2010 that provided additional information regarding the emission inventories, control measures, and contingency measures in the State's attainment plan.

EPA has determined that elements of New Jersey's $PM_{2.5}$ attainment plan meet the applicable requirements of the CAA, as described in the Clean Air Fine Particle Implementation Rule issued by EPA on April 25, 2007 (72 FR 20586). EPA is proposing approval of New Jersey's attainment demonstration, motor-vehicle emissions budgets used for transportation conformity purposes, as well as the RACT/RACM analysis and base-year and projection-year modeling emission inventories. EPA's analysis and findings are discussed in this proposed rulemaking. In addition, the technical support document (TSD) for this proposal is available on-line at *www.regulations.gov,* Docket No. EPA–R02–OAR–2010–0482. The TSD provides additional explanation of EPA's analysis supporting this proposal.

## II. What is the background for EPA's proposed action?

### *A. Designation History*

On July 18, 1997 (62 FR 38652), EPA established the 1997 $PM_{2.5}$ NAAQS, including an annual standard of 15.0 micrograms per cubic meter ($\mu g/m^3$) based on a 3-year average of annual mean $PM_{2.5}$ concentrations and a 24-hour (or daily) standard of 65 $\mu g/m^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to $PM_{2.5}$.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the United States as attaining or not attaining the NAAQS; this designation process is described in section 107(d)(1) of the CAA. On January 5, 2005, EPA promulgated initial air-quality designations for the 1997 $PM_{2.5}$ NAAQS

(70 FR 944), which became effective on April 5, 2005, based on air-quality monitoring data for calendar years 2001–2003.

The Northern and Southern New Jersey $PM_{2.5}$ nonattainment areas, which are the subjects of this proposed rulemaking, are included in the list of areas not attaining the 1997 $PM_{2.5}$ NAAQS. The Northern New Jersey $PM_{2.5}$ nonattainment area consists of the following counties in the State of New Jersey: Bergen, Essex, Hudson, Mercer, Middlesex, Monmouth, Morris, Passaic, Somerset, and Union Counties. The Southern New Jersey $PM_{2.5}$ nonattainment area consists of the following counties: Burlington, Camden, and Gloucester Counties in the State of New Jersey.

Additional information concerning the designation history can be found in the TSD.

*B. Clean Air Fine Particle Implementation Rule*

On April 25, 2007, EPA issued the Clean Air Fine Particle Implementation Rule for the 1997 $PM_{2.5}$ NAAQS (72 FR 20586). The Clean Air Fine Particle Implementation Rule ($PM_{2.5}$ Implementation Rule) describes the CAA framework and requirements for developing state implementation plans for areas designated nonattainment for the 1997 $PM_{2.5}$ NAAQS. An attainment plan must include a demonstration that a nonattainment area will meet the applicable NAAQS within the timeframe provided in the statute. This demonstration must include modeling (40 CFR 51.1007) that is performed in accordance with EPA's ''Guidance on the use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze'' (EPA–454/B–07–002, April 2007). It must also include supporting technical analyses and descriptions of all relevant adopted federal, state, and local regulations and control measures that have been adopted in order to provide attainment by the proposed attainment date.

For the 1997 $PM_{2.5}$ NAAQS, an attainment plan must show that a nonattainment area will attain the 1997 $PM_{2.5}$ NAAQS as expeditiously as practicable, but within five years of designation (i.e. attainment date of April 2010 based on air quality data for 2007–2009). If the area is not expected to meet the NAAQS by April 2010, a state may request to extend the attainment date by one to five years based upon the severity of the nonattainment problem or the feasibility of implementing control measures (CAA Section 172(a)(2)) in the specific area.

For each nonattainment area, the state must demonstrate that it has adopted all RACM, including all RACT for the appropriate emission sources needed to provide for attainment of the $PM_{2.5}$ standards in the area ''as expeditiously as practicable.'' The $PM_{2.5}$ Implementation Rule provided guidance for making these RACT/RACM determinations (see Section IV.C below). Any measures that are necessary to meet these requirements that are not already federally promulgated or in an EPA-approved part of the state's SIP must be submitted as part of a state's attainment plan. Any state measures must meet the applicable statutory and regulatory requirements, and, in particular, must be federally enforceable.

The $PM_{2.5}$ Implementation Rule also included guidance on other elements of a state's attainment plan, including, but not limited to, the pollutants that states must address in their submission, as well as emission inventories, contingency measures, and motor-vehicle emissions budgets used for transportation conformity purposes.

Additional information concerning the $PM_{2.5}$ Implementation Rule can be found in the TSD.

*C. Determinations of Attainment*

EPA makes two different types of attainment determinations for nonattainment areas. The first, a Determination of Attainment by the attainment date, is a determination of whether the area attained the NAAQS as of the area's applicable attainment deadline, which for $PM_{2.5}$, is required by CAA section 179(c). The second is a Determination of Attainment for purposes of suspending a State's obligation to submit certain attainment-related planning SIP requirements (Clean Data Determination) (see 40 CFR 51.1004(c)). A Clean Data Determination and the suspension of requirements continue so long as the area continues to attain the NAAQS.

EPA finalized determinations of attainment in the November 15, 2010 **Federal Register** (75 FR 69589) that the New York-N. New Jersey-Long Island, NY-NJ-CT, $PM_{2.5}$ nonattainment area (the NY-NJ-CT $PM_{2.5}$ nonattainment area), had attained the 1997 $PM_{2.5}$ NAAQS, and had attained the NAAQS by its required attainment date of April 5, 2010. The determinations were based upon complete, quality assured, quality controlled, and certified ambient air monitoring data that showed that the area had monitored attainment of the 1997 $PM_{2.5}$ NAAQS for the 2007–2009 monitoring period by its attainment date of April 5, 2010. Ambient air monitoring data for 2010, 2011, and the first half of 2012 are consistent with continued attainment.

As part of this rulemaking, EPA proposes to add regulatory language under Part 52, chapter I, title 40 of the Code of Federal Regulations concerning the Determination of Attainment for the NY-NJ-CT $PM_{2.5}$ nonattainment area by the April 5, 2010 attainment date. Although EPA had included regulatory language under Part 52, Subpart FF in the November 15, 2010 **Federal Register** (75 FR 69589) that the NY-NJ-CT $PM_{2.5}$ nonattainment area had attained the 1997 $PM_{2.5}$ NAAQS, EPA had inadvertently not included appropriate regulatory language that the area attained the 1997 annual $PM_{2.5}$ by the applicable attainment date of April 5, 2010. EPA will amend Part 52 as indicated if this proposed action is finalized.

On May 16, 2012, EPA finalized determinations of attainment in the **Federal Register** (77 FR 28782) that the Philadelphia-Wilmington, PA-NJ-DE, $PM_{2.5}$ nonattainment area, referred to this point forward as the PA-NJ-DE $PM_{2.5}$ nonattainment area, had attained the 1997 $PM_{2.5}$ NAAQS, and had attained the NAAQS by its required attainment date of April 5, 2010. The determinations were based upon complete, quality assured, quality controlled, and certified ambient air monitoring data that showed that the area had attained the 1997 $PM_{2.5}$ NAAQS, based on ambient air monitoring data for the 2007–2009 and 2008–2010 monitoring periods. Ambient air monitoring data for 2011 and the first half of 2012 are consistent with continued attainment.

Under the provisions of EPA's $PM_{2.5}$ Implementation Rule (40 CFR 51.1004(c)), the requirements for New Jersey to submit an attainment demonstration and associated RACM, reasonable further progress plan, and contingency measures related to attainment of the 1997 $PM_{2.5}$ NAAQS for the Northern New Jersey $PM_{2.5}$ nonattainment area and Southern New Jersey $PM_{2.5}$ nonattainment area are suspended for as long as the areas continue to attain the 1997 $PM_{2.5}$ NAAQS, given the determinations of attainment for the NY-NJ-CT $PM_{2.5}$ nonattainment area and the PA-NJ-DE $PM_{2.5}$ nonattainment area.

Although the requirements are suspended for the elements listed above for the state's attainment plan, and the state may withdraw the submitted elements, EPA proposes to approve the attainment demonstration, as well as the RACT/RACM analysis, which are approvable based on EPA's analysis. See sections IV and V regarding EPA's

analysis and the approvable elements of New Jersey's attainment plan submittal.

## III. What is included in New Jersey's attainment plan?

In accordance with Section 172(c) of the CAA and with the $PM_{2.5}$ Implementation Rule, the attainment plan submitted by the State for the Northern and Southern New Jersey $PM_{2.5}$ nonattainment areas included: emission inventories for the plan's base year (2002) and projection year (2009); an attainment demonstration showing how the two nonattainment areas met the required April 5, 2010 attainment date for the 1997 annual $PM_{2.5}$ NAAQS; an analyses of future-year emissions reductions and air-quality improvements expected to result from national and local programs and from new measures to meet RACT/RACM requirements; adopted emission-reduction measures with schedules for implementation; motor-vehicle emissions budgets for the nonattainment year; and contingency measures.

To analyze future-year emissions reductions and air-quality improvements, New Jersey utilized the regional air quality modeling that was conducted for ozone, $PM_{2.5}$, and Regional Haze. New Jersey first introduced this modeling in its 8-hour ozone attainment demonstration[1] for modeling the ozone problem in the northeastern United States. The ozone season (May 1–September 30) photochemical modeling was combined with additional months of air quality modeling to predict attainment of the 1997 annual $PM_{2.5}$ NAAQS. This modeling was performed in accordance with EPA's modeling guidance (EPA–454/B–07–002, April 2007).

## IV. What is EPA's analysis of New Jersey's attainment plan submittal?

### *A. Attainment Demonstration*

#### 1. Emission Inventory Requirements

States are required under the CAA (section 172(c)(3)) to develop emissions inventories of point, area, and mobile sources for their attainment demonstrations. These inventories provide a detailed accounting of all emissions and emission sources by precursor or pollutant. In addition, inventories are used to model air quality to demonstrate that attainment of the NAAQS can be met by the deadline, which in this case is April 5, 2010 for the 1997 $PM_{2.5}$ NAAQS. Emissions inventory guidance was provided in the April 1999 document ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter NAAQS and Regional Haze Regulations,'' (EPA–454/R–99–006), which was updated in November 2005 (EPA–454/R–05–001). Emissions reporting requirements were provided in the 2002 Consolidated Emissions Reporting Rule (CERR) (67 FR 39602). On December 17, 2008 (73 FR 76539) EPA promulgated the Air Emissions Reporting Requirements (AERR) to update emissions reporting requirements in the CERR, and to harmonize, consolidate and simplify data reporting by states.

In accordance with the AERR and the November 2005 guidance, the $PM_{2.5}$ Implementation Rule required states to submit inventory information on directly emitted $PM_{2.5}$ and $PM_{2.5}$ precursors and any additional inventory information needed to support an attainment demonstration and (where applicable) a Reasonable Further Progress (RFP) plan.

$PM_{2.5}$ is comprised of filterable and condensable emissions. Condensable particulate matter (CPM) can comprise a significant percentage of direct $PM_{2.5}$ emissions from certain sources, and is required to be included in national emission inventories based on emission factors. Test Methods 201A and 202 are available for source-specific measurement of condensable emissions. However, the $PM_{2.5}$ Implementation Rule acknowledged that there were issues and concerns related to availability and implementation of these test methods as well as uncertainties in existing data for condensable $PM_{2.5}$. In recognition of these concerns, EPA established a transition period during which EPA could assess possible revisions to available test methods and to allow time for States to update emission inventories as needed to address direct $PM_{2.5}$, including condensable emissions. Because of the time required for this assessment, EPA recognized that States would be limited in how to effectively address CPM emissions, and established a period of transition, up to January 1, 2011, during which State submissions for $PM_{2.5}$ were not required to address CPM emissions. Amendments to these test methods were proposed on March 25, 2009 (74 FR 12969), and finalized on December 21, 2010 (75 FR 80118). The amendments to Method 201A added a particle-sizing device for $PM_{2.5}$ sampling, and the amendments to Method 202 revised the sample collection and recovery procedures of the method to reduce the formation of reaction artifacts that could lead to inaccurate measurements of CPM.

$PM_{2.5}$ submissions made during the transition period are not required to address CPM emissions, however, States may, if they elect, establish source emission limits that include CPM for submittals made before January 1, 2011.

In July 2008, Earth Justice filed a petition requesting reconsideration of EPA's transition period for CPM emissions provided in the $PM_{2.5}$ Implementation Rule. In January 2009, EPA decided to allow states that have not previously addressed CPM to continue to exclude CPM for PSD permitting during the transition period. Today's action reflects a review of New Jersey's submittal based on current EPA guidance as described in the $PM_{2.5}$ Implementation Rule. New Jersey has included CPM emissions, which were added to filterable emissions, when determining final direct $PM_{2.5}$ emissions for the 2002 Base Year and 2009 Projection Year $PM_{2.5}$ inventories.

##### a. 2002 Modeling Base Year

EPA proposed to approve New Jersey's 2002 Base Year inventories on May 9, 2006, (71 FR 26895) and approved the emission inventories on July 10, 2006 (71 FR 38770). The reader is referred to these rulemakings and the associated TSD for additional information concerning the emission inventories and EPA's approval.

For purposes of developing a 2009 projection year inventory, New Jersey also developed a modeling base year inventory. Tables 1A and 1B below show the 2002 modeling base year $PM_{2.5}$, nitrogen oxides ($NO_X$) and sulfur dioxide ($SO_2$) emission inventories for the Northern and Southern New Jersey $PM_{2.5}$ nonattainment areas.

[1] New Jersey submitted the Ozone Attainment Demonstration SIP on October 29, 2007.

TABLE 1A—2002 NORTHERN NEW JERSEY $PM_{2.5}$ MODELING BASE YEAR INVENTORY

[In tons/year]

| Pollutant | Point | Area | Nonroad mobile | Onroad mobile | Total |
|---|---|---|---|---|---|
| $PM_{2.5}$ | 2,790 | 8,636 | 2,824 | 1,547 | 15,797 |
| $NO_X$ | 34,432 | 18,428 | 42,661 | 102,997 | 198,518 |
| $SO_2$ | 37,750 | 6,242 | 6,654 | 2,244 | 52,890 |

TABLE 1B—2002 SOUTHERN NEW JERSEY $PM_{2.5}$ MODELING BASE YEAR INVENTORY

[In tons/year]

| Pollutant | Point | Area | Nonroad mobile | Onroad mobile | Total |
|---|---|---|---|---|---|
| $PM_{2.5}$ | 940 | 2,218 | 789 | 537 | 4,484 |
| $NO_X$ | 6,682 | 3,624 | 8,207 | 29,986 | 48,499 |
| $SO_2$ | 5,867 | 1,340 | 4,594 | 705 | 12,506 |

b. Modeling Projection Years

A projection of 2002 $PM_{2.5}$, $NO_X$, and $SO_2$ anthropogenic emissions to 2009 is required to determine the emission reductions needed for inventory attainment demonstration. The 2009 modeling projection year emission inventories are calculated by multiplying the 2002 base year inventory by factors which estimate growth from 2002 to 2009. A specific growth factor for each source type in the inventory is required since sources typically grow at different rates.

c. Projection Methodology

i. Major Point Sources

(1) Electric Generating Units (EGUs)

For this point source sector, the projected emissions inventories were first calculated by estimating growth in each source category. As appropriate, the 2002 emissions inventory was used as the base for applying factors to account for inventory growth. The point source inventory was grown from the 2002 inventory to 2009 for each facility using growth factors utilized in EPA's Integrated Planning Model (IPM) model to forecast growth based on the following variables/factors: Electric demand; natural gas, oil and coal supply forecasts; pollution control and performance; capacity cost and performance, and replacement of older less efficient and polluting power plants with newer more efficient units to meet future growth and state by state $NO_X$ and $SO_2$ caps.

(2) Non-Electric Generating Units (Non-EGUs)

For this point source sector, the projected emissions inventories were first calculated by estimating growth in each source category. As appropriate, the 2002 emissions inventory was used as the base for applying factors to account for inventory growth. The point source inventory was grown from the 2002 inventory to 2009 for each facility based on source classification codes using growth factors generated from EPA's Economic Growth Analysis System (EGAS) version 5.0, United States Department of Energy's (USDOE) Annual Energy Outlook Projections (AEO) 2005, and state specific population and employment data, where appropriate. Since these methodologies and growth indicators are some of the preferred growth indicators as outlined in EPA Guidance,[2] EPA proposes that New Jersey's methodology for projecting point sources to be acceptable.

ii. Area Sources

For the area source category, New Jersey projected emissions from 2002 to 2009 using growth factors generated from USDOE AEO 2007, state specific population, employment data, and other state specific data where appropriate. This is in accordance with EPA's recommended growth indicators for projecting emissions for area source categories as outlined in EPA Guidance. Since these methodologies and growth indicators are some of the preferred growth indicators outlined in EPA Guidance,[2] EPA proposes to find New Jersey's methodology for projecting area sources to be acceptable.

iii. Non-Road Mobile Sources

Non-road vehicle and equipment emissions were projected from 2002 to 2009 using the EPA's National Mobile Inventory Model (NMIM) 2005. NMIM 2005 contains growth factors, which are based on the historical trends in nonroad equipment activity. This model was used to calculate past and future emission inventories for all nonroad equipment categories except commercial marine vessels (CMV), locomotives and aircrafts. Emissions were determined on a monthly basis and combined to provide annual emission estimates.

Aircraft, locomotives and CMV emissions were projected based on combined growth and control factors from USEPA Clean Air Interstate Rule (CAIR) by determining the level of emissions and their associated ratios between 2002 base and 2025 projection year. From this point, the State determined the ratio of emissions between 2002 and 2009 projection year using linear interpolation. The ratios between 2002 and 2009 were determined and then multiplied by the 2002 base year to determine 2009 projection year emissions.

Since these methodologies and growth indicators are some of the preferred growth indicators outlined in EPA Guidance, EPA proposes to find New Jersey's methodology for projecting non-road mobile sources to be acceptable.

iv. Onroad Mobile Sources

For the onroad mobile source category, the primary indicator and tool for developing on-road mobile growth and expected emissions are vehicle miles traveled (VMT) and USEPA's

[2] EPA's follow-up memo ''8-Hour Ozone National Ambient Air Quality Standards Implementation—Reasonable Further Progress (RFP)'', dated August 2006; ''Guidance on the Use of Models and Other Analyses for Demonstration Attainment of Air Quality Goals for Ozone, $PM_{2.5}$ and Regional Haze'', dated April 2007; ''Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate of Progress Plans'', dated March 1993; ''Guidance on the Post-1996 Rate of Progress Plan and Attainment Demonstration'', dated January 1994; Emission Inventory Improvement Program guidance document titled ''Volume X, Emission Projections'', dated December 1999.

mobile emissions model Mobile 6.2.03 (MOBILE6.2). The 2009 pollutant emission factors were generated by MOBILE6.2 (with the associated controlled measures applied, where appropriate) and applied to the monthly VMT projections provided by the State. Monthly emissions were then combined to develop annual emission estimates. Since these methodologies and growth indicators are some of the preferred growth indicators outlined in EPA Guidance, EPA proposes to find New Jersey's methodology for projecting on-road mobile sources to be acceptable.

Based on EPA's guidance, the 2009 modeling inventories are complete and approvable. A more detailed discussion on how the emission inventories were reviewed and the results are presented in the TSD. These documents provide further details and references on how projections were performed.

Tables 2A and 2B show the 2009 modeling projection emission inventories controlled after 2002 using the aforementioned growth indicators/methodologies for the Northern and Southern New Jersey $PM_{2.5}$ nonattainment areas.

TABLE 2A—2009 NORTHERN NEW JERSEY $PM_{2.5}$ MODELING PROJECTION YEAR INVENTORY (CONTROLLED)

[In tons/year]

| Pollutant | Point | Area | Nonroad mobile | Onroad mobile | Total |
|---|---|---|---|---|---|
| $PM_{2.5}$ | 3,169 | 8,332 | 2,295 | 956 | 14,752 |
| $NO_X$ | 13,378 | 16,502 | 33,714 | 50,097 | 113,691 |
| $SO_2$ | 18,616 | 6,208 | 1,530 | 457 | 26,811 |

TABLE 2B—2009 SOUTHERN NEW JERSEY $PM_{2.5}$ MODELING PROJECTION YEAR INVENTORY (CONTROLLED)

[In tons/year]

| Pollutant | Point | Area | Nonroad mobile | Onroad mobile | Total |
|---|---|---|---|---|---|
| $PM_{2.5}$ | 1,265 | 2,073 | 690 | 308 | 4,336 |
| $NO_X$ | 5,479 | 3,284 | 7,156 | 15,018 | 30,927 |
| $SO_2$ | 3,289 | 1,331 | 982 | 110 | 5,712 |

2. Pollutants Addressed

In accordance with the $PM_{2.5}$ Implementation Rule, New Jersey's $PM_{2.5}$ attainment plan evaluates emissions of direct $PM_{2.5}$, $SO_2$, and $NO_X$ in the Northern and Southern New Jersey $PM_{2.5}$ nonattainment areas. New Jersey's SIP submission indicated that it agreed with EPA policy where volatile organic compounds (VOCs) and ammonia are not presumed to be $PM_{2.5}$ attainment plan precursors.

3. Modeling

All attainment demonstrations must include modeling that is performed in accordance with EPA's ''Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze'' (EPA–454/B–07–002, April 2007). Modeling may be based on national (e.g., EPA), regional (e.g., Ozone Transport Commission), local modeling, or a combination thereof, if appropriate. A brief description of modeling used to support New Jersey's attainment demonstration follows. For more detailed information about this modeling, please refer to the TSD. Ambient $PM_{2.5}$ typically includes both primary $PM_{2.5}$ (directly emitted) and secondary $PM_{2.5}$ (e.g., sulfate and nitrate formed by chemical reactions in the atmosphere). Some of the physicochemical processes leading to formation of secondary $PM_{2.5}$ may take hours or days, as may some of the removal processes. Thus, some sources of secondary $PM_{2.5}$ may be sources outside of the nonattainment area. To cover a sufficient geographic area to take these processes into account and to use state resources more efficiently, the Ozone Transport Commission (OTC) on behalf of its member states (which include New Jersey, New York, Connecticut, Delaware, and Pennsylvania) performed photochemical grid modeling for their multi-state nonattainment areas.

The OTC Modeling Committee, which coordinated preparing and running the photochemical grid model, chose the Community Multi-scale Air Quality (CMAQ) model as the photochemical grid model of choice. Since the model predicts both ozone, and $PM_{2.5}$ ambient concentrations, the same parameters were used in the modeling runs used to demonstrate attainment of the ozone NAAQS. EPA concurs that this model is appropriate for modeling the formation and distribution of $PM_{2.5}$. The model domain covered almost all of the eastern United States, with a high-resolution grid covering the states in the northeast ozone transport region, including New Jersey.

Under the direction of the OTC Modeling Committee, several states and modeling centers performed the regional modeling runs and contributed to the regional modeling effort, including the New York State Department of Environmental Conservation (NYSDEC), the Ozone Research Center at the University of Medicine & Dentistry of NJ/Rutgers (UMDNJ/ORC), the University of Maryland (UMD), the Northeast States for Coordinated Air Management (NESCAUM), and the Mid-Atlantic Regional Air Management Agency (MARAMA). The NYSDEC ran the CMAQ model for the May 1 through September 30 ozone season, which was supplemented by modeling runs performed by UMDNJ/ORC (March and April), NESCAUM (October, November, December), and the UMD (January, February), for the purposes of determining $PM_{2.5}$ attainment.

The OTC Modeling Committee used annual 2002 meteorology for the modeling analysis. 2002 was the base year for the attainment plans and the year of the emission inventory used in the base year modeling. The OTC Modeling Committee used a Mesoscale Meteorological model, (MM5) version 3.6, a weather forecast model developed by Pennsylvania State University and the National Center for Atmospheric Research for the weather conditions used by the photochemical grid model. Details about how the states used the MM5 model are in Appendix B3 of New Jersey's SIP submittal.

States across the eastern United States provided emissions information from

their sources to be used in the model. MARAMA collected and quality assured the states' emissions data and processed these data for the photochemical grid model to use. The states also included the control measures that were already adopted as well as the control measures that the state was committing to adopt from a list of ''Beyond On the Way'' (BOTW) control measures, which would provide additional emission reductions. Emissions data for the model from outside the Northeast was obtained from other regional planning organizations. States provided projected emissions for 2009 that account for emission changes due to regulations the states plan to implement prior to 2009, as well as expected growth.

Table 3 below lists the control measures that New Jersey took into account in the projected 2009 BOTW CMAQ run. See the TSD for the listing of the BOTW measures that would be implemented in other states in the Ozone Transport Region (OTR), which New Jersey is a part of, to achieve benefits in 2009. Some states in the OTR have chosen to adopt different control strategies than New Jersey.

TABLE 3—MODELED CONTROL MEASURES INCLUDED IN THE 2009 BOTW MODEL RUN FOR NEW JERSEY

| |
|---|
| Pre-2002 with Benefits Achieved Post-2002—On the Books |
| *Federal* |
| Residential Woodstove New Source Performance Standards (NSPS) |
| Onboard Refueling Vapor Recovery (ORVR) Beyond Stage II |
| Tier 1 Vehicle Program |
| National Low Emission Vehicle Program (NLEV) |
| Tier 2 Vehicle Program/Low Sulfur Fuels |
| Heavy-Duty Diesel Vehicles (HDDV) Defeat Device Settlement |
| HDDV Engine Standards |
| Nonroad Diesel Engines |
| Large Industrial Spark-Ignition Engines over 19 kilowatts |
| Recreational Vehicles (includes Snowmobiles, Off-Highway Motorcycles, and All-Terrain Vehicles) |
| Diesel Marine Engines over 37 kilowatts |
| Phase 2 Standards for Small Spark-Ignition Handheld Engines at or below 19 kilowatts |
| Phase 2 Standards for New Nonroad Spark-Ignition Non-Handheld Engines at or below 19 kilowatts |
| Acid Rain |
| Post-2002—On the Books |
| *New Jersey Measures Done Through a Regional Effort* |
| Consumer Products 2005 |
| Architectural Coatings 2005 |
| Portable Fuel Containers 2005 (Area Source Only) |
| Mobile Equipment Repair and Refinishing |
| Solvent Cleaning |
| $NO_X$ RACT Rule (2006) |
| New Jersey Heavy Duty Diesel Rules Including ''Not-To-Exceed'' (NTE) Requirements |
| *New Jersey Only* |
| Stage I and Stage II (Gasoline Transfer Operations) |
| On-Board Diagnostics (OBD)—Inspection and Maintenance (I/M) Program for Gasoline Vehicles |
| *Federal* |
| USEPA Maximum Available Control Technology (MACT) Standards |
| CAIR ($NO_X$ Controls in 2009 Only) |
| Refinery Consent Decrees (Sunoco, Valero, and ConocoPhillips) |
| Post-2002—Beyond the Way |
| *New Jersey Measures Done Through a Regional Effort* |
| Consumer Products 2009 Amendments |
| Portable Fuel Containers 2009 Amendments (Area Source Only) |
| Asphalt Paving |
| Adhesives and Sealants |
| Industrial/Commercial/Institutional (ICI) Boiler Rule 2009 |
| *New Jersey Only* |
| New Jersey Low Emission Vehicle (LEV) Program |
| Controls from EGU Consent Decrees (PSE&G Mercer) |
| Controls from EGU Consent Decrees (PSE&G Hudson $NO_X$) |

$NO_X$ emission reductions from the Clean Air Interstate Rule (CAIR) were included in the list of control measures that New Jersey took into account in the projected 2009 BOTW CMAQ run. EPA published CAIR on May 12, 2005 (76 FR 70093), to address the interstate transport requirements of the CAA. EPA approved New Jersey rules that allowed the State to allocate NOx allowances to New Jersey sources beginning in 2009, on October 1, 2007 (72 FR 55666).

As originally promulgated, CAIR requires significant reductions in emissions of $SO_2$ and NOx to limit the interstate transport of these pollutants. In 2008 the United States Court of Appeals for the District of Columbia (DC Circuit) vacated and remanded CAIR, and the CAIR FIPs (71 FR 25328, April 28, 2006) finding it to be inconsistent with the requirements of the CAA. *North Carolina* v. *EPA,* 531 F.3d 896 (DC Cir. 2008). Following EPA's request for re-hearing, the court remanded the rule to EPA without vacatur, finding that ''allowing CAIR to remain in effect until it is replaced by a rule consistent with [the court's] opinion would at least temporarily preserve the environmental values covered by CAIR.'' *North Carolina* v. *EPA,* 550 F.3d 1176, 1178. CAIR and the CAIR FIPs remained in place and enforceable through the April 5, 2010, attainment date.

In response to the court's decision, EPA issued a new rule to address interstate transport of emissions, ''Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals: Final Rule'' (known as the Cross-State Air Pollution Rule or Transport Rule). 76 FR 48208, August 8, 2011. In the Transport Rule, EPA finalized regulatory changes to sunset (i.e., terminate) CAIR and the CAIR FIPs for control periods in 2012 and beyond. *See* 76 FR 48322.

On December 30, 2011, the D.C. Circuit issued an order addressing the status of the Transport Rule and CAIR in response to motions filed by numerous parties seeking a stay of the Transport Rule pending judicial review. In that order, the DC Circuit stayed the Transport Rule pending the court's resolution of the petitions for review of the rule. *EME Homer Generation, L.P.* v. *EPA* (No. 11–1302 and consolidated cases). The court also indicated that EPA is expected to continue to administer CAIR in the interim until the court rules on the petitions for review of the Transport Rule.

On August 21, 2012, the D.C. Circuit vacated the Transport Rule, *EME Homer City Generation, L.P.* v. *EPA, No. 11–1302,* ruling that EPA had exceeded the agency's statutory authority. However, the decision on the Transport Rule does not disturb EPA's determination that it is appropriate to move forward with this proposed action. This action proposes to approve an attainment plan that demonstrated that the NY-NJ-CT $PM_{2.5}$ nonattainment area and the PA-NJ-DE $PM_{2.5}$ nonattainment area would attain the 1997 annual $PM_{2.5}$ NAAQS by 2010, which it did, as discussed in section II.C. The air quality analysis conducted for the Transport Rule demonstrates that the NY-NJ-CT $PM_{2.5}$ nonattainment area and the PA-NJ-DE $PM_{2.5}$ nonattainment area would be able to attain the 1997 annual $PM_{2.5}$ NAAQS even in the absence of CAIR or the Transport Rule. See Appendix B to the Air Quality Modeling Final Rule Technical Support Document for the Cross-State Air Pollution Rule.[3] Nothing in the D.C. Circuit's August 2012 decision disturbs or calls into question that conclusion or the validity of the air quality analysis on which it is based. More importantly, the Transport Rule is not relevant to this action. The Transport Rule only addresses emissions in 2012 and beyond. As such, neither the Transport Rule itself, nor the vacatur of the Transport Rule, is relevant to the question addressed in this proposal notice. The purpose of this action is to determine whether the attainment plan submitted by New Jersey is sufficient to bring the NY-NJ-CT $PM_{2.5}$ nonattainment area and the PA-NJ-DE $PM_{2.5}$ nonattainment area into attainment by the April 2010 attainment date, a date before the Transport Rule was even promulgated.

Similarly, the status of CAIR after the April 2010 attainment date is also not relevant to this action since CAIR was in place and enforceable through the attainment date. CAIR was an enforceable control measure applicable to affected sources in the area, as well as sources throughout the Eastern United States. As such, the current status of CAIR is irrelevant to and does not impact our conclusion that the attainment plan should be approved. Moreover, in its August 2012 decision, the Court also ordered EPA to continue implementing CAIR. See EME Homer City, slip op. at 60. For these reasons, neither the current status of CAIR nor the current status of the Transport Rule affects any of the criteria for proposed approval of this SIP revision.

The control measures listed in Table 3 does not include additional measures, which the state had planned to implement by 2010, that would result in additional emissions reductions of direct $PM_{2.5}$ and precursors. These additional measures, shown in Table 4 below, which were not included in the photochemical grid modeling, and which have been subsequently adopted by the State, were submitted by New Jersey to provide additional evidence that the New Jersey associated nonattainment areas would attain the 1997 $PM_{2.5}$ NAAQS by the required April 5, 2010 attainment date.

TABLE 4—CONTROL MEASURES ADOPTED BY NEW JERSEY NOT CAPTURED IN THE 2009 BOTW MODEL RUN

| |
|---|
| *Federal* |
| New Nonroad Engine Standards |
| Locomotive Engines and Marine Compression-Ignition Engines Less than 30 Liters per Cylinder |
| Energy Conservation Standards for New Federal Commercial and Multi-Family High-Rise Residential Buildings |
| *State* |
| Diesel Idling Rule Changes |
| Diesel Smoke (I/M Cutpoint) Rule Changes |
| Case-by-Case $NO_X$ Limit Determinations (Facility-Specific Emission Limits/Alternative Emission Limits) |
| Municipal Waste Combustors (Incinerators) $NO_X$ Rule |
| New Jersey Low Emission Vehicle Program from Fleet Turnover Post 2009 |
| On-road Fleet Turnover and Non-Road Equipment Turnover Post 2009 |
| Controls from EGU Consent Decrees (PSE&G Hudson $SO_2$) |
| Nonattainment New Source Review |
| Asphalt Production Plants Rule |
| Glass Manufacturing |
| High Electric Demand Day (HEDD Program) |
| Oil and Gas Fired Electric Generating Units (EGU's) Rule (Portion Not Modeled from Consent Decrees) |
| Sewage Sludge Incinerators |
| $NO_X$ RACT Rule 2006 (Portion Not Modeled) |
| ICI Boiler Rule 2009 (Portion Not Modeled) |
| Low Sulfur Distillate and Residual Fuel Strategies |
| Smoke Management |

In summary, New Jersey is relying on ''modeled'' control measures to demonstrate that the NY-NJ-CT $PM_{2.5}$ nonattainment area and the PA-NJ-DE $PM_{2.5}$ nonattainment area would reach attainment by April 5, 2010, and has

[3] The document is available at *http://www.epa.gov/crossstaterule/pdfs/AQModeling.pdf.*

also included additional ''non-modeled'' measures as additional support for attainment and continued attainment.

EPA provided guidance to states and tribes for projecting $PM_{2.5}$ concentrations using a ''speciated modeled attainment test'' (SMAT) (EPA–454/B–07–002, April 2007). EPA also provided a software program (Model Attainment Test Software ''MATS'') that allows calculation of future year $PM_{2.5}$ design values using the SMAT assumptions contained in the modeled guidance[4]. MATS uses the following $PM_{2.5}$ species: sulfate, nitrate, ammonium, directly emitted inorganic particles, elemental carbon, organic carbon, particle bound water, and blank mass (and optionally salt). Once modeling for a projection year and a base year is complete, relative response factors (RRFs) are computed for sulfate, nitrate, directly emitted inorganic particles, elemental carbon, and organic carbon. For each monitoring location, the quarterly RRF for a component is computed as the ratio of the projection year divided by the base year modeled concentration for a three-by-three array of modeled grid cells centered on the monitoring location. The projection year concentrations are calculated by multiplying quarterly base year concentrations by the RRF for each $PM_{2.5}$ component. The sum of the estimated projection year component concentrations is the estimated projection year $PM_{2.5}$ concentration. If future estimates of $PM_{2.5}$ concentrations are less than the 1997 NAAQS, then the modeling indicates attainment of the standard.

$PM_{2.5}$ includes a mixture of components that can behave independently from one another (e.g., primary vs. secondary particles) or that are related to one another in a complex way (e.g., different secondary particles). Thus, it is appropriate to consider $PM_{2.5}$ as the sum of its major components. As recommended in EPA's modeling guidance, New Jersey divided $PM_{2.5}$ into its major components and noted the effects of a strategy on each. The effect on $PM_{2.5}$ was estimated as a sum of the effects on individual components. Future $PM_{2.5}$ design values at specified monitoring sites were estimated by adding the future- year values of the seven $PM_{2.5}$ (sulfates, nitrates, ammonium, organic carbon, elemental carbon, particle bound water, other primary inorganic particulate matter) components.

For the PA-NJ-DE $PM_{2.5}$ nonattainment area, all future site-specific $PM_{2.5}$ design values were below the concentration specified in the NAAQS. The highest value predicted in the nonattainment area was from the monitor located on Broad Street in Philadelphia, PA, and the predicted value was 13.9 μg/m³. Therefore, the PA-NJ-DE $PM_{2.5}$ nonattainment area passed the SMAT.

For the NY-NJ-CT $PM_{2.5}$ nonattainment area, future site-specific $PM_{2.5}$ design values were below the concentration specified in the NAAQS with the exception of the PS59 monitoring site located in New York County. The projected 2009 value of 15.3 μg/m³ for PS59 was within the weight-of-evidence (WOE) range of values, 14.5 μg/m³ to 15.5 μg/m³, as defined in the $PM_{2.5}$ modeling guidance (EPA–454/B–07–002, April 2007).

New Jersey used a multi-analysis and WOE approach to support the results from the modeled attainment test. In addition to the speciated modeled attainment test, New Jersey presented the following information, which is further described in the TSD, to demonstrate attainment by April 5, 2010:

- Air monitoring data measured from 2000 to 2006 at monitoring sites in both the PA-NJ-DE and the NY-NJ-CT $PM_{2.5}$ nonattainment areas showed declining ambient $PM_{2.5}$ concentrations;
- Technical information from a New York State WOE presentation concerning the PS59 monitoring site: incomplete data in the third quarter of 2003 due to construction work at the site, and lack of collocated speciation data, may have resulted in an estimate of $PM_{2.5}$ being above the level of the NAAQS at the PS59 monitor;
- Additional measures from New York that were not represented in the projection inventories for 2009 and that will contribute to attainment at the PS59 monitor; and
- Additional measures from New Jersey that were not included in the projection year inventories for 2009 that would likely lead to $PM_{2.5}$ concentration below the 2009 modeled design values and support New Jersey's demonstration of attainment of the $PM_{2.5}$ NAAQS in its two multistate nonattainment areas.

As a result of this WOE review, New Jersey concluded that the State of New Jersey, and the New Jersey associated nonattainment areas will attain the 1997 p.m.$_{2.5}$ NAAQS by the required 2010 attainment date.

Complete, quality assured, quality controlled, and certified air quality data from 2007–2009, 2008–2010, and 2009–2011 are available for air monitors in both New Jersey associated $PM_{2.5}$ nonattainment areas. Under EPA's modeling guidance, this data would be considered evidence to be weighed in a WOE process.

EPA published a **Federal Register** (75 FR 69589) on November 15, 2010 finding that the NY-NJ-CT $PM_{2.5}$ nonattainment area had attained the $PM_{2.5}$ NAAQS, based upon monitored attainment during the 2007–2009 monitoring period. Ambient air monitoring data for 2008–2010 and for 2009–2011 show continued attainment. EPA had reviewed ambient air monitoring data for $PM_{2.5}$ consistent with the requirements contained in 40 CFR part 50 and recorded in the EPA Air Quality System (AQS) database. The 3-year averages of the annual mean $PM_{2.5}$ concentrations are less than the NAAQS of 15.0 μg/m³. Table 5 shows the design values by county for the NY-NJ-CT $PM_{2.5}$ nonattainment area $PM_{2.5}$ monitors for the years 2001 through 2011. Overall, county design values continued to decline across the nonattainment area through 2011. As shown in Table 5, the column labeled 06–08 DV indicates that, beginning in 2006–2008, all county design values have been below the NAAQS of 15.0 μg/m³.

TABLE 5—DESIGN VALUES BY COUNTY FOR THE 1997 ANNUAL $PM_{2.5}$ NAAQS FOR THE NY-NJ-CT MONITORS IN MICROGRAMS PER CUBIC METER (μG/M³). THE STANDARD FOR THE 1997 ANNUAL $PM_{2.5}$ NAAQS IS 15.0 UG/M³

| County | 01–03 DV | 02–04 DV | 03–05 DV | 04–06 DV | 05–07 DV | 06–08 DV | 07–09 DV | 08–10 DV | 09–11 DV |
|---|---|---|---|---|---|---|---|---|---|
| Bronx | 15.7 | 15.2 | 15.7 | 15.1 | 15.5 | 14.3 | 13.9 | 12.5 | 11.9 |
| Kings | 14.7 | 14.2 | 14.6 | 14.0 | 14.0 | 12.9 | 12.2 | 10.8 | 10.3 |
| Nassau | 12.2 | 11.7 | 12.1 | 11.5 | 11.4 | 10.9 | 10.3 | 9.5 | 8.9 |

[4] MATS is available at: *http://www.epa.gov/scram001/modelingapps_mats.htm.*

TABLE 5—DESIGN VALUES BY COUNTY FOR THE 1997 ANNUAL $PM_{2.5}$ NAAQS FOR THE NY-NJ-CT MONITORS IN MICROGRAMS PER CUBIC METER (μG/M³). THE STANDARD FOR THE 1997 ANNUAL $PM_{2.5}$ NAAQS IS 15.0 UG/M³—Continued

| County | 01–03 DV | 02–04 DV | 03–05 DV | 04–06 DV | 05–07 DV | 06–08 DV | 07–09 DV | 08–10 DV | 09–11 DV |
|---|---|---|---|---|---|---|---|---|---|
| New York | 17.5 | 16.7 | 17.0 | 15.7 | 15.9 | 14.9 | 14.0 | 12.1 | 11.7 |
| Orange | 11.5 | 11.1 | 11.4 | 10.8 | 10.8 | 10.0 | 9.3 | 8.5 | 8.2 |
| Queens | INC | 12.8 | 12.7 | 12.1 | 11.8 | 11.3 | 10.6 | 10.0 | INC |
| Richmond | 12.0 | 11.5 | 11.8 | 13.4 | 13.2 | 12.4 | 11.6 | 10.5 | 8.5 |
| Rockland | NM | NM | NM | NM | NM | NM | NM | NM | NM |
| Suffolk | 12.1 | 11.3 | 11.5 | INC | INC | 10.5 | 9.7 | 8.9 | 8.4 |
| Westchester | 12.3 | 11.7 | 11.9 | 11.6 | 11.7 | 11.2 | 10.6 | 9.6 | 9.1 |
| Bergen | INC | 12.8 | 13.3 | 12.8 | 13.2 | 12.2 | 11.3 | 9.8 | 9.2 |
| Essex | INC | 13.5 | INC | 13.2 | 13.3 | INC | INC | INC | INC |
| Hudson | 14.7 | 14.3 | 14.7 | 14.1 | 14.0 | 14.1 | 13.1 | 11.6 | 11.1 |
| Mercer | 13.8 | 13.0 | 13.0 | 12.7 | 12.5 | 11.9 | 10.8 | 10.0 | 9.7 |
| Middlesex | 12.4 | 11.8 | 12.5 | 11.8 | 12.1 | 11.3 | 10.4 | 8.8 | 7.9 |
| Monmouth | NM | NM | NM | NM | NM | NM | NM | NM | NM |
| Morris | INC | 11.6 | 11.9 | 11.2 | 11.3 | 10.3 | 9.6 | 8.7 | 8.5 |
| Passaic | INC | 12.9 | 13.1 | 12.6 | 12.9 | 12.3 | 11.3 | 9.8 | INC |
| Somerset | NM | NM | NM | NM | NM | NM | NM | NM | NM |
| Union | 15.5 | 15.3 | 15.5 | 14.8 | 14.4 | 13.6 | 12.6 | 11.6 | 11.4 |
| Fairfield | 13.1 | 12.7 | 13.3 | 13.2 | 13.2 | 12.4 | 11.3 | 10.0 | 9.4 |
| New Haven | 13.9 | 13.4 | 13.5 | 13.0 | 12.8 | 12.2 | 11.4 | 10.3 | 9.6 |

NM—No monitor located in county.
INC—Incomplete data for time period. All counties listed as INC for time period did not meet 75 percent data completeness requirement.
Note: The air monitor at the Newark Willis Center station in Essex County was discontinued on July 24, 2008 due to an unexpected loss of access, and replaced with a new monitor at the Newark Firehouse. $PM_{2.5}$ monitoring was established at the firehouse on May 13, 2009. The monitors in Queens and Passaic had incomplete data due to instrument malfunction, and/or insufficient sampling frequency in one quarter.

On May 16, 2012, EPA finalized in the **Federal Register** (77 FR 28782) a determination that the PA–NJ–DE $PM_{2.5}$ nonattainment area had attained the 1997 $PM_{2.5}$ NAAQS, based upon ambient air monitoring data for the 2007–2009 and 2008–2010 monitoring periods. The 3-year averages of the annual mean $PM_{2.5}$ concentrations are less than the NAAQS of 15.0 μg/m³. Table 6 shows the design values by county for the PA-NJ-DE $PM_{2.5}$ nonattainment area monitors for the years 2001 through 2011. As shown in Table 6, the column labeled 04–06 DV indicates that ambient air monitoring data has been less than or equal to the NAAQS, beginning in 2004–2006.

TABLE 6—DESIGN VALUES BY COUNTY FOR THE 1997 ANNUAL $PM_{2.5}$ NAAQS FOR THE PA-NJ-DE MONITORS IN MICROGRAMS PER CUBIC METER (μG/M³). THE STANDARD FOR THE 1997 ANNUAL $PM_{2.5}$ NAAQS IS 15.0 μG/M³

| County | 01–03 DV | 02–04 DV | 03–05 DV | 04–06 DV | 05–07 DV | 06–08 DV | 07–09 DV | 08–10 DV | 09–11 DV |
|---|---|---|---|---|---|---|---|---|---|
| New Castle | 16.2 | 15.3 | 15.1 | 14.8 | 14.7 | 14.2 | 13.0 | 11.7 | 10.7 |
| Camden | INC | 13.7 | 13.8 | 13.3 | 13.5 | 12.7 | 11.7 | 10.3 | 9.7 |
| Gloucester | 13.5 | 12.8 | 13.5 | INC | INC | INC | 11.4 | 10.0 | INC |
| Burlington | NM | NM | NM | NM | NM | NM | NM | NM | NM |
| Bucks | 14.3 | 13.9 | 13.9 | 13.2 | 13.2 | 12.6 | 12.2 | 11.3 | 10.9 |
| Chester | INC | INC | 15.2 | INC | INC | INC | 13.9 | 13.8 | INC |
| Delaware | 15.4 | 15.1 | 15.7 | 15.0 | 15.0 | 14.1 | 13.7 | 13.3 | 12.9 |
| Montgomery | 14.1 | INC | INC | INC | INC | 12.3 | 11.7 | 10.5 | 10.1 |
| Philadelphia | 16.2 | 15.4 | 15.2 | INC | INC | INC | 13.0 | 12.0 | 11.4 |

NM—No monitor located in county.
INC—Incomplete data for time period. All counties listed as INC for time period did not meet 75 percent data completeness requirement. The monitor in Gloucester had incomplete data due to instrument malfunction, and/or insufficient sampling frequency in one quarter.

EPA proposes to find that the attainment demonstration modeling to be acceptable. New Jersey has followed EPA's modeling guidance, and demonstrated through modeling and the weight-of-evidence process that the area would reach attainment by April 5, 2010.

*B. Reasonable Further Progress (RFP)*

The $PM_{2.5}$ Implementation Rule requires a State to submit a separate RFP plan for any area for which the State justifies an extension of the attainment date beyond 2010. Areas that demonstrate attainment of the standard by 2010 are considered to have satisfied the requirement to show reasonable further progress toward attainment and need not submit a separate RFP plan. There are separate RFP requirements for those nonattainment areas with attainment dates beyond 2010.

Since New Jersey has submitted an attainment demonstration that shows attainment by the 2010 deadline, thus satisfying the RFP requirement, a separate RFP plan is not necessary.

*C. Reasonably Available Control Technology/Reasonably Available Control Measures (RACT and RACM)*

As described in the $PM_{2.5}$ Implementation Rule, EPA is requiring a combined approach to RACT and

RACM. Under this approach, RACT and RACM are those measures that a state finds are both reasonably available and contribute to attainment ''as expeditiously as practicable'' in a specific nonattainment area. By definition, measures that do not help an area attain the NAAQS ''as expeditiously as practicable'' are not required RACT/RACM.

In the preamble to the $PM_{2.5}$ Implementation Rule, EPA provided a recommended list of the types of source categories and types of control measures that may be appropriate for evaluation, based upon the local source mix and attainment needs of a specific area. In order to establish that the target attainment date is as expeditious as practicable, it is necessary to evaluate the combination of measures that could advance the attainment date. A state's attainment plan must include a list of measures considered and information sufficient to show that a state met all requirements for determination of RACT/RACM.

Determination of RACT/RACM is a three-step process: (1) Identifying technically and economically feasible measures and associated emissions reductions, (2) conducting air-quality modeling and related analyses, and (3) selecting RACT/RACM. Identification of potential measures must be based on an inventory of emissions of directly emitted $PM_{2.5}$ and $PM_{2.5}$ precursors from the range of relevant sources and source categories.

Technical feasibility refers to whether there are available measures capable of reducing emissions of $PM_{2.5}$ or $PM_{2.5}$ precursors or both. A number of factors are considered in this analysis, such as process and operating conditions, raw materials, physical plant layout, non-air quality and energy impacts, and the time needed to install and operate controls.

Economic feasibility refers to whether the cost of a measure is reasonable for the regulated entity. A number of factors are considered in this analysis, such as cost per ton of pollution reduced, economic effects on a facility and on the local economy. The cost per ton for previous measures is an indicator of reasonableness; however, the ability of a facility to absorb costs may differ for different source categories. The guiding principle is that the selected RACT/RACM does not exclude any group of reasonable controls that together could advance the attainment date by at least a year.

New Jersey's RACT/RACM analysis for potential control measures was divided into two parts: A $PM_{2.5}$ RACT Assessment for existing major stationary point sources, and a RACM analysis for additional point, area, on-road mobile sources and off-road sources.

1. $PM_{2.5}$ RACT

New Jersey used several venues in its effort to identify potential emission reductions. New Jersey held a public workshop entitled *''Reducing Air Pollution Together''* and established technical workgroups to obtain input on the stringency of existing requirements and evaluate potentially new RACT controls for significant emission reductions of $NO_X$, VOC, $SO_2$, and $PM_{2.5}$. This was followed by state participation in regional control development efforts, and an internal NJDEP assessment of RACT controls. The recommendations from these efforts were further evaluated by NJDEP's Air Quality Management team, and resulted in a list of approximately 60 potential control measures.

Each control measure was subsequently evaluated based on information collected regarding emission benefits, implementation issues, cost-effectiveness, and existing controls. White papers were developed and utilized to further inform the decision for determining RACT control measures.

NJDEP conducted a review of current state and federal requirements such as New Jersey Administrative Code (NJAC) 7:27–4, NJAC 7:27–6, and 7:27–9, New Source Performance Standards (NSPS), Maximum Available Control Technology (MACT), and an evaluation of whether existing controls at the time of installation were previously considered Best Available Control Technology (BACT), Lowest Available Emission Rate (LAER) or State of the Art (SOTA). In addition NJDEP evaluated other states' regulations, such as those in effect in California, and information listed in the USEPA's RACT/BACT/LAER Clearinghouse (RBLC).

Table 7 lists the RACT source categories for which the State adopted as new or revised measures along with the targeted pollutants and affected rules and categories. They were also included in New Jersey's ozone SIP since they also targeted precursors for ozone. The ozone SIP revision was approved by EPA on May 15, 2009 (74 FR 22837). New Jersey adopted all of the rules listed in Table 7 on or before March 20, 2009.

The Industrial, Commercial & Institutional Boilers measure identified as a RACT measure by New Jersey was also included in the regional photochemical grid modeling to demonstrate attainment. Although not included in the regional modeling (except partially through EGU consent decrees), the other measures listed in Table 7 provide additional emission reduction benefits and are included as WOE measures to provide additional evidence that the New Jersey associated nonattainment areas would attain the 1997 $PM_{2.5}$ NAAQS. Section IV.A.3 and the TSD provide further discussion on the control measures used to demonstrate attainment by New Jersey.

There were no additional PM-specific RACT measures available that would qualify as RACM since they could not be implemented early enough to advance the attainment date.

TABLE 7—NEW JERSEY $PM_{2.5}$ RACT

| Candidate source categories | Targeted Pollutants | | | | Affected rules |
|---|---|---|---|---|---|
| | $NO_X$ | VOC | $SO_2$ | $PM_{2.5}$ | |
| Asphalt Pavement Production Plants | X | | | | NJAC 7:27–19.9. |
| Glass Manufacturing Furnaces | X | | X | X | NJAC 7:27–19.2, 19.10. |
| Industrial, Commercial & Institutional Boilers | X | | | | NJAC 7:27–19.7. |
| Coal-Fired EGU Boilers | X | | X | X | NJAC 7:27–4, 10 & 19.4. |
| Oil and Gas-Fired EGUs | X | | | | NJAC 7:27–19.4. |
| High Electrical Demand Day EGUs | X | | | | NJAC 7:27–19.4, 19.5, & 19.29. |
| Case by Case, Facility-Specific Emission Limit & Alternative Emission Limit. | X | X | | | NJAC 7:27–16.17 & 19.13. |
| Municipal Waste Combustors (incinerators) $NO_X$ rule | X | | | | NJAC 7:27–19.12. |
| Sewage Sludge Incinerators | X | | | | NJAC 7:27–19.28. |

2. $PM_{2.5}$ RACM

The New Jersey Department of Transportation (NJDOT), in consultation with the NJDEP, identified 26 measures to be evaluated as prospective mobile source measures that could be considered reasonably available control measures. After identifying these measures, NJDOT analyzed each measure for its potential emissions reduction benefit, economic feasibility, technological feasibility, practicability and potential adverse impact. NJDOT analyzed each prospective emission control measure for each nonattainment area. One measure, *School Bus Replacement of model years 2002 and older to be replaced with model year 2007 buses,* passed on all RACM criteria, but could not be implemented early enough to advance the attainment date from 2010 to 2009. The measure would have needed to be in place by 2008 to achieve reductions in 2009.

NJDEP reviewed a variety of sources of information, such as, those from regional planning organizations, other state organizations, existing NJDEP documents, EPA regional efforts, and New Jersey State organizations to develop a list of 628 potential non-transportation control measures (non-TCMs). Over 250 potential control measures were developed from New Jersey's *''Reducing Air Pollution Together.''* White papers were developed and utilized to further inform the decision for determining RACM control measures. Fifteen non-TCMs passed all RACM criteria but could not be implemented by 2008.

New Jersey noted in its SIP revision that they intended to pursue other measures which will help the state attain the new 2006 $PM_{2.5}$ NAAQS. These measures include lowering the sulfur content of fuel oil, which has since been adopted by the state. EPA approved revisions to New Jersey's Subchapter 9, Sulfur in Fuels rule, on January 3, 2012 as part of EPA's approval of the New Jersey Regional Haze SIP.[5] This rule will reduce the sulfur content in all distillate heating oil (No.2 and lighter distillate fuel) to 500 parts per million (ppm) by July 1, 2014 and to 15 ppm by July 1, 2016. The adopted rule will also reduce the sulfur content in No.4 fuel oil to a consistent 2,500 ppm throughout the State and reduce the sulfur content in No.5, No.6, and heavier fuel oil to 5,000 ppm or less on July 1, 2014. New Jersey estimated[6] a total $SO_2$ emission reduction in 2014 and 2016 from the new sulfur in fuel standards of 1,544 tons per year.

3. RACT/RACM Conclusion

EPA is proposing to approve New Jersey's evaluation of the RACT/RACM control measures for the Northern and Southern New Jersey $PM_{2.5}$ nonattainment areas.

EPA has reviewed the RACT/RACM analysis submitted by New Jersey and finds that there were no additional measures that would have advanced the area attainment date of April 5, 2010.

As noted previously, the most current monitoring data for the Northern and Southern New Jersey $PM_{2.5}$ nonattainment areas indicates that the areas are attaining the 1997 $PM_{2.5}$ NAAQS. EPA's guidance for the $PM_{2.5}$ Implementation Rule recommended that if an area was predicted through the attainment plan to attain the standards within five years after designation, then the State would not need to conduct and submit additional RACM/RACT analyses. In light of the fact that the Northern and Southern New Jersey $PM_{2.5}$ nonattainment areas are now attaining the standards, EPA proposes to conclude that the attainment plan meets the RACT/RACM requirements of the $PM_{2.5}$ Implementation Rule, and that the level of control in the State's attainment plan constitutes RACM/RACT for purposes of the 1997 $PM_{2.5}$ NAAQS. Because the $PM_{2.5}$ Implementation Rule defines RACT/RACM as that level of control that is necessary to bring the area into attainment, the current level of federally enforceable controls on sources located within the area is by definition RACT/RACM for these areas for this purpose. New Jersey's demonstration for attaining the 1997 $PM_{2.5}$ NAAQS is based on the federally enforceable control measures identified in New Jersey's April 1, 2009 SIP submittal and listed in this rulemaking's table 3 titled, ''Modeled control measures included in the 2009 BOTW Model Run for New Jersey'', table 4 titled, ''Control Measures Adopted by New Jersey Not Captured in the 2009 BOTW Model Run'', and table 7 titled, ''New Jersey $PM_{2.5}$ RACT.

*D. Contingency Measures*

In accordance with section 172(c)(9) of the CAA, the $PM_{2.5}$ Implementation Rule requires that $PM_{2.5}$ attainment plans include contingency measures. Contingency measures are additional measures to be implemented in the event that an area fails to meet RFP or fails to attain a standard by its attainment date. These measures must be fully adopted rules or control measures that can be implemented quickly if the area fails to meet RFP or fails to attain by its attainment date, and should contain trigger mechanisms and an implementation schedule. In addition, they should be measures not already included in the SIP control strategy and should provide for emission reductions equivalent to one year of RFP.

The attainment plan for the Northern and Southern New Jersey $PM_{2.5}$ nonattainment areas included contingency measures, shown in Table 8 below, to be implemented if the areas failed to attain by the required attainment date.

TABLE 8—NEW JERSEY $PM_{2.5}$ ATTAINMENT CONTINGENCY MEASURES

| New Jersey contingency measures | Targeted pollutants | | | | Affected rules |
|---|---|---|---|---|---|
| | $NO_X$ | VOC | $SO_2$ | $PM_{2.5}$ | |
| Diesel Idling | X | | | X | NJAC 7:27–14.1, 14.3. |
| Asphalt Production Plants Rule | X | | | | NJAC 7:27–19.9. |
| Onroad Motor Vehicle Control Programs (Fleet Turnover 2010). | X | | | X | Federal Tier 2 and 2007 Heavy Duty Diesel Standards, NJAC 7:27–29. |
| Nonroad Motor Vehicle Control Programs (Fleet Turnover 2010). | X | | X | X | Federal 2004 Nonroad Diesel Rule. |
| Municipal Waste Combustors (Incinerators) $NO_X$ Rule | X | | | | NJAC 7:27–19.12, 19.13. |
| $NO_X$ RACT Rule 2006 (Portion Not Modeled) | X | | | | NJAC 7:27–19. |

[5] **Federal Register** notice: 77 FR 19 (January 3, 2012).

[6] New Jersey Register notice: 41 N.J.R. 4156 (November 16, 2009).

TABLE 8—NEW JERSEY $PM_{2.5}$ ATTAINMENT CONTINGENCY MEASURES—Continued

| New Jersey contingency measures | Targeted pollutants | | | | Affected rules |
|---|---|---|---|---|---|
| | $NO_X$ | VOC | $SO_2$ | $PM_{2.5}$ | |
| Controls from EGU and Refinery Consent Decrees (Additional Emissions Reductions). | ..... | ..... | X | ..... | Not applicable (i.e., Consent Decree). |

All Federal and State contingency measures identified in the attainment plan have been adopted and implemented. EPA has previously approved the State rules listed in Table 8 into the SIP during previous agency actions.[7]

As noted in section II.C of this proposed rulemaking, EPA has finalized the determination that the NY–NJ–CT $PM_{2.5}$ nonattainment area had attained the 1997 $PM_{2.5}$ NAAQS, based on complete, quality-assured, quality controlled, certified ambient air monitoring data for the 2007–2009 monitoring period. EPA has also finalized the determination that the PA–NJ–DE $PM_{2.5}$ nonattainment area had attained the 1997 $PM_{2.5}$ NAAQS, based on complete, quality-assured, quality controlled, certified ambient air monitoring data for the 2007–2009, and 2008–2010 monitoring periods. Because EPA is determining that the areas are attaining by its applicable attainment date, in accordance with CAA 179(c)(1), no contingency measures for failure to attain by this date need to be implemented, and further EPA action is unnecessary. Furthermore, as set forth in the $PM_{2.5}$ Implementation Rule, areas that attained the NAAQS by the attainment date are considered to have satisfied the requirement to show RFP, and as such do not need to implement contingency measures to make further progress to attainment. Since the NY–NJ–CT $PM_{2.5}$ nonattainment area and the PA–NJ–DE $PM_{2.5}$ nonattainment area have attained by the required attainment date, contingency measures submitted by New Jersey are no longer necessary to meet RFP requirements or attain the annual $PM_{2.5}$ NAAQS by the attainment date, and further EPA action is unnecessary. Regardless of this determination, New Jersey has already adopted and implemented the control measures listed in Table 8.

*E. Motor Vehicle Emissions Budgets*

The CAA requires Federal actions in nonattainment and maintenance areas to ''conform to'' the goals of SIPs. This means that such actions will not: Cause or contribute to violations of a NAAQS, worsen the severity of an existing violation, or delay timely attainment of any NAAQS or any interim milestone. Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the transportation conformity rule (40 CFR part 93, subpart A). Under this rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with state air quality and transportation agencies, EPA, and FHWA and FTA to demonstrate that their long-range transportation plans (plans) and transportation improvement programs (TIP) conform to applicable SIPs. This is typically determined by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emissions budgets (budgets) contained in a SIP.

In its submittal, New Jersey established three sets of budgets for the two MPOs within the two $PM_{2.5}$ nonattainment areas in New Jersey. The Delaware Valley Regional Planning Commission (DVRPC) is a bi-state MPO that covers four counties in New Jersey and five in Pennsylvania. Of its four New Jersey counties, three counties (Burlington, Camden, and Gloucester) are part of the Southern New Jersey $PM_{2.5}$ nonattainment area.

Because conformity is determined on a nonattainment area basis within a state, New Jersey established budgets for direct $PM_{2.5}$ and $NO_X$ (a $PM_{2.5}$ precursor) for these three combined counties. DVRPC would use these budgets to satisfy conformity requirements within the Southern New Jersey $PM_{2.5}$ nonattainment area.

New Jersey has also established separate ''sub-area budgets'' for the remaining DVRPC county (Mercer) and the nine counties covered by the North Jersey Transportation Planning Authority (NJTPA) that lie within the Northern New Jersey $PM_{2.5}$ nonattainment area. Though the MPOs belong to the same nonattainment area within the state, these sub-area budgets allow each MPO to work independently to demonstrate conformity by meeting its own $PM_{2.5}$ and $NO_X$ budgets. Each MPO must still verify, however, that the other MPO currently has a conforming plan and TIP prior to making a new plan/TIP conformity determination.

New Jersey has determined that other potential $PM_{2.5}$ precursors (VOC, $SO_2$, and $NH_3$) are not significant and has not set budgets for them. In addition, New Jersey analyzed monitoring data and determined that re-entrained road dust and construction dust do not significantly contribute to $PM_{2.5}$ concentrations, and therefore has not set budgets for either road or construction dust. Table 9 lists New Jersey's submitted budgets.

TABLE 9—2009 MOTOR VEHICLE EMISSIONS BUDGETS SUBMITTED BY NEW JERSEY

[Tons per year]

| Nonattainment area | MPO | $PM_{2.5}$ | $NO_X$ |
|---|---|---|---|
| Northern New Jersey ..... | North Jersey Transportation Planning Authority ..... | 842 | 44,321 |
| Northern New Jersey ..... | Delaware Valley Regional Planning Commission (Mercer County only) ..... | 105 | 5,323 |
| Southern New Jersey ..... | Delaware Valley Regional Planning Commission (Burlington, Camden, and Gloucester Counties). | 341 | 17,319 |

[7] **Federal Register** notices: 72 FR 41626 (July 31, 2007), 73 FR 8200 (February 13, 2008), 74 FR 17781 (April 17, 2009), 75 FR 45483 (August 3, 2010).

For motor vehicle emissions budgets to be approvable, they must meet, at a minimum, EPA's adequacy criteria (40 CFR 93.118(e)(4)). EPA made an adequacy determination on New Jersey's 2009 budgets on June 14, 2010 (75 FR 33614). In our Notice of Adequacy we found that the budgets complied with the adequacy criteria listed at 40 CFR 93.118(e)(4). When EPA determines that budgets are adequate for transportation conformity, we note that an adequacy finding does not imply that budgets will ultimately be approved. Consistent with our adequacy review of New Jersey's submittal and our subsequent thorough review of the entire SIP submission, EPA is proposing to approve New Jersey's 2009 budgets.

The budgets that New Jersey submitted were calculated using the MOBILE6.2 motor vehicle emissions model. EPA is proposing to approve the inventory and the conformity budgets calculated using this model because this model was the most current model available at the time New Jersey was performing its analysis. Separate from today's proposal, EPA has issued an updated motor vehicle emissions model known as the Motor Vehicle Emission Simulator or MOVES. In its announcement of this model, EPA established a grace period for continued use of MOBILE6.2 in transportation conformity determinations for transportation plans and TIPs, after which states and metropolitan planning organizations (other than California) must use MOVES for transportation plan and TIP conformity determinations. (See 75 FR 9411 (March 2, 2010); 77 FR 11394 (Feb. 27, 2012)).

Additional information on the use of MOVES in SIPs and conformity determinations can be found in the December 2009 *Policy Guidance on the Use of MOVES2010 for State Implementation Plan Development, Transportation Conformity, and Other Purposes.* This guidance document is available at: *http://www.epa.gov/otaq/models/moves/420b09046.pdf.* During the conformity grace period, the State and MPO(s) should use the interagency consultation process to examine how MOVES2010a will impact their future transportation plan and TIP conformity determinations, including regional emissions analyses. For example, an increase in emission estimates due to the use of MOVES2010a may affect an area's ability to demonstrate conformity for its transportation plan and/or TIP. Therefore, state and local planners should carefully consider whether the SIP and motor vehicle emissions budget(s) should be revised with MOVES2010a or if transportation plans and TIPs should be revised before the end of the conformity grace period, since doing so may be necessary to ensure conformity determinations in the future.

We would expect that states and metropolitan planning organizations would work closely with EPA and the local Federal Highway Administration and Federal Transit Administration offices to determine an appropriate course of action to address this type of situation if it is expected to occur. If New Jersey chooses to revise its $PM_{2.5}$ attainment plan, it should consult Question 7 of the December 2009 *Policy Guidance on the Use of MOVES2010 for State Implementation Plan Development, Transportation Conformity, and Other Purposes* for information on requirements related to such revisions.

## V. What is EPA's proposed action?

EPA is proposing to approve several elements of New Jersey's attainment plan including New Jersey's attainment demonstration and motor-vehicle emissions budgets used for transportation conformity purposes, as well as the RACT/RACM analysis, and base-year and projection-year modeling emission inventories.

EPA has determined that the SIP meets the applicable requirements of the CAA, as described in the $PM_{2.5}$ Implementation Rule. Specifically, EPA has determined that New Jersey's SIP includes an attainment demonstration and adopted state regulations and programs needed to support a determination that the Northern New Jersey $PM_{2.5}$ nonattainment area and the Southern New Jersey $PM_{2.5}$ nonattainment area have attained the NAAQS by the April 2010 deadline.

## VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely 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 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 Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed 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, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: December 6, 2012.

**Judith A. Enck,**

*Regional Administrator, Region II.*

[FR Doc. 2012–30223 Filed 12–13–12; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 82**

**[EPA–HQ–OAR–2010–0280; FRL–9714–4]**

**RIN 2060–AR41**

## Protection of Stratospheric Ozone: The 2013 Critical Use Exemption From the Phaseout of Methyl Bromide

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing uses that qualify for the 2013 critical use exemption. EPA is also proposing to amend the regulatory framework to determine the amount of methyl bromide that may be produced, imported, or supplied from existing pre-phaseout inventory for those uses in 2013. EPA is taking action under the authority of the Clean Air Act to reflect a recent consensus decision taken by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer at the Twenty-Third Meeting of the Parties. EPA is seeking comment on the list of critical uses and on EPA's determination of the specific amounts of methyl bromide that may be produced and imported, or sold from pre-phaseout inventory for those uses.

**DATES:** Comments must be submitted by January 28, 2013. Any party requesting a public hearing must notify the contact person listed below by 5 p.m. Eastern Standard Time on December 19, 2012. If a hearing is requested it will be held on December 31, 2012. EPA will post information regarding a hearing, if one is requested, on the Ozone Protection Web site *www.epa.gov/ozone/strathome.html*. Persons interested in attending a public hearing should consult with the contact person below regarding the location and time of the hearing.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0280, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-Docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Phone:* (202) 566–1742.
- *U.S. Mail:* Docket EPA–HQ–OAR–2010–0280, U.S. Environmental Protection Agency, EPA Docket Center, Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460.
- *Hand Delivery or Courier:* Docket EPA–HQ–OAR–2010–0280, EPA Docket Center—Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OAR–2010–0280. 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 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 *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 and with any disk or CD–ROM you submit. 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, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

*Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742).

**FOR FURTHER INFORMATION CONTACT:** For further information about this proposed rule, contact Jeremy Arling by telephone at (202) 343–9055, or by email at *arling.jeremy@epa.gov* or by mail at U.S. Environmental Protection Agency, Stratospheric Protection Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Avenue NW., Washington, DC 20460. You may also visit the methyl bromide section of the Ozone Depletion Web site of EPA's Stratospheric Protection Division at *www.epa.gov/ozone/mbr* for further information about the methyl bromide critical use exemption, other Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and related topics.

**SUPPLEMENTARY INFORMATION:** This proposed rule concerns Clean Air Act (CAA) restrictions on the consumption, production, and use of methyl bromide (a Class I, Group VI controlled substance) for critical uses during calendar year 2013. Under the Clean Air Act, methyl bromide consumption (consumption is defined under section 601 of the CAA as production plus imports minus exports) and production were phased out on January 1, 2005, apart from allowable exemptions, such as the critical use and the quarantine and preshipment (QPS) exemptions. With this action, EPA is proposing and seeking comment on the uses that will qualify for the 2013 critical use exemption as well as specific amounts of methyl bromide that may be produced and imported, or sold from pre-phaseout inventory (also referred to as ''stocks'' or ''inventory'') for proposed critical uses in 2013.

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## I. General Information

### *A. Regulated Entities*

Entities potentially regulated by this proposed action are those associated with the production, import, export, sale, application, and use of methyl bromide covered by an approved critical use exemption. Potentially regulated categories and entities include producers, importers, and exporters of methyl bromide; applicators and distributors of methyl bromide; and users of methyl bromide that applied for the 2013 critical use exemption including growers of vegetable crops, fruits and nursery stock, and owners of stored food commodities and structures such as grain mills and processors. This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this proposed action. To determine whether your facility, company, business, or organization could be regulated by this proposed action, you should carefully examine the regulations promulgated at 40 CFR part 82, subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.

### *B. What should I consider when preparing my comments?*

1. *Confidential Business Information.* Do not submit confidential business information (CBI) to EPA through *www.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. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. 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.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
- 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.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

## II. What is methyl bromide?

Methyl bromide is an odorless, colorless, toxic gas which is used as a broad-spectrum pesticide and is controlled under the CAA as a Class I ozone-depleting substance (ODS). Methyl bromide was once widely used as a fumigant to control a variety of pests such as insects, weeds, rodents, pathogens, and nematodes. Information on methyl bromide can be found at *http://www.epa.gov/ozone/mbr*.

Methyl bromide is also regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and other statutes and regulatory authority, as well as by States under their own statutes and regulatory authority. Under FIFRA, methyl bromide is a restricted use pesticide. Restricted use pesticides are subject to Federal and State requirements governing their sale, distribution, and use. Nothing in this proposed rule implementing the Clean Air Act is intended to derogate from provisions in any other Federal, State, or local laws or regulations governing actions including, but not limited to, the sale, distribution, transfer, and use of methyl bromide. Entities affected by this proposal must continue to comply with FIFRA and other pertinent statutory and regulatory requirements for pesticides (including, but not limited to, requirements pertaining to restricted use pesticides) when importing, exporting, acquiring, selling, distributing, transferring, or using methyl bromide for critical uses. The provisions in this proposed action are intended only to implement the CAA restrictions on the production, consumption, and use of methyl bromide for critical uses exempted from the phaseout of methyl bromide.

## III. What is the background to the phaseout regulations for ozone-depleting substances?

The regulatory requirements of the stratospheric ozone protection program that limit production and consumption of ozone-depleting substances are in 40 CFR part 82, subpart A. The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing and subsequent ratification of the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol). The Montreal Protocol is the international agreement aimed at reducing and eliminating the production and consumption of stratospheric ozone-depleting substances. The United States was one of the original signatories to the 1987 Montreal Protocol and the United States ratified the Protocol on April 12, 1988. Congress then enacted, and President George H.W. Bush signed into law, the Clean Air Act Amendments of 1990 (CAAA of 1990) which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, Subchapter VI, to ensure that the United States could satisfy its obligations under the Protocol. EPA issued regulations to implement this legislation and has since amended the regulations as needed.

Methyl bromide was added to the Protocol as an ozone-depleting substance in 1992 through the Copenhagen Amendment to the Protocol. The Parties to the Montreal Protocol (Parties) agreed that each developed country's level of methyl bromide production and consumption in 1991 should be the baseline for establishing a freeze on the level of

methyl bromide production and consumption for developed countries. EPA published a final rule in the **Federal Register** on December 10, 1993 (58 FR 65018), listing methyl bromide as a Class I, Group VI controlled substance. This rule froze U.S. production and consumption at the 1991 baseline level of 25,528,270 kilograms, and set forth the percentage of baseline allowances for methyl bromide granted to companies in each control period (each calendar year) until 2001, when the complete phaseout would occur. This phaseout date was established in response to a petition filed in 1991 under sections 602(c)(3) and 606(b) of the CAAA of 1990, requesting that EPA list methyl bromide as a Class I substance and phase out its production and consumption. This date was consistent with section 602(d) of the CAAA of 1990, which, for newly listed Class I ozone-depleting substances provides that ''no extension [of the phaseout schedule in section 604] under this subsection may extend the date for termination of production of any class I substance to a date more than 7 years after January 1 of the year after the year in which the substance is added to the list of class I substances.''

At the Seventh Meeting of the Parties (MOP) in 1995, the Parties made adjustments to the methyl bromide control measures and agreed to reduction steps and a 2010 phaseout date for developed countries with exemptions permitted for critical uses. At that time, the United States continued to have a 2001 phaseout date in accordance with section 602(d) of the CAAA of 1990. At the Ninth MOP in 1997, the Parties agreed to further adjustments to the phaseout schedule for methyl bromide in developed countries, with reduction steps leading to a 2005 phaseout. The Parties also established a phaseout date of 2015 for Article 5 countries.

## IV. What is the legal authority for exempting the production and import of methyl bromide for critical uses authorized by the parties to the Montreal Protocol?

In October 1998, the U.S. Congress amended the Clean Air Act (CAA) to prohibit the termination of production of methyl bromide prior to January 1, 2005, to require EPA to bring the U.S. phaseout of methyl bromide in line with the schedule specified under the Protocol, and to authorize EPA to provide certain exemptions. These amendments were contained in Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277, October 21, 1998) and were codified in section 604 of the CAA, 42 U.S.C. 7671c. The amendment that specifically addresses the critical use exemption appears at section 604(d)(6), 42 U.S.C. 7671c(d)(6). EPA revised the phaseout schedule for methyl bromide production and consumption in a direct final rulemaking on November 28, 2000 (65 FR 70795), which allowed for the reduction in methyl bromide consumption specified under the Protocol and extended the phaseout to 2005 while creating a placeholder for critical use exemptions. EPA again amended the regulations to allow for an exemption for quarantine and preshipment (QPS) purposes through an interim final rule on July 19, 2001 (66 FR 37751), and a final rule on January 2, 2003 (68 FR 238).

On December 23, 2004 (69 FR 76982), EPA published a final rule (the ''Framework Rule'') that established the framework for the critical use exemption, set forth a list of approved critical uses for 2005, and specified the amount of methyl bromide that could be supplied in 2005 from stocks and new production or import to meet the needs of approved critical uses. EPA subsequently published rules applying the critical use exemption framework for each of the annual control periods from 2006 to 2012. Under authority of section 604(d)(6) of the CAA, today's action proposes the uses that will qualify as approved critical uses in 2013 and the amount of methyl bromide that may be produced, imported, or supplied from inventory to satisfy those uses.

This proposed action on critical uses for 2013 reflects Decision XXIII/4, taken at the Twenty-Third Meeting of the Parties in November 2011. In accordance with Article 2H(5), the Parties have issued several Decisions pertaining to the critical use exemption. These include Decisions IX/6 and Ex. I/4, which set forth criteria for reviewing proposed critical uses. The status of Decisions is addressed in *NRDC* v. *EPA,* (464 F.3d 1, DC Cir. 2006) and in EPA's ''Supplemental Brief for the Respondent,'' filed in *NRDC* v. *EPA* and available in the docket for this action. In this proposed rule on critical uses for 2013, EPA is honoring commitments made by the United States in the Montreal Protocol context.

## V. What is the critical use exemption process?

### *A. Background of the Process*

The critical use exemption is designed to permit the production and import of methyl bromide for uses that do not have technically and economically feasible alternatives that are acceptable from the standpoint of environment and health and for which the lack of methyl bromide would result in significant market disruption (40 CFR 82.3). Article 2H of the Montreal Protocol established the critical use exemption provision. At the Ninth Meeting of the Parties (1997), the Parties established the criteria for an exemption in Decision IX/6. In that Decision, the Parties agreed that ''a use of methyl bromide should qualify as 'critical' only if the nominating Party determines that: (i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and (ii) there are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and public health and are suitable to the crops and circumstances of the nomination.'' These criteria are reflected in EPA's definition of ''critical use'' at 40 CFR 82.3. In addition, the Parties decided that production and consumption, if any, of methyl bromide for critical uses should be permitted only if a variety of conditions have been met, including that all technically and economically feasible steps have been taken to minimize the critical use and any associated emission of methyl bromide, that research programs are in place to develop and deploy alternatives and substitutes, and that methyl bromide is not available in sufficient quantity and quality from existing stocks of banked or recycled methyl bromide.

In response to EPA's request for critical use exemption applications published in the **Federal Register** on July 15, 2010 (75 FR 41177), applicants provided data on the technical and economic feasibility of using alternatives to methyl bromide. Applicants also submitted data on their use of methyl bromide, ongoing research programs into the use of alternatives to methyl bromide in their sector, and efforts to minimize use and emissions of methyl bromide.

EPA reviews the data submitted by applicants, as well as data from governmental and academic sources, to establish whether there are technically and economically feasible alternatives available for a particular use of methyl bromide, and whether there would be a significant market disruption if no exemption were available. In addition, an interagency workgroup reviews other parameters of the exemption applications such as dosage and emissions minimization techniques and applicants' research or transition plans.

This assessment process culminates in the development of a document referred to as the U.S. critical use nomination (CUN). Since 2003, the U.S. Department of State has submitted a CUN annually to the United Nations Environment Programme (UNEP) Ozone Secretariat. The Methyl Bromide Technical Options Committee (MBTOC) and the Technology and Economic Assessment Panel (TEAP), which are advisory bodies to Parties to the Montreal Protocol, review each Party's CUN and make recommendations to the Parties on the nominations. The Parties then take Decisions to authorize critical use exemptions for particular Parties, including how much methyl bromide may be supplied for the exempted critical uses. As required in section 604(d)(6) of the CAA, for each exemption period, EPA consults with the United States Department of Agriculture (USDA) and other departments and institutions of the Federal government that have regulatory authority related to methyl bromide, and provides an opportunity for public comment on the amounts and specific uses of methyl bromide that the agency is proposing to exempt.

On February 4, 2011, the U.S. Government (USG) submitted the ninth *Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America* to the Ozone Secretariat of UNEP. This nomination contained the request for 2013 critical uses. In February 2011, MBTOC sent questions to the USG concerning technical and economic issues in the 2013 nomination. The USG transmitted responses to MBTOC in February, 2011. These documents, together with reports by the advisory bodies noted above, are in the public docket for this rulemaking. The proposed critical uses and amounts reflect the analysis contained in those documents.

*B. How does this proposed rule relate to previous critical use exemption rules?*

The December 23, 2004, Framework Rule (69 FR 76982) established the framework for the critical use exemption program in the United States, including definitions, prohibitions, trading provisions, and recordkeeping and reporting obligations. The preamble to the Framework Rule included EPA's determinations on key issues for the critical use exemption program.

Since publishing the Framework Rule, EPA has annually promulgated regulations to exempt specific quantities of production and import of methyl bromide, to determine the amounts that may be supplied from pre-phaseout inventory, and to indicate which uses meet the criteria for the exemption program for that year. See 71 FR 5985 (February 6, 2006), 71 FR 75386 (December 14, 2006), 72 FR 74118 (December 28, 2007), 74 FR 19878 (April 30, 2009), 75 FR 23167 (May 3, 2010), 76 FR 60737 (September 30, 2011), and 77 FR 29218 (May 17, 2012).

Today's action proposes to amend the regulatory framework to determine the amounts of Critical Use Allowances (CUAs) and Critical Stock Allowances (CSAs) to be allocated for critical uses in 2013. A CUA is the privilege granted through 40 CFR part 82 to produce or import 1 kg of methyl bromide for an approved critical use during the specified control period. These allowances expire at the end of the control period and, as explained in the Framework Rule, are not bankable from one year to the next. The proposed CUA allocation is subject to the trading provisions at 40 CFR 82.12, which are discussed in section V.G. of the preamble to the Framework Rule (69 FR 76982).

A CSA is the right granted through 40 CFR part 82 to sell 1 kg of methyl bromide from inventory produced or imported prior to the January 1, 2005, phaseout date for an approved critical use during the specified control period. The Framework Rule established provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of CSAs and a prohibition on the sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller. It also established trading provisions that allow CUAs to be converted into CSAs.

*C. Stocks of Methyl Bromide*

An approved critical user may purchase methyl bromide produced or imported with CUAs, as well as limited inventories of pre-phaseout methyl bromide, the combination of which constitute the supply of ''critical use methyl bromide'' intended to meet the needs of approved critical uses. EPA considers all pre-phaseout inventory to be suitable for both pre-plant and post harvest uses. The aggregate amount of pre-phaseout methyl bromide reported as being in inventory at the beginning of 2012 is 1,248,876 kg. This amount does not include critical use methyl bromide that was produced after January 1, 2005, and carried over into subsequent years. Nor does it include methyl bromide produced (1) Under the quarantine and preshipment (QPS) exemption, (2) with Article 5 allowances to meet the basic domestic needs of Article 5 countries, or (3) for feedstock or transformation purposes. As in prior years, the Agency will continue to closely monitor CUA and CSA data. As stated in the final 2006 CUE Rule, if an inventory shortage occurs, EPA may consider various options including authorizing the conversion of a limited number of CSAs to CUAs through a rulemaking, bearing in mind the upper limit on U.S. production/import for critical uses. In sections V.D. and V.G. of this preamble, EPA seeks comment on the amount of critical use methyl bromide to come from inventory compared to new production and import.

As explained in the 2008 CUE Rule, the agency intends to continue releasing aggregate methyl bromide inventory information reported to the agency under the reporting requirements at 40 CFR 82.13 at the end of each control period. EPA notes that if the number of competitors in the industry were to decline appreciably, EPA would revisit the question of whether the aggregate is entitled to treatment as confidential information and whether to release the aggregate without notice. EPA is not proposing to change the treatment of submitted information but welcomes information concerning the composition of the industry in this regard. The aggregate information for 2003 through 2012 is available in the docket for this rulemaking.

*D. Proposed Critical Uses*

In Decision XXIII/4, taken in November 2011, the Parties to the Protocol agreed ''to permit, for the agreed critical-use categories for 2013 set forth in table A of the annex to the present decision for each party, subject to the conditions set forth in the present decision and in decision Ex.I/4 to the extent that those conditions are applicable, the levels of production and consumption for 2013 set forth in table B of the annex to the present decision which are necessary to satisfy critical uses * * * ''

The following uses are those set forth in table A of the annex to Decision XXIII/4 for the United States:

- Commodities
- Mills and food processing structures
- Dried cured pork
- Cucurbits
- Eggplant—field
- Nursery stock—fruit, nuts, flowers
- Orchard replants
- Ornamentals
- Peppers—field
- Strawberry—field
- Strawberry runners
- Tomatoes—field

EPA is seeking comment on the technical analysis contained in the U.S. nomination (available for public review in the docket to this rulemaking), and

seeks information regarding any changes to the registration (including cancellation or new registrations), use, or efficacy of alternatives that have transpired after the 2013 U.S. CUN was forwarded. EPA recognizes that as the market for alternatives evolves, the thresholds for what constitutes ''significant market disruption'' or ''technical and economic feasibility'' may change. Comments on technical data contained in the CUN, or new information, could potentially alter the agency's analysis on the uses and amounts of methyl bromide qualifying for the critical use exemption. The agency may, in response to new information, reduce the proposed quantities of critical use methyl bromide, or decide not to approve uses authorized by the Parties. However, the agency will not increase the quantities or add new uses in the final rule beyond those authorized by the Parties.

EPA is also proposing to modify the table in 40 CFR part 82, subpart A, appendix L to reflect the agreed critical use categories identified in Decision XXIII/4. The agency is amending the table of critical uses and critical users based in part on the technical analysis contained in the 2013 U.S. nomination that assesses data submitted by applicants to the CUE program. First, EPA is proposing to remove two users who did not submit applications and therefore were not included in the U.S. nomination. These users are California rose nursery growers and Maryland tomato growers.

Second, EPA is proposing to remove the National Pest Management Association (NPMA) food processing use from the list for 2013. The NPMA did not initially apply to be a critical user in 2013 and the Parties have not authorized a critical use for this purpose for 2013. Members of the NPMA have worked to transition from methyl bromide to alternative practices and alternative fumigants like sulfuryl fluoride. In January 2004, EPA registered the first food uses of sulfuryl fluoride for control of insect pests in grain processing facilities and in harvested and processed food commodities such as cereal grains, dried fruits, and tree nuts. In July 2005, EPA approved sulfuryl fluoride for treatment of additional harvested and processed food commodities such as coffee and cocoa beans, and for fumigation of food handling and processing facilities.

On January 19, 2011, EPA proposed to revoke the residue limits on food, known as tolerances, for fluoride on the food commodities approved for treatment with sulfuryl fluoride (76 FR 3422). In response to this proposal, the NPMA submitted a supplemental request for 2013 during the open period for 2014 applications. The USG did not include NPMA's supplemental request in the 2014 nomination submitted to UNEP on January 31, 2012, because EPA has only proposed to revoke the tolerances for sulfuryl fluoride and has not taken action in any final rule. U.S. critical use nominations have been based on final decisions about alternatives. Additionally, the proposed tolerance revocation rule includes a staggered implementation scheme, making it unlikely that any specific revocation will be effective in 2013. Therefore, EPA is not proposing NPMA as a critical use in 2013.

Third, EPA is proposing to remove sectors or users that applied for a critical use in 2013 but that the United States did not nominate for 2013. EPA conducted a thorough technical assessment of each application and considered the effects that the loss of methyl bromide would have for each agricultural sector, and whether significant market disruption would occur as a result. As a result of this technical review, the U.S. Government did not find that certain sectors or users met the critical use criteria in Decision IX/6 and they were therefore not included in the 2013 Critical Use Nomination. EPA notified these sectors of their status in July 2011. These sectors are: members of the Southeastern Cucurbit Consortium and cucurbit growers in Maryland and Delaware; growers in the forest nursery sector (Southern Forest Nursery Management Cooperative, Northeastern Forest and Conservation Nursery Association, and Michigan seedling growers); members of the Southeastern Pepper Consortium; members of the Southeastern Strawberry Consortium and Florida strawberry growers; California sweet potato slip growers; members of the Southeastern Tomato Consortium and Virginia tomato growers. For each of these uses, EPA found that there are technically and economically feasible alternatives to methyl bromide.

Finally, EPA is proposing to limit the CUE for cucurbit, eggplant, pepper, and tomato sectors in Georgia to small growers. The EPA review of the available information for Georgia indicates that farmers growing fewer than 10 acres of these crops need an additional year to successfully transition to the alternatives. These small growers do not have as much experience with the alternatives and need to convert their equipment to the University of Georgia (UGA) ''3-Way'' mixture (a combination of 1,3-dichloropropene, chloropicrin, and metam). The EPA conducted an economic assessment of small growers' ability to convert their equipment (see revised nomination, dated July 15, in the docket). The assessment demonstrates that despite the UGA 3-Way mixture being more affordable than methyl bromide plus chloropicrin on a per acre basis, retrofitting farm equipment to use the UGA 3-Way mixture at a cost of $3,450 is not affordable for growers under four acres, amortized over 10 years at 7% interest (7% is a home equity loan rate for this region at the time the nomination was submitted; interest on agricultural loans could be lower). However, due to variations in impacts for individual growers and uncertainties in the assumptions used in the economic analysis, farms smaller than 10 acres are reasonably expected to incur negative impacts from having to covert to the UGA 3-Way mixture. Therefore, EPA is proposing to limit the Georgia cucurbit, eggplant, pepper, and tomato critical uses to small growers, which EPA is proposing to define as growers growing fewer than 10 acres. EPA seeks comment on these proposed changes to Appendix L.

EPA is not proposing other changes to the table but is repeating the following clarifications made in previous years for ease of reference. The ''local township limits prohibiting 1,3-dichloropropene'' are prohibitions on the use of 1,3-dichloropropene products in cases where local township limits on use of this alternative have been reached. In addition, ''pet food'' under subsection B of Food Processing refers to food for domesticated dogs and cats. Finally, ''rapid fumigation'' for commodities is when a buyer provides short (two working days or fewer) notification for a purchase or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives.

*E. Proposed Critical Use Amounts*

Table A of the annex to Decision XXIII/4 lists critical uses and amounts agreed to by the Parties to the Montreal Protocol. When added together, the total authorized critical use for 2013 for the United States is 562,326 kilograms (kg), which is equivalent to 2.2% of the U.S. 1991 methyl bromide consumption baseline of 25,528,270 kg. The maximum amount of new production and import for U.S. critical uses, specified in Table B of Decision XXIII/4, is 562,326 kg, minus available stocks. In previous years, the maximum amount of new production has been less than the total authorization, with the

difference representing the minimum amount that the Parties expect to be used from pre-phaseout inventory. For 2013 the Parties indicated that the United States should use ''available stocks,'' but unlike previous years, Decision XXIII/4 did not indicate a minimum amount expected to be taken from stocks. Consistent with EPA's past practice, and our commitments to the Parties, EPA is considering the level of ''available stocks'' that may be allocated in this rulemaking. However, EPA is seeking comment on changing the approach for determining the availability of stocks in this rule.

As established in earlier rulemakings, EPA views the determination of the total allocation, up to the amount authorized by the Parties, as an appropriate exercise of discretion. The Agency may decide to allocate less than the full amount authorized by the Parties, and in past CUE rules EPA has made reductions to the total allocation after considering several factors, including new data on alternatives, such as the registration of a new alternative not considered when the CUN was submitted to UNEP, and carryover from prior years. For 2013, EPA does not have new data regarding the uptake of new alternatives. However, iodomethane, an alternative that was available when the CUN was submitted, is no longer available. EPA believes this is an important factor that should be considered in determining the total amount of the allocation; however, because of the schedule for consideration under the Montreal Protocol, the timing of withdrawal complicates any recognition by the Parties of this development for 2013. In addition, as detailed below, carryover for 2012 is zero and EPA is not proposing reductions on that basis. EPA is therefore proposing to allocate 562,326 kg, the full amount authorized by the Parties, in particular due to the loss of iodomethane. EPA welcomes comment on the proposed levels of exempted new production and import for critical uses and the amount of material that may be sold from pre-phaseout inventory for critical uses.

1. Approach for Determining Critical Stock Allowances

EPA is proposing a new approach for determining the amount of CSAs and CUAs to allocate. EPA is proposing to calculate ''available stocks'' as a percentage of the existing inventory, as was reported to EPA on January 1, 2012. Under this approach, EPA is soliciting comment on two different amounts of ''available stocks'', and thus two different possible allocations of CSAs. EPA is also soliciting comment on a separate approach that would continue to use the framework methodology to calculate the amount of ''available stocks'' by estimating drawdown during 2012 and providing for a supply chain factor for 2013. As noted above, EPA is proposing to not reduce the critical use authorization of the Parties, and thus is proposing that any authorized amount not allocated as CSAs be allocated as new production and import allowances.

In past CUE allocation rules, EPA allocated CSAs in amounts that represented not only the difference between the total authorized CUE amount and the amount of authorized new production and import but also an additional amount to reflect available stocks. After determining the CSA amount, EPA determined the portion of CUE methyl bromide to come from new production and import such that the total amount of methyl bromide exempted for critical uses did not exceed the total amount authorized by the Parties for that year.

EPA views the decision whether to include these additional amounts in the calculation of the year's overall CSA level as an appropriate exercise of discretion. The Agency is not required to allocate the full amount of authorized new production and consumption. The Parties only agree to ''permit'' a particular level of production and consumption; they do not—and cannot—mandate that the United States authorize this level of production and consumption domestically. Nor does the CAA require EPA to allow the full amount permitted by the Parties. Section 604(d)(6) of the CAA does not require EPA to exempt any amount of production and consumption from the phaseout, but instead specifies that the Agency ''may'' create an exemption for critical uses, providing EPA with substantial discretion.

When determining the CSA amounts, EPA considers what portion of existing stocks would be ''available'' for critical uses during that control period. The Parties to the Protocol recognized in their Decisions that the level of existing stocks may differ from the level of available stocks. Decision XXIII/4 states that ''production and consumption of methyl bromide for critical uses should be permitted only if methyl bromide is not available in sufficient quantity and quality from existing stocks * * *.'' In addition, earlier Decisions refer to the use of ''quantities of methyl bromide from stocks that the Party has recognized to be available.'' Thus, it is clear that individual Parties have the ability to determine their level of available stocks. Decision XXIII/4 further reinforces this concept by including the phrase ''minus available stocks'' as a footnote to the United States' authorized level of production and consumption in Table B. Section 604(d)(6) of the CAA does not require EPA to adjust the amount of new production and import to reflect the availability of stocks; however, as explained in previous rulemakings, making such an adjustment is a reasonable exercise of EPA's discretion under this provision.

In recent CUE rules, EPA has calculated the amount of ''available stocks'' using a formula adopted in the 2008 CUE rule: $AS_{CP} = ES_{PP} - D_{PP} - SCF_{CP}$, where $AS_{CP}$ would be the available stocks on the first day of the control period; $ES_{PP}$ would be the existing pre-phaseout stocks of methyl bromide held in the United States by producers, importers, and distributors on the first day of the prior control period; $D_{PP}$ would be the estimated drawdown of existing stocks during the prior control period; and $SCF_{CP}$ would be the supply chain factor for the control period. In the section below, EPA is taking comment on using this approach, and is alternatively proposing a new approach, for determining the amount of available stocks.

Option 1: Percentage of Existing Inventory

For 2013, EPA is proposing a new approach that would allocate critical stock allowances in an amount equal to a percentage of the existing inventory. Under this approach, EPA proposes to calculate ''available stocks'' as a percentage of the existing inventory, as was reported to EPA on January 1, 2012. EPA is considering alternate approaches for allocating critical stock allowances because the old approach, discussed as option 2 below, may be increasingly inaccurate as the amount of inventory declines, overly complex, and contributing to delay in issuing the final critical use exemption. Furthermore, EPA believes that efforts to in estimate available inventory may be further complicated for 2013 by the recent withdrawal of iodomethane from the market.

In the 2012 Final Rule, EPA recognized ''that its estimates [of available stocks] have become increasingly inexact in characterizing actual drawdown of pre-phaseout inventory, as the amounts in inventory have declined over time. EPA intends to consider the adequacy of using this formula to assess 'available stocks' in a future action.'' Initially, the drawdown estimate was a simple linear model based on past years' rates. EPA modified

the approach when it became apparent that the inventory drawdown was decreasing exponentially rather than linearly. EPA noted in the 2009 CUE Rule that the rate of drawdown was based mostly on the business decisions of the companies that hold pre-phaseout inventory, and included aspects that are difficult for EPA to know or quantify, such as honoring long-term relationships with non-CUE customers or holding inventory in response to price fluctuations. To refine the analysis in subsequent rules EPA separately analyzed the use of inventory on critical uses, for which there are a set number of allowances, and non-critical uses, for which there are not. This approach is discussed in more detail below.

Despite increased specificity, precise estimates still proved elusive. In successive years, EPA substantially overestimated inventory drawdown. Most recently, in the 2012 Rule, EPA estimated a drawdown of 1,110,633 kg, when the actual drawdown was half that amount, or 556,794 kg. The results of the methodology using the updated data were sufficiently different that EPA considered providing additional notice and the opportunity to comment to incorporate them into the final allocation rule. EPA is concerned that as the total amount of both the U.S. authorization and the pre-phaseout stocks become smaller, efforts to perfect EPA estimates in this area will delay needed rulemaking.

Moreover, EPA believes that the fact that its projections consistently over-estimate the amount of inventory that will be drawn down is evidence that EPA has been substantially over-estimating the availability of pre-phaseout stocks. EPA has received comments in past rulemakings that existing inventory was not actually available to users because of reductions in the number of distributors, and decisions by distributors not to sell inventory. While EPA believes it is appropriate to rely on market flexibility and efficiency to distribute existing stocks of inventory, EPA recognizes that the data appear to show that inventory is less ''available'' than was estimated under EPA's prior approach.

EPA believes problems with the existing formula may also become worse due to a recent change in the geographic distribution of critical users. In the past, EPA has considered all pre-phaseout inventory to be available to all users, regardless of location. This assumption, as discussed in the 2009 CUE rule (74 FR 19887, April 30, 2009), was based on the fact that inventory is held in California and the Southeast, as well as other locations around the country. While the geographic distribution of inventory generally remains the same, the authorized critical uses have shifted to California over the last two years. In the 2011 control period, 49% of the total authorization was for pre-plant uses in California and 38% was for pre-plant uses in the Southeast. In 2013, this ratio will be 91% and 4% respectively.[1]

EPA believes that inventory held in the Southeast may not be equally available to critical users in California. Stakeholders have told EPA that distributors do not ship pre-phaseout inventory to buyers across the country. Unlike newly produced or imported material which enters nationwide distribution networks, inventory is mostly held by regional distributors. In addition, those distributors typically sell both the gas and the application services together. Distributors would therefore incur additional expense to ship material without being able to charge for performing the application. EPA specifically encourages comment on the question of whether inventory held in one part of the country has been, or can be, transported to critical uses in another part of the country.

Another reason EPA is proposing to allocate critical stock allowances equal to a percentage of the existing inventory is that EPA believes this method will be easier to calculate and will help streamline the issuance of the CUE allocation rule. EPA has received comment in the past few CUE Rules that the agency should find ways to issue the allocation rulemakings before the start of the control period. In the 2012 CUE final rule, EPA stated that the agency ''will consider means of streamlining the Critical Use Exemption rulemaking in the future so that the rule can be issued prior to the start of the control period.'' Absent that, EPA will seek to issue a final rule as soon into the control period as possible. EPA is concerned that efforts to correct estimates and incorporate the most recent data into the calculation of the supply chain factor and the rest of the formula will further delay future CUE rules. EPA recognized in the 2012 Rule that ''the time-sensitive need for a CUE authorization for the current calendar year and concluded that re-opening the allocation for comment is not warranted.'' EPA believes that its prior formula may have attempted to achieve greater precision than was possible or needed, especially in light of the continued reduction in both inventory and annual authorizations for critical uses. Thus, EPA is considering an alternate approach, which provides a greater likelihood of expediting the rulemaking process. EPA will continue to consider other possible means of streamlining the CUE rulemaking process in the future.

As part of this approach, EPA would end its use of the supply chain factor (SCF).[2] Because this approach does not use the available stocks calculation developed in the 2008 CUE Rule to determine the amount of available stocks for use by critical users in 2013, calculation of the SCF is unnecessary. EPA notes that the entire critical use exemption authorized by the Parties for 2013 is 562 MT, which is substantially less than the existing inventory. EPA believes that, although portions of the existing inventory may not practically be available under usual circumstances (*e.g.,* because it may be located in the Southeast and not California), users may be able to access greater amounts of inventory in the event of extraordinary circumstances such as a catastrophic domestic production failure.

In addition to soliciting comment on this approach to calculating CSAs, EPA is also soliciting comment on the specific amount of inventory to be allocated. EPA is proposing to allocate CSAs equal to 5% of the January 1, 2012, reported inventory. Alternatively, EPA is also taking comment on not allocating any CSAs for 2013 under this approach in light of the effect that the withdrawal of iodomethane may have on the demand for inventory. The two options are discussed below.

EPA is proposing to allocate CSAs equal to 5% of the January 1, 2012, reported inventory. The inventory at that date was 1,248,876 kg. Therefore, under this approach, EPA would allocate 62,444 kg of critical stock allowances for 2013. Since 2006, the amount of prior year inventory used through the expenditure of CSAs has ranged from 8% to 26%. EPA believes that it would be appropriate to select a percentage that is below the historic range for several reasons. First, EPA wishes to ensure that the amount allocated for 2013 will be available to critical users in that year. As discussed above, the availability of existing inventory is becoming increasingly difficult to estimate as the amount

[1] EPA treats company-specific methyl bromide inventory information as confidential and believes that disaggregating the inventory data by geographic area could potentially reveal CBI. EPA solicits comment on this issue but is not proposing at this time to release data showing how much inventory is located in or near California. However, even in the absence of specific inventory data broken down by region, EPA believes that the fact that over 90% of critical use is in California is relevant to judging the availability of existing stocks.

[2] The purpose, and calculation, of the supply chain factor is discussed in greater detail below, and in prior CUE notices.

declines. Although EPA is proposing to consider historic patterns of availability in considering how many CSAs to allocate, the fact that stocks in the Southeast may be unavailable as a practical matter for growers in California, while critical uses have recently become highly concentrated in California, suggests that, even under this approach, a conservative approach to estimating availability of inventory is warranted. As noted above, this issue is particularly important for 2013 because the unexpected withdrawal of iodomethane.

EPA believes it is reasonable to assume that 5% of existing inventory on January 1, 2012, could be available for critical users in 2013. Historically, the drawdown of inventory for all uses has never exceeded 42% of the prior year's inventory. Drawdown would have to be over twice that rate in 2012 for there to be less inventory in 2013 than the amount of the proposed CSA. Rather, EPA anticipates that the constraints on drawdown discussed in prior rules (*e.g.,* critical uses capped by allocation amounts, revised labeling removing uses, increased value of the material as supply decreases) will continue to limit the drawdown in 2012. At the same time, expenditure of CSAs have never amounted to less than 8% of inventory, and even if inventory was purchased for critical uses at only half that rate, it would still amount to 4% of the existing inventory, so EPA anticipates that at least that much inventory could be available for critical uses during 2013.

EPA is also seeking comment on using the above approach but allocating 0% from existing stocks for 2013 in light of the withdrawal of iodomethane from the market. In March 2012, Arysta LifeScience, the manufacturer of iodomethane, suspended the sale of iodomethane across the United States. This alternative was registered for use in 48 states on strawberries, tomatoes, peppers, ornamentals, turf, orchard replant, forest nursery seedlings, and strawberry nurseries. Many users had been transitioning to this alternative since 2008, when the product was federally registered.

EPA believes that the unanticipated loss of this alternative could have increased demand for methyl bromide in 2012 from critical users. In comments to EPA's 2010 CUE Rule, Arysta provided data that 97,341 kg of iodomethane was used in 2008 and 177,991 kg was used in 2009. They calculated this to be equivalent to approximately 5,000 and 10,000 acres respectively. They also anticipated sales of 250,000 kg in 2010, which would be equivalent to 650 MT of methyl bromide on 13,500 acres.

In 2012, critical users may seek additional methyl bromide from pre-phaseout inventory than in previous years. The 2012 critical uses include all of the registered uses of iodomethane except for turf. Growers in Florida and the Southeastern United States were using iodomethane on tomatoes, peppers, strawberries, and ornamentals. While many of these sectors could use alternatives other than iodomethane, such as the UGA 3-way, the unexpected loss of iodomethane could lead to growers using inventory methyl bromide for this season. The historical trend described below, in which no more than 70% of the CSAs allocated in one year had ever been expended, may not hold true for 2012. However, under the framework, the use of inventory for critical uses cannot exceed the total CSA allocation of 263 MT in 2012.

EPA also does not believe that the withdrawal of iodomethane will increase demand for pre-phaseout inventory from non-critical uses in 2012. Under the reregistration decision for methyl bromide, seven non-critical uses remain on the pre-plant methyl bromide labels. These non-critical uses can continue to use methyl bromide but are restricted to pre-phaseout inventory. The uses are caneberries, fresh market tomatoes grown in California, fresh market peppers grown in California, Vidalia onions grown in Georgia, ginger grown in Hawaii, soils on golf courses and athletic/recreational fields for resurfacing/replanting of turf, and tobacco seedling trays. See 76 FR 7200 (February 9, 2011). Collectively they are referred to as ''Group II uses.'' Of the Group II uses, iodomethane was only registered for use on fresh market tomatoes grown in California, fresh market peppers grown in California, and turf. Iodomethane was not used in California and EPA suspects it was not widely used on turf since that sector did not submit an application for a critical use exemption for 2015. EPA is seeking comment and additional data on whether the loss of iodomethane will limit the availability of inventory in 2013.

EPA understands that changes in the status of methyl bromide alternatives can occur, and that these changes may expand or contract the list of existing options. We also understand that the sudden change in the availability of iodomethane has created near-term difficulties for growers in transition. As noted above, EPA has taken this change in circumstance into account in proposing to allocate the full amount of CUE authorized by the Parties in 2013. EPA is also requesting comment on a range of potential amounts for the CSA allocation, recognizing that past CUE rules may have overestimated the amount of stocks that are available to critical users. Finally, EPA requests comment on and relevant data to support consideration of other potential mechanisms within the Clean Air Act or other statutory authorities that the EPA could use to respond to unforeseen or emergency situations.

Therefore, under this proposed approach, the agency is proposing to allocate 5% of existing inventory, or 62,444 kg of critical stock allowances for 2013. EPA solicits comment on whether 5% is the appropriate amount, or whether a higher or lower figure would be appropriate. EPA specifically seeks comment on allocating 0 kg from stocks under this approach. In considering the possibility of an allocation for CSAs set at 0 kg, EPA is particularly interested in comments from critical stock allowance holders who would be barred under the existing framework from selling inventory to critical users in 2013. EPA is interested in learning whether an allocation at or close to 0 kg would prevent the drawdown of stocks or prevent the fulfillment of contracts or commitments to sell pre-phaseout inventory in 2013. EPA is interested in learning whether critical users who in the past have accessed allocations of CSAs would still be able to access methyl bromide, either through the conversion of CUAs to CSAs, or from other sources. Finally, EPA is interested in comment on the restriction in the framework rule that limits the sale of inventory to critical uses through the CSA allocation, see 40 CFR 82.4(p), whether that restriction should be lifted, and to what extent reporting and recordkeeping requirements should be adjusted were the restriction lifted.

Option 2: Framework Approach

EPA also solicits comment on whether it should retain for 2013 its recent approach to calculating ''available stocks'' using the formula $AS_{CP} = ES_{PP} - D_{PP} - SCF_{CP}$. EPA calculates through this formula that there will be 221,495 kg of ''available stocks'' on January 1, 2013. Under this approach, EPA would allocate 221,495 kg of CSAs for 2013.

The first step in the formula is to estimate the drawdown of stocks during 2012. To do so, EPA adds the estimated amount of CSAs that will be expended in 2012 plus the estimated amount of methyl bromide that will be used in 2012 for non-critical uses. EPA believes that this is a better practice than using a simple linear fit estimation, which

was the approach EPA used in the first few years it conducted this analysis. A linear estimate would have projected that no methyl bromide would remain in inventory at the beginning of 2013. Furthermore, this estimate does not consider that the use of inventory on critical uses is limited by the allocation of CSAs.

The first element of the drawdown estimate is the amount of inventory used in 2012 on critical uses. This can be no more than the number of CSAs EPA allocated in the 2012 CUE Rule, which is 263,082 kg. As discussed in the Technical Support Document, on average only 59% of the CSAs allocated for a control period are reported as sold in that control period. To estimate the number of expended CSAs in 2012, EPA conservatively assumes that 70% of the CSAs allocated for 2012 will be sold. This amount is greater than any year's use of CSA allocations, however EPA notes below that the loss of iodomethane may result in greater demand for inventory in 2012 than past years. Thus, EPA estimates that 184,157 kg of inventory will be sold for critical uses in 2012.

The second element of the drawdown estimate is the amount of inventory used in 2012 on Group II and non-critical uses. Group II uses are seven non-critical uses that remain on the pre-plant methyl bromide labels. Post-harvest labels have not been revised yet to implement the terms of the reregistration decision concerning use of methyl bromide for commodity fumigation and thus the universe of labeled post-harvest uses remains broader.

There is no clear trend in the pattern of usage for non-critical uses. EPA therefore is estimating the amount of sales for non-critical uses in 2012 by analyzing the percent of the total inventory used each year for this purpose. For example, in 2010, 36% of the total start of year inventory was sold for non-critical uses. On a weight basis, this was equal to 647 MT. In 2006, much more inventory (on a weight basis) was sold for non-critical uses, 1,249 MT, but this comprised only 16% of the total start of year inventory that year. EPA does not believe that an average of the amounts sold (on a weight basis) in 2006–2011 for all non-critical uses is accurate because the inventory has declined. For example, the 1,249 MT of inventory was sold in 2006 for non-critical uses is unlikely to provide an accurate description of the drawdown in 2012, even when averaged with other years' data, because there was only 1,249 MT of inventory at the beginning of 2012. EPA therefore is analyzing the drawdown on a proportional basis rather than a strictly weight basis. While the average proportion is 17%, EPA is conservatively using the highest proportion. Therefore, EPA estimates that 36% of the total start of year inventory would be used for non-critical uses in 2012. Thus, EPA estimates that 449,595 kg of inventory will be sold for Group II uses in 2012. EPA believes that this estimate is conservative because the analysis encompasses years where the use of inventory included all non-critical uses, and was not restricted to Group II uses. These data are contained in EPA's annual Accounting Frameworks submitted to UNEP and summarized in the technical support document in the docket.

In summary, EPA estimates the drawdown of inventory in 2012 as the sum of (1) the use of CSAs in 2012 and (2) the estimate for non-critical uses in 2012. Using this method, EPA conservatively projects that the pre-phaseout methyl bromide inventory will be drawn down by 633,759 kg (184,157 + 449,595) during 2012. This would result in a pre-phaseout inventory declining from 1,248,876 kg on January 1, 2012, to 615,124 kg on January 1, 2013. EPA welcomes comment on this proposed method of calculating inventory drawdown. If EPA utilizes this approach in the final rule and receives actual end-of-year reported data on inventory levels before this rule is finalized, EPA may substitute that data for this estimate.

The next element in the calculation of available stocks is the supply chain factor (SCF). The SCF represents EPA's technical estimate of the amount of pre-phaseout inventory that would be adequate to meet a need for critical use methyl bromide after an unforeseen domestic production failure. As described in the 2008 CUE Rule, and the Technical Support Document contained in the docket to this rule, EPA estimates that it would take 15 weeks for significant imports of methyl bromide to reach the U.S in the event of a major supply disruption. Consistent with the regulatory framework used in previous CUE allocation rules, the SCF for 2013 conservatively reflects the effect of a supply disruption occurring in the peak period of critical use methyl bromide production, which is the first quarter of the year. While this 15-week disruption is based on shipping capacity and does not change year to year, other inputs to EPA's analysis do change each year including the total U.S. and global authorizations for methyl bromide and the average seasonal production of critical use methyl bromide in the United States. Using updated numbers, EPA estimates that critical use production in the first 15 weeks of each year (the peak supply period) currently accounts for approximately 70% of annual critical use methyl bromide demand. EPA, therefore, estimates that the peak 15-week shortfall in 2013 could be 394 MT.

As EPA stated in previous CUE Rules, the SCF is not a ''reserve'' of methyl bromide but is merely an analytical tool used to provide greater transparency regarding how the Agency determines CSA amounts. Further general discussion of the SCF is in the final 2008 CUE rule (72 FR 74118, December 28, 2007) and further detail about the analysis used to derive the value for the 2013 supply chain factor is provided in the Technical Support Document available on the public docket for this rulemaking.

Using the formula $AS_{2013} = ES_{2012} - D_{2012} - SCF_{2013}$, EPA estimates under the framework approach that there will be 221,495 kg of pre-phaseout stocks of methyl bromide ''available'' to be allocated in 2013. (221,495 = 1,248,876 − 633,759 − 393,628). EPA welcomes comment on this approach to determining the level of available stocks and the critical stock allowance allocation for 2013.

In summary, EPA is proposing for 2013 a new approach for allocating amounts authorized for critical uses between CSAs and CUAs, by allocating CSAs as a percentage of the existing inventory. In particular, EPA is proposing to allocate CSAs in an amount equal to 5% of the 2012 reported inventory, or 62,444 kg. EPA seeks comment on a range of values for the allocation of CSAs, given the loss of iodomethane. EPA particularly solicits comment on allocating 0 kg of CSAs. EPA is also seeking comment on using the existing framework to calculate the amount of ''available stocks'' in 2013. EPA estimates the CSA allocation would be 221,495 kg under this approach.

As in past years, EPA would allocate CSAs based on each company's proportionate share of the aggregate inventory. In 2006, the United States District Court for the District of Columbia upheld EPA's treatment of company-specific methyl bromide inventory information as confidential. *NRDC* v. *Leavitt,* 2006 WL 667327 (D.D.C. March 14, 2006). Therefore, the documentation regarding company-specific allocation of CSAs is in the confidential portion of the rulemaking docket and the individual CSA allocations are not listed in the table in 40 CFR 82.8(c)(2). EPA will inform listed companies of their CSA

allocations in a letter following publication of the final rule.

2. Approach for Determining New Production and Import Allowances

For 2013, EPA is proposing to generally apply the existing framework established in the Framework Rule. Under this approach, the amount of new production would equal the total amount authorized by the Parties to the Montreal Protocol in Decision XXIII/4, minus the CSA amount detailed above, minus any reductions for carryover and the uptake of alternatives. As explained above, EPA has considered a number of factors in determining the total allocation, including the loss of the alternative iodomethane, and is not proposing to reduce the total allocation below the amount approved in Decision XXIII/4. Applying this established approach, EPA is proposing to exempt limited amounts of new production and import of methyl bromide for critical uses in 2013 such that the total authorization equals 562,326 kg. Because EPA is taking comment on a range of values for the critical stock allocation, there would be a corresponding range of values for the new production/import amount from to 340,831 kg to 562,326 kg. EPA is proposing an approach that would result in an allocation of 499,882 kg. EPA is taking comment on this approach.

*Carryover Material* The Parties in paragraph 6 of Decision XXIII/4 ''urge parties operating under critical-use exemptions to put in place effective systems to discourage the accumulation of methyl bromide produced under the exemption.'' As discussed in the Framework Rule, EPA regulations prohibit methyl bromide produced or imported after January 1, 2005, under the critical use exemption being added to the existing pre-2005 inventory. Quantities of methyl bromide produced, imported, exported, or sold to end-users under the critical use exemption in a control period must be reported to EPA the following year. EPA uses these reports to calculate the amount of methyl bromide produced or imported under the critical use exemption, but not exported or sold to end-users in that year. EPA deducts an amount equivalent to this ''carryover'' from the total level of allowable new production and import in the year following the year of the data report. Carryover material (which is produced using critical use allowances) is not included in EPA's definition of existing inventory (which applies to pre-2005 material) because this would lead to a double-counting of carryover amounts, and a double reduction of critical use allowances (CUAs).

All critical use methyl bromide that companies reported to be produced or imported in 2011 was sold to end users. The information reported to EPA is that 1,499 MT of critical use methyl bromide was produced or imported in 2011. Slightly more than the amount produced or imported was actually sold to end-users. This additional amount was from distributors selling material that was carried over from the prior control period. Using the existing framework, EPA is proposing to apply the carryover deduction of 0 kg to the new production amount. EPA's calculation of the amount of carryover at the end of 2011 is consistent with the method used in previous CUE rules, and with the method agreed to by the Parties in Decision XVI/6 for calculating column L of the U.S. Accounting Framework. Past U.S. Accounting Frameworks, including the one for 2011, are available in the public docket for this rulemaking.

*Uptake of Alternatives* Under the existing framework, EPA considers data on the availability of alternatives that it receives following submission of each nomination to UNEP. In previous rules EPA has reduced the total CUE amount when a new alternative has been registered. Because EPA determines the CSA allocation separately, any reduction in the total amount has been reflected in a corresponding reduction in the allocation for new production/import. However, where an alternative is withdrawn, EPA cannot propose to increase the total CUE amount above the amount authorized by the Parties.

A development since the USG submitted the 2013 CUN is that Dimethyl Disulfide (DMDS) has been registered in additional states. In July 2010, EPA registered DMDS to control nematodes, weeds, and pathogens in tomatoes, peppers, eggplants, curcurbits, strawberries, ornamentals and forest nursery seedlings, and onions. The CUN considered only a limited uptake in 2013. At that time only a few states had registered DMDS and it was not registered in either California or Florida. Twenty-four states have now registered DMDS, including Georgia and Florida.

EPA is proposing not to make a reduction to the new production/import allocation based on these additional state registrations. As discussed above, over 90% of the amount authorized is for critical uses in California, which has not yet registered DMDS. EPA anticipates that the uptake of DMDS in the Southeast will therefore not significantly affect total demand for critical use methyl bromide.

EPA is not proposing to make any other modifications for alternatives. Transition rates for other alternatives have already been applied for authorized 2013 critical use amounts through the nomination and authorization process. EPA will consider new data received during the comment period and continues to gather information about methyl bromide alternatives through the CUE application process, and by other means. EPA also continues to support research and adoption of methyl bromide alternatives, and to request information about the economic and technical feasibility of all existing and potential alternatives.

*Allocation Amounts* EPA is proposing to allocate 2013 critical use allowances for new production or import of methyl bromide equivalent to 499,882 kg. Because EPA is proposing a range of approaches for the critical stock allocation, EPA is taking comment on the corresponding range of values for the new production/import amount from to 340,831 kg to 562,326 kg.

EPA is proposing to allocate allowances to the four companies that hold baseline allowances. The proposed allocation, as in previous years, is in proportion to those baseline amounts, as shown in the proposed changes to the table in 40 CFR 82.8(c)(1). Paragraph 3 of Decision XXIII/4 states ''that parties shall endeavor to license, permit, authorize or allocate quantities of methyl bromide for critical uses as listed in table A of the annex to the present decision.'' This is similar to language in prior Decisions authorizing critical uses. These Decisions call on Parties to endeavor to allocate critical use methyl bromide on a sector basis. The Framework Rule proposed several options for allocating critical use allowances, including a sector-by-sector approach. The agency evaluated various options based on their economic, environmental, and practical effects. After receiving comments, EPA determined that a lump-sum, or universal, allocation, modified to include distinct caps for pre-plant and post-harvest uses, was the most efficient and least burdensome approach that would achieve the desired environmental results, and that a sector-by-sector approach would pose significant administrative and practical difficulties. For the reasons discussed in the preamble to the 2009 CUE rule (74 FR 19894), the agency believes that under the approach adopted in the Framework Rule, the actual critical use

will closely follow the sector breakout listed in the Parties' decisions.

*F. The Criteria in Decisions IX/6 and Ex. I/4*

Paragraphs 1 and 4 of Decision XXIII/4 request Parties to ensure that the conditions or criteria listed in Decisions Ex. I/4 and IX/6, paragraph 1, are applied to exempted critical uses for the 2013 control period. A discussion of the agency's application of the criteria in paragraph 1 of Decision IX/6 appears in sections V.A., V.D., and V.E. of this preamble. In section V.D. the agency solicits comments on the technical and economic basis for determining that the uses listed in this proposed rule meet the criteria of the critical use exemption. The CUNs detail how each proposed critical use meets the criteria listed in paragraph 1 of Decision IX/6, apart from the criterion located at (b)(ii), as well as the criteria in paragraphs 5 and 6 of Decision Ex. I/4.

The criterion in Decision IX/6(1)(b)(ii), which refers to the use of available stocks of methyl bromide, is addressed in section V.E. of this preamble. The agency has previously provided its interpretation of the criterion in Decision IX/6(1)(a)(i) regarding the presence of significant market disruption in the absence of an exemption, and EPA refers readers to the 2006 CUE final rule (71 FR 5989, February 6, 2006) as well as to the memo on the docket ''Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America'' for further elaboration.

The remaining considerations, including the lack of available technically and economically feasible alternatives under the circumstance of the nomination; efforts to minimize use and emissions of methyl bromide where technically and economically feasible; the development of research and transition plans; and the requests in Decision Ex. I/4(5) and (6) that Parties consider and implement MBTOC recommendations, where feasible, on reductions in the critical use of methyl bromide and include information on the methodology they use to determine economic feasibility, are addressed in the nomination documents.

Some of these criteria are evaluated in other documents as well. For example, the United States has further considered matters regarding the adoption of alternatives and research into methyl bromide alternatives, criterion (1)(b)(iii) in Decision IX/6, in the development of the National Management Strategy submitted to the Ozone Secretariat in December 2005, updated in October 2009, as well as in ongoing consultations with industry. The National Management Strategy addresses all of the aims specified in Decision Ex.I/4(3) to the extent feasible and is available in the docket for this rulemaking.

There continues to be a need for methyl bromide in order to conduct the research required by Decision IX/6. A common example is an outdoor field experiment that requires methyl bromide as a standard control treatment with which to compare the trial alternatives' results. As discussed in the preamble to the 2010 CUE rule (75 FR 23179, May 3, 2010), research is a key element of the critical use process. Research on the crops shown in the table in Appendix L to subpart A remains a critical use of methyl bromide. While researchers may continue to use newly produced material for field, post-harvest, and emission minimization studies requiring the use of methyl bromide, EPA encourages researchers to use pre-phaseout inventory purchased through the expenditure of CSAs. EPA also encourages distributors to make inventory available to researchers, to promote the continuing effort to assist growers to transition critical use crops to alternatives.

*G. Emissions Minimization*

Previous decisions have stated that critical users shall employ emission minimization techniques such as virtually impermeable films, barrier film technologies, deep shank injection and/or other techniques that promote environmental protection, whenever technically and economically feasible. EPA developed a comprehensive strategy for risk mitigation through the 2006 Reregistration Eligibility Decision (RED) for methyl bromide, which is implemented through restrictions on how methyl bromide products can be used. This approach requires that methyl bromide labels include directions that treated sites be tarped except for California orchard replant where EPA instead requires deep (18 inches or greater) shank applications. The RED also incorporated incentives for applicators to use high-barrier tarps, such as virtually impermeable film (VIF), by allowing smaller buffer zones around those sites. In addition to minimizing emissions, use of high-barrier tarps has the benefit of providing pest control at lower application rates. The amount of methyl bromide nominated by the United States reflects the lower application rates necessary when using high-barrier tarps, where such tarps are allowed.

EPA will continue to work with the U.S. Department of Agriculture—Agricultural Research Service (USDA–ARS) and the National Institute for Food and Agriculture (USDA–NIFA) to promote emission reduction techniques. The federal government has invested substantial resources into best practices for methyl bromide use, including emission reduction practices. The Cooperative Extension System, which receives some support from USDA–NIFA provides locally appropriate and project focused outreach education regarding methyl bromide transition best practices. Additional information on USDA research on alternatives and emissions reduction can be found at: *http://www.ars.usda.gov/research/programs/programs.htm?NP_CODE=308* and *http://www.csrees.usda.gov/fo/methylbromideicgp.cfm*.

Users of methyl bromide should continue to make every effort to minimize overall emissions of methyl bromide to the extent consistent with State and local laws and regulations. EPA also encourages researchers and users who are using such techniques to inform EPA of their experiences and to provide such information with their critical use applications.

## VI. Statutory and Executive Order Reviews

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this proposal is a ''significant regulatory action.'' This action is likely to result in a rule that may raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to interagency recommendations have been documented in the docket for this action.

*B. Paperwork Reduction Act*

This action does not impose any new information collection burden. The application, recordkeeping, and reporting requirements have already been established under previous critical use exemption rulemakings and this action does not propose to change any of those existing requirements. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at

40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0482. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

*C. Regulatory Flexibility Act*

The 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 this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201 (see Table below); (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.

| Category | NAICS code | SIC code | NAICS Small business size standard (in number of employees or millions of dollars) |
|---|---|---|---|
| Agricultural production | 1112—Vegetable and Melon farming ..... | 0171—Berry Crops ..... | $0.75 million. |
| | 1113—Fruit and Nut Tree Farming ..... | 0172—Grapes. | |
| | 1114—Greenhouse, Nursery, and Floriculture Production. | 0173—Tree Nuts. | |
| | | 0175—Deciduous Tree Fruits (except apple orchards and farms). | |
| | | 0179—Fruit and Tree Nuts, NEC. | |
| | | 0181—Ornamental Floriculture and Nursery Products. | |
| | | 0831—Forest Nurseries and Gathering of Forest Products. | |
| Storage Uses ..... | 115114—Postharvest Crop activities (except Cotton Ginning). | ..... | $7 million. |
| | 311211—Flour Milling ..... | 2041—Flour and Other Grain Mill Products | 500 employees. |
| | 311212—Rice Milling ..... | 2044—Rice Milling ..... | 500 employees. |
| | 493110—General Warehousing and Storage. | 4225—General Warehousing and Storage | $25.5 million. |
| | 493130—Farm Product Warehousing and Storage. | 4221—Farm Product Warehousing and Storage. | $25.5 million. |
| Distributors and Applicators. | 115112—Soil Preparation, Planting and Cultivating. | 0721—Crop Planting, Cultivation, and Protection. | $7 million. |
| Producers and Importers. | 325320—Pesticide and Other Agricultural Chemical Manufacturing. | 2879—Pesticides and Agricultural Chemicals, NEC. | 500 employees. |

Agricultural producers of minor crops and entities that store agricultural commodities are categories of affected entities that contain small entities. This proposed rule would only affect entities that applied to EPA for an exemption to the phaseout of methyl bromide. In most cases, EPA received aggregated requests for exemptions from industry consortia. On the exemption application, EPA asked consortia to describe the number and size distribution of entities their application covered. EPA estimated that 3,218 entities petitioned EPA for an exemption for the 2005 control period. EPA revised this estimate in 2011 down to 1,800 end users of critical use methyl bromide. EPA believes that the number continues to decline as growers cease applying for critical uses. Since many applicants did not provide information on the distribution of sizes of entities covered in their applications, EPA estimated that, based on the above definition, between one-fourth and one-third of the entities may be small businesses. In addition, other categories of affected entities do not contain small businesses based on the above description.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' (5 U.S.C. 603–604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves a regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since this rule would allow the use of methyl bromide for approved critical uses after the phaseout date of January 1, 2005, this action would confer a benefit to users of methyl bromide. EPA estimates in the Regulatory Impact Assessment found in the docket to this rule that the reduced costs resulting from the de-regulatory creation of the exemption are approximately $22 million to $31 million on an annual basis (using a 3% or 7% discount rate respectively). We have therefore concluded that this proposed rule would relieve regulatory burden for all 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. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Instead, this action would provide an exemption for the manufacture and use of a phased out compound and would not impose any new requirements on any entities.

Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule is expected to primarily affect producers, suppliers, importers, and exporters and users of methyl bromide. Thus, Executive Order 13132 does not apply to this proposed rule. 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 action from State and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule does not significantly or uniquely affect the communities of Indian tribal governments nor does it impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action. EPA specifically solicits additional comment on this proposed action from tribal officials.

*G. Executive Order No. 13045: Protection of Children From Environmental Health 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 That Significantly Affect Energy Supply, Distribution, or Use*

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This proposed rule does not pertain to any segment of the energy production economy nor does it regulate any manner of energy use. Therefore, we have concluded that this proposed rule is not likely to have any adverse energy effects.

*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 does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

Executive Order (EO) 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 proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations, because it affects the level of environmental protection equally for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Any ozone depletion that results from this proposed rule will impact all affected populations equally because ozone depletion is a global environmental problem with environmental and human effects that are, in general, equally distributed across geographical regions in the United States.

**List of Subjects in 40 CFR Part 82**

Environmental protection, Chemicals, Exports, Imports, Ozone depletion.

Dated: December 7, 2012.

**Lisa P. Jackson,**

*Administrator.*

For the reasons stated in the preamble, 40 CFR Part 82 is proposed to be amended as follows:

## PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

**Authority:** 42 U.S.C. 7414, 7601, 7671–7671q.

2. Amend § 82.8 by revising the table in paragraph (c)(1) and by revising paragraph (c)(2).

**§ 82.8 Grant of essential use allowances and critical use allowances.**

* * * * *

(c) * * *

(1) * * *

| Company | 2013 Critical use allowances for pre-plant uses* (kilograms) | 2013 Critical use allowances for post-harvest uses* (kilograms) |
|---|---|---|
| Great Lakes Chemical Corp. A Chemtura Company | 287,633 | 16,145 |
| Albemarle Corp. | 118,281 | 6,639 |
| ICL–IP America | 65,365 | 3,669 |
| TriCal, Inc. | 2,035 | 114 |

| Company | 2013 Critical use allowances for pre-plant uses* (kilograms) | 2013 Critical use allowances for post-harvest uses* (kilograms) |
|---|---|---|
| Total** | 473,315 | 26,567 |

* For production or import of Class I, Group VI controlled substance exclusively for the Pre-Plant or Post-Harvest uses specified in appendix L to this subpart.
** Due to rounding, numbers do not add exactly.

(2) Allocated critical stock allowances granted for specified control period. The following companies are allocated critical stock allowances for 2013 on a pro-rata basis in relation to the inventory held by each.

| Company | | |
|---|---|---|
| Albemarle | Degesch America, Inc. | Prosource One |
| Bill Clark Pest Control, Inc. | Helena Chemical Co. | Trical Inc. |
| Burnside Services, Inc. | ICL–IP America | Trident Agricultural Products |
| Cardinal Professional Products | Industrial Fumigant Company | TriEst Ag Group, Inc. |
| Chemtura Corp. | Pacific Ag Supplies Inc. | Univar |
| Crop Production Services | Pest Fog Sales Corp. | Western Fumigation |
| TOTAL – 62,444 kilograms | | |

3. Appendix L to Subpart A is revised to read as follows:

**Appendix L to Subpart A of Part 82—Approved Critical Uses and Limiting Critical Conditions for Those Uses for the 2013 Control Period**

| Column A | Column B | Column C |
|---|---|---|
| Approved critical uses | Approved critical user and location of use | Limiting critical conditions that exist, or that the approved critical user reasonably expects could rise without methyl bromide fumigation: |
| PRE-PLANT USES | | |
| Cucurbits | Georgia growers on fewer than 10 acres | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe soilborne disease infestation.<br>Moderate to severe root knot nematode infestation. |
| Eggplant | (a) Florida growers | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe soilborne disease infestation.<br>Restrictions on alternatives due to karst topographical.<br>features and soils not supporting seepage irrigation. |
| | (b) Georgia growers on fewer than 10 acres | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe nematode infestation.<br>Moderate to severe pythium collar, crown and root rot.<br>Moderate to severe southern blight infestation.<br>Restrictions on alternatives due to karst topographical features. |
| Nursery Stock (Fruit, Nut, Flower). | Members of the California Association of Nursery and Garden Centers representing Deciduous Tree Fruit Growers. | Moderate to severe nematode infestation.<br>Medium to heavy clay soils.<br>Local township limits prohibiting 1,3-dichloropropene. |
| Orchard Replant | California stone fruit, table and raisin grape, wine grape, walnut, and almond growers. | Moderate to severe nematode infestation.<br>Moderate to severe soilborne disease infestation.<br>Replanted orchard soils to prevent orchard replant disease.<br>Medium to heavy soils.<br>Local township limits prohibiting 1,3-dichloropropene. |
| Ornamentals | (a) California growers | Moderate to severe soilborne disease infestation.<br>Moderate to severe nematode infestation.<br>Local township limits prohibiting 1,3-dichloropropene. |
| | (b) Florida growers | Moderate to severe weed infestation.<br>Moderate to severe soilborne disease infestation.<br>Moderate to severe nematode infestation.<br>Restrictions on alternatives due to karst topographical.<br>features and soils not supporting seepage irrigation. |
| Peppers | (a) Florida growers | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe soilborne disease infestation.<br>Moderate to severe nematode infestation.<br>Restrictions on alternatives due to karst topographical.<br>features and soils not supporting seepage irrigation. |

| Column A | Column B | Column C |
|---|---|---|
| Approved critical uses | Approved critical user and location of use | Limiting critical conditions that exist, or that the approved critical user reasonably expects could rise without methyl bromide fumigation: |
| | (b) Georgia growers on fewer than 10 acres | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe nematode infestation, or moderate to severe pythium root and collar rots.<br>Moderate to severe southern blight infestation, crown or root rot.<br>Restrictions on alternatives due to karst topographical features. |
| Strawberry Fruit | California growers | Moderate to severe black root rot or crown rot.<br>Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe nematode infestation.<br>Local township limits prohibiting 1,3-dichloropropene.<br>Time to transition to an alternative. |
| Strawberry Nurseries | California growers | Moderate to severe soilborne disease infestation.<br>Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe nematode infestation. |
| Tomatoes | (a) Florida growers | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe soilborne disease infestation.<br>Moderate to severe nematode infestation.<br>Restrictions on alternatives due to karst topographical. features and soils not supporting seepage irrigation. |
| | (b) Georgia growers on fewer than 10 acres | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe soilborne disease infestation.<br>Moderate to severe nematode infestation.<br>Restrictions on alternatives due to karst topographical features. |
| POST-HARVEST USES | | |
| Food Processing | (a) Rice millers in the U.S. who are members of the USA Rice Millers Association. | Moderate to severe beetle, weevil, or moth infestation.<br>Presence of sensitive electronic equipment subject to corrosion.<br>Time to transition to an alternative. |
| | (b) Pet food manufacturing facilities in the U.S. who are members of the Pet Food Institute. | Moderate to severe beetle, moth, or cockroach infestation.<br>Presence of sensitive electronic equipment subject to corrosion.<br>Time to transition to an alternative. |
| | (c) Members of the North American Millers' Association in the U.S.. | Moderate to severe beetle infestation.<br>Presence of sensitive electronic equipment subject to corrosion.<br>Time to transition to an alternative. |
| Commodities | California entities storing walnuts, dried plums, figs, raisins, and dates (in Riverside county only) in California. | Rapid fumigation required to meet a critical market window, such as during the holiday season. |
| Dry Cured Pork Products | Members of the National Country Ham Association and the Association of Meat Processors, Nahunta Pork Center (North Carolina), and Gwaltney and Smithfield Inc. | Red legged ham beetle infestation.<br>Cheese/ham skipper infestation.<br>Dermested beetle infestation.<br>Ham mite infestation. |

[FR Doc. 2012–30225 Filed 12–13–12; 8:45 am]
BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 131

**[EPA–HQ–OW–2009–0596; FRL–9759–1]**

**RIN 2040–AF41**

## Water Quality Standards for the State of Florida's Lakes and Flowing Waters; Proposed Rule; Stay

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; proposed stay.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to temporarily stay our regulation the ''Water Quality Standards for the State of Florida's Lakes and Flowing Waters; Final Rule'' (inland waters rule) to November 15, 2013. EPA's inland waters rule currently includes an effective date of January 6, 2013, for the entire regulation except for the site-specific alternative criteria provision, which took effect on February 4, 2011. This proposed stay of its regulations is until November 15, 2013, does not affect or change the February 4, 2011, effective date for the site-specific alternative criteria provision.

**DATES:** Comments must be received on or before December 28, 2012.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OW–2009–0596, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: ow-docket@epa.gov.*

3. *Mail to:* Water Docket, U.S. Environmental Protection Agency, Mail code: 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, Attention: Docket ID No. EPA–HQ–OW–2009–0596.

4. *Hand Delivery:* EPA Docket Center, EPA West Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004, Attention Docket ID No. EPA–HQ–OW–2009–0596. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OW–2009–0596. 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 whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means 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 and with any disk or CD–ROM you submit. 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, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.regulations.gov* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. For additional information about EPA's public docket, visit EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyright 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 in *http://www.regulations.gov* or in hard copy at the Docket Facility. The Office of Water (OW) Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The OW Docket Center telephone number is 202–566–1744 and the Docket address is OW Docket, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

**FOR FURTHER INFORMATION CONTACT:** For information concerning this rulemaking, contact: Tracy Bone, U.S. EPA, Office of Water, Mailcode 4305T, 1200 Pennsylvania Avenue NW., Washington DC 20460; telephone number 202–564–5257; email address: *bone.tracy@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*Does this action apply to me?*

Citizens concerned with water quality in Florida may be interested in this rulemaking. Entities discharging nitrogen or phosphorus to lakes and flowing waters of Florida could be indirectly affected by this rulemaking because water quality standards (WQS) are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits. Categories and entities that may ultimately be affected include:

| Category | Examples of potentially affected entities |
|---|---|
| Industry | Industries discharging pollutants to lakes and flowing waters in the State of Florida. |
| Municipalities | Publicly-owned treatment works discharging pollutants to lakes and flowing waters in the State of Florida. |
| Stormwater Management Districts | Entities responsible for managing stormwater runoff in Florida. |

This table is not intended to be exhaustive, but rather provides a guide for entities that may be affected by this action. Other types of entities not listed in the table, such as nonpoint source contributors to nitrogen and phosphorus pollution in Florida's waters may be indirectly affected through implementation of Florida's water quality standards program (i.e., through Basin Management Action Plans (BMAPs)). Any parties or entities conducting activities within watersheds of the Florida waters covered by this rule, or who rely on, depend upon, influence, or contribute to the water quality of the lakes and flowing waters of Florida, may be indirectly affected by this rule. To determine whether your facility or activities may be affected by this action, you should carefully examine the language in 40 CFR 131.43, which is the final rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

## II. Background

On December 6, 2010, EPA's final inland waters rule, entitled ''Water Quality Standards for the State of Florida's Lakes and Flowing Waters; Final Rule,'' was published in the **Federal Register** at 75 FR 75761, and codified at 40 CFR 131.43. The final inland waters rule established numeric nutrient criteria in the form of total nitrogen, total phosphorus, nitrate+nitrite, and chlorophyll *a* for the different types of Florida's inland waters to assure attainment of the State's applicable water quality designated uses. More specifically, the numeric nutrient criteria translated Florida's narrative nutrient provision at Subsection 62–302.530(47)(b), Florida Administrative Code (F.A.C.), into numeric values that apply to lakes and springs throughout Florida and flowing waters outside of the South Florida Region. (EPA has distinguished the South Florida Region as those areas south of Lake Okeechobee and the Caloosahatchee River watershed to the west of Lake Okeechobee and the St. Lucie watershed to the east of Lake Okeechobee.) The final inland waters rule seeks to improve water quality, protect public health and aquatic life, and achieve the long-term recreational uses of Florida's waters, which are a critical part of the State's economy.

Two portions of EPA's original inland waters rule—numeric nutrient criteria for Florida's streams and default downstream protection values (DPVs) for unimpaired lakes—were remanded to EPA on February 18, 2012 by the U.S. District Court for the Northern District of Florida (*FWF* v. *Jackson,* 4:08–cv–00324–RH–WCS). Per the terms of a Consent Decree, EPA is required to sign proposed criteria for these remanded portions by November 30, 2012 and to

sign a notice of final rulemaking for such portions by August 31, 2013.

## III. Stay of 40 CFR 11.43 (a)–(d)

### *A. Rationale for Staying 40 CFR 131.43 (a)–(d) until November 15, 2013*

As stated in the rule itself (75 FR 75761, December 6, 2010), the inland waters rule was originally scheduled to take effect on March 6, 2012, except for the site-specific alternative criteria (SSAC) provision at 40 CFR 131.43(e), which took effect on February 4, 2011. However, after securing approval from the district court judge presiding over the Consent Decree, EPA published an extension of the March 6, 2012 effective date of the rule for four months to July 6, 2012 (77 FR 13497) to provide time for the Florida Department of Environmental Protection (FDEP) to adopt and submit its final nutrient rules to EPA for review and approval or disapproval under CWA section 303(c). FDEP officially submitted its final nutrient rules to EPA on June 13, 2012. On July 6, 2012 (77 FR 39949), after securing approval from the district court judge presiding over the Consent Decree, EPA published a six-month extension of the July 6, 2012 effective date of the rule to January 6, 2013 in order to avoid the confusion and inefficiency that could occur should Federal criteria become effective while EPA reviewed the recently adopted and submitted State nutrient rules for approval or disapproval under CWA section 303(c).

FDEP's rules include numeric criteria for all freshwater lakes, all springs, some inland flowing waters, and certain estuaries, as well as narrative provisions addressing protection of downstream waters. EPA reviewed FDEP's nutrient rules, in conjunction with the supporting documentation provided, and approved FDEP's rules pursuant to section 303(c) of the CWA. EPA's approval letter is available at: *http://www.epa.gov/lawsregs/rulesregs/florida_index.cfm.*

FDEP's numeric nutrient criteria apply to a subset of flowing waters covered by EPA's January 14, 2009 determination and the Consent Decree; therefore, EPA must propose federal criteria for those flowing waters not covered by FDEP's rule. In a separate action, EPA is re-proposing federal criteria that were remanded to EPA on February 18, 2012, that would apply only to those flowing waters not covered by Florida's newly approved water quality standards.

However, at this time, implementation of Florida's EPA-approved rules is unclear. A provision included in Florida's Rule, specifically subsection 62–302.531(9), F.A.C., casts some doubt as to whether the newly approved state water quality standards will go into effect if EPA proposes and promulgates numeric nutrient criteria for streams not covered by the State water quality standards. Therefore, it is unclear whether an EPA proposal to ''gap fill,'' or establish numeric criteria for nutrients for Florida flowing waters that FDEP does not cover in its Rule, would trigger 62–302.531(9), F.A.C. and result in much of Florida's newly approved state water quality standards not taking effect. See 62–302.531(9), F.A.C. In addition, due to a recent administrative challenge filed in the State of Florida Department of Administrative Hearings, there is uncertainty as to whether FDEP will be able to implement its newly approved state water quality standards consistent with FDEP's ''Implementation of Florida's Numeric Nutrient Standards'' (September 2012), a document describing how FDEP will implement its standards that EPA relied on in its approval.

This stay would provide EPA time to clarify implementation of Florida's rules approved by EPA under CWA section 303(c) and take corresponding final action on EPA's proposal for the remanded portions of the inland waters rule (streams and default downstream protection values (DPVs) for unimpaired lakes), for which a notice of final rulemaking action must be signed by August 31, 2013, and which EPA expects would take effect on or around November 15, 2013. In addition, the stay would provide EPA time to initiate rulemaking to withdraw the corresponding Federal criteria for freshwater lakes and springs if Florida's criteria for freshwater lakes and springs will be implemented by the State, e.g., if 62–302.531(9), F.A.C. is not triggered.

If, following consideration of public comment, EPA takes final action to stay these provisions, these provisions will be stayed until November 15, 2013. For more information on these actions, go to *http://www.epa.gov/region4/water/wqs/index.html.*

## IV. 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), since it merely stays certain sections of an already promulgated rule, and is therefore not subject to review under Executive Order 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). This action does not impose any information collection burden, reporting or record keeping requirements on anyone.

### *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 significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this action 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.

This proposed rule does not establish any requirements that are applicable to small entities, but rather merely stays certain sections of already promulgated requirements. Thus, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

### *D. Unfunded Mandates Reform Act*

This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This proposed rule merely stays certain sections of an already promulgated regulation.

This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed rule does not establish any requirements that are applicable to small entities, but rather merely stays

certain sections of already promulgated requirements.

*E. Executive Order 13132 (Federalism)*

This action does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely stays certain sections of an already promulgated regulation.

*F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)*

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000) EPA may not issue a regulation that has Tribal 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 Tribal governments, or EPA consults with Tribal officials early in the process of developing the proposed regulation and develops a Tribal summary impact statement. This proposed rule will neither impose substantial direct compliance costs on Tribal governments, nor preempt Tribal law.

In the State of Florida, there are two Indian Tribes, the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida, with lakes and flowing waters. Both Tribes have been approved for treatment in the same manner as a State (TAS) status for CWA sections 303 and 401 and have federally approved WQS in their respective jurisdictions. These Tribes are not subject to this proposed rule. This rule will not impact the Tribes because it merely stays certain sections of already promulgated requirements.

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

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866 and because the Agency does not believe this action includes environmental health risks or safety risks that would present a risk to children.

*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 likely to have a significant adverse effect on the supply, distribution, or use of energy.

*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 rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

Executive Order (E.O.) 12898 (59 FR 7629, Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs 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 action is not subject to E.O. 12898 because this action merely stays certain sections of already promulgated requirements.

**List of Subjects in 40 CFR Part 131**

Environmental protection, Florida, Nitrogen/phosphorus pollution, Nutrients, Water quality standards.

Dated: November 30, 2012.

**Lisa P. Jackson,**

*Administrator.*

For the reasons set out in the preamble, 40 CFR part 131 is proposed to be amended as follows:

## PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

**Authority:** 33 U.S.C. 1251 *et seq.*

### Subpart D—Federally Promulgated Water Quality Standards

2. Effective [DATE OF PUBLICATION IN THE FEDERAL REGISTER OF FINAL RULE], 40 CFR 131.43(a)—(d) are stayed until November 15, 2013.

[FR Doc. 2012–29800 Filed 12–13–12; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### 49 CFR Part 665

**[Docket No. FTA–2011–0015]**

**RIN 2132–AB01**

## Bus Testing: Calculation of Average Passenger Weight and Test Vehicle Weight

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of withdrawal.

**SUMMARY:** This action withdraws a notice of proposed rulemaking (NPRM) that would have amended the Federal Transit Administration's (FTA's) bus testing regulation to increase the assumed average passenger weight value used for ballasting test buses from the current value of 150 pounds to a new value of 175 pounds. This increase was proposed to better reflect the actual weight of the average American adult and to provide accurate information to the transit agencies that purchase such vehicles. In light of recent legislation directing FTA to establish new pass/fail standards that require a more comprehensive review of its overall bus testing program, FTA is withdrawing the rulemaking.

**FOR FURTHER INFORMATION CONTACT:** For technical information, Gregory Rymarz, Bus Testing Program Manager, Office of Research, Demonstration, and Innovation (TRI), (202) 366–6410, *Gregory.rymarz@dot.gov.* For legal information, Richard Wong, Office of the Chief Counsel (TCC), (202) 366–0675, *richard.wong@dot.gov.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 317 of the Surface Transportation and Uniform Relocation Act of 1987 (Pub. L. 100–17), now codified at 49 U.S.C. 5318, FTA established a bus testing program to ensure that buses procured with FTA financial assistance could endure the rigors of daily transit service.

In a 2009 rulemaking, FTA established a procedure by which transit

vehicles would be tested with a full load of seated and standing passengers, even if that number exceeded the vehicle's Gross Vehicle Weight Rating (GVWR) (74 FR 51083, October 5, 2009). The testing procedure simulated a 150 lb. weight for each seated passenger and a 150 lb. weight for every 1.5 square foot of clear floor space. Given the upward trend in passenger weight estimations then underway by the Federal Aviation Administration and the United States Coast Guard, FTA published a second NPRM in 2011 proposing to change the average passenger weight from 150 lbs. to 175 lbs. and to change the floor space occupied per standing passenger from 1.5 to 1.75 square feet (76 FR 13850, March 14, 2011).

Subsequent to the NPRM, on July 6, 2012, Congress passed the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141). Section 20014 of MAP–21 amended 49 U.S.C. 5318 to require FTA to work with bus manufacturers and transit agencies to establish a new pass/fail standard for the bus testing program, which must include new safety performance standards established by FTA pursuant to 49 U.S.C. 5329(b) (as amended by MAP–21). Accordingly, in view of the mandate to establish a new pass/fail standard which requires a more comprehensive overall review of the bus testing program that satisfies both bus manufacturers and bus buyers, the proposed rule is hereby withdrawn.

## Regulatory Impact

Because this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore it is not covered under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act, or the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

## List of Subjects in 49 CFR Part 665

Buses, Grant programs—transportation, Public transportation, Motor vehicle safety, Reporting and recordkeeping requirements.

Accordingly, the notice of proposed rulemaking, Docket FTA–2011–0015, published in the **Federal Register** on March 14, 2011 (76 FR 13580), is withdrawn.

Issued in Washington, DC, on December 10, 2012.

**Peter Rogoff,**

*Administrator.*

[FR Doc. 2012–30184 Filed 12–13–12; 8:45 am]

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# Notices

Federal Register

Vol. 77, No. 241

Friday, December 14, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Media Outlets for Publication of Legal and Action Notices in the Southern Region

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice.

**SUMMARY:** Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR parts 215 and 219 in the legal notice section of the newspapers listed in the **SUPPLEMENTARY INFORMATION** section of this notice. The Southern Region consists of Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, Puerto Rico. As provided in 36 CFR 215.5 and Appendix A to 36 CFR 219.35 the public shall be advised through **Federal Register** notice, of the newspaper of record to be utilized for publishing legal notice of decisions. Newspaper publication of notice of decisions is in addition to direct notice of decisions to those who have requested it and to those who have participated in project planning. Responsible Officials in the Southern Region will also publish notice of proposed actions under 36 CFR 215.5 in the newspapers that are listed in the **SUPPLEMENTARY INFORMATION** section of this notice. As provided in 36 CFR 215.5, the public shall be advised, through **Federal Register** notice, of the newspaper of record to be utilized for publishing notices on proposed actions. Additionally, the Deciding Officers in the Southern Region will publish notice of the opportunity to object to a proposed authorized hazardous fuel reduction project under 36 CFR 218.4 or developing, amending or revising land management plans under 36 CFR part 219 in the legal notice section of the newspapers listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

**DATES:** Use of these newspapers for purposes of publishing legal notice of decisions subject to appeal under 36 CFR part 215 and Appendix A to 36 CFR 219.35, notices of proposed actions under 36 CFR part 215, and notices of the opportunity to object under 36 CFR part 218 and 36 CFR part 219 shall begin the first day after the date of this publication.

**FOR FURTHER INFORMATION CONTACT:** James W. Bennett, Regional Appeal Coordinator, Southern Region, Planning, 1720 Peachtree Road NW., Atlanta, Georgia 30309, Phone: 404/347–2788.

**SUPPLEMENTARY INFORMATION:** Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under Appendix A to 36 CFR 219.35, the Responsible Officials in the Southern Region will give notice of decisions subject to appeal under 36 CFR part 215 and opportunity to object to a proposed authorized hazardous fuel reduction project under 36 CFR part 218 or developing, amending or revising land management plans under 36 CFR part 219 in the following newspapers which are listed by Forest Service administrative unit. Responsible Officials in the Southern Region will also give notice of proposed actions under 36 CFR 215.5 in the following newspapers of record which are listed by Forest Service administrative unit. The timeframe for comment on a proposed action shall be based on the date of publication of the notice of the proposed action in the newspaper of record. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the newspaper of record for 36 CFR part 215 and Appendix A to 36 CFR 219.35. The timeframe for an objection shall be based on the date of publication of the legal notice of the opportunity to object for projects subject to 36 CFR part 218 or 36 CFR part 219.

Where more than one newspaper is listed for any unit, the first newspaper listed is the newspaper of record that will be utilized for publishing the legal notice of decisions and calculating timeframes. Secondary newspapers listed for a particular unit are those newspapers the Deciding Officer/Responsible Official expects to use for purposes of providing additional notice.

The following newspapers will be used to provide notice.

**Southern Region**

*Regional Forester Decisions:* Affecting National Forest System lands in more than one Administrative unit of the 15 in the Southern Region, *Atlanta Journal-Constitution,* published daily in Atlanta, GA.

Affecting National Forest System lands in only one Administrative unit or only one Ranger District will appear in the newspaper of record elected by the National Forest, National Grassland, National Recreation Area, or Ranger District as listed below.

*National Forests in Alabama, Alabama*

Forest Supervisor Decisions

Affecting National Forest System lands in more than one Ranger District of the 6 in the National Forests in Alabama, *Montgomery Advertiser,* published daily in Montgomery, AL. Affecting National Forest System lands in only one Ranger District will appear in the newspaper of record elected by the Ranger District as listed below.

District Ranger Decisions

Bankhead Ranger District: *Northwest Alabamian,* published bi-weekly (Wednesday & Saturday) in Haleyville, AL.

Conecuh Ranger District: *The Andalusia Star News,* published daily (Tuesday through Saturday) in Andalusia, AL.

Oakmulgee Ranger District: *The Tuscaloosa News,* published daily in Tuscaloosa, AL.

Shoal Creek Ranger District: *The Anniston Star,* published daily in Anniston, AL.

Talladega Ranger District: *The Daily Home,* published daily in Talladega, AL.

Tuskegee Ranger District: *Tuskegee News,* published weekly (Thursday) in Tuskegee, AL.

*Chattahoochee-Oconee National Forest, Georgia*

Forest Supervisor Decisions

*The Times,* published daily in Gainesville, GA.

District Ranger Decisions

Blue Ridge Ranger District: *The News Observer* (newspaper of record) published bi-weekly (Tuesday & Friday) in Blue Ridge, GA.

*North Georgia News,* (newspaper of record) published weekly (Wednesday) in Blairsville, GA.

*The Dahlonega Nuggett,* (secondary) published weekly (Wednesday) in Dahlonega, GA.

*Towns County Herald,* (secondary) published weekly (Thursday) in Hiawassee, GA.

Conasauga Ranger District: *Daily Citizen,* published daily in Dalton, GA.

Chattooga River Ranger District: *The Northeast Georgian,* (newspaper of record) published bi-weekly (Tuesday & Friday) in Cornelia, GA.

*Clayton Tribune,* (newspaper of record) published weekly (Thursday) in Clayton, GA.

*The Toccoa Record,* (secondary) published weekly (Thursday) in Toccoa, GA.

*White County News,* (secondary) published weekly (Thursday) in Cleveland, GA.

Oconee Ranger District: *Eatonton Messenger,* published weekly (Thursday) in Eatonton, GA.

*Cherokee National Forest, Tennessee*

Forest Supervisor Decisions

*Knoxville News Sentinel,* published daily in Knoxville, TN.

District Ranger Decisions

Unaka Ranger District: *Greeneville Sun,* published daily (except Sunday) in Greeneville, TN.

Ocoee-Hiwassee Ranger District: *Polk County News,* published weekly (Wednesday) in Benton, TN.

Tellico Ranger District: *Monroe County Advocate & Democrat,* published tri-weekly (Wednesday, Friday, and Sunday) in Sweetwater, TN.

Watauga Ranger District: *Johnson City Press,* published daily in Johnson City, TN.

*Daniel Boone National Forest, Kentucky*

Forest Supervisor Decisions

*Lexington Herald-Leader,* published daily in Lexington, KY.

District Ranger Decisions

Cumberland Ranger District: *Lexington Herald-Leader,* published daily in Lexington, KY.

London Ranger District: *The Sentinel-Echo,* published tri-weekly (Monday, Wednesday, and Friday) in London, KY.

Redbird Ranger District: *Manchester Enterprise,* published weekly (Thursday) in Manchester, KY.

Stearns Ranger District: *McCreary County Record,* published weekly (Tuesday) in Whitley City, KY.

*El Yunque National Forest, Puerto Rico*

Forest Supervisor Decisions

*El Nuevo Dia,* published daily in Spanish in San Juan, PR.

*Puerto Rico Daily Sun,* published daily in English in San Juan, PR.

*National Forests in Florida, Florida*

Forest Supervisor Decisions

*The Tallahassee Democrat,* published daily in Tallahassee, FL.

District Ranger Decisions

Apalachicola Ranger District: *Calhoun-Liberty Journal,* published weekly (Wednesday) in Bristol, FL.

Lake George Ranger District: *The Ocala Star Banner,* published daily in Ocala, FL.

Osceola Ranger District: *The Lake City Reporter,* published daily (Monday-Saturday) in Lake City, FL.

Seminole Ranger District: *The Daily Commercial,* published daily in Leesburg, FL.

Wakulla Ranger District: *The Tallahassee Democrat,* published daily in Tallahassee, FL.

*Francis Marion & Sumter National Forests, South Carolina*

Forest Supervisor Decisions

*The State,* published daily in Columbia, SC.

District Ranger Decisions

Andrew Pickens Ranger District: *The Daily Journal,* published daily (Tuesday through Saturday) in Seneca, SC.

Enoree Ranger District: *Newberry Observer,* published tri-weekly (Monday, Wednesday, and Friday) in Newberry, SC.

Long Cane Ranger District: *Index-Journal,* published daily in Greenwood, SC.

Wambaw Ranger District: *Post and Courier,* published daily in Charleston, SC.

Witherbee Ranger District: *Post and Courier,* published daily in Charleston, SC.

*George Washington and Jefferson National Forests, Virginia and West Virginia*

Forest Supervisor Decisions

*Roanoke Times,* published daily in Roanoke, VA.

District Ranger Decisions

Clinch Ranger District: *Coalfield Progress,* published bi-weekly (Tuesday and Friday) in Norton, VA.

North River Ranger District: *Daily News Record,* published daily (except Sunday) in Harrisonburg, VA.

Glenwood-Pedlar Ranger District: *Roanoke Times,* published daily in Roanoke, VA.

James River Ranger District: *Virginian Review,* published daily (except Sunday) in Covington, VA.

Lee Ranger District: *Shenandoah Valley Herald,* published weekly (Wednesday) in Woodstock, VA.

Mount Rogers National Recreation Area: *Bristol Herald Courier,* published daily in Bristol, VA.

Eastern Divide Ranger District: *Roanoke Times,* published daily in Roanoke, VA.

Warm Springs Ranger District: *The Recorder,* published weekly (Thursday) in Monterey, VA.

*Kisatchie National Forest, Louisiana*

Forest Supervisor Decisions

*The Town Talk,* published daily in Alexandria, LA.

District Ranger Decisions

Calcasieu Ranger District: *The Town Talk,* (newspaper of record) published daily in Alexandria, LA.

*The Leesville Daily Leader,* (secondary) published daily in Leesville, LA.

Caney Ranger District: *Minden Press Herald,* (newspaper of record) published daily in Minden, LA.

*Homer Guardian Journal,* (secondary) published weekly (Wednesday) in Homer, LA.

Catahoula Ranger District: *The Town Talk,* published daily in Alexandria, LA.

Kisatchie Ranger District: *Natchitoches Times,* published daily (Tuesday thru Friday and on Sunday) in Natchitoches, LA.

Winn Ranger District: *Winn Parish Enterprise,* published weekly (Wednesday) in Winnfield, LA.

*Land Between The Lakes National Recreation Area, Kentucky and Tennessee*

Area Supervisor Decisions

*The Paducah Sun,* published daily in Paducah, KY.

*National Forests in Mississippi, Mississippi*

Forest Supervisor Decisions

*Clarion-Ledger,* published daily in Jackson, MS.

District Ranger Decisions

Bienville Ranger District: *Clarion-Ledger,* published daily in Jackson, MS.

Chickasawhay Ranger District: *Clarion-Ledger,* published daily in Jackson, MS.

Delta Ranger District: *Clarion-Ledger,* published daily in Jackson, MS.

De Soto Ranger District: *Clarion Ledger,* published daily in Jackson, MS.

Holly Springs Ranger District: *Clarion-Ledger,* published daily in Jackson, MS.

Homochitto Ranger District: *Clarion-Ledger,* published daily in Jackson, MS.

Tombigbee Ranger District: *Clarion-Ledger,* published daily in Jackson, MS.

*National Forests in North Carolina, North Carolina*

Forest Supervisor Decisions

*The Asheville Citizen-Times,* published Wednesday thru Sunday, in Asheville, NC.

District Ranger Decisions

Appalachian Ranger District: *The Asheville Citizen-Times,* published Wednesday thru Sunday, in Asheville, NC.

Cheoah Ranger District: *Graham Star,* published weekly (Thursday) in Robbinsville, NC.

Croatan Ranger District: *The Sun Journal,* published daily in New Bern, NC.

Grandfather Ranger District: *McDowell News,* published daily in Marion, NC.

Nantahala Ranger District: *The Franklin Press,* published bi-weekly (Tuesday and Friday) in Franklin, NC.

Pisgah Ranger District: *The Asheville Citizen-Times,* published Wednesday thru Sunday, in Asheville, NC.

Tusquitee Ranger District: *Cherokee Scout,* published weekly (Wednesday) in Murphy, NC.

Uwharrie Ranger District: *Montgomery Herald,* published weekly (Wednesday) in Troy, NC.

*Ouachita National Forest, Arkansas and Oklahoma*

Forest Supervisor Decisions

*Arkansas Democrat-Gazette,* published daily in Little Rock, AR.

District Ranger Decisions

Caddo-Womble Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR.

Jessieville-Winona-Fourche Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR.

Mena-Oden Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR.

Oklahoma Ranger District (Choctaw; Kiamichi; and Tiak): *McCurtain Daily Gazette,* published daily in Idabel, OK.

Poteau-Cold Springs Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR.

*Ozark-St. Francis National Forests, Arkansas*

Forest Supervisor Decisions

*The Courier,* published daily (Tuesday through Sunday) in Russellville, AR.

District Ranger Decisions

Bayou Ranger District: *The Courier,* published daily (Tuesday through Sunday) in Russellville, AR.

Boston Mountain Ranger District: *Southwest Times Record,* published daily in Fort Smith, AR.

Buffalo Ranger District: *The Courier,* published daily (Tuesday through Sunday) in Russellville, AR.

Magazine Ranger District: *Southwest Times Record,* published daily in Fort Smith, AR.

Pleasant Hill Ranger District: *Johnson County Graphic,* published weekly (Wednesday) in Clarksville, AR.

St. Francis National Forest: *The Daily World,* published daily (Sunday through Friday) in Helena, AR.

Sylamore Ranger District: *Stone County Leader,* published weekly (Wednesday) in Mountain View, AR.

*National Forests and Grasslands in Texas, Texas*

Forest Supervisor Decisions

*The Lufkin Daily News,* published daily in Lufkin, TX.

District Ranger Decisions

Angelina National Forest: *The Lufkin Daily News,* published daily in Lufkin, TX.

Caddo & LBJ National Grasslands: *Denton Record-Chronicle,* published daily in Denton, TX.

Davy Crockett National Forest: *The Lufkin Daily News,* published daily in Lufkin, TX.

Sabine National Forest: *The Lufkin Daily News,* published daily in Lufkin, TX.

Sam Houston National Forest: *The Courier,* published daily in Conroe, TX.

Dated: December 4, 2012.

**Jerome Thomas,**

*Deputy Regional Forester.*

[FR Doc. 2012–30017 Filed 12–13–12; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

**[Docket No. NRCS–2012–0004]**

### Notice of Proposed Changes to the National Handbook of Conservation Practices for the Natural Resources Conservation Service

**AGENCY:** Natural Resources Conservation Service (NRCS), USDA.

**ACTION:** Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices for public review and comment.

**SUMMARY:** Notice is hereby given of the intention of NRCS to issue a series of revised conservation practice standards in the National Handbook of Conservation Practices. These standards include: Amendments for the Treatment of Agricultural Waste (Code 591), Building Envelope Improvement (Code 672), Fence (Code 382), Lighting System Improvement (Code 670), Recreation Land Grading and Shaping (Code 566), Row Arrangement (Code 557), Sprinkler System (Code 442), Tree/Shrub Site Preparation (Code 490), Waste Separation Facility (Code 632), Waste Treatment (Code 629), Watering Facility (Code 614), and Waterspreading (Code 640).

NRCS State Conservationists who choose to adopt these practices for use within their States will incorporate them into section IV of their respective electronic Field Office Technical Guide. These practices may be used in conservation systems that treat highly erodible land (HEL) or on land determined to be a wetland. Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available for public review and comment all proposed revisions to conservation practice standards used to carry out HEL and wetland provisions of the law.

**DATES:** *Effective Date:* This is effective December 14, 2012.

*Comment Date:* Submit comments on or before January 14, 2013. Final versions of these new or revised conservation practice standards will be adopted after the close of the 30-day period, and after consideration of all comments.

**ADDRESSES:** Comments should be submitted, identified by Docket Number NRCS–2012–0004, using any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Email: Public.comments@wdc.usda.gov*. Include Docket Number NRCS–2012–0004 or ''comment on practice standards'' in the subject line of the message.

• *Mail:* Comment Submissions, Attention: Verna Jones, Policy Analyst, Resource Economics, Analysis and Policy Division, Department of Agriculture, Natural Resources Conservation Service, George Washington Carver Center, 5601 Sunnyside Ave, Room 1–1112C, Beltsville, Maryland 20705.

All comments received will become a matter of public record and will be posted without change to *http://www.regulations.gov* including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Wayne Bogovich, National Agricultural Engineer, Conservation Engineering Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue SW., Room 6136 South Building, Washington, DC 20250.

Electronic copies of these standards can be downloaded or printed from the following Web site: *ftp://ftp-fc.sc.egov.usda.gov/NHQ/practice-standards/federal-register/*. Requests for paper versions or inquiries may be directed to Wayne Bogovich, National Agricultural Engineer, Conservation Engineering Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue SW., Room 6136 South Building, Washington, DC 20250.

**SUPPLEMENTARY INFORMATION:** The amount of the proposed changes varies considerably for each of the conservation practice standards addressed in this notice. To fully understand the proposed changes, individuals are encouraged to compare these changes with each standard's current version as shown at: *http://www.nrcs.usda.gov/technical/Standards/nhcp.html*. To aid in this comparison, following are highlights of the proposed revisions to each standard:

*Amendments for the Treatment of Agricultural Waste (Code 591)*—An additional purpose to reduce risk associated with the spread and contamination of pathogens was added. A subsection on system effects was added to limit the use of amendments to situations where the impacts of the altered waste stream on other parts of the manure management system have been identified and to assure that land application of treated manure would comply with the requirements of Conservation Practice Standard 590, Nutrient Management. Other minor changes were made for style and clarity that did not change the technical substance of the standard.

*Building Envelope Improvement (Code 672)*—This is a new conservation practice standard for modification or retrofit of the building envelope of an existing agricultural structure.

*Fence (Code 382)*—Wildlife needs are now included under general criteria, being moved from the considerations section. This will ensure all fence design and placement is made with knowledge of potential impacts to local wildlife.

*Lighting System Improvement (Code 670)*—This is a new conservation practice standard for complete replacement or retrofitting of one or more components of an existing agricultural lighting system.

*Recreation Land Grading and Shaping (Code 566)*—There were minor changes to wording with changes to active voice and references added.

*Row Arrangement (Code 557)*—Added wording to Definition to be consistent with purpose, minor changes to wording with changes to active voice, and added references.

*Sprinkler System (Code 442)*—Changed name from ''Irrigation System, Sprinkler'' to ''Sprinkler'' to make the standard more applicable to other conservation measures that use sprinklers as part of solution (i.e., dust control). Other changes include shortening the section on center pivots and adding criteria for purposes other than irrigation.

*Tree/Shrub Site Preparation (Code 490)*—Only minor changes were made to the standard including editorial changes to the second purpose and the general criteria to improve clarity. Pest management issues are referred to the current Pest Management policy.

*Waste Separation Facility (Code 632)*—The name changed from Solid/Liquid Waste Separation Facility to Waste Separation Facility. Two purposes were removed and one was added to address manure handling. Additional separation methods (not inclusive) were added to the separation efficiency table. The practice will allow solid/solid separation such as poultry litter screening. Two new criteria sections were developed for Sand Separation and Reuse.

*Waste Treatment (Code 629)*—The conditions where practice applies was shortened and made more generic. A subsection on utilities was added to make the standard more consistent with other practice standards that could involve construction activities. The requirement for a minimum practice life of 10 years was removed from the standard. Other minor changes were made for style and clarity that did not change the technical substance of the standard.

*Watering Facility (Code 614)*—The definition was modified to include watering ramps since the purpose of a watering ramp is to provide a watering facility for livestock and wildlife. Additional criteria for the use of tanks for water storage were added.

*Waterspreading (Code 640)*—Reworded purpose to be more in line with the new resource concerns. Other changes consist of cleaning up language in criteria and considerations section.

Signed this 15th day of November 2012, in Washington, DC.

**Dave White,**

*Chief, Natural Resources Conservation Service.*

[FR Doc. 2012–30158 Filed 12–13–12; 8:45 am]

BILLING CODE 3410–16–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–87–2012]**

### Foreign-Trade Zone 75—Phoenix, Arizona Application for Expansion (New Magnet Site) Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the City of Phoenix, grantee of Foreign-Trade Zone 75, requesting authority to expand its zone under the alternative site framework (ASF) adopted by the Board (15 CFR 400.2(c)) to include a new magnet site in Phoenix, Arizona. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u) and the regulations of the Board (15 CFR part 400). It was formally docketed on December 7, 2012.

FTZ 75 was approved by the Board on March 25, 1982 (Board Order 185, 47 FR 14931, 04/07/82), and was expanded on July 2, 1993 (Board Order 647, 58 FR 37907, 07/14/93), on February 27, 2008 (Board Order 1545, 73 FR 13531, 03/13/08), and on March 23, 2010 (Board Order 1672). FTZ 75 was reorganized under the ASF on October 7, 2010 (Board Order 1716, 75 FR 64708–64709, 10/20/2010). The zone project currently has a service area that includes all of Maricopa County and portions of Pinal and Yavapai Counties, Arizona.

The current zone project includes the following magnet sites: *Site 1* (338 acres)—within the 550-acre Phoenix Sky Harbor Center and adjacent air cargo

terminal at the Phoenix Sky Harbor International Airport, Phoenix; *Site 2* (18 acres)—CC&F South Valley Industrial Center, 7th Street and Victory Street, Phoenix; *Site 3* (74 acres)—Riverside Industrial Center, 4750 W. Mohave Street, Phoenix; *Site 4* (18 acres)—Santa Fe Business Park, 47th Avenue and Campbell Avenue, Phoenix; and, *Site 5* (32.5 acres)—the jet fuel storage and distribution system at and adjacent to the Phoenix Sky Harbor International Airport, Phoenix. Since approval of the reorganization of the zone under the ASF, three usage-driven sites have been approved: *Site 6* (31.1 acres)—Western Digital, LLC, 1000–1100 East Bell Road, Phoenix; *Site 7* (5.7 acres)—Michael Lewis Company, 2021 East Jones Avenue, Phoenix; and, *Site 8* (9.47 acres)—The Gap, Inc., 2225 South 75th Avenue, Phoenix.

The applicant is now requesting authority to expand its zone project to include an additional magnet site: Proposed *Site 9* (155 acres)—Prologis Park Riverside, 3202 South 55th Avenue and 5555 West Lower Buckeye Road, Phoenix. The proposed new site is located within Phoenix, Arizona U.S. Customs and Border Protection Ports of Entry.

In accordance with the Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

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 12, 2013.* Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to *February 27, 2013.*

A copy of the application 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:* Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: December 7, 2012.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2012–30220 Filed 12–13–12; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

**[11–BIS–0005]**

### Enterysys Corporation, with Last Known Addresses of: 1307 Muench Court, San Jose, CA 95131 and Plot No. 39, Public Sector, Employees Colony, New Bowenpally 500011, Secunderabad, India, Respondent; Final Decision and Order

This matter is before me upon a Recommended Decision and Order (''RDO'') of an Administrative Law Judge (''ALJ''), as further described below.[1]

### I. Background

On July 11, 2011, the Bureau of Industry and Security (''BIS'') issued a Charging Letter alleging that Respondent, Enterysys Corporation, of San Jose, California and Secunderabad, India (''Enterysys'' or ''Respondent''), committed sixteen violations of the Export Administration Regulations (''Regulations''),[2] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) (''Act'').[3] The Charging Letter included the following specific allegations:

**Charge 1 15 CFR 764.2(h)—Evasion**

In or about May 2006, Enterysys engaged in a transaction and took other actions with intent to evade the provisions of the Regulations. Through false statements to a U.S. manufacturer and freight forwarder, Enterysys obtained and exported to India twenty square meters of ceramic cloth, an item subject to the Regulations, classified under Export Control Classification Number (''ECCN'') 1C010, controlled for National Security reasons, and valued at $15,460, without obtaining the required license pursuant to Section 742.4 of the Regulations. Enterysys purchased the ceramic cloth from a U.S. manufacturer and arranged for the manufacturer to ship the item to a freight forwarder identified by Enterysys, knowing that a license was required for the export of the ceramic cloth to India. On or about May 1, 2006, when Enterysys asked that the U.S. manufacturer to ship the ceramic cloth to Enterysys's freight forwarder instead of directly to Enterysys, Enterysys was informed by the manufacturer that the material ''is a controlled commodity in terms of export to India,'' and the manufacturer asked Enterysys for assurance and a ''guarantee'' that the ceramic cloth would not be exported to India. In response, also on or about May 1, 2006, Enterysys stated, ''This is not going out of USA.'' In addition, in arranging for the purchase from the U.S. manufacturer, Enterysys asked the manufacturer not to put any packing list, invoice or certificate of conformance in the box with the ceramic cloth, but rather to fax the documents to Enterysys. Enterysys also arranged for its freight forwarder to ship the ceramic cloth to Enterysys in India. Once the manufacturer shipped the ceramic cloth to the freight forwarder identified by Enterysys, Enterysys provided the freight forwarder with shipping documentation on or about May 2, 2006, including a packing list and invoice that falsely identified the ceramic cloth as twenty square meters of ''used waste material'' with a value of $200. The ceramic cloth arrived at the freight forwarder on or about May 3, 2006, and was exported pursuant to Enterysys's instructions to India on or about May 5, 2006. Enterysys undertook these acts to facilitate the export of U.S.-origin ceramic cloth to India without the required Department of Commerce license and to avoid detection by law enforcement. In so doing, Enterysys committed one violation of Section 764.2(h) of the Regulations.

**Charge 2 15 CFR 764.2(a)—Engaging in Prohibited Conduct by Exporting Ceramic Cloth to India Without the Required License**

On or about May 5, 2006, Enterysys engaged in conduct prohibited by the Regulations by exporting to India twenty square meters of ceramic cloth, an item subject to the Regulations, classified under ECCN 1C010, controlled for National Security reasons and valued at $15,460, without the Department of Commerce license required pursuant to Section 742.4 of the Regulations. In so doing, Enterysys committed one violation of Section 764.2(a) of the Regulations.

**Charges 3–13 15 CFR 764.2(a)—Engaging in Prohibited Conduct by Exporting Electronic Components to a Listed Entity Without the Required Licenses**

On eleven occasions between on or about August 12, 2005 and November 27, 2007, Enterysys engaged in conduct prohibited by the Regulations by exporting various

[1] I received the certified record from the ALJ, including the original copy of the RDO, for my review on November 2, 2012. The RDO is dated October 15, 2012. BIS timely submitted a response to the RDO, while Respondent has not filed a response to the RDO.

[2] The Regulations currently are codified at 15 CFR parts 730–774 (2012). The charged violations occurred in 2005 through 2007. The Regulations governing the violations at issue are found in the 2005 through 2007 versions of the Code of Federal Regulations. In addition, citations to Section 764.2 of the Regulations elsewhere in this Order are to the 2005–2007 versions of the Regulations, as applicable. For ease of reference, I note that the 2005–2007 versions of the Regulations are the same as the 2012 version with regard to the provisions of Section 764.2 cited herein. This proceeding was instituted in 2011. The 2012 version of the Regulations currently governs the procedural aspects of this case. The 2011 and 2012 versions of the Regulations are the same with respect to the provisions of Part 766 cited herein.

[3] Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13,222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2012 (77 FR 49,699 (Aug. 16, 2012)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*).

electronic components, designated as EAR99 items[4] and valued at a total of $38,527, from the United States to Bharat Dynamics Limited (''BDL'') in Hyderabad, India, without the Department of Commerce license required by Section 744.1 and Supplement No. 4 to Part 744 of the Regulations. BDL is an entity that is designated in the Entity List set forth in Supplement No. 4 to Part 744 of the Regulations, and at all times pertinent hereto that designation included a requirement that a Department of Commerce license was required for all exports to BDL. In so doing, Enterysys committed eleven violations of Section 764.2(a) of the Regulations.

**Charge 14 15 CFR 764.2(e)—Acting With Knowledge of a Violation**

On or about July 11, 2007, in connection with the transaction described in Charge 11, above, Enterysys ordered, bought, stored, transferred, transported and forwarded electronic components, designated as EAR99 items and valued at $8,644, that were to be exported from the United States to BDL in Hyderabad, India, with knowledge that a violation of the Regulations was about to occur or was intended to occur in connection with the items. Enterysys had knowledge that exports to BDL required authorization from the Department of Commerce because, in or around May 2007, Enterysys provided these items to a freight forwarder and was informed by the freight forwarder that items being exported to BDL required an export license and that BDL was on the Entity List. The freight forwarder also directed Enterysys to the BIS Web site. The freight forwarder then returned the items to Enterysys. Subsequently, Enterysys provided the items to a second freight forwarder for export to BDL even though Enterysys knew that an export license was required and had not been obtained. In so doing, Enterysys committed one violation of Section 764.2(e) of the Regulations.

**Charges 15–16 15 CFR 764.2(e)—Acting with Knowledge of a Violation**

On two occasions on or about November 7, 2007 and November 27, 2007, in connection with the transactions described in Charges 12 and 13, above, Enterysys ordered, bought, stored, transferred, transported and forwarded electronic components, designated as EAR99 items and valued at $11,266.85, that were to be exported from the United States to BDL in Hyderabad, India, with knowledge that a violation of the Regulations was about to occur or was intended to occur in connection with the items. Enterysys had knowledge that exports to BDL required authorization from the Department of Commerce because, in or around May 2007, Enterysys was informed by a freight forwarder that items being exported to BDL required a license and that BDL was on the Entity List. The freight forwarder also directed Enterysys to the BIS Web site. Subsequently, Enterysys wrote an email on or about October 11, 2007, to the Department of Commerce requesting guidance about license requirements to BDL, and in response was provided with a copy of the Entity List, advised, among other things, that all exporting companies need to check transactions against certain lists, and provided with a link to such lists on the BIS Web site. Thereafter, on October 24, 2007, Enterysys's President Shekar Babu wrote an email stating that he was ''working directly with US Govt on the export license'' and that the license would ''take a month.'' Nevertheless, Enterysys did not apply for or obtain the required export license. In so doing, Enterysys committed two violations of Section 764.2(e) of the Regulations.

Charging Letter at 1–3.[5]

In accordance with § 766.3(b)(1) of the Regulations, on July 11, 2011, BIS mailed the notice of issuance of the Charging Letter to Enterysys at Enterysys's two last known locations: one in California, by certified mail, and one in India, by registered mail. RDO at 5. BIS received a signed return receipt showing that Respondent received the Charging Letter in California by certified mail on July 26, 2011. *Id.* BIS also received a return receipt for international mail showing that the Respondent received the Charging Letter in India by registered mail. *Id.* Although the date on the registered mail return receipt is difficult to discern, it appears to be July 25, 2011. *Id.* at 5–6. The return receipts establish that delivery occurred no later than July 26, 2011. Respondent thus was obligated to answer the Charging Letter by no later than August 25, 2011.

Moreover, on August 2, 2011, Shekar Babu, the President of Enterysys, sent an email to BIS's counsel further acknowledging receipt of the Charging Letter. On August 15, 2011, via an email from BIS's counsel, Mr. Babu was reminded of the August 25, 2011 deadline for filing an answer. *Id.* at 6–7.

Under Section 766.6(a) of the Regulations, the ''respondent must answer the charging letter within 30 days after being served with notice of issuance'' of the charging letter. Section 766.7(a) of the Regulations provides, in turn, that the ''[f]ailure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear and contest the allegations in the charging letter,'' and that ''on BIS's motion and without further notice to the respondent, [the ALJ] shall find the facts to be as alleged in the charging letter[.]''

Enterysys did not answer the Charging Letter by August 25, 2011, and in fact had not done so by September 14, 2012, when pursuant to Section 766.7 of the Regulations, BIS filed its Motion for Default Order. The Motion for Default Order recommended that Enterysys's export privileges under the Regulations be denied for a period of at least ten years. *Id.* at 15. In addition to the serious nature and extensive number of Enterysys's violations, BIS's submission stated its understanding that Enterysys's principal currently is located in India, indicating that a monetary penalty may be difficult to collect and may not serve a sufficient deterrent effect.

On October 15, 2012, based on the record before him, the ALJ issued the RDO, in which he found Enterysys in default, found the facts to be as alleged in the Charging Letter, and concluded that Enterysys had committed the sixteen violations alleged in the Charging Letter, specifically, one violation of 15 CFR 764.2(h), three violations of 15 CFR 764.2(e), and twelve violations of 15 CFR 764.2(a). *Id.* at 7. The RDO contains a detailed review of the facts and applicable law relating to both merits and sanctions issues in this case.

Based on the record, the ALJ determined, *inter alia,* that, in or about May 2006, Enterysys took actions with intent to evade the applicable licensing requirement and avoid detection by law enforcement in connection with the export of ceramic cloth, an item subject to the Regulations and controlled for national security reasons, to India. These acts included falsely assuring the U.S. manufacturer in writing that the ceramic cloth would not be exported and providing transaction documentation to the freight forwarder that falsely identified the item as ''used waste material.'' *Id.* at 13. The ALJ determined, in addition, that Enterysys violated the Regulations on one occasion by exporting the ceramic cloth to India without the required license. *Id.*

The ALJ also determined that Enterysys violated the Regulations on eleven other occasions by exporting various electronic components subject to the Regulations to Bharat Dynamics Limited (''BDL''), an Indian entity on BIS's Entity List at all times pertinent hereto, without the required licenses. *Id.* at 13–14.[6] Finally, the ALJ determined

[4] EAR99 is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 CFR 734.3(c) (2005–07).

[5] The Charging Letter also includes a Schedule of Violations that provides additional detail concerning the underlying transactions. The Charging Letter, including the Schedule of Violations, will be posted on BIS's ''eFOIA'' Web page along with a copy of this Order (and a copy of the RDO except for the RDO section related to the Recommended Order).

[6] BDL was placed on the Entity List in 1998 through a rule published in the **Federal Register** establishing an entity-specific license requirement for certain entities, including BDL, that were ''determined to be involved in nuclear or missile activities.'' *See India and Pakistan Sanctions and*

Continued

that after being informed that BDL was on the Entity List and that a license was required for exports to BDL, Enterysys nevertheless on three occasions ordered, bought, stored, transferred, transported and forwarded electronic components subject to the Regulations for export from the United States to BDL without the required licenses, thereby acting with knowledge that a violation of the Regulations was about or intended to occur in connection with the items. *Id.* at 14.

The ALJ also recommended that the Under Secretary deny Enterysys's export privileges for a period of ten years, citing, *inter alia,* Enterysys's ''evasive and knowing misconduct and * * * series of unlawful exports,'' including ''deliberate efforts to evade the Regulations in connection with the export of * * * an item controlled for national security reasons,'' and its three similar ''knowledge violations in connection with the unlicensed export of electronic components to BDL.'' *Id.* at 15–16. The ALJ further noted that, ''Respondent's misconduct exhibited a severe disregard for the Regulations and U.S. export controls and a monetary penalty is not likely to be an effective deterrent in this case.'' *Id.* at 17–18.

**II. Review Under Section 766.22**

The RDO, together with the entire record in this case, has been referred to me for final action under Section 766.22 of the Regulations. BIS submitted a timely response to the RDO pursuant to Section 766.22(b); however, Respondent has not submitted a response to the RDO.

I find that the record supports the ALJ's findings of fact and conclusions of law that Respondent did not file an answer, is in default, and committed the sixteen violations of the Regulations alleged in the Charging Letter: Acting with intent to evade the Regulations on one occasion in violation of Section 764.2(h); acting with knowledge of a violation on three occasions in violation of Section 764.2(e); and engaging in prohibited conduct on eleven occasions in violation of Section 764.2(a).

I also find that the ten-year denial order recommended by the ALJ upon his review of the entire record is appropriate, given, as discussed in further detail in the RDO, the nature and number of the violations, the facts of this case, and the importance of deterring Respondent and others from acting to evade the Regulations and otherwise knowingly violate the Regulations.

Accordingly, based on my review of the entire record, I affirm the findings of fact and conclusions of law in the RDO without modification.

*Accordingly, it is therefore ordered:*

*First,* that for a period of ten years from the date this Order is published in the **Federal Register**, Enterysys Corporation (''Enterysys''), with last known addresses of 1307 Muench Court, San Jose, California 95131, and Plot No. 39, Public Sector, Employees Colony, New Bowenpally, 500011, Secunderabad, India, and its successors and assigns, and when acting for or on its behalf, its directors, officers, employees, representatives, or agents (hereinafter collectively referred to as ''Denied Person'') may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

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

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

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

*Second,* that no person may, directly or indirectly, do any of the following:

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

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

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

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

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

*Third,* that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

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

*Fifth,* that this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register**. In addition, the ALJ's Recommended Decision and Order, except for the section related to the Recommended Order, shall be published in the **Federal Register**.

This Order, which constitutes final agency action in this matter, is effective upon publication in the **Federal Register**.

Dated: December 3, 2012.

**Eric L. Hirschhorn,**

*Under Secretary of Commerce for Industry and Security.*

**Certificate of Service**

I hereby certify that, on this 4th day of December, 2012, I have served the foregoing *final decision and order* signed by Eric L. Hirschhorn, Under Secretary of Commerce for Industry and Security, in the matter of Enterysys

*Other Measures,* 63 FR 64,322 (Nov. 19, 1998). BDL remained on the Entity List at all times pertinent to this case, and in fact until January 25, 2011, more than three years after Enterysys's violations at issue here, which occurred between August 12, 2005 and November 27, 2007. *See U.S.-India Bilateral Understanding: Revisions to U.S. Export and Reexport Controls Under the Export Administration Regulations,* 76 FR 4,228 (Jan. 25, 2011).

Corporation (Docket No: 11–BIS–0005) to be sent via Federal Express: Enterysys Corporation, Shekar Babu, 1307 Muench Court, San Jose, CA 95131 and Plot No. 39, Public Sector, Employees Colony, New Bowenpally 500011, Secunderabad, India and Hand-Delivered to: John T. Masterson, Jr., Esq., Joseph V. Jest, Esq., Thea Kendler, Esq., Attorneys for the Bureau of Industry and Security, Office of the Chief Counsel for Industry and Security, U.S. Department of Commerce, 14th & Constitution Avenue NW., Room H–3839, Washington, DC 20230.

Harold Henderson,
*Executive Secretariat, Office of the Under Secretary for Industry and Security.*

## Order Granting Motion for Default Order and Recommended Decision and Order

*Issued: October 15, 2012.*

*Issued by: Hon. Parlen L. McKenna,* Acting Chief Administrative Law Judge, United States Coast Guard.

*For the Agency,* John T. Masterson, Jr., Chief Counsel, Joseph V. Jest, Chief, Enforcement and Litigation, Thea D. R. Kendler, Senior Counsel, Office of Chief Counsel for Industry and Security, U.S. Department of Commerce, Room H–3839, 14th Street & Constitution Avenue NW., Washington, DC 20230.

*For the Respondent,* Enterysys Corporation, Shekar Babu, 1307 Muench Court, San Jose, CA 95131, Plot No. 39, Public Sector, Employees Colony, New Bowenpally 500011, Secunderabad, India.

## I. Preliminary Statement

On July 11, 2011, the Bureau of Industry and Security (''BIS'') filed a Charging Letter against Respondent, Enterysys Corporation (''Enterysys''), which alleged sixteen violations of the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2012) (the ''Regulations'')), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420) (the ''EAA'' or ''Act'').[7]

On September 14, 2012, BIS filed a Motion for Default Order under 15 CFR 766.7. BIS moved for the issuance of a default order for failure to file an answer as required by 15 CFR 766.6. Therefore, BIS requested that the Court issue a recommended decision and order: (1) Finding Enterysys in default; (2) finding the facts to be as alleged in the Charging Letter; (3) concluding that Enterysys has committed the sixteen charged violations; and (4) recommending as an appropriate sanction for these violations an order denying Respondent's export privileges for a period of at least ten years.

BIS served Enterysys with the Motion for Default Order and its exhibits in accordance with 15 CFR 766.5. To date, Enterysys has not filed a response to the Motion for Default Order. For the reasons provided below, BIS' Motion for Default Order is *Granted,* and this Recommended Decision and Order is issued following Respondent's default.

### *A. The Charging Letter*

The Charging Letter alleges a total of sixteen violations that occurred between August 2005 and November 2007. The charges are as follows:

**Charge 1: 15 CFR 764.2(h)—Evasion**

As described in greater detail in the attached Schedule of Violations, which is incorporated herein by reference, in or about May 2006, Enterysys engaged in a transaction and took other actions with intent to evade the provisions of the Regulations. Through false statements to a U.S. manufacturer and freight forwarder, Enterysys obtained and exported to India twenty square meters of ceramic cloth, an item subject to the Regulations, classified under Export Control Classification Number (''ECCN'') 1C010, controlled for National Security reasons, and valued at $15,460, without obtaining the required license pursuant to Section 742.4 of the Regulations. Enterysys purchased the ceramic cloth from a U.S. manufacturer and arranged for the manufacturer to ship the item to a freight forwarder identified by Enterysys, knowing that a license was required for the export of the ceramic cloth to India. On or about May 1, 2006, when Enterysys asked that the U.S. manufacturer to ship the ceramic cloth to Enterysys's freight forwarder instead of directly to Enterysys, Enterysys was informed by the manufacturer that the material ''is a controlled commodity in terms of export to India,'' and the manufacturer asked Enterysys for assurance and a ''guarantee'' that the ceramic cloth would not be exported to India. In response, also on or about May 1, 2006, Enterysys stated, ''This is not going out of USA.'' In addition, in arranging for the purchase from the U.S. manufacturer, Enterysys asked the manufacturer not to put any packing list, invoice or certificate of conformance in the box with the ceramic cloth, but rather to fax the documents to Enterysys. Enterysys also arranged for its freight forwarder to ship the ceramic cloth to Enterysys in India. Once the manufacturer shipped the ceramic cloth to the freight forwarder identified by Enterysys, Enterysys provided the freight forwarder with shipping documentation on or about May 2, 2006, including a packing list and invoice that falsely identified the ceramic cloth as twenty square meters of ''used waste material'' with a value of $200. The ceramic cloth arrived at the freight forwarder on or about May 3, 2006, and was exported pursuant to Enterysys's instructions to India on or about May 5, 2006. Enterysys undertook these acts to facilitate the export of U.S.-origin ceramic cloth to India without the required Department of Commerce license and to avoid detection by law enforcement. In so doing, Enterysys committed one violation of Section 764.2(h) of the Regulations.

**Charge 2: 15 CFR 764.2(a)—Engaging in Prohibited Conduct by Exporting Ceramic Cloth to India Without the Required License**

As described in greater detail in the attached Schedule of Violations, which is incorporated herein by reference, on or about May 5, 2006, Enterysys engaged in conduct prohibited by the Regulations by exporting to India twenty square meters of ceramic cloth, an item subject to the Regulations, classified under ECCN 1C010, controlled for National Security reasons and valued at $15,460, without the Department of Commerce license required pursuant to Section 742.4 of the Regulations. In so doing, Enterysys committed one violation of Section 764.2(a) of the Regulations.

**Charges 3–13: 15 CFR 764.2(a)—Engaging in Prohibited Conduct by Exporting Electronic Components to a Listed Entity Without the Required Licenses**

As described in greater detail in the attached Schedule of Violations, which is incorporated herein by reference, on eleven occasions between on or about August 12, 2005 and November 27, 2007, Enterysys engaged in conduct prohibited by the Regulations by exporting various electronic components, designated as EAR99 items[8] and valued at a total of $38,527, from the United States to Bharat Dynamics Limited (''BDL'') in Hyderabad, India, without the Department of Commerce license required by Section 744.1 and Supplement No. 4 to Part 744 of the Regulations. BDL is an entity that is designated in the Entity List set forth in Supplement No. 4 to Part 744 of the Regulations, and at all times pertinent hereto that designation included a requirement that a Department of Commerce license was required for all exports to BDL. In so doing, Enterysys committed eleven violations of Section 764.2(a) of the Regulations.

**Charge 14: 15 CFR 764.2(e)—Acting With Knowledge of a Violation**

As described in greater detail in the attached Schedule of Violations, which is

[7] Currently, the Regulations are codified at 15 CFR parts 730–774 (2012). The charged violations occurred in 2005 through 2007. The Regulations governing the violations are found in the 2005 through 2007 versions of the Code of Federal Regulations. 15 CFR Parts 730–774 (2005–07). The 2012 Regulations establish the procedures that apply to this matter. The 2011 and 2012 versions of the Regulations are the same with respect to the provisions of section 764.2 and part 766 cited herein. Since August 21, 2001, the Act has been in lapse. The President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2012 (77 FR 49,699 (Aug. 16, 2012)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*).

[8] EAR99 is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 CFR 734.3(c) (2005–06).

incorporated herein by reference, on or about July 11, 2007, in connection with the transaction described in Charge 11, above, Enterysys ordered, bought, stored, transferred, transported and forwarded electronic components, designated as EAR99 items and valued at $8,644, that were to be exported from the United States to BDL in Hyderabad, India, with knowledge that a violation of the Regulations was about to occur or was intended to occur in connection with the items. Enterysys had knowledge that exports to BDL required authorization from the Department of Commerce because, in or around May 2007, Enterysys provided these items to a freight forwarder and was informed by the freight forwarder that items being exported to BDL required an export license and that BDL was on the Entity List. The freight forwarder also directed Enterysys to the BIS Web site. The freight forwarder then returned the items to Enterysys. Subsequently, Enterysys provided the items to a second freight forwarder for export to BDL even though Enterysys knew that an export license was required and had not been obtained. In so doing, Enterysys committed one violation of Section 764.2(e) of the Regulations.

**Charges 15–16: 15 CFR 764.2(e)—Acting With Knowledge of a Violation**

As described in greater detail in the attached Schedule of Violations, which is incorporated herein by reference, on two occasions on or about November 7, 2007 and November 27, 2007, in connection with the transactions described in Charges 12 and 13, above, Enterysys ordered, bought, stored, transferred, transported and forwarded electronic components, designated as EAR99 items and valued at $11,266.85, that were to be exported from the United States to BDL in Hyderabad, India, with knowledge that a violation of the Regulations was about to occur or was intended to occur in connection with the items. Enterysys had knowledge that exports to BDL required authorization from the Department of Commerce because, in or around May 2007, Enterysys was informed by a freight forwarder that items being exported to BDL required a license and that BDL was on the Entity List. The freight forwarder also directed Enterysys to the BIS Web site. Subsequently, Enterysys wrote an email on or about October 11, 2007, to the Department of Commerce requesting guidance about license requirements to BDL, and in response was provided with a copy of the Entity List, advised, among other things, that all exporting companies need to check transactions against certain lists, and provided with a link to such lists on the BIS Web site. Thereafter, on October 24, 2007, Enterysys's President Shekar Babu wrote an email stating that he was ''working directly with US Govt on the export license'' and that the license would ''take a month.'' Nevertheless, Enterysys did not apply for or obtain the required export license. In so doing, Enterysys committed two violations of Section 764.2(e) of the Regulations.

Gov. Exh. 1.

The Charging Letter advised Respondent that the maximum civil penalty is up to the greater of $250,000 per violation or twice the transaction value that forms the basis of the violation; denial of export privileges; and/or exclusion from practice before BIS. The Charging Letter also stated that failure to answer the charges within thirty (30) days after service of the Charging Letter will be treated as a default, and, although Respondent is entitled to an agency hearing, a written demand for hearing must be included with the answer.

The Charging Letter also advised Respondent that the U.S. Coast Guard was providing Administrative Law Judge services for these proceedings [9] and that Respondent's answer had to be filed with both the U.S. Coast Guard ALJ Docketing Center (address provided) and the BIS attorney representing the agency in this case. BIS forwarded the Charging Letter to the U.S. Coast Guard Administrative Law Judge Docketing Center for adjudication. On July 14, 2011, the ALJ Docketing Center issued its Notice of Docket Assignment to the Respondent and BIS.

*B. Service of the Charging Letter and the Deadline for Filing an Answer*

Section 766.3(b)(1) of the Regulations provides that notice of the issuance of a charging letter may be served on a respondent by mailing a copy by registered or certified mail addressed to the respondent at the respondent's last known address. 15 CFR 766.3(b)(1).

On July 11, 2011, BIS mailed the Charging Letter to Enterysys at its last known addresses at two locations: One in California, by certified mail, and one in India, by registered mail. Gov. Exh. 1.[10] BIS received a signed return receipt showing that Enterysys received the Charging Letter in California by certified mail on July 26, 2011. Gov. Exh. 2. BIS also received a return receipt for international mail showing that Enterysys received the Charging Letter in India by registered mail. Gov. Exh. 3. The date on the registered mail return receipt is difficult to discern, but appears to be July 25, 2011.

The record establishes that BIS properly provided notice of the issuance of the Charging Letter in accordance with 15 CFR 766.3(b)(1). With regard to the effective date of this service, 15 CFR 766.3(c) provides that ''[t]he date of service of notice of the issuance of a charging letter instituting an administrative enforcement proceeding * * * is the date of its delivery, or of its attempted delivery if delivery is refused.'' 15 CFR 766.3(c). The return receipts submitted by BIS establish that delivery occurred with service effective no later than July 26, 2011.

Under 15 CFR 766.6(a), a respondent must file an answer to a charging letter ''within 30 days after being served with notice of the issuance of the charging letter'' initiating the proceeding. Enterysys thus was obligated to answer the Charging Letter by no later than August 25, 2011. It has now been over one year and Enterysys has not filed an answer to the Charging Letter.

*C. Enterysys Defaulted Under 15 CFR Part 766*

BIS properly served the Charging Letter on Respondent and Respondent had notice in that Charging Letter of both its obligations to file an answer and the consequences for failure to do so.[11] In addition to the acknowledgements of receipt indicated by the certified and registered mail receipts, Enterysys defaulted even though Shekar Babu, the President of Enterysys, sent an email to BIS's counsel on August 2, 2011, further acknowledging receipt of the Charging Letter. *See* Gov. Exh. 4. Furthermore, BIS reminded Enterysys of the August 25, 2011 deadline for filing an answer, via an email from BIS's counsel to Mr. Babu on August 15, 2011. *See* Gov. Exh. 5. Yet, Enterysys still elected to sit on its rights. Given Enterysys's failure to answer the Charging Letter, BIS's Motion for Default Order is *granted* and Enterysys is found to be in *default* with respect to the Charging Letter.

The Regulations provide that where the respondent has failed to file a timely answer, such failure ''constitutes a waiver of the respondent's right to appear and contest the allegations in the charging letter.'' 15 CFR 766.7(a). That section further provides in pertinent part that ''[i]n such event, the administrative law judge, *on BIS's motion and without further notice to the respondent,* shall find the facts to be as alleged in the charging letter and render an initial or recommended decision containing findings of fact and appropriate conclusions of law and issue or recommend an order imposing appropriate sanctions.'' *Id.* (emphasis added). Respondent's only remedy to cure such a default is to file a petition to the Under Secretary pursuant to 15 CFR 766.7(b).

Enterysys has thus waived its right to appear and contest the allegations in the Charging Letter. Because of Enterysys's *default,* I also find the facts to be as alleged in the Charging Letter as to each of the sixteen charged violations and hereby determine that those facts establish that Enterysys committed one violation of Section 764.2(h) (2006), three violations of Section 764.2(e) (2007), and twelve violations of Section 764.2(a) (2005–2007). Under 15 CFR 766.7(a), the judge's duty at this stage is to issue a Recommended Decision in accordance with 15 CFR 766.17(b)(2).

[9] U.S. Coast Guard Administrative Law Judges provide these services pursuant to a Memoranda of Agreement and Office of Personnel Management letters issued in accordance with 5 U.S.C. 3344 and 5 CFR 930.230, which authorize the detail of U.S. Coast Guard Administrative Law Judges to adjudicate BIS cases involving export control regulations on a reimbursable basis.

[10] Gov. Exhs. refer to the exhibits BIS filed with its Motion for Default Order.

[11] As noted above, the Charging Letter not only set out each of the sixteen alleged violations, but also provided Enterysys with actual notice of, *inter alia,* the requirement to file an answer within thirty days, as well as the consequences of failing to timely file an answer, stating:

If Enterysys fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. See 15 CFR 766.6 and 766.7 (2010). If Enterysys defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Enterysys. The Under Secretary for Industry and Security may then impose up to the maximum penalty on the charges in this letter.

Gov, Exh. 1, at 4.

*D. Time for Decision*

The Regulations provide at 15 CFR 766.17(d) that administrative enforcement proceedings not involving Part 760 of the EAR (including review by the Under Secretary under 15 CFR 766.22) shall be concluded within one year from submission of the Charging Letter unless the Administrative Law Judge extends such period for good cause shown. Here, the Charging Letter was issued on July 11, 2011, which exceeds the one year period and I have not extended the period for concluding the enforcement proceedings.

However, 15 CFR 766.17(d) provides that ''[t]he charging letter will be deemed to have been submitted to the administrative law judge on the date the respondent filed an answer or on the date BIS files a motion for default order pursuant to § 766.7(a) of this part, *whichever occurs first.*'' (emphasis added). Respondent has not filed an answer to the Charging Letter. BIS filed its Motion of Default Order on September 14, 2012. Therefore, September 14, 2012 is the operative date for calculating the time for decision under the Regulations.

## II. Recommended Findings of Fact

The Recommended Findings of Fact and Conclusions of Law are based on a thorough and careful analysis of the documentary evidence, exhibits, and the entire record as a whole. Given Respondent's *default,* the facts alleged in the Charging Letter are deemed to be admitted and Respondent has waived its right to appear and contest the allegations contained therein.

**Charge 1: 15 CFR 764.2(h)—Evasion**

1. As described in greater detail in the Schedule of Violations attached to the Charging Letter, which is incorporated herein by reference, in or about May 2006, Enterysys obtained and exported to India twenty square meters of ceramic cloth by making false statements to a U.S. manufacturer and freight forwarder.

2. The ceramic cloth was an item subject to the Regulations, classified under Export Control Classification Number (''ECCN'') 1C010, controlled for National Security reasons, and valued at $15,460.

3. Enterysys did not obtain the required license pursuant to Section 742.4 of the Regulations

4. Enterysys purchased the ceramic cloth from a U.S. manufacturer and arranged for the manufacturer to ship the item to a freight forwarder identified by Enterysys, knowing that a license was required for the export of the ceramic cloth to India.

5. On or about May 1, 2006, Enterysys asked the U.S. manufacturer to ship the ceramic cloth to Enterysys's freight forwarder instead of directly to Enterysys. Enterysys was informed by the manufacturer that the material ''is a controlled commodity in terms of export to India,'' and the manufacturer asked Enterysys for assurance and a ''guarantee'' that the ceramic cloth would not be exported to India.

6. In response, also on or about May 1, 2006, Enterysys stated, ''This is not going out of USA.''

7. In addition, in arranging for the purchase from the U.S. manufacturer, Enterysys asked the manufacturer not to put any packing list, invoice or certificate of conformance in the box with the ceramic cloth, but rather to fax the documents to Enterysys.

8. Enterysys also arranged for its freight forwarder to ship the ceramic cloth to Enterysys in India.

9. Once the manufacturer shipped the ceramic cloth to the freight forwarder identified by Enterysys, Enterysys provided the freight forwarder with shipping documentation on or about May 2, 2006, including a packing list and invoice that falsely identified the ceramic cloth as twenty square meters of ''used waste material'' with a value of $200.

10. The ceramic cloth arrived at the freight forwarder on or about May 3, 2006, and was exported pursuant to Enterysys's instructions to India on or about May 5, 2006.

11. Enterysys undertook these acts to facilitate the export of U.S.-origin ceramic cloth to India without the required Department of Commerce license and to avoid detection by law enforcement.

**Charge 2: 15 CFR 764.2(a)—Engaging in Prohibited Conduct by Exporting Ceramic Cloth to India Without the Required License**

12. As described in greater detail in the Schedule of Violations attached to the Charging Letter, which is incorporated herein by reference, on or about May 5, 2006, Enterysys engaged in conduct prohibited by the Regulations by exporting to India twenty square meters of ceramic cloth.

13. The ceramic cloth was an item subject to the Regulations, classified under ECCN 1C010, controlled for National Security reasons and valued at $15,460.

14. Enterysys undertook these acts to facilitate the export of U.S.-origin ceramic cloth to India without the required Department of Commerce license.

**Charges 3–13: 15 CFR 764.2(a)—Engaging in Prohibited Conduct by Exporting Electronic Components to a Listed Entity Without the Required Licenses**

15. As described in greater detail in the Schedule of Violations attached to the Charging Letter, which is incorporated herein by reference, on eleven occasions between on or about August 12, 2005 and November 27, 2007, Enterysys engaged in conduct prohibited by the Regulations by exporting various electronic components, designated as EAR99 items [12] and valued at a total of $38,527, from the United States to Bharat Dynamics Limited (''BDL'') in Hyderabad, India, without the Department of Commerce license required by Section 744.1 and Supplement No. 4 to Part 744 of the Regulations.

16. BDL is an entity that is designated in the Entity List set forth in Supplement No. 4 to Part 744 of the Regulations, and at all times pertinent hereto that designation included a requirement that a Department of Commerce license was required for all exports to BDL.

**Charge 14: 15 CFR 764.2(e)—Acting With Knowledge of a Violation**

17. As described in greater detail in the Schedule of Violations attached to the Charging Letter, which is incorporated herein by reference, on or about July 11, 2007, in connection with the transaction described in Charge 11, above, Enterysys ordered, bought, stored, transferred, transported and forwarded electronic components, designated as EAR99 items and valued at $8,644, that were to be exported from the United States to BDL in Hyderabad, India, with knowledge that a violation of the Regulations was about to occur or was intended to occur in connection with the items.

18. Enterysys had knowledge that exports to BDL required authorization from the Department of Commerce because, in or around May 2007, Enterysys provided these items to a freight forwarder and was informed by the freight forwarder that items being exported to BDL required an export license and that BDL was on the Entity List.

19. The freight forwarder also directed Enterysys to the BIS Web site.

20. The freight forwarder then returned the items to Enterysys.

21. Subsequently, Enterysys provided the items to a second freight forwarder for export to BDL even though Enterysys knew that an export license was required and had not been obtained.

**Charges 15–16: 15 CFR 764.2(e)—Acting With Knowledge of a Violation**

22. As described in greater detail in the Schedule of Violations attached to the Charging Letter, which is incorporated herein by reference, on two occasions on or about November 7, 2007 and November 27, 2007, in connection with the transactions described in Charges 12 and 13, above, Enterysys ordered, bought, stored, transferred, transported and forwarded electronic components, designated as EAR99 items and valued at $11,266.85, that were to be exported from the United States to BDL in Hyderabad, India, with knowledge that a violation of the Regulations was about to occur or was intended to occur in connection with the items.

23. Enterysys had knowledge that exports to BDL required authorization from the Department of Commerce because, in or around May 2007, Enterysys was informed by a freight forwarder that items being exported to BDL required a license and that BDL was on the Entity List.

24. The freight forwarder also directed Enterysys to the BIS Web site.

25. Subsequently, Enterysys wrote an email on or about October 11, 2007, to the Department of Commerce requesting guidance about license requirements to BDL, and in response was provided with a copy of the Entity List that advised, among other things, that all exporting companies need to check transactions against certain lists, and was provided with a link to such lists on the BIS Web site.

[12] EAR99 is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 CFR 734.3(c) (2005–06).

26. Thereafter, on October 24, 2007, Enterysys's President Shekar Babu wrote an email stating that he was ''working directly with US Govt on the export license'' and that the license would ''take a month.''

27. Nevertheless, Enterysys did not apply for or obtain the required export license.

## III. Analysis

### *A. Burden of Proof*

The burden in this proceeding lies with BIS to prove the charges instituted against the Respondents by a preponderance of reliable, probative, and substantial evidence. *Steadman* v. *SEC.,* 450 U.S. 91, 102 (1981); *In the Matter of Abdulmir Madi, et al.,* 68 FR 57406 (October 3, 2003). In the simplest terms, the Agency must demonstrate that the existence of a fact is more probable than its nonexistence. *Concrete Pipe & Products* v. *Construction Laborers Pension Trust,* 508 U.S. 602, 622 (1993).

Given Respondent's *default,* the facts alleged in the Charging Letter are deemed admitted and can (and hereby do) serve as the basis for a finding of the violations alleged proven and the imposition of sanctions. *See* 15 CFR 766.7(a).

### *B. The Regulations' Prohibited Conduct and the Charges*

The Regulations generally prohibit a range of conduct under 15 CFR 764.2. Specifically relevant for these proceedings, the Regulations establish a violation for ''Evasion'' as follows: ''No person may engage in any transaction or take any other action with intent to evade the provisions of the EAA, the EAR, or any order, license or authorization issued thereunder.'' 15 CFR 764.2(h).

Furthermore, the Regulations establish a violation for ''Engaging in Prohibited Conduct'' as follows: ''No person may engage in any conduct prohibited by or contrary to, or refrain from engaging in any conduct required by, the EAA, the EAR, or any order, license or authorization issued thereunder.'' 15 CFR 764.2(a).

The Regulations also prohibit ''Acting with knowledge of a violation'' at 15 CFR 764.2(e) as follows:

> No person may order, buy, remove, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, any item exported or to be exported from the United States, or that is otherwise subject to the EAR, with knowledge that a violation of the EAA, the EAR, or any order, license or authorization issued thereunder, has occurred, is about to occur, or is intended to occur in connection with the item.''

The Regulations define ''Knowledge'' at 15 CFR 772.1 under ''Definitions of terms as used in the Export Administration Regulations (EAR).'' as:

> Knowledge of a circumstance (the term may be a variant, such as ''know,'' ''reason to know,'' or ''reason to believe'') includes not only positive knowledge that the circumstance exists or is substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence. Such awareness is inferred from evidence of the conscious disregard of facts known to a person and is also inferred from a person's willful avoidance of facts. This definition does not apply to part 760 of the EAR (Restrictive Trade Practices or Boycotts).

*Charge 1* alleges that Enterysys violated 15 CFR 764.2(h) in May 2006, when, with knowledge that the national-security-controlled ceramic cloth at issue required a license for export to India, Enterysys took actions with intent to evade that licensing requirement and avoid detection by law enforcement. Enterysys's evasive acts included falsely assuring the U.S. manufacturer in writing that the item would not be exported from the United States and providing a packing list and invoice to the freight forwarder that falsely identified the item not as ceramic cloth, but as ''used waste material.'' The facts establish that *Charge 1* is *proved.*

*Charge 2* alleges, in turn, that Enterysys violated 15 CFR 764(2)(a) when it exported the ceramic cloth to India without the required license, thereby engaging in conduct prohibited by the Regulations. The facts establish that *Charge* 2 is *proved.*

*Charges 3–13* allege that Enterysys also violated 15 CFR 764(2)(a) between August 2005 and November 2007, when without the required licenses, it exported electronic components to Bharat Dynamics Limited (''BDL''), an Indian entity on BIS's Entity List at all times pertinent hereto. The facts establish that *Charges 3–13* are *proved.*

In connection with the transactions alleged in *Charges 11-13,* respectively, *Charges 14–16* allege that Enterysys violated 15 CFR 764.2(e), when, *inter alia,* after being informed that BDL was on the Entity List and that exports to BDL required a license, Enterysys nevertheless ordered, bought, stored, transferred, transported and forwarded electronic components for export from the United States to BDL without the required licenses. In so doing, Enterysys acted with knowledge that a violation of the Regulations was about to occur or was intended to occur in connection with the items. The facts establish that *Charges 14–16* are *proved.*

## IV. Ultimate Findings of Fact and Conclusions of Law

1. Respondent and the subject matter of these proceedings are properly within the jurisdiction vested in BIS under the EAA, and the EAR, as extended by Executive Order and Presidential Notices.

2. As detailed in the Findings of Fact Nos. 1–11, Enterysys violated 15 CFR 764.2(h) by engaging in the described transaction and taking other actions with intent to evade the provisions of the Regulations.

3. As detailed in Findings of Fact Nos. 12–14, Enterysys violated 15 CFR 764(2)(a) when it exported the ceramic cloth to India without the required license, thereby engaging in conduct prohibited by the Regulations.

4. As detailed in Findings of Fact Nos. 15–16, Enterysys violated 15 CFR 764.2(a) on 11 occasions by exporting EAR99 electronic components to a listed entity without the required licenses.

5. As detailed in Findings of Fact Nos. 17–21, Enterysys violated 15 CFR 764.2(e) by ordering, buying, storing, transferring, transporting and forwarding the EAR99 electronic components for export from the United States to a known listed entity without the required licenses.

6. As detailed in Findings of Fact Nos. 22–27, Enterysys violated 15 CFR 764.2(e) on two further occasions by ordering, buying, storing, transferring, transporting and forwarding the EAR99 electronic components for export from the United States to a known listed entity without the required licenses.

## V. Recommended Sanction

Section 764.3 of the Regulations sets forth the sanctions BIS may seek for violations of the Regulations. The applicable sanctions are: (i) A monetary penalty, (ii) a denial of export privileges under the Regulations, and/or (iii) suspension from practice before BIS. 15 CFR 764.3. BIS submits in its Motion for Default Order that the nature and extent of Enterysys's misconduct demonstrates a severe disregard for U.S. export control laws and calls for the imposition of a significant sanction. BIS also submits that Enterysys's principal, Shekar Babu, apparently is located in India and that a monetary penalty may be difficult to collect and may not serve a sufficient deterrent effect. BIS thus submits that the Court should recommend the imposition of a denial of export privileges of at least ten years.

The facts admitted by *default* demonstrate that Enterysys engaged in evasive and knowing misconduct and a series of unlawful exports. Enterysys's

misconduct included deliberate efforts to evade the Regulations in connection with the export of ceramic cloth, an item that was controlled for national security reasons under ECCN 1C010 and that required a BIS license for export to India pursuant to Section 742.4 of the Regulations. Enterysys falsely assured the U.S. manufacturer that the item would not be exported from the United States to India (or elsewhere); took additional steps so that the manufacturer would not place any identifying documents in the packaging with the ceramic cloth; and provided the freight forwarder with a packing list falsely identifying the ceramic cloth as ''used waste material'' with a minimal value. Enterysys thus was able to evade the applicable licensing requirement and export the item to India without seeking and obtaining an export license from BIS.

Enterysys similarly committed three knowledge violations in connection with the unlicensed export of electronic components to BDL, an Indian entity on BIS's Entity List continuously from November 1998 until January 2011. BDL's placement on the Entity List, which established a license requirement for all exports to BDL of items subject to the EAR, occurred through a rule that established sanctions and other measures for certain entities in India and Pakistan that were ''determined to be involved in nuclear or missile activities.'' India and Pakistan Sanctions and Other Measures, 63 FR 64,322 (Nov. 19, 1998).

The facts demonstrate that after being informed specifically that BDL was on the Entity List and that a license was required for exports to BDL, Enterysys nonetheless ordered, bought, stored, transferred, transported and forwarded electronic components subject to the EAR for export to BDL. Enterysys thus acted with knowledge that a violation of the Regulations was about to occur or was intended to occur in connection with the export of these items.

These evasion and knowledge violations establish Enterysys's disregard for the Regulations and U.S. export control laws. In addition, Enterysys made eleven other unlicensed exports of electronic components to BDL in violation of Section 764.2(a) of the Regulations.

Although Section 764.2(a) is a strict liability provision (unlike Sections 764.2(e) and (h)), these numerous additional violations further support BIS's sanction request. In total, Enterysys committed sixteen violations relating to twelve unlicensed exports, with two of the violations involving an item controlled for national security reasons and fourteen involving an Entity List entity sanctioned due to its involvement in nuclear or missile activities.

BIS's request also is supported by prior BIS case law. *See, e.g., In the Matter of Technology Options (India) Pvt. Ltd. and Shivram Rao,* 69 FR 69,887 (Dec. 1, 2004), *as amended on other grounds*, 69 FR 71,397 (Dec. 9, 2004) (a ten-year denial of export privileges imposed where the respondents defaulted after being charged with two counts of evading the Regulations, a conspiracy charge, and a false statement charge in connection with exports ultimately intended, as in this case, for an Indian entity included on BIS's Entity List); *In the Matter of Winter Aircraft Products SA*, 72 FR 29,965 (May 30, 2007) (a ten-year denial of export privileges imposed where the respondent defaulted after being charged with two counts of evasion in connection with exports to Iran, including failing to inform the U.S. suppliers of the true destination for the aircraft parts at issue).

Respondent's misconduct exhibited a severe disregard for the Regulations and U.S. export controls and a monetary penalty is not likely to be an effective deterrent in this case. Given the nature and number of Enterysys's violations, I recommend, pursuant to Section 766.7(a), that the Under Secretary of Commerce for Industry and Security (''Under Secretary'') impose a ten-year denial of export privileges against Respondent.

*Wherefore:*

**VII. Order**

*It is hereby ordered* that BIS's Motion for Default Order is *granted* and Respondent, Enterysys Corporation, is found to be in *default;* the *recommended order* for which is contained below.

**VIII. Recommended Order**

[REDACTED SECTION]

Within thirty (30) days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written order, affirming, modifying, or vacating the Recommended Decision and Order. *See* 15 CFR § 766.22(c). A copy of the Agency regulations for Review by the Under Secretary can be found as *Attachment A.*

Done and dated on this 15th day of October, 2012 at Alameda, California.

Hon. Parlen L. McKenna,

*Acting Chief Administrative Law Judge, United Coast Guard.*

**Attachment A**

*Notice to the Parties Regarding Review by the Under Secretary*

15 CFR 766.22

Section 766.22 Review by Under Secretary.

(a) Recommended decision. For proceedings not involving violations relating to part 760 of the EAR, the administrative law judge shall immediately refer the recommended decision and order to the Under Secretary. Because of the time limits provided under the EAA for review by the Under Secretary, service of the recommended decision and order on the parties, all papers filed by the parties in response, and the final decision of the Under Secretary must be by personal delivery, facsimile, express mail or other overnight carrier. If the Under Secretary cannot act on a recommended decision and order for any reason, the Under Secretary will designate another Department of Commerce official to receive and act on the recommendation.

(b) Submissions by parties. Parties shall have 12 days from the date of issuance of the recommended decision and order in which to submit simultaneous responses. Parties thereafter shall have eight days from receipt of any response(s) in which to submit replies. Any response or reply must be received within the time specified by the Under Secretary.

(c) Final decision. Within 30 days after receipt of the recommended decision and order, the Under Secretary shall issue a written order affirming, modifying or vacating the recommended decision and order of the administrative law judge. If he/she vacates the recommended decision and order, the Under Secretary may refer the case back to the administrative law judge for further proceedings. Because of the time limits, the Under Secretary's review will ordinarily be limited to the written record for decision, including the transcript of any hearing, and any submissions by the parties concerning the recommended decision.

(d) Delivery. The final decision and implementing order shall be served on the parties and will be publicly available in accordance with Sec. 766.20 of this part.

(e) Appeals. The charged party may appeal the Under Secretary's written order within 15 days to the United States Court of Appeals for the District of Columbia pursuant to 50 U.S.C. app. Sec. 2412(c)(3).

**Certificate of Service**

I hereby certify that I have served the foregoing *recommended decision &*

*order* (11–BIS–0005) via overnight carrier to the following persons and offices:

Eric L. Hirschhorn, Esq., Under Secretary for Industry and Security, U.S. Department of Commerce, Room H–3839, 14th & Constitution Avenue NW., Washington, DC 20230, Telephone: (202) 482–5301.

John T. Masterson, Esq., Chief Counsel for Industry and Security, Joseph V. Jest, Esq., Chief of Enforcement and Litigation, Thea D. R. Kendler, Senior Counsel, Attorneys for Bureau of Industry and Security, Office of Chief Counsel for Industry and Security, United States Department of Commerce, Room H–3839, 14th Street & Constitution Avenue NW., Washington, DC 20230, Telephone: (202) 482–5301.

Enterysys Corporation, Shekar Babu, 1307 Muench Court, San Jose, CA 95131, (FEDEX).

Plot No. 39, Public Sector, Employees Colony, New Bowenpally 500011, Secunderabad, India, (FEDEX International).

Hearing Docket Clerk, USCG, ALJ Docketing Center, 40 S. Gay Street, Room 412, Baltimore, Maryland 21202–4022, Telephone: (410) 962–5100.

Done and dated on this 17th day of October, 2012, Alameda, California.

Cindy J. Melendres,

*Paralegal Specialist to the Hon. Parlen L. McKenna.*

[FR Doc. 2012–29789 Filed 12–13–12; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–968]**

### Aluminum Extrusions From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Affirmative Countervailing Duty Determination and Notice of Amended Final Affirmative Countervailing Duty Determination

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

**SUMMARY:** On November 30, 2012, the United States Court of International Trade (CIT) sustained the Department of Commerce's (Department's) results of redetermination, which recalculated the all others subsidy rate in the countervailing duty (CVD) investigation of aluminum extrusions from the People's Republic of China (PRC) [1] pursuant to the CIT's remand order in *MacLean Fogg IV.* [2] Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken,* [3] as clarified by *Diamond Sawblades,* [4] the Department is notifying the public that the final judgment in this case is not in harmony with the Department's *Final Determination* and is therefore amending its *Final Determination.*

**DATES:** *Effective Date:* December 10, 2012.

**FOR FURTHER INFORMATION CONTACT:** Robert Copyak, AD/CVD Operations, Office 8, Import Administration, U.S. Department of Commerce, C129, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–2209.

**SUPPLEMENTARY INFORMATION:** On April 4, 2011, the Department issued the *Final Determination.* In the *Final Determination,* the Department assigned a total adverse facts available (AFA) rate of 374.14 percent to the three non-cooperating mandatory respondents and calculated company-specific net subsidy rates for two participating voluntary respondents. Pursuant to the statute and regulations, the Department averaged the rates calculated for the mandatory respondents and applied this rate as the all-others rate.[5]

In *MacLean Fogg I,* the CIT held that the statute was ambiguous concerning whether the Department is required to base the all-others rate on rates calculated for mandatory respondents and therefore the Department was permitted to use the mandatory respondent's rate in calculating the all-others rate, provided it did so in a reasonable manner.[6] Nonetheless, the CIT remanded the all-others rate to the Department for reconsideration because the Department had failed to articulate a logical connection between the mandatory respondent rates, based on AFA, and the all-others companies.[7]

In *MacLean Fogg II,* the CIT held that the Department's preliminary all-others rate in the *Preliminary Determination* [8] was also subject to review under the same reasonableness standard because it had legal effect on the entries made during the interim time period between the issuance of the preliminary and final CVD rates, both as a cash deposit rate and, if an annual review was sought, as a cap on the final rate for those particular entries.[9] Thus, in *MacLean-Fogg II,* the Court held that it would consider the reasonableness of the preliminary rate when it reviews Commerce's remand determination.[10]

In *MacLean Fogg III,* the Court considered the Department's first remand results in which the Department did not recalculate the all-others rate, but rather, provided data indicating that the rate calculated for the mandatory respondents is logically connected to the all-others companies because the mandatory respondents comprise a significant portion of the Chinese extruded aluminum producers and exporters and thus are representative of the Chinese extruded aluminum industry as a whole.[11] The CIT held that ''nothing in the statute requires that the mandatory respondents' rates, even when based on AFA, may only be used to develop rates for uncooperative respondents.'' [12] However, in *MacLean Fogg III,* the CIT also concluded that the Department failed to explain how the all-others rate was remedial and not punitive when it assumed use of all subsidy programs identified in the investigation.[13] Therefore, the CIT remanded for the Department's consideration of the issue.[14]

In its final results of redetermination pursuant to *MacLean Fogg III,* the Department designated the all-others rate as equal to the preliminary rate it calculated for the mandatory respondents: 137.65 percent *ad valorem.*[15] In *MacLean Fogg IV,* the CIT affirmed the Department's final results of redetermination pursuant to remand, holding that the Department's selection of this all-others rate is reasonable.[16]

[1] *See Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 76 FR 18521 (April 4, 2011) (*Final Determination*).

[2] *See MacLean Fogg Co., et al.* v . *United States,* Slip Op. 12–146, Court No. 11–00209 (November 30, 2012) (*MacLean Fogg IV*).

[3] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[4] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[5] *See Final Determination,* 76 FR at 18523, and accompanying Issues and Decision Memorandum (I&D Memorandum) at Comment 9.

[6] *See MacLean-Fogg Co.* v. *United States,* 836 F. Supp. 2d 1367, 1373–1374 (CIT 2012) (*MacLean-Fogg I*).

[7] *Id.* at 1376.

[8] *See Aluminum Extrusions From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination,* 75 FR 54302 (September 7, 2010) (*Preliminary Determination*).

[9] *See MacLean-Fogg Co.* v. *United States,* 853 F. Supp. 2d 1253, 1256 (2012) (*MacLean-Fogg II*).

[10] *Id.*

[11] See *MacLean-Fogg Co.* v. *United States,* 853 F. Supp. 2d 1336, 1338 (2012) (*MacLean-Fogg III*).

[12] *Id.* at 1341.

[13] *Id.* at 1342—1343.

[14] *Id.* at 1343.

[15] *See* ''Final Results of Redetermination Pursuant to Court Remand,'' dated September 13, 2012.

[16] *See MacLean Fogg IV* at 11–12. The Court also held that the preliminary all-others rate, at issue in *MacLean Fogg II,* is reasonable, and sustained this rate. *Id.* at 12.

**Timken Notice**

In its decision in *Timken*[17] as clarified by *Diamond Sawblades,* the CAFC has held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's November 30, 2012, judgment in *MacLean Fogg IV* sustaining the Department's decision to designate the all others rate as equal to the preliminary rate it calculated for the mandatory respondents (137.65 percent *ad valorem*), constitutes a final decision of that court that is not in harmony with the Department's *Final Determination.* This notice is published in fulfillment of the publication requirements of *Timken.*

**Amended Final Determination**

Because there is now a final court decision with respect to the *Final Determination,* the Department amends its *Final Determination.* The Department finds the following revised net subsidy rate exists:

| Company | *Ad valorem* net subsidy rate |
|---|---|
| All Others Rate ..... | 137.65 percent *ad valorem.* |

For companies subject to the all others rate, the cash deposit rate will be the rate listed above and the Department will instruct U.S. Customs and Border Protection accordingly. This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: December 6, 2012.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

[FR Doc. 2012–30213 Filed 12–13–12; 8:45 am]

BILLING CODE 3510–DS–P

[17] *See Timken,* 893 F.2d at 341.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648–XC368

### International Affairs; U.S. Fishing Opportunities in the Northwest Atlantic Fisheries Organization Regulatory Area

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

**ACTION:** Notification of U.S. fishing opportunities.

**SUMMARY:** NMFS announces fishing opportunities in the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area. This action is necessary to make fishing privileges available on an equitable basis.

**DATES:** Effective January 1, 2013, through December 31, 2013. Expressions of interest regarding fishing opportunities in NAFO will be accepted through December 31, 2012.

**ADDRESSES:** Expressions of interest regarding U.S. fishing opportunities in NAFO should be made in writing to Patrick E. Moran in the NMFS Office of International Affairs, at 1315 East-West Highway, Silver Spring, MD 20910 (phone: 301–427–8370, fax: 301–713–2313, email: *Pat.Moran@noaa.gov*).

Information relating to NAFO fishing opportunities, NAFO Conservation and Enforcement Measures, and the High Seas Fishing Compliance Act (HSFCA) Permit is available from Douglas Christel, at the NMFS Northeast Regional Office at 55 Great Republic Drive, Gloucester, MA 01930 (phone: 978–281–9141, fax: 978–281–9135, email: *douglas.christel@noaa.gov*) and from NAFO on the World Wide Web at *http://www.nafo.int.*

**FOR FURTHER INFORMATION CONTACT:** Patrick E. Moran, 301–427–8370.

**SUPPLEMENTARY INFORMATION:**

**What Fishing Opportunities Are Available?**

The principal species managed by NAFO are cod, flounder, redfish, American plaice, halibut, hake, capelin, shrimp, skates and *Illex* squid. NAFO maintains conservation measures for fishery resources in its Regulatory Area that include one effort limitation fishery (shrimp), as well as the other fisheries that are managed by total allowable catches (TACs) allocated among NAFO Contracting Parties. At the 2012 NAFO Annual Meeting, the United States received national quota allocations for three NAFO stocks to be fished during 2013. However, only redfish and squid will be made available to U.S. fishing interests during 2013, as further described below. The species, location, and allocation (in metric tons (mt)) of these 2013 U.S. fishing opportunities, as found in Annexes I.A, I.B, and I.C of the 2013 NAFO Conservation and Enforcement Measures, are as follows:

1. Redfish, NAFO Division 3M, 69 mt.
2. Squid (Illex), NAFO Subareas 3 & 4, 453 mt.
3. Shrimp, NAFO Division 3L, 96 mt.

Additionally, the United States may be transferred up to 1,000 mt (with the possibility of 500 additional mt) of NAFO Division 3LNO yellowtail flounder from Canada's quota allocation if requested before January 1 of each year, or any succeeding year through 2018, based upon a bilateral arrangement with Canada. The United States has already requested this 1,000 mt of Division 3LNO yellowtail flounder from Canada for 2013. Up to 500 mt of additional Division 3LNO yellowtail flounder could be made available on the condition that the United States transfers its Division 3L shrimp allocation (96 mt in 2013) to Canada. The United States has requested this additional Division 3LNO yellowtail flounder for 2013 to provide additional fishing opportunities for U.S. vessels following the successful development of a U.S. yellowtail flounder fishery within the NAFO Regulatory Area during 2012. If Canada accepts this request, the U.S. allocation of Division 3L shrimp will not be available to U.S. vessels in 2013. The arrangement for the transfer of Canadian yellowtail flounder quota would enable U.S. vessels to harvest American plaice as bycatch in the yellowtail flounder fishery in an amount equal to 15 percent of the total yellowtail flounder quota transferred to the United States. Additional quota for these and other stocks managed within the NAFO Regulatory Area may be available to U.S. vessels through industry-initiated chartering arrangements or transfers of quota from other NAFO Contracting Parties.

U.S. fishermen may also access stocks in which the United States has not received a national quota (also known as the ''Others'' allocation), including: Division 3M cod (57 mt); Division 3LN redfish (39 mt); Division 3O redfish (100 mt); Division 3NO white hake (59 mt); Division 3LNO skates (258 mt). Note that the United States shares these allocations with other NAFO Contracting Parties, and access to such stocks is on a first-come-first-served basis. Fishing is halted by NAFO when

the ''Others'' allocation for a particular stock has been fully harvested.

**Who can apply for these fishing opportunities?**

Expressions of interest to fish for any or all of the 2013 U.S. fishing opportunities in NAFO described above will be considered from all U.S. fishing interests (e.g., vessel owners, processors, agents, others). Applicants are urged to carefully review and thoroughly address the application requirements and selection criteria as detailed below. Expressions of interest should be directed in writing to Patrick E. Moran (see **ADDRESSES**).

**What information is required in an application letter?**

Expressions of interest should include a detailed description of anticipated fishing operations in 2013. This includes, but is not limited to, the following elements: Intended target species; proposed dates of fishing operations; vessels to be used to harvest fish, including the name, registration, and home port of the intended harvesting vessel, as appropriate; the number of fishing personnel involved in vessel operations; intended landing port; for landing ports outside of the United States, whether or not the product will be shipped to the United States for processing; processing facilities to be employed; target market for harvested fish; and evidence demonstrating the ability of the applicant to successfully prosecute fishing operations in the NAFO Regulatory Area. Note that U.S. applicant vessels must be in possession of, or eligible for, a valid HSFCA permit, which is available from the NMFS Northeast Regional Office. Information regarding other requirements for fishing in the NAFO Regulatory Area is detailed below and is also available from the NMFS Northeast Regional Office (see **ADDRESSES**). U.S. applicants wishing to harvest U.S. allocations using a vessel from another NAFO Contracting Party, or transfer U.S. allocations to another NAFO Contracting Party should see below for details on U.S. and NAFO requirements for such activities. If you have further questions regarding what information is required in an expression of interest, please contact Patrick E. Moran (see **ADDRESSES**).

**What criteria will be used in identifying successful applicants?**

Applicants demonstrating the greatest benefits to the United States through their intended operations will be most successful. Such benefits might include (but are not limited to): The use of U.S vessels; detailed, positive impacts on U.S. employment; use of U.S. processing facilities; transport, marketing and sales of product within the United States; other benefits to U.S. businesses; and documentation of the physical characteristics and economics of the fishery for future use by the U.S. fishing industry. After reviewing all requests for allocations submitted, NMFS may decide not to grant any allocations if it is determined that no requests adequately meet the criteria described in this notice. To ensure equitable access by U.S. fishing interests, NMFS may provide additional guidance or procedures, or may promulgate regulations designed to allocate fishing interests to one or more U.S. applicants from among qualified applicants.

All applicants will be notified of the allocation decision as soon as possible. Once allocations have been awarded, NMFS will immediately take appropriate steps to notify NAFO and other appropriate actions to facilitate operations by U.S. fishing interests.

**What if I want to charter a vessel to fish available U.S. allocations?**

Under the bilateral arrangement with Canada, the United States may enter into a chartering (or other) arrangement with a Canadian vessel to harvest the transferred yellowtail flounder. For other NAFO-regulated stocks, the United States may enter into a chartering arrangement with a vessel from any other NAFO Contracting Party. Prior notification to the NAFO Executive Secretary is necessary in either case. Expressions of interest intending to make use of another NAFO Contracting Party vessel under chartering arrangements should provide the following information: The name and registration number of the intended vessel; a copy of the charter agreement; a detailed fishing plan; a written letter of consent from the applicable NAFO Contracting Party; the date from which the vessel is authorized to commence fishing; and the duration of the charter (not to exceed six months). Note that expressions of interest using another NAFO Contracting Party vessel under charter should be accompanied by a detailed description of anticipated benefits to the United States, as described above.

Any vessel wishing to enter into a chartering arrangement with the United States must be in full current compliance with the requirements outlined in the NAFO Convention and Conservation and Enforcement Measures. These requirements include, but are not limited to, submission of the following reports to the NAFO Executive Secretary: Notification that the vessel is authorized by its flag State to fish within the NAFO Regulatory Area during 2013, provisional monthly catch reports for all vessels of that NAFO Contracting Party operating in the NAFO Regulatory Area, daily catch reports for each day fished by the subject vessel within the Regulatory Area, observer reports within 30 days following the completion of a fishing trip, and an annual statement of actions taken by its flag state to comply with the NAFO Convention. The United States may also consider the vessel's previous compliance with NAFO bycatch, reporting and other provisions, as outlined in the NAFO Conservation and Enforcement Measures, before entering into a chartering arrangement. More details on NAFO requirements for chartering operations are available from NMFS (see **ADDRESSES**).

**What if I want to transfer U.S. quota allocations to another NAFO party?**

Under NAFO rules in effect for 2013, the United States may transfer fishing opportunities with the consent of the receiving NAFO Contracting Party and with prior notification to the NAFO Executive Secretary. An applicant may request to be allocated one of the above U.S. opportunities so that it may be transferred to another NAFO party, although such applications will generally be given lesser priority than those that involve more direct harvesting or processing by U.S. entities. Applications to transfer U.S. fishing opportunities should contain a letter of consent from the receiving NAFO Contracting Party, and should also be accompanied by a detailed description of anticipated benefits to the United States. As in the case of chartering operations, the United States may also consider a NAFO Contracting Party's previous compliance with NAFO bycatch, reporting and other provisions, as outlined in the NAFO Conservation and Enforcement Measures, before entering agreeing to a transfer.

**What rules must I follow while fishing?**

U.S. applicant vessels must be in possession of, or eligible for, a valid HSFCA permit, which is available from the NMFS Northeast Regional Office. Note that vessels issued valid HSFCA permits under 50 CFR part 300 are exempt from the Northeast multispecies and monkfish permit, mesh size, effort-control, and possession limit restrictions, specified in §§ 648.4, 648.80, 648.82, 648.86, 648.87, 648.91, 648.92, and 648.94, respectively, while transiting the U.S. exclusive economic zone (EEZ) with multispecies and/or

monkfish on board the vessel, or landing multispecies and/or monkfish in U.S. ports that were caught while fishing in the NAFO Regulatory Area, provided:

1. The vessel operator has a letter of authorization issued by the Regional Administrator on board the vessel;

2. For the duration of the trip, the vessel fishes, except for transiting purposes, exclusively in the NAFO Regulatory Area and does not harvest fish in, or possess fish harvested in, or from, the U.S. EEZ;

3. When transiting the U.S. EEZ, all gear is properly stowed in accordance with one of the applicable methods specified in § 648.23(b); and

4. The vessel operator complies with the provisions/conditions specified on the HSFCA permit and all NAFO conservation and enforcement measures while fishing in the NAFO Regulatory Area.

Relevant NAFO Conservation and Enforcement Measures include, but are not limited to, maintenance of a fishing logbook with NAFO-designated entries; adherence to NAFO hail system requirements; presence of an on-board observer; deployment of a functioning, autonomous vessel monitoring system authorized by issuance of the HSFCA permit; and adherence to all relevant minimum size, gear, bycatch, and other requirements. Further details regarding U.S. and NAFO requirements are available from the NMFS Northeast Regional Office, and can also be found in the current NAFO Conservation and Enforcement Measures on the Internet (see **ADDRESSES**).

Dated: December 7, 2012.

**Elizabeth McLanahan,**

*Acting Director, Office of International Affairs, National Marine Fisheries Service.*

[FR Doc. 2012–30136 Filed 12–13–12; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC395**

### Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Pacific Fishery Management Council's (Pacific Council) Groundfish Management Team (GMT) will hold a week long working meeting, which is open to the public. The GMT will also meet with a subgroup of the Council's Scientific and Statistical Committee (SSC).

**DATES:** The GMT meeting will be held Monday, January 14, 2013 from 1 p.m. until business for the day is completed. The GMT meeting will reconvene Tuesday, January 15 through Friday, January 18 from 8:30 a.m. until business for each day has been completed. The joint meeting of the SSC subgroup and the GMT will occur on January 17, 2013.

**ADDRESSES:** The meetings will be held at the Hotel Deca, Governor's Room, 4507 Brooklyn Avenue NE., Seattle, WA; telephone: (206) 634–2000.

*Council address:* Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kelly Ames or Mr. John DeVore, Staff Officers, Pacific Council; telephone: (503) 820–2280.

**SUPPLEMENTARY INFORMATION:** The primary purpose of the GMT working meeting is to prepare for the 2013 Council meetings, including the upcoming harvest specifications and management measures cycle. Specific agenda topics include the use of descending devices to recompress rockfish discarded in west coast recreational fisheries and the associated revised mortality rates; changes to the harvest specifications and management measures process under the proposed Amendment 24 to the groundfish Fishery Management Plan; evaluation of and proposed changes to the groundfish stock complexes; and a review of impact projection models. The GMT may also address other assignments relating to groundfish management. No management actions will be decided by the GMT. The GMT's task will be to develop recommendations for consideration by the Council at its meetings in 2013.

Although non-emergency issues not contained in the meeting agenda may come before the GMT for discussion, those issues may not be the subject of formal GMT action during this meeting. GMT 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 GMT'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 Mr. Kris Kleinschmidt at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: December 11, 2012.

**Tracey L. Thompson,**

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

[FR Doc. 2012–30208 Filed 12–13–12; 8:45 am]

**BILLING CODE 3510–22–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed Additions to the Procurement List.

**SUMMARY:** The Committee is proposing to add products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**DATES:** *Comments Must Be Received on or Before:* 1/14/2013.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT:** Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

**Additions**

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products and service are proposed for addition to Procurement List for production by the nonprofit agencies listed:

**Products**

*NSN:* MR 1146—Serving Set, Stand and Bowl, 16oz.
*NPA:* Industries for the Blind, Inc., West Allis, WI.
*Contracting Activity:* Military Resale-Defense Commissary Agency (DeCA), Fort Lee, VA.
*Coverage:* C-List for the requirements of military commissaries and exchanges as aggregated by the Defense Commissary Agency.
*NSN:* 7510–00–NIB–1886—Tape, Vinyl Backing, Rubber Adhesive, Yellow, 36 yds.
*NSN:* 7510–00–NIB–1891—Tape, Safety Stripe, Rubber Adhesive, Black/Yellow, 36 yds.
*Coverage:* A-List for the Total Government Requirement as aggregated by the General Services Administration.
*NSN:* 7510–00–NIB–1890—Tape, Safety Stripe, Rubber Adhesive, Black/White, 36 yds.
*Coverage:* B-List for the Broad Government Requirement as aggregated by the General Services Administration.
*NPA:* Cincinnati Association for the Blind, Cincinnati, OH.
*Contracting Activity:* General Services Administration, New York, NY.

**Service**

*Service Type/Location:* Water System Hydrant Maintenance, Joint Base Lewis-McChord, WA.
*NPA:* Skookum Educational Programs, Bremerton, WA.
*Contracting Activity:* Dept of the Army, W6QM MICC–JB Lewis-McChord, Fort Lewis, WA.

**Barry S. Lineback,**

*Director, Business Operations.*

[FR Doc. 2012–30174 Filed 12–13–12; 8:45 am]

**BILLING CODE 6353–01–P**

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

### Notice of Availability for the Draft Environmental Impact Statement for the Gregory Canyon Landfill Project, San Diego County, CA

**AGENCY:** Department of the Army—U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of Availability.

**SUMMARY:** The U.S. Army Corps of Engineers, Los Angeles District (Regulatory Division) has completed a Draft Environmental Impact Statement (EIS) for the proposed Gregory Canyon Landfill Project in San Diego County, CA. The project proponent and landowner, Gregory Canyon, Ltd., requires authorization pursuant to Section 404 of the Clean Water Act to discharge fill material into waters of the U.S. associated with the construction of the proposed project.

**FOR FURTHER INFORMATION CONTACT:** Questions or comments concerning the Draft EIS should be directed to William H. Miller, Senior Project Manager, Attention: Gregory Canyon, Regulatory Division, U.S. Army Corps of Engineers, 6010 Hidden Valley Road, Suite 105, Carlsbad, CA, (602) 230–6954 or *gregorycanyonEIS–SPL@usace.army.mil.*

**SUPPLEMENTARY INFORMATION:** This Draft EIS has been filed with the Environmental Protection Agency to be published in the **Federal Register**. The review period for the Draft EIS will begin from the date of publishing the Notice of Availability in the **Federal Register**, which is on December 14, 2012. Please forward your comments for the Draft EIS to the contact listed above by February 12, 2013.

**David J. Castanon,**

*Chief, Regulatory Division, Los Angeles District.*

[FR Doc. 2012–30197 Filed 12–13–12; 8:45 am]

**BILLING CODE 3720–58–P**

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

### Intent to Prepare an Environmental Impact Statement (EIS) for the Donlin Gold Project

**AGENCY:** U.S. Army Corps of Engineers, Department of Defense.

**ACTION:** Notice of intent.

**SUMMARY:** The Alaska District, U.S. Army Corps of Engineers (Corps) intends to prepare an Environmental Impact Statement (EIS) to identify and analyze the potential impacts associated with the proposed Donlin Gold Project, which would be an open pit, hardrock gold mine located 10 miles north of the village of Crooked Creek, Alaska. The Corps is the lead Federal agency; the Bureau of Land Management (BLM), the U.S. Fish and Wildlife Service, the Pipeline and Hazardous Materials Safety Administration, the Environmental Protection Agency, and the Alaska Department of Natural Resources will serve as cooperating agencies in developing the EIS. The Tribal governments of Crooked Creek, Chuathbaluk, and Napaimute have also indicated their intention to serve as cooperating agencies. The Corps will be evaluating a permit application for work and/or discharges of pollutants under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. The EIS will be used as a basis for the permit decision in compliance with the National Environmental Policy Act (NEPA).

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and the DEIS should be referred to: Mr. Don Kuhle, Regulatory Division, *telephone:* (907) 753–2780, *email: don.p.kuhle@usace.army.mil,* or *mail:* U.S. Army Corps of Engineers, P.O. Box 6898, Joint Base Elmendorf Richardson, AK 99506–0898. To be added to the project mailing list and for additional information, please visit the following web site: *http://www.donlingoldeis.com.*

**SUPPLEMENTARY INFORMATION:**

*1. Proposed Action.* Donlin Gold LLC is proposing the development of an open pit, hardrock gold mine located 277 miles west of Anchorage, 145 miles northeast of Bethel, and 10 miles north of the community of Crooked Creek. The proposed project would require approximately 3 to 4 years to construct with a projected mine life of approximately 27.5 years. Major project components include excavation of an open pit, that ultimately would be approximately 2.2 miles long by 1 mile wide by 1,850 feet deep; a waste treatment facility (tailings impoundment) approximately 1 mile long, and ultimately covering 2,350 acres; a waste rock facility covering approximately 2,300 acres; a mill facility processing approximately 59,000 short tons of ore per day; a natural gas-fired power plant with a total connected load of 227 MW, supplied by a 313-mile, small-diameter (approximately 14-inches), natural gas pipeline from the west side of Cook Inlet to the mine site; and transportation infrastructure including a 5,000-foot airstrip, a 30-mile-long road from the mine site to a new barge landing near Jungjuk Creek on the Kuskokwim River, and barge terminal facilities in Bethel. The proposed mine and related facilities would have a total foot print of approximately 16,300 acres. There is currently no road or rail access to the site, which is isolated from existing power and other related infrastructure.

The pipeline route would originate at the Beluga National Gas Pipeline, with a single compressor station at milepost 5. The route proceeds north to the Skwentna River, continuing alongside the Skwentna River to Puntilla Lake. It then crosses the Alaska Range through Rainy Pass and Rohn, before turning southwest to Farewell. The route then runs west along the north side of the Alaska Range to cross the Kuskokwim River at approximately Devil's Elbow. The last 80 miles follow ridgelines north

of the Kuskokwim River to the Donlin Gold mine site.

2. *Alternatives.* A reasonable range of alternatives will be identified and evaluated through scoping and the alternatives development process.

3. *Scoping Process.* The scoping period will extend from December 14, 2012 through March 29, 2013.

a. *Public involvement.* The Corps invites full public participation to promote open communication on the issues to be addressed in preparation of the EIS regarding the proposed action. All Federal, State, Tribal, and local agencies, and other interested persons or organizations, are urged to participate in the NEPA scoping process. Scoping meetings will be conducted to inform interested parties of the proposed project, receive public input on the development of proposed alternatives to be reviewed in the EIS, and to identify significant issues to be analyzed.

b. *Scoping meetings.* The Corps plans to hold scoping meetings in Crooked Creek, Aniak, Bethel, and Anchorage in mid-January 2013. Scoping meetings in Akiak, Nunapitchuk, Kipnuk, Quinhagak, Toksook Bay, Hooper Bay, Emmonak, St. Mary's, Holy Cross, and McGrath are planned for late-January through March 2013. Information about these meetings and meeting dates will be published locally, posted at *http://www.donlingoldeis.com,* and available by contacting the Corps as previously described. A description of the proposed project will be posted on the project web site prior to these meetings to help the public focus their scoping comments.

4. *Issues To Be Analyzed in the EIS.* The EIS will analyze the potential social, economic, physical, biological, and cultural resource impacts of the proposed project. Numerous issues will be analyzed in depth in the EIS related to the effects of mine and associated infrastructure construction, operation, and closure. These issues will include, but will not be limited to, the following: Wetlands, water quality, air quality, hazardous materials, fish and wildlife, special status species, vegetation, cultural resources, subsistence, human health, land use and management, socioeconomics, and cumulative impacts.

5. *Other Environmental Review and Consultation Requirements.* Other environmental review and consultation requirements include Executive Order 13175 *Consultation and Coordination with Indian Tribal Governments,* Section 106 of the National Historic Preservation Act of 1966, Endangered Species Act consultation; and subsistence uses in accordance with Section 810 of the Alaska National Interest Lands Conservation Act.

6. *Land Ownership.* The proposed mine is located predominately on lands owned by the Kuskokwim Corporation and the Calista Corporation, although some project components would be located on BLM, State of Alaska and CIRI Inc. lands.

7. *Estimated Date Draft EIS Available to Public.* It is anticipated that the Draft EIS will be available in August 2014 for public review.

Dated: November 28, 2012.

**Don P. Kuhle,**

*Project Manager, Alaska District, U.S. Army Corps of Engineers.*

[FR Doc. 2012–30198 Filed 12–13–12; 8:45 am]

BILLING CODE 3720–58–P

## DEPARTMENT OF EDUCATION

**[Docket No. ED–2012–ICCD–0040]**

## Agency Information Collection Activities; Comment Request; State of Preschool Survey 2013–2015

**AGENCY:** Department of Education (ED), IES/NCES.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

**DATES:** Interested persons are invited to submit comments on or before February 12, 2013.

**ADDRESSES:** Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2012–ICCD–0040 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E117, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* State of Preschool Survey 2013–2015.

*OMB Control Number:* 1850–NEW.

*Type of Review:* New information collection.

*Respondents/Affected Public:* State, Local, or Tribal Governments.

*Total Estimated Number of Annual Responses:* 53.

*Total Estimated Number of Annual Burden Hours:* 636.

*Abstract:* The National Center for Education Statistics (NCES), within the Institute of Education Sciences (IES) of the U.S. Department of Education (ED), is seeking approval to conduct in 2013, 2014, and 2015 the annual, web-based State of Preschool survey, which centralizes data about publicly provided early childhood education opportunities. Data are collected from state agencies responsible for providing early childhood education and made available for secondary analyses. Data collected as part of the survey focus on enrollment counts in state-funded early childhood education programs, funding provided by the states for these programs, and program monitoring and licensing policies. The collected data are then reported, both separately and in combination with extant data available from federal agencies supporting early childhood education programs such as Head Start and the U.S. Census Bureau. Data from the U.S. Census Bureau form the basis for some of the rates developed for the State of Preschool reports. The data and annual report resulting from

the State of Preschool data collection provide a key information resource for research and for federal and state policy on publicly funded early childhood education.

Dated: December 11, 2012.

**Tomakie Washington,**

*Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

[FR Doc. 2012–30219 Filed 12–13–12; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

**[OE Docket No. EA–387]**

### Application to Export Electric Energy; Energia Renovable S.C., LLC

**AGENCY:** Office of Electricity Delivery and Energy Reliability, DOE.

**ACTION:** Notice of application.

**SUMMARY:** Energia Renovable S.C., LLC (Energia Renovable) has applied for authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act (FPA).

**DATES:** Comments, protests, or motions to intervene must be submitted on or before December 31, 2012.

**ADDRESSES:** Comments, protests, or motions to intervene should be addressed to: Christopher Lawrence, Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to **CHRISTOPHER.LAWRENCE@HQ.DOE.GOV**, or by facsimile to 202–586–8008.

**FOR FURTHER INFORMATION CONTACT:** Christopher Lawrence (Program Office) at 202–586–5260, or by email to *Christopher.Lawrence@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C.824a(e)).

On September 11, 2012, DOE received an application from Energia Renovable for authority to transmit electric energy from the United States to Mexico for five years as a power marketer using existing international transmission facilities. Energia Renovable does not own any electric transmission facilities nor does it hold a franchised service area.

The electric energy that Energia Renovable proposes to export to Mexico would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States. The existing international transmission facilities to be utilized by Energia Renovable have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. In its application, Energia Renovable requested expedited application treatment due to an scheduled imminent transaction. DOE hereby grants this request by shortening the comment period to 15 days.

*Procedural Matters:* Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments on the Energia Renovable application to export electric energy to Mexico should be clearly marked with OE Docket No. 387. An additional copy is to be filed directly with Jorge Gutierrez, Reforma 905, Lomas de Chapultepec, Delegacioön Miguel Hidalgo, Mexico, D.F. Mexico 11000, and Federico Santacruz Gonzalez, Ritch Mueller, S.C. Blvd. M. Avila Camacho No. 24, piso 20, Lomas de Chapultepec, Mexico, D.F. Mexico 11000.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on December 7, 2012.

**Jon Worthington,**

*Deputy Assistant Secretary, Office of Electricity Delivery and Energy Reliability.*

[FR Doc. 2012–30188 Filed 12–13–12; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Notice of Availability of the Final Tank Closure and Waste Management Environmental Impact Statement for the Hanford Site, Richland, Washington

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice of Availability.

**SUMMARY:** The U.S. Department of Energy (DOE) announces the availability of its *Final Tank Closure and Waste Management Environmental Impact Statement for the Hanford Site, Richland, Washington* (Final TC & WM EIS, DOE/EIS–0391), prepared pursuant to the National Environmental Policy Act (NEPA). This final environmental impact statement addresses all public comments on the Draft TC & WM EIS, which was issued in October 2009, and identifies DOE's preferred alternatives.

**DATES:** DOE will publish a Record of Decision no sooner than 30 days after publication of the U.S. Environmental Protection Agency's (EPA) Notice of Availability in the **Federal Register**.

**ADDRESSES:** Copies of the Final TC &WM EIS (paper or electronic) may be obtained by contacting:

Ms. Mary Beth Burandt, NEPA Document Manager, Office of River Protection, U.S. Department of Energy, P.O. Box 1178, Richland, Washington 99352, Email: *TC&WMEIS@saic.com.*

The Final TC & WM EIS is also available on the DOE NEPA Web site at *http://energy.gov/nepa,* as well as in the public reading rooms listed in **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** For further information on the Final TC & WM EIS, contact Ms. Burandt at the address listed in **ADDRESSES** or by telephone at 1–888–829–6347. For general information regarding the DOE NEPA process, contact:

Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, GC–54, U. S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: 202–586–4600, or leave a message at 1–800–472–2756, Email: *askNEPA@hq.doe.gov.*

Additional information on the Final TC & WM EIS is also available through the Hanford Web site at *http://www.hanford.gov/.*

**SUPPLEMENTARY INFORMATION:**

## Background

The Hanford Site, located in southeastern Washington State along the Columbia River, is approximately 586 square miles in size. Hanford's mission from the early 1940s to approximately 1989 included defense-related nuclear research, development, and weapons production activities. These activities created a wide variety of chemical and radioactive wastes. Hanford's mission now is focused on the cleanup of those wastes and ultimate closure of the Site. An important part of the mission includes the retrieval and treatment of waste from 177 underground radioactive waste storage tanks, including 149 single shell tanks (SSTs), and closure of the SSTs. Hanford's mission also includes radioactive waste management on the Site and decommissioning of the Fast Flux Test Facility (FFTF), a nuclear test reactor that has been designated for closure.

To support its decision making for these actions, DOE prepared the TC & WM EIS pursuant to NEPA and in accordance with Council on Environmental Quality and DOE NEPA implementing regulations (40 CFR Parts 1500–1508; 10 CFR Part 1021). EPA and the Washington State Department of Ecology are cooperating agencies on this EIS. DOE held a public comment period on the draft EIS that extended from October 30, 2009, through May 3, 2010, with public hearings in Washington, Oregon, and Idaho. DOE considered all public comments received in preparing the Final TC & WM EIS, which includes DOE's responses to those comments.

## Scope of the TC & WM EIS

The Final TC & WM EIS addresses proposed actions in three major areas: Retrieving and treating radioactive waste from 177 underground storage tanks at Hanford, including 149 SSTs and closure of the SSTs; decommissioning the FFTF and its auxiliary facilities; and continued and expanded solid waste management operations, including disposal of low-level radioactive waste and mixed low-level radioactive waste. The final EIS also includes a No Action Alternative to the proposed actions for each of the three major areas, as required by NEPA.

DOE's preferred alternatives are described in the Summary, Section S.7, and in Chapter 2, Section 2.12, of Volume 1 of the Final TC & WM EIS. Copies of the Final TC & WM EIS are available in the following public reading rooms or via the means identified in **ADDRESSES**.

## Public Reading Rooms

Gonzaga University, Foley Center Library, 101–L East 502 Boone, Spokane, Washington 99258, (509) 313–5931.

Portland State University, Government Information, Branford Price Millar Library, 1875 SW Park Avenue, Portland, Oregon 97201, (503) 725–5874.

University of Washington, Suzzallo-Allen Library, Government Publications Division, Seattle, Washington 98195, (206) 543–4164.

U.S. Department of Energy, Public Reading Room, 1776 Science Center Drive, Idaho Falls, Idaho 83402, (208) 526–5190.

U.S. Department of Energy, Freedom of Information Reading Room, 1000 Independence Avenue SW., 1G–033, Washington, DC 20585, (202) 586–5955.

U.S. Department of Energy, Public Reading Room, Consolidated Information Center, 2770 University Drive, Room 101L, Richland, Washington 99352, (509) 372–7443.

U.S. Department of Energy, WIPP Information Center, Skeen-Whitlock Building, 4021 National Parks Highway, Carlsbad, New Mexico 88220, (575) 234–7348.

Issued in Washington, DC, on December 10, 2012.

**Mark A. Gilbertson,**

*Deputy Assistant Secretary for Site Restoration.*

[FR Doc. 2012–30204 Filed 12–13–12; 8:45 am]

BILLING CODE 6450–01–P

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# DEPARTMENT OF ENERGY

**[Certification Notice—222]**

## Notice of Filing of Self-Certification of Coal Capability Under the Powerplant and Industrial Fuel Use Act

**AGENCY:** Office Electricity Delivery and Energy Reliability, DOE.

**ACTION:** Notice of filing.

**SUMMARY:** On July 26, 2012, GWF Energy, LLC, as owner and operator of a new base load electric powerplant, submitted a coal capability self-certification to the Department of Energy (DOE) pursuant to § 201(d) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended, and DOE regulations in 10 CFR 501.60, 61. FUA and regulations thereunder require DOE to publish a notice of filing of self-certification in the **Federal Register**. (42 U.S.C. 8311(d)(2)) and 10 CFR 501.61(c))

**ADDRESSES:** Copies of coal capability self-certification filings are available for public inspection, upon request, in the Office of Electricity Delivery and Energy Reliability, Mail Code OE–20, Room 8G–024, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Christopher Lawrence at (202) 586–5260.

**SUPPLEMENTARY INFORMATION:** Title II of FUA, as amended (42 U.S.C. 8301 *et seq.*), provides that no new base load electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. Pursuant to FUA in order to meet the requirement of coal capability, the owner or operator of such a facility proposing to use natural gas or petroleum as its primary energy source shall certify to the Secretary of Energy (Secretary) prior to construction, or prior to operation as a base load electric powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with FUA section 201(a) as of the date it is filed with the Secretary. (42 U.S.C. 8311)

The following owner of a proposed new base load electric powerplant has filed a self-certification of coal-capability with DOE pursuant to FUA section 201(d) and in accordance with DOE regulations in 10 CFR 501.60, 61:

*Owner:* GWF Energy LLC
*Capacity:* 314 megawatts (MW)
*Plant Location:* Tracy, CA
*In-Service Date:* Third quarter 2012

Issued in Washington, DC on December 4, 2012.

**Jon Worthington,**

*Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.*

[FR Doc. 2012–30194 Filed 12–13–12; 8:45 am]

BILLING CODE 6450–01–P

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# ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2012–0880; FRL–9338–5]**

## Certain New Chemicals; Receipt and Status Information

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new

chemical (i.e., a chemical not on the TSCA Chemical Substances Inventory (TSCA Inventory)) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. In addition under TSCA, EPA is required to publish in the **Federal Register** a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of notices of commencement (NOC) to manufacture those chemicals. This document, which covers the period from October 15, 2012 to October 31, 2012, and provides the required notice and status report, consists of the PMNs and TMEs, both pending or expired, and the NOC to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

**DATES:** Comments identified by the specific PMN number or TME number, must be received on or before January 14, 2013.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2012–0880, and the specific PMN number or TME number for the chemical related to your comment, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* EPA's policy is that all comments received will be included in the 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 whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means 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 regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the 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 and with any disk or CD–ROM you submit. 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, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact:* Bernice Mudd, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8951; fax number: (202) 564–8955; email address: *mudd.bernice@epa.gov.*

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this action apply to me?*

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the PMNs addressed in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## II. Why is EPA taking this action?

EPA classifies a chemical substance as either an ''existing'' chemical or a ''new'' chemical. Any chemical substance that is not on EPA's TSCA Inventory is classified as a ''new chemical,'' while those that are on the TSCA Inventory are classified as an ''existing chemical.'' For more information about the TSCA Inventory go to: *http://www.epa.gov/opptintr/newchems/pubs/inventory.htm.* Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required by TSCA section 5 to provide EPA with a PMN, before initiating the activity. Section 5(h)(1) of TSCA authorizes EPA to allow persons, upon application, to manufacture (includes import) or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a), for ''test marketing'' purposes, which is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://www.epa.gov/oppt/newchems.*

Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a PMN or an application for a TME and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of NOCs to manufacture those chemicals. This status report, which covers the period from October 15, 2012 to October 31, 2012, consists of the PMNs and TMEs, both pending or expired, and the NOCs to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

## III. Receipt and Status Reports

In Table I. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: The EPA case number assigned to the PMN, the date the PMN was received by EPA, the projected end date for EPA's review of the PMN, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the PMN, and the chemical identity.

TABLE I—63 PMNS RECEIVED FROM 10/15/12 TO 10/31/12

| Case No. | Received date | Projected notice end date | Manufacturer/ Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–13–0021 ... | 10/10/2012 | 1/7/2013 | CBI ..... | (S) Surface protection agent for use in building materials. | (G) Perfluoroacrylate polymer. |
| P–13–0022 ... | 10/12/2012 | 1/9/2013 | CBI ..... | (S) Surface protection agent for use in building materials. | (G) Perfluoroacrylate polymer. |
| P–13–0023 ... | 10/12/2012 | 1/9/2013 | CBI ..... | (G) Coating additive ..... | (G) Siloxanes and silicones, substituted alkyl group-terminated, alkoxylated, polymers with substituted carbomonocycle, substituted alkanediol and substituted alkane. |
| P–13–0024 ... | 10/15/2012 | 1/12/2013 | ICL–IP America, Inc.. | (G) Phosphate ester based halogen-free flame retardant. | (G) Phosphate ester. |
| P–13–0025 ... | 10/11/2012 | 1/8/2013 | CBI ..... | (G) Drilling fluid component ..... | (G) Acid modified petroleum residuum. |
| P–13–0026 ... | 10/11/2012 | 1/8/2013 | CBI ..... | (G) Drilling fluid component ..... | (G) Acid modified petroleum residuum. |
| P–13–0027 ... | 10/11/2012 | 1/8/2013 | CBI ..... | (G) Drilling fluid component ..... | (G) Acid modified petroleum residuum. |
| P–13–0028 ... | 10/15/2012 | 1/12/2013 | CBI ..... | (G) Lubricant additive ..... | (G) 2-Propenoic acid, 2-methyl-, alkyl esters, telomers with *N*-[3-(dimethylamino)propyl]-2-methyl-2-propenamide, 1-dodecanethiol and memethacrylate, tert-bu 2-ethylhexaneperoxoate-initiated. |
| P–13–0029 ... | 10/8/2012 | 1/5/2013 | Honda of America Mfg., Inc.. | (S) Source of mineral content for cement manufacturing. | (S) Slage produced in a cupola and/or electric melt furnace during a metal recovery process used by the automotive industry. Composed primarily of the oxides of silicon, calcium, magnesium, aluminum, and manganese. |
| P–13–0030 ... | 10/22/2012 | 1/19/2013 | CBI ..... | (G) Adhesive/sealant component | (G) Carboxylic acid, substituted alkylstannylene ester, reaction products with inorganic acid tetra alkyl ester. |
| P–13–0031 ... | 10/22/2012 | 1/19/2013 | CBI ..... | (G) Reactive hot melt adhesive | (G) Isocyanate terminated polyester/polyether/MDI polymer. |
| P–13–0032 ... | 10/22/2012 | 1/19/2013 | Cytec Industries, Inc.. | (G) Coating resin ..... | (G) Alkenoic acid, ester with alkylpolyol, polymer with disubsituted alkane. |
| P–13–0033 ... | 10/22/2012 | 1/19/2013 | CBI ..... | (G) Starting material in sulfuric acid production process (contains sulfur). | (G) Dialkyl thiophenol, manufacturer of, by-products. |
| P–13–0034 ... | 10/22/2012 | 1/19/2013 | CBI ..... | (G) Starting material in sulfuric acid production process (contains sulfur). | (G) Alkylthiophenamine, manufacturer of, by-products. |

TABLE I—63 PMNS RECEIVED FROM 10/15/12 TO 10/31/12—Continued

| Case No. | Received date | Projected notice end date | Manufacturer/ Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–13–0035 ... | 10/22/2012 | 1/19/2013 | CBI ..... | (G) Starting material in sulfuric acid production process (contains sulfur). | (G) Alkylthiophenamine, manufacturer of, by-products. |
| P–13–0036 ... | 10/22/2012 | 1/19/2013 | CBI ..... | (G) Industrial liquid coatings ..... | (G) Polymer of epoxy and aliphatic and aromatic acids. |
| P–13–0037 ... | 10/22/2012 | 1/19/2013 | Sachem, Inc. .... | (G) Chemical intermediate ..... | (S) Oxirane, 2-[(1-naphthalenyloxy)methyl]-. |
| P–13–0038 ... | 10/22/2012 | 1/19/2013 | Lonza, Inc. ..... | (G) Curative for thermosetting resin. | (G) Halogenated polyaromatic diamine. |
| P–13–0039 ... | 10/22/2012 | 1/19/2013 | Colonial Chemical, Inc.. | (S) Surfactant for carpet cleaning; surfactant for antifog coating; wetting agent for fiber treatment. | (S) D-glycopyranose, oligomeric, $C_{10-16}$-alkyl decyl octyl glycosides, 2-hydroxy-3-(trimethylammonio) propyl ethers, chlorides, polymers with 1,3-dichloro-2-propanol. |
| P–13–0040 ... | 10/22/2012 | 1/19/2013 | Colonial Chemical, Inc.. | (S) Surfactant for carpet cleaning; surfactant for antifog coating; wetting agent for fiber treatment. | (S) D-glucopyranose,oligomeric, $C_{10-16}$-alkyl glycosides, 3-(dimethyloctadecylammonio)-2-hydrosypropyl ethers,chlorides, polymers with 1,3-dichloro-2-propanol. |
| P–13–0041 ... | 10/22/2012 | 1/19/2013 | Colonial Chemical, Inc.. | (S) Surfactant for carpet cleaning; surfactant for antifog coating; wetting agent for fiber treatment. | (S) D-glucopyranose, oligomeric, decyl octyl glycosides, 3-(dimethyloctadeylammonio)-2-hydroxypropyl ethers,chlorides, polymers with 1,3-dichloro-2-propanol. |
| P–13–0042 ... | 10/22/2012 | 1/19/2013 | Colonial Chemical, Inc.. | (S) Surfactant for carpet cleaning; surfactant for antifog coating; wetting agent for fiber treatment. | (S) D-glucopyranose, oligomeric, $C_{10-16}$-alkyl glycosides, 3-(dodecyldimethylammonio)-2-hydroxypropyl ethers, chlorides, polymers with 1,3-dichloro-2-propanol. |
| P–13–0043 ... | 10/22/2012 | 1/19/2013 | Colonial Chemical, Inc.. | (S) Surfactant for carpet cleaning; surfactant for antifog coating; wetting agent for fiber treatment. | (S) D-glucopyranose, oligomeric, decyl octyl glycosides, 3-(dodecyldimethylammonio)-2-hydroxypropyl ethers, chlorides, polymers with 1,3-dichloro-2-propanol. |
| P–13–0044 ... | 10/22/2012 | 1/19/2013 | CBI ..... | (S) Adhesion promoter for use in asphalt applications; emulsifier for use in asphalt applications. | (G) Fatty acid amine. |
| P–13–0045 ... | 10/22/2012 | 1/19/2013 | CBI ..... | (S) Adhesion promoter for use in asphalt applications; emulsifier for use in asphalt applications. | (G) Fatty acid amine. |
| P–13–0046 ... | 10/22/2012 | 1/19/2013 | CBI ..... | (S) Adhesion promoter for use in asphalt applications; emulsifier for use in asphalt applications. | (G) Fatty acid amine. |
| P–13–0047 ... | 10/22/2012 | 1/19/2013 | CBI ..... | (S) Adhesion promoter for use in asphalt applications; emulsifier for use in asphalt applications. | (G) Fatty acid amine. |
| P–13–0048 ... | 10/22/2012 | 1/19/2013 | CBI ..... | (S) Adhesion promoter for use in asphalt applications; emulsifier for use in asphalt applications. | (G) Fatty acid amine. |
| P–13–0049 ... | 10/23/2012 | 1/20/2013 | DIC International (USA) LLC. | (G) A polymer component of industrial paint for coating/spray coating building materials. | (G) Fatty acids, polymer with acrylic acid, epoxy resin, methacrylate esters, styrene and vegetable-oil fatty acids, tert-bu benzenecarboperoxoate-initiated, compounds with amine. |
| P–13–0050 ... | 10/22/2012 | 1/19/2013 | CBI ..... | (S) Adhesion promoter for use in asphalt applications; emulsifier for use in asphalt applications. | (G) Fatty acid amide. |
| P–13–0051 ... | 10/22/2012 | 1/19/2013 | CBI ..... | (S) Adhesion promoter for use in asphalt applications; emulsifier for use in asphalt applications. | (G) Fatty acid amide. |
| P–13–0052 ... | 10/23/2012 | 1/20/2013 | DIC International (USA) LLC. | (G) Binder component of water based paint/coating for spray coating application. | (G) Cyclohexyl methacrylic acids, polymer with methacrylate esters, acrylic esters, methacrylate polyester polyol, styrene and tert-bu benzenecarboperoxoate-initiated, compounds with amine. |
| P–13–0053 ... | 10/24/2012 | 1/21/2013 | Gelest, Inc. ..... | (S) Process aid for pigments and fillers in polymes; dispersant in coatings. | (S) Silsesquioxanes, octyl. |

TABLE I—63 PMNS RECEIVED FROM 10/15/12 TO 10/31/12—Continued

| Case No. | Received date | Projected notice end date | Manufacturer/ Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–13–0054 ... | 10/24/2012 | 1/21/2013 | R & F Industries, Inc.. | (G) Fluid stabilizer ..... | 1. (S) 1-Piperazine ethanamine, acetate (1:3).<br>2. (S) Ethanamine, 2,2'-oxybis-, acetate.<br>3. (S) Morpholine, acetate (1:1). |
| P–13–0055 ... | 10/24/2012 | 1/21/2013 | CBI ..... | (G) Starting material in sulfuric acid production process (contains sulfur). | (G) Alkaneamide, halo-dialkylthienyl-alkoxydialkyl-, manufacturer of, by-products. |
| P–13–0056 ... | 10/24/2012 | 1/21/2013 | CBI ..... | (G) Starting material in sulfuric acid production process (contains sulfur). | (G) Alkaneamide, halo-dialkylthienyl-alkoxydialkyl-, manufacturer of, by-products. |
| P–13–0057 ... | 10/25/2012 | 1/22/2013 | DIC International (USA) LLC. | (G) Industrial paint ..... | (G) Acrylic polymer with 2-propenoic acid, 2-methyl-, butyl ester, methacrylic acid esters, acrylic acid esters and alkyl polyester ether acrylate. |
| P–13–0058 ... | 10/25/2012 | 1/22/2013 | CBI ..... | (G) An emulsifier for emulsion polymerizations. | (G) Ammonium salt of propylene/ethylene oxide polymer. |
| P–13–0059 ... | 10/26/2012 | 1/23/2013 | CBI ..... | (G) Pigment dispersant ..... | (G) 2-Propenoic acid, alkyl, alkyl ester, polymer with substituted heteromonocycle, substituted carbomonocycle, alkyl propenoate and substituted heteromonocycle polymer with heteromonocycle mono alkyl propenoate, tert-bu benzenecarboperoxoate-initiated. |
| P–13–0060 ... | 10/26/2012 | 1/23/2013 | The Goodyear Tire & Rubber Company. | (S) Precursor to polymerization catalyst. | (G) Neodymium, Ziegler-Natta preformed stage 1 catalyst. |
| P–13–0061 ... | 10/26/2012 | 1/23/2013 | CBI ..... | (G) Open, non-dispersive use as plastic or glass coating. | (G) Aliphatic urethane acrylate. |
| P–13–0062 ... | 10/29/2012 | 1/26/2013 | Dow Chemical Company. | (S) Component for construction sealants; component for transportation adhesive. | (G) Alkoxy ether with alkyl polyol ester with alpha-[[[3-(carboxyamino)methyl phenyl]amino]carbonyl]-omega-[3-(alkoxysilyl)propoxy]polyglycol ether. |
| P–13–0063 ... | 10/30/2012 | 1/27/2013 | CBI ..... | (S) Surfactant for use in asphalt emulsions. | (G) Fatty acid amine hydrochloride. |
| P–13–0064 ... | 10/30/2012 | 1/27/2013 | CBI ..... | (S) Surfactant for use in asphalt emulsions. | (G) Fatty acid amide hydrochloride. |
| P–13–0065 ... | 10/30/2012 | 1/27/2013 | CBI ..... | (S) Surfactant for use in asphalt emulsions. | (G) Fatty acid amide hydrochloride. |
| P–13–0066 ... | 10/30/2012 | 1/27/2013 | CBI ..... | (S) Surfactant for use in asphalt emulsions. | (G) Fatty acid amine hydrochloride. |
| P–13–0067 ... | 10/30/2012 | 1/27/2013 | CBI ..... | (S) Surfactant for use in asphalt emulsions. | (G) Fatty acid amide hydrochloride. |
| P–13–0068 ... | 10/30/2012 | 1/27/2013 | CBI ..... | (S) Surfactant for use in asphalt emulsions. | (G) Fatty acid amine hydrochloride. |
| P–13–0069 ... | 10/30/2012 | 1/27/2013 | CBI ..... | (S) Surfactant for use in asphalt emulsions. | (G) Fatty acid amine hydrochloride. |
| P–13–0070 ... | 10/30/2012 | 1/27/2013 | CBI ..... | (S) Surfactant for use in asphalt emulsions. | (G) Fatty acid amine hydrochloride. |
| P–13–0071 ... | 10/30/2012 | 1/27/2013 | CBI ..... | (S) Surfactant for use in asphalt emulsions. | (G) Fatty acid amine hydrochloride. |
| P–13–0072 ... | 10/30/2012 | 1/27/2013 | CBI ..... | (S) Surfactant for use in asphalt emulsions. | (G) Fatty acid amide hydrochloride. |
| P–13–0073 ... | 10/30/2012 | 1/27/2013 | CBI ..... | (S) Surfactant for use in asphalt emulsions. | (G) Fatty acid amide hydrochloride. |
| P–13–0074 ... | 10/30/2012 | 1/27/2013 | CBI ..... | (S) Surfactant for use in asphalt emulsions. | (G) Fatty acid amide hydrochloride. |
| P–13–0075 ... | 10/30/2012 | 1/27/2013 | CBI ..... | (S) Surfactant for use in asphalt emulsions. | (G) Fatty acid amide hydrochloride. |
| P–13–0076 ... | 10/30/2012 | 1/27/2013 | CBI ..... | (S) Surfactant for use in asphalt emulsions. | (G) Fatty acid amide hydrochloride. |
| P–13–0077 ... | 10/30/2012 | 1/27/2013 | CBI ..... | (S) Surfactant for use in asphalt emulsions. | (G) Fatty acid amide hydrochloride. |
| P–13–0078 ... | 10/30/2012 | 1/27/2013 | Huntsman Corporation. | (S) A catalyst for producing polyurethane foam. | (G) Tertiary amine alkyl ether. |
| P–13–0079 ... | 10/30/2012 | 1/27/2013 | CBI ..... | (G) Anionic dipsersant/emulsifier | (G) Polyaryl ethoxylate phosphate. |
| P–13–0080 ... | 10/8/2012 | 1/5/2013 | CBI ..... | (G) Intermediate in external can coating. | (G) Polyester resin, water reducible. |

TABLE I—63 PMNS RECEIVED FROM 10/15/12 TO 10/31/12—Continued

| Case No. | Received date | Projected notice end date | Manufacturer/ Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–13–0081 ... | 10/25/2012 | 1/22/2013 | CBI ..... | (G) Open, non-dispersive use in coating and printing application and dispersive use in consumer products. | (G) Olefin copolymer. |

In Table II. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received by EPA during this period: The EPA case number assigned to the TME, the date the TME was received by EPA, the projected end date for EPA's review of the TME, the submitting manufacturer/ importer, the potential uses identified by the manufacturer/importer in the TME, and the chemical identity.

TABLE II—1 TME RECEIVED FROM OCTOBER 15, 2012 TO OCTOBER 31, 2012

| Case No. | Received date | Project notice end date | Manufacturer importer | Use | Chemical |
|---|---|---|---|---|---|
| T–13–0001 ... | 10/22/2012 | 12/5/2012 | Cytec industries, Inc .. | (G) Coating resin ..... | (G) Alkenoic acid, ester with alkylpolyol, polymer with disubsituted alkane. |

In Table III. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs received by EPA during this period: The EPA case number assigned to the NOC, the date the NOC was received by EPA, the projected end date for EPA's review of the NOC, and chemical identity.

TABLE III—23 NOCS RECEIVED FROM 10/15/12 TO 10/31/12

| Case No. | Received date | Project notice end date | Chemical |
|---|---|---|---|
| P–06–0474 ... | 10/22/2012 | 10/20/2012 | (G) Fluoroalkyl acrylate copolymer. |
| P–07–0635 ... | 10/12/2012 | 9/24/2012 | (G) Styrene, polymer with methacrylate ester, alkene, and substituted trialkoxysilane. |
| P–09–0100 ... | 10/12/2012 | 10/1/2012 | (S) Tricyclo[3.3.1.13,7]decan-1-aminium, *N,N,N*-trimethyl-, chloride (1:1).* |
| P–09–0111 ... | 10/2/2012 | 12/16/2011 | (G) Alkoxysilane functional acrylic resin. |
| P–10–0265 ... | 10/23/2012 | 10/19/2012 | (G) Hexamethylenediisocyanate homopolymer, alkyl-oxy-terminated. |
| P–10–0316 ... | 10/22/2012 | 10/20/2012 | (G) Perfluoroalkyl acrylate. |
| P–10–0521 ... | 10/24/2012 | 10/1/2012 | (S) Siloxanes and silicones, di-me, polymers with me PH silsesquioxanes, methoxy-terminated.* |
| P–11–0087 ... | 10/2/2012 | 9/7/2012 | (G) Polyfluoroalkyl phosphoric acid salt, aqueous solution. |
| P–11–0433 ... | 10/9/2012 | 9/22/2012 | (G) Substituted amino polymer, with substituted amine salt and salted acrylate. |
| P–12–0013 ... | 10/2/2012 | 6/19/2012 | (G) Crosslinked polyalkyl methacrylate. |
| P–12–0043 ... | 10/23/2012 | 10/22/2012 | (G) 2-(dimethylamino)ethyl methyl-2-propanoate, polymer with alkyl-substituted methyl-2-propanoate, salt with mono(alkyl-substituted polyalkoxyether)butanedioates. |
| P–12–0094 ... | 10/10/2012 | 9/28/2012 | (G) Polyether polyurethane dispersion. |
| P–12–0104 ... | 10/4/2012 | 9/28/2012 | (G) Mixture of isomers of condensation products of substituted diazotized aminoanilines. |
| P–12–0156 ... | 10/4/2012 | 9/21/2012 | (G) Water soluble modified linseed oil. |
| P–12–0235 ... | 10/2/2012 | 9/20/2012 | (G) Polyesterurethane. |
| P–12–0335 ... | 10/22/2012 | 10/6/2012 | (G) Benzoic acid, 4-[substituted diamino-5-(disubstituted phenylazo)-phenylazo]-, sodium potassium salt. |
| P–12–0392 ... | 10/5/2012 | 10/4/2012 | (G) Mix of isomers of substituted cyclohexyl carboxaldehyde. |
| P–12–0407 ... | 10/15/2012 | 10/13/2012 | (G) Substituted carbomoncycles, polymer with substituted alkanoic acids and dialkyleneglycol, substsituted alkylamine-blocked, compounds with alkylamino alcohol. |
| P–12–0426 ... | 10/11/2012 | 9/28/2012 | (S) Aluminate(1-), tetrafluoro-, cesium, (t-4)-.* |
| P–12–0442 ... | 10/8/2012 | 10/1/2012 | (G) Carboxylic acid, alkenyl ester, polymers with alkyl acrylate, me methacrylate and polyethylene glycol hydrogen sulfate substituted alkyl branched alkoxy methyl substituted (alkoxy)alkyl ethers salts. |
| P–12–0443 ... | 10/30/2012 | 10/25/2012 | (G) Benzene, ethenyl-, polymer with substituted alkane. |
| P–12–0454 ... | 10/9/2012 | 10/8/2012 | (G) Modified lignocellulose. |
| P–12–0462 ... | 10/30/2012 | 10/29/2012 | (G) Anhydride, polymer with substituted alkylbenzene and polyalkyl glycol, 2-butanol- and substituted acrylate hetermonocycle reaction products and substituted carbomonocyclic homopolymer alkyl ester and polyethylene glycol mono-me ether-blocked.* |

If you are interested in information that is not included in these tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

**List of Subjects**

Environmental protection, Chemicals, Hazardous substances, Imports, Notice of commencement, Premanufacturer,

Reporting and recordkeeping requirements, Test marketing exemptions.

Dated: December 3, 2012.

**Chandler Sirmons,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 2012–30239 Filed 12–13–12; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–9006–5]**

## Environmental Impacts Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 12/03/2012 Through 12/07/2012

Pursuant to 40 CFR 1506.9.

### Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

**SUPPLEMENTARY INFORMATION:** As of October 1, 2012, EPA will not accept paper copies or CDs of EISs for filing purposes; all submissions on or after October 1, 2012 must be made through e-NEPA. While this system eliminates the need to submit paper or CD copies to EPA to meet filing requirements, electronic submission does not change requirements for distribution of EISs for public review and comment. To begin using e-NEPA, you must first register with EPA's electronic reporting site—*https://cdx.epa.gov/epa_home.asp.*

*EIS No. 20120379, Final EIS, BLM, CA,* West Chocolate Mountains Renewable Energy Evaluation Area, Proposed California Desert Conservation Area Plan Amendment, Imperial County, CA, Review Period Ends: 01/14/2013, Contact: Sandra McGinnis 916–978–4427.

*EIS No. 20120380, Draft EIS, BLM, AK,* Ring of Fire Resource Management Plan Amendment, Haines Block Planning Area, Southeast Alaska, Comment Period Ends: 03/14/2013, Contact: Molly Cobbs 907–267–1221.

*EIS No. 20120381, Draft Supplement, NRC, TX,* GENERIC—License Renewal of Nuclear Plants Supplement 48 Regarding South Texas Project, Units 1 and 2 (NUREG 1437) Matagorda County, TX, Comment Period Ends: 02/22/2013, Contact: Tam Tran 301–415–3617.

*EIS No. 20120382, Draft Supplement, FTA, MN,* Central Corridor Light Rail Transit Project, Construction-Related Potential Impacts on Business Revenue, St. Paul and Twin Cities Metropolitan Area, MN, Comment Period Ends: 01/30/2013, Contact: Maya Sarna 202–366–5811

*EIS No. 20120383, Draft EIS, USACE, CA,* Gregory Canyon Landfill, Application for Permit Authorizing Discharge of Fill in U.S. Waters, San Diego County, CA, Comment Period Ends: 02/12/2013, Contact: William H. Miller 602–230–6954.

*EIS No. 20120384, Final EIS, BLM, NV,* Searchlight Wind Energy Project, NVN–084626 and NVN–086777, Application for Right-of-Way Grant on Public Land to Develop, Construct, Operate, Maintain and Decommission of a 200 megawatt Wind Energy Facility, USACE Section 404 Permit, Clark County, NV, Review Period Ends: 01/14/2013, Contact: Gregory Helseth 702–515–5173

*EIS No. 20120385, Final EIS, DOE, WA,* Hanford Site Tank Closure and Waste Management Project, Richland, Benton County, WA, Review Period Ends: 01/14/2013, Contact: Mary Beth Burandt 888–829–6347.

*EIS No. 20120386, Final EIS, FTA, MD,* Red Line Project, Implementation of a new East-West Light Rail Transit Alignment, Baltimore County, MD, Review Period Ends: 01/28/2013, Contact: Daniel Koenig 202–219–3528.

### Amended Notices

*EIS No. 20120334, Draft EIS, USFS, OR,* Oregon Dunes NRA Management Area 10(C) Designated Routes Project, Central Coast Ranger District, Oregon Dunes National Recreation Area, Siuslaw National Forest, Coos, Douglas, and Lane Counties OR, Comment Period Ends: 01/24/2013, Contact: Angie Morris 541–271–6040. Revision to FR Notice Published 10/26/2012; Extending Comment from 12/10/2012 to 01/24/2013.

Dated: December 11, 2012.

**Cliff Rader,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 2012–30237 Filed 12–13–12; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2012–0898; FRL–9372–2]**

## Registration Review; Pesticide Dockets Opened for Review and Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** With this document, EPA is opening the public comment period for several registration reviews. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment. EPA is also announcing the availability of amended final work plans (FWPs) for the following active ingredients: Sodium pyrithione (formerly known as sodium omadine), methylene bis(thiocyanate), troysan KK–108A (IPBC), zinc salts, and tri-*n* butyl tetradecyl phosphonium chloride (TTPC).

**DATES:** Comments must be received on or before February 12, 2013.

**ADDRESSES:** Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A., 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:** *For pesticide specific information contact:* The Chemical Review Manager or Regulatory Action Leader identified in the table in Unit III.A. for the pesticide of interest.

*For general information contact:* Kevin Costello, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 308–8090; email address: *costello.kevin@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this action apply to me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

### *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. Authority

EPA is initiating its reviews of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

## III. Registration Reviews

### *A. What action is the agency taking?*

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registrations identified in the table in this unit to assure that they continue to satisfy the FIFRA standard for registration—that is, they can still be used without unreasonable adverse effects on human health or the environment. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. At present, EPA is opening registration review dockets for the cases identified in this table.

TABLE—REGISTRATION REVIEW DOCKETS OPENING

| Registration review case name and number | Docket ID No. | Chemical review manager or regulatory action leader, telephone number, email address |
|---|---|---|
| 2,4-D | EPA–HQ–OPP–2012–0330 | Jill Bloom, (703) 308–8019, *bloom.jill@epa.gov.* |
| *Bacillus pumilus* | EPA–HQ–OPP–2012–0857 | Susanne Cerrelli, (703) 308–8077, *cerrelli.susanne@epa.gov.* |
| Bifenazate | EPA–HQ–OPP–2012–0633 | Garland Waleko, (703) 308–8049, *waleko.garland@epa.gov.* |
| Chlorinated isocyanurates | EPA–HQ–OPP–2012–0794 | Wanda Henson, (703) 308–6345, *henson.wanda@epa.gov.* |
| Chlorsulfuron | EPA–HQ–OPP–2012–0878 | Kaitlin Keller, (703) 308–8172, *keller.kaitlin@epa.gov.* |
| Clodinafop-propargyl | EPA–HQ–OPP–2012–0424 | Wilhelmena Livingston, (703) 308–8025, *livingston.wilhelmena@epa.gov.* |
| Folpet | EPA–HQ–OPP–2012–0859 | Christina Scheltema, (703) 308–2201, *scheltema.christina@epa.gov.* |
| Foramsulfuron | EPA–HQ–OPP–2012–0387 | Jose Gayoso, (703) 347–8652, *gayoso.jose@epa.gov.* |

TABLE—REGISTRATION REVIEW DOCKETS OPENING—Continued

| Registration review case name and number | Docket ID No. | Chemical review manager or regulatory action leader, telephone number, email address |
|---|---|---|
| Hydramethylnon | EPA–HQ–OPP–2012–0869 | Steven Snyderman, (703) 347–0249, *snyderman.steven@epa.gov.* |
| Iprodione | EPA–HQ–OPP–2012–0392 | James Parker, (703) 306–0469, *parker.james@epa.gov.* |
| Kresoxim-methyl | EPA–HQ–OPP–2012–0861 | Katie Weyrauch, (703) 308–0166, *weyrauch.katie@epa.gov.* |
| Phenol, and salts | EPA–HQ–OPP–2012–0810 | Elizabeth Hernandez, (703) 347–0241, *hernandez.elizabeth@epa.gov.* |
| Prohexadione calcium | EPA–HQ–OPP–2012–0870 | Katie Weyrauch, (703) 308–0166, *weyrauch.katie@epa.gov.* |
| Sodium carbonate | EPA–HQ–OPP–2012–0809 | Seiichi Murasaki, (703) 347–0163, *murasaki.seiichi@epa.gov.* |
| Sulfometuron methyl | EPA–HQ–OPP–2012–0433 | Rusty Wasem, (703) 305–6979, *wasem.russell@epa.gov.* |
| Triphenyltin hydroxide (TPTH) (also known as fentin hydroxide). | EPA–HQ–OPP–2012–0413 | Susan Bartow, (703) 603–0065, *bartow.susan@epa.gov.* |

EPA is announcing the availability of amended FWPs for the following active ingredients: Sodium pyrithione (also known as sodium omadine), docket ID number EPA–HQ–OPP–2011–0611; methylene bis(thiocyanate), docket ID number EPA–HQ–OPP–2011–0613; IPBC, docket ID number EPA–HQ–OPP–2011–0420; zinc salts, docket ID number EPA–HQ–OPP–2009–0011; and TTPC, docket ID number EPA–HQ–OPP–2011–0952. These FWPs have been amended to incorporate changes to data requirements and/or clarifications to planned risk assessments for registration review.

*B. Docket Content*

1. *Review dockets.* The registration review dockets contain information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information.* More information on these cases, including the active ingredients for each case, may be located in the registration review schedule on the Agency's Web site at *http://www.epa.gov/oppsrrd1/registration_review/schedule.htm.* Information on the Agency's registration review program and its implementing regulation may be seen at *http://www.epa.gov/oppsrrd1/registration_review.*

3. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: December 7, 2012.

**Richard P. Keigwin, Jr.,**

*Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.*

[FR Doc. 2012–30242 Filed 12–13–12; 8:45 am]

BILLING CODE 6560–50–P

## EXPORT-IMPORT BANK

**[Public Notice 2012–0547]**

## Agency Information Collection Activities: Final Collection; Comment Request

**AGENCY:** Export-Import Bank of the U.S.

**ACTION:** Submission for OMB review and comments request.

Form Title: EIB 99–17 Enhanced Assignment of Policy Proceeds.

**SUMMARY:** The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

The form represents the exporter's directive to Ex-Im Bank to whom and

where the insurance proceeds should be sent, and also describes the duties and obligations that have to be met by the financial institution in order to share in the policy proceeds. The form is typically part of the documentation required by financial institution lenders in order to provide financing of an exporter's foreign accounts receivable. Foreign accounts receivable insured by Ex-Im Bank represent stronger collateral to secure the financing. By recording which policyholders have completed this form, Ex-Im Bank is able to determine how many of its exporter policyholders require Ex-Im Bank insurance policies to support lender financing.

The form can be viewed at *www.exim.gov/pub/pending/eib99-17.pdf.*

**DATES:** Comments should be received on or before February 12, 2013 to be assured of consideration.

**ADDRESSES:** Comments maybe submitted electronically on *www.regulations.gov* or by mail to Arnold Chow, Export Import Bank of the United States, 811 Vermont Ave. NW., Washington, DC 20571.

**SUPPLEMENTARY INFORMATION:**

*Titles and Form Number:* EIB 99–17 Enhanced Assignment of Policy Proceeds.

*OMB Number:* 3048–xxxx.

*Type of Review:* New.

*Need and Use:* This collection of information is used by exporters to convey legal rights to, and describe the duties and obligations that have to be met by their financial institution lender in order to share insurance policy proceeds from Ex-Im Bank approved insurance claims. *Affected Public:* This form affects entities involved in the export of U.S goods and services.

*Annual Number of Respondents:* 15.

*Estimated Time per Respondent:* 15 minutes.

*Number of forms reviewed by Ex-Im Bank:* 15.

*Government Annual Burden Hours:* 15 hours.

*Government Cost:* $620.

*Frequency of Reporting or Use:* Annually.

**Sharon A. Whitt,**

*Agency Clearance Officer.*

[FR Doc. 2012–30179 Filed 12–13–12; 8:45 am]

**BILLING CODE 6690–01–P**

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### Sunshine Act Notice

December 10, 2012.

**TIME AND DATE:** 11:00 a.m., Thursday, December 20, 2012.

**PLACE:** The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (entry from F Street entrance).

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following in open session: *Mark Gray* v. *North Fork Coal Corporation,* Docket No. KENT 2010–430–D. (Issues include whether the Administrative Law Judge erred in ruling that the complainant had failed to meet his burden of showing that unlawful discrimination had occurred.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

**CONTACT PERSON FOR MORE INFO:** Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

**Emogene Johnson,**

*Administrative Assistant.*

[FR Doc. 2012–30306 Filed 12–12–12; 4:15 pm]

**BILLING CODE 6735–01–P**

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### Sunshine Act Notice

December 10, 2012.

**TIME AND DATE:** 10:00 a.m., Thursday, December 20, 2012.

**PLACE:** The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (entry from F Street entrance).

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following in open session: *Prairie State Generating Co., LLC* v.*Secretary of Labor,* Docket Nos. LAKE 2009–711–R, et al. (Issues include whether the Administrative Law Judge erred in upholding the District Manager's disapproval of roof control and ventilation plans submitted by the operator.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

**CONTACT PERSON FOR MORE INFO:** Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

**Emogene Johnson,**

*Administrative Assistant.*

[FR Doc. 2012–30304 Filed 12–12–12; 4:15 pm]

**BILLING CODE 6735–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 31, 2012.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Troy and Crystal Faulkender, Oakley, Kansas; Jay and Brandy Todd, Rexford, Kansas; Darvin and Tammi Strutt, Colby, Kansas; Sharon and Ronnie Schamberger, Leslea and Brett Oelke, Brittany Schamberger, Taylore Schamberger, Jerry and Melissa Spresser, all of Hoxie, Kansas; Crystal Ann Trauer, trustee of the Laurence Duane Trauer Tax Shelter Trust and the Crystal Ann Trauer Revocable Trust, both in Hays, Kansas; Nichole and Bret Tremblay, Manhattan, Kansas; Larry and Julie Spresser, Pittsburg, Kansas; and Brian and Sheri Baalman,* Menlo, Kansas; as a group acting in concert, to acquire voting shares of Big Mac Bancshares, Inc., Hoxie, Kansas, and thereby indirectly acquire voting shares of Peoples State Bank, McDonald, Kansas.

Board of Governors of the Federal Reserve System, December 11, 2012.

**Margaret McCloskey Shanks,**

*Deputy Secretary of the Board*

[FR Doc. 2012–30206 Filed 12–13–12; 8:45 am]

**BILLING CODE 6210–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60-Day 13–0650]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

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 Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Ron Otten, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

Prevention Research Centers Program National Evaluation Reporting System (OMB No. 0920–0650, exp. 6/30/2013)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The Prevention Research Centers (PRC) Program was established by Congress through the Health Promotion and Disease Prevention Amendments of 1984. CDC manages the PRC Program and currently provides funding to PRC grantees that are housed within schools of public health, medicine or osteopathy. Awards are made for five years and may be renewed through a competitive application process. PRCs conduct outcomes-oriented health promotion and disease prevention research on a broad range of topics using a multi-disciplinary and community-based approach. Research projects involve state and local health departments, health care providers, universities, community partners, and other organizations. PRCs collaborate with external partners to assess community health priorities; identify research priorities; set research agendas; conduct research projects and related activities such as training and technical assistance; and disseminate research results to public health practitioners, researchers, and the general public. Each PRC receives an approximately equal amount of funding from CDC to establish its core capacity and support a core research project as well as training and evaluation activities. Research foci reflect each PRC's area of expertise and the needs of the community. Health disparities and goals outlined in *Healthy People 2020* are a particular emphasis for most PRC core research.

CDC is currently approved to collect performance information from PRCs through a web-based survey and telephone interview (OMB #0920–0650, exp. 6/30/2013). The web-based survey is designed to collect information on the PRCs' collaborations with health departments; formal training programs and other training activities; and other funded prevention research projects conducted separately from their core research. A structured telephone interview with a key PRC informant obtains information on systems and environmental changes in which PRCs are involved. The content of the information collection is guided by a set of performance indicators developed (2002) and later revised (2009) in collaboration with the PRCs.

CDC will request OMB approval to continue collecting performance information from PRCs for three years, with some changes. In this revision, CDC requests OMB approval to (1) Continue using a web-based survey and telephone interview for data collection, (2) change the platform of the web-based survey, (3) decrease the data collection burden for each PRC by decreasing the number of questions collected on an annual basis, and (4) revise some questions for clarity or to reflect the current needs and priorities of the program.

CDC will continue to use the information reported by PRCs to identify training and technical assistance needs, respond to requests for information from Congress and other sources, monitor grantees' compliance with cooperative agreement requirements, evaluate progress made in achieving goals and objectives, and describe the impact and effectiveness of the PRC Program.

There is no change in the number of respondents (37). Each PRC program will report the required information to CDC once per year. The estimated burden per response for the web-based survey will decrease from six hours to five hours, and the estimated burden per response for each telephone interview will decreased from one hour to 30 minutes. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondent | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|---|
| PRC Program | Survey | 37 | 1 | 5 | 185 |
| | Telephone Interview | 37 | 1 | 30/60 | 19 |
| Total | | | | | 204 |

Dated: December 10, 2012.

**Ron A. Otten,**

*Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Director.*

[FR Doc. 2012–30180 Filed 12–13–12; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–13–0604]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

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 Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Ron Otten, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

School Associated Violent Death Surveillance System (0920–0604, Expiration 1/31/2013)—Revision—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The Division of Violence Prevention (DVP), National Center for Injury Prevention and Control (NCIPC) proposes to maintain a system for the surveillance of school-associated homicides and suicides. The system relies on existing public records and interviews with law enforcement officials and school officials. The purpose of the system is to (1) estimate the rate of school-associated violent death in the United States and (2) identify common features of school-associated violent deaths. The system will contribute to the understanding of fatal violence associated with schools, guide further research in the area, and help direct ongoing and future prevention programs.

Violence is the leading cause of death among young people, and increasingly recognized as an important public health and social issue. In 2006, over 3,200 school-aged children (5 to 18 years old) in the United States died violent deaths due to suicide, homicide, and unintentional firearm injuries. The vast majority of these fatal injuries were not school associated. However, whenever a homicide or suicide occurs in or around school, it becomes a matter of particularly intense public interest and concern. NCIPC conducted the first scientific study of school-associated violent deaths (SAVD) during the 1992–99 academic years to establish the true extent of this highly visible problem. Despite the important role of schools as a setting for violence research and prevention interventions, relatively little scientific or systematic work has been done to describe the nature and level of fatal violence associated with schools. Until NCIPC conducted the first nationwide investigation of violent deaths associated with schools, public health and education officials had to rely on limited local studies and estimated numbers to describe the extent of school-associated violent death.

SAVD is an ongoing surveillance system that draws cases from the entire United States in attempting to capture all cases of school-associated violent deaths that have occurred. Investigators review public records and published press reports concerning each school-associated violent death. For each identified case, investigators also interview an investigating law enforcement official (defined as a police officer, police chief, or district attorney), and a school official (defined as a school principal, school superintendent, school counselor, school teacher, or school support staff) who are knowledgeable about the case in question. Respondents will only be interviewed once. Researchers request information on both the victim and alleged offender(s)—including demographic data, their academic and criminal records, and their relationship to one another. Data are also collected on the time and location of the death; the circumstances, motive, and method of the fatal injury; and the security and violence prevention activities in the school and community where the death occurred, before and after the fatal injury event. The data collection process has been revised to update items included in the surveys administered to law enforcement and school staff and to incorporate use of Computer Assisted Telephone Interviewing software to further reduce respondent burden. To obtain as much detailed information as possible concerning each identified case, investigators seek to obtain the initial law enforcement investigative report.

All data are secured through the use of technical, physical, and administrative controls. Hard copies of data are to be kept under lock and key in secured offices, located in a secured facility that can be accessed only by presenting the appropriate credentials. Digital data are password protected and then stored (and backed up routinely) onto a secure Local Area Network that can only be accessed by individuals who have been appropriately authorized. Study data are reported in the aggregate, such that no individual case can be identified from the reports. Data collection will be discontinued for the early part of 2013 as we wait for the 30-day notice to post and approval of our revision package.

There are no costs to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|---|
| School Officials | School Interview | 35 | 1 | 1 | 35 |

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|---|
| Police Officials | Law Enforcement Interview | 35 | 1 | 1 | 35 |
| Total | | | | | 70 |

Dated: December 10, 2012.

**Ron A. Otten,**

*Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Director.*

[FR Doc. 2012–30183 Filed 12–13–12; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–0711]**

### Request for Comments and Information on Initiating a Risk Assessment for Establishing Food Allergen Thresholds; Establishment of Docket

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; establishment of docket; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA or we) is establishing a docket to obtain comments relevant to conducting a risk assessment to establish regulatory thresholds for major food allergens as defined in the Food Allergen Labeling and Consumer Protection Act of 2004.

**DATES:** Submit either electronic or written comments by February 12, 2013.

**ADDRESSES:** You may submit comments, identified by Docket No. FDA–2012–N–0711, by any of the following methods:

**Electronic Submissions**

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

**Written Submissions**

Submit written submissions in the following ways:

- *Fax:* 301–827–6870.
- *Mail/Hand delivery/Courier (for paper or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

*Instructions:* All submissions received must include the Agency name and Docket No. FDA–2012–N–0711. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Steven M. Gendel, Center for Food Safety and Applied Nutrition (HFS–200), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1056.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Food allergy is an immune-mediated sensitivity to foods that can lead to life-threatening adverse reactions. Because there is no cure for food allergy, allergic consumers must use avoidance to prevent allergic reactions. Successful avoidance requires, among other things, that allergic consumers and their caregivers be able to read and understand the ingredient lists on packaged foods.

To help consumers more easily identify ingredients in foods that may cause an allergic reaction, the President signed the Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA) (Title II of Pub. L. 108–282), which amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) by defining the term ''major food allergen'' and stating that foods regulated under the FD&C Act are misbranded unless they declare the presence of major food allergens on the product label using the common or usual name of that major food allergen. Section 201(qq) of the FD&C Act (21 U.S.C. 321(qq)) now defines a major food allergen as ''[m]ilk, egg, fish (e.g., bass, flounder, or cod), Crustacean shellfish (e.g., crab, lobster, or shrimp), tree nuts (e.g., almonds, pecans, or walnuts), wheat, peanuts, and soybeans'' and also as a food ingredient that contains protein derived from such foods. The definition excludes any highly refined oil derived from a major food allergen and any ingredient derived from such highly refined oil.

FALCPA provides two mechanisms through which ingredients may become exempt from the major food allergen labeling requirement. An individual may petition for an exemption by providing scientific evidence, including the analytical method used, that an ingredient ''does not cause an allergic response that poses a risk to human health.'' (21 U.S.C. 403(w)(6)(C)). Alternatively, an individual may submit a notification that contains either scientific evidence showing that an ingredient ''does not contain allergenic protein'' or that a determination has previously been made through a premarket approval process that the ingredient ''does not cause an allergic response that poses a risk to human health.'' (21 U.S.C. 403(w)(7)(A)).

In addition to their intended use as ingredients, the unintended presence of major food allergens in foods may occur through cross-contact. Cross-contact describes the inadvertent introduction of an allergen into a product that would not intentionally contain that allergen as an ingredient. Most cross-contact can be avoided by controlling the production environment. These controls can include a wide range of activities, such as establishing personnel and traffic patterns that minimize the potential to transfer an allergen from one product to another.

FDA has used several risk management strategies to reduce the risk from unlabeled major food allergens, such as targeted inspections or discussions with industry organizations. However, we have not established regulatory thresholds or action levels for major food allergens. The establishment of regulatory thresholds or action levels for major food allergens would help us

determine whether, or what type of, enforcement action is appropriate when specific problems are identified and also help us establish a clear standard for evaluating claims in FALCPA petitions that an ingredient ''does not cause an allergic response that poses a risk to human health'' or ''does not contain allergenic protein.'' Regulatory thresholds also would help industry to conduct allergen hazard analyses and develop standards for evaluating the effectiveness of allergen preventive controls.

## II. Food Safety Risk Assessment for Establishing Food Allergen Thresholds

The FDA Threshold Working Group (the working group) has previously evaluated the approaches that could be used for establishing thresholds for food allergens (Ref. 1). Of the four approaches that were identified (methods-based, safety assessment-based, risk assessment-based, and statutorily-derived), the working group identified the quantitative risk assessment-based approach as being the ''strongest, most transparent'' approach. Further, the working group determined that this approach provides the most insight into both the level of protection and the degree of uncertainty associated with an exposure level. The working group also acknowledged the need for clinical and epidemiological data to support a quantitative risk assessment and to develop applicable risk assessment tools.

Since the working group's report was published in March 2006, there have been significant advances in both scientific tools and data resources related to food allergens. Therefore, we intend to determine if the currently available data and analysis tools are sufficient to support a quantitative risk assessment and, if so, to use these data and tools to evaluate the public health impact of establishing specific regulatory thresholds for one or more of the major food allergens.

## III. Establishment of a Docket and Request for Information

We are establishing a docket to provide an opportunity for interested individuals to submit comments (including data) that we can use to design and carry out a quantitative risk assessment for establishing regulatory thresholds for major food allergens. In particular, we invite comments on the following matters:

1. How should we define ''an allergic response that poses a risk to human health?''

2. Which major food allergens are of greatest public health concern and what is the size of the at-risk population?

3. How should clinical dose distribution data be used when establishing regulatory thresholds for the major food allergens?

4. What approaches exist for using biological markers or other factors related to the severity of allergic responses in a threshold risk assessment?

5. What data and information exist on dietary exposure patterns for individuals on allergen avoidance diets?

6. What data or other information exist on current levels of exposure associated with the consumption of undeclared major food allergens in packaged foods?

7. What other information or data should we consider in establishing regulatory thresholds for major food allergens?

## IV. Comments

Interested persons may submit either written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**) or electronic comments to *http://www.regulations.gov.* It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

## V. Reference

FDA has placed the following reference on display. To view the reference, go to *http://www.regulations.gov* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box. The reference may also be seen in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

1. Threshold Working Group, 2006, Approaches to Establish Thresholds for Major Food Allergen and for Gluten in Food, available at *http://www.fda.gov/Food/LabelingNutrition/FoodAllergensLabeling/GuidanceComplianceRegulatoryInformation/ucm106108.htm,* accessed December 5, 2012. (FDA has verified this Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**).

Dated: December 10, 2012.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2012–30123 Filed 12–13–12; 8:45 am]

**BILLING CODE 4160–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–0001]**

### Pulmonary-Allergy Drugs Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Pulmonary-Allergy Drugs Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the Agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on March 7, 2013, from 8 a.m. to 5 p.m.

*Location:* FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

*Contact Person:* Cindy Hong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, email: *PADAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee

information line to learn about possible modifications before coming to the meeting.

*Agenda:* On March 7, 2013, the committee will discuss the new drug application (NDA) 204275, for fluticasone furoate and vilanterol dry powder inhaler (proposed tradename BREO ELLIPTA), sponsored by GlaxoSmithKline, for the long-term maintenance treatment of airflow obstruction and for reducing exacerbations in patients with chronic obstructive pulmonary disease.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 21, 2013. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 12, 2013. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 13, 2013.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Cindy Hong at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 12, 2012.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2012–30171 Filed 12–13–12; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0001]**

### Agency Information Collection Activities: Petition for Alien Fiance(e), Form Number I–129F; Revision of a Currently Approved Collection

**ACTION:** 30-day notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on October 11, 2012, at 77 FR 61776, allowing for a 60-day public comment period. USCIS did not receive any comments in connection with the 60-day notice.

**DATES:** The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 14, 2013. This process is conducted in accordance with 5 CFR 1320.10.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to DHS, and to the OMB USCIS Desk Officer. Comments may be submitted to: DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140. Comments may also be submitted to DHS via email at *uscisfrcomment@dhs.gov,* to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via email at *oira_submission@omb.eop.gov* and via the Federal eRulemaking Portal Web site at *http://www.Regulations.gov* under e-Docket ID number USCIS–2006–0028. When submitting comments by email, please make sure to add OMB Control Number 1615–0001 in the subject box.

All submissions received must include the agency name, OMB Control Number and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

**Note:** The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection Request:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Petition for Alien Fiance(e).

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* USCIS Form I–129F; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–129F must be filed with USCIS by a citizen of the United States in order to petition for an alien fiance(e), spouse, or his/her children.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 46,936 responses at 1 hour and 35 minutes (1.58 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 74,158 annual burden hours.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140; Telephone 202–272–8377.

Dated: December 11, 2012

**Laura Dawkins,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2012–30215 Filed 12–13–12; 8:45 am]

**BILLING CODE 9111–97–P**

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## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0124]**

### Agency Information Collection Activities: Consideration of Deferred Action for Childhood Arrivals, Form I–821D, Revision of a Currently Approved Collection

**ACTION:** 60-day notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 35), on August 15, 2012, the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), submitted an information collection request, utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance. OMB approved the information collection request. DHS is now requesting OMB approval of a revision and extension of the approved information collection.

**DATES:** Comments are encouraged and will be accepted for sixty days until February 12, 2013.

**ADDRESSES:** Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to: DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140. Comments may be submitted to DHS via email at *uscisfrcomment@uscis.dhs.gov* and must include OMB Control Number 1615–0038 in the subject box. Comments may also be submitted via the Federal eRulemaking Portal at *www.Regulations.gov* under e-Docket ID number USCIS–2012–0012.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *www.Regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or that is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *www.Regulations.gov.*

**Issues for Comment Focus**

DHS, USCIS invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort, and resources used by the respondents to respond).

For Form I–821D, USCIS is especially interested in the public's experience, input, and estimates on the burden in terms of time and money incurred by applicants for the following aspects of this information collection:

- The time burden incurred by preparers (persons who assist the respondent with the preparation of the form) who are not paid.
- For preparers who are paid, the time and expense to the respondent to find and secure such preparers for assistance.
- The amount that paid preparers charge for their services.
- The time required to obtain supporting documents for Form I–821D.
- The monetary costs incurred to obtain supporting documents from sources such as a landlord, church, utility, public agency (housing, social services, law enforcement), school, medical care provider, advocacy group, law firm, or military service.
- The average time required and money expended to secure secondary evidence such as an affidavit.
- The percentage of total applicants who require English translations of their supporting documents.
- The percentage of supporting documents for each individual applicant that require translation into English.
- The time required to find, hire, or otherwise obtain translations of supporting documents for immigration benefit requests.
- The average out of pocket monetary cost if any to obtain translations of supporting documents when required.

In addition, in order to truly be helpful to the improvement of this form and program written comments and suggestions concerning the collection of information are requested to provide clear and specific suggestions on the data elements on the form and the evidence required to be submitted with a focus on one or more of the following four points:

(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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) How to reduce or minimize the burden of the collection of information on those who are to respond, including through the use of appropriate

automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Consideration of Deferred Action for Childhood Arrivals.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–821D, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. The information collected on this form is used by USCIS to determine eligibility of certain individuals who were brought to the United States as children and meet the following guidelines to be considered for deferred action for childhood arrivals:

1. Were under the age of 31 as of June 15, 2012;
2. Came to the United States before reaching their 16th birthday;
3. Have continuously resided in the United States since June 15, 2007, up to the present time;
4. Were present in the United States on June 15, 2012, and at the time of making their request for consideration of deferred action with USCIS;
5. Entered without inspection before June 15, 2012, or their lawful immigration status expired as of June 15, 2012;
6. Are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a general education development certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
7. Have not been convicted of a felony, significant misdemeanor, three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

These individuals will be considered for relief from removal from the United States or from being placed into removal proceedings as part of the deferred action for childhood arrivals process. Those who submit requests with USCIS and demonstrate that they meet the threshold guidelines may have removal action in their case deferred for a period of two years, subject to renewal (if not terminated), based on an individualized, case by case assessment of the individual's equities. Only those individuals who can demonstrate, through verifiable documentation, that they meet the threshold guidelines will be considered for deferred action for childhood arrivals, except in exceptional circumstances.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 700,000 responses at 2 hours and 45 minutes (2.75 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,925,000 annual burden hours.

If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal at *www.Regulations.gov*. We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number 202–272–8377.

Dated: December 11, 2012.

**Laura Dawkins,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2012–30229 Filed 12–13–12; 8:45 am]

BILLING CODE 9111–97–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0035]**

### Agency Information Collection Activities: Application To Adjust Status From Temporary to Permanent Resident, Form Number I–698; Extension, Without Change, of a Currently Approved Collection

**ACTION:** 30-Day Notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on October 4, 2012, at 77 FR 60708, allowing for a 60-day public comment period. USCIS did not receive any comments in connection with the 60-day notice.

**DATES:** The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 14, 2013. This process is conducted in accordance with 5 CFR 1320.10.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to DHS, and to the OMB USCIS Desk Officer. Comments may be submitted to: DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140. Comments may also be submitted to DHS via email at *uscisfrcomment@dhs.gov*, to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via email at *oira_submission@omb.eop.gov* and via the Federal eRulemaking Portal Web site at *http://www.Regulations.gov* under e-Docket ID number USCIS–2008–0019. When submitting comments by email, please make sure to add OMB Control Number 1615–0035 in the subject box.

All submissions received must include the agency name, OMB Control Number and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov*, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

**Note:** The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do*, or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application to Adjust Status from Temporary to Permanent Resident.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–698; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The data collected on this form is used by USCIS to determine eligibility to adjust an applicant's residence status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 165 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 165 annual burden hours.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140; Telephone 202–272–8377.

Dated: December 11, 2012.

**Laura Dawkins,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2012–30217 Filed 12–13–12; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[CIS No. 2523–12; DHS Docket No. USCIS–2009–0033]**

**RIN 1615–ZB13**

### Implementation of Immigrant Visa DHS Domestic Processing Fee

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** U.S. Citizenship and Immigration Services (USCIS) announces that as of February 1, 2013, USCIS will begin to collect a $165 Immigrant Visa DHS Domestic Processing Fee (USCIS Immigrant Fee) from individuals who have been issued immigrant visas by the U.S. Department of State (DOS) and are applying for admission to the United States. Prospective adoptive parents whose child(ren) is/are seeking admission to the United States under the Orphan or Hague Process will be exempt from the USCIS Immigrant Fee. The USCIS Immigrant Fee covers the cost of processing that is performed in the United States after immigrant visa holders receive their visa packages from DOS and are admitted to the United States. This notice provides instructions on how individuals who have been issued immigrant visas from DOS can pay the fee.

**DATES:** On February 1, 2013, USCIS will begin collecting the USCIS Immigrant Fee from individuals who have been issued immigrant visas by DOS.

**FOR FURTHER INFORMATION CONTACT:** Lyndon Lewis, U.S. Citizenship and Immigration Services, Financial Management Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2060; or by phone at (202) 272–9675 (this is not a toll-free number). You may also visit *www.USCIS.gov/immigrantfee* where a news release and a detailed payment Web page, including a set of questions and answers about the USCIS Immigrant Fee, are available.

**SUPPLEMENTARY INFORMATION:**

**I. Background on Fee**

On September 24, 2010, the Department of Homeland Security (DHS) published the final rule titled, *U.S. Citizenship and Immigration Services Fee Schedule.* 75 FR 58962. That final rule became effective on Nov. 23, 2010. The final rule, among other things, established the USCIS Immigrant Fee at $165 to recover the cost of processing that is performed in the United States after immigrant visa holders receive their immigrant visa packages from DOS at overseas consulates and are admitted to the United States. *See* 8 CFR 103.7(b)(1)(i)(D); *see also* 75 FR at 58979 (public comments on the Immigrant Visa DHS Domestic Processing Fee and DHS response). USCIS established this fee to recover its costs associated with processing, filing and maintaining the immigrant visa package, and producing and mailing required documents.

USCIS has not collected the fee from immigrant visa holders applying for admission to the United States because implementing procedures have only recently been developed in conjunction with DOS. Since the fee has not been collected since it was established, USCIS is publishing this Notice to announce that the USCIS Immigrant Fee collection process is now in place and that USCIS will begin collecting the fee in accordance with this Notice and the USCIS fee regulation at 8 CFR 103.7(b)(1)(i)(D).

The USCIS Director, however, is exempting from this USCIS Immigrant Fee prospective adoptive parents whose child(ren) is/are seeking admission to the United States under the Orphan or Hague Process. In addition, the Director has determined that the public interest of encouraging adoption of international orphans is served by exempting these new adoptive parents from this fee. USCIS will include the cost of processing immigrant visas for overseas adoptees in the next fee study conducted for adjustment of the USCIS fee schedule.

**II. Fee Collection Process**

To simplify and centralize the new fee collection process, immigrant visa holders applying for admission to the United States must pay the USCIS Immigrant Fee online at Pay.gov. Immigrant visa holders can electronically submit the fee by answering the questions on the USCIS intake page on Pay.gov and providing their checking account, debit or credit card information. Check payments must be drawn on a U.S. bank. If the immigrant visa holder is unable to make this payment, another person can make this payment on the immigrant visa holder's behalf.

Immigrant visa holders must submit payments online after they receive their immigrant visa package from DOS. DOS will issue the applicant:

- A USCIS handout which will include the immigrant visa holder's Alien number and Case ID number; and

• Instructions on how to submit payment.

Payment should be made before traveling to the United States. Immigrant visa holders should keep a copy of their receipt for their records. More details are available at *www.USCIS.gov/immigrantfee.*

Failure to pay the USCIS Immigrant Fee will not directly result in denial of admission to the United States as an immigrant or the loss of status as an alien lawfully admitted for permanent residence. However, USCIS will not issue a Permanent Resident Card (Form I–551) to an individual who is subject to the USCIS Immigrant Fee until the individual has remitted the fee. Failure to obtain the Form I–551 will make it difficult for the individual to show that he or she has complied with the alien registration requirements in sections 261–266 of the Immigration and Nationality Act, 8 U.S.C. 1301–1306. It may also make it difficult for the individual to show that he or she is authorized to accept employment in the United States or to return to the United States from temporary foreign travel.

**Alejandro N. Mayorkas,**

*Director, U.S. Citizenship and Immigration Services.*

[FR Doc. 2012–30226 Filed 12–13–12; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR 5604–N–15]**

## Notice of Proposed Information Collection: Comment Request Community Development Block Grant Recovery (CDBG–R) Program

**AGENCY:** Office of Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* February 12, 2013.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Departmental Paperwork Reduction Act Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4160, Washington, DC 20410; telephone: 202–708–3400 (this is not a toll-free number) or email Ms. Pollard for a copy of the proposed form and other available information.

**FOR FURTHER INFORMATION CONTACT:** Steve Johnson, Director, Entitlement Communities Division, Office of Block Grant Assistance, 451 7th Street SW., Room 7282, Washington, DC 20410; telephone (202) 708–1577 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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 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.

This Notice also lists the following information:

*Title of Proposal:* Community Development Block Grant Recovery (CDBG–R) Program.

*OMB Control Number, if applicable:* 2506–0184.

*Description of the need for the information and proposed use:* This request identifies the estimated reporting burden associated with the reporting of CDBG–R assisted activities as they are completed and closing out the CDBG–R program. The American Recovery and Reinvestment Act of 2009 (Recovery Act) appropriated $1 Billion in Community Development Block Grant (CDBG) funds to states and local governments that received CDBG funding in Fiscal Year 2008 to carry out, on an expedited basis, eligible activities under the CDBG program. The purpose of the CDBG–R funding was to stimulate the economy through measures that modernized the Nation's infrastructure, improved energy efficiency, and expanded educational opportunities and access to health care. All CDBG–R funds were required to be expended by September 30, 2012. Any CDBG–R funds remaining after that date were recaptured by HUD and returned to Treasury.

The Recovery Act did not specify a requirement regarding the date for completion of CDBG–R assisted activities, although grantees were required to give preference to activities that could be started and completed expeditiously. While the CDBG–R expenditure deadline has passed, all CDBG–R assisted activities have not been completed. New activities were added over time when grantees amended their 2008 substantial amendments to add such activities because previously identified activities came in under budget, were identified as imprudent, or did not meet the purposes of the Recovery Act. Once CDBG–R assisted activities meet a national objective and are physically complete, grantees may proceed in closing out their CDBG–R programs. Grantees must complete their final reports in federalreporting.gov before closing out their CDBG–R grants. HUD expects grantees to be ready to begin closing out their grants by March 31, 2013.

Once final reports are completed in federalreporting.gov, grantees may begin the process of closing out their CDBG–R grants. This process requires grantees to submit their final federalreporting.gov report and prepare and submit a CDBG–R Program Grantee Closeout Certification, a CDBG–R closeout checklist, Grant Closeout Agreement, and a Federal Financial Report (SF 425) to local HUD Field Offices.

The Recovery Act requires that not later than 10 days after the end of each calendar quarter, each recipient that received recovery funds from a federal agency shall submit a report to that agency that contains: (1) The total amount of recovery funds received from that agency; (2) the amount of recovery funds received that were expended or obligated to projects or activities; and (3) a detailed list of all projects or activities for which recovery funds were expended or obligated, including (A) the name of the project or activity; (B) a description of the project or activity; (C) an evaluation of the completion status of the project or activity; (D) an estimate of the number of jobs created and the number of jobs retained by the project or activity; and (E) for infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under the Recovery Act

and name of the person to contact at the agency if there are concerns with the infrastructure investment.

An update of the status of activities identified here must be reported quarterly in federalreporting.gov. In addition, not later than 30 calendar days after the end of each calendar quarter, each agency that made Recovery Act funds available to any recipient shall make the information in reports submitted publicly available by posting the information on a Web site. Grantees that have ongoing CDBG–R assisted activities are required to continue reporting quarterly on those activities until they are completed.

Information must be submitted using HUD's IDIS system and in federalreporting.gov. Pursuant to Section 1512 of the Recovery Act, CDBG–R grantees must enter the data into IDIS on a quarterly basis for generation of reports by HUD or other entities. In addition, grantees are required to submit reports in federalreporting.gov on a quarterly basis. Grantees will report in IDIS and federalreporting.gov for CDBG–R assisted activities, recordkeeping requirements, and reporting requirements.

The Recovery Act imposes additional reporting requirements including, but not limited to, information on the environmental review process, the expected completion of the activity, the type of activity, and the location of the activity.

*Agency form numbers, if applicable:* Not applicable.

*Members of affected public:* Grant recipients (metropolitan cities and urban counties) participating in the CDBG–R Entitlement Program.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The number of respondents was 1,167. However, some grantees have completed all CDBG–R assisted activities and have closed out their CDBG–R program grants. The remaining estimated number of respondents carrying out CDBG–R assisted activities and/or closing out their CDBG–R programs is 200. The proposed frequency of the response to the collection is quarterly. The total estimated burden is 25,600 hours.

*Status of the proposed information collection:* This submission is a revision of a currently approved collection. The current OMB approval expires on January 31, 2013.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 7, 2012.

**Mark Johnston,**

*Assistant Secretary (Acting).*

[FR Doc. 2012–30203 Filed 12–13–12; 8:45 am]

**BILLING CODE 4210–67–P**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5601–N–49]**

## Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the

appropriate landholding agencies at the following addresses: *Air Force:* Mr. Robert Moore, Air Force Real Property Agency, 143 Billy Mitchell Blvd., San Antonio, TX 78226, (210) 925–3047; *Army:* Ms. Veronica Rines, Department of Army, Office of the Chief of Staff for Installation Management, 600 Army Pentagon, Room 5A128, Washington, DC, 20310, 571–256–8145; *Energy:* Mr. Mark C. Price, Office of Engineering & Construction Management, OECM MA–50, 4B122, 1000 Independence Ave., NW., Washington, DC, 20585, (202) 586–5422; *GSA:* Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040 Washington, DC 20405, (202) 501–0084; *HHS:* Ms. Theresa M. Rita, Chief, Real Property Branch, Department of Health and Human Services, Division of Property Management, Program Support Center, Room 5B–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2265; *Interior:* Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1801 Pennsylvania Ave, NW., 4th Floor, Washington, DC 20006: 202–254–5522; *Navy:* Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave., SW., Suite 1000, Washington, DC 20374; (These are not toll-free numbers).

Dated: December 6, 2012.

**Ann Marie Oliva,**

*Deputy Assistant Secretary for Special Needs (Acting).*

**TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 12/14/2012**

**Suitable/Available Properties**

*Building*

Alaska

12 Buildings
Eielson AFB
Eielson AK 99702
Landholding Agency: Air Force
Property Number: 18201240003
Status: Unutilized
Directions: 1120, 1121, 1161, 1190, 1300, 4305, 6131, 6398, 1302, 1191, 5281, 3108
Comments: Off-site removal only; sf. varies; secured area; contact AF for info. on a specific property & accessibility/removal requirements

12 Buildings
JBER–E
Anchorage AK 99506
Landholding Agency: Air Force
Property Number: 18201240029
Status: Underutilized
Directions: 9372, 9374, 9382, 9378, 57528, 57501, 57438, 57434, 57432, 57409, 57035, 57033
Comments: Off-site removal only; sf. varies; moderate conditions; restricted area; contact AF for more info. on a property & accessibility/removal requirements

9 Buildings
JBER–E
Anchorage AK 99506
Landholding Agency: Air Force
Property Number: 18201240030
Status: Unutilized
Directions: 5374, 59122, 59348, 76520, 16519, 16521, 9570, 7179, 8197
Comments: Off-site removal only; sf. varies; moderate conditions; restricted area; contact AF for more info. on a specific property & accessibility/removal requirements

3 Buildings
Barrow Magnetic Observatory
Barrow AK 99723
Landholding Agency: GSA
Property Number: 54201240011
Status: Excess
GSA Number: 9AK–I–0842
Directions: STORAGE: 309 sf.; SENSOR BLDG.: 225 sf.; ABSOLUTE BLDG.:166 sf
Comments: Off-site removal only; total sf. 700; good to poor conditions; major renovations needed to make bldgs. ideal to occupy; lead/asbestos; contact GSA for more info. on accessibility/removal

California

Building 1028
19338 North St.
Beale CA 95903
Landholding Agency: Air Force
Property Number: 18201240009
Status: Unutilized
Comments: 178 sf.; storage; poor conditions; asbestos & lead; restricted area; contact AF for info. on accessibility requirements

Building 2153
6900 Warren Shingle
Beale AFB CA 95903
Landholding Agency: Air Force
Property Number: 18201240010
Status: Unutilized
Comments: 4,000 sf.; storage; very poor conditions; asbestos & lead possible; restricted area; contact AF for info. on accessibility requirements

Nevada

2 Buildings
Military Circle
Tonopah NV
Landholding Agency: GSA
Property Number: 54201240012
Status: Unutilized
GSA Number: 9–I–NV–514–AK
Directions: bldg. 102: 2,508 sf.; bldg. 103: 2,880 sf.
Comments: Total sf. for both bldgs. 5,388; Admin.; vacant since 1998; sits on 0.747 acres; fair conditions; lead/asbestos present

Oklahoma

Building 3356
Burrill Rd.
Ft. Sill OK 73503
Landholding Agency: Army
Property Number: 21201240050
Status: Unutilized
Comments: Off-site removal only; 10,839 sf.; vehicle maint. shop; 6 mons. vacant; moderate conditions

Pennsylvania

Tract 05–151
1198 Taneytown Rd.
Gettysburg PA 17325
Landholding Agency: Interior
Property Number: 61201240028
Status: Excess
Comments: Off-site removal only; 852 sf.; garage; extensive deterioration; repairs required; 2 months vacant; contamination identified; contact Interior for more info.

Tract 04–145
288 Taneytown Rd.
Gettysburg PA 17325
Landholding Agency: Interior
Property Number: 61201240029
Status: Excess
Comments: Off-site removal only; 240 sf.; storage; extensive deterioration; repairs required; lead base paint; contact Interior for more info.

Virginia

Joint Base Langley Eustis
1134 Wilson Ave.
Newport News VA
Landholding Agency: Air Force
Property Number: 18201240006
Status: Unutilized
Comments: 887 sf.; storage; poor conditions; restricted area; visitor's pass required; contact AF for more info.

Joint Base Langley Eustis
3508 Mulberry Island Rd.
Newport News VA
Landholding Agency: Air Force
Property Number: 18201240007
Status: Unutilized
Comments: 4,026 sf.; storage; poor conditions; restricted area; visitor's pass required; contact AF for more info.

*Land*

Tennessee

Fort Campbell Army Garrison
U.S. Hwy 79
Woodlawn TN 37191
Landholding Agency: GSA
Property Number: 54201240010
Status: Excess
GSA Number: 4–D–TN–586–2
Comments: 8 parcels; 3.41 to 13.90 acres; agricultural; adjacent to Ft. Campbell-U.S. Army Garrison; parcel 37 identified as wetlands; contact GSA for more details on specific property

**Unsuitable Properties**

*Building*

Alabama

6 Buildings
Maxwell AFB
Maxwell AL
Landholding Agency: Air Force
Property Number: 18201240021
Status: Underutilized
Directions: 302, 307, 1411, 695, 699, 322
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

California

7 Bldgs.

Edwards AFB
Edwards CA 93524
Landholding Agency: Air Force
Property Number: 18201210087
Status: Unutilized
Directions: 9641, 602, 4269, 4951, 7981, 8804
Comments: Nat'l security concerns; no public access and no alternative method to gain access; bldg. 3496 has been demolished
Reasons: Secured Area

26 Buildings
Eureka Hill Rd.
Point Arena Air CA
Landholding Agency: Air Force
Property Number: 18201240011
Status: Underutilized
Directions: 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627
Comments: Secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

21 Buildings
Eureka Hill Rd.
Point Arena Air CA
Landholding Agency: Air Force
Property Number: 18201240012
Status: Underutilized
Directions: 100, 102, 104, 105, 160, 201, 108, 202, 203, 206, 220, 221, 222, 225, 228, 217, 218, 408, 700, 300, 216
Comments: Secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

ACFT DY RSCH
Edwards AFB
Edwards CA
Landholding Agency: Air Force
Property Number: 18201240016
Status: Unutilized
Comments: Secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

ACFT RSCH ENG
Edwards AFB
Edwards CA
Landholding Agency: Air Force
Property Number: 18201240017
Status: Unutilized
Comments: Secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Kennel Stray Animal
Edwards AFB
Edwards CA
Landholding Agency: Air Force
Property Number: 18201240018
Status: Excess
Comments: Secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Florida

7 Buildings
Eglin AFB
Eglin FL 32542
Landholding Agency: Air Force
Property Number: 18201240015
Status: Underutilized
Directions: 249, 250, 251, 256, 408, 888, 955
Comments: Restricted area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

4 Buildings
Fighter Wing, FL ANGB
Jacksonville FL 32218
Landholding Agency: Air Force
Property Number: 18201240028
Status: Underutilized
Directions: 1014, 1015, 1016, 1017
Comments: Property located on a gated entry controlled military base; public access denied & no alternative to gain access w/ out compromising nat'l security.
Reasons: Secured Area

Facility 3013
107 Ford St.
Eglin AFB FL 32542
Landholding Agency: Air Force
Property Number: 18201240034
Status: Underutilized
Comments: Located in a secured area; on the Duke Field cantonment area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Buildings 224 & 1900
NAS
Jacksonville FL
Landholding Agency: Navy
Property Number: 77201240006
Status: Unutilized
Comments: Located on secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Hawaii

Bldg. 3378
Joint Base Pearl Harbor
Hickman HI
Landholding Agency: Air Force
Property Number: 18201240027
Status: Unutilized
Comments: Located on secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Idaho

Fac. 291
Bomber Rd.
MHAFB ID 83648
Landholding Agency: Air Force
Property Number: 18201240013
Status: Unutilized
Comments: Secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Building 629
Idaho Nat'l Lab
Idaho Falls ID 83415
Landholding Agency: Energy
Property Number: 41201240001
Status: Unutilized
Comments: Restricted area; public access denied & no alternative method to access w/out compromising nat'l security
Reasons: Secured Area

Louisiana

4 Buildings
Barksdale AFB
Barksdale LA 71110
Landholding Agency: Air Force
Property Number: 18201240004
Status: Unutilized
Directions: 4411, 4414, 4421, 4868
Comments: w/in restricted area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

B–4401
743 Kenny Ave.
Barksdale LA 71110
Landholding Agency: Air Force
Property Number: 18201240005
Status: Excess
Comments: Restricted area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Building 4161
460 Billy Mitchell Ave.
Barksdale LA 71110
Landholding Agency: Air Force
Property Number: 18201240014
Status: Underutilized
Comments: Secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Bldg. 6115
300 Miller Ave.
Boosier LA 71112
Landholding Agency: Air Force
Property Number: 18201240033
Status: Unutilized
Comments: Extremely high noise hazard area; located w/in military airfield clear zone
Reasons: Within airport runway clear zone

2 Buildings
300 Miller Ave.
Boosier City LA 71112
Landholding Agency: Air Force
Property Number: 18201240035
Status: Unutilized
Directions: 6117, 6119
Comments: Located w/in 1,500 ft. of a Federal facility handling 34,000 gallons of flammable materials; located within aircraft accident potential zone 1 (most dangerous); military airfield clear zone
Reasons: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone

Maryland

Buildings 127 & 128
16701 Elmer School Rd.
Dickerson MD 20837
Landholding Agency: HHS
Property Number: 57201240001
Status: Unutilized
Comments: Secured scientific research campus; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Massachusetts

3 Buildings
175 Falcon Dr.
Westfield MA 01085

Landholding Agency: Air Force
Property Number: 18201240026
Status: Excess
Directions: 16, 35, 28
Comments: Located on secured area; public access denied & no alternative methods to gain access w/out compromising nat'l security
Reasons: Secured Area

New Jersey

2 Buildings
JBMDL
Ft. Dix NJ 08640
Landholding Agency: Air Force
Property Number: 18201240019
Status: Unutilized
Directions: 8679, 2316
Comments: Secured post; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

New Mexico

Buildings 782, 793, 1102, 803
Holloman AFB
Holloman NM 88330
Landholding Agency: Air Force
Property Number: 18201240008
Status: Unutilized
Comments: Active military installation; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

5 Buildings
Cannon AFB
Cannon NM 88103
Landholding Agency: Air Force
Property Number: 18201240031
Status: Unutilized
Directions: 381, 799, 2112, 2382, 258
Comments: Located on AF controlled installation; restricted to authorized personnel only; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Oklahoma

Facility 47
501 North First St.
Altus OK 73523
Landholding Agency: Air Force
Property Number: 18201240022
Status: Excess
Comments: Public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

4 Buildings
Altus AFB
Altus OK 73523
Landholding Agency: Air Force
Property Number: 18201240023
Status: Unutilized
Directions: 165, 65, 72, 48
Comments: Secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Oregon

Building 1004
6801 NE Cornfoot Rd.
Portland OR 97218
Landholding Agency: Air Force
Property Number: 18201240025
Status: Unutilized
Comments: Located on secured areea; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Tennessee

Building 712
240 Knapp Blvd.
Nashville TN 37217
Landholding Agency: Air Force
Property Number: 18201240024
Status: Excess
Comments: Located on secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Wyoming

3 Buildings
FE Warren AF
Cheyenne WY 82005
Landholding Agency: Air Force
Property Number: 18201240020
Status: Unutilized
Directions: 1166, 2277, 835
Comments: Restricted area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

[FR Doc. 2012–29925 Filed 12–13–12; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5635–N–02]**

## Federally Mandated Exclusions from Income: Republication of Corrected Listing

**AGENCY:** Office of the General Counsel, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD's regulations provide that HUD will periodically publish a **Federal Register** notice listing the amounts specifically excluded by any Federal statute from consideration as income for purposes of determining eligibility or benefits. On July 24, 2012, HUD published a notice in the **Federal Register** that listed those exclusions and listed federal statutes that require certain income sources to be disregarded with regard to specific HUD programs. The July 24, 2012, notice updated the list of exclusions last published on April 20, 2001, by amending, removing, and adding exclusions. Today's notice corrects errors and an omission in the July 24, 2012, notice. For the convenience of the public, the Department is publishing a corrected version of the July 24, 2012, notice in its entirety.

**FOR FURTHER INFORMATION CONTACT:** For the Rent Supplement, section 236, and Project-based section 8 programs administered under 24 CFR parts 880, 881, and 883 through 886: Catherine Brennan, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street SW., Room 6138, Washington, DC 20410, telephone number 202–401–7914. For other section 8 programs administered under 24 CFR part 882 (Moderate Rehabilitation) and under part 982 (Housing Choice Voucher), and the Public Housing Programs: Shauna Sorrells, Director, Office of Public Housing Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4206, Washington, DC 20410, telephone number 202–402–2769, or the Public and Indian Housing Information Resource Center at 1–800–955–2232. For Indian Housing Programs: Rodger Boyd, Deputy Assistant Secretary, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4126, Washington, DC 20410, telephone number 202–401–7914. With the exception of the telephone number for the PIH Information Resource Center, these are not toll-free numbers. Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Relay Service at 1–800–877–8339 or by visiting *http://federalrelay.us/* or *http://www.federalip.us/.*

**Please note:** Members of the public who are aware of other federal statutes that require any benefit not listed in this notice to be excluded from consideration as income in these programs should submit information about the statute and the benefit program to one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section above. Members of the public may also submit this information to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

**SUPPLEMENTARY INFORMATION:** Under several HUD programs (Rent Supplement under 24 CFR 200.1303 (although loans in existence immediately before May 1, 1996, continue to be governed by 24 CFR part 215 (1995 ed.)); Mortgage Insurance and Interest Reduction Payment for Rental Projects under 24 CFR part 236; section 8 Housing Assistance programs; Public Housing programs), the definition of income excludes amounts of other

benefits specifically excluded by federal law.

HUD published a **Federal Register** notice on July 24, 2012 (77 FR 43347) that updated the list of exclusions last published on April 20, 2001 (66 FR 20318). Today's notice corrects errors and an omission in the July 24, 2012, notice. For the convenience of the public, the Department is republishing a corrected version of the July 24, 2012 notice in its entirety, and updates the list of federally mandated exclusions last published on April 20, 2001 to include the following:

(1) Assistance from section 1780 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(e)) and section 11(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1780(b);

(2) Payments from the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f);

(3) Payments from any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts;

(4) Compensation received by or on behalf of a veteran for service-connected disability, death, dependency or indemnity compensation in programs authorized under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4101 *et seq.*) and administered by the Office of Native American Programs;

(5) A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the United States District Court case entitled *Elouise Cobell et al.* v. *Ken Salazar et al.,* 816 F.Supp.2d 10 (Oct. 5, 2011 D.D.C.); and

(6) Federal major disaster and emergency assistance provided to individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93–288, as amended) and comparable disaster assistance provided by States, local governments, and disaster assistance organizations (42 U.S.C. 5155(d)).

## Background

In certain HUD-subsidized housing programs, annual income is a factor in determining eligibility and the level of benefits. Annual income is broadly defined as the anticipated total income from all sources received by every family member. HUD excludes certain types of benefits from applicants' and participants' annual income, as listed in 24 CFR 5.609, this notice, or otherwise specified by statute.

Federal statutes that require certain income sources be disregarded as income are universally applicable to all HUD programs where income is a factor in determining eligibility and benefits. Other federal statutes specify that income exclusions are specific to certain HUD programs.

## Changes to the Previously Published List

*Exclusions Amended:* Exclusion (viii) in the updated list below has been clarified to describe its applicability to section 8 programs.

*Exclusions Removed:* Certain exclusions from the previously published list have been removed because they have been repealed by Congress. These exclusions are as follows:

1. Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b)). When the Workforce Investment Act was enacted in 1998, it simultaneously repealed the Job Training Partnership Act. The exclusion that still applies to HUD programs is listed as exclusion (xvii) in the updated list below.

2. Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran. This exclusion was repealed by Public Law 106–419 in 2000.

*Exclusions Added:* The exclusions that are being added to the previously published list are as follows:

1. Section 1780 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(e)) and section 11(b) of the Child Nutrition Act of 1996 (42 U.S.C. 1780(b)) provide that the value of benefits to children under each of the respective Acts shall not be considered income or resources for any purpose under any Federal or state laws.

The effective date of this provision was October 11, 1966. This exclusion is added to the list as paragraph (xviii).

2. Section 8 of the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b)), provides: None of the payments, funds or distributions authorized, established, or directed by this Act, and none of the income derived therefrom, shall affect the eligibility of the Seneca Nation or its members for, or be used as a basis for denying, or reducing funds under any Federal program.

The effective date of this provision was November 3, 1990. This exclusion is added to the list as paragraph (xix).

3. Section 2608 of the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289), amended the definition of annual income in section 3(b)(4) of the United States Housing Act of 1937 (42 U.S.C. 1437) to exclude payments from any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts. The law provides:

Section 3(b)(4) of the United States Housing Act of 1937 (42 U.S.C. 1437a(3)(b)(4)) is amended by inserting ''or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts'' before ''may not be considered.''

This exclusion is applicable only to the section 8 and Public Housing programs. The effective date of this provision was July 30, 2008. This exclusion is added to the list as paragraph (xx).

4. Section 2 of the Indian Veterans Housing Opportunity Act of 2010 (Pub. L. 111–269, approved October 12, 2010), amended the definition of income contained in section 4 of NAHASDA (25 U.S.C. 4103(9)) to exclude compensation received by or on behalf of a veteran for service-connected disability, death, dependency or indemnity compensation. The law provides:

Paragraph (9) of section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4103(9)) is amended by adding at the end the following new subparagraph: ''(C) Any amounts received by any member of the family as disability compensation under chapter 11 of title 38, United States Code, or dependency and indemnity compensation under chapter 13 of such title.''

This exclusion only applies to the programs authorized under NAHASDA and administered by the Office of Native American Programs. The effective date of this provision was October 12, 2010. This exclusion is added to the list as paragraph (xxi).

5. The Claims Resolution Act of 2010 (Pub. L. 111–291), excludes a lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the United States District Court case entitled *Elouise Cobell et al.* v. *Ken Salazar et al.,* 816 F.Supp.2d 10 (Oct. 5, 2011 D.D.C.). The law provides in subsection (f) of section 101:

Notwithstanding any other provision of law, for purposes of determining initial eligibility, ongoing eligibility, or level of benefits under any Federal or federally assisted program, amounts received by an individual Indian as a lump sum or

a periodic payment pursuant to the Settlement shall not be treated for any household member, during the 1-year period beginning on the date of receipt—

(A) As income for the month during which the amounts were received; or

(B) As a resource.

The effective date of this provision was December 8, 2010. This exclusion is added to the list as paragraph (xxii).

6. The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93–288, as amended) provides that amounts received under the Act and comparable disaster assistance provided by States, local governments, and disaster assistance organizations shall not be considered as income or a resource when determining eligibility for or benefit levels under federally funded income assistance or resource-tested benefit programs (42 U.S.C. 5155(d)).

The effective date of this provision was November 23, 1988. This exclusion is added to the list as paragraph (xxiii).

**Updated List of Federally Mandated Exclusions From Income**

The following updated list of federally mandated exclusions republishes and corrects the notice published in the **Federal Register** on July 24, 2012. The following list of program benefits is the comprehensive list of benefits that currently qualify for the income exclusion in either any federal program or in specific federal programs. Exclusions (viii), (xiii), (xx), and (xxi) have provisions that apply only to specific HUD programs.

(i) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017(b));

(ii) Payments to Volunteers under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5044(f)(1), 5058);

(iii) Certain payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));

(iv) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);

(v) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));

(vi) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94–540, section 6);

(vii) The first $2000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first $2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407);

(viii) Amounts of scholarships funded under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070), including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For section 8 programs only (42 U.S.C. 1437f), any financial assistance in excess of amounts received by an individual for tuition and any other required fees and charges under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall not be considered income to that individual if that individual is over the age of 23 with dependent children (Pub. L. 109–115, section 327)(as amended);

(ix) Payments received from programs funded under title V of the Older Americans Act of 1965 (42 U.S.C. 3056g);

(x) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund (Pub. L. 101–201) or any other fund established pursuant to the settlement in *In Re Agent Orange Liability Litigation,* M.D.L. No. 381 (E.D.N.Y.);

(xi) Payments received under the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420, 25 U.S.C. 1721);

(xii) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);

(xiii) Earned income tax credit (EITC) refund payments received on or after January 1, 1991, for programs administered under the United States Housing Act of 1937, title V of the Housing Act of 1949, section 101 of the Housing and Urban Development Act of 1965, and sections 221(d)(3), 235, and 236 of the National Housing Act (26 U.S.C. 32(l));

(xiv) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95–433);

(xv) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d));

(xvi) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602(c));

(xvii) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931(a)(2));

(xviii) Any amount received under the Richard B. Russell School Lunch Act (42 U.S.C.1760(e)) and the Child Nutrition Act of 1966 (42 U.S.C. 1780(b)), including reduced-price lunches and food under the Special Supplemental Food Program for Women, Infants, and Children (WIC);

(xix) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b));

(xx) Payments from any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts as provided by an amendment to the definition of annual income in the U.S. Housing Act of 1937 (42 U.S.C. 1437A) by section 2608 of the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289);

(xxi) Compensation received by or on behalf of a veteran for service-connected disability, death, dependency, or indemnity compensation as provided by an amendment by the Indian Veterans Housing Opportunity Act of 2010 (Pub. L. 111–269; 25 U.S.C. 4103(9)) to the definition of income applicable to programs authorized under NAHASDA and administered by the Office of Native American Programs;

(xxii) A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled *Elouise Cobell et al.* v. *Ken Salazar et al.,* 816 F. Supp. 2d 10 (Oct. 5, 2011 D.D.C.), as provided in the Claims Resolution Act of 2010 (Pub. L. 111–291); and

(xxiii) Major disaster and emergency assistance received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93–288, as amended) comparable disaster assistance provided by States, local governments, and disaster assistance organizations shall not be considered as income or a resource when determining eligibility for or benefit levels under federally funded income assistance or resource-tested benefit programs (42 U.S.C. 5155(d)).

Dated: December 10, 2012.

**Aaron Santa Anna,**

*Assistant General Counsel, Regulations Division.*

[FR Doc. 2012–30210 Filed 12–13–12; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–HQ–MB–2012–N285; FF09M21200–234–FXMB1232099BPP0]**

### Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Depredation Orders for Double-Crested Cormorants

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** We (U.S. Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on January 31, 2013. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

**DATES:** You must submit comments on or before January 14, 2013.

**ADDRESSES:** Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail), or *hope_grey@fws.gov* (email). Please include ''1018–0121'' in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Hope Grey at *hope_grey@fws.gov* (email) or 703–358–2482 (telephone). You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 1018–0121.

*Title:* Depredation Orders for Double-Crested Cormorants, 50 CFR 21.47 and 21.48.

*Service Form Number(s):* None.

*Type of Request:* Extension of a currently approved collection.

*Description of Respondents:* Aquaculture producers, States, and tribes.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* Annually for reports; ongoing for recordkeeping.

| Activity | Number of respondents | Number of responses | Completion time per response (hours) | Total annual burden hours |
|---|---|---|---|---|
| Report take of migratory bird species other than double-crested cormorants (21.47(d)(7); 21.48(d)(7)) | 1 | 1 | 1 | 1 |
| Report take of species protected under Endangered Species Act (21.47(d)(8); 21.48(d)(8)) | 1 | 1 | 1 | 1 |
| Written notice of intent to conduct control activities (21.48(d)(9)) | 12 | 12 | 3 | 36 |
| Report of control activities (21.48(d)(10) and (11)) | 12 | 12 | 20 | 240 |
| Report effects of management activities (21.48(d)(12)) | 9 | 9 | 75 | 675 |
| Recordkeeping (21.47(d)(9)) | 325 | 325 | 7 | 2,275 |
| Totals | 360 | 360 | | 3,228 |

*Abstract:* This information collection is associated with regulations implementing the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*). Under the MBTA, it is unlawful to take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, migratory birds or their parts, nests, or eggs, except as authorized by regulations implementing the MBTA.

The regulations in the Code of Federal Regulations (CFR) at 50 CFR 21.47 (Aquaculture Depredation Order) authorize aquaculture producers and the U.S. Department of Agriculture (APHIS-Wildlife Services) in 13 States to take double-crested cormorants when the birds are found committing or about to commit depredations on commercial freshwater aquaculture stocks. The regulations at 50 CFR 21.48 (Public Resource Depredation Order) authorize State fish and wildlife agencies, APHIS-Wildlife Services, and federally recognized tribes in 24 States to take double-crested cormorants to prevent depredations on the public resources of fish, wildlife, plants, and their habitats.

Both 50 CFR 21.47 and 21.48 impose reporting and recordkeeping requirements on those operating under the depredation orders. We use the information collected to:

- Help assess the impact of the depredation orders on double-crested cormorant populations.
- Protect nontarget migratory birds or other species.
- Ensure that agencies and individuals are operating in accordance with the terms, conditions, and purpose of the orders.
- Help gauge the effectiveness of the orders at mitigating cormorant-related damages.

*Comments:* On July 9, 2012, we published in the **Federal Register** (77 FR 40374) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited comments for 60 days, ending on September 7, 2012. We received one comment. The commenter objected to APHIS-Wildlife Services being included as an action agency under the depredation orders, but did not address the information collection requirements. We did not make any changes to our requirements based on this comment.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and

• Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: December 6, 2012.

**Tina A. Campbell,**

*Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.*

[FR Doc. 2012–30181 Filed 12–13–12; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R7–SM–2012–N286; FXFR13350700640–134–FF07J00000]**

### Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Federal Subsistence Regulations and Associated Forms

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** We (U.S. Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on January 31, 2013. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

**DATES:** You must submit comments on or before January 14, 2013.

**ADDRESSES:** Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail), or *hope_grey@fws.gov* (email). Please include ''1018–0075'' in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Hope Grey at *hope_grey@fws.gov* (email) or 703–358–2482 (telephone). You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 1018–0075.

*Title:* Federal Subsistence Regulations and Associated Forms, 50 CFR 100 and 36 CFR 242.

*Service Form Numbers:* FWS Forms 3–2321, 3–2322, 3–2323, 3–2326, 3–2327, 3–2328, 3–2378, and 3–2379.

*Type of Request:* Extension of a currently approved collection.

*Description of Respondents:* Federally defined rural residents in Alaska.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion.

| Activity | Number of respondents | Number of responses | Completion time per response | Total annual burden hours |
|---|---|---|---|---|
| 3–2321—Membership Application | 67 | 67 | 2 hours | 134 |
| 3–2322—Applicant Interview | 67 | 67 | 30 minutes | 34 |
| 3–2323—Reference/Contact Interview | 171 | 171 | 15 minutes | 43 |
| 3–2326—Hunt Application and Permit | 7,250 | 7,250 | 10 minutes | 1,208 |
| 3–2326—Hunt Report | 7,250 | 7,250 | 5 minutes | 604 |
| 3–2327—Designated Hunter Application and Permit | 645 | 645 | 10 minutes | 108 |
| 3–2327—Designated Hunter—Hunt Report | 645 | 645 | 5 minutes | 54 |
| 3–2328—Fishing Application and Permit | 1,114 | 1,114 | 10 minutes | 186 |
| 3–2328—Fishing Report | 1,114 | 1,114 | 5 minutes | 93 |
| 3–2378—Designated Fishing Application and Permit | 29 | 29 | 10 minutes | 5 |
| 3–2378—Designated Fishing Report | 29 | 29 | 5 minutes | 2 |
| 3–2379—Customary Trade Recordkeeping Application and Permit | 25 | 25 | 10 minutes | 4 |
| 3–2379—Customary Trade Recordkeeping—Report | 25 | 25 | 5 minutes | 2 |
| Petition to Repeal | 1 | 1 | 2 hours | 2 |
| Proposed Changes | 92 | 92 | 30 minutes | 46 |
| Special Actions Request | 25 | 25 | 30 minutes | 13 |
| Request for Reconsideration (Appeal) | 3 | 3 | 4 hours | 12 |
| Traditional/Cultural/Educational Permits and Reports | 22 | 22 | 30 minutes | 11 |
| Fishwheel, Fyke Net, and Under-ice Permits and Reports | 8 | 8 | 15 minutes | 2 |
| TOTALS | 18,582 | 18,582 | | 2,563 |

*Abstract:* The Alaska National Interest Lands Conservation Act (ANILCA) and regulations in the Code of Federal Regulations (CFR) at 50 CFR part 100 and 36 CFR part 242 require that persons engaged in taking fish, shellfish, and wildlife on public lands in Alaska for subsistence uses must apply for and obtain a permit to do so and comply with reporting provisions of that permit. We use the following forms to collect information from qualified rural residents for subsistence harvest:

(1) FWS Form 3–2326 (Federal Subsistence Hunt Application, Permit, and Report).

(2) FWS Form 3–2327 (Designated Hunter Permit Application, Permit, and Report).

(3) FWS Form 3–2328 (Federal Subsistence Fishing Application, Permit, and Report).

(4) FWS Form 3–2378 (Designated Fishing Permit Application, Permit, and Report).

(5) FWS Form 3–2379 (Federal Subsistence Customary Trade Recordkeeping Form).

We use the information collected to evaluate:

- Eligibility of applicant.
- Subsistence harvest success.
- Effectiveness of season lengths, harvest quotas, and harvest restrictions.
- Hunting patterns and practices.
- Hunter use.

The Federal Subsistence Board uses the harvest data, along with other information, to set future season dates and bag limits for Federal subsistence resource users. These seasons and bag limits are set to meet the needs of subsistence hunters without adversely impacting the health of existing animal populations.

Also included in this ICR are three forms associated with recruitment and selection of members for regional advisory councils.

(1) FWS Form 2321 (Federal Subsistence Regional Advisory Council Membership Application/Nomination).

(2) FWS Form 2322 (Regional Advisory Council Candidate Interview).

(3) FWS Form 2323 (Regional Advisory Council Reference/Key Contact Interview).

The member selection process begins with the information that we collect on the application. Ten interagency review panels interview all applicants and nominees, their references, and regional key contacts. These contacts are all based on the information that the applicant provides on the application form. The information that we collect through the application form and subsequent interviews is the basis of the Federal Subsistence Board's recommendations to the Secretaries of the Interior and Agriculture for appointment and reappointment of council members.

In addition to the above forms, our regulations at 50 CFR 100 and 36 CFR 242 contain requirements for the collection of information. We collect nonform information on:

(1) Repeal of Federal subsistence rules and regulations (50 CFR 100.14 and 36 CFR 242.14).

(2) Proposed changes to Federal subsistence regulations (50 CFR 100.18 and 36 CFR 242.18).

(3) Special action requests (50 CFR 100.19 and 36 CFR 242.19).

(4) Requests for reconsideration (50 CFR 100.20 and 36 CFR 242.20).

(5) Requests for permits and reports, such as traditional religious/cultural/educational permits, fishwheel permits, fyke net permits, and under-ice permits (50 CFR 100.25–27 and 36 CFR 242.25–27).

*Comments:* On July 9, 2012, we published in the **Federal Register** (77 FR 40372) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited comments for 60 days, ending on September 7, 2012. We did not receive any comments in response to that notice.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: December 6, 2012.

**Tina A. Campbell,**

*Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.*

[FR Doc. 2012–30175 Filed 12–13–12; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R8–ES–2012–N226; FF08ESMF00–FXES11120800000–134]**

## Proposed Habitat Conservation Plan/Natural Community Conservation Plan for Western Butte County, CA: Environmental Impact Statement

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent; notice of public scoping meeting; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), intend to prepare a draft environmental impact statement (EIS) under the National Environmental Policy Act for the proposed Habitat Conservation Plan/Natural Community Conservation Plan for Western Butte County, hereafter referred to as the Butte Regional Conservation Plan (BRCP). This document is being prepared under the Endangered Species Act of 1973, as amended, and the California Natural Community Conservation Planning Act. The BRCP addresses State and Federal endangered species compliance requirements for the county of Butte and the cities of Oroville, Chico, Biggs, and Gridley (local agencies); the Butte County Association of Governments (BCAG); the California Department of Transportation (Caltrans); the Western Canal Water District; the Biggs West Gridley Water District, Butte Water District; and Richvale Irrigation District; and the BRCP implementing entity that will be established to implement the BRCP (permit applicants) for activities and projects in the BRCP plan area that they conduct or approve. The permit applicants intend to apply for a 50-year incidental take permit from the Service. This permit is needed to authorize the incidental take of threatened and endangered species that could result from activities covered under the BCRP. We announce meetings and invite comments.

**DATES:** To ensure consideration, please send your written comments by January 28, 2013. Two public scoping meetings will be held on January 9th, 2013, the first from 2 to 4 p.m. at the Oroville City Council Chambers, located at 1735 Montgomery Street Oroville, CA 95965; and the second from 6:00 to 8:00 p.m. at the Butte County Association of Governments, at 2580 Sierra Sunrise Terrace Suite 100, Chico, CA 95928.

**ADDRESSES:** To request further information or submit written comments, please use one of the following methods, and note that your information request or comment is in reference to the Butte Regional Conservation Plan (BRCP):

- *U.S. Mail:* U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825.
- *In-Person Drop-Off, Viewing, or Pickup:* Call 916–414–6600 to make an appointment during regular business hours to drop off comments or view

received comments at the above U.S. mail address.

• *Fax:* U.S. Fish and Wildlife Service, 916–414–6713, Attn.: Mike Thomas.

**FOR FURTHER INFORMATION CONTACT:** Mike Thomas, Chief, Conservation Planning Division, Sacramento Fish and Wildlife Office, or Eric Tattersall, Deputy Assistant Field Supervisor, by phone at 916–414–6600 or by U.S. mail at the above address. If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), publish this notice under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.;* NEPA), and its implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6, as well as in compliance with section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.;* Act). We intend to prepare a draft EIS to evaluate the impacts of several alternatives related to the potential issuance of an Incidental Take Permit to the applicants, as well as impacts of the implementation of the supporting proposed Butte Regional Conservation Plan. The EIS will be a joint EIS/Environmental Impact Report (EIR), for which the Service, BCAG, the National Marine Fisheries Service (NMFS), and the California Department of Fish and Game (CDFG), intend to gather information necessary for preparation.

The BRCP is a comprehensive, regional plan designed to provide long-term conservation and management of natural communities, sensitive species, and the habitats upon which those species depend, while accommodating other important uses of the land. It will serve as a habitat conservation plan pursuant to the federal Endangered Species Act (Act), and a natural community conservation plan (NCCP) under the California Natural Community Conservation Planning Act (NCCPA).

The Service will serve as the administrative lead for all actions related to this **Federal Register** notice for the EIS component of the EIS/EIR. The BCAG will serve as the State lead agency under the California Environmental Quality Act for the EIR component. BCAG, in accordance with the California Environmental Quality Act, is publishing a similar notice.

## Project Summary

In 2007, the BRCP planning agreement was entered into and by and among the local agencies, BCAG, CDFG, the Service, and NMFS. In 2010, Western Canal Water District, Biggs West Gridley Water District, Butte Water District, Richvale Irrigation District and Caltrans became additional signatories to the planning agreement. The planning agreement set out the initial scope of the program and defined the roles and responsibilities of the parties in the development of the BRCP. The planning agreement has helped guide the BRCP planning process and to define the initial scope of the effort. BCAG served as the lead in coordination of the process and preparation of the BRCP.

The BRCP's conservation strategy proposes to provide a regional approach for the long-term conservation of covered species (see Covered Species, below) and natural communities within the BRCP plan area while allowing for compatible future land use and development under county and city general plan updates and the regional transportation plans. The BRCP identifies and addresses the covered activities carried out by the permittees that may result in take of covered species within the BRCP plan area.

The proposed BRCP is intended to be consistent with and support compliance with other Federal and State wildlife and related laws and regulations, other local conservation planning efforts, and the city and county general plans. The BRCP was developed in coordination with the development of city and county general plans in the BRCP plan area, with feedback loops between the BRCP and general plan processes. These feedback loops identified opportunities and constraints and allowed for improvements in the general plans regarding the avoidance and minimization of impacts on biological resources and the development of open space and conservation elements that dovetail with the BRCP.

The proposed BRCP is designed to streamline and coordinate existing processes for review and permitting of public and private activities that potentially affect protected species. To meet this goal, the BRCP will propose a conservation strategy that includes measures to ensure that impacts on covered species and habitats related to covered activities are avoided, minimized, or mitigated, as appropriate. Covered activities encompass the range of existing and future activities that are associated with much of the regional economy (see Covered Activities, below).

## Background

Section 9 of the Act (16 U.S.C. 1531 et seq.) and Federal regulations prohibit the ''take'' of wildlife species listed as endangered or threatened. The Act defines the term ''take'' as: to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species, or to attempt to engage in such conduct (16 U.S.C. 1532). Harm includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering [50 CFR 17.3(c)]. Pursuant to section 10(a)(1)(B) of the Act, we may issue permits to authorize ''incidental take'' of listed species. ''Incidental take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Service regulations governing permits for threatened species and endangered species, respectively, are promulgated in 50 CFR 17.22 and 17.32.

Section 10(a)(1)(B) of the Act contains provisions for issuing such incidental take permits to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

• The taking will be incidental;

• The applicants will, to the maximum extent practicable, minimize and mitigate the impact of such taking;

• The applicants will develop a proposed HCP and ensure that adequate funding for the plan will be provided;

• The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

• The applicants will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

Thus, the purpose of issuing an ITP is to allow the applicants, under their respective regional authority, to authorize development while conserving the covered species and their habitats. Implementation of a multispecies HCP, rather than a species-by-species or project-by-project approach, can maximize the benefits of conservation measures for covered species and eliminate expensive and time-consuming efforts associated with processing individual ITPs for each project within the applicants' proposed Plan Area. The Service expects that the applicants will request ITP coverage for a period of 50 years.

## Plan Area

The boundary of the BRCP plan area (or permit area) is based on political, ecological, and hydrologic factors. The BRCP plan area includes approximately 564,270 acres, including the western lowlands and foothills of Butte County.

The BRCP plan area is bounded on the west by county boundaries with Tehama, Glenn, and Colusa Counties; bounded on the south by boundaries with Sutter and Yuba Counties; bounded on the north by the boundary with Tehama County; and bounded on the east by the upper extent of landscape dominated by oak woodland natural communities. Specifically, the eastern oak woodland boundary is defined by a line below which land-cover types dominated by oak trees comprise more than one half of the land cover present, plus a small portion of the City of Chico that extends above the oak zone.

*Covered Activities*

The proposed section 10 incidental take permit may allow take of covered wildlife species resulting from covered activities on non-Federal land in the proposed BRCP plan area. BCAG and local partners intend to request incidental take authorization for covered species that could be affected by activities identified in the BRCP. The activities within the BRCP plan area for which incidental take permit coverage is requested include construction and maintenance of facilities and infrastructure, both public and private, that are consistent with local general plans and local, State and Federal laws. The following is a summary of covered activities as proposed in the BRCP. Activities are grouped geographically (within Urban Permit Areas, outside urban permit areas, and within the system of conservation lands established in the BRCP), and are further grouped into activities that result in permanent development, and activities involving maintenance of existing or new facilities that are expected to occur over time during the permit duration. This following list is not intended to be exhaustive; rather, it provides an overview of the types of activities that would be expected to occur.

1. Activities within Urban Permit Areas (UPAs) are areas within the BRCP plan area for which the cities and County anticipate urban development under their respective general plan updates.

a. Permanent Development: Covered activities within UPAs as a result of new construction and improvements to existing facilities are covered, including the following types of activities: residential, commercial, public facilities, and industrial construction; recreational activity–related construction; transportation facilities construction; pipeline installation; utility services (above and below ground); waste and wastewater management activities; flood control and stormwater management activities; and in-water permanent development projects.

b. Recurring Maintenance: Covered activities within UPAs include maintenance of existing and new facilities that results in temporary impacts, including the following types of activities: recreational activities; transportation facilities maintenance; pipeline maintenance; utility services; waste and wastewater facilities management activities; flood control and stormwater management activities; vegetation management; bridge and drainage structure maintenance; in-water recurring maintenance activities; and irrigation and drainage canal activities (Western Canal Water District, Biggs West Gridley Water District, Butte Water District, and Richvale Irrigation District).

2. Activities outside UPAs are areas of the county within the BRCP plan area and located outside of the UPAs. Covered activities include linear utilities, transportation construction and maintenance projects, and agricultural support services projects. Outside UPAs do not include areas that become part of BRCP conservation lands.

a. Permanent Development: Covered activities of outside UPAs include new construction and improvements to existing facilities, including the following types of activities: waste management and wastewater facilities; rerouting of canals (Western Canal Water District, Biggs West Gridley Water District, Butte Water District, and Richvale Irrigation District); transportation facilities construction; BCAG Regional Transportation Plan and Caltrans projects; county rural bridge replacement projects; Butte County rural intersection improvement projects; Butte County rural roadway improvement projects; in-water permanent development projects; and agricultural services.

b. Recurring Maintenance: Covered activities of outside UPAs include maintenance of existing and new facilities, including the following types of activities: waste and wastewater management activities; irrigation and drainage canal activities (Western Canal Water District, Biggs West Gridley Water District, Butte Water District, and Richvale Irrigation District); transportation facilities maintenance; flood control and stormwater management activities; vegetation management; in-water maintenance activities; and bridge and drainage structure maintenance.

3. Conservation Lands include the system of conservation lands established under the BRCP. Conservation actions will be implemented by the BRCP on conservation lands, including the following types of activities: habitat management; habitat restoration and enhancement; habitat and species monitoring; directed studies; general maintenance of conservation lands and facilities; avoidance and minimization measures; and species population enhancement measures.

**Covered Species**

Covered Species are those species addressed in the proposed BRCP for which conservation actions will be implemented and for which the permit applicants will seek incidental take authorizations for a period of up to 50 years. Proposed covered species are expected to include threatened and endangered species listed under the Act, species listed under the California Endangered Species Act, and currently unlisted species. Species proposed for coverage in the BRCP are species that are currently listed as federally threatened or endangered or have the potential to become listed during the life of this BRCP and have some likelihood to occur within the BRCP plan area. The BRCP is currently expected to address 41 listed and non-listed wildlife and plant species. The list of proposed covered species may change as the planning process progresses; species may be added or removed as more is learned about the nature of covered activities and their impact within the BRCP plan area.

The following federally listed threatened and endangered wildlife species are proposed to be covered by the BRCP: The threatened Central Valley steelhead (*Oncorhynchus mykiss*), endangered Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), threatened Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*), threatened green sturgeon (*Acipenser medirostris*), threatened Valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), endangered vernal pool tadpole shrimp (*Lepidurus packardi*), endangered conservancy fairy shrimp (*Branchinecta conservatio*), threatened vernal pool fairy shrimp (*Branchinecta lynchi*), and threatened giant garter snake (*Thamnophis gigas*).

The following unlisted wildlife species are proposed to be covered by the BRCP: tricolored blackbird (*Agelaius tricolor*), yellow-breasted chat (*Icteria virens*), bank swallow (*Riparia riparia*), Western burrowing owl (*Athene*

*cunicularia hypugea*), western yellow-billed cuckoo (*Coccyzus americanus occidentalis*), greater sandhill crane (*Grus canadensis tabida*), California black rail (*Laterallus jamaicensis coturniculus*), American peregrine falcon (*Falco peregrinus anatum*), Swainson's hawk (*Buteo swainsoni*), white-tailed kite (*Elanus leucurus*), bald eagle (*Haliaeetus leucocephalus*), Blainville's horned lizard (*Phrynosoma blainvillii*), Western pond turtle (*Actinemys marmorata*), foothill yellow-legged frog (*Rana boylii*), Western spadefoot toad (*Spea hammondii*), Central Valley fall/late fall-run Chinook salmon (*Oncorhynchus tshawytscha*), Sacramento splittail (*Pogonichthys macrolepidotus*), and river lamprey (*Lampetra ayresii*).

Take of listed plant species is not prohibited on non-Federal land under the Act, and cannot be authorized under a section 10 permit. However, the permit applicants propose to include plant species on the permit in recognition of the conservation benefits provided for them under an HCP. For the purposes of the plan, certain plant species are further included to meet regulatory obligations under section 7 of the Act and the California Endangered Species Act. The Applicant would receive assurances under the Service's ''No Surprises'' regulations found in 50 CFR 17.22(b)(5) and 17.32(b)(5) for all species on the incidental take permit. The following federally listed plant species are proposed to be included in the BRCP in recognition of the conservation benefits provided for them under the BRCP and the assurances permit holders would receive if they are included on a permit: the threatened Hoover's spurge (*Chamaesyce hooveri*), endangered Butte County meadowfoam (*Limnanthes floccosa* ssp. *californica*), endangered hairy Orcutt grass (*Orcuttia pilosa*), threatened slender Orcutt grass (*Orcuttia tenuis*), and endangered Greene's tuctoria (*Tuctoria greenei*). The following unlisted plant species are also proposed to be included in the BRCP: Ferris' milkvetch (*Astragalus tener* var. *ferrisiae*), lesser saltscale (*Atriplex minuscule*), Ahart's dwarf rush (*Juncus leiospermus* var. *ahartii*), Red Bluff dwarf rush (*Juncus leiospermus* var. *leiospermus*), veiny monardella (*Monardella douglasii* ssp. *venosa*), Ahart's paronychia (*Paronychia ahartii*), California beaked-rush (*Rhynchospora californica*) Butte County checkerbloom (*Sidalcea robusta*), and Butte County golden clover (*Trifolium jokerstii*).

## Environmental Impact Statement

Before deciding whether to issue the requested Federal incidental take permit, the Service will prepare a draft EIS, in order to analyze the environmental impacts associated with issuance of the incidental take permit. In the EIS, the Service will consider the following alternatives: (1) The proposed action, which includes the issuance of take authorizations consistent with the proposed BRCP under section 10(a)(1)(B) of the Act; (2) no action (no permit issuance); and (3) a reasonable range of additional alternatives. The EIS/EIR will include a detailed analysis of the impacts of the proposed action and alternatives. The range of alternatives could include variations in impacts, conservation, permit duration, covered species, covered activities, permit area, or a combination of these elements.

The EIS/EIR will identify and analyze potentially significant direct, indirect, and cumulative impacts of our authorization of incidental take (permit issuance) and the implementation of the proposed BRCP on biological resources, land uses, utilities, air quality, water resources, cultural resources, socioeconomics and environmental justice, recreation, aesthetics, climate change and greenhouse gases, and other environmental issues that could occur with implementation of each alternative. The Service will use all practicable means, consistent with NEPA and other relevant considerations of national policy, to avoid or minimize significant effects of our actions on the quality of the human environment.

Following completion of the environmental review, the Service will publish a notice of availability and a request for comment on the draft EIS/EIR and the applicants' permit application, which will include the proposed HCP.

## Public Comments

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice. We will consider these comments in developing a draft EIS/EIR and in the development of an HCP and ITP. We particularly seek comments on the following:

1. Biological information concerning the species;
2. Relevant data concerning the species;
3. Additional information concerning the range, distribution, population size, and population trends of the species;
4. Current or planned activities in the subject area and their possible impacts on the species;
5. The presence of archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, which are required to be considered in project planning by the National Historic Preservation Act; and
6. Identification of any other environmental issues that should be considered with regard to the proposed development and permit action.

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section.

Comments and materials we receive, as well as supporting documentation we use in preparing the EIS/EIR document, will be available for public inspection by appointment, during normal business hours (Monday through Friday, 8 a.m. to 4:30 p.m.) at the Service's Sacramento address (see **ADDRESSES**).

## Scoping Meetings

See **DATES** for the dates and times of our public meetings. The purpose of scoping meetings is to provide the public with a general understanding of the background of the proposed HCP and activities it would cover, alternative proposals under consideration for the draft EIS, and the Service's role and steps to be taken to develop the draft EIS for the proposed HCP.

The primary purpose of these meetings and public comment period is to solicit suggestions and information on the scope of issues and alternatives for the Service to consider when drafting the EIS. Written comments will be accepted at the meetings. Comments can also be submitted by methods listed in the **ADDRESSES** section. Once the draft EIS and proposed HCP are complete and made available for review, there will be additional opportunity for public comment on the content of these documents through additional public comment periods.

## Meeting Location Accommodations

Persons needing reasonable accommodations in order to attend and participate in the public meetings should contact Mike Thomas at 916–414–6600 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

## Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and per NEPA Regulations (40 CFR 1501.7, 40 CFR 1506.6, and 1508.22).

Dated: December 10, 2012

**Alexandra Pitts,**

*Deputy Regional Director, Pacific Southwest Region, Sacramento, California.*

[FR Doc. 2012–30182 Filed 12–13–12; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R8–ES–2012–N204; FF08E00000–FXES11120800000F2–123–F2]**

### Proposed Low-Effect Habitat Conservation Plan for the State-Route 99/Cartmill Avenue Interchange Improvements Project, City of Tulare, Tulare County, CA

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), have received an application from the City of Tulare, Tulare County, California (applicant), for a 5-year incidental take permit for two species under the Endangered Species Act of 1973, as amended (Act). The application addresses the potential for ''take'' of two listed animals, the vernal pool fairy shrimp and the San Joaquin kit fox. The applicant would implement a conservation strategy program to avoid, minimize, and mitigate effects of the project's covered activities, as described in the applicant's low-effect habitat conservation plan (HCP). We request comments on the applicant's application and plan, and our preliminary determination that the plan qualifies as a ''low-effect'' habitat conservation plan, eligible for a categorical exclusion under the National Environmental Policy Act of 1969, as amended (NEPA). We discuss our basis for this determination in our environmental action statement (EAS), also available for public review.

**DATES:** We must receive written comments on or before January 14, 2013.

**ADDRESSES:** To request further information or submit written comments, please use one of the following methods, and note that your information request or comment is in reference to the Low-Effect Habitat Conservation Plan for the State Route 99/Cartmill Avenue Interchange Improvements Project, City of Tulare, Tulare County, California:

- *U.S. Mail:* Nina Bicknese, Conservation Planning Division, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, CA 95825.
- *In-Person Drop-off, Viewing, or Pickup:* Call (916) 414–6600 to make an appointment during regular business hours to drop off comments or view received comments at the address shown above.

**FOR FURTHER INFORMATION CONTACT:** Mike Thomas, Chief, Conservation Planning Division, or Eric Tattersall, Deputy Assistant Field Supervisor, at the address shown above or at (916) 414–6600 (telephone). If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

#### Availability of Documents

You may obtain copies of the permit application, HCP, and EAS from the individuals in **FOR FURTHER INFORMATION CONTACT**. Copies of these documents are also available for public inspection, by appointment, during regular business hours, at the Sacramento Fish and Wildlife Office (see **ADDRESSES**).

#### Public Availability of Comments

Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—might be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

#### Background Information

Section 9 of the Act prohibits taking of fish and wildlife species listed as endangered or threatened under section 4 of the Act. Under the Act, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The term ''harm'' is defined in the regulations as significant habitat modification or degradation that results in death or injury of listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term ''harass'' is defined in the regulations as to carry out actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

However, under specified circumstances, the Service may issue permits that allow the take of federally listed species, provided that the take that occurs is incidental to, but not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively.

Section 10(a)(1)(B) of the Act contains provisions for issuing such incidental take permits to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

1. The taking will be incidental;
2. The applicants will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
3. The applicants will develop a proposed HCP and ensure that adequate funding for the HCP will be provided;
4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
5. The applicants will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

The applicant seeks an incidental take permit for proposed covered activities within a 219-acre permit area surrounding the intersection of State Route 99 and Cartmill Avenue within the City of Tulare, Tulare County, California. The HCP does not include any unlisted animal species or unlisted plant species. The following two federally listed species will be included as covered species in the applicant's proposed HCP:

- San Joaquin kit fox (*Vulpes macrotis mutica*) (endangered)
- Vernal pool fairy shrimp (*Branchinecta lynchi*) (threatened)

For these covered species, the applicants would seek incidental take authorization. All species included in the incidental take permit would receive assurances under our ''No Surprises'' regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)).

Activities proposed for coverage under the proposed incidental take permit (covered-activities) would be otherwise lawful activities that could occur consistent with the HCP, to include, but not be limited to:

- Widen and improve sections of existing roadway.
- Remove the existing Cartmill Avenue overpass, remove associated roadways and associated highway ramps, and dispose of those materials.
- Store equipment and supplies in a designated staging area.
- Construct a new Cartmill Avenue overpass, including a temporary structure (falsework). Construct new roadways and new highway ramps associated with the new overpass.

• Excavate seven new stormwater detention basins and dispose of excavated soil.
• Remove existing vegetation, including plant roots.
• Grade and re-contour ground, compact soil, and install road surfaces (paving).
• Install erosion control structures (such as silt fencing and barriers).
• Operate heavy equipment (including, but not limited to, pneumatic tools, scrapers, bulldozers, backhoes, heavy trucks, cement trucks, compactors, and water trucks.
• Control dust by watering soil surfaces.
• Excavate trenches to install traffic signals, lighting conduit, streetlights, and similar facilities.
• Sow native-plant species or other groundcover to prevent erosion and to restore areas disturbed by construction activities.
• Maintain and operate the completed project, including maintenance watering of any landscaping vegetation, future mowing of roadside vegetation, and future maintenance repairs to the constructed facilities.

The applicant's proposed project would improve the State Route 99/Cartmill Avenue Interchange (Interchange) and correct nonstandard features of the existing Cartmill Avenue overcrossing. The new Cartmill Avenue overpass would provide 16.5 feet of vertical clearance over State Route 99, compared to the existing 15 feet, and provide space to accommodate any future widening of State Route 99. The approximately 2,700-foot long overpass-section of Cartmill Avenue would be widened from two lanes (approximately 38-feet wide) to become a six-lane divided arterial (approximately 128-feet wide). The new Cartmill Avenue overpass would transition from six lanes to the existing two lanes in a 400-foot section west of M Street, and in a 1,300-foot section east of the new Akers Street intersection/Tulare Irrigation District Canal crossing. The existing M Street intersection with Cartmill Avenue would be improved, and a portion of M Street would be reconstructed. An existing highway ramp in the southwest quadrant of the Interchange would be removed, realigned, and replaced with a new ramp. Three additional highway ramps would be constructed in the other Interchange quadrants. The existing frontage road (Road 100) in the northeast quadrant of the Interchange would be removed, and a new roadway (Akers Street) would be constructed in an area approximately 330 feet to the east of the existing road. Additional 12-inch-deep water detention basins would be excavated in each quadrant of the Interchange. The entire project would be constructed in a single phase.

The applicant proposes to avoid, minimize, and mitigate the effects to the covered species associated with the covered activities by fully implementing the conservation strategy described in the HCP. Avoidance and minimization measures will include compliance with our January 2011 document ''U.S. Fish and Wildlife Service Standard Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior to or During Ground Disturbance.'' Other avoidance and minimization measures include but are not limited to:
• Install barrier fencing around the entire work area.
• Install barrier fences around seasonal pools and other sensitive areas.
• Install of erosion control measures around seasonal pools.
• Implement actions to avoid migratory birds and active nests.
• Conduct environmental awareness training for onsite personnel.
• Conduct preconstruction surveys for kit fox and kit fox dens.
• Employ a qualified biological monitor to be on site during all initial ground-disturbing construction activities, to revisit the construction site at least weekly and assure that all avoidance and minimization measures are in good working order, and to prepare monitoring reports.
• The biological monitor will have the authority to stop work, if deemed necessary.

The applicant proposes to compensate for covered-species effects that cannot be avoided by purchasing preservation credits at the Service-approved conservation banks discussed in the HCP.

**Alternatives**

Our proposed action is approving the applicant's HCP and issuing an incidental take permit for the applicant's covered activities. As required by the Act, the applicant's HCP considers alternatives to the take expected under the proposed action. The HCP considers the environmental consequences of one alternative to the proposed action, the No-Action Alternative. Under the No-Action Alternative, we would not issue a permit; the applicant would not improve the State Route 99/Cartmill Avenue Interchange and would not correct nonstandard features of the existing Cartmill Avenue overcrossing; project effects on covered-species habitat would not occur; and the applicant would not implement proposed mitigation measures. While this No-Action Alternative would avoid take of covered-species, it is considered infeasible because the applicant could not complete necessary traffic safety improvements or correct existing circulation, access, and capacity problems at the existing interchange.

Under the Proposed-Action Alternative, we would issue an incidental take permit for the applicant's proposed project, which includes the covered activities described above. The Proposed-Action Alternative would permanently affect approximately 36.44 acres and temporarily affect approximately 12.24 acres of low-quality San Joaquin kit fox foraging and breeding habitat, and would permanently affect 0.071 acre of low-quality vernal pool fairy shrimp aquatic habitat. To mitigate for these effects, the applicant proposes to purchase preservation credits equal to 58.73 acres of high-quality kit fox habitat and purchase preservation credits equal to 0.213 acre of high-quality vernal pool habitat at two Service-approved conservation banks.

**National Environmental Policy Act**

As described in our EAS, we have made the preliminary determination that approval of the proposed HCP and issuance of the permit would qualify as a categorical exclusion under NEPA (42 U.S.C. 4321–4347 et seq.), as provided by NEPA implementing regulations in the Code of Federal Regulations (40 CFR 1500.5(k), 1507.3(b)(2), 1508.4), by Department of Interior regulations (43 CFR 46.205, 46.210, 46.215), and by the Department of the Interior Manual (516 DM 3 and 516 DM 8). Our EAS found that the proposed HCP qualifies as a ''low-effect'' habitat conservation plan, as defined by our ''Habitat Conservation Planning and Incidental Take Permitting Process Handbook'' (November 1996). Determination of whether a habitat conservation plan qualifies as low-effect is based on the following three criteria: (1) Implementation of the proposed HCP would result in minor or negligible effects on federally listed, proposed, or candidate species and their habitats; (2) implementation of the proposed HCP would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the HCP, considered together with the impacts of other past, present, and reasonably foreseeable projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant. Based upon the preliminary determinations in the EAS, we do not intend to prepare further NEPA documentation. We will consider public comments when making

the final determination on whether to prepare an additional NEPA document on the proposed action.

**Public Comments**

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice. We particularly seek comments on the following:

1. Biological information concerning the species;

2. Relevant data concerning the species;

3. Additional information concerning the range, distribution, population size, and population trends of the species;

4. Current or planned activities in the subject area and their possible impacts on the species;

5. The presence of archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, which are required to be considered in project planning by the National Historic Preservation Act; and

6. Identification of any other environmental issues that should be considered with regard to the proposed development and permit action.

**Authority**

We provide this notice pursuant to section 10(c) of the Act and the NEPA public-involvement regulations (40 CFR 1500.1(b), 1500.2(d), and 1506.6). We will evaluate the permit application, including the HCP, and comments we receive to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, we will issue a permit to the applicant for the incidental take of the San Joaquin kit fox and the vernal pool fairy shrimp from the implementation of the covered activities described in the Low-Effect Habitat Conservation Plan for the Proposed State Route 99/Cartmill Avenue Interchange Improvements Project, City of Tulare, Tulare County, California. We will make the final permit decision no sooner than January 14, 2013.

Dated: December 10, 2012.

**Alexandra Pitts,**

*Field Supervisor, Sacramento Fish and Wildlife Office, Sacramento, California.*

[FR Doc. 2012–30186 Filed 12–13–12; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–HQ–IA–2012–N298; FXIA16710900000P5–123–FF09A30000]**

### Endangered Species; Receipt of Applications for Permit

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications for permit.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

**DATES:** We must receive comments or requests for documents on or before January 14, 2013.

**ADDRESSES:** Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

**FOR FURTHER INFORMATION CONTACT:** Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

**SUPPLEMENTARY INFORMATION:**

**I. Public Comment Procedures**

*A. How do I request copies of applications or comment on submitted applications?*

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

*B. May I review comments submitted by others?*

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**II. Background**

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

**III. Permit Applications**

*A. Endangered Species*

Applicant: Palm Beach Zoo at Dreher Park, West Palm Beach, FL; PRT–706378

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, genera, and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

*Families:*
Cebidae
Cercopithecidae
Lemuridae
*Species:*
Bengal tiger *(Panthera tigris tigris)*
Clouded leopard *(Neofelis nebulosa)*
Yellow-footed rock wallaby (*Petrogale xanthopus)*
Maned wolf (*Chrysocyon brachyurus)*
Baird's tapir (*Tapirus bairdii)*
Red-crowned crane (*Grus japonensis)*
Komodo monitor (*Varanus komodoensis)*

Applicant: Indianapolis Zoological Society, Inc., Indianapolis, IN; PRT–679556

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, genera, and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

*Families:*
Lemuridae
Iguanidae
*Species:*
African wild dog (*Lycaon pictus*)
Amur tiger (*Panthera tigris altaica*)
Lar gibbon (*Hylobates lar*)
Radiated tortoise (*Astrochelys radiata)*

Applicant: Reptile Wrangler LLC, Douglasville, GA; PRT–91700A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the Radiated tortoise (*Astrochelys radiata*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Timathy Beard, Hauser, ID; PRT–233238

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise (*Astrochelys radiata*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Richard Ehrlich, Addison, IL; PRT–232854

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for golden parakeet (*Guarouba guarouba*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Indiana University–Purdue University Fort Wayne, Fort Wayne, IN; PRT–89757A

The applicant requests a permit to import biological samples collected from loggerhead sea turtles (*Caretta caretta*), green sea turtles (*Chelonia mydas*), leatherback sea turtles (*Dermochelys coriacea*), and olive ridley sea turtles (*Lepidochelys olivacea*) in the wild in South Africa and Costa Rica, for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 3-year period.

Applicant: Utah State University-Intermountain Herbarium, Logan, UT; PRT–92157A

The applicant requests a permit to export and re-import non-living museum/herbarium specimens of endangered and threatened species (excluding animals) previously legally accessioned into the permittee's collection for scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Thomas Archipley, Okemos, MI; PRT–91717A
Applicant: Lonnie Henriksen, Arlington, SD; PRT–91698A
Applicant: David Combs, Long Beach, CA; PRT–91992A
Applicant: Walters Wade, Hattlesburg, MS; PRT–91292A
Applicant: Leslie Barnhart, Houston, TX; PRT–91988A

**Brenda Tapia,**
*Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.*

[FR Doc. 2012–30214 Filed 12–13–12; 8:45 am]
BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

**[FWS–HQ–IA–2012–N297; FXIA16710900000P5–123–FF09A30000]**

## Endangered Species; Marine Mammals; Issuance of Permits

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of issuance of permits.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA).

**ADDRESSES:** Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

**FOR FURTHER INFORMATION CONTACT:** Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

**SUPPLEMENTARY INFORMATION:** On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 *et seq.*), as amended, and/or the MMPA, as amended (16 U.S.C. 1361 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) The application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

ENDANGERED SPECIES

| Permit No. | Applicant | Receipt of application **Federal Register** notice | Permit issuance date |
|---|---|---|---|
| 60610A | University of California, UC Davis Stable Isotope Facility. | 77 FR 17494; March 26, 2012 | September 14, 2012. |
| 63801A | Global Viral Forecasting Initiative | 77 FR 24510; April 24, 2012 | September 12, 2012. |
| 65708A | Duke Lemur Center | 77 FR 30547; May 23, 2012 | September 12, 2012. |
| 66809A | University of Cincinnati | 77 FR 34059; June 8, 2012 | September 13, 2012. |
| 77911A | Coleman Floyd | 77 FR 41198; July 12, 2012 | August 16, 2012. |

ENDANGERED SPECIES—Continued

| Permit No. | Applicant | Receipt of application **Federal Register** notice | Permit issuance date |
|---|---|---|---|
| 77994A | Gary Benmark | 77 FR 41198; July 12, 2012 | August 18, 2012. |
| 045532 | NOAA/National Marine Fisheries Service | 77 FR 41198; July 12, 2012 | September 14, 2012. |
| 73636A | Bruce Soik | 77 FR 43108; July 23, 2012 | September 14, 2012. |
| 80316A | Mitchell Strickling | 77 FR 44264; July 27, 2012 | September 24, 2012. |
| 77276A | Wildlife Artistry Taxidermy | 77 FR 46514; August 3, 2012 | October 12, 2012. |
| 81313A | David Kjelstrup | 77 FR 49453; August 16, 2012 | August 22, 2012. |
| 81986A | Billy Elebert | 77 FR 49453; August 16, 2012 | August 22, 2012. |
| 80923A | Richard Haskins | 77 FR 49453; August 16, 2012 | August 22, 2012. |
| 80535A | John Fry | 77 FR 49453; August 16, 2012 | August 22, 2012. |
| 81167A | Michelle Crawford | 77 FR 49453; August 16, 2012 | September 21, 2012. |
| 80043A | Steven Sullivan | 77 FR 49453; August 16, 2012 | September 21, 2012. |
| 81166A | Silas Blanton | 77 FR 49453; August 16, 2012 | September 24, 2012. |
| 80043A | Steve Sullivan | 77 FR 49453; August 16, 2012 | September 21, 2012. |
| 81167A | Michelle Crawford | 77 FR 49453; August 16, 2012 | September 21, 2012. |
| 80165A | Don Dahlgren | 77 FR 49455; August 16, 2012 | September 24, 2012. |
| 81990A | John Hattner | 77 FR 51819; August 27, 2012 | October 3, 2012. |
| 75218A | Smithsonian National Zoological Park | 77 FR 51819; August 27, 2012 | November 29, 2012. |
| 82880A | Big Game Studio | 77 FR 54604; September 5, 2012 | October 17, 2012. |
| 83520A | Donald Priest | 77 FR 58405; September 20, 2012 | October 25, 2012. |
| 84493A | Kevin Dunworth | 77 FR 58405; September 20, 2012 | November 16, 2012. |
| 82650A | Timothy Chestnut | 77 FR 58405; September 20, 2012 | November 16, 2012. |
| 82530A | Robert Eslick | 77 FR 58405; September 20, 2012 | November 16, 2012. |
| 72061A | Alexandria Rosati | 77 FR 49453; August 16, 2012 | November 19, 2012. |
| 77898A | Kimberly Stewart | 77 FR 59961; October 1, 2012 | November 20, 2012. |
| 83025A | Edward Hopkins | 77 FR 59961; October 1, 2012 | November 5, 2012. |
| 85002A | Randal Easley | 77 FR 59961; October 1, 2012 | November 5, 2012. |
| 85523A | Allan Spina | 77 FR 59961; October 1, 2012 | November 5, 2012. |
| 87103A | David Cote | 77 FR 64121; October 18, 2012 | December 5, 2012. |
| 89047A | Martin Turchin | 77 FR 66476; November 5, 2012 | December 7, 2012. |
| 88274A | Daniel Ceto | 77 FR 66476; November 5, 2012 | December 7, 2012. |

MARINE MAMMALS

| Permit No. | Applicant | Receipt of application **Federal Register** notice | Permit issuance date |
|---|---|---|---|
| 130062 | Darlene Ketten, Ph.D., Woods Hole Oceanographic Institute. | 77 FR 44264; July 27, 2012 | November 13, 2012. |
| 100875 | John Wise, Ph.D., University of Southern Maine | 77 FR 43108; July 23, 2012 | December 7, 2012. |

**Availability of Documents**

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280.

**Brenda Tapia,**

*Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.*

[FR Doc. 2012–30212 Filed 12–13–12; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLAKA01000.L16100000.DQ0000. LXSS086L0000]**

### Notice of Availability of the Draft Resource Management Plan Amendment, Draft Environmental Impact Statement for the Ring of Fire Resource Management Plan—Haines Planning Area, Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (RMP) Amendment/Draft Environmental Impact Statement (EIS) for the Ring of Fire RMP for the Haines Planning Area and by this notice is announcing the opening of the comment period.

**DATES:** To ensure that comments will be considered, the BLM must receive written comments on the Draft RMP Amendment/Draft EIS within 90 days following the date of publication of this Notice in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media news releases, and/or mailings.

**ADDRESSES:** You may submit comments related to the Ring of Fire RMP—Haines Planning Area Amendment by any of the following methods:

- *Email: BLM_AK_ROF_AMEND@ blm.gov.*
- *Fax:* 907–267–1267.
- *Mail:* BLM-Anchorage Field Office, Attention: Haines Amendment, 4700 BLM Road, Anchorage, Alaska 99507.

Copies of the Draft RMP Amendment/ Draft EIS are available at the Anchorage Field Office at the above address; or, on the Anchorage Field Office's Planning

Web site: *http://www.blm.gov/ak/st/en/prog/planning.html.*

**FOR FURTHER INFORMATION CONTACT:** Molly Cobbs, Anchorage District Planning and Environmental Coordinator, 907–267–1221, *mcobbs@blm.gov,* or in writing at the address above. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. FIRS is available 24 hours a day, 7 days a week, to leave a question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The Planning Area is located in southeast Alaska, and consists of approximately 320,000 acres of BLM-managed public lands located in two main blocks or parcels. The north block is located northwest of Skagway along the United States-Canada border and the south block is located southwest of the city of Haines along the boundary of Glacier Bay National Park. The Planning Area encompasses the cities of Haines and Skagway.

The Anchorage Field Office began a scoping process for this RMP Amendment and Draft EIS on March 26, 2009, with the publication of the Notice of Intent in the **Federal Register** (74 FR 13222). The formal scoping period ended June 26, 2009. Public meetings were held during the scoping period in the communities of Haines, Skagway, and Anchorage. The majority of comments received discussed wildlife and wildlife habitat, particularly mountain goats, as a reason to create an Area of Critical Environmental Concern (ACEC). Several comments were also offered in support of maintaining the existing Monitoring and Control Area. Other comments focused on whether or not to change the Special Recreation Management Area (SRMA) designation. Based on the BLM's management concerns and input received from cooperating agencies; other Federal, State, and local agencies; and the public during the scoping period, the Draft RMP Amendment and Draft EIS evaluate potential impacts on wildlife populations from recreation activities occurring on BLM-managed lands in the Planning Area. Additionally, the Draft EIS includes, but is not limited to, analysis of noise impacts from helicopters; impacts on recreational opportunities and experiences; and impacts to Lands with Wilderness Characteristics from helicopters. Permitted recreation activities and helicopter landings in the planning area include commercial filming, glacier landing tours, and helicopter-supported ski and winter trekking excursions. In 2002, a Monitoring and Control Area was established in the northwest portion of the north block. Commercial helicopter landings were prohibited within the Monitoring and Control Area boundary in order to provide a source of consistent monitoring data when adaptive management changes were necessary. Originally, the Monitoring and Control Area consisted of 112,790 acres; however, after recent land conveyances to the State of Alaska and Native Corporations, the area now consists of 98,000 acres.

The 2008 Ring of Fire RMP Record of Decision (ROD) designated an SRMA in the north block of the Planning Area. At the time the ROD was completed, the BLM assumed that most of the BLM-managed lands in the south block would be conveyed to the State and the SRMA boundary was not extended to the south block. Due to recent policy changes in the BLM's focus and use of SRMAs, this planning effort reevaluates whether to retain this designation or to change it to an Extensive Recreation Management Area (ERMA) designation.

The Ring of Fire RMP ROD also deferred to a subsequent planning effort evaluation of whether any ACECs should be designated in the Haines Planning Area. The BLM has now evaluated the resources in the Planning Area to determine whether any areas meet the ACEC relevance and importance criteria found in 43 CFR 1610.7–2 and BLM Manual for ACECs (MS–1613). The BLM determined that none of the areas in the Planning Area meet the ACEC relevance and importance criteria and therefore the Draft RMP Amendment/Draft EIS does not contain any proposed ACEC designations. Although some areas in the Planning Area contain exceptional scenery as well as populations of mountain goats and bald eagles, the areas do not have more than locally significant qualities when compared to similar resources in the region. The wildlife populations, scenery, and natural processes in the Planning Area are typical of all of Southeast Alaska, and are not unique to the region. Designation of an ACEC in the Planning Area is addressed in the Draft EIS as an Alternative Considered but Eliminated from Further Study.

Permitting helicopter and other organized flight excursions in the project area is one of the primary administrative actions of BLM in the Planning Area. As of 2011, two helicopter operators are authorized for up to 2,400 summer landings annually in the Haines Block SRMA (north block only). However, at least two additional helicopter operators have also requested landing authorizations on BLM-managed lands in the Planning Area. All requests for winter landing authorizations are currently on hold pending the outcome of this planning effort.

Four alternatives were analyzed in the Draft EIS:

Alternative A, the No Action Alternative, is a continuation of existing management. The SRMA designation would be retained in the north block, as would the Monitoring and Control Area. A total of 2,400 summer landings would be permitted in the project area annually.

Under Alternative B, the SRMA designation would be retained in the north block and would be expanded to include the south block. The Monitoring and Control Area would be eliminated. A maximum of 7,500 summer and winter landings would be permitted in the project area annually.

Under Alternative C, the SRMA designation would be changed to an ERMA designation and would be extended to all BLM-managed lands in the Planning Area. The Monitoring and Control Area would be retained for a period of 5 years from the signing of the ROD to provide a control area for mountain goat studies conducted jointly by the BLM and the Alaska Department of Fish and Game. After the 5-year period expires, the Monitoring and Control Area would be eliminated and landing permit applications would be accepted for site-specific NEPA review prior to the issuance of any new authorizations. A maximum of 4,000 summer and winter landings would be permitted annually.

Alternative D is the BLM's preferred alternative. Under Alternative D, the SRMA designation would be changed to an ERMA as described for Alternative C. The Monitoring and Control Area would be retained for 5 years and would then be eliminated as described for Alternative C. A maximum of 6,000 summer and winter landings would be permitted annually.

The 2009 Notice of Intent identified the associated NEPA document for the plan amendment as a Supplemental Environmental Impact Statement. Instead, the associated NEPA document is a Draft Environmental Impact Statement and will be referred to as such from this point forward.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment–including your

personal identifying information–may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Following the public comment period, comments will be used to prepare the Final Environmental Impact Statement. The BLM will respond to each substantive comment by making appropriate revisions to the document or explaining why a comment did not warrant a subsequent change.

**Authority:** 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2.

**Ted A. Murphy,**

*Acting State Director.*

[FR Doc. 2012–30160 Filed 12–13–12; 8:45 am]

**BILLING CODE 4310–JA–P**

## DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–WASO–NRNHL–11779; 2200–3200–665]**

## National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before November 17, 2012. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by December 31, 2012. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 21, 2012.

**J. Paul Loether,**

*Chief, National Register of Historic Places/National Historic Landmarks Program.*

**ARIZONA**

**Pima County**

Anderson, Arthur Olaf and Helen S., House, (Architecture and Planning of Josias Joesler and John Murphey in Tucson, Arizona MPS AD), 5505 N. Camino Escuela, Tucson, 12001101

Brown, Grace and Eliot, House, (Architecture and Planning of Josias Joesler and John Murphey in Tucson, Arizona MPS AD), 5025 N. Camino Escuela, Tucson, 12001102

Craig, Mr. and Mrs. George C., House, (Architecture and Planning of Josias Joesler and John Murphey in Tucson, Arizona MPS AD), 5005 N. Calle La Vela, Tucson, 12001103

DiCenso, Dr. Sabatino, House, (Architecture and Planning of Josias Joesler and John Murphey in Tucson, Arizona MPS AD), 5276 N. Camino Real,Tucson, 12001104

Goodman, John and Aline, House, (Architecture and Planning of Josias Joesler and John Murphey in Tucson, Arizona MPS AD), 4950 N. Calle Colmado, Tucson, 12001105

Remer, Ross T., House, (Architecture and Planning of Josias Joesler and John Murphey in Tucson, Arizona MPS AD), 4715 N. Camino Ocotillo, Tucson, 12001106

Wilson, Betty Jean, House, (Architecture and Planning of Josias Joesler and John Murphey in Tucson, Arizona MPS AD), 2322 E. Calle Lustre, Tucson, 12001107

Wollen, Herbert and Irma, House, (Architecture and Planning of Josias Joesler and John Murphey in Tucson, Arizona MPS AD), 4925 N. Camino Antonio, Tucson, 12001108

**CALIFORNIA**

**San Diego County**

La Jolla Post Office, (US Post Office in California 1900–1941 TR) 1040 Wall St., San Diego, 12001109

**Solano County**

USCGC STORIS (cutter), U.S. Maritime Administration National Defense Reserve Fleet, Suisun Bay, Benicia, 12001110

**CONNECTICUT**

**Middlesex County**

Eclectic House, The, 200 High St., Middletown, 12001111

**ILLINOIS**

**Bureau County**

Village Hall, 239 S. Main St., Sheffield, 12001112

**Cook County**

Neuville, The, 232 E. Walton Pl., Chicago, 12001113

Polish Roman Catholic Union of America, (Ethnic (European) Historic Settlement in the city of Chicago 1860–1930 MPS) 984 N. Milwaukee Ave., Chicago, 12001114

Vesta Accumulator Company Building, 2100 S. Indiana Ave., Chicago, 12001115

**Pike County**

Zoe Theatre, 209 N. Madison St., Pittsfield, 12001116

**IOWA**

**Henry County**

Camp Harlan—Camp McKean Historic District, 2260 Hickory Ave., Mount Pleasant, 12001117

**KANSAS**

**Douglas County**

Beni Israel Cemetery, 1301 E. 2100 Rd., Eudora, 12001118

**Greenwood County**

Eureka Atchison, Topeka and Santa Fe Railroad Depot, (Railroad Resources of Kansas MPS) 416 E. 5th St., Eureka, 12001119

**Marshall County**

Marysville High School—Junior High School Complex, (Public Schools of Kansas MPS) 1011–1111 Walnut St., Marysville, 12001120

**Stafford County**

Gray, William R., Photography Studio and Residence, 116 N. Main, St. John, 12001121

**Thomas County**

St. Thomas Hospital, (New Deal-Era Resources of Kansas MPS) 210 S. Range Ave., Colby, 12001122

**Wyandotte County**

Saint Margaret's Hospital, 263 S. 8th St., 759 Vermont Ave., Kansas City, 12001123

**MISSOURI**

**Cole County**

Hobo Hill Historic District, 500 blks. of E. Miller & Jackson Sts., Jefferson City, 12001124

**St. Louis Independent City**

Penrose Park Historic District, Bounded by I–70, Kingshighway Blvd., Newstead & Natural Bridge Aves., St. Louis (Independent City), 12001125

**NEBRASKA**

**Sioux County**

Agate Springs Ranch, Address Restricted, Harrison, 12001126

**NEW JERSEY**

**Morris County**

Church in the Glen, The, 2 Ledgewood Ave., Netcong, 12001127

**NEW YORK**

**Erie County**

Turner Brothers' Building—American Household Storage Company, 295 Niagara St., Buffalo, 12001128

**Essex County**

Ligonier Point Historic District, Point Rd., Ligonier Way, Willsboro, 12001129

**Rensselaer County**

Baum—Wallis Farmstead, (Farmsteads of Pittstown, New York MPS) 132 Baum Rd., Johnsonville, 12001130

Cannon—Brownell—Herrington Farmstead, (Farmsteads of Pittstown, New York MPS) 551 Otter Creek Rd., Johnsonville, 12001131

Halford—Hayner Farmstead, (Farmsteads of Pittstown, New York MPS) 346 Cooksboro Rd., Troy, 12001132

**Westchester County**

Downtown Ossining Historic District (Boundary Increase), Main St., Central & Croton Aves., Ossining, 12001133

**TEXAS**

**Walker County**

Austin Hall, 1741 University Ave., Huntsville, 12001134

**VIRGINIA**

**Fredericksburg Independent City**

Lewis Store, The, 1200 Caroline St., Fredericksburg (Independent City), 12001135

**Montgomery County**

Bowstring Truss Bridge, I–81, Ironto Rest Area, Ironto, 12001136

**Rockingham County**

Timberville Historic District, Bounded by Main, Bellevue, Montevideo, High, Church & S. C Sts., Maple Ave., Timberville, 12001137

**WASHINGTON**

**King County**

Fourth Church of Christ, Scientist, 1119 8th Ave., Seattle, 12001138

**Pierce County**

Puyallup Fish Hatchery, 1416 14th St., SW., Puyallup, 12001139

**San Juan County**

Moran State Park, 3572 Olga Rd., Olga, 12001140

**WEST VIRGINIA**

**Hampshire County**

Springfield Brick House, 12 Market St., Springfield, 12001141

[FR Doc. 2012–30172 Filed 12–13–12; 8:45 am]

BILLING CODE 4312–51–P

## DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–WASO–NRNHL–11746: 2200–3200–665]**

## National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before November 10, 2012. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by December 31, 2012. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 15, 2012.

**J. Paul Loether,**

*Chief, National Register of Historic Places/ National Historic Landmarks Program.*

**ALABAMA**

**Morgan County**

East Old Town Historic District, Address Restricted, Decatur, 12001079

West Old Town Historic District, Address Restricted, Decatur, 12001080

**COLORADO**

**Routt County**

Bell and Canant Mercantile—Crossan's M and A Market, 101 Main St., Yampa, 12001081

**GEORGIA**

**Richmond County**

Paine College Historic District, 1235 15th St., Augusta, 12001082

**IOWA**

**Harrison County**

Woodbine Lincoln Highway and Brick Street Historic District (Iowa's Main Street Commercial Architecture MPS), 101–524 Lincoln Way, 303–524 Walker, parts of 5th, 4th, & 3rd Sts., Woodbine, 12001083

**MARYLAND**

**Baltimore Independent City**

Locust Point Historic District, Roughly bounded by Fort Ave., B & O RR., Woodall & Reynolds Sts., Baltimore (Independent City), 12001084

**Washington County**

Elmwood, 16311 Kendle Rd., Williamsport, 12001085

**MISSISSIPPI**

**Hinds County**

Belhaven Historic District, Roughly bounded by E. Fortification & N. State Sts., I–55, Riverside Dr., Jackson, 12000920

**MONTANA**

**Lewis and Clark County**

Huseby, John H., House, 511 E. 6th Ave., Helena, 12001086

**NORTH CAROLINA**

**Catawba County**

Hollar Hosiery Mills—Knit Sox Knitting Mills, 883 Highland Ave., SE., Hickory, 12001087

**Durham County**

Wright's Automatic Machinery Company, 915 Holloway St., Durham, 12001088

**Johnston County**

Harrison, Richard B., School, 605 W. Noble & 405 S. Brevard Sts., Selma, 12001089

**Surry County**

Marion House and Marion Brothers Store, 7034 Siloam Rd., Siloam, 12001090

**OHIO**

**Hamilton County**

Main—Third Street Buildings, 208—210 E. 3rd & 300–318 Main Sts., Cincinnati, 83004654

**OREGON**

**Jackson County**

Antelope Creek Covered Bridge (Oregon Covered Bridges TR), Little Butte Cr., 35 ft. E. of Main St., Eagle Point, 12001091

**Polk County**

Grand Ronde Rail Depot, 8615 Grand Ronde Rd., Grand Ronde, 12001092

**PENNSYLVANIA**

**Allegheny County**

Brashear, John A., House and Factory, 1954 Perrysville Ave., Pittsburgh, 12001093

United States Post Office—Sewickley Branch, 200 Broad St., Sewickley, 12001094

**Butler County**

Preston Laboratories, 415 S. Eberhart Rd., Butler, 12001095

**Franklin County**

Irwinton Historic District, 9717 & 9685 Anderson Rd. (Montgomery Township), Upton, 12001096

**Philadelphia County**

Hotel Pennsylvania, 3900 Chestnut St., Philadelphia, 12001097

Wilson, James, Public School (Philadelphia Public Schools TR), 1148 Wharton St., Philadelphia, 88002238

**RHODE ISLAND**

**Providence County**

Lymansville Company Mill, 184 Woonasquatucket Ave., North Providence, 12001098

**WASHINGTON**

**Pierce County**

Whitman Elementary School, 1120 S. 39th St., Tacoma, 12001100

**Spokane County**

City Ramp Garage, 430 W. 1st Ave., Spokane, 12001099

[FR Doc. 2012–30173 Filed 12–13–12; 8:45 am]

**BILLING CODE 4312–51–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Ocean Energy Management

**[Docket No. BOEM–2012–0074]**

### Interim Policy Leasing for Renewable Energy Data Collection Facility on the Outer Continental Shelf off the Coast of Georgia

**AGENCY:** Bureau of Ocean Energy Management (BOEM), Interior.

**ACTION:** Notice of Intent to Prepare an Environmental Assessment.

**SUMMARY:** This Notice of Intent (NOI) to prepare an Environmental Assessment (EA) is being published as an initial step for the purpose of involving Federal agencies, states, tribes, local governments, and the public in the preparation of an EA. The EA will consider the environmental consequences associated with issuing a lease for an offshore data collection facility located on the Outer Continental Shelf (OCS), in accordance with applicable Department of the Interior (DOI) and Council on Environmental Quality (CEQ) regulations implementing the provisions of the National Environmental Policy Act (NEPA) of 1969 as amended (42 U.S.C. 4321 *et seq.*).

On November 6, 2007, the Minerals Management Service, now BOEM, announced an interim policy for authorizing the issuance of leases for the installation of offshore data collection and technology testing facilities on the OCS (72 FR 62673). An applicant has submitted a lease proposal to BOEM pursuant to the interim policy and, thus, has initiated the need for an EA.

On April 7, 2011, Southern Company submitted an application to lease three OCS blocks, approximately 3—11 nautical miles off the coast of Tybee Island, Georgia, under its original nomination submitted on July 23, 2008. The areas proposed for leasing are identified as Brunswick NH 17–02 OCS blocks numbered 6074, 6174, and 6126. The proposed lease area covers about 70 square kilometers (17,280 acres) of seafloor, and ranges from a depth of 12 meters (m) in Block 6074 to 20 m in the eastern half of Block 6126. Southern Company submitted amended project applications on May 18, 2012, and October 25, 2012, which describe additional data collection and technology testing activities to be conducted on the proposed lease. Southern Company intends to deploy a meteorological tower and/or a meteorological buoy that will measure wind speed, direction and shear, and potentially collect other environmental data during the five year lease term.

BOEM intends to prepare an EA for the purpose of considering the environmental consequences associated with issuing an interim policy lease to Southern Company; this EA will consider impacts associated with the deployment and installation of a meteorological tower and/or the deployment of a meteorological buoy. At a minimum, the EA will consider the alternatives of no action (i.e., no issuance of a lease) and the issuance of a lease and approval of certain technology testing activities within the lease area, such as installation of a fixed meteorological tower and/or deployment of a meteorological buoy.

With this NOI, BOEM requests comments and input from Federal, state, and local government agencies, tribal governments, and other interested parties on important environmental issues and alternatives that may be appropriate for consideration in the EA. BOEM also requests information pertaining to measures (e.g., limitations on activities based on technology, siting, or timing) that would minimize the reasonably foreseeable impacts to environmental resources and socioeconomic conditions which could result from the proposed activity. BOEM will conduct consultations with other Federal agencies, tribal governments, and affected states during the EA process.

**Authority:** BOEM publishes this NOI to prepare an EA pursuant to 43 CFR 46.305.

**FOR FURTHER INFORMATION CONTACT:** Michelle Morin, BOEM Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170–4817, (703) 787–1340 or *michelle.morin@boem.gov*.

**SUPPLEMENTARY INFORMATION:**

### 1. Interim Policy

Subsection 8(p) of the OCS Lands Act (43 U.S.C. 1337(p)), which was added by section 388 of the Energy Policy Act of 2005 (EPAct), gave the Secretary of the Interior the authority to issue leases, easements and rights-of-way on the OCS for alternative energy activities. The Secretary delegated this authority to BOEM. In a Request for Information and Nominations published on November 6, 2007, in the **Federal Register** (72 FR 62673), BOEM announced that it had established an interim policy under which it would issue limited leases authorizing renewable energy resource assessment, data collection, and technology testing activities on the OCS and that it was accepting nominations for limited leases to conduct such activities. Leases issued under the interim policy have a term of five years, and do not authorize the production or transmission of energy. In response to the November 6, 2007 notice, BOEM received more than 40 nominations proposing areas for interim policy leases on the OCS off the Pacific and Atlantic Coasts.

BOEM reviewed in detail all nominations received and, on April 18, 2008, identified 16 proposed lease areas for consideration based on factors such as the technological complexity of the proposed project, timing needs, competing OCS space-use issues, and relevant state-supported renewable energy activities and initiatives (73 FR 21152). BOEM also took into consideration the importance of supporting the advancement of activities related to the development of each of the renewable energy resource types that would be studied in the proposals—wind, ocean current, and wave. Of the 16 areas, BOEM identified three proposed areas offshore Georgia as suitable areas for renewable energy resource data collection and technology testing.

In the April 18, 2008 notice, BOEM solicited expressions of competitive interest from parties interested in leasing any of these nominated areas. The notice also invited comments and solicited information from the public regarding the suitability of these areas for leasing and the environmental and socioeconomic consequences that may be associated with issuing research leases in these areas.

The terms outlined in the BOEM interim policy lease and stipulations published in the **Federal Register** (73 FR 21363) on April 21, 2008, govern interim policy leases. More information about the interim policy can be found at the following web address: *http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/Index.aspx#Interim_Policy.*

### 2. Cooperating Agencies

BOEM invites Federal, state, and local government agencies as well as tribal governments to consider becoming cooperating agencies in the preparation of the EA. CEQ regulations

implementing the procedural provisions of NEPA define cooperating agencies as those with ''jurisdiction by law or special expertise'' (40 CFR 1508.5). Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and remember that an agency's role in the environmental analysis neither enlarges nor diminishes the final decisionmaking authority of any other agency involved in the NEPA process.

Upon request, BOEM will provide potential cooperating agencies with a draft Memorandum of Agreement that includes a schedule with critical action dates and milestones, mutual responsibilities, designated points of contact, and expectations for handling pre-decisional information. Agencies should also consider the ''Factors for Determining Whether To Invite, Decline, or End Cooperating Agency Status'' in Attachment 1 of CEQ's January 30, 2002, Memorandum for the Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the NEPA. Copies of this document are available at the following web addresses: *http://ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html* and *http://ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagencymemofactors.html*.

BOEM, as the lead agency, will not provide financial assistance to cooperating agencies. Even if an organization is not a cooperating agency, opportunities will exist to provide information and comments to BOEM during the normal public input phases of the NEPA process.

**3. Comments**

Federal, state, local government agencies, tribal governments, and other interested parties are requested to send their written comments regarding important environmental issues and the identification of reasonable alternatives related to the proposed issuance of an interim policy lease to Southern Company to conduct data collection and technology testing activities in one of the following ways:

1. *Electronically: http://www.regulations.gov.* In the entry titled ''Enter Keyword or ID,'' enter ''BOEM–2012–0074,'' then click ''Search.'' Follow the instructions to submit public comments and view supporting and related materials available for this document.

2. In written form, delivered by hand or by mail, enclosed in an envelope labeled *''Comments on OCS Renewable Energy Program Interim Policy Lease for Southern Company''* to Program Manager, Office of Renewable Energy Programs (HM 1328), Bureau of Ocean Energy Management, 381 Elden Street, Herndon, Virginia 20170.

Comments should be submitted no later than January 14, 2013.

Dated: December 5, 2012.

**Tommy P. Beaudreau,**

*Director, Bureau of Ocean Energy Management.*

[FR Doc. 2012–30185 Filed 12–13–12; 8:45 am]

BILLING CODE 4310–MR–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–921 (Second Review)]**

### Folding Gift Boxes From China

**Determination**

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on folding gift boxes from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

**Background**

The Commission instituted this review on April 2, 2012 (77 FR 19714) and determined on July 6, 2012 that it would conduct an expedited review (77 FR 42762, July 20, 2012).

The Commission transmitted its determination in this review to the Secretary of Commerce on December 10, 2012. The views of the Commission are contained in USITC Publication 4365 (November 2012), entitled *Folding Gift Boxes from China: Investigation No. 731–TA–921 (Second Review).*

By order of the Commission.

Issued: December 10, 2012.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2012–30162 Filed 12–13–12; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–846]**

### Certain CMOS Image Sensors and Products Containing Same; Investigations: Terminations, Modifications and Rulings

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 9) granting unopposed motions to terminate the above-captioned investigation based on a settlement agreement. The investigation is terminated.

**FOR FURTHER INFORMATION CONTACT:** Clark S. Cheney, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2661. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on June 6, 2012, based on a complaint filed by California Institute of Technology of Pasadena, California (''CalTech''). 77 FR 33488 (June 6, 2012). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain CMOS image sensors and products containing the same based on infringement of three United States patents. The notice of investigation named as respondents STMicroelectronics of Geneva, Switzerland, and STMicroelectronics Inc., of Coppell, Texas (collectively, ''STMicro''); Nokia Corp., of Espoo,

Finland, and Nokia, Inc., of White Plains, New York (collectively, ''Nokia''); and Research In Motion Ltd., of Ontario, Canada, and Research In Motion Corp., of Irving, Texas (collectively, ''RIM'')..

On October 16, 2012, CalTech and STMicro jointly moved to terminate the investigation based upon a settlement agreement between CalTech and STMicro. On October 26, 2012, RIM and Nokia filed a separate joint motion to terminate the investigation based on the same settlement agreement between CalTech and STMicro. Neither motion was opposed.

On November 8, 2012, the ALJ issued the subject ID (Order No. 9) granting both motions to terminate the investigation. The ALJ found no indication that termination of the investigation based on the settlement agreement would have an adverse impact on the public interest. No petitions for review of the ID were filed.

The Commission has determined not to review the ID. The investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

Issued: December 10, 2012.

By order of the Commission.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2012–30161 Filed 12–13–12; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Representative Fee Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) revision titled, ''Representative Fee Request,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

**DATES:** Submit comments on or before January 14, 2013.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**Authority:** 44 U.S.C. 3507(a)(1)(D).

**SUPPLEMENTARY INFORMATION:** An attorney or other representative may represent an individual filing for compensation benefits with the OWCP. The representative is entitled to request a fee for services under the Federal Employees' Compensation Act and under the Longshore and Harbor Workers' Compensation Act; however, the OWCP must approve the fee before the representative can make any demand for payment. This ICR sets forth the criteria for the information the respondent must present in order to have the fee approved by the OWCP. The information collection does not impose a particular form or format for the application, provided all required information is presented. This information collection has been characterized as a revision to account for an electronic filing option and because the OWCP has enhanced the information provided about the rights of respondents with disabilities.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1240–0049. The current approval is scheduled to expire on December 31, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on August 27, 2012 (77 FR 51829).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0049. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* DOL–OWCP.

*Title of Collection:* Representative Fee Request.

*OMB Control Number:* 1240–0049.

*Affected Public:* Private Sector—businesses or other for-profits.

*Total Estimated Number of Respondents:* 12,363.

*Total Estimated Number of Responses:* 12,363.

*Total Estimated Annual Burden Hours:* 6,182.

*Total Estimated Annual Other Costs Burden:* $15,696.

Dated: December 7, 2012.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2012–30201 Filed 12–13–12; 8:45 am]

**BILLING CODE 4510–CR–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Petitions for Mine Safety Standard Modification

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, ''Petitions for Mine Safety Standard Modification,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

**DATES:** Submit comments on or before January 14, 2013.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain*, on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov*.

**FOR FURTHER INFORMATION CONTACT:** Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov*.

**Authority:** 44 U.S.C. 3507(a)(1)(D).

**SUPPLEMENTARY INFORMATION:** Federal Mine Safety and Health Act of 1977 section 101(c), 30 U.S.C. 811(c), provides that a mine operator or a representative of miners may petition the Secretary of Labor to modify the application of a mandatory safety standard. A petition for modification may be granted if the Secretary determines (1) that an alternative method of achieving the results of the standard exists and that it will guarantee, at all times, no less than the same measure of protection for the miners affected as that afforded by the standard or (2) that the application of the standard will result in a diminution of safety to the miners affected. Upon receipt of a petition, the MSHA publishes a notice in the **Federal Register** advising interested parties that they may provide comments or other relevant information on the proposed modification. Thereafter, the MSHA conducts an investigation to determine the merits of the petition for the purpose of deciding whether to grant the request and, if granted, whether there is a need for any additional terms or conditions.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if it does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1219–0065. The current approval is scheduled to expire on January 31, 2013; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on August 3, 2012 (77 FR 46525).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219–0065. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* DOL–MSHA.

*Title of Collection:* Petitions for Mine Safety Standard Modification.

*OMB Control Number:* 1219–0065.

*Affected Public:* Private Sector—businesses or other for profits and not-for-profit institutions.

*Total Estimated Number of Respondents:* 80.

*Total Estimated Number of Responses:* 80.

*Total Estimated Annual Burden Hours:* 2,560.

*Total Estimated Annual Other Costs Burden:* $37,514.

Dated: December 10, 2012.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2012–30200 Filed 12–13–12; 8:45 am]

BILLING CODE 4510–43–P

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

### Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Charter Renewal

In accordance with section 512(a)(1) of the Employee Retirement Income Security Act of 1974 (ERISA) and the provisions of the Federal Advisory Committee Act and its implementing regulations issued by the General Services Administration (GSA), the charter for the Advisory Council on Employee Welfare and Pension Benefit Plans is renewed.

The Advisory Council on Employee Welfare and Pension Benefit Plans shall advise the Secretary of Labor on technical aspects of the provisions of ERISA and shall provide reports and/or recommendations each year on its findings to the Secretary of Labor. The Council shall be composed of fifteen members appointed by the Secretary. Not more than eight members of the Council shall be of the same political party. Three of the members shall be representatives of employee organizations (at least one of whom shall be a representative of any organization members of which are participants in a multiemployer plan); three of the members shall be representatives of employers (at least one of whom shall be a representative of employers maintaining or contributing to multiemployer plans); three members shall be representatives

appointed from the general public (one of whom shall be a person representing those receiving benefits from a pension plan); and there shall be one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting.

The Advisory Council will report to the Secretary of Labor. It will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act, and its charter will be filed under the Act. For further information, contact Larry I. Good, Executive Secretary, Advisory Council on Employee Welfare and Pension Benefit Plans, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 693–8668.

Signed at Washington, DC, this 7th day of December, 2012.

**Phyllis C. Borzi,**

*Assistant Secretary, Employee Benefits Security Administration.*

[FR Doc. 2012–30191 Filed 12–13–12; 8:45 am]

**BILLING CODE 4510–29–P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Intent To Seek Approval To Establish an Information Collection

**AGENCY:** National Science Foundation.

**ACTION:** Notice and request for comments.

**SUMMARY:** The National Science Foundation (NSF) is announcing plans to request approval of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

**DATES:** Interested persons are invited to send comments regarding the burden or any other aspect of this collection of information requirements by February 12, 2013.

**ADDRESSES:** Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by email to *splimpto@nsf.gov*.

*Comments:* Written comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; or (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.

**FOR FURTHER INFORMATION CONTACT:** Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; 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).

**SUPPLEMENTARY INFORMATION:**

*Title:* Program Evaluation of the Scholarships in Science, Technology, Engineering, and Mathematics (S–STEM) Program

*OMB Approval Number:* 3145–NEW

*Expiration Date: Not applicable.*

*Overview of this information collection:* The National Science Foundation (NSF) is supporting an evaluation of the Scholarships in Science, Technology, Engineering, and Mathematics (S–STEM) Program, which operates within NSF's Division of Undergraduate Education. The evaluation will include surveys of principal investigators, surveys of a sample of S–STEM scholarship recipients, and focus groups and interviews with project personnel and students during site visits to S–STEM awardee institutions. The S–STEM Program awards grants to a geographically diverse set of two- and four-year institutions of higher education (IHEs) that then provide scholarships for academically talented students, in science and engineering disciplines, who have demonstrated financial need. The institutions also provide resources and support services to assist students in becoming and/or remaining engaged in science and engineering through to the successful attainment of associate, baccalaureate, or graduate-level degrees. Funding for the S–STEM Program comes from H–1B VISAs, funding which was reauthorized in FY 2005 through Public Law 108–447. NSF is committed to providing stakeholders with information regarding the expenditures of taxpayer funds. The evaluation of the S–STEM Program will explore the strategies, practices, and characteristics of the implementation of exemplary S–STEM awardees; investigate S–STEM Program outcomes related to awarding scholarships to talented STEM students with demonstrated financial need; and investigate institutional-related outcomes of S–STEM grantees. If NSF cannot collect information from S–STEM participants, NSF will have no other means to consistently document the outcomes, strategies, and experiences related to the program.

### Consult With Other Agencies and the Public

NSF has not consulted with other agencies. However, the contractor conducting the evaluation has gathered information from an external evaluation group of subject matter experts on the study design and data collection plan. A request for public comments will be solicited through announcement of data collection in the **Federal Register**.

### Background

The evaluation will involve data from extant sources, web surveys and site visits. OMB approval is being sought for the new data that will be collected for the study. Primary data sources will include web surveys of S–STEM Program Principal Investigators (PIs) and S–STEM scholarship recipients and in-depth interviews or focus groups with a series of respondents during site visits to a subset of awardee institutions.

*Respondents:* Individuals (Principal Investigators, S–STEM scholarship recipients, other campus officials involved in the S–STEM program).

*Number of Respondents:* 8,907.

*Average Time per Response:* 24 minutes.

*Burden on the Public:* 3,563 total hours.

Dated: December 11, 2012.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2012–30177 Filed 12–13–12; 8:45 am]

**BILLING CODE P**

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection Activities: Comment Request; Education and Human Resources Project Monitoring Clearance

**AGENCY:** National Science Foundation.

**ACTION:** Notice.

**SUMMARY:** Under the Paperwork Reduction Act of 1995, Public Law 104–13 (44 USC U.S.C. 3506(c)(2)(A)), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation invites the general public and other Federal agencies to take this opportunity to comment on this information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 77 FR 33774 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.*

**DATES:** Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the Federal Register.

**ADDRESSES:** Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by email to *splimpto@nsf.gov.* Copies of the submission may be obtained by calling (703) 292–7556.

*For Additional Information:* Contact Suzanne Plimpton, the NSF Reports Clearance Officer, phone (703) 292–7556, 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).

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.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Education and Human Resources Program Monitoring Clearance.

*OMB Approval Number:* 3145–NEW.

*Type of Request:* Intent to seek approval to establish an information collection.

*Abstract:* The National Science Foundation (NSF) requests establishment of program accountability data collections that describe and track the impact of NSF funding that focuses on the Nation's science, technology, engineering, and mathematics (STEM) education and STEM workforce. NSF funds grants, contracts, and cooperative agreements to colleges, universities, and other eligible institutions, and provides graduate research fellowships to individuals in all parts of the United States and internationally.

The Directorate for Education and Human Resources (EHR), a unit within NSF, promotes rigor and vitality within the Nation's STEM education enterprise to further the development of the 21st century's STEM workforce and public scientific literacy. EHR does this through diverse projects and programs that support research, extension, outreach, and hands-on activities that service STEM learning and research at all institutional (e.g., pre-school through postdoctoral) levels in formal and informal settings; and individuals of all ages (birth and beyond). EHR also focuses on broadening participation in STEM learning and careers among United States citizens, permanent residents, and nationals, particularly those individuals traditionally underemployed in the STEM research workforce, including but not limited to women, persons with disabilities, and racial and ethnic minorities.

The scope of this information collection request will primarily cover descriptive information gathered from education and training projects that are funded by NSF. NSF will primarily use the data from this collection for program planning, management, and audit purposes to respond to queries from the Congress, the public, NSF's external merit reviewers who serve as advisors, including Committees of Visitors (COVs), the NSF's Office of the Inspector General and as a basis for either internal or third-party evaluations of individual programs.

The collections will generally include three categories of descriptive data: (1) Staff and project participants (data that are also necessary to determine individual-level treatment and control groups for future third-party study or for internal evaluation); (2) project implementation characteristics (also necessary for future use to identify well-matched comparison groups); and (3) project outputs (necessary to measure baseline for pre- and post- NSF-funding-level impacts).

*Use of the Information:* This information is required for effective administration, communication, program and project monitoring and evaluation, and for measuring attainment of NSF's program, project, and strategic goals, and as identified by the President's Accountability in Government Initiative; GPRA, and the NSF's Strategic Plan. The Foundation's FY 2011–2016 Strategic Plan may be found at: *http://www.nsf.gov/news/strategicplan/nsfstrategicplan_2011_2016.pdf.*

Since the this collection will primarily be used for accountability and evaluation purposes, including responding from queries from COVs and other scientific experts, a census rather than sampling design typically is necessary. At the individual project level funding can be adjusted based on individual project's responses to some of the surveys. Some data collected under this collection will serve as baseline data for separate research and evaluation studies.

NSF-funded contract or grantee researchers and internal or external evaluators in part may identify control, comparison, or treatment groups for NSF's ET portfolio using some of the descriptive data gathered through this collection to conduct well-designed, rigorous research and portfolio evaluation studies.

*Respondents:* Individuals or households, not-for-profit institutions, business or other for profit, and Federal, State, local or tribal government.

*Number of Respondents:* 9,3335.

*Burden on the Public:* NSF estimates that a total reporting and recordkeeping burden of 62,909 hours will result from activities to monitor EHR STEM education programs. The calculation is shown in table 1.

TABLE 1—ANTICIPATED PROGRAMS THAT WILL COLLECT DATA ON PROJECT PROGRESS AND OUTCOMES ALONG WITH THE NUMBER OF RESPONDENTS AND BURDEN HOURS PER COLLECTION PER YEAR

| Collection title | Number of respondents | Number of responses | Annual hour burden |
|---|---|---|---|
| Centers of Research Excellence in Science and Technology (CREST) and Historically Black Colleges and Universities Research Infrastructure for Science and Engineering (HBCU–RISE) Monitoring System. | 37 | 37 | 1,374 |
| Graduate STEM Fellows in K–12 Education (GK–12) Monitoring System | 1,626 | 1,626 | 3,941 |
| Integrative Graduate Education and Research Traineeship Program (IGERT) Monitoring System. | 4,658 | 4,658 | 12,156 |
| Informal Science Education (ISE) Monitoring System | 157 | 157 | 2,047 |
| Louis Stokes Alliances for Minority Participation (LSAMP) Monitoring System | 518 | 518 | 17,094 |
| Louis Stokes Alliances for Minority Participation Bridge to the Doctorate (LSAMP–BD) Monitoring System. | 50 | 50 | 3,600 |
| Robert Noyce Teacher Scholarship Program (Noyce) Monitoring System | 294 | 294 | 3,822 |
| Research in Disabilities Education (RDE) Monitoring System | 43 | 43 | 1,743 |
| Scholarships in Science, Technology, Engineering, and Mathematics Program (S–STEM) Monitoring System. | 500 | 1,000 (500 respondents × 2 responses/yr.). | 6,000 |
| Science, Technology, Engineering, and Mathematics Talent Expansion Program (STEP) Monitoring System. | 242 | 242 | 6,292 |
| Transforming Undergraduate Education in Science, Technology, Engineering, and Mathematics (TUES) Monitoring System. | 1,210 | 1,210 | 4,840 |
| Additional Collections not Specified | 900 | 900 | 1,200 |
| Total | 9,335 | 9,835 | 62,909 |

The total estimate for this collection is 62,909 annual burden hours. The average annual reporting burden is between 1.5 and 72 hours per ''respondent,'' depending on whether a respondent is a direct participant who is self-reporting or representing a project and reporting on behalf of many project participants.

Dated: December 11, 2012.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2012–30222 Filed 12–13–12; 8:45 am]

BILLING CODE 7555–01–P

## NATIONAL SCIENCE FOUNDATION

### Alan T. Waterman Award Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Alan T. Waterman Award Committee, #1172.

*Date and Time:* January 11, 2013, 8:30a.m.–1:30 p.m.

*Place:* National Science Foundation, Arlington, Virginia 22230.

*Type of Meeting:* Closed.

*Contact Person:* Ms. Mayra Montrose, Program Manager, Room 1282, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–8040.

*Purpose of Meeting:* To provide advice and recommendations in the selection of the Alan T. Waterman Award recipient.

*Agenda:* To review and evaluate nominations as part of the selection process for awards.

*Reason for Closing:* The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: December 11, 2012.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 2012–30178 Filed 12–13–12; 8:45 am]

BILLING CODE 7555–01–P?≤

## OFFICE OF PERSONNEL MANAGEMENT

### Privacy Act of 1974; Computer Matching Program

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice—computer matching between the Office of Personnel Management and the Social Security Administration.

**SUMMARY:** In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 published June 19, 1989), and OMB Circular No. A–130, revised November 28, 2000, ''Management of Federal Information Resources,'' the Office of Personnel Management (OPM) is publishing notice of its new computer matching program with the Social Security Administration (SSA).

**DATES:** OPM will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will begin 30 days after the **Federal Register** notice has been published or 40 days after the date of OPM's submissions of the letters to Congress and OMB, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended an additional 12 months thereafter. Subsequent matches will run until one of the parties advises the other in writing of its intention to reevaluate, modify and/or terminate the agreement.

**ADDRESSES:** Send comments to Deon Mason, Chief, Business Services, Office of Personnel Management, Room 4316, 1900 E. Street NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Bernard A. Wells III on 202–606–2730

**SUPPLEMENTARY INFORMATION:**

#### A. General

The Privacy Act (5 U.S.C. 552a), as amended, establishes the conditions under which computer matching involving the Federal government could be performed and adding certain

protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. Among other things, it requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency for agencies participating in the matching programs;

(2) Obtain the approval of the match agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching;

(5) Verify match findings before reducing, suspending, termination or denying an individual's benefits or payments.

**B. OPM Computer Matches Subject to the Privacy Act**

We have taken action to ensure that all of OPM's computer matching programs comply with the requirements of the Privacy Act, as amended.

**Notice of Computer Matching Program, Office of Personnel Management (OPM) With the Social Security Administration (SSA)**

*A. Participating Agencies*

OPM and SSA.

*B. Purpose of the Matching Program*

The purpose of this agreement is to establish the conditions under which SSA agrees to disclose tax return and/or Social Security benefit information to OPM. The SSA records will be used in redetermining and recomputing the benefits of certain annuitants and survivors whose computations are based, in part, on military service performed after December 1956 under the Civil Service Retirement System (CSRS) and certain annuitants and survivors whose annuity computation under the Federal Employees Retirement System (FERS) have a CSRS component.

*C. Authority for Conducting the Matching Program*

Chapters 83 and 84 of title 5 of the United States Code provide the basis for computing annuities under CSRS and FERS, respectively, and require release of information by SSA to OPM in order to administer data exchanges involving military service performed by an individual after December 31, 1956. The CSRS requirement is codified at section 8332(j) of title 5 of the United States Code; the FERS requirement is codified at section 8422(e)(4) of title 5 of the United States Code. The responsibilities of SSA and OPM with respect to information obtained pursuant to this agreement are also in accordance with the following: The Privacy Act (5 U.S.C. 552a), as amended; section 307 of the Omnibus Budget Reconciliation Act of 1982 (Pub. L. 97–253), codified at section 8332 Note of title 5 of the United States Code; section 1306(a) of title 42 of the United States Code; and section 6103(1)(11) of title 26 of the United States Code.

*D. Categories of Records and Individuals Covered by the Match*

SSA will disclose data from its MBR file (60–0090, Master Beneficiary Record, SSA/OEEAS) and MEF file (60–0059, Earnings Recording and Self-Employment Income System, SSA/OEEAS) and manually-extracted military wage information from SSA's ''1086'' microfilm file when required (71 FR 1796, January 11, 2006). OPM will provide SSA with an electronic finder file from the OPM system of records published as OPM/Central-1 (Civil Service Retirement and Insurance Records) on October 8, 1999 (64 FR 54930), as amended on May 3, 2000 (65 FR 25775). The system of records involved have routine uses permitting the disclosures needed to conduct this match.

*E. Privacy Safeguards and Security*

The Privacy Act (5 U.S.C. 552a(o)(1)(G)) requires that each matching agreement specify procedures for ensuring the administrative, technical and physical security of the records matched and the results of such programs.

All Federal agencies are subject to: The Federal Information Security Management Act of 2002 (FISMA) (44 U.S.C. 3541 *et seq.*); related OMB circulars and memorandum (e.g., OMB Circular A–130 and OMB M–06–16); National Institute of Science and Technology (NIST) directives; and the Federal Acquisition Regulations (FAR). These laws, circulars, memoranda directives and regulations include requirements for safeguarding Federal information systems and personally identifiable information used in Federal agency business processes, as well as related reporting requirements. OPM and SSA recognize that all laws, circulars, memoranda, directives and regulations relating to the subject of this agreement and published subsequent to the effective date of this agreement must also be implemented if mandated. FISMA requirements apply to all Federal contractors and organizations or sources that possess or use Federal information, or that operate, use, or have access to Federal information systems on behalf of an agency. OPM will be responsible for oversight and compliance of their contractors and agents. Both OPM and SSA reserve the right to conduct onsite inspection to monitor compliance with FISMA regulations.

*F. Inclusive Dates of the Match*

The matching program shall become effective upon the signing of the agreement by both parties to the agreement and approval of the agreement by the Data Integrity Boards of the respective agencies, but no sooner than 40 days after notice of this matching program is sent to Congress and the Office of Management and Budget or 30 days after publication of this notice in the **Federal Register**, whichever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

**John Berry,**

*Director, U.S. Office of Personnel Management.*

[FR Doc. 2012–30129 Filed 12–13–12; 8:45 am]

BILLING CODE 6325–38–P

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** [77 FR 73498, December 10, 2012].

**STATUS:** Closed Meeting.

**PLACE:** 100 F Street NE., Washington, DC.

**DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING:** December 13, 2012 at 2:00 p.m.

**CHANGE IN THE MEETING:** Additional Item.

The following matter will also be considered during the 2:00 p.m. Closed Meeting scheduled for Thursday, December 13, 2012: A personnel matter.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions as set forth in 5 U.S.C. 552b(c)(2) and (6) and 17 CFR

200.402(a)(2) and (6), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Walter, as duty officer, voted to consider the item listed for the Closed Meeting in closed session, and determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: December 12, 2012.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2012–30326 Filed 12–12–12; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

### In the Matter of the Hartcourt Companies, Inc., Hawksdale Financial Visions, Inc. (n/k/a Advanced Medical Institute, Inc.), Healthcare Providers Direct, Inc., Heartland Oil & Gas Corp., Hellenic Solutions Corp., and HIV–VAC, Inc. (n/k/a Grupo International, Inc.); Order of Suspension of Trading

December 12, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of The Hartcourt Companies, Inc. because it has not filed any periodic reports since the period ended November 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Hawksdale Financial Visions, Inc. (n/k/a Advanced Medical Institute, Inc.) because it has not filed any periodic reports since the period ended December 31, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Healthcare Providers Direct, Inc. because it has not filed any periodic reports since September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Heartland Oil & Gas Corp. because it has not filed any periodic since the period ended June 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Hellenic Solutions Corp. because it has not filed any periodic reports since the period ended September 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of HIV–VAC, Inc. (n/k/a Grupo International, Inc.) because it has not filed any periodic reports since the period ended December 31, 2010.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on December 12, 2012, through 11:59 p.m. EST on December 26, 2012.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2012–30301 Filed 12–12–12; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

### Encore Clean Energy, Inc., Energy & Engine Technology Corp., Equity Media Holdings Corporation, eTotalSource, Inc., Extensions, Inc., Firepond, Inc., and GNC Energy Corporation; Order Withdrawing Trading Suspension as to Extensions, Inc.

December 12, 2012.

The Securities and Exchange Commission hereby withdraws the trading suspension order as to the securities of Extensions, Inc. (''EXTI'') entered November 29, 2012 (''November 29, 2012 Order'').

This order shall be effective immediately.

The remainder of the November 29, 2012 Order remains in full force and effect according to its original terms.

By the Commission.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–30299 Filed 12–12–12; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68393; File No. SR–Phlx–2012–134]**

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of a Proposal with Respect to the Authority of the Exchange or Nasdaq Options Services LLC (''NOS'') To Cancel Options Orders when a Technical or System Issue Occurs and To Describe the Operation of an Error Account for NOS

December 10, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 30, 2012, NASDAQ OMX PHLX LLC (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal with respect to the authority of the Exchange or NOS to cancel options orders when a technical or system issue occurs and to describe the operation of an error account for NOS. The text of the proposed rule change is available at *http://nasdaqomxphlx.cchwallstreet.com,* at PHLX's principal office, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 1080(m) by adding a new subparagraph (v) that addresses the authority of the Exchange or NOS to cancel options orders when a technical or systems issue occurs and to describe the operation of an error account for NOS.[4]

NOS is the approved routing broker of the Exchange, subject to the conditions listed in Rule 1080(m). The Exchange relies on NOS to provide outbound routing services from itself to routing destinations of NOS (''routing destinations'').[5] When NOS routes orders to a routing destination, it does so by sending a corresponding order in its own name to the routing destination. In the normal course, routed orders that are executed at routing destinations are submitted for clearance and settlement in the name of NOS, and NOS arranges for any resulting securities positions to be delivered to the member that submitted the corresponding order to the Exchange. From time to time, however, the Exchange and NOS encounter situations in which it becomes necessary to cancel orders and resolve error positions.[6]

Examples of Circumstances That May Lead to Canceled Orders

A technical or systems issue may arise at NOS, a routing destination, or the Exchange that may cause the Exchange or NOS to take steps to cancel orders if the Exchange or NOS determines that such action is necessary to maintain a fair and orderly market. The examples set forth below describe some of the circumstances in which the Exchange or NOS may decide to cancel orders.

*Example 1.* If NOS or a routing destination experiences a technical or systems issue that results in NOS not receiving responses to immediate or cancel (''IOC'') orders that it sent to the routing destination, and that issue is not resolved in a timely manner, NOS or the Exchange would seek to cancel the routed orders affected by the issue.[7] For instance, if NOS experiences a connectivity issue affecting the manner in which it sends or receives order messages to or from routing destinations, it may be unable to receive timely execution or cancellation reports from the routing destinations, and NOS or the Exchange may consequently seek to cancel the affected routed orders. Once the decision is made to cancel those routed orders, any cancellation that a member submitted to the Exchange on its initial order during such a situation would be honored.[8]

*Example 2.* If the Exchange experiences a systems issue, the Exchange may take steps to cancel all outstanding orders affected by that issue and notify affected members of the cancellations. In those cases, the Exchange would seek to cancel any routed orders related to the members' initial orders.

Examples of Circumstances That May Lead to Error Positions

In some instances, the technical or systems issue at NOS, a routing destination, the Exchange, or a non-affiliate third party Routing Broker may also result in NOS acquiring an error position that it must resolve. The examples set forth below describe some of the circumstances in which error positions may arise.

*Example A.* Error positions may result from routed orders that the Exchange or NOS attempts to cancel but that are executed before the routing destination receives the cancellation message or that are executed because the routing destination is unable to process the cancellation message. Using the situation described in Example 1 above, assume that the Exchange seeks to cancel orders routed to a routing destination because it is not receiving timely execution or cancellation reports from the routing destination. In such a situation, NOS may still receive executions from the routing destination after connectivity is restored, which it would not then allocate to members because of the earlier decision to cancel the affected routed orders. Instead, NOS would post those positions into its error account and resolve the positions in the manner described below.

*Example B.* Error positions may result from an order processing issue at a routing destination. For instance, if a routing destination experienced a systems problem that affects its order processing, it may transmit back a message purporting to cancel a routed order, but then subsequently submit an execution of that same order (*i.e.,* a locked-in trade) to The Options Clearing Corporation (''OCC'') for clearance and settlement. In such a situation, the Exchange would not then allocate the execution to the member because of the earlier cancellation message from the routing destination. Instead, NOS would post those positions into its error account and resolve the positions in the manner described below.

*Example C.* Error positions may result if NOS receives an execution report from a routing destination but does not

[4] NOS is a facility of the Exchange. Accordingly, under Rule 1080(m), the Exchange is responsible for filing with the Commission rule changes and fees relating to NOS's functions. In addition, the Exchange is using the phrase ''NOS or the Exchange'' in this rule filing to reflect the fact that a decision to take action with respect to orders affected by a technical or systems issue may be made in the capacity of NOS or the Exchange depending on where those orders are located at the time of that decision. From time to time, the Exchange may use non-affiliate third-party broker-dealers to provide outbound routing services (*i.e.,* third-party Routing Brokers). In those cases, orders are submitted to the third-party Routing Broker through NOS, the third-party Routing Broker routes the orders to the routing destination in its name, and any executions are submitted for clearance and settlement in the name of NOS so that any resulting positions are delivered to NOS upon settlement. As described above, NOS normally arranges for any resulting securities positions to be delivered to the member that submitted the corresponding order to the Exchange. If error positions (as defined in proposed Rule 1080(m)(v)(2)) result in connection with the Exchange's use of a third-party Routing Broker for outbound routing, and those positions are delivered to NOS through the clearance and settlement process, NOS would be permitted to resolve those positions in accordance with proposed Rule 1080(m)(v). If the third-party Routing Broker received error positions in connection with its role as a routing broker for the Exchange, and the error positions were not delivered to NOS through the clearance and settlement process, then the third-party Routing Broker would resolve the error positions itself, and NOS would not be permitted to accept the error positions, as set forth in proposed Rule 1080(m)(v)(2)(B).

[5] The Exchange has authority to receive inbound routes of options orders by NOS from NASDAQ OMX BX (on a one year pilot basis) and The NASDAQ Options Market. *See* Securities Exchange Act Release Nos. 67294 (June 28, 2012), 77 FR 39771 (July 5, 2012)(SR–Phlx–2012–68); 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR–Phlx–2008–31); and 65399 (September 26, 2011), 76 FR 60955 (September 30, 2011)(SR–Phlx–2011–111).

[6] The examples described in this filing are not intended to be exclusive. Proposed Rule 1080(m)(v) would provide general authority for the Exchange or NOS to cancel orders in order to maintain fair and orderly markets when technical and systems issues are occurring, and Rule 1080(m)(v) also would set forth the manner in which error positions may be handled by the Exchange or NOS. The proposed rule change is not limited to addressing order cancellation or error positions resulting only from the specific examples described in this filing.

[7] In a normal situation (*i.e.,* one in which a technical or systems issue does not exist), NOS should receive an immediate response to an IOC order from a routing destination, and would pass the resulting fill or cancellation on to the Exchange member. After submitting an order that is routed to a routing destination, if a member sends an instruction to cancel that order, the cancellation is held by the Exchange until a response is received from the routing destination. For instance, if the routing destination executes that order, the execution would be passed on to the member and the cancellation instruction would be disregarded.

[8] If a member did not submit a cancellation to the Exchange, however, that initial order would remain ''live'' and thus be eligible for execution or posting on the Exchange, and neither the Exchange nor NOS would treat any execution of that initial order or any subsequent routed order related to that initial order as an error.

receive clearing instructions for the execution from the routing destination. For instance, assume that a member sends the Exchange an order to buy 100 contracts overlying ABC stock, which causes NOS to send an order to a routing destination that is subsequently executed, cleared, and closed out by that routing destination, and the execution is ultimately communicated back to that member. On the next trading day (T+1), if the routing destination does not provide clearing instructions for that execution, NOS would still be responsible for settling that member's purchase, but would be left with a short position in its error account.[9] NOS would resolve the position in the manner described below.

*Example D.* Error positions may result from a technical or systems issue that causes orders to be executed in the name of NOS that are not related to NOS's function as the Exchange's routing broker and are not related to any corresponding orders of members. As a result, NOS would not be able to assign any positions resulting from such an issue to members. Instead, NOS would post those positions into its error account and resolve the positions in the manner described below.

*Example E.* Error positions may result from a technical or systems issue through which the Exchange does not receive sufficient notice that a member that has executed trades on the Exchange has lost the ability to clear trades through OCC. In such a situation, the Exchange would not have valid clearing information, which would prevent the trade from being automatically processed for clearance and settlement on a locked-in basis. Accordingly, NOS would assume that member's side of the trades so that the counterparties can settle the trades. NOS would post those positions into its error account and resolve the positions in the manner described below.

*Example F.* Error positions may result from a technical or systems issue at the Exchange that does not involve routing of orders through NOS. For example, a situation may arise in which a posted quote/order was validly cancelled but the system erroneously matched that quote/order with an order that was seeking to access it. In such a situation, NOS would have to assume the side of the trade opposite the order seeking to access the cancelled quote/order. NOS would post the position in its error account and resolve the position in the manner described below.

In the circumstances described above, neither the Exchange nor NOS may learn about an error position until T+1, either: (1) During the clearing process when a routing destination has submitted to OCC a transaction for clearance and settlement for which NOS never received an execution confirmation; or (2) when a routing destination does not recognize a transaction submitted to OCC for clearance and settlement. Moreover, the affected members' trade may not be nullified absent express authority under Exchange rules.[10]

Proposed Amendments to Rule 1080(m)

The Exchange proposes to amend Rule 1080(m) to add new subparagraph (v) to address the cancellation of orders due to technical or systems issues and the use of an error account by NOS.

Specifically, under subparagraph (v)(1) of the proposed rule, the Exchange or NOS would be expressly authorized to cancel orders as may be necessary to maintain fair and orderly markets if a technical or systems issue occurred at the Exchange, NOS, or a routing destination.[11] The Exchange or NOS would be required to provide notice of the cancellation to affected members as soon as practicable.

Subparagraph (v)(2) of the proposed rule would permit NOS to maintain an error account for the purpose of addressing positions that result from a technical or systems issue at NOS, the Exchange, a routing destination, or a non-affiliate third-party Routing Broker that affects one or more orders (''error positions''). By definition, an error position would not include any position that results from an order submitted by a member to the Exchange that is executed on the Exchange and automatically processed for clearance and settlement on a locked-in basis. NOS also would not be permitted to accept any positions in its error account from an account of a member and could not permit any member to transfer any positions from the member's account to NOS's error account under the proposed rule.[12] However, if a technical or systems issue results in the Exchange not having valid clearing instructions for a member to a trade, NOS may assume that member's side of the trade so that the trade can be processed for clearance and settlement on a locked-in basis.[13]

Under subparagraph (v)(3), in connection with a particular technical or systems issue, NOS or the Exchange would be permitted to either (i) assign all resulting error positions to members, or (ii) have all resulting error positions liquidated, as described below. Any determination to assign or liquidate error positions, as well as any resulting assignments, would be required to be made in a nondiscriminatory fashion.

NOS or the Exchange would be required to assign all error positions resulting from a particular technical or systems issue to the applicable members affected by that technical or systems issue if NOS or the Exchange:

- Determined that it has accurate and sufficient information (including valid clearing information) to assign the positions to all of the applicable members affected by that technical or systems issue;
- Determined that it has sufficient time pursuant to normal clearance and settlement deadlines to evaluate the information necessary to assign the positions to all of the applicable members affected by that technical or systems issue; and
- Had not determined to cancel all orders affected by that technical or systems issue.

For example, a technical or systems issue of limited scope or duration may occur at a routing destination, and the resulting trades may be submitted for clearance and settlement by such routing destination to OCC. If there were a small number of trades, there may be sufficient time to match positions with member orders and avoid using the error account.

[9] To the extent that NOS incurred a loss in covering its short position, it would submit a reimbursement claim to that routing destination.

[10] *See, e.g.,* Rule 1092.

[11] Such a situation may not cause the Exchange to declare self-help against the routing destination pursuant to Rule 1084(b)(i). If the Exchange or NOS determines to cancel orders routed to a routing destination under proposed Rule 1080(m)(v), but does not declare self-help against that routing destination, the Exchange would continue to be subject to the trade-through requirements in the Options Order Protection and Locked/Crossed Markets Plan and Rule 1084 with respect to that routing destination.

[12] The purpose of this provision is to clarify that NOS may address error positions under the proposed rule that are caused by a technical or systems issue, but that NOS may not accept from a member positions that are delivered to the member through the clearance and settlement process, even if those positions may have been related to a technical or systems issue at NOS, the Exchange, a routing destination of NOS, or a non-affiliate third-party Routing Broker. This provision would not apply, however, to situations like the one described in Example C in which NOS incurred a short position to settle a member's purchase, as the member did not yet have a position in its account as a result of the purchase at the time of NOS's action (i.e., NOS's action was necessary for the purchase to settle into the member's account). Similarly, the provision would not apply to situations like the one described in Example F, where a system issue caused one member to receive an execution for which there was not an available contraparty, in which case action by NOS would be necessary for the position to settle into that member's account.

[13] *See* Example E above.

There may be scenarios, however, where NOS determines that it is unable to assign all error positions resulting from a particular technical or systems issue to all of the affected members, or determines to cancel all affected routed orders. For example, in some cases, the volume of questionable executions and positions resulting from a technical or systems issue might be such that the research necessary to determine which members to assign those executions to could be expected to extend past the normal settlement cycle for such executions. Furthermore, if a routing destination experiences a technical or systems issue after NOS has transmitted IOC orders to it that prevents NOS from receiving responses to those orders, NOS or the Exchange may determine to cancel all routed orders affected by that issue. In such a situation, NOS or the Exchange would not pass on to the members any executions on the routed orders received from the routing destination.

The proposed rule also would require NOS to liquidate error positions as soon as practicable.[14] In liquidating error positions, NOS would be required to provide complete time and price discretion for the trading to liquidate the error positions to a third-party broker-dealer and could not attempt to exercise any influence or control over the timing or methods of trading to liquidate the error positions.[15] NOS also would be required to establish and enforce policies and procedures reasonably designed to restrict the flow of confidential and proprietary information between the third-party broker-dealer and NOS/the Exchange associated with the liquidation of the error positions.

Under proposed subparagraph (v)(4), NOS and the Exchange would be required to make and keep records to document all determinations to treat positions as error positions and all determinations for the assignment of error positions to members or the liquidation of error positions, as well as records associated with the liquidation of error positions through the third-party broker-dealer.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[16] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5),[17] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange believes that this proposal is in keeping with those principles because NOS's or the Exchange's ability to cancel orders during a technical or systems issue and to maintain an error account facilitates the smooth and efficient operations of the market. Specifically, the Exchange believes that allowing NOS or the Exchange to cancel orders during a technical or systems issue would allow the Exchange to maintain fair and orderly markets. Moreover, the Exchange believes that allowing NOS to assume error positions in an error account and to liquidate those positions, subject to the conditions set forth in the proposed amendments to Rule 1080(m), would be the least disruptive means to correct these errors, except in cases where NOS can assign all such error positions to all affected members of the Exchange. Overall, the proposed amendments are designed to ensure full trade certainty for market participants and to avoid disrupting the clearance and settlement process. The proposed amendments are also designed to provide a consistent methodology for handling error positions in a manner that does not discriminate among members. The proposed amendments are also consistent with Section 6 of the Act insofar as they would require NOS to establish controls to restrict the flow of any confidential information between the third-party broker and NOS/the Exchange associated with the liquidation of error positions.

*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.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6)[19] thereunder.

Phlx has requested that the Commission waive the 30-day operative delay.[20] The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Such waiver would allow the Exchange, without delay, to implement the proposed rule change, which is designed to provide a consistent methodology for handling error positions in a manner that does not discriminate among members. The Commission also notes that the proposed rule change is based on, and substantially similar to, Phlx Rule 3315(d), which the Commission recently approved.[21] Accordingly, the Commission designates the proposal operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if

[14] If NOS determines in connection with a particular technical or systems issue that some error positions can be assigned to some affected members but other error positions cannot be assigned, NOS would be required under the proposed rule to liquidate all such error positions (including those positions that could be assigned to the affected members).

[15] This provision is not intended to preclude NOS from providing the third-party broker with standing instructions with respect to the manner in which it should handle all error account transactions. For example, NOS might instruct the broker to treat all orders as ''not held'' and to attempt to minimize any market impact on the price of the stock being traded.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 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.

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] *See* Securities Exchange Act Release No. 67654 (August 14, 2012), 77 FR 50187 (August 20, 2012) (SR–Phlx–2012–81).

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2012–134 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–134. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2012–134 and should be submitted on or before January 4, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68394; File No. SR–BX–2012–073]**

## Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change With Respect to the Authority of the Exchange or Nasdaq Options Services LLC (''NOS'') To Cancel Options Orders When a Technical or System Issue Occurs and To Describe the Operation of an Error Account for NOS

December 10, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 29, 2012, NASDAQ OMX BX, Inc. (the ''Exchange'' or ''BX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a rule change with respect to the authority of the Exchange or Nasdaq Options Services LLC (''NOS'') to cancel options orders when a technical or system issue occurs and to describe the operation of an error account for NOS. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com,* at the Exchange'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 amend Chapter VI, Section 11, Order Routing, by adding a new paragraph (g) that addresses the authority of the Exchange or NOS to cancel options orders when a technical or systems issue occurs and to describe the operation of an error account for NOS.[4]

NOS is the approved routing broker of the Exchange, subject to the conditions listed in Chapter VI, Section 11. The Exchange relies on NOS to provide

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[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] NOS is a facility of the Exchange. Accordingly, under Chapter VI, Section 11, the

Exchange is responsible for filing with the Commission rule changes and fees relating to NOS's functions. In addition, the Exchange is using the phrase ''NOS or the Exchange'' in this rule filing to reflect the fact that a decision to take action with respect to orders affected by a technical or systems issue may be made in the capacity of NOS or the Exchange depending on where those orders are located at the time of that decision.

From time to time, the Exchange may use non-affiliate third-party broker-dealers to provide outbound routing services (*i.e.,* third-party Routing Brokers). In those cases, orders are submitted to the third-party Routing Broker through NOS, the third-party Routing Broker routes the orders to the routing destination in its name, and any executions are submitted for clearance and settlement in the name of NOS so that any resulting positions are delivered to NOS upon settlement. As described above, NOS normally arranges for any resulting securities positions to be delivered to the member that submitted the corresponding order to the Exchange. If error positions (as defined in proposed Chapter VI, Section 11(g)(2)) result in connection with the Exchange's use of a third-party Routing Broker for outbound routing, and those positions are delivered to NOS through the clearance and settlement process, NOS would be permitted to resolve those positions in accordance with proposed Chapter VI, Section 11(g). If the third-party Routing Broker received error positions in connection with its role as a routing broker for the Exchange, and the error positions were not delivered to NOS through the clearance and settlement process, then the third-party Routing Broker would resolve the error positions itself, and NOS would not be permitted to accept the error positions, as set forth in proposed Chapter VI, Section 11(g) (2)(B).

outbound routing services from itself to routing destinations of NOS (''routing destinations'').[5] When NOS routes orders to a routing destination, it does so by sending a corresponding order in its own name to the routing destination. In the normal course, routed orders that are executed at routing destinations are submitted for clearance and settlement in the name of NOS, and NOS arranges for any resulting securities positions to be delivered to the member that submitted the corresponding order to the Exchange. From time to time, however, the Exchange and NOS encounter situations in which it becomes necessary to cancel orders and resolve error positions.[6]

Examples of Circumstances That May Lead to Canceled Orders

A technical or systems issue may arise at NOS, a routing destination, or the Exchange that may cause the Exchange or NOS to take steps to cancel orders if the Exchange or NOS determines that such action is necessary to maintain a fair and orderly market. The examples set forth below describe some of the circumstances in which the Exchange or NOS may decide to cancel orders.

*Example 1.* If NOS or a routing destination experiences a technical or systems issue that results in NOS not receiving responses to immediate or cancel (''IOC'') orders that it sent to the routing destination, and that issue is not resolved in a timely manner, NOS or the Exchange would seek to cancel the routed orders affected by the issue.[7] For instance, if NOS experiences a connectivity issue affecting the manner in which it sends or receives order messages to or from routing destinations, it may be unable to receive timely execution or cancellation reports from the routing destinations, and NOS or the Exchange may consequently seek to cancel the affected routed orders. Once the decision is made to cancel those routed orders, any cancellation that a member submitted to the Exchange on its initial order during such a situation would be honored.[8]

*Example 2.* If the Exchange experiences a systems issue, the Exchange may take steps to cancel all outstanding orders affected by that issue and notify affected members of the cancellations. In those cases, the Exchange would seek to cancel any routed orders related to the members' initial orders.

Examples of Circumstances That May Lead to Error Positions

In some instances, the technical or systems issue at NOS, a routing destination, the Exchange, or a non-affiliate third party Routing Broker may also result in NOS acquiring an error position that it must resolve. The examples set forth below describe some of the circumstances in which error positions may arise.

*Example A.* Error positions may result from routed orders that the Exchange or NOS attempts to cancel but that are executed before the routing destination receives the cancellation message or that are executed because the routing destination is unable to process the cancellation message. Using the situation described in Example 1 above, assume that the Exchange seeks to cancel orders routed to a routing destination because it is not receiving timely execution or cancellation reports from the routing destination. In such a situation, NOS may still receive executions from the routing destination after connectivity is restored, which it would not then allocate to members because of the earlier decision to cancel the affected routed orders. Instead, NOS would post those positions into its error account and resolve the positions in the manner described below.

*Example B.* Error positions may result from an order processing issue at a routing destination. For instance, if a routing destination experienced a systems problem that affects its order processing, it may transmit back a message purporting to cancel a routed order, but then subsequently submit an execution of that same order (*i.e.,* a locked-in trade) to The Options Clearing Corporation (''OCC'') for clearance and settlement. In such a situation, the Exchange would not then allocate the execution to the member because of the earlier cancellation message from the routing destination. Instead, NOS would post those positions into its error account and resolve the positions in the manner described below.

*Example C.* Error positions may result if NOS receives an execution report from a routing destination but does not receive clearing instructions for the execution from the routing destination. For instance, assume that a member sends the Exchange an order to buy 100 contracts overlying ABC stock, which causes NOS to send an order to a routing destination that is subsequently executed, cleared, and closed out by that routing destination, and the execution is ultimately communicated back to that member. On the next trading day (T+1), if the routing destination does not provide clearing instructions for that execution, NOS would still be responsible for settling that member's purchase, but would be left with a short position in its error account.[9] NOS would resolve the position in the manner described below.

*Example D.* Error positions may result from a technical or systems issue that causes orders to be executed in the name of NOS that are not related to NOS's function as the Exchange's routing broker and are not related to any corresponding orders of members. As a result, NOS would not be able to assign any positions resulting from such an issue to members. Instead, NOS would post those positions into its error account and resolve the positions in the manner described below.

*Example E.* Error positions may result from a technical or systems issue through which the Exchange does not receive sufficient notice that a member that has executed trades on the Exchange has lost the ability to clear trades through OCC. In such a situation, the Exchange would not have valid clearing information, which would prevent the trade from being automatically processed for clearance and settlement on a locked-in basis. Accordingly, NOS would assume that member's side of the trades so that the counterparties can settle the trades. NOS would post those positions into its

[5] The Exchange has authority to receive inbound routes of options orders by NOS from

The NASDAQ Stock Market (''NASDAQ'') and NASDAQ OMX PHLX. *See* Securities Exchange Act Release No. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR–BX–2012–030) (Approving the establishment of the BX Options market).

[6] The examples described in this filing are not intended to be exclusive. Proposed Chapter

VI, Section 11(g) would provide general authority for the Exchange or NOS to cancel orders in order to maintain fair and orderly markets when technical and systems issues are occurring, and Chapter VI, Section 11(g) also would set forth the manner in which error positions may be handled by the Exchange or NOS. The proposed rule change is not limited to addressing order cancellation or error positions resulting only from the specific examples described in this filing.

[7] In a normal situation (*i.e.,* one in which a technical or systems issue does not exist), NOS should receive an immediate response to an IOC order from a routing destination, and would pass the resulting fill or cancellation on to the Exchange member. After submitting an order that is routed to a routing destination, if a member sends an instruction to cancel that order, the cancellation is held by the Exchange until a response is received from the routing destination. For instance, if the routing destination executes that order, the execution would be passed on to the member and the cancellation instruction would be disregarded.

[8] If a member did not submit a cancellation to the Exchange, however, that initial order would remain ''live'' and thus be eligible for execution or posting on the Exchange, and neither the Exchange nor NOS would treat any execution of that initial order or any subsequent routed order related to that initial order as an error.

[9] To the extent that NOS incurred a loss in covering its short position, it would submit a reimbursement claim to that routing destination.

error account and resolve the positions in the manner described below.

*Example F.* Error positions may result from a technical or systems issue at the Exchange that does not involve routing of orders through NOS. For example, a situation may arise in which a posted quote/order was validly cancelled but the system erroneously matched that quote/order with an order that was seeking to access it. In such a situation, NOS would have to assume the side of the trade opposite the order seeking to access the cancelled quote/order. NOS would post the position in its error account and resolve the position in the manner described below.

In the circumstances described above, neither the Exchange nor NOS may learn about an error position until T+1, either: (1) During the clearing process when a routing destination has submitted to OCC a transaction for clearance and settlement for which NOS never received an execution confirmation; or (2) when a routing destination does not recognize a transaction submitted to OCC for clearance and settlement. Moreover, the affected members' trade may not be nullified absent express authority under Exchange rules.[10]

Proposed Amendments to Chapter VI, Section 11

The Exchange proposes to amend Chapter VI, Section 11 to add new paragraph (g) to address the cancellation of orders due to technical or systems issues and the use of an error account by NOS.

Specifically, under paragraph (g)(1) of the proposed rule, the Exchange or NOS would be expressly authorized to cancel orders as may be necessary to maintain fair and orderly markets if a technical or systems issue occurred at the Exchange, NOS, or a routing destination.[11] The Exchange or NOS would be required to provide notice of the cancellation to affected members as soon as practicable.

Paragraph (g)(2) of the proposed rule would permit NOS to maintain an error account for the purpose of addressing positions that result from a technical or systems issue at NOS, the Exchange, a routing destination, or a non-affiliate third-party Routing Broker that affects one or more orders (''error positions''). By definition, an error position would not include any position that results from an order submitted by a member to the Exchange that is executed on the Exchange and automatically processed for clearance and settlement on a locked-in basis. NOS also would not be permitted to accept any positions in its error account from an account of a member and could not permit any member to transfer any positions from the member's account to NOS's error account under the proposed rule.[12] However, if a technical or systems issue results in the Exchange not having valid clearing instructions for a member to a trade, NOS may assume that member's side of the trade so that the trade can be processed for clearance and settlement on a locked-in basis.[13]

Under paragraph (g)(3), in connection with a particular technical or systems issue, NOS or the Exchange would be permitted to either (i) assign all resulting error positions to members, or (ii) have all resulting error positions liquidated, as described below. Any determination to assign or liquidate error positions, as well as any resulting assignments, would be required to be made in a nondiscriminatory fashion.

NOS or the Exchange would be required to assign all error positions resulting from a particular technical or systems issue to the applicable members affected by that technical or systems issue if NOS or the Exchange:

- Determined that it has accurate and sufficient information (including valid clearing information) to assign the positions to all of the applicable members affected by that technical or systems issue;
- Determined that it has sufficient time pursuant to normal clearance and settlement deadlines to evaluate the information necessary to assign the positions to all of the applicable members affected by that technical or systems issue; and
- Had not determined to cancel all orders affected by that technical or systems issue.

For example, a technical or systems issue of limited scope or duration may occur at a routing destination, and the resulting trades may be submitted for clearance and settlement by such routing destination to OCC. If there were a small number of trades, there may be sufficient time to match positions with member orders and avoid using the error account.

There may be scenarios, however, where NOS determines that it is unable to assign all error positions resulting from a particular technical or systems issue to all of the affected members, or determines to cancel all affected routed orders. For example, in some cases, the volume of questionable executions and positions resulting from a technical or systems issue might be such that the research necessary to determine which members to assign those executions to could be expected to extend past the normal settlement cycle for such executions. Furthermore, if a routing destination experiences a technical or systems issue after NOS has transmitted IOC orders to it that prevents NOS from receiving responses to those orders, NOS or the Exchange may determine to cancel all routed orders affected by that issue. In such a situation, NOS or the Exchange would not pass on to the members any executions on the routed orders received from the routing destination.

The proposed rule also would require NOS to liquidate error positions as soon as practicable.[14] In liquidating error positions, NOS would be required to provide complete time and price discretion for the trading to liquidate the error positions to a third-party broker-dealer and could not attempt to exercise any influence or control over

[10] *See, e.g.,* Chapter V, Section 6.

[11] Such a situation may not cause the Exchange to declare self-help against the routing destination pursuant to Chapter XII, Section 2(b)(1). If the Exchange or NOS determines to cancel orders routed to a routing destination under proposed Chapter VI, Section 11(g), but does not declare self-help against that routing destination, the Exchange would continue to be subject to the trade-through requirements in the Options Order Protection and Locked/Crossed Markets Plan and Chapter XII, Section 2 with respect to that routing destination.

[12] The purpose of this provision is to clarify that NOS may address error positions under the proposed rule that are caused by a technical or systems issue, but that NOS may not accept from a member positions that are delivered to the member through the clearance and settlement process, even if those positions may have been related to a technical or systems issue at NOS, the Exchange, a routing destination of NOS, or a non-affiliate third-party Routing Broker. This provision would not apply, however, to situations like the one described in Example C in which NOS incurred a short position to settle a member's purchase, as the member did not yet have a position in its account as a result of the purchase at the time of NOS's action (i.e., NOS's action was necessary for the purchase to settle into the member's account). Similarly, the provision would not apply to situations like the one described in Example F, where a system issue caused one member to receive an execution for which there was not an available contraparty, in which case action by NOS would be necessary for the position to settle into that member's account. Moreover, to the extent a member receives locked-in positions in connection with a technical or systems issue, that member may seek to rely on Chapter V, Section 9 if it experiences a loss. That rule references BX Rule 4626, which provides members with the ability to file claims against the Exchange for ''losses directly resulting from the Systems' actual failure to correctly process an order, Quote/Order, message, or other data, provided the NASDAQ OMX BX Equities Market has acknowledged receipt of the order, Quote/Order, message, or data.''

[13] *See* Example E above.

[14] If NOS determines in connection with a particular technical or systems issue that some error positions can be assigned to some affected members but other error positions cannot be assigned, NOS would be required under the proposed rule to liquidate all such error positions (including those positions that could be assigned to the affected members).

the timing or methods of trading to liquidate the error positions.[15] NOS also would be required to establish and enforce policies and procedures reasonably designed to restrict the flow of confidential and proprietary information between the third-party broker-dealer and NOS/the Exchange associated with the liquidation of the error positions.

Under proposed paragraph (g)(4), NOS and the Exchange would be required to make and keep records to document all determinations to treat positions as error positions and all determinations for the assignment of error positions to members or the liquidation of error positions, as well as records associated with the liquidation of error positions through the third-party broker-dealer.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [16] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5),[17] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange believes that this proposal is in keeping with those principles because NOS's or the Exchange's ability to cancel orders during a technical or systems issue and to maintain an error account facilitates the smooth and efficient operations of the market. Specifically, the Exchange believes that allowing NOS or the Exchange to cancel orders during a technical or systems issue would allow the Exchange to maintain fair and orderly markets. Moreover, the Exchange believes that allowing NOS to assume error positions in an error account and to liquidate those positions, subject to the conditions set forth in the proposed amendments to Chapter VI, Section 11, would be the least disruptive means to correct these errors, except in cases where NOS can assign all such error positions to all affected members of the Exchange. Overall, the proposed amendments are designed to ensure full trade certainty for market participants and to avoid disrupting the clearance and settlement process. The proposed amendments are also designed to provide a consistent methodology for handling error positions in a manner that does not discriminate among members. The proposed amendments are also consistent with Section 6 of the Act insofar as they would require NOS to establish controls to restrict the flow of any confidential information between the third-party broker and NOS/the Exchange associated with the liquidation of error positions.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and Rule 19b–4(f)(6) [19] thereunder.

BX has requested that the Commission waive the 30-day operative delay.[20] The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Such waiver would allow the Exchange, without delay, to implement the proposed rule change, which is designed to provide a consistent methodology for handling error positions in a manner that does not discriminate among members. The Commission also notes that the proposed rule change is based on, and substantially similar to, BX Equity Rule 4758(d), which the Commission recently approved.[21] Accordingly, the Commission designates the proposal operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2012–073 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2012–073. 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

[15] This provision is not intended to preclude NOS from providing the third-party broker with standing instructions with respect to the manner in which it should handle all error account transactions. For example, NOS might instruct the broker to treat all orders as ''not held'' and to attempt to minimize any market impact on the price of the stock being traded.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 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.

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] *See* Securities Exchange Act Release No. 67280 (June 27, 2012), 77 FR 39552 (July 3, 2012) (SR–BX–2012–034).

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2012–073 and should be submitted on or before January 4, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–30169 Filed 12–13–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68385; File No. SR–NYSEARCA–2012–133]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending NYSE Arca Equities Rule 7.31(h)(7) To Permit PL Select Orders To Interact With Incoming Orders Larger Than the Size of the PL Select Order

December 7, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 27, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.31(h)(7) to permit PL Select Orders to interact with incoming orders larger than the size of the PL Select Order. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 7.31(h)(7) to permit PL Select Orders to interact with incoming orders larger than the size of the PL Select Order.

On September 5, 2012, the Exchange received Commission approval for the PL Select Order type, which is a form of a PL Order that does not interact with an incoming order that: (i) Has an immediate-or-cancel (''IOC'') time in force condition,[4] (ii) is an ISO,[5] or (iii) is larger than the size of the PL Select Order.[6] The Exchange implemented the new PL Select Order functionality on September 21, 2012.[7]

Based on the few weeks of experience with the new order type, the Exchange has identified an unintended business consequence in connection with the fact that PL Select Orders do not interact with incoming orders that are larger than the size of the PL Select Order. Specifically, in limited situations, the existence of a PL Select Order may prevent certain incoming opposite side interest from posting to the Arca Book. For example, assume that an ETP Holder has entered a PL Select Order to sell priced at $10.10 for 100 shares. Assume further that the Exchange receives an incoming buy order for 200 shares priced at $10.10, which becomes both the Exchange best bid and the National Best Bid. Because the arriving buy order is larger than the resting PL Select Order, as required by current Rule 7.31(h)(7), the PL Select Order would not execute against the arriving $10.10 buy order. By contrast, a regular PL Order to sell at $10.10 would have executed against the incoming buy order. Because the PL Select Order would not execute in this scenario, it remains undisplayed on the Arca Book.

Assume further that there is now an incoming Add Liquidity Only Order (''ALO Order'') to buy priced at $10.10, which is seeking to add to the existing bid of $10.10 for 200 shares. As required by NYSE Arca Equities Rule 7.31(nn)(3), because there is a resting sell PL Select Order at that price, the incoming ALO Order would be rejected. In such scenario, both the PL Select Order and the ALO order are operating consistently with the rules, but because of the operation of the rules, an ETP Holder seeking to add liquidity to the Arca Book with an ALO order would be unable to do so, even though there is resting interest posted at the same price. The Exchange believes it is appropriate to allow ALO orders to be entered in such scenario. By removing the requirement that PL Select Orders not interact with larger-sized interest, such ALO interest would not need to be rejected, as required by Rule 7.31(nn), because the PL Select Order would have executed against the larger-sized incoming interest and would no longer be resting on the Book.

The Exchange continues to believe that the rationale initially presented for why PL Select Orders should not interact with incoming orders larger in size remains valid. Namely, by not interacting with incoming orders larger in size, the PL Select Order remains on the Arca Book as a mechanism to provide price improvement, rather than be executed in a series of inferior prices as a large incoming order sweeps the Arca Book. However, while the above-described scenario is rare, the Exchange believes that the potential for liquidity-posting interest to be rejected outweighs the benefits of having the PL Select Order not interact with incoming orders that are larger in size than the PL Select Order.

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* NYSE Arca Equities Rule 7.31(e).

[5] *See* NYSE Arca Equities Rule 7.31(jj).

[6] *See* Securities Exchange Act Release No. 67785 (Sept. 5, 2012), 77 FR 55888 (Sept. 11, 2012) (SR–NYSEArca–2012–48).

[7] *See http://www.nyse.com/pdfs/Reminder_NYSE_Arca_Introduces_New_PL_Select_Order_Type.pdf.*

In addition, the Exchange notes that some institutional investors have raised concerns that by not executing against larger-sized interest, PL Select Orders may be bypassing legitimate interest entered on behalf of institutional investors. While the Exchange continues to believe that the purpose of the PL Select Order not to execute against larger-sized interest is consistent with its original intent to interact with less impactful orders, the Exchange also recognizes that the goal is not to bypass executions with legitimate trading interest, and to the extent there is a perception that this may be the case, the Exchange believes that the restriction should be lifted.

Accordingly, the Exchange proposes to amend Rule 7.31(h)(7) to delete that PL Select Orders would not interact with incoming orders that are larger in size than the PL Select Order.

Because of the related technology changes that this proposed rule change would require, the Exchange proposes to announce the initial implementation date via Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[8] in general, and furthers the objectives of Section 6(b)(5),[9] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange continues to believe that skipping executions with larger-sized incoming interest would incentivize Users to route PL Orders to the Exchange because such orders would remain available to provide price improvement and would not be swept up by such larger-sized incoming orders. Similarly, because such PL Select Orders would remain available to provide price improvement, it could similarly incentivize Users to route displayable interest to the Exchange because the likelihood of receiving price improvement could increase. However, the Exchange believes that the costs associated with rejecting certain interest that would otherwise be posting liquidity in the Arca Book outweighs the initial rationale for PL Select Orders not to interact with incoming interest that is larger than the size of the PL Select Order. Accordingly, the Exchange believes that amending Rule 7.41(h)(7) to delete that PL Select Orders would not interact with incoming interest that is larger in size that the PL Select Order would remove impediments to and perfect the mechanism of a free and open market because it would eliminate the potential that liquidity adding interest would be rejected. Moreover, the Exchange believes that the proposed change promotes just and equitable principles of trade to the extent that it eliminates any perception that the PL Select Order could be bypassing executions with legitimate trading interest entered on behalf of institutional investors.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2012–133 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2012–133. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2012–133, and should be submitted on or before January 4, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–30163 Filed 12–13–12; 8:45 am]

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[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68395; File No. SR–NASDAQ–2012–134]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change for the NASDAQ Options Market (''NOM'') With Respect to the Authority of the Exchange or Nasdaq Options Services LLC (''NOS'') To Cancel Options Orders When a Technical or System Issue Occurs and To Describe the Operation of an Error Account for NOS

December 10, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 29, 2012, The NASDAQ Stock Market LLC (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a proposal relating to the authority of NASDAQ or Nasdaq Options Services to cancel orders on NOM when a technical or system issue occurs and to describe the operation of an error account for.

NASDAQ will implement the proposed rule change thirty days after the date of the filing. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Chapter VI, Section 11, Order Routing, by adding a new paragraph (g) that addresses the authority of the Exchange or NOS to cancel options orders when a technical or systems issue occurs and to describe the operation of an error account for NOS.[4]

NOS is the approved routing broker of the Exchange, subject to the conditions listed in Chapter VI, Section 11. The Exchange relies on NOS to provide outbound routing services from itself to routing destinations of NOS (''routing destinations'').[5] When NOS routes orders to a routing destination, it does so by sending a corresponding order in its own name to the routing destination. In the normal course, routed orders that are executed at routing destinations are submitted for clearance and settlement in the name of NOS, and NOS arranges for any resulting securities positions to be delivered to the member that submitted the corresponding order to the Exchange. From time to time, however, the Exchange and NOS encounter situations in which it becomes necessary to cancel orders and resolve error positions.[6]

Examples of Circumstances That May Lead to Canceled Orders

A technical or systems issue may arise at NOS, a routing destination, or the Exchange that may cause the Exchange or NOS to take steps to cancel orders if the Exchange or NOS determines that such action is necessary to maintain a fair and orderly market. The examples set forth below describe some of the circumstances in which the Exchange or NOS may decide to cancel orders.

*Example 1.* If NOS or a routing destination experiences a technical or systems issue that results in NOS not receiving responses to immediate or cancel (''IOC'') orders that it sent to the routing destination, and that issue is not resolved in a timely manner, NOS or the Exchange would seek to cancel the routed orders affected by the issue.[7] For instance, if NOS experiences a connectivity issue affecting the manner in which it sends or receives order messages to or from routing destinations, it may be unable to receive timely execution or cancellation reports from the routing destinations, and NOS or the Exchange may consequently seek to cancel the affected routed orders. Once the decision is made to cancel those routed orders, any cancellation that a member submitted to the Exchange on its initial order during such a situation would be honored.[8]

*Example 2.* If the Exchange experiences a systems issue, the Exchange may take steps

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] NOS is a facility of the Exchange. Accordingly, under Chapter VI, Section 11, the Exchange is responsible for filing with the Commission rule changes and fees relating to NOS's functions. In addition, the Exchange is using the phrase ''NOS or the Exchange'' in this rule filing to reflect the fact that a decision to take action with respect to orders affected by a technical or systems issue may be made in the capacity of NOS or the Exchange depending on where those orders are located at the time of that decision.

From time to time, the Exchange may use non-affiliate third-party broker-dealers to provide outbound routing services (*i.e.,* third-party Routing Brokers). In those cases, orders are submitted to the third-party Routing Broker through NOS, the third-party Routing Broker routes the orders to the routing destination in its name, and any executions are submitted for clearance and settlement in the name of NOS so that any resulting positions are delivered to NOS upon settlement. As described above, NOS normally arranges for any resulting securities positions to be delivered to the member that submitted the corresponding order to the Exchange. If error positions (as defined in proposed Chapter VI, Section 11(g)(2)) result in connection with the Exchange's use of a third-party Routing Broker for outbound routing, and those positions are delivered to NOS through the clearance and settlement process, NOS would be permitted to resolve those positions in accordance with proposed Chapter VI, Section 11(g). If the third-party Routing Broker received error positions in connection with its role as a routing broker for the Exchange, and the error positions were not delivered to NOS through the clearance and settlement process, then the third-party Routing Broker would resolve the error positions itself, and NOS would not be permitted to accept the error positions, as set forth in proposed Chapter VI, Section 11(g)(2)(B).

[5] The Exchange has authority to receive inbound routes of options orders by NOS to NOM from NASDAQ OMX BX (on a one year pilot basis) and NASDAQ OMX PHLX. *See* Securities Exchange Act Release Nos. 67295 (June 28, 2012), 77 FR 39758 (July 5, 2012) (SR–NASDAQ–2012–061); and 59948 (May 20, 2009), 74 FR 25784 (May 29, 2009) (SR–NASDAQ–2009–047).

[6] The examples described in this filing are not intended to be exclusive. Proposed Chapter VI, Section 11(g) would provide general authority for the Exchange or NOS to cancel orders in order to maintain fair and orderly markets when technical and systems issues are occurring, and Chapter VI, Section 11(g) also would set forth the manner in which error positions may be handled by the Exchange or NOS. The proposed rule change is not limited to addressing order cancellation or error positions resulting only from the specific examples described in this filing.

[7] In a normal situation (*i.e.,* one in which a technical or systems issue does not exist), NOS should receive an immediate response to an IOC order from a routing destination, and would pass the resulting fill or cancellation on to the Exchange member. After submitting an order that is routed to a routing destination, if a member sends an instruction to cancel that order, the cancellation is held by the Exchange until a response is received from the routing destination. For instance, if the routing destination executes that order, the execution would be passed on to the member and the cancellation instruction would be disregarded.

[8] If a member did not submit a cancellation to the Exchange, however, that initial order would remain ''live'' and thus be eligible for execution or posting on the Exchange, and neither the Exchange nor NOS would treat any execution of that initial order or any subsequent routed order related to that initial order as an error.

to cancel all outstanding orders affected by that issue and notify affected members of the cancellations. In those cases, the Exchange would seek to cancel any routed orders related to the members' initial orders.

## Examples of Circumstances That May Lead to Error Positions

In some instances, the technical or systems issue at NOS, a routing destination, the Exchange, or a non-affiliate third party Routing Broker may also result in NOS acquiring an error position that it must resolve. The examples set forth below describe some of the circumstances in which error positions may arise.

*Example A.* Error positions may result from routed orders that the Exchange or NOS attempts to cancel but that are executed before the routing destination receives the cancellation message or that are executed because the routing destination is unable to process the cancellation message. Using the situation described in Example 1 above, assume that the Exchange seeks to cancel orders routed to a routing destination because it is not receiving timely execution or cancellation reports from the routing destination. In such a situation, NOS may still receive executions from the routing destination after connectivity is restored, which it would not then allocate to members because of the earlier decision to cancel the affected routed orders. Instead, NOS would post those positions into its error account and resolve the positions in the manner described below.

*Example B.* Error positions may result from an order processing issue at a routing destination. For instance, if a routing destination experienced a systems problem that affects its order processing, it may transmit back a message purporting to cancel a routed order, but then subsequently submit an execution of that same order (*i.e.,* a locked-in trade) to The Options Clearing Corporation (''OCC'') for clearance and settlement. In such a situation, the Exchange would not then allocate the execution to the member because of the earlier cancellation message from the routing destination. Instead, NOS would post those positions into its error account and resolve the positions in the manner described below.

*Example C.* Error positions may result if NOS receives an execution report from a routing destination but does not receive clearing instructions for the execution from the routing destination. For instance, assume that a member sends the Exchange an order to buy 100 contracts overlying ABC stock, which causes NOS to send an order to a routing destination that is subsequently executed, cleared, and closed out by that routing destination, and the execution is ultimately communicated back to that member. On the next trading day (T+1), if the routing destination does not provide clearing instructions for that execution, NOS would still be responsible for settling that member's purchase, but would be left with a short position in its error account.[9] NOS would resolve the position in the manner described below.

*Example D.* Error positions may result from a technical or systems issue that causes orders to be executed in the name of NOS that are not related to NOS's function as the Exchange's routing broker and are not related to any corresponding orders of members. As a result, NOS would not be able to assign any positions resulting from such an issue to members. Instead, NOS would post those positions into its error account and resolve the positions in the manner described below.

*Example E.* Error positions may result from a technical or systems issue through which the Exchange does not receive sufficient notice that a member that has executed trades on the Exchange has lost the ability to clear trades through OCC. In such a situation, the Exchange would not have valid clearing information, which would prevent the trade from being automatically processed for clearance and settlement on a locked-in basis. Accordingly, NOS would assume that member's side of the trades so that the counterparties can settle the trades. NOS would post those positions into its error account and resolve the positions in the manner described below.

*Example F.* Error positions may result from a technical or systems issue at the Exchange that does not involve routing of orders through NOS. For example, a situation may arise in which a posted quote/order was validly cancelled but the system erroneously matched that quote/order with an order that was seeking to access it. In such a situation, NOS would have to assume the side of the trade opposite the order seeking to access the cancelled quote/order. NOS would post the position in its error account and resolve the position in the manner described below.

In the circumstances described above, neither the Exchange nor NOS may learn about an error position until T+1, either: (1) During the clearing process when a routing destination has submitted to OCC a transaction for clearance and settlement for which NOS never received an execution confirmation; or (2) when a routing destination does not recognize a transaction submitted to OCC for clearance and settlement. Moreover, the affected members' trade may not be nullified absent express authority under Exchange rules.[10]

## Proposed Amendments to Chapter VI, Section 11

The Exchange proposes to amend Chapter VI, Section 11 to add new paragraph (g) to address the cancellation of orders due to technical or systems issues and the use of an error account by NOS.

Specifically, under paragraph (g)(1) of the proposed rule, the Exchange or NOS would be expressly authorized to cancel orders as may be necessary to maintain fair and orderly markets if a technical or systems issue occurred at the Exchange, NOS, or a routing destination.[11] The Exchange or NOS would be required to provide notice of the cancellation to affected members as soon as practicable.

Paragraph (g)(2) of the proposed rule would permit NOS to maintain an error account for the purpose of addressing positions that result from a technical or systems issue at NOS, the Exchange, a routing destination, or a non-affiliate third-party Routing Broker that affects one or more orders (''error positions''). By definition, an error position would not include any position that results from an order submitted by a member to the Exchange that is executed on the Exchange and automatically processed for clearance and settlement on a locked-in basis. NOS also would not be permitted to accept any positions in its error account from an account of a member and could not permit any member to transfer any positions from the member's account to NOS's error account under the proposed rule.[12] However, if a technical or systems issue results in the Exchange not having valid

[9] To the extent that NOS incurred a loss in covering its short position, it would submit a reimbursement claim to that routing destination.

[10] *See, e.g.,* Chapter V, Section 6.

[11] Such a situation may not cause the Exchange to declare self-help against the routing destination pursuant to Chapter XII, Section 2(b)(1). If the Exchange or NOS determines to cancel orders routed to a routing destination under proposed Chapter VI, Section 11(g), but does not declare self-help against that routing destination, the Exchange would continue to be subject to the trade-through requirements in the Options Order Protection and Locked/Crossed Markets Plan and Chapter XII, Section 2 with respect to that routing destination.

[12] The purpose of this provision is to clarify that NOS may address error positions under the proposed rule that are caused by a technical or systems issue, but that NOS may not accept from a member positions that are delivered to the member through the clearance and settlement process, even if those positions may have been related to a technical or systems issue at NOS, the Exchange, a routing destination of NOS, or a non-affiliate third-party Routing Broker. This provision would not apply, however, to situations like the one described in Example C in which NOS incurred a short position to settle a member's purchase, as the member did not yet have a position in its account as a result of the purchase at the time of NOS's action (*i.e.,* NOS's action was necessary for the purchase to settle into the member's account). Similarly, the provision would not apply to situations like the one described in Example F, where a system issue caused one member to receive an execution for which there was not an available contraparty, in which case action by NOS would be necessary for the position to settle into that member's account. Moreover, to the extent a member receives locked-in positions in connection with a technical or systems issue, that member may seek to rely on Chapter V, Section 9 if it experiences a loss. That rule references NASDAQ Rule 4626, which provides members with the ability to file claims against the Exchange for ''losses directly resulting from the Systems' actual failure to correctly process an order, Quote/Order, message, or other data, provided the Nasdaq Market Center has acknowledged receipt of the order, Quote/Order, message, or data.''

clearing instructions for a member to a trade, NOS may assume that member's side of the trade so that the trade can be processed for clearance and settlement on a locked-in basis.[13]

Under paragraph (g)(3), in connection with a particular technical or systems issue, NOS or the Exchange would be permitted to either (i) assign all resulting error positions to members, or (ii) have all resulting error positions liquidated, as described below. Any determination to assign or liquidate error positions, as well as any resulting assignments, would be required to be made in a nondiscriminatory fashion.

NOS or the Exchange would be required to assign all error positions resulting from a particular technical or systems issue to the applicable members affected by that technical or systems issue if NOS or the Exchange:

- Determined that it has accurate and sufficient information (including valid clearing information) to assign the positions to all of the applicable members affected by that technical or systems issue;
- Determined that it has sufficient time pursuant to normal clearance and settlement deadlines to evaluate the information necessary to assign the positions to all of the applicable members affected by that technical or systems issue; and
- Had not determined to cancel all orders affected by that technical or systems issue.

For example, a technical or systems issue of limited scope or duration may occur at a routing destination, and the resulting trades may be submitted for clearance and settlement by such routing destination to OCC. If there were a small number of trades, there may be sufficient time to match positions with member orders and avoid using the error account.

There may be scenarios, however, where NOS determines that it is unable to assign all error positions resulting from a particular technical or systems issue to all of the affected members, or determines to cancel all affected routed orders. For example, in some cases, the volume of questionable executions and positions resulting from a technical or systems issue might be such that the research necessary to determine which members to assign those executions to could be expected to extend past the normal settlement cycle for such executions. Furthermore, if a routing destination experiences a technical or systems issue after NOS has transmitted IOC orders to it that prevents NOS from receiving responses to those orders, NOS or the Exchange may determine to cancel all routed orders affected by that issue. In such a situation, NOS or the Exchange would not pass on to the members any executions on the routed orders received from the routing destination.

The proposed rule also would require NOS to liquidate error positions as soon as practicable.[14] In liquidating error positions, NOS would be required to provide complete time and price discretion for the trading to liquidate the error positions to a third-party broker-dealer and could not attempt to exercise any influence or control over the timing or methods of trading to liquidate the error positions.[15] NOS also would be required to establish and enforce policies and procedures reasonably designed to restrict the flow of confidential and proprietary information between the third-party broker-dealer and NOS/the Exchange associated with the liquidation of the error positions.

Under proposed paragraph (g)(4), NOS and the Exchange would be required to make and keep records to document all determinations to treat positions as error positions and all determinations for the assignment of error positions to members or the liquidation of error positions, as well as records associated with the liquidation of error positions through the third-party broker-dealer.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[16] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5),[17] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange believes that this proposal is in keeping with those principles because NOS's or the Exchange's ability to cancel orders during a technical or systems issue and to maintain an error account facilitates the smooth and efficient operations of the market. Specifically, the Exchange believes that allowing NOS or the Exchange to cancel orders during a technical or systems issue would allow the Exchange to maintain fair and orderly markets. Moreover, the Exchange believes that allowing NOS to assume error positions in an error account and to liquidate those positions, subject to the conditions set forth in the proposed amendments to Chapter VI, Section 11, would be the least disruptive means to correct these errors, except in cases where NOS can assign all such error positions to all affected members of the Exchange. Overall, the proposed amendments are designed to ensure full trade certainty for market participants and to avoid disrupting the clearance and settlement process. The proposed amendments are also designed to provide a consistent methodology for handling error positions in a manner that does not discriminate among members. The proposed amendments are also consistent with Section 6 of the Act insofar as they would require NOS to establish controls to restrict the flow of any confidential information between the third-party broker and NOS/the Exchange associated with the liquidation of error positions.

*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.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of

[13] *See* Example E above.

[14] If NOS determines in connection with a particular technical or systems issue that some error positions can be assigned to some affected members but other error positions cannot be assigned, NOS would be required under the proposed rule to liquidate all such error positions (including those positions that could be assigned to the affected members).

[15] This provision is not intended to preclude NOS from providing the third-party broker with standing instructions with respect to the manner in which it should handle all error account transactions. For example, NOS might instruct the broker to treat all orders as ''not held'' and to attempt to minimize any market impact on the price of the stock being traded.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and Rule 19b–4(f)(6) [19] thereunder.

The Exchange has requested that the Commission waive the 30-day operative delay.[20] The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Such waiver would allow the Exchange, without delay, to implement the proposed rule change, which is designed to provide a consistent methodology for handling error positions in a manner that does not discriminate among members. The Commission also notes that the proposed rule change is based on, and substantially similar to, NASDAQ Equity Rule 4758(d), which the Commission recently approved.[21] Accordingly, the Commission designates the proposal operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–134 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–134. 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–2012–134 and should be submitted on or before January 4, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**Kevin M. O'Neill,**

*Deputy Secretary.*

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[18] 15 U.S.C. 78s(b)(3)(A).

[19] 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.

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] *See* Securities Exchange Act Release No. 67281 (June 27, 2012), 77 FR 39543 (July 3, 2012) (SR–NASDAQ–2012–057).

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68392; File No. SR–NSX–2012–24]**

## Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fee and Rebate Schedule

December 10, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 3, 2012, National Stock Exchange, Inc. (''NSX®'' 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 comment 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 proposing to amend its Fee and Rebate Schedule (the ''Fee Schedule'') issued pursuant to Exchange Rule 16.1(a) to: (1) Modify the Quotation Update Fee charged for each quotation update [3] transmitted to the Exchange by an Equity Trading Permit (''ETP'') [4] Holder using the Exchange's Order Delivery mode (''Order Delivery Mode''); and (2) cap the Quotation Update Fee to the first 150 million quotation updates entered by each ETP Holder per month. The text of the proposed rule change is available on the Exchange's Web site at *www.nsx.com,* at the Exchange'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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''quotation update'' includes any change to the price, size or side of a quotation or submission of an updated quote with the same price, size or side. A quotation update does not include posting of a new quote to replace a quote that was fully executed.

[4] Exchange Rule 1.5 defines the term ''ETP'' as an Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's Trading Facilities.

any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Fee Schedule issued pursuant to Exchange Rule 16.1(a) to: (1) Modify the Quotation Update Fee charged for each quotation update transmitted to the Exchange by an ETP Holder using the Exchange's Order Delivery mode; [sic] and (2) cap the Quotation Update Fee to the first 150 million quotation updates entered by each ETP Holder per month.

Electronic Communication Networks (''ECNs'') can use Order Delivery Mode to provide quotations to the Exchange for publishing in the consolidated quotation feed as well as the Exchange's proprietary depth-of-book feed. The Exchange delivers Order Delivery Notifications [5] to an ECN when it receives an incoming order from another trading center which can potentially execute against the published quote. Except for very limited circumstances, the ECN must immediately and automatically execute the Order Delivery Notification. Under Section 6(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'' or ''Act''), the Exchange must have effective surveillance mechanisms to ensure that Order Delivery participants comply with the Exchange's rules and regulations as well as those of the SEC.[6]

On November 2, 2012, the Exchange amended Section IV of its Fee Schedule to adopt a separate Quotation Update Fee for existing and new Order Delivery participants.[7] The Exchange adopted the Quotation Update Fee as a means of recouping costs associated with regulating the marketplace and the Order Delivery program. The Quotation Update Fee is $0.000444 for each quotation update by an existing Order Delivery participant, and $0.006667 for each quotation update from a new Order Delivery participant during the first three (3) months of participation.

The Exchange now proposes to (i) Increase the Quotation Update Fee for existing Order Delivery participants from $0.000444 to $0.000467, (ii) decrease the Quotation Update Fee for new Order Delivery participants from $0.006667 to $0.000667 during the first three (3) months of participation, and (iii) cap the Quotation Update Fee to the first 150 million quotation updates entered by each ETP Holder per month.

The Exchange believes that this approach equitably allocates fees among its members and is not unfairly discriminatory because Order Delivery participants (i) constitute a substantial portion of the Exchange's processing activity including quotations, Order Delivery Notifications, and transactions, and (ii) require a heightened level of regulatory scrutiny and are utilizing significantly greater regulatory resources as compared to ETP Holders that post and execute orders on the Exchange using automatic execution. The Exchange also believes that a cap on the Quotation Update Fee is necessary to equitably allocate regulatory costs among Order Delivery participants. The Exchange will assess, on a quarterly basis, whether the Quotation Update Fee is equitably allocated among its members and to adjust the rate accordingly [sic]. The Exchange will consider any changes in the level of Order Delivery processing and other activity as well as any changes in the market, surveillance and system requirements required to effectively perform the regulatory, surveillance, investigative or enforcement functions.

**Operative Date and Notice**

The Exchange will make the proposed modifications, which are effective on filing of this proposed rule, operative as of commencement of trading on December 3, 2012.[8] Pursuant to Exchange Rule 16.1(c), the Exchange will ''provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange'' through the issuance of an Information Circular of the changes to the Fee Schedule and will post a copy of the rule filing on the Exchange's Web site (*www.nsx.com*).

2. Statutory Basis

The Exchange believes that the amended Quotation Update Fee for existing Order Delivery participants is consistent with the provisions of Section 6(b) of the Act,[9] in general, and Section 6(b)(4) of the Act,[10] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using the facilities of the Exchange. Order Delivery Mode imposes on the Exchange greater regulatory and operational costs than should the Exchange offer only automatic execution mode of interaction (''Auto-Ex Mode''),[11] [sic] because Order Delivery is a model that requires increased regulatory procedures and resources to ensure effective oversight of compliance with the rules and regulations of the Exchange and the Commission. The Exchange believes that the amended Quotation Update Fee for existing Order Delivery participants is consistent with the provisions of Section 6(b)(5) of the Act,[12] is equitable and not unfairly discriminatory because Order Delivery participants constitute a substantial portion of the Exchange's processing activity including quotations, order delivery notifications, and transactions, and require a heightened level of regulatory scrutiny and resources as compared to ETP Holders that post and execute orders on the Exchange using Auto-Ex Mode. The Exchange believes that capping the Quotation Update Fee is necessary to equitably allocate regulatory costs among Order Delivery participants. Order Delivery participants are eligible to submit (or not submit) liquidity adding and quotes, and may do so at their discretion in the daily volumes they choose during any given trading day.

Therefore, the Exchange believes the revised fee structure is a reasonable means for the NSX to recover the regulatory costs of the marketplace and Order Delivery. The Quotation Update Fee is reasonable given that it is directly related to the Exchange's cost of regulation. The Exchange will review the rate of the Quotation Update Fee on a quarterly basis, and will consider any changes in the level of Order Delivery processing and other activity as well as any changes in the market, surveillance and system requirements required to effectively perform the surveillance, investigative or enforcement functions.

[5] An ''Order Delivery Notification'' refers to a message sent by the Exchange to the Order Delivery participant communicating the details of the full or partial quantity of an inbound contra-side order that potentially may be matched within the System for execution against an Order Delivery Order.

[6] 15 U.S.C. 78f(b)(1).

[7] *See* Securities Exchange Act Release No. 68215 (November 13, 2012), 77 FR 69522 (November 19, 2012) (SR–NSX–2012–20).

[8] While the Exchange proposes to amend the date of its Fee Schedule to December 1, 2012, it will not implement the proposed fee changes until Monday, December 3, 2012, the first day of trading. The Exchange proposes to amend the Fee Schedule's date to December 1 as it contains non-transaction based fees that are charged on a monthly basis.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] Under Auto-Ex Mode, the Exchange matches and executes like-priced orders (including against Order Delivery orders resting on the NSX book). Auto-Ex orders resting in the NSX book execute immediately when matched against a marketable incoming contra-side Auto-Ex order.

[12] 15 U.S.C. 78f(b)(5).

Furthermore, the Exchange also believes that the amended Quotation Update Fee for new Order Delivery participants during their first three (3) months of operation is consistent with the provisions of Section 6(b) of the Act,[13] in general, and Section 6(b)(4) of the Act,[14] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using the facilities of the Exchange. Oversight of a new Order Delivery participant's activities imposes on the Exchange additional regulatory and operational costs because the Exchange expends an increased regulatory focus over a new Order Delivery participant's activities to ensure compliance with Exchange Rule 11.13 and to gain familiarity with their quoting activities. The Exchange believes that continuing to charge a higher quotation update fee for new Order Delivery participants during their first three (3) months of operation is a reasonable means to cover the regulatory oversight costs. Moreover, the Exchange believes that the amended Quotation Update Fee for new Order Delivery participants during their first three (3) months of operation is consistent with the provisions of Section 6(b)(5) of the Act,[15] in that the proposed regulatory fee is not unfairly discriminatory. New participants may not quote with as much frequency as established Order Delivery participants. For example, a new Order Delivery participant may submit quotations in a few securities, and ramp up quotation activity with experience. However, the Exchange will need to expend additional resources to ensure that the new Order Delivery participant is complying with all regulations. In addition, new Order Delivery participants require increased regulatory oversight due to the Exchange's focus on their trading activity as well as Exchange staff developing familiarity with the new participant's [sic] trading behavior. Also, Order Delivery participants are eligible to submit (or not submit) liquidity adding and [sic] quotes, and may do so at their discretion in the daily volumes they choose during any given trading day.

Lastly, the Exchange believes that proposing to limit the Quotation Update Fee to an Order Delivery participant's first 150 million quotation updates each month is also consistent with the provisions of Section 6(b) of the Act,[16] in general, and Section 6(b)(4) of the Act,[17] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among Order Delivery participants, its members and other persons using the facilities of the Exchange. The Exchange found that capping the Quotation Update Fee was necessary to equitably allocate regulatory costs among Order Delivery participants. Moreover, the Exchange believes that the proposed cap on the Quotation Update fee is consistent with the provisions of Section 6(b)(5) of the Act,[18] in that the proposed regulatory fee is not unfairly discriminatory because it applies to all Order Delivery participants equally. Nonetheless, the Exchange understands that new participants may not quote with as much frequency as established Order Delivery participants, thereby not reaching the cap. As stated above, a new Order Delivery participant may submit quotations in a few securities, and ramp up quotation activity with experience. However, the Exchange will need to expend additional resources to ensure that the new Order Delivery participant is complying with all regulations. In addition, new Order Delivery participants require increased regulatory oversight due to the Exchange's focus on their trading activity as well as Exchange staff developing familiarity with the new participant's trading behavior.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [19] and subparagraph (f)(2) of Rule 19b–4.[20] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSX–2012–24 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2012–24. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2012–24, and should be submitted on or before January 4, 2013.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(3)(A)(ii).

[20] 17 CFR 240.19b–4.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–30167 Filed 12–13–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68391; File No. SR–NSX–2012–25]**

## Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fee and Rebate Schedule

December 10, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 3, 2012, National Stock Exchange, Inc. (''NSX®'' 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 comment 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 proposing to amend its Fee and Rebate Schedule (the ''Fee Schedule'') issued pursuant to Exchange Rule 16.1(a) to: (1) Modify the rebates provided to Equity Trading Permit (''ETP'') [3] Holders that execute orders on the Exchange using Order Delivery mode (''Order Delivery Mode''); and (2) charge a fee for each Order Delivery Notification,[4] which is capped on a monthly basis. The text of the proposed rule change is available on the Exchange's Web site at *www.nsx.com,* at the Exchange'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 parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is proposing to amend its Fee Schedule issued pursuant to Exchange Rule 16.1(a) to: (1) Modify the rebates for orders executed by ETP Holders using the Exchange's Order Delivery Mode; and (2) charge a fee for each Order Delivery Notification, which is capped on a monthly basis.

Modification of Order Delivery Rebates for Securities Priced at $1.00 or Above

Under Section II of the Fee Schedule, the Exchange offers ETP Holders both a Primary and Alternate Fee Schedule with four (4) tiers of progressively greater rebates. An ETP Holder's monthly average daily trading volume (''ADV'') determines which rebate tier the ETP Holder meets. The Exchange proposes to replace these tiers and the Primary and Alternate Fee Schedules under Section II of the Fee Schedule with a single rebate for all shares executed by ETP Holders against displayed and undisplayed orders using the Order Delivery Mode (''Order Delivery Participants'').[5] The Exchange also [sic] proposes a $0.0030 per share rebate and a 50% Market Data Rebate (''MDR'') for all transactions executed by Order Delivery Participants in securities priced at $1.00 or above.[6] These rebates will replace the current 25% MDR paid to ETP Holders that meet the ADV requirements under the fourth tier of Section II of the Fee Schedule. The Exchange believes that Order Delivery Participants will post additional liquidity on the Exchange if it (i) increases the rebate to $0.0030 per share when the Order Deliver [sic] Participant adds liquidity in a security quoted at a price of $1.00 or greater, and (ii) provides Order Delivery Participants with 50% of the attributable MDR received by the Exchange.

Modification of Order Delivery Rebates for Securities Priced Below $1.00

The Exchange is proposing to amend Section II of the Fee Schedule to no longer provide ETP Holders with a rebate for transactions executed using Order Delivery Mode for securities quoted at prices less than $1.00. The Fee Schedule currently provides ETP Holders with a rebate of the ''[l]esser of: 0.20% of trade value and 20% of the quote spread'' for securities quoted at prices less than $1.00.

Rationale for Revised Order Delivery Rebates

The Exchange believes that the higher rebates [7] will provide ETP Holders with an incentive to post additional liquidity on the Exchange via Order Delivery Mode. The Exchange also notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive. The Exchange believes that the proposed rule change reflects this competitive environment.

Order Delivery Notification Fee

The Exchange proposes to introduce an Order Delivery Notification Fee. The Exchange proposes to charge ETP Holders $0.29 for each Order Delivery Notification delivered to each ETP Holder for potential execution against a posted displayed or undisplayed order. Currently, the Exchange provides this service to ETP Holders at no charge. The proposed Order Delivery Notification Fee will only apply to the first 1.5 million Order Delivery Notifications from [sic] a single Order Delivery Participant in a given calendar month.

Rationale for Order Delivery Notification Fee

The Exchange's Order Delivery Mode provides Electronic Communication Networks (''ECNs'') with an electronic trading platform to interact with the

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Rule 1.5 defines the term ''ETP'' as an Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's Trading Facilities.

[4] An Order Delivery Notification refers to a message sent by the Exchange to the Order Delivery participant communicating the details of the full or partial quantity of an inbound contra-side order that potentially may be matched within the System for execution against an Order Delivery Order.

[5] As a result of consolidating the Primary and Alternate Fee Schedules, ETP Holders that are Order Delivery Participants will no longer automatically receive the Alternate Fee Schedule upon meeting a minimum ADV in both Auto-Ex Mode and Order Delivery Mode because a separate Alternate Fee Schedule will not be available.

[6] As part of the proposed rebate consolidation, Midpoint Peg Zero Display Reserve Orders will receive the proposed $0.0030 per share rebate described above rather than the existing fixed rebate of $0.0017 per executed share.

[7] The Commission notes that this rule filing increases rebates for transactions in stocks priced over $1, but actually eliminates rebates for transactions in stocks priced under $1.

National Market System. ECNs can use Order Delivery Mode to fulfill certain regulatory obligations such as qualifying as an ECN Display Alternative [8] or publishing quotations in the consolidated quotation system when the five (5) percent order display requirement is triggered.[9] Order Delivery Mode provides ECNs with the ability to (i) Publish quotations into the consolidated quotation system, (ii) receive ''protected quotation'' status under Rule 611 of Regulation NMS,[10] (iii) receive an Order Delivery Notification when there is a potential match against a published quotation, and (iv) distribute attributed quotations through the Exchange's Depth-of Book market data product. Order Delivery Mode is a unique market structure that costs more to operate and regulate than if the Exchange offered only automatic executions. Instead of moving to a less expensive market model and technology, the Exchange maintains this high cost structure to foster competition between markets, to encourage the display of limit orders by alternative trading systems, and to provide ECNs with a mechanism to grow within the National Market System. However, maintaining the Order Delivery program inhibits the Exchange's ability to gain additional liquidity through automatic executions.

The Exchange's Order Delivery Mode currently provides ECN's with ''free advertising'' through attributed quotations, which facilitates an increasing rate of executions away from the Exchange. Over the past several months, the overall messaging activity for Order Delivery Participants has increased rapidly without a corresponding increase in executions or an increase in net transaction revenue. During the month of November 2012, Order Delivery Mode accounted for approximate [sic] seventy-four (74) percent of the Exchange's overall messaging activity with one Order Delivery Participant accounting for approximately fifty-five (55) percent of that activity, while only accounting for nine (9) percent of the Exchange's overall trading volume. The disproportionate trade-to-quote ratio in Order Delivery Mode is a result of ECNs successfully leveraging the Exchange's infrastructure to develop their businesses away from the Exchange, even as the majority of the Exchange's operational costs are fixed. Consequently, the Exchange strongly believes that continuing to rely on transaction-based revenues to support Order Delivery Mode is not feasible. The Exchange believes that it is reasonable to charge for the services provided to Order Delivery Participants, and recover the development and ongoing operational costs, excluding the costs of regulation, of Order Delivery Mode. The Exchange will evaluate on a quarterly basis the level of quotations, Order Delivery Notifications and executions as a percentage of overall operations in order to ensure that the Order Delivery Notification Fee is reasonable, equitable and not unfairly discriminatory among ETP Holders.

Operative Date and Notice

The Exchange will make the proposed modifications, which are effective on filing of this proposed rule, operative as of commencement of trading on December 3, 2012.[11] Pursuant to Exchange Rule 16.1(c), the Exchange will ''provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange'' through the issuance of an Information Circular of the changes to the Fee Schedule and will post a copy of the rule filing on the Exchange's Web site (*www.nsx.com*).

2. Statutory Basis

The Exchange believes that the proposed changes to Section II of the Fee Schedule are consistent with the provisions of Section 6(b) of the Securities Exchange Act of 1934 [12] (the ''Act''), in general, and Section 6(b)(4) of the Act,[13] in particular in that they are designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using the facilities of the Exchange. Moreover, the proposed rebate structure under Section II of the Fee Schedule is not discriminatory in that all ETP Holders are eligible to submit (or not submit) liquidity adding trades [sic] and quotes, and may do so at their discretion in the daily volumes they choose during the course of the billing period. All similarly situated ETP Holders are subject to the same fee structure, and access to the Exchange is offered on terms that are not unfairly-discriminatory. Rebates and discounts have been widely adopted in the equities markets, and are equitable because they are open to all ETP Holders on an equal basis and provide rebates that are reasonably related to the value of an exchange's market quality associated with its Order Delivery Mode. Lastly, the Exchange believes offering different rebates for executions in securities with prices quoted above and below $1.00 is reasonable because it is designed to encourage ETP Holders to improve liquidity in securities with quoted prices at or above $1.00.

The Exchange believes that the proposed Order Delivery Notification Fee is consistent with the provisions of Section 6(b) of the Act,[14] in general, and Section 6(b)(4) of the Act,[15] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using the facilities of the Exchange. As stated above, Order Delivery Participants utilize a substantial portion of the Exchange's infrastructure, operational and processing resources. The Order Delivery Notification Fee is a mechanism under which the Exchange can recoup the costs associated with Order Delivery Mode, as it did by capturing the difference between the rebate provided to the Order Delivery Participant and the fee charged to the liquidity taker. The Exchange believes that is [sic] fair and equitable to charge a [sic] Order Delivery Participant a fee which covers the proportionate cost of a unique technology that offers Order Delivery Mode. The Order Delivery Notification Fee is reasonable since it will only recoup the costs associated with Order Delivery Mode. The Exchange will evaluate the Order Delivery Notification Fee on a quarterly basis to ensure that it remains reasonable and equitable among all ETP Holders. In addition, the Exchange proposes to cap the Order Delivery Notification Fee to the first 1.5 million Order Delivery Notifications transmitted to each Order Delivery Participant.

The Exchange also believes the Order Delivery Notification Fee and cap is a reasonable means for the Exchange to recover the development costs of Order Delivery Mode, as well as the ongoing operating costs. During the month of November 2012, Order Delivery Mode accounted for approximate [sic] seventy-four (74) percent of the Exchange's overall messaging activity with one Order Delivery Participant accounting for approximately fifty-five (55) percent of that activity, while only accounting for nine (9) percent of the Exchange's overall trading volume. The disproportionate trade-to-quote ratio in

[8] 17 CFR 242.602(b)(5)(i).

[9] 17 CFR 242.301(b)(3)(B).

[10] 17 CFR 611.

[11] While the Exchange proposes to amend the date of its Fee Schedule to December 1, 2012, it will not implement the proposed fee changes until Monday, December 3, 2012, the first day of trading. The Exchange proposes to amend the Fee Schedule's date to December 1 as it contains non-transaction based fees that are charged on a monthly basis.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

Order Delivery Mode is a result of ECNs successfully leveraging the Exchange's infrastructure to develop their businesses away from the Exchange, even as the majority of the Exchange's operational costs are fixed. While the Exchange could modify its transaction-based fee structure to charge Order Delivery participants a fee for posting Order Delivery liquidity, the Exchange believes that utilizing an [sic] capped Order Delivery Fee structure provides Order Delivery participants a greater incentive to post liquidity on the Exchange. Consequently, the Exchange strongly believes that continuing to rely on transaction-based revenues to support Order Delivery Mode is not feasible. The Exchange believes that it is reasonable to charge for the services provided to Order Delivery Participants, and recover the development and ongoing operational costs, excluding the costs of regulation, of Order Delivery Mode. The Exchange will evaluate on a quarterly basis the level of quotations, Order Delivery notifications and executions as a percentage of overall operations in order to ensure that the Order Delivery Notification Fee is reasonable, equitable and not unfairly discriminatory among ETP Holders.

Moreover, the Exchange believes that the proposed Order Delivery Notification Fee and cap is consistent with the provisions of Section 6(b)(5) of the Act,[16] in that the proposed fee is not unfairly discriminatory amongst Order Delivery Participants. Order Delivery Participants are eligible to submit (or not submit) liquidity adding quotes, and may do so at their discretion in the daily volumes they choose during any given trading day. As stated earlier, Order Delivery Mode currently accounts for approximately 74% of the Exchange's overall incoming messaging activity. Due to the low level of executions resulting from the quotation activity, the Exchange does not believe that a transaction-based fee is a reasonable means for the Exchange to recover the development and the ongoing operational costs of the Order Delivery program. The Exchange does not believe that the Order Delivery Fee is unfairly discriminatory since it directly correlates to the amount of Exchange infrastructure, operations and processing required to maintain the Order Delivery program. The Exchange will evaluate the Order Delivery Notification Fee on a quarterly basis to ensure that changes in Order Delivery activity or volume compared to the Exchange's other operations which causes the fee to become unfair or discriminatory among Order Delivery Participants.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [17] and subparagraph (f)(2) of Rule 19b–4.[18] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NSX–2012–25 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2012–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2012–25, and should be submitted on or before January 4, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**BILLING CODE 8011–01–P**

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 240.19b–4.

[19] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68389; File No. SR–NASDAQ–2012–122]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend and Adopt Several NASDAQ Rules To Reflect Changes to Rules of the Financial Industry Regulatory Authority (''FINRA'')

December 10, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 26, 2012, The NASDAQ Stock Market LLC (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend and adopt several NASDAQ rules to reflect changes to rules of the Financial Industry Regulatory Authority (''FINRA''). NASDAQ will implement the proposed rule change thirty days after the date of the filing. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

Many of NASDAQ's rules governing member conduct are based on rules of FINRA (formerly the National Association of Securities Dealers (''NASD'')). During 2008, FINRA embarked on an extended process of moving rules formerly designated as ''NASD Rules'' into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, NASDAQ has also been undertaking a process of modifying its rulebook to ensure that NASDAQ rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. To the extent possible, NASDAQ will designate a NASDAQ rule that is intended to parallel a FINRA rule with the suffix ''A''. For example, the NASDAQ rule paralleling FINRA Rule 2090 will be designated as Rule 2090A. This filing makes the following changes:

(1) NASDAQ is adopting Rule 5310A, which incorporates FINRA Rule 5310 (Best Execution and Interpositioning) by reference. The new rule takes the place of Rule 2320 (Best Execution and Interpositioning) and IM–2320 (Interpretive Guidance with Respect to Best Execution Requirements).[5] References in FINRA Rule 5310 to NASD Rule 2440 and IM–2440 will not be reflected in NASDAQ's rule, since NASDAQ has not adopted corresponding rules regulating the activities of NASDAQ Members with respect to commissions and mark-ups.

(2) NASDAQ is redesignating Rule 3060 (Influencing or Rewarding Employees of Others) as Rule 3220A and changing the incorporated rule from NASD Rule 3060 to FINRA Rule 3220.[6]

(3) NASDAQ is redesignating Rule 3090 (Transactions Involving Nasdaq Employees) as Rule 2070A.[7]

(4) NASDAQ is replacing Rule 2310 (Recommendations to Customers (Suitability)), IM–2310–1 (Reserved), IM–2310–2 (Fair Dealing with Customers), and IM–2310–3 (Suitability Obligations to Institutional Customers) with Rule 2111A (Suitability), which incorporates FINRA Rule 2111, and Rule 2090A (Know Your Customer), which incorporates FINRA Rule 2090.[8] However, references in FINRA Rule 2111 to NASD IM–2210–6 will not be reflected in NASDAQ's rule, since NASDAQ has not adopted a corresponding rule regulating the activities of NASDAQ Members in connection with investment analysis tools.

NASDAQ notes that in some instances, the amended rules reference rules that are being adopted or renumbered by contemporaneous NASDAQ rule filings that have been filed on an immediately effective basis.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[10] in general, and with Section 6(b)(5) of the Act,[11] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed changes will conform various NASDAQ Rules to changes made to corresponding FINRA rules, thus promoting application of consistent regulatory standards with respect to rules that FINRA enforces pursuant to its regulatory services agreement with NASDAQ.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 65895 (December 5, 2011), 76 FR 77042 (December 9, 2011) (SR–FINRA–2011–052). NASDAQ Rule 2320 and IM–2320 had not previously incorporated NASD or FINRA rules by reference, but had closely tracked the language of the analogous NASD rules in effect at the time of their adoption. By incorporating FINRA Rule 5310 by reference, NASDAQ will be incorporating changes made by FINRA in the interim. Specifically, FINRA has moved portions of former NASD Rule 2320 and IM–2320 into a new section of Supplementary Material reflecting guidance with respect to (i) The definition of ''market'' for purposes of the rule, (ii) best execution and executing brokers, and (iii) use of a broker's broker, and has adopted new Supplementary Material providing guidance with respect to (i) Execution of marketable customer orders, (ii) best execution and debt securities, (iii) orders involving securities with limited quotations or pricing information, (iv) orders involving foreign securities, (v) customer instructions regarding order handling, and (vi) regular and rigorous review of execution quality. In addition, FINRA modified its rule to make it clear that an interpositioning arrangement must be consistent with the overall rule governing best execution, rather than focusing exclusively on the cost of such an arrangement. FINRA also deleted language focused on the channeling of customers' orders through a broker's broker, again because such arrangements would be subject to the overall rule governing best execution. Specifically, the rule requires a broker to use reasonable diligence to ascertain the best market, based on a consideration of a range of factors enumerated in the rule. Through this rule filing, NASDAQ will be making all of the foregoing changes applicable to NASDAQ members in their capacities as NASDAQ members. NASDAQ notes that NASDAQ members with public customers are required to be members of FINRA by virtue of Section 15(b)(8) of the Act, 15 U.S.C. 78o(b)(8), and SEC Rule 15b9–1, 17 CFR 240.15b9–1. The change is designed to ensure that NASDAQ may enforce the rule against its members under the same parameters as FINRA enforces the rule against its members.

[6] *See* Securities Exchange Act Release No. 58660 (September 26, 2008), 73 FR 57393 (October 2, 2008) (SR–FINRA–2008–027).

[7] *Id.*

[8] *See* Securities Exchange Act Release No. 63325 (November 17, 2010), 75 FR 71479 (November 23, 2010) (SR–FINRA–2010–039).

[9] *See* Securities Exchange Act Release Nos. 68123 (October 31, 2012), 77 FR 66658 (November 6, 2012) (SR–NASDAQ–2012–123); 68153 (November 5, 2012), 77 FR 67409 (November 9, 2012) (SR–NASDAQ–2012–124).

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(5).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–122 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–122. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–122 and should be submitted on or before January 4, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–30164 Filed 12–13–12; 8:45 am]

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[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68390; File No. SR–BATS–2012–042]**

## Self-Regulatory Organizations; BATS Exchange, Inc.; Order Granting Approval of Proposed Rule Change To List and Trade Shares of the iShares Sovereign Screened Global Bond Fund

December 10, 2012.

**I. Introduction**

On October 12, 2012, BATS Exchange, Inc. (''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the iShares Sovereign Screened Global Bond Fund (''Fund'') under BATS Rule 14.11(i). The proposed rule change was published for comment in the **Federal Register** on October 30, 2012.[3] The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

**II. Description of the Proposed Rule Change**

The Exchange proposes to list and trade Shares of the Fund pursuant to BATS Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by iShares Sovereign Screened Global Bond Fund, Inc. (''Company''),[4] a Maryland corporation that is registered with the Commission as an open-end investment company. BlackRock Fund Advisors is the investment adviser (''BFA'' or ''Adviser'') to the Fund. BlackRock International Limited serves as sub-adviser for the Fund (''Sub-Adviser'').[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68094 (October 24, 2012), 77 FR 65740 (''Notice'').

[4] *See* Registration Statement on Form N–1A for the Company, dated March 5, 2012 (File Nos. 333–179905 and 811–22674) (''Registration Statement''). The Commission has issued an order granting certain exemptive relief (''Exemptive Order'') to the Company under the Investment Company Act of 1940. *See* Investment Company Act Release No. 29571 (January 24, 2011) (File No. 812–13601).

[5] The Adviser manages the Fund's investments and its business operations subject to the oversight of the Board of Directors of the Company (''Board''). While BFA is ultimately responsible for the management of the Fund, it is able to draw upon the trading, research, and expertise of its asset management affiliates for portfolio decisions and management with respect to portfolio securities. Portfolio managers employed by the Adviser are generally responsible for day-to-day management of

State Street Bank and Trust Company is the administrator, custodian, and transfer agent for the Company, and BlackRock Investments, LLC is the distributor for the Company. The Exchange states that the Adviser and the Sub-Adviser are both affiliated with multiple broker-dealers and have both implemented fire walls with respect to such broker-dealer affiliates regarding access to information concerning the composition and/or changes to the Fund's portfolio.[6]

*iShares Sovereign Screened Global Bond Fund*

The Fund will seek to generate current income while striving to mitigate downside risk by investing principally in global sovereign debt obligations. To achieve its objective, the Fund will invest, under normal circumstances,[7] at least 80% of its net assets in sovereign government bonds from both developed and emerging market countries. In the absence of normal circumstances, the Fund may temporarily depart from its normal investment process, provided that such departure is, in the opinion of the portfolio management team of the Fund, consistent with the Fund's investment objective and in the best interest of the Fund. For example, the Fund may hold a higher than normal proportion of its assets in cash in response to adverse market, economic, or political conditions.

The Fund will hold sovereign debt obligations of at least 13 non-affiliated issuers. The Fund will not purchase the securities of issuers conducting their principal business activity in the same industry if, immediately after the purchase and as a result thereof, the value of the Fund's investments in that industry would equal or exceed 25% of the current value of the Fund's total assets, provided that this restriction does not limit the Fund's: (i) Investments in securities of other investment companies; (ii) investments in securities issued or guaranteed by the U.S. government, its agencies, or instrumentalities; or (iii) investments in repurchase agreements collateralized by U.S. government securities. The Fund will not invest in equity securities.

The Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.[8]

*Sovereign Debt*

The Fund intends to achieve its investment objective by investing, under normal circumstances, at least 80% of its net assets in bonds denominated in local currencies and the U.S. dollar, issued by governments in both developed and emerging market countries.

The Fund intends to maintain specific exposure to global government bonds with targeted investment characteristics. The Adviser will utilize a model-based proprietary investment process to assemble the investment portfolio from a defined group of developed and emerging market countries across all credit rating categories, including below investment grade. The investment process primarily will utilize the universe of sovereign debt issuers included in the BlackRock Sovereign Risk Index, a proprietary model that scores countries using a comprehensive list of relevant fiscal, financial, and institutional metrics to assess sovereign credit risk. These country scores, along with other model-driven factors, will be used to construct the Fund's investment portfolio by screening out lower scoring countries and weighting the remaining sovereigns based on their scores. According to the Exchange, as of July 31, 2012, there were 48 countries in the universe of eligible countries, any of which may or may not be held by the Fund.[9] This proprietary investment process is intended to provide an increased exposure to sovereign debt securities issued by countries with higher credit quality, as defined by the model, than would a fund that seeks to replicate the performance of a broad global government bond index that is weighted more heavily towards countries based on their amount of debt outstanding. According to the Exchange, as of July 31, 2012, the following countries were included in the universe of eligible countries: Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, China, Colombia, Croatia, the Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Hungary, India, Indonesia, Ireland, Israel, Italy, Japan, Malaysia, Mexico, the Netherlands, New Zealand, Norway, Peru, the Philippines, Poland, Portugal, Russia, Singapore, Slovakia, Slovenia, South Africa, South Korea, Spain, Sweden, Switzerland, Taiwan, Thailand, Turkey, the United Kingdom, the United States, and Venezuela.[10] Countries may be added to, eliminated from, or replaced in the universe of eligible countries at any time, and the model may score countries differently over time, which means that countries may be added to, deleted from, or re-weighted within the model.

The universe of sovereign debt currently includes securities that are rated ''investment grade'' as well as ''below investment grade.''[11] The Fund will not invest in distressed debt. The Fund expects that, under normal circumstances, the securities included in the Fund will be primarily investment grade. According to the Exchange, as of July 31, 2012, 97% of the securities in the BlackRock Sovereign Risk Index were rated investment grade.

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. Under normal circumstances, the effective duration of

the Fund and, as such, typically make all decisions with respect to portfolio holdings. The Adviser also has ongoing oversight responsibility. The Sub-Adviser, subject to the supervision and oversight of the Board and BFA, will be primarily responsible for execution of securities transactions outside the United States and Canada and may, from time to time, participate in the management of specified assets in the Fund's portfolio. The Sub-Adviser may be responsible for the day-to-day management of the Fund.

[6] *See* BATS Rule 11.14(i)(7). In the event (a) the Adviser or Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, they will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio.

[7] The term ''under normal circumstances'' includes, but is not limited to, the absence of adverse market, economic, political, or other conditions, including extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[8] 26 U.S.C. 851.

[9] Countries must have at least $5 billion of outstanding debt principal amounts at the beginning of the calendar year in order to be included in the eligible universe.

[10] According to the Exchange, each country's approximate value of outstanding debt principal amounts as of July 31, 2012, is as follows (in billions): Argentina $160; Australia $246; Austria $248; Belgium $421; Brazil $498; Canada $865; Chile $58; China $1,216; Colombia $76; Croatia $22; the Czech Republic $79; Denmark $133; Egypt $116; Finland $106; France $1,696; Germany $1,347; Greece $169; Hungary $86; India $593; Indonesia $112; Ireland $109; Israel $151; Italy $2,007; Japan $11,554; Malaysia $142; Mexico $379; the Netherlands $384; New Zealand $58; Norway $64; Peru $27; the Philippines $98; Poland $221; Portugal $143; Russia $140; Singapore $136; Slovakia $40; Slovenia $18; South Africa $138; South Korea $380; Spain $844; Sweden $143; Switzerland $98; Taiwan $162; Thailand $104; Turkey $265; the United Kingdom $1,878; the United States $10,743; and Venezuela $72.

[11] When constructing the model, the distribution of ratings across issues in each country will be considered in order to ensure that no single issue is over weighted and that the model is diversified. The ratings-based caps will be imposed on a per country basis, and will be generally as follows: AAA/AA=5%; A=4%; BBB=3%; Junk=2% (ratings are averaged across Moody's and S&P).

the Fund's portfolio is expected to be 5–7 years, as calculated by the Adviser.

*Other Portfolio Holdings*

While the Fund will invest at least 80% of its net assets in bonds denominated in local currencies and the U.S. dollar issued by governments in both developed and emerging market countries, the Adviser expects that, under normal market circumstances, the Fund intends to invest its remaining assets in money market securities (as described below) in a manner consistent with its investment objective in order to help manage cash flows in and out of the Fund, such as in connection with payment of dividends or expenses, and to satisfy margin requirements, to provide collateral, or to otherwise back investments in derivative instruments. For these purposes, money market securities include: Short-term, high-quality obligations issued or guaranteed by the U.S. Treasury or the agencies or instrumentalities of the U.S. government; short-term, high-quality securities issued or guaranteed by non-U.S. governments, agencies, and instrumentalities; repurchase agreements backed by U.S. government securities; money market mutual funds; and deposits and other obligations of U.S. and non-U.S. banks and financial institutions. All money market securities acquired by the Fund will be rated investment grade. The Fund does not intend to invest in any unrated money market securities. However, it may do so, to a limited extent, such as where a rated money market security becomes unrated, if such money market security is determined by the Adviser or the Sub-Adviser to be of comparable quality.

Additionally, the Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

Pursuant to the Exemptive Order, the Fund will not invest in swap agreements, futures contracts, or option contracts. The Fund may invest in currency forwards for hedging against foreign currency exchange rate risk and/or trade settlement purposes.

Additional information regarding the Shares and the Fund, including investment strategies, risks, creation and redemption procedures, fees and expenses, portfolio holdings disclosure policies, distributions, taxes, and reports to be distributed to beneficial owners of the Shares can be found in the Notice,[12] the Registration Statement,[13] or on the Web site for the Fund (*www.iShares.com*), as applicable.

## III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act [14] and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[16] which requires, among other things, that the Exchange's rules 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 facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of BATS Rule 14.11(i) to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[17] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available on the facilities of the Consolidated Tape Association (''CTA''). In addition, the Intraday Indicative Value, as defined in BATS Rule 14.11(i)(3)(C), will be updated and widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours.[18] On each business day, before commencement of trading in Shares during Regular Trading Hours on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio, as defined in BATS Rule 14.11(i)(3)(B), held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[19] The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange (generally 4:00 p.m. Eastern Time). Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Intraday, executable price quotations on sovereign bonds and other assets are available from major broker-dealer firms. Such intraday information is also available through subscription services, such as Bloomberg, Thomson Reuters, and International Data Corporation. The Fund's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that

[12] *See supra* note 3.

[13] *See supra* note 4.

[14] 15 U.S.C. 78f.

[15] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[18] According to the Exchange, several major market data vendors display and/or make widely available Intraday Indicative Values published via the CTA or other data feeds. The Exchange notes that the quotations of certain of the Fund's holdings may not be updated during U.S. trading hours if such holdings do not trade in the United States or if updated prices cannot be ascertained. Further, there may be periods of time during Regular Trading Hours during which the Intraday Indicative Value would be static to the extent securities that comprise the Fund's holdings are not actively trading.

[19] The Disclosed Portfolio will include, as applicable, the names, quantity, percentage weighting, and market value of fixed income securities and other assets held by the Fund and the characteristics of such assets. The Web site and information will be publicly available at no charge.

the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[20] In addition, trading in the Shares will be subject to BATS Rule 14.11(i)(4)(B)(iv), which sets forth circumstances under which Shares of the Fund may be halted. The Exchange may halt trading in the Shares if trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[21] Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[22] The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges that are members or affiliates of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Exchange prohibits the distribution of material, non-public information by its employees. The Exchange also states that the Adviser and the Sub-Adviser are both affiliated with multiple broker-dealers and have both implemented fire walls with respect to such broker-dealer affiliates regarding access to information concerning the composition and/or changes to the Fund's portfolio.[23]

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will be subject to BATS Rule 14.11(i), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures applicable to derivative products, which include Managed Fund Shares, are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) BATS Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value is disseminated; (d) the risks involved in trading the Shares during the Pre-Opening and After Hours Trading Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) a reminder that there may be periods of time during Regular Trading Hours during which the Intraday Indicative Value would be static to the extent securities that comprise the Fund's holdings are not actively trading; (f) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (g) trading information.

(5) For initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 under the Exchange Act.[24]

(6) Consistent with the Exemptive Order, the Fund will not invest in options, swaps, or futures. The Fund's investments will be consistent with its investment objective and will not be used to enhance leverage. The Fund will not invest in equity securities.

(7) Countries must have at least $5 billion of outstanding debt principal amounts at the beginning of the calendar year in order to be included as an eligible investment.

(8) The Fund expects that, under normal circumstances, the securities included in the Fund will be primarily investment grade. In addition, the Fund will not invest in distressed debt.

(9) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities.

(10) A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations and description of the Fund, including those set forth above and in the Notice.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[25] and the rules and regulations thereunder applicable to a national securities exchange.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–BATS–2012–042) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–30165 Filed 12–13–12; 8:45 am]

BILLING CODE 8011–01–P

[20] *See* BATS Rule 14.11(i)(4)(A)(ii).

[21] *See* BATS Rule 14.11(i)(4)(B)(iii) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). With respect to trading halts, the Exchange may consider other relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in BATS Rule 11.18 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

[22] *See* BATS Rule 14.11(i)(4)(B)(ii)(b).

[23] *See supra* note 6. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and the Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[24] 17 CFR 240.10A–3.

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

### National Women's Business Council

### Federal Advisory Committee Meeting

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of open Federal advisory committee meeting.

**SUMMARY:** The SBA is issuing this notice to announce the location, date, time, and agenda for the next meeting of the National Women's Business Council (NWBC). The meeting will be open to the public.

**DATES:** The meeting will be held on January 22, 2013 from approximately 11:30 a.m. to 2:00 p.m. EDT.

**ADDRESSES:** The meeting will be held via web teleconference.

**Participant Instructions**

The web conference is scheduled to begin at 11:30 a.m. Eastern Time on January 22, 2013. You may join the web conference 15 minutes prior to the scheduled start by clicking *Webinar Login: http://emsp.intellor.com/login/411593.*

*Dial-in:* After you've connected your computer, audio connection instructions will be presented. If you need technical support or additional information regarding our events, please visit our portal at *http://emsp.intellor.com/portal/sbaevents* or contact AT&T Connect Support at 1–888–796–6118.

*Teleconference option:* day of event dial 1–888–621–9649, when prompt enter ID 411593.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the National Women's Business Council. The National Women's Business Council is tasked with providing policy recommendations on issues of importance to women business owners to the President, Congress, and the SBA Administrator.

The purpose of the meeting is to discuss NWBC's 2013 action items and the status of current research projects.

**FOR FURTHER INFORMATION CONTACT:** The meeting is open to the public however advance notice of attendance is requested. Anyone wishing to attend or make a presentation to the NWBC must either email their interest to *info@nwbc.gov* or call the main office number at 202–205–3850.

Those needing special accommodation in order to attend or participate in the meeting, please contact 202–205–3850 no later than January 15, 2013.

For more information, please visit our Web site at *www.nwbc.gov*.

**Anie J. Borja,**

*Executive Director.*

[FR Doc. 2012–30137 Filed 12–13–12; 8:45 am]

**BILLING CODE P**

## SMALL BUSINESS ADMINISTRATION

### Data Collection Available for Public Comments and Recommendations

**ACTION:** 60 Day Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

**DATES:** Submit comments on or before February 12, 2013.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Jose Mendez, Case Management Specialist, Office of Ombudsman, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Jose Mendez, Case Management Specialist, *mailto: 202-205-7507%20%20gail.hepler@sba.gov* 202–205–6178 *jose.mendez@sba.com* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

**SUPPLEMENTARY INFORMATION:** The Small Business Regulatory Enforcement Fairness Act of 1966, 15 U.S.C. Sec. 657(b)(2)(B), requires the SBA National Ombudsman to establish a means for SBA to receive comments on regulatory and compliance actions from small entities regarding their disagreements with a Federal Agency action. The Ombudsman uses it to obtain the agency's response, encourage a fresh look by the agency at a high level, and build a more small business-friendly regulatory environment.

*Title:* Federal Agency Comment Form.

*Description of Respondents:* Small Business Owners and Farmer.

*Form Number:* 1993.

*Annual Responses:* 400.

*Annual Burden:* 300.

**Curtis Rich,**

*Management Analyst.*

[FR Doc. 2012–30153 Filed 12–13–12; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #13406]**

### Nevada; Disaster #NV–00018 Declaration of Economic Injury

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Nevada, dated 12/04/2012.

*Incident:* Severe Thunderstorm and Flash Flooding.

*Incident Period:* 09/11/2012.

*Effective Date:* 12/04/2012.

*EIDL Loan Application Deadline Date:* 09/04/2013.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Clark.

Contiguous Counties:

Nevada: Lincoln, Nye.

Arizona: Mohave.

California: Inyo, San Bernardino.

The Interest Rates are:

| | Percent |
|---|---|
| Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations Without Credit Available Elsewhere | 3.000 |

The number assigned to this disaster for economic injury is 134060.

The States which received an EIDL Declaration # are Nevada, Arizona, California.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: December 4, 2012.

**Karen G. Mills,**

*Administrator.*

[FR Doc. 2012–30145 Filed 12–13–12; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

### Eagle Fund III, L.P., License No. 07/07–0116; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Eagle Fund III, L.P., 101 S. Hanley Road, Suite

1250, St. Louis, MO 63105, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under § 312 of the Act and § 107.730, Financings which constitute conflicts of interest, of the Small Business Administration Rules and Regulations (13 CFR part 107). Eagle Fund III, L.P., proposes to provide debt financing to JRI Holdings, Inc., 1339 N. Cedarbrook, Springfield, MO 65802. The financing is contemplated to provide growth capital for the company.

The financing is brought within the purview of § 107.730(a) of the Regulations because Eagle Fund I, L.P., an Associate of Eagle Fund III, L.P., has a 10% equity interest in JRI Holdings, Inc., thereby making JRI Holdings, Inc., an Associate of Eagle Fund III, L.P., as defined in § 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

**Sean J. Greene,**

*Associate Administrator for Investment and Innovation.*

[FR Doc. 2012–30142 Filed 12–13–12; 8:45 am]

**BILLING CODE P**

## SMALL BUSINESS ADMINISTRATION

### Eagle Fund III–A, L.P.; License No. 07/07–0117: Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Eagle Fund III–A, L.P., 101 S. Hanley Road, Suite 1250, St. Louis, MO 63105, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under § 312 of the Act and § 107.730, Financings which constitute conflicts of interest, of the Small Business Administration Rules and Regulations (13 CFR part 107). Eagle Fund III–A, L.P., proposes to provide debt financing to JRI Holdings, Inc., 1339 N. Cedarbrook, Springfield, MO 65802. The financing is contemplated to provide growth capital for the company.

The financing is brought within the purview of § 107.730(a) of the Regulations because Eagle Fund I, L.P., an Associate of Eagle Fund III–A, L.P., has a 10% equity interest in JRI Holdings, Inc., thereby making JRI Holdings, Inc., an Associate of Eagle Fund III–A, L.P., as defined in § 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

**Sean J. Greene,**

*Associate Administrator for Investment and Innovation.*

[FR Doc. 2012–30139 Filed 12–13–12; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF STATE

**[Public Notice 8119]**

### 30-Day Notice of Proposed Information Collection: Directorate of Defense Trade Controls Information Collection: ''Request for Commodity Jurisdiction (CJ) Determination''

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 30 days for public comment.

**DATES:** Submit comments to the Office of Management and Budget (OMB) up to January 14, 2013.

**ADDRESSES:** Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collections listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Nicholas Memos, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112, who may be reached via phone at (202) 663–2829, or via email at *memosni@state.gov.*

**SUPPLEMENTARY INFORMATION:**

- *Title of Information Collection:* Request for Commodity Jurisdiction (CJ) Determination
- *OMB Control Number:* 1405–0163
- *Type of Request:* Extension of Currently Approved Collection
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
- *Form Number:* DS–4076
- *Respondents:* Business and Nonprofit Organizations
- *Estimated Number of Respondents:* 1,260
- *Estimated Number of Responses:* 1,260
- *Average Hours per Response:* 10 hours
- *Total Estimated Burden:* 12,600 hours
- *Frequency:* On Occasion
- *Obligation to Respond:* Voluntary

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed collection of information is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

*Abstract of proposed collection:* The export, temporary import, temporary export and brokering of defense articles, defense services and related technical data are licensed by the Directorate of Defense Trade Controls in accordance with the International Traffic in Arms Regulations (22 CFR parts 120–130) and Section 38 of the Arms Export Control Act. Any person who engages in the business of manufacturing or exporting defense articles, defense services, and related technical data, or the brokering thereof, must register with the Department of State.

The information submitted pursuant to this collection will be used to

evaluate whether a particular defense article or defense service is covered by the U.S. Munitions List, and therefore is subject to export licensing jurisdiction of the Department of State. This collection may also be used to request a change in U.S. Munitions List category designation, request the removal a defense article from the U.S. Munitions List, or request the reconsideration of a previous commodity jurisdiction determination.

*Methodology:* These forms/information collections are to be sent electronically to the Directorate of Defense Trade Controls via the Directorate of Defense Trade Controls Web site.

Dated: December 6, 2012.

**Robert S. Kovac,**

*Managing Director of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State.*

[FR Doc. 2012–30233 Filed 12–13–12; 8:45 am]

**BILLING CODE 4710–25–P**

## DEPARTMENT OF STATE

**[Public Notice 8118]**

### Determination Concerning the Bolivian Military and Police

Pursuant to the authority vested in the Secretary of State, including that set forth in the ''International Narcotics Control and Law Enforcement'' account of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Div. I, Pub. L. 112–74), I hereby determine that funds made available for assistance for Bolivian military and police are in the national security interest of the United States.

This Determination shall be transmitted to the Congress and published in the **Federal Register**.

Dated: November 25, 2012.

**Hillary Rodham Clinton,**

*Secretary of State.*

[FR Doc. 2012–30243 Filed 12–13–12; 8:45 am]

**BILLING CODE 4710–29–P**

## DEPARTMENT OF STATE

**[Public Notice 8120]**

### Posting of Pamphlet Provided for in the International Marriage Broker Regulation Act

**ACTION:** Notice of posting of pamphlet provided for in section 833(a) of the International Marriage Broker Regulation Act, Title D of Public Law 109–162.

**SUMMARY:** Section 833(a) of the International Marriage Broker Regulation Act, Title D of Public Law 109–162, provided that the Secretary of Homeland Security, in consultation with the Attorney General and the Secretary of State, develop an information pamphlet on legal rights and resources for immigrants who are victims of domestic violence. That section further provided that such pamphlet be posted on the Web sites of the Department of State and all consular posts processing applications for K (fiancé(e) or spouse of U.S. citizen) visas. This notice announces that this pamphlet is posted on the Web site of the Bureau of Consular Affairs of the Department of State at: *http://travel.state.gov/visa/temp/pamphlet/pamphlet_5725.html.*

**DATES:** The pamphlet was posted on November 8, 2012.

**FOR FURTHER INFORMATION CONTACT:** Paul-Anthony L. Magadia, Legislation and Regulations Division, Visa Services, Bureau of Consular Affairs, Department of State, Washington, DC 20520–0106. (202) 663–3969, email: *magadiapl@state.gov.*

**SUPPLEMENTARY INFORMATION:** Section 833(a)(1) of the International Marriage Broker Regulation Act (''IMBRA''), Title D of Public Law 109–162, provided that the Secretary of Homeland Security, in consultation with the Attorney General and the Secretary of State, develop an information pamphlet on legal rights and resources for immigrants who are victims of domestic violence. Section 833(a)(5)(C) of IMBRA provided that such pamphlet be posted on the Web sites of the Department of State and all consular posts processing applications for K visas. IMBRA section 833(a)(4) directed that the Secretary of State translate the pamphlet into foreign languages, including Russian, Spanish, Tagalog, Vietnamese, Chinese, Ukrainian, Thai, Korean, Polish, Japanese, French, Arabic, Portuguese, and Hindi, and any other languages that the Secretary, in her discretion, may specify. The Secretary of Homeland Security completed this pamphlet, and the Secretary of State had it translated into the foregoing 14 languages. The Department of State has posted the pamphlet, in English and those 14 languages, online at *http://travel.state.gov/visa/temp/pamphlet/pamphlet_5725.html.* To make the pamphlet publicly available through consular posts, the Department of State has instructed U.S. embassies and consulates worldwide to establish a link to the Department's posting by November 21, 2012. By posting the pamphlet online, the Department is also making it available to any international marriage broker, government agency, or nongovernmental advocacy organization, pursuant to IMBRA section 833(a)(5)(D).

Dated: November 28, 2012.

**Janice L. Jacobs,**

*Assistant Secretary, Bureau of Consular Affairs, Department of State.*

[FR Doc. 2012–30231 Filed 12–13–12; 8:45 am]

**BILLING CODE 4710–06–P**

## DEPARTMENT OF TRANSPORTATION

**[Docket No. FRA 2012–0006–N–17]**

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Federal Railroad Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collection and their expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on September 24, 2012 (77 FR 58907).

**DATES:** Comments must be submitted on or before January 14, 2013.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5,

1320.8(d)(1), 1320.12. On September 24, 2012, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs for which the agency was seeking OMB approval. 77 FR 58907. FRA received no comments in response to this notice.

Before OMB decides whether to approve a proposed collection of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection requirements (ICRs) and the expected burden, and are being submitted for clearance by OMB as required by the PRA.

*Title:* State Safety Participation Regulations and Remedial Actions.

*OMB Control Number:* 2130–0509.

*Type of Request:* Extension with change of a previously approved information collection.

*Affected Public:* 49 States/566 Railroads.

*Abstract:* The collection of information is set forth under 49 CFR part 212, and requires qualified state inspectors to provide various reports to FRA for monitoring and enforcement purposes concerning state investigative, inspection, and surveillance activities regarding railroad compliance with Federal railroad safety laws and regulations. Additionally, railroads are required to report to FRA actions taken to remedy certain alleged violations of law.

*Form Number(s):* FRA F 6180.33/61/67/96/96A/109/110/111/112.

*Annual Estimated Burden Hours:* 9,058 hours.

*Title:* Use of Locomotive Horns at Highway-Rail Grade Crossings.

*OMB Control Number:* 2130–0560.

*Type of Request:* Extension with change of a currently approved collection.

*Affected Public:* 728 railroads/340 Public Authorities.

*Abstract:* Under Title 49 Part 222 of the Code of Federal Regulations, FRA seeks to collect information from railroads and public authorities in order to increase safety at highway-rail grade crossings nationwide by requiring that locomotive horns be sounded when trains approach and pass through these crossings or by ensuring that a safety level at least equivalent to that provided by blowing locomotive horns exists for corridors in which horns are silenced. FRA reviews applications by public authorities intending to establish new or, in some cases, continue pre-rule quiet zones to ensure the necessary level of safety is achieved.

*Form Number(s):* N/A.

*Annual Estimated Burden Hours:* 9,581 hours.

*Addressee:* Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street NW., Washington, DC, 20503, Attention: FRA Desk Officer. Comments may also be sent electronically via email to the Office of Information and Regulatory Affairs (OIRA) at the following address: *oira_submissions@omb.eop.gov.*

*Comments are invited on the following:* 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 best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

**Authority:** 44 U.S.C. 3501–3520.

Issued in Washington, DC, on *December 10, 2012.*

**Rebecca Pennington,**

*Chief Financial Officer, Federal Railroad Administration.*

[FR Doc. 2012–30187 Filed 12–13–12; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2012–0111]**

### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel PEGASUS; Invitation for Public Comments

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before January 14, 2013.

**ADDRESSES:** Comments should refer to docket number MARAD–2012–0111. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel PEGASUS is:

*Intended Commercial Use of Vessel:* ''Offshore sailing instruction, private cruise.''

*Geographic Region:* Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida.

The complete application is given in DOT docket MARAD–2012–0111 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

**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).

By Order of the Maritime Administrator.

Date: December 6, 2012.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2012–30122 Filed 12–13–12; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. FD 35377]**

### North Shore Railroad Company—Acquisition and Operation Exemption—PPL Susquehanna, LLC

North Shore Railroad Company (North Shore), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire a rail operating easement over approximately 7 miles of rail line (the Line) in Luzerne County, Pa., that PPL Susquehanna, LLC (PPLS), and Allegheny Electric Cooperative, Inc. (AEC), the owners of the Line,[1] had acquired previously from the Pennsylvania Department of Transportation (PennDOT).[2] The Line, a portion of the former Bloomsburg Branch, extends from the eastern terminus of North Shore's existing rail line at milepost 176.97 at Berwick, to milepost 170.00 at the PPLS nuclear power plant near Hicks Ferry Road at Beach Haven.[3] From the point of connection with the Line, North Shore's line extends to an interchange with Norfolk Southern Railway. North Shore states that it provides the only connection between the PPLS nuclear power plant and any Class I railroad, and that it has operated the Line since 1984 for PennDOT and then for PPLS.[4]

North Shore certifies that the projected annual revenues as a result of the transaction will not exceed $5 million and will not result in North Shore's becoming a Class I or Class II rail carrier.

The parties intend to consummate the transaction on the effective date of the exemption (30 days after the exemption is served and published).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than December 21, 2013 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35377, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Richard R. Wilson, 518 North Center Street Ste. 1, Ebensburg, PA 15931.

Board decisions and notices are available on our Web site at: *www.stb.dot.gov.*

Decided: December 11, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2012–30176 Filed 12–13–12; 8:45 am]

**BILLING CODE 4915–01–P**

[1] PPLS, a subsidiary of PPL Generation, LLC, is the operator of the power plant served by the Line and owns a 90% undivided interest in the Line and the power plant. AEC owns the remaining 10% undivided interest in the Line and the power plant.

[2] North Shore filed the notice of exemption on May 17, 2010. Because the notice raised a number of issues, the Board in a decision served on June 3, 2010, held the publication of the notice and the effectiveness of the exemption in abeyance and directed North Shore to file a copy of the parties' Rail Service Easement Agreement (Agreement) and additional information. Based on North Shore's response, which included a copy of the Agreement, the Board in a decision served on April 26, 2011, directed PPLS to respond to additional questions about its acquisition of the Line from PennDOT. PPLS responded on May 26, 2011, and on November 21, 2011, jointly filed with AEC a verified notice of exemption to acquire the Line, which the Board subsequently served and published in the **Federal Register**. *See PPL Susquehanna, LLC & Allegheny Electric Coop., Inc.—Acq. Exemption—Pa. Dept. of Transp.,* FD 35576 (STB served Dec. 7, 2011); 76 FR 76490. On July 2, 2012, North Shore filed a revised copy of the Agreement which addressed the concerns expressed by the Board in the April 26, 2011 decision, regarding the extent of control PPLS, then the noncarrier owner of the Line, could exert over North Shore's proposed common carrier operations.

[3] Based on the additional information that has been submitted, the description of the Line has been modified slightly from what appeared in the April 26, 2011 decision.

[4] In its notice of exemption, North Shore stated that it provided contract rail service on the Line. However, in a supplement to that notice, filed on August 13, 2010, in response to the Board's June 3, 2010 decision, North Shore stated that it provided common carrier rail service on the Line. In any event, North Shore will not become an authorized common carrier with respect to the Line until the effective date of this exemption.

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. FD 35696]**

### Michigan Southern Railroad Company—Acquisition and Operation Exemption—RMW Ventures, LLC and Maumee & Western Railroad Corporation

Michigan Southern Railroad Company (MSO), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate an approximately 51-mile rail line between milepost 79.0, near Woodburn, Ind. and milepost TN–28.0 near Liberty Center, Ohio. MSO has reached an agreement for the transaction with RMW Ventures, LLC, which owns the line,[1] and with Maumee & Western Railroad Corporation, which operates the line.[2] MSO states that the agreement does not contain a provision that would limit future interchange with a third-party connecting carrier.

The transaction may not be consummated prior to December 28, 2012 (30 days after the notice of exemption was filed).

MSO certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of

[1] *RMW Ventures, L.L.C.—Corporate Family Transaction Exemption—C & NC, L.L.C., Maumee & W., L.L.C., & Wabash Cent., L.L.C.,* FD 33541 (STB served Mar. 10, 1998).

[2] *Maumee & W. R.R.—Operation Exemption—Maumee & W., L.L.C.,* FD 33535 (STB served Jan. 16, 1998).

a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than December 21, 2012 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35696, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Daniel A. LaKemper, General Counsel, Michigan Southern Railroad Company, 1318 S. Johanson Road, Peoria, IL 61607.

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov*''.

Decided: December 11, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2012–30192 Filed 12–13–12; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

December 11, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before January 14, 2013 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

**FOR FURTHER INFORMATION CONTACT:** Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov*, or the entire information collection request maybe found at *www.reginfo.gov.*

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0129.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* U.S. Income Tax Return for Certain Political Organizations.

*Form:* 1120–POL.

*Abstract:* Certain political organizations file Form 1120–POL to report the tax imposed by section 527. The form is used to designate a principal business campaign committee that is subject to a lower rate of tax under section 527(h). IRS uses Form 1120–POL to determine if the proper tax was paid.

*Affected Public:* Private Sector: Not-for-profit institutions.

*Estimated Total Burden Hours:* 239,150.

*OMB Number:* 1545–0175.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Alternative Minimum Tax-Corporations.

*Form:* 4626.

*Abstract:* Section 55 of the Internal Revenue Code imposes an alternative minimum tax. The tax is 20 percent of the amount by which a corporation's taxable income adjusted by the items listed in sections 56 and 58, and by the tax preference items listed in Section 57, exceed an exemption amount. This result is reduced by the alternative minimum tax foreign tax credit. If this result is more than the corporation's regular tax liability before all credits (except the foreign tax and possessions tax credits), the difference is added to the tax liability. Form 4626 provides a line-by-line computation of the alternative minimum tax.

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 2,611,200.

*OMB Number:* 1545–0228.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Installment Sale Income.

*Form:* 6252.

*Abstract:* Information is needed to figure and report an installment sale for a casual or incidental sale of personal property, and a sale of real property by someone not in the business of selling real estate. Data is used to determine whether the installment sale has been properly reported and the correct amount of profit is included in income on the taxpayer's return.

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 1,597,008.

*OMB Number:* 1545–0712.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Risk Limitations.

*Form:* 6198.

*Abstract:* IRC section 465 requires taxpayers to limit their at-risk loss to the lesser of the loss or their amount at risk. Form 6198 is used by taxpayers to determine their deductible loss and by IRS to verify the amount deducted.

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 914,419.

*OMB Number:* 1545–0945.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* TD 7852—Registration Requirements with Respect to Debt Obligations (NPRM, LR–255–82).

*Abstract:* The rule requires an issuer of a registration-required obligation and any person holding the obligation as a nominee or custodian on behalf of another to maintain ownership records in a manner which will permit examination by the IRS in connection with enforcement of the Internal Revenue laws.

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 50,000.

*OMB Number:* 1545–0950.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Application for Enrollment to Practice Before the Internal Revenue Service.

*Form:* 23, 23–EP.

*Abstract:* Form 23 must be completed by those who desire to be enrolled to practice before the Internal Revenue Service. The information on the form will be used by the Director of Practice to determine the qualifications and eligibility of applicants for enrollment. Form 23–EP is the application form for Enrolled Retirement Plan Agents.

*Affected Public:* Individuals or households.

*Estimated Total Burden Hours:* 1,200.

*OMB Number:* 1545–1020.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Allocation of Estimated Tax Payments to Beneficiaries.

*Form:* 1041–T.

*Abstract:* This form was developed to allow a trustee of a trust or an executor

of an estate to make an election under IRC section 643(g) to allocate any payment of estimated tax to a beneficiary(ies). This form serves as a transmittal so that Service Center personnel can determine the correct amounts that are to be transferred from the fiduciary's account to the individual's account.

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 900.

*OMB Number:* 1545–1021.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Asset Acquisition Statement.

*Form:* 8594.

*Abstract:* Form 8594 is used by the buyer and seller of assets to which goodwill or going concern value can attach to report the allocation of the purchase price among the transferred assets.

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 219,462.

*OMB Number:* 1545–1538.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Notice 97–34, Information Reporting on Transactions With Foreign Trusts and on Large Foreign Gifts.

*Abstract:* This notice provides guidance on the foreign trust and foreign gift information reporting provisions contained in the Small Business Job Protection Act of 1996.

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 3,750.

*OMB Number:* 1545–1818.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Rev. Proc. 2003–38, Commercial Revitalization Deduction.

*Abstract:* Pursuant to Sec. 1400I of the Internal Revenue Code, this procedure provides the time and manner for states to make allocations of commercial revitalization expenditures to a new or substantially rehabilitated building that is placed in service in a renewal community.

*Affected Public:* State, Local, and Tribal Governments.

*Estimated Total Burden Hours:* 200.

*OMB Number:* 1545–1844.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Agreement to Mediate.

*Form:* 13369.

*Abstract:* Fast Track Mediation is a dispute resolution process designed to expedite case resolution. In order to avail themselves of this process, taxpayers and Compliance must complete the Agreement to Mediate once an examination or collection determination is made. Once signed by both parties, the Agreement to Mediate will be forwarded to Appeals to schedule a mediation session.

*Affected Public:* Individuals or households.

*Estimated Total Burden Hours:* 15.

**Dawn D. Wolfgang,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2012–30207 Filed 12–13–12; 8:45 am]

**BILLING CODE 4830–01–P**

# FEDERAL REGISTER

Vol. 77 Friday,

No. 241 December 14, 2012


Part II

## The President

Presidential Determination No. 2013–2 of December 4, 2012—Suspension of Limitations Under the Jerusalem Embassy Act

Federal Register
Vol. 77, No. 241
Friday, December 14, 2012

# Presidential Documents

**Title 3—**

## The President

**Presidential Determination No. 2013–2 of December 4, 2012**

## Suspension of Limitations Under the Jerusalem Embassy Act

**Memorandum for the Secretary of State**

Pursuant to the authority vested in me as President by the Constitution and the laws of the United States, including section 7(a) of the Jerusalem Embassy Act of 1995 (Public Law 104–45) (the ''Act''), I hereby determine that it is necessary, in order to protect the national security interests of the United States, to suspend for a period of 6 months the limitations set forth in sections 3(b) and 7(b) of the Act.

You are authorized and directed to transmit this determination to the Congress, accompanied by a report in accordance with section 7(a) of the Act, and to publish the determination in the *Federal Register.*

This suspension shall take effect after the transmission of this determination and report to the Congress.

THE WHITE HOUSE,
*Washington, December 4, 2012*

[FR Doc. 2012–30347
Filed 12–13–12; 11:15 am]
Billing code 4710–10

# Reader Aids

**Federal Register**

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